

IN THE SUPREME COURT OF FLORIDA

CASE NO. 94,135
(CI 98-CI 1137)

STATE OF FLORIDA,

Appellant,

vs.

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

VALIDATION OF NOT EXCEEDING
\$35,000,000 OSCEOLA COUNTY,
FLORIDA TOURIST DEVELOPMENT
TAX REVENUE BONDS, SERIES 1998

Appellee,

_____ /

**OSCEOLA COUNTY, FLORIDA'S RESPONSE TO
APPELLANT'S MOTION FOR CLARIFICATION OR REHEARING**

Appellee, OSCEOLA COUNTY, FLORIDA (the "County"), by and through its undersigned counsel, pursuant to Fla. R. App. P. 9.330, responds to Appellant's Motion for Clarification or Rehearing.

Contrary to the assertions of Appellant, this Court did not overlook or misapprehend points of law or fact which would justify a rehearing or clarification of this cause. Appellant's initial basis for clarification and rehearing relates to the

consideration of the operating and development agreement in the validation process.¹ Appellant argues that this Court's determination that the "propriety and completeness" of the development and operating agreements are collateral matters to the validation process is inconsistent with the consideration of the agreements for any other purpose. More particularly, Appellant references footnote 13 of this Court's opinion, which reads as follows:

The State's arguments against the propriety or completeness of the development and operating agreement are collateral matters which are beyond the scope of this validation proceeding. See State v. Sunrise Lakes Phase II Special Recreation Dist., 383 So. 2d 631, 633 (Fla. 1980)(holding that trial court does not have jurisdiction to consider validity of operating contract for recreational facility because contract involves other parties and is collateral to bond validation proceeding)....

(Slip Op. at 22, n. 13).

Appellant's argument on this matter represents nothing more than a reargument of the various assertions made throughout this appeal.² Fla. R. App. P. 9.330(a) prescribes a standard for granting a motion for rehearing.

A motion for rehearing or clarification shall state with particularity the points of law or fact that the court has

¹Appellant asserts three grounds for clarification or rehearing, however, the first and second issue appear to be a rearguing of the same point. They will be treated as one ground for the purpose of this response.

²See Initial Brief of Appellant State of Florida (pp.30-34), (pp. 37-42).

overlooked or misapprehended. The motion shall not re-argue the merits of the court's order.

Rule 9.330(a), Fla. R. App. P. (emphasis added). See Parker v. Baker, 499 So. 2d 843, 847 (Fla. 2d DCA 1986), rev. denied, 506 So.2d 1040 (Fla. 1986) (quoting State v. Green, 105 So. 2d 817, 818-19 (Fla. 1958)) ("[I]t is not the function of a petition for rehearing . . . to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, . . .") (emphasis added). Based on these principles, Appellant's motion should be denied because the motion consists of assertions which have been fully briefed by the parties and considered by the Court in this case. Appellant's motion expresses nothing more than mere dissatisfaction with this Court's treatment of their argument. Such an expression of disagreement is not a basis for rehearing. See Whipple v. State, 431 So. 2d 1011, 1013 (Fla. 2d DCA 1983)(quoting State v. Green, 105 So. 2d 817, 818-19 (Fla. 1958))("[I]t is not the function of a [motion] for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion[.]").

The relevance of the operating and development agreements in the validation process was solely in regard to the existence of a paramount public purpose and whether any private benefit was incidental thereto. Poe v. Hillsborough County, 695

So. 2d 672 (Fla. 1997). This Court, having considered the agreements within that limited context, correctly determined that matters of business judgment and the specific terms and provisions to be included were collateral to the validation process. This analysis is consistent with the historical scope of validation applied by this Court. Poe v. Hillsborough County, 695 So. 2d 672, 679 (Fla. 1997); Town of Medley v. State, 162 So. 2d 257, 258-259 (Fla. 1964); Partridge v. St. Lucie County, 539 So. 2d 472, 473 (Fla. 1989); GRW Corp. v. Department of Corrections, 642 So. 2d 718 (Fla. 1994).

Appellant also argues that section 125.0104(5)(a), Florida Statutes, which governs the general use of tourist development taxes, imposes restrictions upon the operation of all tourist development tax funded convention centers through its reference to "publicly owned and operated convention centers."³ The language relied upon by Appellant states:

³This argument appears to have never been previously asserted by the Appellant. A review of the initial brief, the reply brief, and oral argument reflects that the only argument asserted by Appellant was whether the term "acquired" in section 125.0104(5)(a), Florida Statutes, acted as a limitation on the use of tax proceeds under section 125.0104(3)(1), Florida Statutes. Generally, courts will not entertain the assertion of a matter for the first time on a motion for rehearing. Polyglycoat Corporation v. Hirsch Distributors, Inc., 442 So. 2d 958 (Fla. 4th DCA 1983); Eastern Airlines, Inc. v. King, 561 So. 2d 1220 (Fla. 3d DCA 1990); Price Wise Buying Group v. Nuzum, 343 So. 2d 115 (Fla. 1st DCA 1977); Ratley v. Batchelor, 599 So. 2d 1298 (Fla. 1st DCA 1991). However, for the purpose of clarification, the County will respond.

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied.

§ 125.0104(5)(a)1., Fla. Stat. (1997) (emphasis added).

As indicated in the opinion of this Court, the tourist development tax proceeds pledged for the repayment of the bonds at issue are pursuant to section 125.0104(3)(1)2., Florida Statutes, which permits an additional one percent tax for the specific purpose of:

Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds.

§ 125.0104(3)(1)2., Fla. Stat.

The distinction between these sections is that in addition to the financing of the construction of a convention center, section 125.0104(5)(a), Florida Statutes, also authorizes the tax proceeds to be used to fund the operations of that center. By contrast, the tax proceeds under section 125.0104(3)(1), Florida Statutes, are restricted

to only the "construction, reconstruction and renovation of a convention center," and may not be used for its operations. The clear legislative intent under section 125.0104(5)(a), Florida Statutes, is to allow some tourist development taxes to fund operations, but not private operations. As section 125.0104(3)(l), Florida Statutes, does not allow the use of any of its tourist development tax for operations, it is unnecessary to restrict the manner that the convention center would be operated.

The Court did not overlook or misapprehend the interrelation between sections 125.0104(3)(l) and 125.0104(5)(a), Florida Statutes, and fully analyzed both provisions in regard to their legislative intent.

WHEREFORE, Appellant has failed to provide this Court with any points of law or fact that it overlooked or misapprehended which would justify a rehearing or clarification of this matter and Appellee OSCEOLA COUNTY, FLORIDA respectfully requests that this Court deny Appellant's Motion for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to CLOYCE L. MANGAS, JR., ESQUIRE, Assistant State Attorney, Ninth Judicial Circuit of Florida, Post Office Box 1673, 415 N. Orange Avenue, Orlando, Florida 32802, this _____ day of June, 1999.

GREGORY T. STEWART

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