

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,825

JAMES F. REDFORD, JR., etc.,
et al.,

Petitioners,

vs.

STATE OF FLORIDA, DEPARTMENT
OF REVENUE,

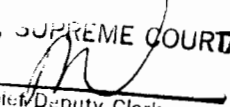
Appellees.

FILED

SID J. WHITE

SEP 12 1984

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

PETITIONER BYSTROM AS DADE COUNTY
PROPERTY APPRAISER'S BRIEF ON JURISDICTION

ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130

By

James K. Kracht
Assistant County Attorney

OFFICE OF COUNTY ATTORNEY

16TH FLOOR COURTHOUSE

MIAMI, FLORIDA 33130

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,825

JAMES F. REDFORD, JR., etc.,
et al.,

Petitioners,

vs.

STATE OF FLORIDA, DEPARTMENT
OF REVENUE,

Appellees.

PETITIONER BYSTROM AS DADE COUNTY
PROPERTY APPRAISER'S BRIEF ON JURISDICTION

ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130

By

James K. Kracht
Assistant County Attorney

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages</u>
<u>Blake v. Xerox Corp.</u> , 447 So.2d 1348 (1984)	5
<u>Florida State Board of Health v. Lewis</u> , 149 So.2d 41 (Fla. 1963)	5
<u>Hollywood Jaycees v. State</u> , 306 So.2d 109 (Fla. 1975)	7, 8, 9, 10
<u>Powell v. Kelly</u> , 223 So.2d 305 (Fla. 1969)	5
<u>Spradley v. State</u> , 293 So.2d 697 (Fla. 1974)	5
<u>Taylor v. Tampa Electric Co.</u> , 356 So.2d 260 (Fla. 1978)	5
<u>Walter v. Schuler</u> , 176 So.2d 81 (Fla. 1965)	5
<u>OTHER</u>	
Florida Constitution Art.VIII, §1(d)	4
Florida Statutes	
§193.114(5)	2
§193.122	2
§193.122(1)	9
§194.032	2
§194.032(6)(a)(3)	2
§195.092	3
§196.194	2
Laws of Florida, Chapter 77-234	9
Florida Rules of Appellate Procedure	
Rule 9.030(a)(2)(A)(iii)	4
Rule 9.030(a)(2)(A)(iv)	8

INDEX

	<u>Pages</u>
Table of Authorities	i
Introduction	1
Statement of the Case and Facts	1
Argument	
I. THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION DIRECTLY AND EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS ..	4
II. THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN THE CASE OF <u>Hollywood Jaycees v. State</u> , 306 So.2d 109 (Fla. 1975)	7
Conclusion	10
Certificate of Service	10

INTRODUCTION

In this Brief on Jurisdiction, the Petitioner, Franklin B. Bystrom, Dade County Property Appraiser, will be referred to as the "Property Appraiser".

The Petitioners, James F. Redford, Jr., Ruth Shack, William G. Oliver, Phyllis Miller, and Linton B. Tyler, as members of and constituting the Dade County Property Appraisal Adjustment Board, will be referred to as the "Property Appraisal Adjustment Board" or the "Board".

The Respondent, State of Florida, Department of Revenue, will be referred to as the "DOR".

The appellate court in this case, the Third District Court of Appeal, will be referred to as the "District Court".

STATEMENT OF THE CASE AND FACTS

On January 1, 1979, each of the lessees (the "Lessees") identified in Paragraph 5 of the Respondent's Complaint (except Miami Aviation Corp.) held a leasehold interest on real property located at the Miami International Airport (the "Leasehold Interests"). (App. B) Said Lessees have never been and are not now parties to this lawsuit.

The Miami International Airport is owned, operated and controlled by Dade County, Florida, a political subdivision of the State of Florida.

The subject Leasehold Interests pertain to real property and improvements thereon, acquired and/or constructed through the issuance and sale of revenue bonds by Dade County, Florida, acting as the Dade County Port Authority.

The Property Appraiser initially granted ad valorem tax exemptions to the subject Leasehold Interests for 1979.

Thereafter, the Department of Revenue approved the tax roll containing such exemptions in accordance with §193.114(5), Fla.Stat. Later, however, the DOR reversed itself and directed the Property Appraiser to place such Leasehold Interests on the tax roll as taxable property. The Property Appraiser complied with that directive. Subsequently, the Property Appraisal Adjustment Board held hearings to review the exemptions on its own motion pursuant to §194.032 and §196.194, at which time the Lessees appeared in support of their respective tax exemptions.

After conducting full hearings, the Board granted exemption to the subject Leasehold Interests and certified the 1979 tax roll, reflecting all such Leasehold Interests as exempt property. Shortly thereafter, the Property Appraiser also certified said tax roll containing the subject exemptions to the Dade County Tax Collector in accordance with §193.122, Fla.Stat.

In granting the subject tax exemptions the Board and the Property Appraiser found, inter alia, that all of the Lessees holding the Leasehold Interests were either commercial air carriers of passengers and/or cargo, or were engaged in providing vital air support services (e.g. fuel stations, overhaul, repair and maintenance facilities and the like) which were necessary for the operation of the mass transportation system at Miami International Airport.

After the Board granted the tax exemptions, as aforesaid, and after the tax roll was certified to the Tax Collector, the DOR unilaterally requested that the Property Appraiser file suit against the Board allegedly in accordance with §194.032(6)(a)(3), Fla.Stat. The Property Appraiser refused.

This action was then initiated by the DOR pursuant to §195.092, Fla.Stat. for the expressed purposes of:

1. Obtaining a judicial declaration that the Leasehold Interests of the Lessees described in Paragraph 5 of the Complaint should not have been granted exemption by the Board and Property Appraiser for the tax year 1979; and
2. Nullifying any previous actions by the Board and the Property Appraiser in granting and certifying said exemptions; and to retroactively recertify the said Leaseholds as taxable property on the 1979 tax roll. (App. B).

After moving to dismiss the Complaint (App. C and D) and the denial of said motions (App. E), the Property Appraiser and Board answered the Complaint raising numerous affirmative defenses including failure by the Plaintiff to join in these proceedings the very taxpayers whose tax exemptions the DOR is seeking to cancel. (App. F and G)

On July 21, 1982, the DOR filed a Motion for Summary Judgment, requesting the Court to enter summary judgment in its favor, based upon the pleadings and the Board's responses to the discovery theretofore filed by the DOR. (App. H).

On August 19, 1982, the Board and the Property Appraiser filed their Joint Motion for Summary Judgment, based upon separate and distinct issues from those relied upon by the DOR in its Motion for Summary Judgment. (App. I).

On September 22, 1982, the Trial Court entered a final order granting the DOR's Motion for Summary Judgment. (App. J).

The Board and the Property Appraiser appealed the decision to the Third District Court of Appeal and on June 12, 1984, the Third District Court of Appeal issued its decision in the within cause holding that under its supervisory responsibilities over the Dade County Property

Appraiser and Property Appraisal Adjustment Board, the DOR had an absolute right to compel the assessment of particular properties in a particular manner without: 1) the need to demonstrate the legal correctness of its opinion; and 2) without affording any notice, opportunity to be heard or other procedural due process requirements to the group of taxpayers affected by its decision. (App. A).

Subsequently, after denial of their motion for rehearing, the Property Appraiser and Property Appraisal Adjustment Board filed their Joint Notice to Invoke Discretionary Jurisdiction of this Court because the decision of the District Court significantly affects the duties and responsibilities of constitutional or state officers and expressly and directly conflicts with a decision of this court on the same question of law.

ARGUMENT

- I. THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION DIRECTLY AND EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS

County property appraisers are a class of constitutional officers under Art.VIII, §1(d), Fla.Const. This Court has jurisdiction of this case pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iii) because the District Court's decision directly and expressly affects the Property Appraiser of Dade County and, thereby, all property appraisers in the State. The District Court's decision does more than simply modify or construe or add to the existing case law on ad valorem taxes: it directly and exclusively affects the powers and duties of property appraisers in that it allows the State DOR to perform the functions of a property appraiser and

property appraisal adjustment board without statutory authority and notice to affected taxpayers. Spradley v. State, 293 So.2d 697 (Fla. 1974); Taylor v. Tampa Electric Co., 356 So.2d 260 (Fla. 1978); and Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963).

Pursuant to the Florida Constitution and statutory framework pertaining to ad valorem taxation, it is the fundamental duty and primary responsibility of county property appraisers to appraise all property within their counties. Blake v. Xerox Corp., 447 So.2d 1348 (1984); Walter v. Schuler, 176 So.2d 81 (Fla. 1965); Powell v. Kelly, 223 So.2d 305 (Fla. 1969). Under the statutes and case law, property appraisal adjustment boards have the duty and responsibility of reviewing issues relating to actions of property appraisers, including decisions of property appraisers to grant or deny tax exemptions for particular property.

Notwithstanding the Florida Legislature's delegation of primary responsibility for the assessment of property to county property appraisers and the review of questions arising out of the assessment and exemption of such property to property appraisal adjustment boards, the opinion and decision of the District Court in the within cause has totally ignored any presumption of correctness clothing the official acts of these officials and concluded that the Department of Revenue of the State of Florida, under the guise of the purported exercise of its supervisory powers, may substitute its judgment and opinion for that of a property appraiser and a property appraisal adjustment board. Furthermore, the District Court's decision effectively coerces compliance with the DOR's opinion through the Florida courts without affording any due process to the involved taxpayers.

After having received initial exemptions, and in response to purportedly authorized directives from the DOR, the affected lessee-taxpayers were notified by the Property Appraiser of the cancellation of their exemptions. After attending and participating in full-scale hearings at the Property Appraisal Adjustment Board, hearings which the Department of Revenue neither attended nor participated in, these taxpayers were advised of the reinstatement of their exemptions. Now, more than four years later, the decision and opinion of the District Court has sanctioned the right of the Department of Revenue to interfere with, reverse and otherwise modify actions of property appraisers and property appraisal adjustment boards that go far beyond the guise of supervisory responsibility and take away from non-party taxpayers valuable property rights they possess through the exemption of their property. The court has done so although the statutory framework within which taxing officials must operate no longer provides any mechanism for the Department of Revenue to review, reverse, or otherwise nullify actions of property appraisers and property appraisal adjustment boards with respect to the taxation and assessment of particular parcels of property. That is, the decision allows the DOR to substitute its judgment for that of appraising and reviewing officials, take away tax exemptions from a group of interested non-party taxpayers without apprising them of any due process rights, and to do so totally outside the statutory framework for the assessment of property and procedures for administrative and judicial review thereof. The decision thereby allows the Department of Revenue in the first instance to become both the appraiser and administrative reviewer for the

leasehold interest assessments involved in the within cause after and without regard for the presumptively valid official actions of the Property Appraiser and Property Appraisal Adjustment Board and totally without notice, opportunity to be heard and other due process requirements having been given to any of the affected taxpayers.

By allowing the DOR to singlehandedly substitute its judgment for that of the Property Appraiser and the Property Appraisal Adjustment Board, and at the expense of and without notice to the adversely affected taxpayers, the decision of the District Court greatly affects the ability of property appraisers to exercise and fully perform their constitutional and statutory duties and totally nullifies the role of property appraisal adjustment boards in holding administrative hearings and reviewing exemption questions. The decision effectively expands the supervisory role of the DOR by transforming it into a non-statutorily recognized appellate body which the District Court would allow to operate without regard to either the responsibilities and duties of property appraisers and property appraisal adjustment boards or the property rights of the affected taxpayers. This Court should therefore exercise its jurisdiction and quash the decision of the District Court because it greatly affects actions of constitutional and state officers.

II. THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BECAUSE THE DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN THE CASE OF Hollywood Jaycees v. State, 306 So.2d 109 (Fla. 1975)

The decision of the District Court, enlarging the "supervisory powers" of the Department of Revenue so as to permit the DOR unilaterally to override the decisions of

property appraisers and property appraisal adjustment boards ignores and is wholly contrary to this Court's decision in Hollywood Jaycees v. State, Department of Revenue, 306 So.2d 109 (Fla. 1975). Consequently, this Court should exercise its discretionary jurisdiction and review the District Court's decision pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv).

In Hollywood Jaycees, this Court noted the necessity and importance of affording taxpayers the full panoply of due process protections before they could be denied property tax exemptions which had been previously granted by a county Board of Tax Adjustment after the taxpayers had been given a full hearing. Calling the due process protections "necessary constitutional conditions precedent," this Court stated that any reviewing body, be it the County Board of Tax Adjustment or the DOR, was required to grant taxpayers their rights of notice and an opportunity to be heard before depriving them of significant property rights in the form of tax exemptions. 306 So.2d at 112. This Court went on to emphasize that the statutes affording a taxpayer de novo review in the Circuit Court of any denial of a tax exemption do not "supply the initial lack of due process by the DOR." Id. A taxpayer is "constitutionally entitled originally to administrative due process by the DOR and should not be relegated to his own initiative to bring a collateral judicial proceeding." Id. Moreover, this Court noted that the so-called de novo review in the Circuit Court was unlikely to be impartial because the taxpayer will have been disadvantaged by the DOR's adverse finding on his eligibility for an exemption. Id.

The District Court's opinion in the within cause flies in the face of Hollywood Jaycees. It totally ignores this Court's insistence upon full due process protections at each and every stage of review and sanctions the DOR's summary denial of previously-granted exemptions without affording the taxpayer notice, an opportunity to be heard, an opportunity to confront witnesses, and the preparation of findings of fact and conclusions of law. Contrary to the decision of this Court in Hollywood Jaycees, the District Court relegates the taxpayer to bringing a collateral proceeding to challenge the DOR's decision. The District Court has, by virtue of its decision in the instant cause, condoned actions of the DOR unilaterally cancelling specific tax exemptions which this Court expressly addressed and condemned in its Hollywood Jaycees decision.

Finally, the conflict between the decision in Hollywood Jaycees and the District Court's decision is of even greater significance because the DOR's action disallowing the exemption in Hollywood Jaycees was predicated upon a statutory procedure whereby the DOR had specific authority to automatically review and change decisions of property appraisal adjustment boards. Subsequent to this Court's decision in Hollywood Jaycees v. State, Department of Revenue, supra, §193.122(1), Fla.Stat. was amended by Chapter 77-234, Laws of Florida, so as to abolish that automatic review procedure. As a result, the DOR action condoned by the District Court's decision in the within cause not only denies the involved taxpayers all procedural due process but wholly lacks any statutory authority.

Because the decision of the court below expressly and directly conflicts with this Court's opinion in Hollywood

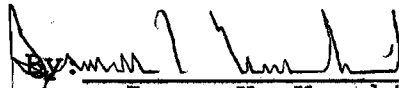
Jaycees, this Court should exercise its discretionary jurisdiction and review the decision of the District Court.

CONCLUSION

Based upon the foregoing argument and authority, this Court is respectfully requested to exercise its discretionary jurisdiction and accept this case for review.

Respectfully submitted,

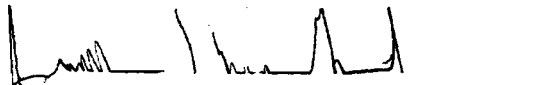
ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130



James K. Kracht
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER BYSTROM AS DADE COUNTY PROPERTY APPRAISER'S BRIEF ON JURISDICTION was mailed on this 10th day of September, 1984 to STEVEN A. SCHULTZ, Esquire Schultz & Hollander, P.A., 1200 Republic National Bank Building, 150 S.E. Second Avenue, Miami, FL 33131; J. TERRELL WILLIAMS, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, LL04, Tallahassee, FL 32301; DAVID LINN, Esquire, Assistant General Counsel, Department of Revenue, Post Office Box 6668, Tallahassee, FL 32301; DARREY A. DAVIS, Esquire, Steel Hector & Davis, 1400 Southeast Bank Building, Miami, FL 33131; JOSEPH A. JENNINGS, Esquire, 900 Brickell Centre, 799 Brickell Plaza, Miami, FL 33131.



Assistant County Attorney