Original

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,347

FILED
SID J. WHITE
JUL 11 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

ESCAMBIA COUNTY, FLORIDA,

Petitioner,

v.

CITY OF PENSACOLA, a municipal corporation,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ON PETITION FOR WRIT OF CERTIORARI
TO THE FIRST DISTRICT COURT OF APPEAL

Don J. Caton, City Attorney
John W. Fleming, Assistant
City Attorney
P.O. Box 12910
Pensacola, Florida 32521
(904) 436-4320

W. Peter Burns
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

Of Counsel:
Talbot D'Alemberte, P.A.
320 Barnett Bank Building
315 South Calhoun Street
Tallahassee, Florida 32301

Attorneys for the City of
Pensacola

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,347

ESCAMBIA COUNTY, FLORIDA,	)
	)
Petitioner,	)
	)
v.	)
	)
CITY OF PENSACOLA, a municipal corporation,	)
	)
Respondent.	)

RESPONDENT'S BRIEF ON JURISDICTION

ON PETITION FOR WRIT OF CERTIORARI
TO THE FIRST DISTRICT COURT OF APPEAL

Don J. Caton, City Attorney
John W. Fleming, Assistant
City Attorney
P.O. Box 12910
Pensacola, Florida 32521
(904) 436-4320

W. Peter Burns
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

Of Counsel:
Talbot D'Alemberte, P.A.
320 Barnett Bank Building
315 South Calhoun Street
Tallahassee, Florida 32301

Attorneys for the City of
Pensacola

TABLE OF CONTENTS

TABLE OF CITATIONS

RESPONDENT'S BRIEF ON JURISDICTION

This brief is submitted by Respondent, the City of Pensacola ("the City"), pursuant to Fla.R.App.P. 9.120(d), on the issue of this Court's jurisdiction only.

ARGUMENT

It is the City's position that this Court is without jurisdiction to review the decision of the First District Court of Appeal.* We will respond to the County's arguments in favor of jurisdiction in the order presented in the County's brief.

1. The decision below does not affect a class of constitutional officers.

The few decisions of this Court which have interpreted the "class of constitutional officers" language of Article V, §3 of the Constitution show that jurisdiction on this basis is extremely limited. For instance, in Spradley v. State, 293 So.2d 697 (Fla. 1974), this Court was asked to review a District Court decision concerning the duty of a prosecuting attorney to disclose, to a criminal defendant, the names of persons who had been granted immunity for furnishing information relating to the crime charged. Jurisdiction was premised on the theory that the ruling would affect all prosecuting attorneys in the discharge of their duties - a theory which this Court had earlier espoused in the similar case of Richardson v. State, 246 So.2d 771 (Fla.

---

* Escambia County v. City of Pensacola, 448 So.2d 9 (Fla. 1984).

1971). However, in Spradley this Court determined that it was without jurisdiction, and in so doing receded from the jurisdictional holding in Richardson, stating:

> A decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must directly and, in some way, exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers. (293 So.2d at 701; emphasis in original).

The purpose for the jurisdictional grant is well stated in Florida State Board of Health v. Lewis, 149 So.2d 41, at 42 (Fla. 1963):

> The obvious purpose of the provision in question was to permit this Court to review a decision which directly affects one state officer and in so doing similarly affects every other state officer in the same category.

This purpose would simply not be served by allowing review here. Judge Gordon determined, and the First District agreed, that the Escambia County Sheriff's road patrol and the Escambia County local roads provide no real and substantial benefit to residents of the City of Pensacola. No one would suggest, however, that such a factual finding is in any way res judicata as to a Sheriff's road patrol or County local roads in another county. Indeed, in other cases both a Sheriff's road patrol (Alsdorf v. Broward County, 373 So.2d 695 (Fla. 4th DCA 1979),

cert. denied 385 So.2d 754 (Fla. 1980)), and a system of county roads (Burke v. Charlotte County, 286 So.2d 199 (Fla. 1973)) have been held to provide a real and substantial benefit to municipal residents. In these cases, the law applied was the same as that applied here, and in every other double taxation case; the facts, however, were vastly different. Because no new, generally applicable rule of law was announced by the First District in its decision in this case, the decision does not "similarly affect" all county commissioners in all counties; thus, no jurisdiction exists under the "class of constitutional officers" language.

The County does not appear seriously to contest this conclusion; indeed the County cites not a single case in support of its jurisdictional argument. Rather, the County uses this section of its brief to venture beyond the record and discuss at length the purported similarities between the proof offered here, and the proof offered in Palm Beach County v. Town of Palm Beach, 426 So.2d 1063 (Fla. 4th DCA 1983).* Because, says the County, the proof in the two cases was "virtually identical" (County's brief, p.4), and because "the facts of each case are known whether reported in the appellate decision or not"

---

* The County's distinguished lead counsel, who is also lead counsel for Palm Beach County in the Palm Beach case, can certainly be forgiven for discussing in his brief his views of the factual similarities of the two cases. It is to be hoped, therefore, that the forgiveness will be reciprocal if undersigned counsel (who is co-counsel for the Town of Palm Beach) states his view that the proof offered in the two cases was widely different, and that, even if Palm Beach was correctly decided by the Fourth District (which it was not), the difference in proof fully justifies the different result here.

(County's brief, p.4), the two cases create "chaos in an area of complex intergovernmental relations where stability resulting from consistent case law was emerging." (County' brief, p.8).

With all due respect, the "stability" the County was hoping for was a series of appellate cases which would effectively excise Article VIII, §1(h) from the Constitution. Throughout this proceeding, the County has relied heavily upon the unexceptionable proposition that the "indirect" or "unquantifiable" benefits of a County service must be considered in determining whether the service provides a real and substantial benefit to City residents. That is clearly the law. But the County also seems to believe that the cases, particularly Palm Beach, assign some sort of preferred status to "indirect" or "unquantifiable" benefits. In essence, the County appears to believe that a county service which provides any "unquantifiable" benefits is, as a matter of law, of real and substantial benefit to municipal residents. Because any county service is bound to provide at least slight "unquantifiable" benefit to at least some municipal residents, such a rule would have a simple result: The county always wins.

There is, of course, no such absurd rule. Rather, the cases (including Palm Beach) make it clear that the issue whether a particular service in a particular county provides a real and substantial benefit to city residents in that county is primarily factual. Inevitably, cities and counties will continue to disagree, and even litigate, over this factual issue. Such litigation may not be as tidy as a hard-and-fast

rule promulgated to deal with all possible factual circumstances; but whether the County likes it or not, our system resolves disputed issues of fact by the "chaos" of trials, not the "stability" of judicial fiat. The First District decision, in stating that the determination of double taxation cases is "necessarily dependent upon the particular circumstances of each case" (448 So.2d at 10), simply reaffirms that rather basic principle.

By painting the decision here as some sort of bizarre anomaly, the County is turning logic on its head; in fact, the anomaly is Palm Beach, which is the only appellate case ever to reverse a trial judge's determination of whether or not a particular county service provides a real and substantial benefit to city residents. For reasons stated elsewhere in this brief, we believe that the decision here can co-exist perfectly happily with Palm Beach. However, if confusion exists among county officials, it is the Fourth District, not the First District, which is to blame.

2. The decision below does not expressly and directly conflict with either Briley, Wild or Palm Beach.

In attempting to demonstrate the "express and direct conflict" required by Article V of the Constitution, the County is in something of a pickle: the two cases which are said to create the conflict (City of St. Petersburg v. Briley, Wild & Assoc., Inc., 239 So.2d 817 (Fla 1970) and Palm Beach, cited above) are explicitly referred to in the decision under review here, and are found to be in complete harmony with the result

reached. Worse, from the County's point of view, the harmonization is not based upon some tortured legal analysis which this Court might find unpersuasive; rather, it is based upon a determination that the trial judge properly applied the legal rules of Briley, Wild and Palm Beach to the facts presented to him at trial.

In order to make this determination, of course, the District Court reviewed the entire record on appeal, and in particular the evidence presented to Judge Gordon at trial. The County's brief, unable to find any express and direct conflict on the face of the District Court opinion, attacks the District Court review of the record, suggesting (contrary to the explicit finding of the District Court) that the trial judge did not really consider "unquantifiable" benefits at all. Thus, the County concludes, conflict exists and this Court has jurisdiction.

The County's dilemma is that the District Court specifically found that "the parties argued, and it appears that the trial court did consider, the value of unquantifiable benefits." (448 So.2d at 10). Even assuming this statement to be incorrect, the incorrectness can be ascertained only by a review of the "record proper."* As this Court well knows,

---

* In the first portion of its brief, the County makes an extensive (and incorrect) comparison of the proof allegedly offered in Palm Beach with that allegedly offered here. The County does not, however, attempt to rely on this comparison in support of its argument that an express and direct conflict exists. Apparently, the County realizes that the comparison, whatever its relevance to the "class of constitutional officers" argument, has no relevance whatsoever to the conflict argument.

review of the record proper to establish conflict is no longer allowed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Because the decision here, on its face, is in complete harmony with both Briley, Wild and Palm Beach, the jurisprudence of the State is not in doubt, and thus no conflict exists.

CONCLUSION

This Court is without jurisdiction to review the decision of the First District Court of Appeal. Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Don J. Caton, City Attorney
John W. Fleming, Assistant
City Attorney
P.O. Box 12910
Pensacola, Florida 32521
(904) 436-4320

W. Peter Burns
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

By: W Peter Burns
W. Peter Burns
Don J. Caton
John W. Fleming

Of Counsel:
Talbot D'Alemberte, P.A.
320 Barnett Bank Building
315 South Calhoun Street
Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of this Respondent's Brief on Jurisdiction have been furnished, by mail, to Thomas Santurri, Esq., County Attorney, 28 West Government Street, Pensacola, Florida 32501; Robert L. Nabors, Esq., P.O. Box 37, Titusville, Florida 32780; Barbara Staros Harmon, Esq., Dept. of Legal Affairs, The Capitol, Room 1104, Tallahassee, Florida 32301; and Miles Davis, Esq., Beggs & Lane, Blount Bldg., Pensacola, Florida 32501, this 9th day of July, 1984.

STEEL HECTOR & DAVIS
Attorneys for the City of
Pensacola

By: W Peter Burns
W. Peter Burns