

IN THE SUPREME COURT OF FLORIDA

DR. GREGORY L. STRAND,

Appellant,

v.

CASE NO. SC06-1894
L.T. Case No. 2006-CA-881

ESCAMBIA COUNTY, FLORIDA,
a political subdivision of the State of
Florida,

Appellee.

**APPELLANT DR. GREGORY L. STRAND'S
AMENDED REPLY TO THE ATTORNEY GENERAL'S
AMICUS CURIAE BRIEF IN SUPPORT OF CLARIFICATION**

Appellant DR. GREGORY L. STRAND (“Dr. Strand”), by and through his undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.330(c), hereby files this Amended Reply to the “Amicus Curiae Brief of Attorney General Bill McCollum in Support of Clarification,” which was accepted by Order of this Court dated September 20, 2007, and, states as follows:

I.

INTRODUCTION

On September 15, 2006, Dr. Strand appealed a Final Judgment entered by the First Judicial Circuit Court validating bonds to be issued by Appellee Escambia County, Florida (“Escambia County”), in an amount not to exceed

\$135,000,000.00, and funded through the utilization of tax increment financing. On appeal, Dr. Strand argued, in pertinent part, that the tax increment financing scheme proposed by Escambia County constituted an indirect pledge of ad valorem taxation without a referendum in violation of Article VII, Section 12 of the Florida Constitution.

On September 6, 2007, the Court issued its Opinion in the instant appeal, thereby reversing the Circuit Court's Final Judgment and invalidating the proposed bond issuance. In so doing, the Court receded from its prior decisions in *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), and *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990), stating, in part, that the Court can no longer support the "legal fiction" underlying such decisions, which has "allowed localities to indirectly pledge ad valorem taxation for the repayment of long-term bonds without the consent of the electorate." *Strand v. Escambia County*, No. SC06-1894, slip op. at 25 (Fla. Sept. 6, 2007). Accordingly, the Court held:

The phrase "payable from ad valorem taxation" in article VII, section 12 refers not only to a pledge of the taxing power itself but also to a pledge of ad valorem tax revenues. And, because tax increment financing pledges funds obtained from ad valorem tax revenues, bonds that rely upon such financing schemes are bonds "payable from ad valorem taxation." Consequently, approval of such bonds by referendum, as mandated by article VII, section 12, must be obtained.

Id. at 8.

On September 17, 2007, the Attorney General filed a “Motion for Leave to File Amicus Curiae Brief in Support of Clarification” (“Motion”). By Order dated September 20, 2007, this Court granted the Attorney General’s Motion and accepted the Attorney General’s Amicus Curiae Brief in Support of Clarification.

In his Amicus Brief, the Attorney General does not seek to have the Court revisit its underlying ruling or its decision to recede from *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), and *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990), which the Attorney General acknowledges is “the Court’s prerogative to make.” (Amicus Brief at 9). Rather, the Attorney General simply requests that the Court clarify the scope and potential retroactive application of its September 6 Opinion to bonds that were validly “issued” in reliance upon *Miami Beach* and *Sarasota County*, but not judicially “validated” pursuant to Chapter 75, *Florida Statutes*.

II.

THE COURT'S OPINION APPLIES PROSPECTIVELY

In its September 6 Opinion, the Court stated that its ruling would apply prospectively:

[O]ur decision in this case does not affect bonds that were validated prior to this opinion becoming final. *See Miami Beach*, 392 So. 2d at 895; *County Comm'rs v. King*, 13 Fla. 451 (1869).

Strand v. Escambia County, No. SC06-1894, slip op. at 26 (Fla. Sept. 6, 2007).

The Court's use of the term "validated," however, has apparently led to some speculation as to the scope of the Court's ruling because judicial "validation" pursuant to Chapter 75, *Florida Statutes*, is not required prior to the issuance of bonds. *See* § 75.02, Fla. Stat. (2006) (providing that "[a]ny county, municipality, taxing district or other political district . . . authorized by law to issue bonds, may determine its authority to incur bonded debt or issue certificates of debt" by filing a complaint for validation in circuit court) (emphasis supplied).

By its citation to *County Comm'rs v. King*, 13 Fla. 451 (1869), however, Dr. Strand submits that it was the Court's intention that its decision would not apply to bonds validly "issued" to bona fide holders based upon the authority of *Miami Beach* and *Sarasota County* prior to the Court's September 6 Opinion. Indeed, in *King*, this Court held that the bonds in question, "having been issued [to bona fide holders] under the sanction of the highest judicial authority of the state," were

valid and not affected by a subsequent decision declaring a law unconstitutional, and that such decision “would operate only upon the future.” (Emphasis supplied); *see also State ex rel. Nuveen v. Greer*, 102 So. 739, 743 (Fla. 1924) (“Bonds sold to bona fide holders while the statute authorizing the bonds is duly adjudged to be constitutional, are valid, and the purchaser is protected from a subsequent decision of invalidity”). Thus, while the Court’s September 6 Opinion used the term “validated,” Dr. Strand submits that the use of such term was not meant to limit the prospective nature of the Court’s ruling so as to call into question the validity of bonds previously “issued” to bona fide holders based upon the authority of *Miami Beach* and *Sarasota County*, but not judicially “validated” pursuant to Chapter 75, *Florida Statutes*.

III.

CONCLUSION

In sum, a thorough reading of the Court’s September 6 Opinion, and the legal precedent cited therein, indicates that the Court’s decision applies prospectively and does not affect bonds previously “issued” to bona fide holders based upon the authority of *Miami Beach* and *Sarasota County*. However, based upon the alleged confusion caused by the Court’s use of the term “validated” in its September 6 Opinion, Dr. Strand respectfully submits the following proposed revision for the Court’s consideration:

[O]ur decision in this case does not affect bonds that were validated **or issued to bona fide holders** prior to this opinion becoming final. *See Miami Beach*, 392 So. 2d at 895; *County Comm'rs v. King*, 13 Fla. 451 (1869).

Dr. Strand submits that such revision would alleviate the concerns raised by the Attorney General in his Amicus Brief, as well as the other parties on rehearing and clarification, regarding the potential retroactive application of the Court's September 6 Opinion.¹

RESPECTFULLY SUBMITTED this ____ day of September 2007.

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¹ *See Escambia County's Amended Motion for Rehearing and Clarification* at 6-8; *The Florida Association of Counties, Inc.'s Motion for Rehearing and Clarification* at 10-14; *The Florida School Boards Association, Inc.'s Joint Motion for Clarification* at ¶¶ 12-16; *The Florida League of Cities, Inc.'s Motion for Leave* at 16-17.

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