IN THE SUPREME COURT OF FLORIDA

Case No. 67,022

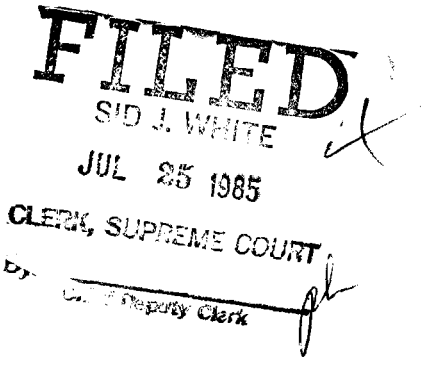
BRENT R. ELDRED,

Petitioner,

vs.

NORTH BROWARD HOSPITAL DISTRICT,

Respondent.



BRIEF OF AMICUS CURIAE LOWER FLORIDA KEYS HOSPITAL DISTRICT AND INDIAN RIVER COUNTY HOSPITAL DISTRICT

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INTRODUCTION

This cause is currently pending before this Court upon discretionary review of a decision of the District Court of Appeal, Fourth District, which certified a non-conflicting opinion to involve a question of great public interest. The parties, BRENT R. ELDRED, Petitioner, and NORTH BROWARD HOSPITAL DISTRICT, Respondent, have briefed their respective positions.

Motion for leave to file amicus brief was filed on behalf of the LOWER FLORIDA KEYS HOSPITAL DISTRICT, d/b/a FLORIDA KEYS MEMORIAL HOSPITAL and INDIAN RIVER COUNTY HOSPITAL DISTRICT, d/b/a INDIAN RIVER MEMORIAL HOSPITAL. This court granted that motion pursuant to Rule 9.370, **Fla.R.App.P.**, and this brief is submitted on behalf of those districts. Hereinafter they will be referred to by name or collectively as THE DISTRICTS.

The LOWER FLORIDA KEYS HOSPITAL DISTRICT and the INDIAN RIVER COUNTY HOSPITAL DISTRICT fully concur in the result reached by the Fourth District in the instant case and find themselves in complete agreement with the arguments being advanced by the NORTH BROWARD HOSPITAL DISTRICT. They urge this Court to reach the same result reached by the Fourth District whether for the same reasons expressed by that

Court or any of the alternate theories which have been suggested.

STATEMENT OF CASE AND FACTS

The parties to the case **sub judice** have briefed and argued the specific facts which they feel are applicable. Because this Court's ultimate disposition of this case will have a significant impact upon numerous units of government in the state, THE DISTRICTS deem it appropriate to submit the following.

Pursuant to long-standing constitutional authority, the Legislature of the State of Florida has created a number of political subdivisions generally known as special tax districts. For example, the INDIAN RIVER COUNTY HOSPITAL DISTRICT was established by Chapter 61-2275, **Laws of Florida.** The LOWER FLORIDA KEYS HOSPITAL DISTRICT was established by the Legislature through enactment of Chapter 61-2507, **Laws of Florida.** Several other hospital districts, including the NORTH BROWARD HOSPITAL DISTRICT, have been created by the Legislature from time to time and in addition, special taxing districts have been created to address problems ranging from mosquito control to public housing to water management. While minor variations exist in the enabling legislation for each district, there are some universal common denominators. For example, districts are granted the governmental power to levy and collect taxes and to exercise the right of eminent domain. Districts normally have the author-

ity to issue bonds. The districts are almost always governed by boards appointed by the governor and board members are subject to removal in the same manner as, for example, city or county commissioners. Public records laws, Government in the Sunshine Laws and governmental ethics requirements are all applicable to special taxing districts and their governing boards.

The Constitution of the State of Florida (1968) specifically addresses special taxing districts. Article III, Section 14 provides a civil service system for county, municipal **and district** employees. Article VI, Section 6 touches upon registration and elections in districts created by statute. Article VII, concerning finance and taxation, deals at length with special taxing districts. For example, Section 8 allows state funds to be appropriated to "special districts" by general law. Section 9 empowers special districts to levy ad valorem taxes or "other taxes" as authorized by general law for their respective purposes. Section 9(b) allows a vote of the electors residing within a special taxing district to establish a millage for purposes of ad valorem taxes. Section 10 delineates the authority of special districts to pledge its credit, invest "public trust funds," issue revenue bonds and own, construct or operate electrical energy generating facilities. Section 12 allows special districts to issue bonds, certificates of indebted-

ness or other forms of tax anticipation certificates, payable from ad valorem taxation, to finance capital projects or to refund outstanding bonds. Section 14 authorizes state bonds pledging the full faith and credit of the state to finance the construction of air and water pollution control and abatement and solid waste disposal facilities to be operated by any municipality, county, district or other authority.

Article VIII, Section 4 deals with transfer of any function or power of a local political subdivision, including special districts, to be transferred to or contracted to be performed by another political subdivision of the state. Section 6(b) provided for the continuation of the powers, jurisdiction and government of special districts upon the adoption of the 1968 Constitution. Finally, Article XII provided for the continuation of tax millages authorized in special districts on the date of the adoption of the Constitution, Section 2, and the ad valorem taxing power of special districts was preserved by Section 15.

While there may be minor variations in the enabling legislation for the numerous special taxing districts established by the state, and an item by item comparison would not necessarily be beneficial for these purposes, THE DISTRICTS suggest that a review of the acts which created them as well as the act which created the NORTH BROWARD HOSPITAL

DISTRICT, will be indicative of the powers, jurisdiction, responsibilities and operation of most special taxing districts. Quite obviously, either the purpose for the establishment of the district or a district's particular geographical location may require additional authority or a limitation upon operations. However, THE DISTRICTS believe that the Fourth District correctly determined that all special taxing districts fall within the ambit of Section 768.28, **Fla.Stat.**, and to determine the application of that statute to districts on an ad hoc basis would be as unworkable as the governmental-proprietary test rejected by this Court in **COMMERCIAL CARRIER CORPORATION V. INDIAN RIVER COUNTY**, 371 So.2d 1010 (Fla. 1979).

SUMMARY OF ARGUMENT

As amicus curiae, THE LOWER FLORIDA KEYS HOSPITAL DISTRICT and the INDIAN RIVER COUNTY HOSPITAL DISTRICT, for themselves and presumably for most other special taxing districts in the state, submit that they are governmental entities falling within the ambit of Section 768.28, **Fla.Stat.** The legislative purpose behind the adoption of Section 768.28 and amendments thereto clearly indicates a desire to treat all units of government within the state in the same manner whether or not they are local, county, regional or state instruments of government. Furthermore, liability of all units of government is both established and limited to provide for the orderly conduct of public business.

Nothing in the language of Section 768.28 indicates that special taxing districts established by the Legislature are to be treated any differently than any other units of government; to the contrary, there is every indication that the Legislature intended that Section 768.28 should apply to all special taxing districts. Therefore, the Fourth District reached the right result although it may have posed the question of great public interest in terms which are too narrow. THE DISTRICTS suggest that this Court should affirm the result reached by the Fourth District for either the reasons

expressed by that Court or alternative reasons argued by THE DISTRICTS or the NORTH BROWARD HOSPITAL DISTRICT.

ARGUMENT

ALL SPECIAL TAXING DISTRICTS CREATED BY THE LEGISLATURE OF THE STATE OF FLORIDA ARE EITHER INDEPENDENT ESTABLISHMENTS OF THE STATE OR CORPORATIONS PRIMARILY ACTING AS INSTRUMENTALITIES OF THE STATE, AND THEY ARE SUBJECT TO THE RIGHTS, OBLIGATIONS AND LIMITATIONS PROVIDED BY SECTION 768.28, **FLA.STAT.** (1977).

Prior to the original enactment of Section 768.28 in 1973, the doctrine of "sovereign immunity" could be best categorized as a patchwork doctrine applied on an ad hoc basis. Liability existed for some agencies of government while other agencies, carrying out identical functions, were immune. Furthermore, some activities of political subdivisions were immune while other activities, even substantially similar activities, of the same agency could result in tort liability. When the Legislature adopted Chapter 73-13, **Laws of Florida**, it attempted to create a uniform and workable statutory scheme whereby all units of government would be exposed to liability for most activities. Perhaps as a trade-off to the establishment of liability where none had previously existed, and to insure uniformity, the Legislature provided both a claims mechanism and a dollar limitation on liability.

Notwithstanding the probable intent of the Legislature, an Attorney General's opinion in 1976 construed the statute

adversely to municipalities and the Legislature promptly amended the law when it adopted Chapter 77-86, Laws of Florida.

Section 768.28(2) defines "state agencies and subdivisions" to include:

> The Executive Department, the Legislature, the Judicial Branch, and the independent establishments of the state, counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties or municipalities. (e.s.).

Furthermore, the same section now provides that:

> The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity prior to July 1, 1974. (e.s.).

In addition, Section 1.01(9) provides that in construing the Florida Statutes the term "political subdivision" is to include:

> counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state. (e.s.).

The clear wording of Section 768.28, when read in conjunction with Section 1.01(9), demonstrates beyond question that the Legislature intended for all units of government,

including special taxing districts, to be subject to Section 768.28. THE DISTRICTS have already pointed out several portions of The Constitution of the State of Florida which treat and consider special taxing districts as political subdivisions of the state with rights and obligations similar to municipalities and counties in several respects. The balance of the statutes does no less. For example, Chapter 75, Fla.Stat., treats taxing districts identically to counties, municipalities or other political districts or subdivisions of the state for purposes of bond valuation. Section 97.021(21) includes district offices filled by election along with any federal, state, county or school office filled in a like manner. Chapter 98 deals with voter registration, including registration for district elections. Section 99.061(2) governs qualification for election to elective boards of special taxing districts. Chapter 100, dealing with general, primary, special, bond and referendum elections, includes within its operation special taxing districts with elected officers. The campaign financing law is made applicable to elections for special taxing district offices filled by vote of the electors by Chapter 106. Chapter 112, dealing with public offices and employees, specifically defines the term "employer" to include special districts. Vacancies in district offices are filled by the governor pursuant to Section 114.04. All districts created

or established by law are included within the scope of the public records law by virtue of Section 119.011(2). Districts are governed by the Administrative Procedure Act according to Section 120.52(1)(b). Employees of special districts may be participants in the Florida Retirement System under Section 121.021(9). The General Refunding Law lists those governmental units to which it applies, including "taxing districts." Section 132.02(1). Under Section 163.01(3)(b), single and multi-purpose special districts are defined to be public agencies for purposes of the Florida Interlocal Cooperation Act of 1969. Chapter 165, the Formation of Local Governments Acts, provides a method for creation of both municipalities and special districts created pursuant to general or special law for the purpose of performing prescribed, specialized functions within limited boundaries. Special taxing districts themselves are addressed by Chapter 189 and scores of other statutes impose obligations upon special taxing districts and grant rights and powers to those districts in the same or substantially similar manner that obligations, rights and responsibilities are imposed on municipalities, counties and all other units of government. **E.g.**, Section 196.012; Section 200.001(4); Section 218.31; Section 218.34; Section 218.403; Section 218.502; Section 274.01; Section 279.02(11); and Section 280.02(1).

Not only do the **Constitution** and the statutes treat special taxing districts as units of government, but likewise virtually every reported appellate decision wherein the issue involved a question of whether or not a particular governmental right or obligation was applicable to a special taxing district has reached the same conclusion. For example, a mosquito control district was accorded the venue privilege formerly reposing in governmental entities to be sued in their home counties in **AMELIA ISLAND MOSQUITO CONTROL DISTRICT V. TYSON**, 150 So.2d 246 (Fla. 1st DCA 1963). **See also, VEN-FUEL V. JACKSONVILLE ELECTRIC AUTHORITY**, 332 So.2d 81 (Fla. 3d DCA 1975). In **NORTH BROWARD HOSPITAL DISTRICT V. MIZELL**, 148 So.2d 1 (Fla. 1962), this Court determined that a hospital district is subject to governmental due process requirements. In the context of certain constitutional requirements for public bodies, the Fourth District found that a special taxing district was a governmental entity in **HITT V. NORTH BROWARD HOSPITAL DISTRICT**, 387 So.2d 482 (Fla. 4th DCA 1980). **See also, RABIN V. LAKE WORTH DRAINAGE DISTRICT**, 82 So.2d 353 (Fla. 1955); **BRYANT V. DUVAL COUNTY HOSPITAL AUTHORITY**, 459 So.2d 1154 (Fla. 1st DCA 1984); **Op. Att'y Gen.** 81-96 (December 22, 1981)(housing authority); 081-57 (August 4, 1981)(hospital district); 078-145 (December 21, 1978)(mosquito control district);

078-113 (September 7, 1978)(water control district); 28 Fla. Jur. 2d **Government Tort Liability** Sec. 14 (1981).

In addition to the Fourth District's decision in the instant case, another decision by another panel of that court, **LEE V. SOUTH BROWARD HOSPITAL DISTRICT**, 10 F.L.W. 1435 (Fla. 4th DCA, June 12, 1985) has reached an identical conclusion. Likewise, the Fifth District has repeatedly held that special hospital taxing districts are subject to Section 768.28. **FLORIDA PATIENTS' COMPENSATION FUND V. SLR**, 458 So.2d 342 (Fla. 5th DCA 1984); **WHACK V. SEMINOLE MEMORIAL HOSPITAL, INC.**, 456 So.2d 561 (Fla. 5th DCA 1984); **WHITNEY V. MARION COUNTY HOSPITAL DISTRICT**, 416 So.2d 500 (Fla. 5th DCA 1982). No other Florida appellate court has seemingly addressed the specific question but the Third District has come close to indicating agreement with the Fourth and Fifth Districts in **JAAR V. PUBLIC HEALTH TRUST**, 10 F.L.W 427 (Fla. 3d DCA, February 12, 1985). In fact, the **JAAR** decision is particularly important in that it apparently rejected the "paying patient" doctrine found in **SUWANEE COUNTY HOSPITAL CORP. V. GOLDEN**, 56 So.2d 911 (Fla. 1952).

THE DISTRICTS submit that they are "independent establishments" of the State of Florida as that term is used in Section 768.28. The Fourth District is quite correct when it wonders what special taxing districts might be if not

governmental entities. The mere fact that they are called "bodies corporate" in the special acts which create them does not transform them into private corporations. This very corporate term is used on a regular basis when referring to municipalities or other governmental agencies and, for example, Article IX, Section 2, **The Constitution of the State of Florida** (1968), provides that the State Board of Education "shall be a body corporate. . . ." There is no presumption that the State Board of Education, or the City of Miami, as an example, are private corporations merely because the term "corporate" is used and no such presumption may attach to THE DISTRICTS. Although the issue is not ripe for consideration in the case **sub judice**, it is doubtful that the Legislature of the State of Florida has the constitutional authority to establish **private** corporations with the power to levy taxes, pledge public revenue, issue bonds and exercise the right of eminent domain. "Corporations" possessing such powers, as well as the other powers, rights and responsibilities as enumerated in the special acts which create the various special taxing districts, are presumptively governmental entities.

Furthermore, it is of no consequence that special taxing districts may generate some revenue from user fees as opposed to ad valorem taxation. User fees of one type or another are assessed and collected at virtually every level

of government. **See, e.g., CIRCUIT COURT V. DEPARTMENT OF NATURAL RESOURCES**, 339 So.2d 1113 (Fla. 1976)(paying patron in a state park). The Department of Transportation does not lose its governmental status because it charges a toll for use of certain roads. Counties and municipalities which charge a user fee for collection of garbage do not become private corporations. Governmental units which operate parks, convention centers or other recreational facilities are not considered private corporations. Likewise, unless the old governmental-proprietary test is to be resurrected, special taxing district hospitals must be deemed no less governmental because they generate income from patients. The real question, as indicated by the Third District in **VEN-FUEL V. JACKSONVILLE ELECTRIC AUTHORITY, supra**, is whether tax money is **available** to finance operations, if **necessary**. Certainly, exposure of THE DISTRICTS to uncapped and unlimited liability will virtually insure that the public will be responsible through higher taxes to satisfy judgments or purchase costly liability insurance.

One of the specific problems addressed by the Legislature when it adopted Section 768.28 was the unequal treatment of equal activities by different governmental entities. A municipality might be liable for the acts of a police officer, for example, while the same acts committed by a deputy sheriff would result in no liability on the part of

the county or the sheriff's department. This Court noted the problem in **CAULEY V. CITY OF JACKSONVILLE**, 403 So.2d 379 (Fla. 1981) and concluded that:

> It is our decision that, in this state, sovereign immunity should apply equally to **all constitutionally authorized governmental entities** and not in a disparate manner. 403 So.2d at 387 (e.s.)

To hold that a special taxing district which owns and operates a hospital is not within the purview of Section 768.28, while a county or municipality which owns or operates a hospital is, would create the very confusing and inequitable situation which existed prior to Section 768.28. Special taxing districts are "constitutionally authorized governmental entities" and when created by the Legislature, become independent establishments of the state.

Special taxing districts perform valuable public services whether local, regional or state-wide. They help insure the public health and welfare as in the case of hospital districts, guarantying the availability of health care facilities to all residents. They protect the public safety as in the case of water and flood control districts and they help prevent the spread of disease as in the case of mosquito control districts. They are not private, profit-making entities and they possess virtually all indicia of other acknowledged governmental entities. They fall within

the literal definition of "state agencies and subdivisions" found in Section 768.28(2) and a review of all other constitutional and statutory authority leads irrefragably to the conclusion that special taxing districts are governmental entities. The Fourth and Fifth Districts have reached the correct conclusion regarding special taxing districts, as has every Attorney General's opinion since 1977, and the Petitioner has demonstrated no reason why this Court should conclude otherwise.

CONCLUSION

Based upon the foregoing reasons and authorities, THE DISTRICTS respectfully submit that the Fourth District reached the correct result in determining that special taxing districts are within the purview of Section 768.28. While that court may have taken an unnecessarily narrow view in phrasing its certified question in terms of corporations acting primarily as instrumentalities of government, its ultimate decision should be affirmed upon a determination that special taxing districts are "independent establishments" of the State of Florida. Historically and in practice, special taxing districts have always performed vital functions of government, effectuating public policy concerning health, welfare and safety and THE DISTRICTS possess virtually all indicia of government. If this Court were to agree, **arguendo**, with Petitioner, there would be serious state-wide implications. The ultimate victims will, obviously, be the taxpayers of the respective districts.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 22nd day of July, 1985 to SHELDON J. SCHLESINGER, P.A., 1212 SE 3rd Avenue, Ft. Lauderdale, Florida 33335, JOEL D. EATON, Esquire, 1201 City National Bank Building, 25 W. Flagler Street, Miami, Florida 33130, ELLEN MILLS GIBBS, Esquire, 224 SE 9th Street, Ft. Lauderdale, Florida 33316, FLEMING, O'BRYAN & FLEMING, 1415 E. Sunrise Boulevard, Ft. Lauderdale, Florida 33304 and BERNARD & MAURO, PO Drawer 14126, Ft. Lauderdale, Florida 33316.

By 
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