

IN THE SUPREME COURT  
OF FLORIDA

**FILED**

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CLERK, SUPREME COURT

CASE NO. 65,825  
(District Court Case No. 82-2228)

By [Signature]  
Chief/Deputy Clerk

JAMES F. REDFORD, JR., et al.,  
as members of and constituting the  
Property Appraisal Adjustment Board of Dade County, Florida;  
and  
FRANKLIN B. BYSTROM,  
Dade County Property Appraiser

Petitioners,

v.

STATE OF FLORIDA, DEPARTMENT OF REVENUE,  
Respondent

PROPERTY APPRAISAL ADJUSTMENT BOARD'S  
BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS\*

On January 1, 1979 (the relevant taxing date) various non-governmental entities including airlines (the "Lessees"), held leasehold interests on real property (the "Leasehold Interests") located at the Miami International Airport, which is owned and operated by Dade County, Florida. (App. 1, 2) The Lessees are not parties to this lawsuit. The 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. (R. 3, 72, 78, 215)

The Dade County Property Appraiser (the "Appraiser"), a constitutional officer pursuant to Fla. Const., Art. VIII, Sec. 1(d), initially granted an ad valorem tax exemption to the Leasehold Interests for 1979. (App. 1, 2) Thereafter, in accordance with Fla. Stat. §193.114(5) (1979), the Department of Revenue (the "DOR") approved the tax roll containing those exemptions. Later, however, the DOR reversed itself and directed the Appraiser to place the Leasehold Interests on the tax roll, and the Appraiser complied. (App. 2)

On its own motion the Property Appraisal Adjustment Board (the "Board"), an agency created by act of the legislature (presently Fla. Stat. §194.015), held extensive hearings to review the exemptions pursuant to §194.032 and §196.194, at which time the Lessees appeared in support thereof. The DOR did not appear or participate in the hearings. The Board granted exemptions for the Leasehold Interests and officially certified the 1979 tax roll reflecting those exemptions. (App. 2) Shortly thereafter, the Appraiser also

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\* The following abbreviations shall be used in this Brief:  
App = Appendix to this Brief; R = Record on Appeal

certified the tax roll in accordance with Fla. Stat. §193.122.

(App. 2) In granting the tax exemptions, the Board and the Appraiser found, inter alia, that all of the Lessees 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) which were necessary for the operation of the mass transportation system at Miami International Airport. (App. 9-10)

Thereafter, the DOR unilaterally requested that the Appraiser file suit against the Board, allegedly in accordance with Fla. Stat. §194.032(6)(a)(3), but the Appraiser refused. (App. 2) The DOR brought this action seeking, inter alia, "a de novo finding that the subject possessory leasehold interests of the Lessees are not entitled to be granted exemption from ad valorem taxation of the 1979 Dade County Tax Roll." (App. 7) Following discovery the trial court granted the DOR's Motion for Summary Judgment and denied the Board's and Appraiser's Motion for Summary Judgment, specifically finding, concluding and adjudging - on the merits - that "the leasehold interests of the Lessees ... are subject to ad valorem taxation for the year 1979." (App. 12)

The Board and Appraiser filed their Notices of Appeal to the District Court of Appeal, Third District on October 22, 1982. (R. 211, 212) Following oral argument on June 17, 1983 the District Court filed its opinion (App. 1-3) on June 12, 1984, affirming in part and vacating in part the summary judgment of the trial court. The District Court, deciding the case on an issue not raised, briefed or argued by any party, held that, as between the governmental parties before the court, Fla. Stat., §195.092 controlled and (1) "enables the DOR to compel obedience to its interpretation of the tax rules

and regulations" and "authorizes the DOR's superintending power to compel obedience of the taxing official to place the property on the tax roll" and (2) "an action brought under this section does not contemplate [nor presumably permit] a merit determination." (App. 3) The Board and Appraiser served and filed their Joint Notice to Invoke Discretionary Jurisdiction on August 29, 1984. (App. 13-14)

POINT I

THIS COURT HAS JURISDICTION BECAUSE THE  
DISTRICT COURT'S OPINION EXPRESSLY AFFECTS  
A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

The Appraiser is a class of constitutional officer created by Fla. Const. Art. VIII, §1(d). The Board is composed of state officers functioning as a quasi-judicial body created by the legislature. Fla. Stat. §194.015 (1983). The DOR is a state agency created by Fla. Stat. §20.21. The Governor and the Cabinet, who are a class of constitutional officers pursuant to Fla. Const., Art. IV, §§1 and 4, are specifically named to head the DOR.

The above referred to officers are not nominal, representative or incidental parties to this litigation. They are the real parties in interest, particularly in light of the District Court's decision which purports to resolve the conflict among the DOR, the Board and Appraiser concerning their relative powers and duties in the tax assessment field. The District Court stated the issue as:

whether the DOR has the power to compel obedience [of the Board and Appraiser] to its decision that the subject property be placed on the tax roll

and it concluded:

that section 195.092 authorizes the DOR's superintending power to compel obedience of the taxing official to place the property on the tax roll.

(App. 3)

This Court has delineated the parameters of its jurisdiction to review decisions that affect a class of constitutional or state officers in Spradley v. State, 293 So.2d 697,701 (Fla. 1974):

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. This may be a decision in a case in which the class, or some of its members, is directly involved as a party. It may also be in a case in which no member of the class is a party if the decision generally affects the entire class in some way unrelated to the specific facts of that case.

Based upon this standard a variety of cases have been heard by this Court. See e.g. Treasure, Inc. v. State Beverage Department, 238 So.2d 580 (Fla. 1970) (jurisdiction to review decision concerning authority of substitute state officer appointed under Administrative Procedure Act); Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980) (jurisdiction to review decision permitting removal of artificial life-sustaining measures for terminally ill patient based upon state attorney (who opposed relief) as a class of constitutional officer); and Taylor v. Tampa Electric Co., 356 So.2d 260 (Fla. 1978) (jurisdiction to review decision presenting the issue of whether a circuit court clerk, a class of constitutional officer, may exact a commission on funds disbursed to eminent domain defendants).



In this case the District Court viewed the prime issue in terms of the power and authority of the DOR verses the Board and Appraiser. The ruling in question reposes all of that power and authority with the DOR. The Board believes this ruling is contrary to and conflicts with the law governing tax assessments. See Point III, infra. It is clear, for example, that property appraisers are charged with the duty and authority to "assess" the tax. They are given wide discretion in the exercise of that function. Calder Race Course, Inc. v. Overstreet, 363 So.2d 631 (Fla. 3d DCA, 1978). The property appraisal adjustment boards are charged with the review, after evidentiary hearing, of assessments by the property appraiser. Fla. Stat. §194.015 (1983). By its ruling the District Court has emasculated the power and authority of the Board and Appraiser. It is difficult to imagine a decision that could more directly or expressly affect the DOR, property appraisal adjustment boards and property appraisers throughout the state.

#### POINT II

THIS COURT HAS JURISDICTION BECAUSE  
THE DISTRICT COURT'S OPINION EXPRESSLY  
AND DIRECTLY CONFLICTS WITH THIS COURT'S  
DECISION IN HOLLYWOOD JAYCEES v. STATE,  
DEPARTMENT OF REVENUE, 306 So.2d 109  
(Fla. 1975), ON THE SAME POINT OF LAW.

In the instant case the District Court's ruling has effectively eliminated from tax assessment proceedings the constitutionally mandated administrative due process required by this Court's decision in Hollywood Jaycees v. State, Department of Revenue, 306 So.2d 109 (Fla. 1975). In Hollywood Jaycees this Court reversed the trial court and quashed a decision of the DOR

which unilaterally and without notice or hearing invalidated a previously granted tax exemption. The facts of Hollywood Jaycees are strikingly similar to this case. The taxpayer applied to the Broward Board of Tax Adjustment following a denial of an exemption granted in previous years. After a full hearing the Board re-instated the exemption. Several months thereafter, the DOR notified the taxpayer of its aforementioned decision invalidating the exemption pursuant to the apparent authority of Fla. Stat. §193.122(1), without "opportunity to be heard nor to confront witnesses nor to challenge the action taken by the DOR in any manner." 306 So.2d at 111. The taxpayer appealed.

This case reached the District Court on identical facts with the exception that: (1) the DOR now relies on Fla. Stat. §195.092 as authority to maintain this action, along with other related supervisory statutes (former Fla. Stat. §193.122(1) is no longer in effect) and (2) the Board and Appraiser, unlike their Broward County counterparts, refused to acquiesce to the unilateral and (in their opinion) improper action of the DOR.

The essence of the Hollywood Jaycees decision is that absent administrative due process any attempted invalidation by the DOR of a previously granted tax exemption is an unconstitutional exercise of its supervisory powers. That holding conflicts with the decision of the District Court which permits the DOR, relying upon a successor to the statute declared unconstitutional in Hollywood Jaycees, to impose its will on the taxpayer, the Board and Appraiser, without the necessity of notice,

an opportunity to be heard and confront witnesses or the right to receive findings of fact or conclusions of law. See also, Miller v. Nolte, \_\_\_\_ So.2d \_\_\_\_, 9 FLW 284 (Fla. 1984). Hollywood Jaycees protects the tax assessment system by mandating due process at the administrative level. The opportunity for de novo judicial review was specifically found to be an inadequate salve, a recognition of the benefit of and constitutional entitlement to an original administrative proceeding in contrast to a "collateral judicial proceeding." 306 So.2d at 112.

### POINT III

THIS COURT HAS JURISDICTION BECAUSE THE DECISION OF THE DISTRICT COURT DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF THIS COURT IN ROOT v. WOOD, 21 So.2d 133 (Fla. 1945), ON THE SAME POINT OF LAW.

The decision of the District Court frames the issue presented in terms of the DOR verses the Board and Appraiser. (Point I, supra) The ruling clearly places all power with the DOR by concluding that Fla. Stat. §195.092 "authorizes the DOR's superintending power to compel obedience of the taxing official to place the property on the tax roll." (App. 3) That interpretation effectively grants the DOR a "tax assessment" power, one it was not intended to have according to the tax assessment system designed by the legislature.

In Root v. Wood, 21 So.2d 33 (Fla. 1945), this Court was presented with issues concerning the relative power and duties of the Tax Assessor, Board of Equalization and the State Comptroller in the field of intangible property taxation. Again, the facts of Root bear striking resemblance to those of this case. The Tax

Assessor made his determination as to value, imposed his assessment and submitted the tax roll to the Board of Equalization. Following examination the Board approved the assessments without objection and the taxes were paid. Thereafter, the Comptroller concluded that the property was undervalued and, relying on Fla. Stat. §199.03, directed the tax assessor to make an increased assessment.

This Court reviewed the statutory basis for the power and authority of the Tax Assessor, the Board of Equalization and the Comptroller and concluded:

We find nothing in this provision to authorize the Comptroller to make assessments of intangible personal property. We find that duty vested exclusively in the Tax Assessor subject to revision by the Board of Equalization as outlined in the forepart of this opinion. The duty of the Comptroller is to investigate intangible personal property tax rolls and see that all property owners have "made proper returns" and have returned all "property subject to taxation" and "advise the tax assessor of his findings." The tax assessor "shall utilize the information furnished by the comptroller" and enter any property certified to him by the Comptroller on the assessment rolls.

21 So.2d at 135-136.

Clearly, the role of tax "assessment" was placed exclusively with the Tax Assessor. The Board was charged with the duty and power to evaluate and review those assessments in light of the evidence and argument presented at a hearing. The Comptroller's function, under the statutory scheme, was informational, supervisory and advisory, but he was given "no power to make assessments ...." 21 So.2d at 139.

The Root Court held that the attempted additional assessment by the Comptroller was illegal and outside his authority.

The statutory scheme for tax assessment of real property parallels that previously utilized for intangible property. The three tier system of authority is identical. A review of the applicable statutes reveals that the Appraiser is charged with the duty of "Assessment," which is the appropriate title of Chapter 193, Fla. Stat. The Board, an agency created by legislative act, is empowered with the review of the Appraiser's assessments, under Chapter 194, Fla. Stat., Part I entitled "Administrative Review." The DOR's power and authority is contained in Chapter 195, Fla. Stat. entitled "Property Assessment Administration and Finance." Under the various sections of Chapter 195 the legislature sets forth the means by which the DOR administers the system. The DOR is not empowered to "tax" or "assess." A cursory review of the sub-titles of the various sections of Chapter 195 reveal and support this assertion; i.e. - §195.002 Supervision by DOR, §195.022 Forms to be prescribed by DOR, §195.027 Rules and regulations, §195.032 Establishment of standards of value, §195.052 Research and tabulation of data, §195.084 Information exchange.

The statute relied upon by the District Court, Fla. Stat. §195.092 Authority to bring and maintain suits, cannot be the source or basis for substantive power of the DOR. That section merely permits the DOR a vehicle to enforce any "lawful order" it makes, but cannot be used in a "bootstrap" fashion to make lawful an order that, as in Root, was illegal. The statutory scheme

recognized in Root is also applicable in this case, and the District Court's decision to the contrary is directly and expressly in conflict.

CONCLUSION

This Court has jurisdiction pursuant to Fla. Const., Art. V, Sec. 3(b)(3) to review the decision of the District Court based upon the foregoing arguments.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing Brief on Jurisdiction was mailed this 10th day of September, 1984, to: J. TERRELL WILLIAMS, ESQ., Assistant Attorney General, Department of Legal Affairs, The Capitol, Room LL04, Tallahassee, Florida 32301; DAVID LINN, ESQ., Assistant General Counsel, Department of Revenue, Post Office Box 6668, Tallahassee, Florida 32301; and JAMES KRACHT, ESQ., Assistant County Attorney, 1626 Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130.

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