IN THE SUPREME COURT OF THE STATE OF FLORIDA

CITY OF DAYTONA BEACH SHORES, a Florida municipal corporation,

Petitioner,

vs.

THE STATE OF FLORIDA, ex rel. STEPHEN L. BOYLES,

Respondent.

CASE NO. 65,912

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and statement of the facts except for the last paragraph in the statement of the facts. [BR 3] This paragraph suggests that the beach access fee was used only for improvements needed for vehicular access to the beach. As the district court's opinion finds, the fee actually financed a multitude of services including many unrelated to accomodation of vehicles.

ARGUMENT

POINT I. THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL CANNOT DIRECTLY AND EXPRESSLY CONFLICT WITH NICHOLS V. CITY OF JACKSONVILLE, 262 SO.2D 231 (FLA. 1ST DCA 1972), BECAUSE THAT OPINION DOES NOT APPLY OR ANNOUNCE A RULE OF LAW OR CONTAIN ANY STATEMENT OF REASONS.

Petitioner argues that the decision below conflicts with only one case - that being Nichols v. City of Jacksonville, 262 So.2d 231 (Fla. 1st DCA 1972). Examination of this case reveals that it recites no facts, states nothing about the ordinance in question and explains nothing about the errors asserted, the arguments and theories advanced or the basis for its decision.

It is fundamental to conflict jurisdiction that both district court decisions in question announce or apply a rule of law. Neilsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960). Nichols does neither. In recognition of this all too obvious fact, petitioner has included in the appendix to its brief a copy of the trial court decision in Nichols and has tacitly invited this Court to find conflict with that opinion. It need hardly be stated that conflict, if it exists, must be found in the district court decisions. Jurisdiction cannot rest on asserted conflict between the Fifth District's opinion below and the trial court in Nichols. Kendel v. Pontious, 261 So.2d 167 (Fla. 1972).

This Court has consistently denied conflict review of district court decisions rendered without a statement of reasons and lacking precedential value. In Mystan Marine, Inc. v. Harrington, 339 So.2d 200 (Fla. 1976), the Court ruled that a district court's denial of certiorari without a statement of reasons could not give rise to conflict jurisdiction. Such decisions have no precedential value and do not create discord in the decisional law of the state. Following the reasoning in Mystan, it is clear that Nichols sets no precedent and therefore cannot be a basis for conflict review.

Although the opinion of the Fifth District fleetingly adverts to Nichols, its parenthetical interpretation of that decision is certainly not based on anything the First District Court of Appeal wrote in its brief per curiam opinion. That per curiam opinion, stating no facts or reasons, is scarcely the progenitor of decisional discord. For this reason, petitioner's reliance on Jenkins v. State, 385 So.2d 1356 (Fla. 1980), is misplaced. That case simply held that a per curiam affirmed decision accompanied by a dissenting opinion did not confer conflict jurisdiction on the Supreme Court. Jenkins did not recognize that conflict jurisdiction could be predicated on a case that stated no rule of decision or reason in reaching its result. In fact, in Davis v. Mandau, 410 So.2d 915 (Fla. 1981), this Court, considering an affirmance without opinion much like the Nichols decision, relied on Jenkins in ruling:

> [T]he district court's decision on the summary judgment issue was effectually an affirmance without opinion with which express and direct conflict cannot be established. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

It is apparent that petitioner seeks to revive the "record proper" conflict abolished by the 1980 amendment to Article V, §3(b)(3), Florida Constitution, with the additional disingenuous twist that it asks the Court to find the requisite conflict in the record of a case that is not even before the Court. The conflict petitioner urges was not recognized under the pre-1980 Article V, §3(b)(3), and certainly does not exist under the present provision.

POINT II. THE FIFTH DISTRICT COURT OF APPEAL DID NOT CERTIFY ITS DECISION AS PASSING UPON A QUESTION OF GREAT PUBLIC IMPORTANCE; HENCE, THERE IS NO JURISDICTION ON THIS BASIS.

Petitioner asserts the Court should accept jurisdiction because the decision below involves issues of great public importance. Jurisdiction exists on this basis only when the district court so certifies its ruling. Article V, §3(b)(4), Florida Constitution. Here, the Fifth District denied petitioner's motion for certification.

CONCLUSION

The Court should not accept jurisdiction over this appeal because no proper basis for it has been shown.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Stephen L. Boyles, Esquire, State Attorney, 440 South Beach Street, Daytona Beach, Florida 32014; Lee R. Rohe, Esquire, Assistant General Counsel, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303; and to Peter B. Heebner, Esquire, 523 North Halifax Avenue, Daytona Beach, Florida 32018, this 29th day of October, 1984.

Louis F. Hubener
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