IN THE SUPREME COURT, STATE OF FLORIDA

JAMES F. REDFORD, JR.,
ETC., ET AL.,

Petitioners,

vs.

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,

Respondent.
_____/

CASE NO. 65,825

THIRD DISTRICT COURT OF APPEAL
CASE NUMBERS 82-2227, 82-2228

BRIEF ON JURISDICTION OF RESPONDENT, STATE OF FLORIDA, DEPARTMENT OF REVENUE

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ATTORNEYS FOR RESPONDENT

PRELIMINARY STATEMENT

Defendant/Appellants, FRANKLIN B. BYSTROM, as Dade County Property Appraiser, and THE PROPERTY APPRAISAL ADJUSTMENT BOARD OF DADE COUNTY, will be referred to collectively herein as the "Petitioners." The Plaintiff/Appellee, STATE OF FLORIDA, DEPARTMENT OF REVENUE, will be referred to herein as the "Department." The symbol "A" followed by a page number will refer to the Appendix at the end of the Department's Brief on Jurisdiction.

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE AND FACTS

The Department is in basic agreement with the Statement of the Case and Facts as set forth in the Petitioners' brief, but would add the following:

(1) That the legal dispute prompting the filing of the action in the trial court was not between the Department and the Property Appraiser. The Property Appraiser complied with the Department's directive to place the class of private leasehold interests in governmental property on the Dade County assessment roll as taxable property for the year 1979. It was the Adjustment Board which overruled the Department and the Property Appraiser and subsequently declared such leasehold interests exempt and removed them from the assessment rolls as taxable property. (A-2)

(2) The holding of the District Court in the decision below was expressly limited to the issue whether the Department had the authority under §195.092, F.S., to compel obedience with its directive to place the subject class of property (private leasehold interests in governmentally-owned property) on the tax roll by filing an action in the circuit court. (A-3)

(3) The District Court expressly ruled that the decision in no way barred or adversely affected the rights of any aggrieved taxpayers to raise any and all defenses to the assessments in subsequent proceedings pursuant to §194.171, F.S. (A-3). The District Court also ruled that any such aggrieved taxpayer would have 60 days from the date

that a tax roll is certified for collection in order to file suit to challenge such assessments (A-3).

ARGUMENT

I.

THIS COURT SHOULD REFUSE TO ACCEPT JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

The Petitioners' claim that the decision of the District Court "expressly affects a class of constitutional or state officers" under Art. V, §3(b)(3), Fla. Const., is without merit for several reasons. First, neither of the Petitioners are within a "class of constitutional or state officers", and are thus not entitled to a review of the District Court decision based on this ground of discretionary jurisdiction.

The property appraisers in most of the sixty-seven (67) counties in the State of Florida are constitutional officers. However, the constitutional office of property appraiser was abolished in Dade County in 1958 pursuant to §8.01 of the Dade County Home Rule Charter adopted in accordance with Art. VIII, §11, Fla.Const. Consequently, since the year 1958 the property appraiser in Dade County has been an appointed county employee responsible to the Dade County Manager.

A property appraisal adjustment board is obviously not a constitutional body. This board is strictly a creature of

statutory origin having been created by the Legislature pursuant to the enactment of general law currently codified into the state statutes as §194.015, F.S.

The membership of a property appraisal adjustment board is made up of existing county officials. The five member board is comprised of three members of the county commission and two members of the school board. §194.015, F.S. In such a case, this Court has ruled that such membership does not constitute a separate "office," but merely imposes additional duties on the existing officers. See, Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981), and cases cited therein at page 112 of the opinion.

Even if membership in a property appraisal adjustment board was considered to be an "office" it would not constitute a "state office". This Court has repeatedly held that a state officer is one "whose field for the exercise of his jurisdiction, duties and powers is coexentsive with the limits of the state and extends to every part of it." In re Advisory Opinion to Governor, 1 So.2d 636, 638 (Fla. 1941); and State v. Hocker, 39 Fla. 477, 22 So. 721, 723 (Fla. 1897). It is an inevitable conclusion that the Petitioner Adjustment Board does not have any power beyond the geographical boundaries of Dade County.

The Petitioners also make a cursory argument that the Governor and Cabinet sitting as as the collegiate head of the Department would constitute a "class of constitutional

officers" within the purview of Art. V., 3(b)(3), Fla. Const. However, a similar contention was expressly rejected by this Court in the case of Florida State Bd. of Health v. Lewis, 149 So.2d 41 (Fla. 1963). This Court ruled on page 43 of the Lewis opinion in pertinent part as follows:

> [3] The "class", as the word is employed in Section 4, Article V, supra, means two or more constitutional or state officers who separately and independently exercise identical powers of government. In this sense a group of officers composing a single governmental entity such as a board or commission would not, as such board or commission, constitute a class. It is the existence of two or more members of a given class of separate official entities that supplies the jurisdictional foundation for this Court to proceed.
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> [4] Here, the state entity involved was the Board of Health, as distinguished from the individual members of the Board. The individuals collectively constitute the Board. When, as here, the official action of the Board as an entity of government is brought into question we are confronted by the action of a single state entity rather than a potential class of state entities. (e.s.)

The Department submits that the holding of this Court in the Lewis case, supra, compels the conclusion that the Governor and Cabinet sitting as the collegiate head of the Department of Revenue constitute a single state agency and do not constitute a "class of constitutional officers" within the meaning of Art. V, §3(b)(3), Fla. Const.

Finally, even if one of the Petitioners was within "a class of constitutional or state officers", the decision of the District Court does not have any express effect on the current duties of the various property appraisers or adjustment boards throughout the state.

The proceedings below arose out of a dispute between the Department and the Adjustment Board in the year 1979 under the prior statutory law whereby private leasehold interests in governmentally-owned property were treated for ad valorem tax purposes as interests in real property. Unless expressly exempt, such leasehold estates were assessed by the local property appraiser and placed on the county ad valorem tax rolls. See, §§196.001(2) and 196.199, F.S. (1979); Williams v. Jones, 326 So.2d 425 (Fla. 1975); and Walden v. Hillsborough County Aviation Authority, 375 So.2d 283 (Fla. 1979).

In 1980, the Florida Legislature enacted Ch. 80-268, Laws of Fla., amending §§196.199, 199.023 and 199.072, F.S. Chapter 80-368 provided that most private leasehold interests in governmentally-owned property (with certain execptions not material to this proceeding) would now be subject to ad valorem tax assessment by the Department as intangible personal property under Ch. 199, F.S. Consequently, the county property appraisers have not had the statutory duty or power to assess such private leasehold estates in governmental property since the year 1979.

II.

THIS COURT SHOULD NOT ACCEPT JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION NEITHER EXPRESSLY NOR DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

The Department would direct this Court's attention to the crucial fact that the holding of the District Court in the decision below was expressly limited to a relatively narrow issue. That issue was whether the Department has the power under §195.092, F.S. to compel compliance with its directive that the subject class of property (private leasehold interests in governmentally-owned property) should be placed on the Dade County assessment roll for the tax year 1979 by bringing an action in the circuit court. The District Court decision represents the first instance known to the Department where the appellate courts of this state have directly construed the provisions of §195.092 relating to the power of the Department to bring and maintain actions to enforce compliance with the tax laws or rules or directives of the Department made under the authority of these tax laws.

The two cases cited by the Petitioners as purporting to create an "express and direct conflict on the same question

of law "are the decisions of this Court in Hollywood Jaycees v. State, Department of Revenue, 306 So.2d 109 (Fla. 1975); and Root v. Wood, 21 So.2d 133 (Fla. 1945). However, the holdings of this Court in the Hollywood Jaycees and Root v. Wood cases, supra, were not based in whole or in part on a statutory construction of the controlling provisions of §195.092, F.S. In fact, §195.092 was not discussed or even cited by this Court in the Hollywood Jaycees and Root v. Wood decisions.

The decision of this Court in Hollywood Jaycees v. Department of Revenue, supra, involved a construction of certain statutory language existing in the year 1973, which language was subsequently repealed and was not in existence at the time the action was filed in the trial court below. Under the provisions of former §193.122(1), F.S. (1973), any changes to a tax roll made by a board of tax adjustment were required by statute to be reviewed by the Department.

The Department had the express statutory authority under former s. 193.122(1) F.S. (1973) to invalidate any changes made by an adjustment board, without a judicial or administrative hearing, if the Department found that the reasons for such changes were legally insufficient. However, there are no longer any similar statutory provisions as contained in former §193.122(1) authorizing the Department to unilaterally invalidate, without a

judicial or administrative hearing, changes made by an adjustment board to a tax roll.

In this case, the Department's determination that the subject class of property (leasehold interests in governmentally owned property) should be placed on the 1979 Dade County assessment rolls was complied with by the Property Appraiser. The legal issues presented in connection with the Adjustment Board's subsequent decision to overrule the Department and Property Appraiser and remove this class of property from the tax rolls were fully aired in the trial court proceedings. The interests and legal positions of the Petitioners were presented by their able counsel and were duly considered by the trial court and District Court.

The Petitioners' stated concern for providing due process to potentially aggrieved taxpayers was expressly dealt with in the decision below. The District Court ruled that any affected taxpayers would have the right to raise any and all defenses to the assessments by filing an action under s.194.171, F.S., within 60 days from the date that a tax roll containing such assessments is certified for collection (A-3). This ruling of the District Court concerning the rights of taxpayers is in full harmony with the decision of the Second District Court in Mikos v. P.A.A.B., 365 So.2d 757, 759 (Fla. 2 DCA 1978).

The Department also submits that the Petitioners' reliance on the case of Root v. Wood as a purported basis for an "express and direct conflict" is clearly misplaced. The Root case was decided in the year 1945 before the Department was even created and long before the current statutory duties and powers of the Department to supervise taxing officials were created, expanded and consolidated into Ch. 195, Fla. Stat., now known as the "Property Assessment Administration and Finance Law". Also, the Root case dealt with the taxation of intangible personal property under Ch. 199 rather than ad valorem taxation of interests in real property on the county assessment rolls as is presented in this proceeding.

CONCLUSION

The decision of the District Court does not expressly affect a "class of constitutional or state officers", because neither of the Petitioners nor the Department is a member of any such "class of constitutional or state officers" under Art. V. §3(b)(3), Fla.Const.

Furthermore, the holding of the District Court does not "expressly and directly" conflict with the decisions of this Court in the Hollywood Jaycees and Root v. Wood cases, supra. The District Court decision is a case presenting the initial construction by the appellate courts of this state of the provisions of §195.092, F.S., dealing with the express authority of the Department to bring actions in the

circuit courts to enforce compliance with the tax laws of this state. The Petitioners' contention that the District Court decision initially construing a controlling state statute "expressly and directly" conflicts with prior decisions of this Court not discussing or even citing the statute in question is without merit.

The Petition for Review should be denied.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Darrey A. Davis, Esquire, 1400 S.E. Bank Bldg., Miami, Florida 33131, Steven A. Schultz, Esquire, 900 Flagler Federal Building, 111 N.E. 1st Street, Miami, Florida 33132, James K. Kracht, Esquire, Assistant County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130, and Joseph F. Jennings, Esquire, Suite 900 Brickell Centre, 790 Brickell Plaza, Miami, Florida, 33131, this 27th day of September, 1984.

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