

IN THE SUPREME COURT
STATE OF FLORIDA

SUZANNE M. BOSCHEN,
Appellant,

vs.

CASE NO. 96,874
Circuit Civil Case No. 99-3622-CI-20

CITY OF CLEARWATER, a municipal
corporation and public body corporate and
politic of the State of Florida,
Appellee.

**ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA**

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

The City of Clearwater, Florida (the "City") files this Answer Brief to affirm the decision of the trial court below validating its Infrastructure Sales Tax Revenue Bonds, Series 1999 (the "Bonds"). The proceeds of the Bonds are intended to finance the cost of certain roadway and related capital improvements designed to reconcile pedestrian and traffic problems within the City's Clearwater Beach area¹.

At issue in this appeal is the meaning of Article IX of the Charter of the City of Clearwater (the "Charter"). Adopted as part of the Charter's passage in 1978, Article IX places some limitations on the broad home rule authority of the City to issue bonds, requiring a referendum if the bond issue exceeds \$1 million unless the bonds are revenue bonds for "public health, safety or industrial development and revenue bonds for refunding" (Emphasis Added). The City Commission of the City determined that the pedestrian accident and traffic problems at the congested main roadway arteries in Clearwater Beach required examination, and after hearing professional reports and citizen comments, found that the proposed improvements were in furtherance of the public's health and safety.

¹ Although sometimes referred to as "Clearwater Beach" in the Appendices and the Transcript, this area is within the city limits of the City and is not separately incorporated.

The proposed improvements (collectively the "Roadway Project") include the construction of a roundabout, landscaping, fountains, sidewalks, pedestrian trails and bicycle access at a series of three congested intersections in an effort to slow traffic and to reduce the number and severity of pedestrian and vehicular accidents at an area of the City which constitutes a main focal point for tourists and residents alike. The Appellant seeks to dissect the Roadway Project, striking from the project landscaping, fountains and other portions of the project which it does not believe contribute to the "health and safety" of the persons using the intersections. Such an approach, while beyond the scope of a bond validation hearing to begin with, also is in conflict with the record evidence which indicates that the entire roundabout concept, including the fountains and landscaping, were intentionally holistically designed to alleviate the traffic and pedestrian problems associated with a difficult intersection within the City. Such a use is consistent with the Charter's explicit exception for bond issues for public health and safety.

Thus, the judgment of the trial court should be affirmed and the Bonds validated.

References to the Parties and the Record

In this brief, the Appellee/Plaintiff, the City of Clearwater, Florida, will be referred to as the "City," and the Appellant/Defendant, Suzanne M. Boschen, will be referred to as the "Appellant." References to the Appendix supplied by the Appellant

will be cited by the symbol "A" followed by the tab number followed by the page number. References to the Supplemental Appendix supplied by the City will be cited by the symbol "A-Supp" followed by the tab number followed by the page number. References to the Transcript attached to the Appellant's Appendix will be cited by the symbol "T" followed by the page number.

COUNTER-STATEMENT OF THE FACTS

Appellant's Statement of the Facts makes several critical omissions that require the City to submit this Counter-Statement of the Facts and Supplemental Appendix to fully develop the record upon which the trial court validated the Bonds.

Background

The City of Clearwater adopted its Charter on December 12, 1978. (A-Supp-1). The Charter, enacted after the Florida Constitutional revisions of 1968, gave broad powers to the City to provide for the welfare of its citizens. Article I, Section 1.01 of the Charter states:

Section 1.01. Corporate existence and powers.

(a) General Powers. The City of Clearwater, Florida, (the "city"), as created by Chapter 9710, Special Laws of Florida, 1923, as amended, shall exist and continue as a municipal corporation, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law. In addition to the powers enumerated herein, the city shall be vested with all powers granted by general or special acts of the Legislature of the State of Florida and otherwise provided by law.

(b) Exercise of Powers. The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any one or more states or political subdivisions or agencies thereof, or the United States or any agency thereof, or with any person as defined by law.

(c) Construction. The powers of the city under this charter shall be construed liberally in favor of the city. The city is empowered to do whatever is necessary and proper for the safety, health, convenience and general welfare of its inhabitants. The specific mention of a particular power in this charter shall not be construed as limiting the general power stated in this section of Article I.

The Charter, however, did impose some limitations on the otherwise broad home rule authority of the City to issue bonds, by requiring a referendum on the issuance of bonds in excess of \$1 million unless the bond issue is for revenue bonds for public health, safety or industrial development or refunding. The Charter provision which is at the center of this appeal is Article IX, entitled "Fiscal Management Procedure," which provides:

The fiscal management procedures shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.

The Roadway Project

The entrance to the City's beach area consists of three major intersections (T-22). These intersections have experienced higher than average accident counts (T-22). The City's Public Works Department has the responsibility for road design oversight in the City (T-30) and commissioned a traffic study from D.K.S. Associates to examine

the traffic volumes and analyze traffic movements on the Clearwater Beach area (T-23). Excerpts of the final traffic study can be located in the City's Supplemental Appendix (A-Supp-2). The Public Works Department and the City's Master Planner used that data to consider reconfiguration of the problematic intersections in the Clearwater Beach entry area (T-30-31). After a presentation before the City Commission of options for reconfiguration of the intersections by the City's Public Works Department and the City's Master Planner (T-33), the City Commission decided to pursue preliminary engineering designs by hiring a design consultant (T-33). A roundabout design was the City's "preferred" method of resolving the traffic difficulties, subject to review by the design consultant (T-33). Excerpts of the Preliminary Engineering Report produced by the design consultant can be found in the City's Supplemental Appendix (A-Supp-3). Additionally, the City issued a Congestion Mitigation Air Quality Submission (excerpted at A-Supp-4) that states that air pollutants will be reduced with the implementation of the roundabout in the place of multiple intersections. (A-Supp-4-2).

The City's Public Works Department and/or its consultants made presentations to a number of bodies, including (1) the City Commission, (2) the Metropolitan Planning Commission (MPO), (3) the Citizens Advisory Committee of the MPO, and (4) the Traffic Control Committee of the MPO (T-34-36). Each presentation consisted of a visual presentation in the form of a "power point" slide presentation (T-35-36) and oral discussions with City staff and various City consultants. Copies of the power point

slides are set forth in the City's Supplemental Appendix (A-Supp-5). Based upon the findings contained in the Final Traffic Study, the engineering report, its public hearings and recommendations from staff, the City Commission approved the Roadway Project which is to be funded by the Bonds. Following months of such input, the City Commission authorized the issuance of bonds to be repaid with proceeds of the City's infrastructure sales tax revenues with the enactment on second reading and following a public hearing of Ordinance No. 6352-99 on May 6, 1999 (A-Supp-6), and immediately thereafter approved issuance of the Bonds in Resolution 99-28, adopted on May 6, 1999. (A-1-Exh. C).

In its redesign of the roadways, factors considered by the City and its consultants included the fact that the area was a tourist area with seasonal peaks, pedestrian accidents, vehicle to vehicle accidents and other factors (T-31). According to the City's Public Works Administrator, the Roadway Project design of a roundabout, with wide pedestrian walkways and a central median with a large fountain, was designed to facilitate traffic flow while accommodating the pedestrians in the Clearwater Beach area (T-42-43; A-Supp-3). Additionally, air quality improvements associated with roundabouts were also an important factor in the selection of the roundabout design (T-38-39; A-Supp-4). Along with the roundabout design, the City paid special attention to the landscaping of the roundabout as a method of "traffic calming" to reduce speeds and thus decrease traffic accidents in the area (T-21-22; A-Supp-3). Included in the

landscaping plan is a fountain in the center of the roundabout. "The visibility of the central feature (the fountain) from a distance is also a safety and efficiency design feature, because it promotes the important slowdown of traffic as it approaches the Gateway Roundabout. See FDOT (Florida Department of Transportation) [Roundabout] Guide, pp.5-3 through 5-6." (A-Supp-4-6)

The City's entire design of the Roadway Project sought to address and incorporate all of the health and safety factors listed above. According to the City's Public Works Administrator, "every element in the project was purposely done to create a total design concept, both to facilitate pedestrian movement and vehicle movement, and to allow them to co-exist in that constrained right of way." (T-43)

In the resolution authorizing the Bonds for the Roadway Project, the City Commission found that, "[b]ased on the extensive information received by the members of the City Commission through such public hearings and in reports of the professionals engaged by the City, the City Commission hereby determines that the Series 1999 Project², as hereinafter approved, is necessary for the continued health and safety of the citizens of the City and the visitors to the City and that the construction of the Series 1999 Project and the financing thereof with proceeds of the Series 1999 Bonds is in furtherance of the public health and safety of the citizens of the City of Clearwater." (A-

² The definition of "Series 1999 Project" in Ordinance No. 6352-99 (A-Supp-6) specifically includes the Roadway Project at issue in this Appeal.

1-Exh.C at pp.1-2)

The total Roadway Project cost is \$10,000,000 (T-14).

Upon service of the Complaint for validation of the Bonds, Appellant objected to the construction of the Roadway Project without prior referendum approval. At the bond validation proceeding below, the City's Public Works Administrator testified as to the health and safety concerns involved in the Roadway Project (T-19-74), and the City's chief financial officer testified about the adequacy of the revenues to repay the Bonds (T-9-11). Notwithstanding the Appellant's express challenge to the Roadway Project, the Appellant did not offer any evidence disputing the testimony of the City's Financial Services Administrator or Public Works Administrator described above, and in fact, offered only one witness, an expert traffic engineer, for the purpose of challenging various portions of the Roadway Project (T-75-88). This witness testified that he had offered no input to the City Commission, and had in fact been complimentary of the Roadway Project to the City's Public Works Department staff during the week immediately preceding the validation hearing (T-78-79, 86, 87).

The trial court validated the Bonds in its Final Judgment. In validating the Bonds, the trial court held that the City Commission determined that it was necessary for the continued health and safety of the citizens of the City and the visitors to the City to issue the Bonds by increasing the level of service on the roadway, improving air quality and providing a safer environment for pedestrians (A-7-2). This appeal followed.

STANDARD OF REVIEW

This Court's scope of review in bond validation cases is limited to the following issues: (1) whether the public body has the authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance complies with the requirements of the law. *See State v Osceola County*, 24 FLW S245, 1999 WL 343064 (Fla. 1999); *State v. Inland Protection Fin. Corp.*, 699 So. 2d 1352 (Fla. 1997); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997); *Northern Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440 (Fla. 1992); *Taylor v. Lee County*, 498 So. 2d 424 (Fla. 1986). The Appellant has the burden of demonstrating that the record and evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639,641 (Fla. 1985).

STATEMENT OF THE ISSUES

1. Are the Bonds to be issued for the Roadway Project within the public health and safety exception to the Charter requirement of referendum approval of revenue bond issues in excess of \$1,000,000?
2. Did the City rely on competent substantial evidence when finding that the Roadway Project benefitted the health and safety of inhabitants of the City?

SUMMARY OF THE ARGUMENT

The City will reply to the two basic arguments made by the Appellant in her appeal. The Appellant's first argument is that this Court should read into the City's Charter, which provides for an exception from a referendum requirement for revenue bonds for public health and safety projects, the judicially-created exception for "essential government functions." This is an exception that is derived from the 1885 Florida Constitutional prohibition of issuing any bonds without prior referendum approval. As part of this argument, Appellant urges this Court to equate "public health and safety" in the City's Charter with superceded case law creating an "essential governmental functions" exception to the 1885 Florida Constitutional ban on bond issuance without voter approval.

Appellant's argument fails to understand the purpose for such exception and relies on incorrect historical interpretations and outdated cases to support its contentions. The City will show that the historical interpretations given to the City's

Charter that bonds for projects in excess of \$1,000,000 must either be approved in a referendum, or be determined by the City Commission in the exercise of its legislative function to be in furtherance of “public health, safety, industrial development or refunding” in numerous prior bond validations is the correct interpretation (A-Supp-7). Further, the imposition of an additional test as requested by the Appellant is not justified either by the language of the City Charter, the issues before the citizens of Clearwater at the time the Charter was adopted, or relevant judicial authority.

The City will also show that the second argument raised by the Appellant -- that the project to be financed by the City with the proceeds of the bonds is not in furtherance of public health or safety -- is also not supported by record evidence or case law. Through this argument, the Appellant is challenging various components of the project rather than the City’s authority to issue its bonds. In response to this argument, the City will demonstrate that the testimony and documentary evidence introduced by the City in the course of the bond validation hearing reflects a broad scope of information delivered to the City Commission over a several month period regarding the road project to be financed, including the health and safety implications of the conversion of three highly congested and dangerous intersections into a roundabout. This information provided a foundation which was more than sufficient for the City Commission to base its legislative determinations that the Roadway Project was in furtherance of the public health and safety of its citizens and residents.

REPLY TO APPELLANT'S ARGUMENT I

THE CITY'S ROAD PROJECT IS WITHIN THE PUBLIC HEALTH AND SAFETY EXCEPTION OF ARTICLE IX OF THE CITY OF CLEARWATER'S CHARTER AND THUS THE BONDS WERE PROPERLY AUTHORIZED BY THE CITY.

Appellant challenges the issuance of the Bonds based on the City's alleged failure to comply with its own Charter because particular portions of the road project do not constitute "essential government purposes", which the Appellant contends must be read into the definition of "public health and safety" under the City's Charter. This argument misconstrues the City's Charter and attempts to apply case law superceded by the Constitutional revisions of 1968.

Article IX of the Charter of the City of Clearwater provides (emphasis supplied):

The fiscal management procedures shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.

Historical Review of the "Essential Government Function" Doctrine

The Appellant offers an interpretation of Article IX of the City Charter based on case law arising out of the 1885 Florida Constitution rather than the present Florida Constitution adopted in 1968. Initially, the Appellant asserts at page 11 of her brief that

municipalities do not have inherent authority to incur bonded indebtedness, and that they have only such authority as the legislature expressly or impliedly confers on them, and in support thereof, cites to *Merrill vs. St. Petersburg*, 109 So. 315 (Fla. 1926) and *Nuveen vs. Quincy*, 156 So. 153 (Fla. 1934). Indeed this was the case under the 1885 Florida Constitution.

The 1885 Florida Constitution, Article IX, Section 6, provided in part as follows:

... 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, to be held in the manner to be prescribed by law...

Article IX, Section 6, Fla. Const. (1885).

Clearly, under this prior Constitutional prohibition, units of local government could not incur any form of bonded indebtedness without prior referendum approval by the affected citizens. This Court became concerned about certain aspects of this Constitutional prohibition of incurring bonded debt following the boom-bust period of the 1920's and the early years of the Great Depression, and began a line of judicial authority which created the “essential government purpose” exception for counties to this constitutional prohibition. This Court reasoned that certain aspects of a county government, consisting of jails and courthouses, were so completely essential to the very existence of county governments that the provisions of Section 6, Article IX of the

1885 Florida Constitution, as enacted by the citizens of Florida could not have been meant to hinder a county's financing of its jails and courthouses. *State v. County of Manatee*, 93 So.2d 381 (Fla. 1957); *see also State v. Florida State Improvement Commission*, 60 So.2d 747 (Fla. 1952); *State v. Broward County*, 54 So.2d 512 (Fla. 1951). Each county must be granted the necessary powers to carry out its basic governmental functions irrespective of any provision of the Florida Constitution. As a result, a county in Florida could issue bonds to finance a county jail and county courthouse without receiving the prior approval of the citizens in a referendum.

The "essential government purpose" exception was rendered obsolete with the enactment of Article VII, Section 12, of the 1968 Florida Constitution, where the only constitutional prohibition against the incurring of bonded indebtedness is restricted to bonds bearing the full faith and credit of the governmental issuer which are directly supported by the levy of ad-valorem taxes. Such bonds secured by the levy of ad-valorem taxes still must be approved by prior referendum. After the 1968 Constitutional revisions, this Court has ruled that the "essential government purpose" doctrine is no longer applicable and was rendered invalid with the adoption of the 1968 Constitutional revisions. *State v. County of Dade*, 234 So.2d 651 (Fla. 1970). When requested by the School Board of Sarasota County, in an appeal of a bond validation proceeding, this Court reiterated that the doctrine was no longer valid and refused to reinstate it. *State v. School Board of Sarasota County*, 561 So.2d 549 (Fla. 1990).

Municipal Borrowing under the 1885 Florida Constitution

In regard to municipalities, this Court historically took a slightly different approach prior to the 1968 Constitutional revisions. Since municipalities were a creature of the legislation which created them, usually by special acts, a municipality would be authorized to carry out its “municipal purposes.” These purposes were determined either by the special act which created a particular municipality, or by an ordinance enacted by a municipality in furtherance of any delegated powers in its special act. For example, this Court determined that since the special act applicable to the City of Pensacola authorized them to construct a municipal auditorium, wharves, docks and piers, that the construction and financing of such a project was a valid “municipal purpose”. As a valid municipal purpose, the City of Pensacola was authorized to issue bonds to finance these projects either secured by a levy of ad-valorem taxes following approval by a public referendum, or payable from non ad-valorem tax revenues of the City of Pensacola without prior referendum approval. *State v. City of Pensacola*, 43 So.2d 340 (Fla. 1949). In *State v. City of Pompano Beach*, 47 So.2d 515 (Fla. 1950), this Court determined that the construction and financing of a new city hall was a valid “municipal purpose” within the special act chartering the City of Pompano Beach, and that such project could be financed with the issuance of bonds payable solely from power and light company franchise revenues could be issued without prior referendum approval. Similarly, in *State v. City of Miami*, 76 So.2d 294

(Fla. 1954), this court determined that since the special act charter for the City of Miami authorized the city to undertake public improvements, including markets, that it was a valid “municipal purpose” of the city to construct a trade mart to be owned and operated by the city. Since this project was a valid “municipal purpose”, the City of Miami was then authorized to issue bonds to finance the project without prior referendum approval since the bonds were to be paid solely from the proceeds of a utility tax imposed on utilities within the city and thus not impose a general obligation on the taxpayers of the city.

The common thread in each of these cases, as well as similar cases of the time, is a legislative finding, either by the Florida Legislature as part of the municipality’s special act or by an ordinance or resolution adopted by the municipality in furtherance of its special act charter, that a particular project constituted a valid “municipal purpose”. None of these legislative determinations were subsequently questioned by this Court in any of these rulings, and were accepted as law applicable to each particular municipality. Thus, by 1949, once a legislative determination was made that a particular project was a “municipal purpose” for a particular municipality, that municipality was free to incur debt to finance that project without prior referendum approval so long as the bonds were not payable from the ad-valorem tax revenues of the municipality.

Effect of the 1968 Constitutional Revisions on Municipal Borrowing

With the adoption of the revised Florida Constitution in 1968, municipalities were granted extremely broad home rule powers pursuant to Article VIII, Section 2, Florida Constitution (1968), where the only constitutional limitation placed on a municipality's authority to conduct municipal government, perform municipal functions and render municipal services, is that such power be exercised for valid "municipal purposes". Municipalities are no longer dependent upon the Legislature for further authorization. *State v. City of Sunrise*, 354 So.2d 1206 (Fla. 1978). In the first decision by this Court following the adoption of the 1968 Constitution, this Court held that the City of Miami Beach did not possess the power to enact a rent-control ordinance. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801 (Fla. 1972). In response to the *City of Miami Beach* decision, the Legislature enacted in 1973 the Municipal Home Rule Powers Act, now codified as Chapter 166, Florida Statutes. In a subsequent case, this Court then upheld the power of the City of Miami Beach to enact a rent-control ordinance on the premise that Section 166.021(1) now authorized municipalities to exercise any power for municipal purposes except where expressly prohibited by law. *City of Miami Beach v. Forte Towers, Inc.*, 305 So.2d 764 (Fla. 1974). In *State v. City of Sunrise, supra*, this Court acknowledged the vast breadth of municipal home rule powers when it said:

Article VIII, Section 2, Florida Constitution, expressly grants to every

municipality in this state authority to conduct municipal government, perform municipal functions and render municipal services. The only limitation on that power is that it must be exercised for a valid “municipal purpose.” It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

State v. City of Sunrise, 354 So.2d at 1209.

Adoption and Interpretation of City Charter

By 1978, the legal framework within which municipalities, such as the City of Clearwater, operated was fundamentally different from the legal framework that existed prior to the adoption in 1968 of the revised Florida Constitution. As observed by this Court in *State v. City of Sunrise, supra*, municipalities had evolved from highly restricted and regulated entities, essentially being nothing more than creatures of special acts of the Legislature, to fully mature governmental units with the ability and authority to exercise broad home rule powers. The only restrictions on a municipality’s incurring bonded indebtedness by this time was the Florida Constitutional requirement for a public referendum to approve bonds payable from ad-valorem taxes, any local charter restrictions enacted subsequent to the enactment of Chapter 166, Florida Statutes and the implicit Constitutional requirement that the incurrence of debt must be in furtherance of a valid municipal purpose. For example, this Court in *State v. City of Orlando*, 576 So.2d 1315 (Fla. 1991), held that borrowing for the sole purpose of reinvestment to earn a profit without the concurrent capital projects to be financed with

such profits being identified, was not a valid municipal purpose. It was in this setting that the citizens of the City of Clearwater sought to impose some restrictions on the City's ability to issue bonds with the adoption of the Charter under which the Bonds which are the subject of this Appeal were authorized.

By 1978, the concept of an "essential government purpose" exception to the public referendum requirement, although widely recognized, had been rendered obsolete in light of the 1968 Florida Constitution revisions. *See State v. County of Dade, supra*. At the time the Charter was adopted on December 12, 1978, it was the undisputed state of the law that the City of Clearwater had virtually unlimited authority to issue bonds without public referendum so long as the City did not pledge its ad-valorem tax powers to secure the bonds and was issuing debt in furtherance of a valid municipal purpose.

The exception to the referendum requirement for bond issuance in the City's Charter is a matter of first impression for this Court. In interpreting Article IX of the Charter, it should be read in conjunction with Article I, Section 1.01 of the Charter, which states:

Section 1.01. Corporate existence and powers.

(a) General Powers. The City of Clearwater, Florida, (the "city"), as created by Chapter 9710, Special Laws of Florida, 1923, as amended, shall exist and continue as a municipal corporation, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal

services, and may exercise any power for municipal purposes except when expressly prohibited by law. In addition to the powers enumerated herein, the city shall be vested with all powers granted by general or special acts of the Legislature of the State of Florida and otherwise provided by law.

(b) Exercise of Powers. The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any one or more states or political subdivisions or agencies thereof, or the United States or any agency thereof, or with any person as defined by law.

(c) Construction. The powers of the city under this charter shall be construed liberally in favor of the city. The city is empowered to do whatever is necessary and proper for the safety, health, convenience and general welfare of its inhabitants. The specific mention of a particular power in this charter shall not be construed as limiting the general power stated in this section of Article I.

The citizens of Clearwater did not intend that the then newly adopted Charter restrict the exercise of any “home rule powers” granted to the City by the Florida Constitution or by Chapter 166, Florida Statutes. Keeping in mind the recent history in Florida as well as then relevant judicial precedence, the citizens of Clearwater clearly wanted to provide some restrictions on the ability of the City to incur bond indebtedness without prior referendum approval, but yet did not want to force the City to continually seek the approval of the citizens in a referendum for any and all bonds anticipated to be issued by the City. In light of these historical precedents, the City submits that its citizens intended for the City Commission, as the legislative body of the City, make the necessary determinations as to what projects would be within its “municipal purposes”,

and further which of these projects were also in furtherance of its public health, safety or industrial development functions. Under Article IX of the Charter, those projects in furtherance of a valid municipal purpose which are legislatively determined by the City Commission to be in furtherance of the City's public health, safety or industrial development functions could be financed by the City with the issuance of bonds payable from a revenue source other than ad-valorem taxes without the requirement of a referendum, and any project in furtherance of a valid municipal purpose could be so financed as long as the costs of the project was less than \$1,000,000.

In every bond validation judgment involving the interpretation of the City's Charter since its adoption in 1978, the Circuit Courts in Pinellas County have consistently stated that the test under Article IX of the Charter is whether the project to be financed was in furtherance of the City's health and safety functions. Those decisions which related to road or road-related projects cited in the City's Trial Memorandum (A-4) were provided to the Court below (T-104) and copies of these decisions are included in the City's Supplemental Appendix (A-Supp-7). Any suggestion by the Appellant that this Court should now ignore over 20 years of consistent interpretation of the City's Charter and now require the outdated concept of an "essential government purpose" be read into Article IX of the City's Charter can only be based on a misinterpretation of historical facts and judicial precedence.

REPLY TO APPELLANT'S ARGUMENT II

THE CITY RELIED ON SUFFICIENT EVIDENCE WHEN MAKING ITS FINDINGS THAT THE ROADWAY PROJECT WAS IN THE INTERESTS OF THE HEALTH AND SAFETY OF THE INHABITANTS OF THE CITY SO THAT THE FINDINGS WERE NOT SO CLEARLY WRONG AS TO BE BEYOND THE POWER OF THE CITY COMMISSION.

Although the Appellant recognizes in her Initial Brief at page 15 that a legislative finding can be sufficient to satisfy the requirements of Article IX of the City's Charter, the Appellant has suggested that the City's legislative findings are not sufficient. Essentially, the Appellant wants the City Commission to find that a project is not only in furtherance of public health or safety (or industrial development or refunding as the case may be) , but is also an "essential government function" to the public health and safety of its citizens, and that such findings be supported by competent substantial evidence. The first addition to the historical finding requirements imposed on the City Commission that a project also be found to be an "essential government function" is an attempt to harken back to the outdated concept of "essential government purpose" discussed in the Reply to Appellant's Argument I earlier in this Answer Brief, and is not supportable by either historical facts or judicial precedence. The second portion of her argument seeks to utilize the wrong judicial standard for review of legislative determinations.

Contrary to the arguments set forth by the Appellant in its initial brief beginning

at page 17, the cases cited by the City in its Trial Memorandum, namely, *City of Jacksonville v. Savannah Machine & Foundry Company*, 47 So.2d 634 (Fla. 1950) and *State v. City of St. Petersburg*, 198 So. 837 (Fla. 1940), do not support the concept that “essential government functions” must be read into the City’s Charter. Rather these cases, along with *Nohrr v. Brevard County Educational Facilities Authority*, 247 So.2d 304 (Fla. 1971) cited by the Circuit Court in the Final Judgment, stand for the proposition that a legislative determination once made will not be challenged by the courts absence a showing that such determination was “so clearly wrong as to be beyond the power of the legislature.” *Nohrr v. Brevard County Educational Facilities Authority*, *supra*, at 309. This concept of the validity of legislative determinations was well established in the “municipal purposes” cases cited in response to Appellant’s argument I above, and was clearly a recognized concept applicable to municipalities when the City’s Charter was adopted in December, 1978.

Appellant’s primary argument in Part II of its Initial Brief is that the City Commission did not have significant competent evidence to support its decision that the particular road design to be constructed would further the health and safety of its citizens, and thus is beyond the scope of the exemption to the referendum requirement in the Charter. This bold proposition of the Appellant requires this Court to ignore the evidence submitted by the City as part of the validation hearing. *See generally*, City’s Counter-Statement of Facts. The City would further submit to this Court that any

decision its City Commission made regarding road improvements in the City should fit within the Charter exemption and that exactly these types of decisions were the ones contemplated by the voters when the Charter was adopted. Thus, even ignoring the body of evidence regarding the health and safety issues which were before the City Commission, the City submits that bonds for road improvements should be validated in virtually all cases on the presumption that such projects necessarily involve the public's health and safety.

This determination, however, is made less difficult where, as here, the City fully contemplated a number of health and safety issues when embarking on the project, including accident rates (T-22), pedestrian safety (T-31), air pollution (T-38-39) and traffic speeds (T-21-22). The Appellant attempts to confuse the issue by making citations to an initial draft of the Traffic Study that was not the final Traffic Study delivered to the Public Works Department. *See* A-Supp-2, T-30. The actual final conclusions of the Traffic Study as admitted into evidence can be found in the City's Supplemental Appendix (A-Supp-2). Moreover, the Traffic Study was never presented to the City Commission. In fact, the City's engineering report (authorized by the City Commission for the express purpose of determining the impact of the proposed roundabout design (T-33)) made the following conclusions (*See* A-Supp-3-7):

- The realigned causeway with roundabout rather than signalized intersections "will improve capacity when compared to a signalized system."

- The design of 10 foot travel lanes and a raised median with barrier curb "will help reduce speeds to desired levels prior to entering the roundabout."
- "Better access control will improve safety by eliminating unsignalized left turns . . . and uncontrolled turning movements from parking lots and private businesses.

In addition to the traffic safety issues involved in the Roadway Project, the health issues associated with air pollution were also seriously considered by the City (T-38-39). The City concluded that the design of the roundabout, which eliminates the stopping, idling and acceleration of vehicles associated with traffic signals, would "result in a very large reduction in air pollutants generated by traffic." (A-Supp-4-2). This conclusion was based, in part, upon the finding by the Engineering Report, that the Level of Service of the roadways would increase to an "A" level if the Roadway Project were constructed as designed with a roundabout (A-Supp-4-3, A-Supp-3-4).

With such evidence supporting the fact that the Roadway Project would be beneficial to the health and safety of the inhabitants of Clearwater, the determination of the City Commission and the trial court should not be overturned by this Court³. The

³ This reasoning is completely consistent with other bond validation judgments rendered on behalf of the City of Clearwater since the adoption of its Charter in 1978 discussed in response to Appellant's first argument. *See* A-Supp-7. The Circuit Court has consistently applied the reasoning that since the legislative body of the City made a legislative determination that the project to be financed was in furtherance of the health and safety needs of the citizens and within the health and safety functions of the City, that prior referendum approval was not required by Article IX of the City's Charter. (A-Supp-1) In the sole bond validation case involving the City of Clearwater since the adoption of its Charter in 1978 previously appealed to this Court, this Court entered an order affirming the Circuit Court's final

Appellant has the burden of demonstrating that the record and the evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639,641 (Fla. 1985). In the face of the ample evidence regarding the health and safety benefits of the Roadway Project, the findings of such benefits by the City Commission and the lower court should not be disturbed by this Court on this record.

In the Appellant's Initial Brief at page 15, the Appellant admits that the City Commission made a legislative finding that the project was in furtherance of the public and safety. The legislative findings of the City Commission, set forth in Resolution No. 99-28 (A-1-8), were:

SECTION 1. FINDINGS. The City Commission hereby finds and determines:

A. The City Commission has received through one or more public hearings input, comments and advice from professionals generally recognized to be experts in matters relating to road design and traffic flow patterns and needs, as well as comments from the citizens of the City in relation to the Series 1999 Project.

B. Based on the extensive information received by the members of the City Commission through such public hearings and in reports of the professionals engaged by the City, the City Commission hereby determines that the Series 1999 Project, as hereinafter approved, is necessary for the continued health and safety of the citizens of the City and the visitors to the City and that the construction of the Series 1999 Project and the financing

judgment pursuant to Florida Rule of Appellate Procedure 9.315(a). *Kelly v. City of Clearwater*, 650 So.2d 990 (Fla. 1995). The validation judgment appealed from in the *Kelly* decision utilized this same standard for testing the City's authority to issue bonds under Article IX of the City's Charter.

thereof with proceeds of the Series 1999 Bonds is in furtherance of the public health and safety of the citizens of the City of Clearwater.

As evidenced by the transcript and the Appendix presented by the Appellant, the Appellant did not offer any evidence contrary to that offered by the City at the validation hearing, and did not offer any evidence that the City Commission did not have sufficient facts before it so as to render its legislative determinations “so clearly wrong as to be beyond the power of the legislature”. *Nohrr v. Brevard County Educational Facilities Authority, supra*, at 309. The Appellant had the burden to demonstrate such a lack of facts before the City Commission, and clearly failed to carry her burden during the validation hearing. As a result, the Final Judgment rendered below should be affirmed by this Court.

CONCLUSION

For all of the foregoing reasons, the trial court's decision validating the Bonds should be affirmed. This Court should enter an order validating the Bonds.

Respectfully submitted this 6th day of December, 1999.

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CERTIFICATE OF SERVICE

A true and complete copy of the foregoing Answer Brief of Appellee was delivered to (i) C. Marie King, Assistant State Attorney, by mailing a copy to her at P.O. Box 5028, Clearwater, Florida 33718-5028, and (ii) Patrick T. Maguire, Esq., counsel for Suzanne Boschen, by mailing a copy to him at 308 N. Belcher Road, Clearwater, Florida 33765, this 6th day of December, 1999.

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CERTIFICATION

The undersigned does hereby certify that this Brief used 14 point Times New Roman type and does hereby comply with Rule 9.210(a)(2), Florida Rules of Appellate Procedure and the Administrative Order of this Court dated July 13, 1998.

ROBERT C. REID

SUPPLEMENTAL APPENDIX

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