IN THE SUPREME COURT OF FLORIDA

CITY OF ATLANTIC BEACH, FLORIDA,

Petitioner,

v.

GEORGE BULL,

Respondent.

CASE NO: 66,446

DCA CASE NO: AW-339

GEORGE BULL,

Petitioner,

v.

CITY OF ATLANTIC BEACH, FLORIDA,

Respondent.

CASE NO: 66,488

DCA CASE NO: AW-339

INITIAL BRIEF ON THE MERITS OF RESPONDENT/PETITIONER, GEORGE BULL

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STATEMENT OF THE CASE

Appellate proceedings in this case commenced with an appeal from a final order dismissing George Bull's Third Amended Complaint with prejudice on the basis that the Plaintiff lacked standing. (R. 64-65)

Respondent/Petitioner, George Bull, Plaintiff in the trial court, will be referred to in this brief, as "Bull". (Please see this Court's order dated February 4, 1985.) The Defendants in the trial court were the City of Atlantic Beach, Florida, a municipal corporation, and various individuals. The City of Atlantic Beach will be herein referred to as the "City". In the event it becomes necessary to refer to the individual defendants, they will be referred to by their surnames.

In this, and future briefs, the following abbreviations will be used:

R for Record-On-Appeal in the District Court.
PIB for the City's Initial Brief herein.
RIB for Bull's Initial Brief herein (this brief).
PAB for the City's Answer Brief anticipated to be filed herein.
PA for the Appendix to the City's Initial Brief.
RA for the Appendix to this brief.
DCA for the District Court of Appeal, First District.

This case was commenced by the filing of a Complaint against the City only on August 13, 1982. (R. 1-2) An Amended Complaint was filed November 2, 1982. (R. 11-12) Pursuant to Motion to Add Parties Defendant and for Permission to File Second Amended Complaint (R. 15) an Order was

entered on November 8, 1982 (R. 20) permitting the filing of a Second Amended Complaint naming as Defendants, in addition to the City, seven individuals. (R. 16-19) The individual Defendants were all dismissed by Order dated January 5, 1983 (R. 29). Various subsequent orders relating to dismissal of those individuals and awards of attorneys fees in their favor pursuant to the provisions of F.S. 57.105 were the subject matter of other appeals which were concluded in favor of Bull. (Please see Bull v. City of Atlantic Beach, 450 So.2d 570 (Fla. 1st DCA 1984); Bull v. Persons, et al., 453 So.2d 103 (Fla. 1st DCA 1984) and Bull v. Gulliford, 453 So.2d 103 (Fla. 1st DCA 1984)).

Pursuant to Orders of the Court dated April 26, 1983 (R. 40) and May 24, 1983 (R. 43) a Third Amended Complaint was filed on June 22, 1983 against the City only (R. 44-49), permission to file a further amended complaint against the individual Defendants having been denied. (R. 43) The City filed a Motion to Dismiss the Third Amended Complaint on the specific ground that the Plaintiff was without standing. (R. 54) That motion, as aforesaid, was granted by Order dated and filed November 23, 1983. (R. 64-65)

Appeal to the DCA followed. The issue as framed in Bull's initial brief as modified in his reply brief was:

> "Whether a taxpayer citizen whose taxes will be increased, but who otherwise will suffer no injury different from other citizens similarly situated, has standing to maintain an action to enjoin unlawful expenditures by governmental officials or for other relief?
>
> "Does the raising of a constitutional issue afford standing?"

The DCA, without considering the constitutional aspect, "followed the lead of the Fourth District Court of Appeal" and certified to this Honorable Court the same question as certified from the Fourth District in Fornes v. North Broward Hospital District, 455 So.2d 584 (Fla. 4th DCA 1984), to wit:

> "Does a taxpayer who alleges that the taxing authority is acting illegally in expending public funds which will increase his tax burden have standing to sue to prevent such expenditure, or is it necessary that he suffer some other special injury distinct from other taxpayers (as opposed to other inhabitants) or launch a constitutional attack upon the taxing authority's action in order to have standing?"

Having so certified that question as being one of great public importance, the DCA reversed the trial court, ruling in favor of Bull's standing. (RA, 1-2)

Before the opinion of the DCA was "rendered" within the contemplation of Rule 9.120(b), Florida Rules of Appellate Procedure, the City filed its notice to invoke the discretionary jurisdiction of this Court. Being apprehensive that such notice might be considered by the Court as being premature, and being anxious that there be no question about the jurisdiction of this Court, Bull filed a proper and timely notice to invoke the discretionary jurisdiction of this Court and thereupon filed a motion in this Court to determine the timeliness of the notice by the City. That motion resulted in the entry by this Court of an order dated February 4, 1985, consolidating the Bull proceeding with that of the City, setting forth a briefing schedule and

designating the City as "Petitioner/Respondent" and Bull as the "Respondent/Petitioner".

STATEMENT OF THE FACTS

The pleadings in the trial court constitute all of the facts relevant to this proceeding. The only issue is whether, under the allegations of the Third Amended Complaint, Bull, Plaintiff in the trial court, demonstrated standing to maintain the action.

The Third Amended Complaint alleged Bull to be a citizen of the State of Florida; a resident of the City; owner of property situated in the City subject to taxation by the City for City purposes and a taxpayer of the City; that the City caused to be published an invitation to bid incident to the construction of a proposed public building and that the City expended substantial sums of money incident thereto in disregard of Sections 71 and 72, Charter of the City of Atlantic Beach, being Chapter 57.1126, Special Acts of Florida, 1957, and in disregard of Sections 8-5 and 8-6, Ordinances of the City of Atlantic Beach and contrary to various provisions of Chapter 287, Florida Statutes. It was further alleged that, accordingly, the disbursements and threatened disbursements by the City were illegal and void and that the payments made were in disregard of Section 2(b) of Article 8 of the Constitution of the State of Florida.

The Plaintiff prayed that the City be restrained from paying out funds of the City until such time as it should comply with the above mentioned ordinances, laws and consti-

tutional provisions and that it be required to account for and recover the monies theretofore wrongfully and illegally disbursed. The Complaint also contained a prayer for general relief. (R. 49)

The Order of dismissal, being the Order giving rise to this proceeding, contained the following important recitals:

> "In his Third Amended Complaint, Plaintiff has alleged that, as a taxpayer of the City of Atlantic Beach, he will suffer an increase in his tax burden as a result of the alleged non-compliance of the City with the requirements of Section 287.055, Fla. Stat. (1981); the Plaintiff has failed, however, to allege any special injury different and distinct from that suffered by other taxpayers in the City.
>
> * * *
>
> "Florida law requires that, in order for a plaintiff to maintain a taxpayer's suit against a governmental entity, he must demonstrate that he has sustained such a 'special' injury, different from that sustained by other taxpayers and proximately caused by the alleged wrongful actions of the governmental entity.***
>
> * * *
>
> "On the basis of the foregoing findings and law, it is hereby
>
> "ORDERED AND ADJUDGED that Defendant's Motion to Dismiss the Third Amended Complaint is granted, and the said Third Amended Complaint is hereby dismissed with prejudice." (R. 64-65)

Any additional relevant facts will be recited under the "Argument" portion of this brief.

SUMMARY OF ARGUMENT

It is the position of Bull that a taxpayer who alleges

that the taxing authority is acting illegally in expending public funds which will increase the taxpayer's burden has standing to sue to seek relief from such illegal expenditure without the necessity of alleging that the plaintiff taxpayer will suffer some other special injury distinct and apart from other taxpayers (as opposed to other inhabitants); that the so-called "Rickman Rule" has been misconstrued and misunderstood; that neither Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972), Department of Revenue of the State of Florida v. Markham, 396 So.2d 1120 (Fla. 1981) nor any other decision by this Court holds contrarily to the conclusion reached by the DCA, sub judice; that application of the apparent holding of the Third District Court of Appeal in Paul v. Blake, 376 So.2d 256 (Fla. 3d DCA 1979) that suffering taxpayers may seek relief only at the ballot box is "too little and too late" and constitutes a deprivation of the constitutional right of redress and that from the standpoint of constitutional right, common justice, public policy and proper interpretation of this Court's precedents, the conclusions reached by the Fourth District Court of Appeal in Fornes v. North Broward Hospital District, the dissent in Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983) and the DCA in the case sub judice, are correct and that the questions certified to this Court should be answered in the affirmative.

Bull further urges that, in any event, the Third Amended Complaint from whence these proceedings emanate raised a

constitutional issue and a constitutional attack upon the taxing authority's action and that therefore he had, and has, standing.

ARGUMENT

Issue

WHETHER A TAXPAYER CITIZEN WHOSE TAXES WILL BE INCREASED, BUT WHO OTHERWISE WILL SUFFER NO INJURY DIFFERENT FROM OTHER CITIZENS SIMILARLY SITUATED, HAS STANDING TO MAINTAIN AN ACTION TO ENJOIN UNLAWFUL EXPENDITURES BY GOVERNMENTAL OFFICIALS OR FOR OTHER RELIEF?

DOES THE RAISING OF A CONSTITUTIONAL ISSUE AFFORD STANDING?

STANDING AND "RICKMAN RULE"

It is worthwhile to commence by observing what are not issues: There is no issue as to Bull being a taxpayer; a citizen and resident of the City; a property owner within the City whose taxes will be increased as a result of the unlawful expenditures and that the expenditures and threatened expenditures are unlawful. Each of those matters are alleged in the Third Amended Complaint (R. 44-49) and are, for the purposes of the Motion to Dismiss and for the purposes of these proceedings, deemed true. (Thompson v. City of Jacksonville, 130 So.2d 105 (Fla. 1st DCA 1961).

Accordingly, the issue is narrowed as to whether a resident citizen taxpayer must allege that he will suffer some injury other than increase in his taxes in order to have standing to enjoin unlawful or illegal expenditures by the City or other governmental officials.

The law is so well settled as to have been condensed as follows:

> "The payment of public moneys on void and unauthorized contracts may be enjoined in a suit by a taxpayer. And it is immaterial whether actual fraud was intended or contemplated by the threatened action, if in fact the disbursement proposed is for an unauthorized or illegal purpose. Thus, where a public contract has been illegally awarded without competitive bidding, the taxpayer may prosecute an action to restrain payment under it. And a court of equity will enjoin a payment made in pursuance of a contract by a county officer which is void on grounds of public policy." (Footnotes omitted: 32 Fla.Jur., Taxpayers' Actions, Section 16)

Although the law has been so beyond which man's mind remembereth not to the contrary, a logical commencement is a 1931 opinion from this Court, Wester v. Belote, et al., 138 So. 721 (Fla. 1931), wherein the Court held:

> "That a contract made by public officers in violation of the statutes requiring them to be let pursuant to competitive bids, to the best responsible bidder, is absolutely void, and that no rights can be acquired thereunder by the contracting party, is beyond question in this jurisdiction. And that payments under such a contract will be enjoined at the suit of a citizen and taxpayer of the affected county is also not to be denied under the decisions of this court." (Citations omitted: 138 So. at p. 724)

> "And it has even been held that, where illegal or void contracts have already been executed, and payments of money made by the public officers under them, a suit in equity lies at the instance of a citizen and taxpayer to obtain an accounting and recover the payments back for the benefit of the public treasury, ***." (Citations omitted: 138 So. at p. 724)

> "Citizens and taxpayers, when suing as such, undoubtedly have the right to in-

> junctive relief to protect the public treasury against illegal disbursements of public funds which it is charged will result from the carrying out of an unauthorized or illegal contract. And in such cases no other showing is required of complainant than that he allege his status as a citizen and taxpayer and point out that the threatened disbursement of public funds is for an unauthorized or illegal purpose, ***." (Underlining added: 138 So. at p. 726)

This Court reached the same decision in Town of Boca Raton v. Raulerson, 146 So. 576 (Fla. 1933).

Another factually similar case, announcing the same principles of law, is Armstrong v. Richards, 175 So. 340 (Fla. 1937), wherein this Court stated and held:

> "It is too well settled to be seriously questioned that a taxpayer has the right to maintain a suit against officers who have squandered or dissipated public funds, or who have unlawfully disposed of, or are about to dispose of, public funds." (Underlining added: 175 So. at p. 341)

After citing numerous authorities, the Court quoted with approval:

> "Courts of equity have jurisdiction to restrain municipal corporations and their officers from making unauthorized appropriations, or otherwise illegally or wrongfully disposing of the corporate funds, to the injury of property holders and taxpayers in the corporation, and a bill for this purpose is properly brought by an individual taxpayer on behalf of himself and other taxpayers in the municipality." (Underlining added; citations omitted: 175 So. at p. 341)

The First District Court of Appeal, in Mayes Printing Company v. Flowers, 154 So.2d 859 (Fla. 1st DCA 1963), in a

case "on all fours" quoted with approval the findings of the trial court which were, in turn, a verbatim quotation of the quotation above set forth from Town of Boca Raton v. Rauler-son, supra. (154 So.2d at page 859)

It is material that each of the above cited and quoted decisions post-date by many years the opinion of this Court in Rickman v. Whitehurst, 74 So. 205 (Fla. 1917). However, it was a recent misconstruction of that opinion which resulted in the erroneous order giving rise to these proceedings. Because the Rickman case has been often cited in recent years it is necessary to determine the holding of that case and the principle of law to be gleaned therefrom. It is true that if sentences and phrases taken from that opinion are construed out of context they tend to create a hiatus in the law. However, the opinion as a whole is consistent with the law above quoted and, in fact, supports the position of Bull sub judice.

The law has long been established that it is inappropriate in construing either statutes or judicial opinions to excise sentences or even paragraphs from the context of the whole. With that principle in mind, a reading of Rickman v. Whitehurst in its entirety clearly reveals that the author never intended for it to be construed as holding that a taxpayer whose taxes will be increased is without standing to enjoin wrongful and unlawful expenditures by public officers.

The City seeks to ignore the distinction between "citi-

zen" and "taxpayer". True it is that every citizen does not have standing. However, if the citizen is also a taxpayer whose taxes will be increased as a result of the wrongful disbursement then he clearly has standing, under the cases addressing that issue, to seek relief. The increase in a taxpayer's taxes is a "special injury" different from that of other citizens who are not taxpayers or whose taxes will not be increased as a result of the unlawful expenditure.

In the Rickman case a special road district had been created in DeSoto County and called the Punta Gorda Special Road and Bridge District. The Road and Bridge District issued bonds and turned the proceeds over to the bond trustees. The act by which the District was created required that the County Commissioners prepare plans and specifications and, after advertising, "award the contract for such construction to the lowest responsible bidder". Instead, the Commissioners determined that they could save money by constructing the roads with day labor (which they were entitled to do by virtue of a subsequent special act). Rickman filed suit seeking an injunction to restrain the County Commissioners from constructing the roads and bridges in the special road district by day labor or otherwise, except under contract to be let to the lowest responsible bidder. There was no allegation by Rickman "that the cost of constructing the roads and bridges by the method proposed [would] entail a greater cost than the method prescribed by the general act, nor that the money [was] being wasted or

improvidently expended". (74 So. at p. 207).

Under the foregoing circumstances, the Court announced the principles of law above quoted as follows:

> "In the first place the complainant has the right to maintain the bill if the acts complained of were unauthorized and not within the powers of the Board of County Commissioners, and tended to produce a resultant injury to the complainant by increasing the burden of his taxes. ***The principle on which the rights rests is that the taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of the County Commissioners which may increase the burden to be borne by the taxpayers of the county, ***." (74 Fla. 207: Underlining added.)

After so holding, the author of the opinion proceeded then to speak of "special injury", stating that:

> "The right of the complainant to maintain this suit therefore would seem to depend upon the peculiar injury which may result to him from the expenditure of the funds ***." (74 So. at p. 207)

It is obvious, however, upon reading the entire opinion that the "special injury" then being referred to by the author of the opinion was the increase in the plaintiff's tax burden. That position is made clear by the following statements:

> "***His position is not contradistinguished from that of all other taxpayers, or citizens who are not taxpayers, and therefore cannot invoke the aid of equity merely to prevent an unlawful corporate act ***." (74 So. at p. 207: Underlining added.)

Further sustaining the construction that the author was there speaking of increased tax burden of a taxpayer as "special injury", as distinguished from a citizen who is

not a taxpayer, is the further statement:

> "***We have upon investigation of the authorities, including text-books and decisions from other jurisdictions found no case in which such a suit has been maintained where it did not appear that special injury would result to the complainant as a taxpayer in the increased public burden as the result of the unauthorized act." (Underlining added: 74 So. 207)

When the Rickman decision is carefully analyzed the conclusion is inescapable but that all the opinion held was that it is necessary that a citizen also be a taxpayer whose tax burden will be increased in order for that citizen to have standing to challenge unlawful expenditures. Indeed, the First District Court of Appeal so indicated in R. L. Bernardo & Sons, Inc. v. Duncan, 134 So.2d 297 (Fla. 1st DCA 1961), wherein Judge Wigginton, in an excellently reasoned opinion, discussed Rickman v. Whitehurst, supra, and in accordance with the other cases hereinabove cited and quoted, said:

> "The Supreme Court of Florida in a series of decisions has established the principle that a citizen and taxpayer, when suing as such, undoubtedly has the right to injunctive relief to protect the public treasury against illegal disbursements of public funds which it is charged will result from the carrying out of an unauthorized or illegal contract. In such cases, no other showing is required of complainant other than he allege his status as a citizen and taxpayer and point out that the threatened disbursement of public funds is for an unauthorized or illegal purpose, whether any actual fraud or misconduct was intended or contemplated thereby or not.*** " (134 So.2d 302: Underlining added.)

To the same effect is the First District's post-Rickman opinion in Robinson's, Inc. v. Short, 146 So.2d 108 (Fla. 1st DCA 1962).

MISCONSTRUCTIONS OF THE "RICKMAN RULE"

If the applicable principles of law are so clear then why, one would be inclined to query, did the trial court rule as it did, and why did the Second District Court of Appeal go astray in Godheim v. City of Tampa, supra? It is clear that the trial judge, sub judice, relied on the Godheim decision. It is equally clear that the Godheim decision results from a misinterpretation of Rickman v. Whitehurst, supra; Department of Administration v. Horne, supra, and Department of Revenue of the State of Florida v. Markham, supra. (R. 64)

Although the Godheim opinion is founded upon a misinterpretation of Department of Revenue v. Horne, supra, and Department of Revenue of the State of Florida v. Markham, supra, as above stated, even Godheim is distinguishable from the case sub judice: Although the author of the Godheim opinion refers to the plaintiff as having been "a citizen and taxpayer of the City of Tampa" it is not recited in the opinion that the plaintiff alleged that his taxes would be increased as a result of the illegal act sought to be enjoined. While the scrivener of this brief does not purport to have read the complaint involved in the Godheim case, it is clear that the failure to allege an increase in tax burden would be fatal to standing under the Rickman v. White-

hurst holding. However, whether or not the Godheim decision is distinguishable on account of the failure of the plaintiff there to allege an increase in his tax burden, it is nevertheless clear that both the author of that opinion and the trial judge sub judice misconstrued and misapplied Department of Administration v. Horne, supra, and Department of Revenue of the State of Florida v. Markham, supra. Accordingly, those opinions must be addressed.

Department of Administration v. Horne, hereinafter referred to as "Horne", does not support the City's position sub judice. Indeed, albeit under the guise of an "exception to the Rickman rule" the Court there found standing, even absent the recitation of any specific allegation of increased tax burden.

In Horne, although the plaintiffs were members of the legislature, the Court explicitly stated that for the purposes of the action they would be considered as any other "taxpayer". In the Horne decision there was no attempt to enjoin threatened unlawful expenditures, as was the case sub judice. Instead, the plaintiffs there sought a declaratory judgment and an injunction to enjoin the comptroller from disbursing state funds authorized by various legislative acts claimed by plaintiffs to have been unconstitutional. A far cry from the facts sub judice! In quoting from the "Rickman rule" the Court (at least inferentially) construed the case as has the scrivener of this brief, supra, in that it is recited that the principle on which standing to sue

"rests is that the taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of the County Commissioners which may increase the burden to be borne by the taxpayers", continuing with the observation:

> "The right of the complainant to maintain this suit therefore would seem to depend upon the peculiar injury which may result to him from the expenditure of the funds ***." (Underlining added: 269 So.2d at p. 662)

A careful reading of the opinion clearly reveals that by use of the word "therefore" the Court was equating "peculiar injury" or "special injury" to an increase in tax burden by reason of the unlawful act sought to be enjoined. Confirming that interpretation is the further recitation:

> "***The taxpayer's injury specially induced by the unlawful act is the basis of his equity, and unless it is alleged and proved, there can be no equitable relief." (269 So.2d at p. 662)

Sub judice, the peculiar injury to Bull, a taxpayer, as distinguished from some other citizen, viz: an apartment renter or beachcomber, by the increase of taxes on properties owned by him and taxed in the City, was clearly and unequivocally alleged and therefore under all applicable law, including Horne, furnishes standing.

Further, although, as above stated, Horne is distinguishable on its facts and because the relief sought related to a declaration that certain acts were unconstitutional, it is nevertheless relevant that the Court there held the plaintiffs to have standing, reciting:

> "Despite our reluctance to open the door to possible multiple suits by 'ordinary citizens', nonetheless, it is the 'ordinary citizen' and taxpayer who is ultimately affected and who is sometimes the only champion of the people in an unpopular cause. We would therefore not deny this right of attack by a responsible taxpayer upon allegedly illegal expenditures (appropriations) of public monies, as transcending possible unwarranted litigation that might in some instances ensue." (269 So.2d at p. 663: Underlining added.)

Neither may the City properly take refuge in Department of Revenue of the State of Florida v. Markham, supra, hereinafter referred to as "Markham":

First, very important is the fact that the plaintiff in the Markham case sought only a declaratory judgment and not an injunction. Neither was expenditure or threatened expenditure of public funds involved. The author of the opinion went to great lengths to point out that whether as a public official or as an individual citizen and taxpayer, in the absence of a constitutional challenge, "an advisory judicial opinion" could not be obtained under the guise of declaratory judgment. The author stated:

> "***As a general rule, a public official may only seek a declaratory judgment when he is 'willing to perform his duties, but ***prevented from doing so by others'. Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion. Since the property appraisers *** had a clear statutory duty to comply with the prescribed *** regulations *** they clearly lacked standing for declaratory relief in

> their governmental capacities." (Underlining added; citations omitted: 396 So.2d at p. 1121)

The author again, in the concluding portion of the opinion, quoted at length from Williams v. Howard, 329 So.2d 277 (Fla. 1976) relating to "standing basis for declaratory suits", saying:

> "Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; *** that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest; and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity." (Underlining added: 396 So.2d 1122)

So it is that, notwithstanding some rather loose language regarding Rickman v. Whitehurst, supra, it cannot, by any stretch of the imagination, be seriously contended that Markham constitutes a precedent for a holding that a taxpayer citizen whose taxes will be increased, but who otherwise will suffer no injury different from other citizens similarly situated, does not have standing to maintain an action to enjoin unlawful expenditures by governmental officials. That simply was not the issue before the court in the Markham case!

LAND USE AND PUBLIC NUISANCE CASES

The "special injury" requirement in land use cases, zoning cases and public nuisance cases is quite different from the standing requirement for a taxpayer to seek relief

as a result of an illegal expenditure of public funds.

The "special injury" or "special damage" often referred to in zoning and land use cases finds its origin in public nuisance law. There a private citizen was required to show special damage because a public nuisance was considered an offense against the public in general and subject to abatement in an action by the government. (Skaggs-Albertson's v. ABC Liquors, Inc., 360 So.2d 1082 (Fla. 1978) The public policy behind such a rule was to prevent persons who created public nuisances from being held liable in multiple damage suits brought by individual members of the public, regardless of the injury to each. Even that rule, however, makes little sense when injunction is the relief sought because a multiplicity of suits will not be filed once an action seeking injunction is instituted.

Nevertheless, regulating public nuisances has traditionally been deemed best accomplished by authorities and not private citizens. Accordingly, although courts eventually have permitted private citizens to seek injunction against public nuisances, special damages have been required to be plead and proved. The same rule of special damages was later carried over into zoning law cases. However, standing to sue in zoning and land use cases should be treated differently from standing in taxpayer suits. In the former, citizens frequently complain of discretionary acts that have no direct nor measurable impact on the challengers. On the other hand, because taxpayer suits require

allegations and proof of increased tax burden, they address a readily identifiable and direct injury. Disregard by a public official of competitive bidding laws, for example, will result in a greater public expenditure, the consequence of which will be a direct impact upon the taxpayer. It is therefore logical that the "special injury" as relates to zoning, land use, and public nuisance cases should not be applied in the same manner to suits by taxpayers to enjoin illegal expenditure of taxpayers' funds.

Even in zoning cases, this Court recognized in Renard v. Dade County, 261 So.2d 832 (Fla. 1972) that the "special damage rule" was not intended to apply to zoning matters "other than suits by individuals for zoning violations". (261 So.2d at page 835) In that case, this Court stated that the "special damage rule" should not be invoked when a zoning ordinance itself was challenged on substantive or procedural grounds". (261 So.2d at page 835: Emphasis added) Also in Skaggs-Albertson's v. ABC Liquors, supra, the Court after reviewing Renard v. Dade County, supra, observed that "any affected resident, citizen or property owner of the governmental unit in question has standing to challenge [an ordinance improperly or unlawfully enacted]". (363 So.2d at page 1087)

Henry L. Doherty & Co., Inc. v. Joachim, 200 So. 238; 146 Fla. 50 (Fla. 1941) is not even remotely in point. In that case the city fathers of Palm Beach passed an ordinance closing a traditional walkway across private property.

There was no showing that the closing of the walkway was unlawful nor illegal, nor was taxation in any manner involved. A citizen of Palm Beach challenged the propriety of the closing of the walkway. Under those circumstances, this Court cited Rickman v. Whitehurst, supra, and said:

> "But the council apparently had the power and used it and there is nothing in what we have observed in this record to show a result to complainants different in kind from that to others in the same community, the nieghbor nextdoor or the man across the street." (146 Fla., at page 54)

Town of Flagler Beach v. Green, 83 So.2d 598 (Fla. 1955) is similar to the Joachim case but not at all analogous to the case sub judice. In that case the city sought to erect a recreational building on property owned by the city lying between the ocean and Green's hotel. Green challenged the right of the city to erect the building. A motion to strike filed by the city was, "by stipulation, heard by the trial judge as a motion for summary judgment". (83 So.2d at page 598: Emphasis added.) Upon the case reaching this Court the author of the opinion noted that: "No testimony was taken and so far as the record reveals there is a factual issue as to whether the Greens will suffer any injury different in kind from that experienced by the community generally". (83 So.2d at page 598: First emphasis added.) Under those circumstances, a summary final decree in favor of the city was reversed for further proceedings to determine whether "the plaintiffs below will suffer any injury from the construction of the building

proposed different from the kind suffered by the public generally". (83 So.2d at page 600)

Again, Town of Flagler Beach v. Green did not involve an unlawful or illegal act by the city nor did it involve taxes, taxpayers or increased tax burdens.

United States Steel Corp. v. Save Sand Key, Inc., 303 So.2d 9 (Fla. 1974) is also similar to the Joachim and Town of Flagler Beach cases but factually dissimilar, and therefore distinguishable, from the case sub judice. Indeed, this Court recognized and expressed the distinction between that case and Department of Administration v. Horne, supra, (303 So.2d 12). In the United States Steel case a group had formed Save Sand Key, Inc. for the purpose of seeking to enjoin United States Steel from improving and utilizing lands owned by it on Sand Key. In their complaint they "sought injunctive relief from any future acts which interfere with, impair or impede the exercise of the public's rights and from an alleged public nuisance in the form of a purpesture blocking enjoyment of those rights". (303 So.2d at page 10: Underlining added.) This Court held that the District Court erred in reversing the order of dismissal by the trial court based on lack of standing to maintain the action.

As in the Joachim and Town of Flagler Beach cases, the United States Steel case related to matters akin to a public nuisance which traditionally does, indeed, require some sort of "special injury" as a condition to standing.

However, the case sub judice does not involve nuisance law, but is entirely different therefrom. There is a clear distinction between a citizen taxpayer who, with other taxpayers, is injured as a result of the increase in his taxes as a result of an unlawful or illegal act on the part of the taxing authority, as opposed to a complainant seeking redress on account of a public nuisance. To have standing to seek relief from a public nuisance it is necessary that the complainant demonstrate "special injury" resulting from the public nuisance: However, to enjoin or seek other appropriate relief on account of a public authority unlawfully or illegally disbursing or squandering public funds the plaintiff need only show that he is a citizen within the area of the taxing authority; that he is a taxpayer and that his taxes will be increased as a result of the illegal or unlawful acts from which relief is sought. Under those circumstances the increase in the taxpayer's taxes (though with other taxpayers, as distinguished from non-taxpaying citizens) constitutes special injury and therefore standing. The mere fact that others will also be injured does not deprive one of standing! This Court placed its finger on the touchstone in Department of Administration v. Horne, supra, when it stated:

> "***It is the 'ordinary citizen' and taxpayer who is ultimately affected and who is sometimes the only champion of the people in an unpopular cause.***" (269 So.2d at page 659)

Further, the City's reliance on Florida Wildlife Feder-

ation v. State Department of Environmental Regulation, 390 So.2d 64 (Fla. 1980) is equally misplaced. Indeed, a careful reading of that opinion in the light of the facts sub judice reveals that it is authority for Bull's position. The scrivener of that opinion, as in Department of Administration v. Horne, supra, while paying lip service to the so called "Rickman Rule" avoided its application, explaining:

> "The rule is not absolute, however, and exceptions to it have been carved out by both this court and the legislature. ***". (390 So.2d at page 67)

Further, the Court recognized the true test for standing:

> "***the statute insures that the minimum requirements for standing - injury and interest in redress - will be met." (390 So.2d at page 66)

The Court there also, albeit obliquely, recognized the distinction between one suffering a particular injury (i.e., a taxpayer whose taxes are increased as a result of unlawful expenditures) and "the public at large" (i.e., non-taxpayer citizens who will not suffer an increase in taxes). (390 So.2d at page 67).

PRIOR PRECEDENTS

Interestingly, two of the "recent" Supreme Court opinions relied upon by the City (Department of Administration v. Horne, supra, and Florida Wildlife Federation v. State Department of Environmental Regulation, supra) found standing in the plaintiff. None of the cases, however, relied upon by the City are factually similar to the case sub judice;

none address the issue as to whether or not a taxpayer whose taxes will be increased has standing to seek injunctive relief against wrongful and unlawful expenditures and none are authority for dismissal of Bull's complaint in the trial court.

If the "Rickman Rule" denies standing to a taxpayer whose taxes will be increased as a result of unlawful expenditures by public officials sought to be enjoined as contended by the City, then into what abyss, one might rhetorically inquire, did the several courts lapse into when granting standing in the following post Rickman decisions?:

Ashe v. City of Boca Raton, 133 So.2d 122 (Fla. 2d DCA 1961)

Armstrong v. Richards, 175 So. 340 (Fla. 1937)

City of Daytona Beach v. News Journal Corp., 156 So. 887 (Fla. 1934)

Hathaway v. Munroe, 119 So. 149 (Fla. 1929)

Hunter v. Carmichael, 133 So.2d 584 (Fla. 2d DCA 1961)

Krantzler v. Board of County Commissioners, 354 So.2d 126 (Fla. 3d DCA 1978)

Mayes Printing Company v. Flowers, 154 So.2d 859 (Fla. 1st DCA 1963)

R. L. Bernardo & Sons, Inc. v. Duncan, 134 So.2d 297 (Fla. 1st DCA 1961)

Robinson's, Inc. v. Short, 146 So.2d 108 (Fla. 1st DCA 1962)

Robert G. Lassiter & Co. v. Taylor, 128 So. 14 (Fla. 1930)

Town of Boca Raton v. Raulerson, 146 So. 576 (Fla. 1933)

Wester v. Belote, et al., 138 So. 721 (Fla. 1931)

Each of those cases have been decided since Rickman v. Whitehurst, supra!

In none of the cases in which the so called "Rickman Rule" has been applied to deny standing have the facts been as those in the case at bar. On the other hand, in each case factually similar to the case sub judice standing has been found proper. (For example, R. L. Bernardo & Sons, Inc. v. Duncan, supra.) The sole exception is Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983). That Godheim is wrongfully decided is clearly demonstrated in prior portions of this brief and no useful purpose will be accomplished by repetition here. The author of the Godheim opinion simply failed to grasp the true holding of Rickman v. Whitehurst and failed to recognize the factual differences between that case and those relied upon for the holding. (Department of Administration v. Horne, supra and Department of Revenue of the State of Florida v. Markham, supra.)

Although there are literally dozens of cases supporting Bull's position (among them being Robert G. Lassiter & Co. v. Taylor, 128 So. 14 (Fla. 1930); Hathaway v. Munroe, 119 So. 149 (Fla. 1929); City of Daytona Beach v. News Journal Corp., 156 So. 887 (Fla. 1934); Hunter v. Carmichael, 133 So.2d 584 (Fla. 2d DCA 1961); Ashe v. City of Boca Raton, 133 So.2d 122 (Fla. 2d DCA 1961) and Krantzler v. Board of County Commissioners, 354 So.2d 126 (Fla. 3d DCA 1978)), Bull will here treat only one additional case, Krantzler

v. Board of County Commissioners, supra. The facts of that case are very similar to those sub judice. There the complainants sought an injunction against disbursements and further requested reimbursement to the County of taxpayers' funds already expended. The trial court dismissed the case for lack of standing, with prejudice. In a per curiam opinion the District Court of Appeal, Third District, reversed quoting the familiar law, including the same quotation as hereinabove set forth from Rickman v. Whitehurst, supra, and further said:

> "***On the facts before us, plaintiffs not only sought reimbursement of funds which they alleged were improperly spent, but also sought an injunction against future promotional brochures.
>
> * * *
>
> "But if his allegations show any grounds for equitable relief, his pleadings should be regarded as sufficient, as against a motion for dismissal, [citations omitted] and the complaint must be viewed most favorably to the pleader, [citations omitted]. Therefore, we find that the trial court erred in ruling that plaintiff's complaint was inadequate to invoke its equity jurisdiction." (354 So.2d at p. 126)

Nor is it either reasonable or logical for the City to seek refuge in the dictum found in Paul v. Blake, 376 So.2d 256 (Fla. 3d DCA 1979). The law is so well settled as to render citations of authority superfluous that where there is a wrong there is a remedy. That addage obviously means a remedy at law! Surely it is wrong to cause an increase in a taxpayer's taxes as a result of wrongful and unlawful squan-

dering of public funds. To suggest that the wronged taxpayer is without judicial remedy but that he must await his opportunity at the polls is reminescent of the West Florida cliche of "closing the gate after the horses have already gotten out!" Once the public trust monies have been squandered and disbursed they are gone and the taxpayers' taxes are assessed accordingly. Voting the rascals out will neither bring back the funds nor decrease the taxpayers' taxes! The polls are certainly a tool by which future squanderings may be prevented but the polls are not a judicial remedy. A contrary holding would constitute a deprivation of free access to the Courts as guaranteed and mandated by Article 1, Section 21 of the Constitution of the State of Florida.

STANDING IS GROUNDED IN THE CONSTITUTION

Indeed, the restrictions sought by the City to be imposed upon standing of a citizen and taxpayer to enjoin unlawful expenditures which would have the effect of increasing his tax burden would constitute an unconstitutional deprivation of access to the courts, contrary to both the Federal and State Constitutions. The First and Fourteenth Amendments to the Constitution of the United States guarantees free access to the courts and prohibits either Congress or a state from depriving a citizen of that right. The Constitution of the State of Florida is even more specific: Section 9, Article 1, provides in material part that: "No person shall be deprived of life, liberty or

property without due process of law, ***." Section 21 of Article 1 provides:

> "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

The cases construing those constitutional provisions are legion. However, among those are G. B. B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3d DCA 1977), which is instructive. In that case, specifically addressing Article 1, Section 21 of the Florida Constitution (1968) the Court held:

> "***It guarantees to every person the right to free access to the courts on claims of redress of injury free of unreasonable burdens and restrictions. Any restrictions on such access to the courts must be liberally construed in favor of the constitutional right." (Underlining added: 343 So.2d at p. 899)

As in the case last above cited, it can hardly be disputed that an increase in tax burden is an "injury" within the constitutional concept. Not even liberal construction is required to reach that conclusion!

FLOODS OF FRIVOLOUS CASES

There simply is no basis in fact for the contention of the City that liberalized standing will open the floodgates to frivolous litigation and "threaten the total disruption of municipal government by exposing Florida municipalities and other public bodies to unrestricted law suits***". (PIB, 7) As demonstrated by the numerous decisions of this

Court and other Appellate Courts of Florida above cited and quoted, taxpayer standing has been the norm rather than the exception, all without inundation with frivolous taxpayer suits. Indeed, Courts of the State have been open to taxpayers since 1856. (Cotton v. Commissioners of Leon County, 6 Fla. 610 (Fla. 1856)) Standing is, of course, merely the threshold requirement in a suit to enjoin unlawful expenditures by governmental authorities. Granting taxpayers standing may well cause more complaints to be filed and more honesty in government but it will hardly inundate the Courts. Suits which are without merit will be summarily disposed of by dismissal or summary judgment and will not place an undue burden on public officials nor the judicial system.

Although courts do not always provide the least expensive or most efficient forum for protecting citizens' rights, when those rights are affected by illegal conduct of governmental officials, courts are often the only forum in which members of the public can vindicate their rights. The "floodgates" argument of public entities is generally not for the purpose of protecting courts nor public bodies from inundation, but is advanced by those who wish to insulate their conduct from judicial scrutiny. While the City, sub judice, obviously wishes to exempt itself from taxpayer lawsuits, such motivation is hardly a proper ground for reversing this Court's long established precedent for taxpayer standing.

The Courts as well as the legislature have already

furnished deterrents to frivolous lawsuits or abuse of taxpayer standing by dismissal of shams as provided in Rule 1.150, Florida Rules of Civil Procedure, and imposition of attorneys fees pursuant to F.S. 57.105. Also, the Court can certainly take judicial notice of the fact that litigation is not inexpensive. The substantial expense of litigation, the provisions for dismissals of frivolous lawsuits with accompanying sanctions and imposition of attorneys fees all clearly furnish substantial deterrents to taxpayers bringing baseless claims against governmental officials.

The City gleefully, in support of its contention that granting standing will result in vexatious litigation, cites to Bull's brief in the DCA acknowledging "multiple cases wherein Bull is plaintiff or appellant and the city is defendant or appellee". (PIB, 19; PA, 7) What the City does not tell the Court, however, is that those multiple actions resulted from awards of attorneys fees against Bull in favor of the various individual defendants who were dismissed in the trial court, via separate orders which required multiple appeals and which appeals were successful in Bull's favor. (RA, 4-8: Bull v. City of Atlantic Beach, 450 So.2d 570 (Fla. 1st DCA 1984); Bull v. Gulliford, 453 So.2d 103 (Fla. 1st DCA 1984); Bull v. Persons, 453 So.2d 103 (Fla. 1st DCA 1984).

THE ATTORNEY GENERAL

Nor does pragmatic experience and precedent support the contention (PIB, 21-25) that wronged taxpayers can or will

receive sufficient protection of their tax dollars from the Attorney General. Indeed, as already observed, this Court has specifically recognized that "***it is the 'ordinary citizen' and taxpayer who is ultimately affected [by illegal expenditures of public monies] and who is sometimes the only champion of the people in an unpopular cause." (Horne: 269 So.2d at page 663)

Another excellent example is United States Steel Corp. v. Save Sand Key, Inc., supra, sought to be relied upon by the City (PIB, 17) in which, as observed by this Court, although the lower courts "***refused to dismiss the attorney general, permitting him to pursue the action insofar as it pertains to the alleged public nuisance***the attorney general [took] a voluntary nonsuit". (303 So.2d at page 10)

The attorney general, although charged with the responsibility, simply cannot bring suit in all cases where illegal acts occur. (Please see F.S. 16.01.) Further, while the attorney general may bring such actions, he has plenary discretion to decide whether or not a particular case will be prosecuted. (Please see, for example, State of Florida, ex rel. Shevin v. Exxon Corp., 526 F.2d 266 (5th Cir. 1976), reh. den. 1976, Standard Oil Company of California, ex rel. v. Florida, ex rel. Robert L. Shevin, Attorney General, 429 U.S. 829, 50 L.Ed.2d 92, 97 S.Ct. 88 (1976). The "unpopular cause" recognized by this Court in Horne may well have such political implications as to dissuade prosecution.

Any argument that taxpayers can safely rely upon the attorney general to protect their interests and that, in cases involving violation of competitive bidding requirements, the losing bidder can effectively represent the public is also without merit. Such argument misapprehends the purpose of competitive bidding statutes. Such laws have been enacted for the protection of the public, not governmental officials nor bidders. (Wester v. Belote, supra) Neither is there any reason to believe that wronged bidders will be able to adequately represent taxpayers. While they may, in some cases, coincidentally champion the right of the public, the taxpayers should not be relegated to reliance upon wronged bidders when it is the taxpayer whose rights have been violated. Although a losing bidder may be in a position to sue, there is no mechanism by which the taxpayer can compel him to do so when competitive bidding laws have been violated.

BULL ALLEGED CONSTITUTIONAL GROUNDS

While not directly responsive to the certified question now before the Court, there are yet other reasons for determining that the DCA correctly reversed the trial court's dismissal of Bull's Third Amended Complaint for lack of standing. Both Markham and Horne specifically held that, regardless of taxpayer standing or increase in tax burden, a citizen has standing when constitutionality of the challenged act is at issue. In Horne, the Court limited its holding "to constitutional challenges on taxing and spend-

ing" (269 So.2d at p. 662) and observed:

> "Appellees have alleged the unconstitutionality of certain sections of an appropriations act." (Emphasis the Court's: 269 So.2d at p. 662)

Further the Court stated:

> "Thus we find that where there is an attack upon constitutional grounds based directly upon the legislature's taxing and spending power, there is standing to sue***". (Emphasis the Court's: 269 So.2d at p. 663)

The Court, in Horne, quoted at length from Flast v. Cohen, 392 U.S. 3, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968), wherein the United States Supreme Court held that a federal taxpayer has standing to challenge the validity of a federal spending program.

Likewise in Markham, the Court twice recited that Markham's complaint was absent "a constitutional challenge" (396 So.2d at p. 1121) and that it alleged "no constitutional infirmity". (396 So.2d at p. 1122).

For that additional reason, the trial judge erred in dismissing the Third Amended Complaint sub judice. In that complaint (paragraphs 19 and 22) Bull thrice alleged the unlawful acts sought to be enjoined as being, in addition to contrary to statutes and ordinances, contrary to specified provisions of the Constitution of the State of Florida. Based upon those allegations alone, Bull had standing!

CONCLUSION

In conclusion, the question certified by the DCA to this Honorable Court as being one of great public importance

should be answered in the affirmative.

Stare decisis will not be in any manner disturbed because all prior precedents from this Court relating to the rights of taxpayers alleging that their taxes will be increased as a result of unlawful expenditures by a governmental entity have afforded standing to those complaining taxpayers.

Rickman v. Whitehurst, supra, is clearly distinguishable on its facts: Even if it were not distinguishable the Rickman case, when properly construed, allows standing to a taxpayer complaining of increase in taxes as a result of unlawful expenditures by a governmental agency.

There is a clear distinction between suits by taxpayers complaining of unlawful expenditures and those involving land use, zoning and public nuisances.

Taxpayers whose taxes will be increased as a result of unlawful acts by taxing authorities have a constitutional right of redress and a right to free access to the courts.

Experience has not demonstrated that allowing standing to taxpayers under such circumstances will result in vexatious litigation nor an undue burden on the courts.

To relegate a taxpayer to his remedy at the polls, perhaps many years after public funds have been unlawfully dissipated or squandered is neither reasonable, just nor constitutional.

Experience has also demonstrated that it is neither reasonable nor just to place taxpayers in the position of

being protected at the whim or ability, either timewise or financial, of the attorney general.

Public policy dictates that taxpayers should have access to the Courts. Any increase in lawsuits or litigation is far outweighed by affording beleaguered taxpayers the right to require lawful expenditures by those placed in the public trust.

Finally, narrowing the issues to the case sub judice, Bull did in fact level a constitutional attack in his Third Amended Complaint: Therefore, for that further reason the reversal by the DCA of the trial court's dismissal for want of standing should be approved by this Honorable Court.

RESPECTFULLY SUBMITTED this 19 day of March, 1985.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing brief and appendix has been mailed to Claude L. Mullis, Esquire, and James F. Valenti, Jr., Esquire, Post Office Box 4099, Jacksonville, Florida 32201, and Thomson Zeder Bohrer Werth Adorno & Razook, 100 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, this 19 day of March, 1985.

Attorney