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Florida Constitutional Law: Necessity of Freeholders' Vote for County Building Anticipation Bonds

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achieving substantial justice through the foregoing exceptions. It is suggested, however, that a sounder foundation could be established for these decisions upon the presentation of the issues of *res judicata*, merger, prevention of double recovery, or ratification, which are submerged in the doctrine of election of remedies.

JAMES W. MAHONEY

FLORIDA CONSTITUTIONAL LAW: NECESSITY OF
FREEHOLDERS' VOTE FOR COUNTY BUILDING
ANTICIPATION BONDS

Pinellas County v. State, 36 So.2d 216 (Fla. 1948)

The Board of County Commissioners of Pinellas County instituted validation proceedings for a proposed issue of building revenue anticipation bonds under a special act¹ for the immediate construction of a branch courthouse designed to house certain county officers in a city other than the county seat. The special act provided that the county should issue bonds to be serviced exclusively by its share of the state racing revenues as provided by statute² and the excess fees of its several officers. The proposal stipulated, and the bonds stated, that they would not constitute an indebtedness of the county, and that no *ad valorem* taxes should ever be required to be levied for the payment of either principal or interest. The county proposed the issuance of the bonds without a vote of the freeholders, which proposal the state attacked as contravening the Florida Constitution. From a decree of validation the state appealed. HELD, the proposed bond issue does not violate the Florida constitutional prohibition against issuance of bonds by political subdivisions without an approving vote of the freeholders. Decree affirmed, Chief Justice Thomas, Justices Adams and Barnes dissenting.

L. REV. 298 (1934); Deinard and Deinard, *Election of Remedies*, 6 MINN. L. REV. 341, 480 (1922); Hine, *Election of Remedies, A Criticism*, 26 HARV. L. REV. 707 (1913); Rothschild, *A Remedy for Election of Remedies*, 14 CORN. L. Q. 141 (1929).

¹Fla. Spec. Acts 1947, c. 24819.

²FLA. STAT. §550.13 (1941).

The present case illustrates a liberalization of the Florida Supreme Court's construction of Article IX, Section 6, of the Florida Constitution.³

An early and comparatively strict interpretation was enunciated in *Williams v. Dunnellon*,⁴ in which the Court indicated that an approving vote of the freeholders would not be required for issuance of revenue anticipation bonds by political subdivisions for repair and improvement of *existing* and *necessary* public utilities and services if, but only if, it was clear that such revenue would be sufficient to retire the bonds without resort to a tax or pledge from any other source. Those utilities and services which were merely desirable or convenient were expressly excluded.⁵

In a case shortly thereafter the Court held that a proposal to issue toll anticipation bonds on a proposed bridge, and to give bondholders a lien on the result of the construction in the event of default, was violative of the Florida Constitution in the absence of a vote of the freeholders.⁶ In cases decided during the same term the Court decided that a city could not issue, without approval of freeholders, revenue anticipation bonds for the construction of a *new* utility,⁷ or improvement of an existing *non-essential* utility.⁸ In a later case the Court explained the decision in the *Hygena* case on the ground that, there being no existing utility of this type, a proposed gas plant might impose new liabilities in tort and contract which the city had not theretofore assumed.⁹

The Court has consistently held that a bond issue for present funding of an improvement for an existing and necessary utility or

³FLA. CONST. Art IX, § 6, ". . . and the Counties, Districts, or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate. . . ." (As amended, general election, Nov. 4, 1930).

⁴*Williams v. Dunnellon*, 125 Fla. 114, 169 So. 631 (1936); *accord* *Seward v. Bowers*, 37 N. M. 385, 24 P.2d 253 (1933).

⁵*Williams v. Dunnellon*, 125 Fla. 114, 123, 169 So. 631, 635 (1936).

⁶*State v. Calhoun County*, 125 Fla. 263, 169 So. 673 (1936); *Boykin v. River Junction*, 121 Fla. 902, 164 So. 558 (1935).

⁷*Hygena v. City of Sebring*, 124 Fla. 683, 169 So. 366 (1936).

⁸*Charles v. Miami*, 125 Fla. 110, 169 So. 589 (1936). *But cf.* *State v. Miami*, 157 Fla. 616, 26 So.2d 672 (1946).

⁹*Flint v. Duval County*, 126 Fla. 18, 46, 170 So. 587, 597 (1936).

service, to be met exclusively from net revenue of such utility, does not require a vote of freeholders.¹⁰ This construction has been extended not only to funding of improvements for gas plants,¹¹ water works,¹² electric power installations,¹³ and sewerage systems,¹⁴ but also to bridges,¹⁵ port facilities,¹⁶ garbage disposal plants,¹⁷ and hospitals.¹⁸

The construction of the Court in *Williams v. Dunnellon* has been liberalized in subsequent cases, which have allowed revenue anticipation bonds to be issued without the vote of freeholders for the construction of new bridges,¹⁹ the acquisition of a new utility,²⁰ and the purchase of an airport.²¹ Even though it was possible that these activities would introduce new liabilities, the controlling fact was that property other than expected revenues would not be pledged.²² A further extension was permitted in upholding a county's proposal, acting under legislative authority, to pledge its share of the racing revenue for the construction of a courthouse, even though there was no vote of the freeholders.²³

The rationale of the early construction placed on Article IX, Section 6, is that an assumption of new liabilities, obligations to tax, or pledges

¹⁰*State v. Tampa*, 148 Fla. 6, 3 So.2d 484 (1941); *State v. DeLand*, 135 Fla. 540, 185 So. 343 (1938); *State v. Miami*, 113 Fla. 280, 152 So. 6 (1933).

¹¹*State v. St. Petersburg*, 135 Fla. 642, 185 So. 451 (1938).

¹²*State v. St. Petersburg*, 145 Fla. 206, 198 So. 837 (1940); *State v. DeLand*, 135 Fla. 540, 185 So. 343 (1938); *Board of Comm'rs v. Herrick*, 123 Fla. 619, 167 So. 386 (1936).

¹³*State v. Jacksonville*, 31 So.2d 385 (Fla. 1947); *Brooks v. Jacksonville*, 127 Fla. 564, 173 So. 365 (1937).

¹⁴*State v. Winter Park*, 34 So.2d 740 (Fla. 1948); *State v. Miami*, 157 Fla. 726, 27 So.2d 118 (1946); *State v. Tampa*, 137 Fla. 29, 187 So. 604 (1939).

¹⁵*Flint v. Duval County*, 126 Fla. 18, 46, 170 So. 587, 597 (1936).

¹⁶*Dickey v. Broward County Port Authority*, 135 Fla. 622, 185 So. 349 (1938).

¹⁷*Jacksonville v. May*, 140 Fla. 826, 192 So. 614 (1939).

¹⁸*State v. Miami*, 150 Fla. 270, 7 So.2d 146 (1942); *Dickey v. Fort Lauderdale*, 134 Fla. 193, 183 So. 724 (1938).

¹⁹*State v. Escambia County*, 153 Fla. 282, 14 So.2d 576 (1943); *State v. Dade County*, 146 Fla. 331, 200 So. 848 (1941); *Kinsey v. Walton County Bridge Authority*, 136 Fla. 204, 186 So. 418 (1939).

²⁰*State v. Key West*, 153 Fla. 226, 14 So.2d 707 (1943), *rev'd on other grounds*.

²¹*State v. Dade County*, 157 Fla. 859, 27 So.2d 283 (1946).

²²*See Zinnen v. Fort Lauderdale*, 32 So.2d 162, 163 (Fla. 1947).

²³*Compare Posey v. Wakulla County*, 148 Fla. 115, 3 So.2d 799 (1941) *with Tapers v. Pichard*, 124 Fla. 549, 169 So. 39 (1936).