

IN THE SUPREME COURT OF FLORIDA

Case No. SC09-1817/1818
Lower Case No.: 50-2008-CA-031975XXXXMB

MICCOSUKEE TRIBE OF INDIANS OF
FLORIDA, and
NEW HOPE SUGAR COMPANY and
OKEELANTA CORPORATION,

Defendants/Appellants,

vs.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Plaintiffs/Appellee.

**RESPONSE OF APPELLANT MICCOSUKEE TRIBE
OF INDIANS OF FLORIDA IN OPPOSITION TO
FLORIDA SCHOOL BOARD ASSOCIATION’S AND
FLORIDA ASSOCIATION OF DISTRICT SCHOOL SUPERINTENDENTS,
INC.’S MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF**

Defendant/Appellant, the Miccosukee Tribe of Indians of Florida (“Tribe”), hereby responds in opposition to The Florida School Board Association’s and Florida Association of District School Superintendents, Inc.’s (jointly the “Associations”) Motion for Leave to File Amicus Curiae Brief, as follows:

The Associations’ proposed amicus brief, while well intended, will not assist this Court in resolving the issues in this appeal. Appellants are not challenging the legality or availability of Certificates of Participation (“COPs”)

financing or lease purchase agreements per se. Instead, Appellants have explained in their briefs that they take issue with the way Appellee South Florida Water Management District (“SFWMD”) has used and abused the devices in this context. Indeed, Appellant Tribe relies on *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990), in its argument in the Initial Brief (*see* pp. 27, 35-36, 39-40), and does not take any issue with the holdings in the more recent *Strand* decision (*see* Initial Brief at pp. 32). Accordingly, if Appellants prevail on their appeal, the Associations’ ability to use COPs and lease purchase agreements as they have done in the past remains completely unaffected.

1. An Amicus Brief from the Associations would not assist the Court because Appellants are not challenging the arguments to be advanced by the Associations in this case.

“Briefs from amicus curiae . . . are generally for the purpose of assisting the court in cases which are of general public interest, or aiding in the presentation of difficult issues.” *Ciba-Geigy Limited v. Fish Peddler, Inc.*, 683 So.2d 522, 523 (Fla. 4th DCA 1996); *see also* Florida Rule of Appellate Procedure 9.370. The issues the Associations intend to raise in their amicus brief will not assist the Court. The Tribe’s appeal in no way challenges the right of the Associations’ members to use COPs or lease purchase agreements to finance their concerns.

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The Associations propose to address two major issues: (1) the importance of COPs and lease purchase obligations to school districts and the consequences if COPs and lease purchase obligations are no longer a viable financing mechanism; and (2) the necessity of following the doctrine of *stare decisis* with decisions such as *School Board of Sarasota County*, 561 So.2d 549 (Fla. 1990). Motion at 4. Accepting the Associations' amicus brief would not assist the Court because (1) Appellant Tribe in no way challenges the importance of COPs and lease purchase obligations to school districts, and agrees that this funding mechanism should remain available to school boards. Nothing in the Tribe's appeal states otherwise; (2) Appellant Tribe agrees with the necessity of following the doctrine of *stare decisis*, and has argued that the Court should stay within the well-established boundaries of bond law. The Tribe relies on cases such as *School Board of Sarasota County*, and argues that the Court should stay with its prior decisions that public referenda are dispensable for bond issuance only if the public entity could, for practical purposes, walk away from its obligations if it so chooses. Initial Brief at pp. 35-36. The Tribe argues that the District, in this case, could *not* walk away from its obligations for a variety of reasons, and that a referendum is required according to cases such as *School Board of Sarasota County*.

- 2. The bond validation sought by Appellee SFWMD is not in line with established precedent and instead seeks to validate bonds for purposes never previously validated.**

The Associations state that they propose to describe how they rely on COP and lease purchase financing, and explain the constitutional framework of Article VII, Fla. Const., for the issuance of such instruments. Both Appellants and Appellee SFWMD (presumably) will describe the constitutional framework in considerable detail. How school boards rely on COP and lease purchase obligations is entirely besides the point. In this case, the COPs are sought to be issued by a water management district, which has carefully circumscribed statutory authority, and not a school district under its different constitutional authority. Appellant Tribe's Initial Brief, at pp. 27 – 28, stated:

This distinguishes the instant land acquisition from the typical school or fire districts' financing of an actual facilities project, which includes the land acquisition and the associated planning, design, engineering and construction of a facility. *See, e.g., State v. School Board of Sarasota County*, 561 So. 2d 549, 550-51 (Fla. 1990); *Leon County Educ. Authority v. Hartsfield*, 698 So.2d 526, 527 (Fla. 1997). In this case, the District is seeking validation to acquire only part of the land, and without any regard to the concrete planning, design, engineering, financing or construction of the infrastructure projects that will be necessary to obtain any of the actual environmental and water resources benefits the District claims. In the school construction cases, the public benefit is the actual construction and subsequent use of a

facility, the school itself.

Indeed, COPs and lease purchase obligations have never been validated in Florida for plain land purchases without an attached project (land banking) and for the purchase of land options. Initial Brief at p. 28.

The Associations, at Section 4, p. 3 of their Motion, argue that “COPs and lease purchase obligations are used by school districts as a means to finance the construction and major renovations of educational facilities,” precisely the purposes for which the SFWMD is *not* using them in this case. At best, the financing methods used by school boards present a contrast to the daring use of these devices by Appellee SFWMD for the purchase of land and land options. The Associations cannot argue credibly that they have ever used COPs and lease purchase obligations for pure land banking, and that a finding by this Court prohibiting such practices would prejudice them in any way.

In this regard, the consequences that flowed from this Court’s initial opinion in the *Strand* case are completely besides the point. The way Appellee SFWMD attempts to use COPs in this case is completely and fundamentally distinguishable from the bonds addressed in *Strand v. Escambia County*, 992 So.2d 150 (Fla. 2008). *Strand* did not even involve Certificates of Participation, and definitely did not concern the issuance of bonds, without referendum, for the purpose of

purchasing raw land and a land option without a foreseeable project. Indeed, no argument can be credibly advanced that an opinion from this Court declining to expand bond law into the arenas of land speculation would affect credit ratings of school boards and municipalities for COPs in any way. It is simply not correct to state that “this case presents similar concerns and issues [as the *Strand* case], and has the potential to similarly impact school district funding sources.” Motion at p. 6. What is at issue in this case is an out-of-control water management district, not a school district following well-established law.

CONCLUSION

Appellant Tribe respectfully requests that this Court deny the Motion of the Associations to file and amicus brief, and focus on the issues actually presented in this case, i.e., can a statutory water management district issue, without prior referendum, certificates of participation to purchase raw land and a land option, for the purpose of leasing it back as is to the seller, and to then study what to do with the land in the future. The proposed amicus brief would in no way assist the Court in resolving that issue. Accordingly, the Motion of the Associations should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to The Florida School Board Association's and Florida Association of District School Superintendents, Inc.'s Motion for Leave to File Amicus Curiae Brief, has been furnished this 3rd day of November, 2009, to the parties on the attached service list:

By: /s/ Dexter Lehtinen
Dexter Lehtinen, Fla. Bar # 265551

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Service List:

<p>RANDALL W. HANNA, Esq. CHRISTINE E. LAMIA, Esq. BRYANT MILLER OLIVE, P.A. 101 North Monroe Street, Suite 900 Tallahassee, FL 32301</p>	<p>KENNETH R. ARTIN, Esq. BRYANT MILLER OLIVE, P.A. 135 West Central Blvd., Suite 700 Orlando, FL 32801</p>
<p>SHERYL G. WOOD, General Counsel FRANK. S. BARTOLONE, Esq. South Florida Water Management District 3301 Gun Club Road, MSC 1410 West Palm Beach, Florida 33046</p>	<p>MARK E. KOHL, Esq. State Attorney, 16th Judicial Circuit 530 Whitehead Street, Suite 301 Key West, Florida 33040</p>
<p>LAWSON S. LAMAR, Esq. State Attorney, Ninth Judicial Circuit 415 North Orange Avenue Orlando, FL 32801</p>	<p>GERALD P. HILL, Esq. State Attorney, 10th Judicial Circuit 255 Broadway Avenue, 2nd Floor Bartow, FL 33830</p>
<p>KATHRYN P. HEAVEN, Esq. Asst. State Attorney 17th Judicial Circuit 201 S.E. 6th Street, Suite 655 Fort Lauderdale, FL 33301</p>	<p>KATHERINE FERNANDEZ RUNDLE, Esq. State Attorney, 11th Judicial Circuit 1350 N.W. 12th Avenue Miami, FL 33136</p>
<p>RYAN BUTLER, Esq. Asst. State Attorney 19th Judicial Circuit 411 South Second Street, Ft. Pierce, FL 34950</p>	<p>MAUREEN HACKETT, Esq. Asst State Attorney 15th Judicial Circuit 401 North Dixie Highway West Palm Beach, FL 33401-4209</p>
<p>STEPHEN P. RUSSELL, Esq. State Attorney 20th Judicial Circuit 1700 Monroe Street, 3rd Floor Ft. Myers, FL 33902</p>	<p>JOSEPH P. KLOCK, Esq. GABRIEL E. NIETO, Esq. RASCO KLOCK ET AL 282 Catalonia Avenue Coral Gables, FL 33134</p>
<p>I. WILLIAM SPIVEY, II, Esq. COURTNEY M. WITTE, Esq. GREENBERG TRAUIG, P.A. 450 South Orange Ave., Suite 650 Orlando, FL 32801</p>	<p>THOMAS J. WILKES, Esq. HEATHER M. BLOM-RAMOS, Esq. GRAY ROBINSON, P.A. P.O. Box 3068 Orlando, FL 32802-3068</p>

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E. THOM RUMBERGER RUMBERGER, KIRK & CALDWELL, P.A. P.O. Box 10507 Tallahassee, FL 32303	J. MICAEL HUEY, Esq. PETER ANTINACCI, Esq. GRAY ROBINSON, P.A. P.O. Box 11189 Tallahassee, FL 32302-3189
Major B. Harding, Esq. Ausley & McMullen, P.A. 227 S. Calhoun Street Tallahassee, Florida 32301	Robert L. Nabors, Esq. Nabors, Giblin & Nickerson, P.A. 1500 Mahan Drive, Suite 200 Tallahassee, Florida 32308
Joy Causseaux Frank, Esq. Florida Association of District School Superintendents 208 S. Monroe Street Tallahassee, Florida 32301	