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Municipal Corporations -- Validation of Bond Issue

for members of their race constitutes a labor dispute.[15] Prior cases have held that a closed shop contract could not be made by a union which arbitrarily excluded Negroes solely because of their color,[16] or other qualified persons [17] from membership. This court has extended the decisions of these former cases by holding that the *Negro race constitutes a closed union.* The words of the court are not necessarily confined to this one race, but would appear to apply to all races. Because race and color are inherent qualities, those persons who are born with such qualities constitute among themselves a closed union which others cannot join. Thus, if the store had yielded to the demands of the petitioners in this case, its hiring policy would have constituted, as to a proportion of its employees, the equivalent of both a closed shop and a closed union *in favor* of the Negro race. As to this proportion of jobs, a qualified worker of any other race though a union member, could not have been hired. Therefore, the picketing was properly enjoined.

MUNICIPAL CORPORATIONS — VALIDATION OF BOND ISSUE

The City of Fort Lauderdale, Florida petitioned to obtain a decree validating an issue of recreational revenue bonds, the proceeds to be used for the purpose of acquiring lands and constructing a municipal recreation center thereon. The principal and interest were to be payable solely from the revenue of the recreational facilities, *and from the proceeds of a utilities service tax.* A freeholder's election, apparently required by the Florida Constitution,[1] had not been conducted. From a judgment for the City, the intervenor appealed. *Held:* Judgment affirmed. No election by the freeholders was required because the pledging of utility taxes is permitted by statute.[2] These bonds do not consti-

15. New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) (the desire for fair and equitable conditions on the part of persons of any race or color and the removal of discrimination against them by reason of their race and religion is quite as important to those concerned as conditions of employment can be to any labor organization).

16. Williams v. International Brotherhood of Boilermakers, 27 Cal.2d 586, 165 P.2d 903 (1946) (employer may be enjoined from indirectly assisting in carrying out discriminatory practices against Negroes through a closed shop contract); Thompson v. Moore Drydock Co., 27 Cal.2d 595, 165 P.2d 901 (1946); *cf.* Steele v. Louisville and Nashville R.R., 323 U.S. 192 (1944).

17. Bautista v. Jones, 25 Cal.2d 746, 155 P.2d 343 (1944) (if the worker meets the conditions imposed, the union must accept him for membership or give up its demands for a closed shop).

1. FLA. 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, to be held in the manner to be prescribed by law . . .").

2. Fla. Laws Spec. Acts of 1947, c. 24514, § 1 (4) [". . . and to pledge the revenue derived from any such facility (recreational) *or any other available funds* to pay and discharge any bonds which might have been issued in connection with securing moneys to construct or improve such facilities"] (italics ours).

tute an obligation of the City, and no bondholder can ever coerce the City to enforce a tax on real estate to service principal or interest. *Schmeller v. City of Fort Lauderdale*, 38 So.2d 36 (Fla. 1948) (three Justices dissenting).

It is the well established rule [3] in Florida, notwithstanding the requirements of the Florida Constitution, that bonds, secured solely by a pledge of the revenues from a city facility, may be issued without the approving vote of the freeholders. However, the principal case and the case of *State v. City of Winter Park*,[4] which was cited by the court as precedent, are the only cases in Florida holding that a municipality can pledge its *utility taxes* to secure an indebtedness without the approving vote of the freeholders.

In the *Winter Park* case, the court, in a summary discussion of this issue, relied on four prior cases. Three of these cases [5] involved the issuance of bonds secured by tolls and other revenue received from toll roads and bridges. The bonds stated that the toll roads and bridges were to be leased or sold to the State Road Department which was to pay as rent, or as the purchase price, eighty per cent of the surplus gasoline taxes collected by the State of Florida and by it allocated to the counties. These gasoline taxes were pledged together with the tolls from the roads and bridges as security for the bonds. The fourth case [6] involved the issuance of bonds, by the County Board of Instruction, secured by funds received by the county from the pari-mutuel race track tax collected by the state. It is to be noted that in these four cases, as well as in the principal case and the *Winter Park* case, excise taxes were pledged to secure bonds without an approving vote of the freeholders.

Nevertheless, the "gas tax" and "race track tax" cases appear distinguishable because constitutional amendments,[7] and statutes enacted pursuant thereto,[8] gave state agencies and counties the power to pledge these specified excise taxes to the service of bonds issued by these agencies and counties

3. *E.g.*, State v. City of Winter Park, 34 So.2d 740 (Fla. 1948); Zimmer v. City of Fort Lauderdale, 159 Fla. 498, 32 So.2d 162 (1948); State v. City of Miami, 157 Fla. 726, 27 So.2d 118 (1946); State v. City of Tampa, 148 Fla. 6, 3 So.2d 484 (1941); *cf.* Kathleen Citrus Land Co. v. City of Lakeland, 124 Fla. 659, 169 So. 356 (1936); Hygema v. City of Sebring, 124 Fla. 683, 169 So. 366 (1936). *Contra*: Charles v. City of Miami, 125 Fla. 110, 169 So. 589 (1936) (this case was distinguished in the principal case on the ground that it involved a pledge of city assets to service bonds. However, this distinction is not quite clear inasmuch as the bonds were to be payable solely from the revenue and income of the facility and were not to constitute a lien on any property of the city).

4. 34 So.2d 740 (Fla. 1948).

5. State v. Florida State Improvement Commission, 159 Fla. 350, 31 So.2d 554 (1947) [a per curiam opinion based on State v. Florida State Improvement Commission, 159 Fla. 338, 31 So.2d 548 (1947)]; State v. State Board of Administration, 157 Fla. 360, 25 So.2d 880 (1946); State v. Escambia County, 153 Fla. 282, 14 So.2d 576 (1943).

6. Prescott v. Board of Public Instruction of Hardee County, 159 Fla. 663, 32 So.2d 731 (1947).

7. FLA. CONST. Art. IX, § 16 (Which has been interpreted to have vested an unlimited discretion to use gas taxes for the best interests of the county. *See* State v. State Board of Administration, *supra*); FLA. CONST. Art. IX, § 15.

8. FLA. STAT. §§ 341.63, 420.06 (1941); Fla. Laws Spec. Acts of 1947, cc. 24224, 23758; Fla. Laws Spec. Acts of 1941, c. 21216, § 14, c. 20555.

without the approving vote of the freeholders. In the *Winter Park* case, the only applicable provision[9] of the constitution required the approval of the freeholders before bonds could be issued.[10]

The court, in the principal case, in allowing the city to pledge utility taxes without the approval of the freeholders, based its decision on the words "any other available funds" in the statute[11] and on the *Winter Park* case. This view seems subject to the objection, not raised in the case, that it implies that the legislature has the power to render the constitution impotent by statutory enactments which allow a city to do indirectly that which it cannot do directly.

It may be that the court allows the pledging of excise taxes because the use of the word "freeholders" indicates that the intent of the framers of the constitution was to prevent the unfettered imposition of ad valorem taxes on real property.[12] Under this construction, the pledging of excise taxes would not be within the constitutional prohibition.

This construction of the constitution seems to depart from the former view that the taxing power could not be pledged without an approving vote of the freeholders.[13] The rule now appears to be that a municipality can pledge a *portion* of its taxing power without the freeholders' approval.[14]

The drafters of any proposed Florida Constitution should consider the effect of the principal case and expressly provide that no excise or ad valorem tax, except as provided for in Article IX, §§ 15, 16, can be pledged without the approval of the *voters*.[15]

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9. See note 1 *supra*.
10. See note 1 *supra*.
11. See note 2 *supra*.
12. *See* State v. Pinellas County, 36 So.2d 216, 219 (Fla. 1948) ("nothing . . . could be construed as requiring that said bonds be serviced by the imposition of ad valorem . . . taxes"); *id.* at 220 (concurring opinion): "Section 6, Art. IX of the Constitution has reference only to bonds which are to be serviced by ad valorem taxation (i.e., a direct tax upon real property). . . . This word [freeholders] connotes landowners. . . . The obvious purpose of the framers . . . was to make sure that bonds, which would be serviced by levying and assessing taxes against real property, should not be issued unless the freeholders . . . should approve the issuance; Schmeller v. City of Fort Lauderdale, *supra*, at 38 (". . . and no holder of them [bonds] can ever coerce the taxing power of the City or enforce a tax on any real estate. . . ."); *id.* at 39 (dissenting opinion) ("The Constitution speaks of bonds. It is not limited to that class of bonds secured by ad valorem taxation. . . .").
13. *See* cases cited note 3 *supra; cf.* Posey v. Wakulla County, 148 Fla. 115, 3 So.2d 799 (1941); Tapers v. Pichard, 124 Fla. 549, 169 So. 39 (1936) (bonds, serviced by an *ad valorem tax on real property* can be issued without approval of the freeholders, if the proceeds of the bonds are to be used to acquire assets which are an essential governmental requirement, e.g., a jail and a courthouse).
14. It is not yet clear what the limits of this *portion* may be.
15. REDFEARN, A PROPOSED CONSTITUTION FOR FLORIDA, Art. IX, § 4 (Stetson Univ. Press 1947) (expressly continues the use of the word "freeholders").