

IN THE SUPREME COURT, STATE OF FLORIDA

FILED

CASE NO. 67-318 SID J. WHITE

JUL 24 1985

CLERK, SUPREME COURT
BY *[Signature]*
Chief Deputy Clerk

THE STATE OF FLORIDA and THE)
TAXPAYERS, PROPERTY OWNERS AND)
CITIZENS OF THE CITY OF DAYTONA)
BEACH, including non-residents)
owning property or subject to)
taxation therein et. al.,)

DEFENDANT-APPELLANT,)

V.)

CITY OF DAYTONA BEACH, FLORIDA)
a municipal corporation of the State of)
Florida,)

PLAINTIFF-APPELLEE.)

ON APPEAL OF FINAL JUDGEMENT
OF VALIDATION FROM THE
SEVENTH JUDICIAL CIRCUIT,
STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

STEPHEN L. BOYLES
STATE ATTORNEY
SEVENTH JUDICIAL CIRCUIT,
STATE OF FLORIDA

BY: GEORGE S. PAPPAS
ASSISTANT STATE ATTORNEY

ATTORNEYS FOR THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

The Plaintiff, the State of Florida, hereby files a request for oral argument pursuant to Florida Rules of Appellate Procedure 9.320.

ISSUE

Does Article VII, section 9(a) of the Florida Constitution prohibit a special taxing district from levying taxes for, or making tax appropriations to a city's redevelopment trust fund if it was created for a purpose unrelated to and not shown to substantially benefit from, the redevelopment fund? The State says yes.

STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal pursuant to Art. V, §3(b)2, of the Florida Constitution and Florida Rule of Appellate Procedure. 9.030(1)(B)(i) concerning the validation of Daytona Beach Improvement Revenue Bonds, Series 1985 in a sum not to exceed \$20,000,000. (Hereinafter called "Bonds").

The Bonds are revenue obligations pursuant to Art. VII §11(c) of the Florida Constitution and a referendum was deemed not necessary. The Bonds are to finance the cost of the acquisition and construction of additions, extensions, and improvements of the yacht mooring and fueling facilities of the City of Daytona Beach, Florida (hereinafter called "City"), in accordance with the "City of Daytona Beach, Halifax Harbor Master Plan" dated July 8, 1983 (hereinafter called "Halifax Harbor Improvements") and the acquisition and construction of streets, sidewalks, lighting, parking and other improvements within the downtown area of the City in accordance with the "Daytona Beach Redevelopment - Preliminary Report Phase II - Downtown and Main Street Areas" dated March, 1984. (Hereinafter called "Downtown Improvements").

On December 16, 1981 the City adopted Resolution No. 81-415 to which the City declared certain property referred to therein as the "Downtown Area" to be a slum or blighted area and the city declared itself the Community Redevelopment Agency of the City pursuant to §163.357, Florida Statute (1983). All the rights, powers, duties, privileges and immunities of the Community Redevelopment Agency of the City, including the power to issue bonds and other

obligations, were thereby vested in the city commission and the city in accordance with §163.357, Florida Statute (1983). (Appendix, Resolution No. 81-415)

On August 18, 1982 the city enacted ordinance No. 82-254 pursuant to which (a) the "Downtown Area" referred to in Resolution No. 81-415 was designated the "Downtown Redevelopment Project Area", and (b) a "Community Redevelopment Plan" was approved for the Downtown Redevelopment Project Area. The Halifax Harbor Improvements and the Downtown Improvements are in accordance with and in furtherance of the Community Redevelopment Project Area. (Appendix, Ordinance No. 82-254)

On August 18, 1982 the City enacted Ordinance No. 82-255 to which (a) a Redevelopment Trust Fund was created for the Community Redevelopment Agency of the City, and (b) a Downtown Redevelopment Project Area Account, into which Downtown area Tax Increment Revenues would be deposited was authorized to be established within the Redevelopment Trust Fund. (Appendix, Ordinance No. 82-255)

The City on the 9th of January, 1985 enacted Ordinance No. 85-1 providing for the issuance of not exceeding \$20,000,000 Improvement Revenue Bonds, Series 1985 ("Bonds") for the purpose of financing the cost of acquisition and construction of a public marina and other facilities. Additionally the city's Ordinance No. 85-1 provides for the payment of said bonds, the rights, security and remedies of the holders of said bonds and when the ordinance shall take effect. (Appendix, Ordinance No. 85-1)

The city has prescribed three forms of payment for the Bonds. 1) From the Net Operating Revenues derived from the operation of the Marina; 2) From the Utilities Service taxes levied and collected on the purchase of certain utility services within the corporate limits of the City under the authority of §166.231 Florida Statute (1983); and (3) the Downtown Area Tax Increment

Revenues, computed in accordance with §163.387(1) Florida Statute (1983)
(Appendix, Complaint, Page 3 and 4)

On January 10, 1985, Circuit Judge William Johnson, Jr. issued an Order to Show Cause.

On January 11, 1985, the State Attorney acknowledged service.

On February 13, 1985, an Order to Show Cause hearing was commenced but continued by the City with no objection from the state.

On March 8, 1985, the hearing was conducted for the validation of the bonds.

On June 5, 1985, the city filed a Motion to Expedite.

On June 7, 1985, Judge Johnson ordered the validation of the bonds.

On July 3, 1985, the State filed it's notice of appeal.

The State's position is that the city is barred by the Florida Constitution from collecting money for the Redevelopment Trust Fund from special taxing districts when those special taxing districts have no relation to the Downtown Redevelopment Project.

SUMMARY OF ARGUMENT

The Downtown Redevelopment Trust Fund receives by tax increment financing tax revenues from seven different taxing sources. Five of those sources are special taxing districts.

The State's argument is that it is unconstitutional for four of those special taxing districts to contribute money to the Downtown Redevelopment Trust Fund.

Those four special taxing districts were created for purposes unrelated to the downtown redevelopment and they will not substantially benefit from the downtown redevelopment.

The State is relying heavily on the case of State of Florida ex rel. City of Gainesville v. St. Johns River Water Management District, 408 So.2d 1067 (Fla. 1st DCA, 1982).

In that case the City of Gainesville petitioned for a Writ of Mandamus to compel the Water Management District to make payments into a community redevelopment trust fund. The Water Management District had refused to make payments into the Gainesville community redevelopment trust fund because it contended that such an appropriation would exceed the constitutional limit of its taxing authority as a special taxing district.

The 1st DCA agreed with the Water Management District and denied the writ citing Article VII, section 9(a), of the Florida Constitution as its reason.

The State in the instant case argues that the same situation exists in Daytona Beach with the four special taxing districts as it did in Gainesville with the Water Management District.

Since the four special taxing districts in question are unrelated to and do not substantially benefit from the redevelopment fund, it is unconstitutional for them to contribute to the redevelopment fund.

ARGUMENT

Does Article VII, section 9(a) of the Florida Constitution prohibit a special taxing district from levying taxes for, or making tax appropriations to a city's redevelopment trust fund if it was created for a purpose unrelated to and not shown to substantially benefit from, the redevelopment fund? The State says yes.

The State does not object to the bonds being repaid from the revenues of the Marina and Utilities Service taxes. The State does find that the third method of payment, Downtown Area Tax Increment Revenues, presents a problem.

The increment revenues are computed by a equation laid out in §163.387(1) Florida Statute (1984 Supp.). The statute states:

Such increment shall be determined annually and shall be that amount equal to 95 percent of the difference between:

(a) The amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of a community redevelopment area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the most recent assessment roll used in connection with the taxation of such property by each taxing authority prior to the effective date of the ordinance providing for the funding of the trust fund.

Art. VII, §12(a) of the Florida Constitution states that proposed bonds payable from ad valorem taxation may not be issued without the approval of the electors who are owners of freeholds. But in The State of Florida v. Miami Beach Redevelopment Agency, 392 So.2d. 875 (Fla. 1980) the Supreme Court found that increment revenue collection derived from Florida Statute 163.387 was not unconstitutional and that there was no direct pledge of ad valorem tax

revenues contrary to the Florida Constitution.

The State's objection stems from the use of money contributed from certain special taxing districts which have been required to participate in the Downtown Area Redevelopment Trust Fund.

The Downtown Redevelopment Trust Fund receives tax revenues from seven different taxing sources. They are the Ponce DeLeon Port Authority (hereinafter known as "Port Authority"), the East Volusia Mosquito Control District (hereinafter known as "Mosquito Control"), the East Volusia Transportation Tax Districts (hereinafter known as "Transportation District"), the Halifax Hospital Medical Center (hereinafter known as "Halifax Hospital"), the Daytona Beach Downtown Development Authority (hereinafter known as "Downtown Development Authority"), Volusia County and the City of Daytona Beach. (Appendix, Stipulation)

Of those taxing districts, the Port Authority, the Halifax Hospital, the Transportation District, Mosquito Control and the Downtown Development Authority are special taxing districts. Of those five special taxing districts only one, the Downtown Development Authority has anything to do with the Downtown Redevelopment Project. Ch. 72-520, 77-537, 79-445 and 80-491, Laws of Florida, creating and dealing with the Downtown Development Authority.

The other four, Port Authority, Mosquito Control, Transportation District and Halifax Hospital, have nothing to do with the Downtown Redevelopment Project.

The use of the money from the above four taxing districts for the Downtown Redevelopment Trust Fund is a violation of Article VII, section 9(a) of the Florida Constitution. It states:

"Counties, school districts, and municipalities shall,

and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution". (emphasis added).

For the purposes of this argument the relevant statement in Article VII, section 9(a) of the Florida Constitution is "for their respective purposes". The Port Authority, Mosquito Control, the Transportation District, and Halifax Hospital have no relevant or purposeful connection with the Downtown Area Redevelopment Project.

The enabling acts of the Port Authority, Mosquito Control and the Transportation District do not authorize them to make contributions to community redevelopment trust funds nor do their functions bear any substantial relation to the Downtown Redevelopment Project. Ch. 69-1705 Laws of Florida creating the Ponce DeLeon Port Authority. Ch. 63-2016 Laws of Florida creating the East Volusia Mosquito Control District and Volusia County Ordinance 73-14 creating the East Volusia Transportation District. (Appendix, Ordinance 73-14))

Until 1984 the Halifax Hospital was not authorized to make contributions to a community redevelopment trust fund, nor does it bear any substantial relation to the Downtown Redevelopment Project. Ch. 25-11272, Laws of Florida (1925). But Chapter 84-539 §3 Laws of Florida states that:

the district shall have the power...to foster community redevelopment within the district through financial contribution with the community redevelopment trust fund.

As the State will explain later this law along with three other statutes was intended to circumvent the case of the State of Florida ex rel. City of Gainesville v. St. Johns River Water Management District, 408 So.2d 1067 (Fla. 1st DCA, 1982).

In the case of State of Florida ex rel. City of Gainesville v. St. Johns River Water Management District, 408 So. 2d. 1067 (Fla. 1ST DCA 1982), (hereinafter known as St. Johns case) the St. Johns River Water Management District refused to make payments into a community redevelopment trust fund because it contended that such an appropriation would exceed the constitutional limit of its taxing authority as a special taxing district.

The Florida 1st District Court of Appeal agreed stating:

We therefore conclude that respondent as a special taxing district created for water management purposes is prohibited by Article VII Section 9(a), Florida Constitution, from levying taxes for, or making appropriations to, the redevelopment trust fund involved in this case.

State of Florida ex rel. City of Gainesville v. St. Johns River Water Management District 408 So. 2d. 1067, 1068 (Fla. 1st DCA 1982).

The Court also stated:

Article VII, Section 9(a), Florida Constitution allows the legislature to authorize special districts, among other taxing entities, to levy ad valorem and other taxes "for their respective purposes" Id at 1068.

And the Court said:

Florida Law has long established that a special taxing district may not be created with general taxing authority, and may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district. Id at 1068.

In the instant case the four special taxing districts previously mentioned are paying money from ad valorem taxation into the Downtown Redevelopment Trust Fund which has no substantial relation to the special purpose of those taxing districts.

Circuit Judge William Johnson, on June 7, 1985, reluctantly validated the bonds in question. His reason was that:

the Florida Legislature in 1984 passed legislation which vitiates the Gainesville - St. Johns case as a precedent in this case. (Appendix, Final Judgement, Page 7)

And that is exactly what the legislature has attempted to do; to circumvent a constitutional decision made by the 1st District Court of Appeal of Florida in the St. Johns case.

The new legislation is §163.335(4), Florida Statute (1984 Supp.); §163.353, Florida Statute (1984 Supp.); §163.387(2)(a), Florida Statute (1984 Supp.) and Chapter 84-539 §3 Laws of Florida.

163.335(4) Florida Statute (1984 Supp.) states:

It is further found and declared that the preservation or enhancement of the tax base from which a taxing authority realizes tax revenues is essential to its existence and financial health; that the preservation and enhancement of such tax base is implicit in the purposes for which the taxing authority is established; that tax increment financing is an effective method of achieving such preservation and enhancement in areas in which such tax base is declining; that community redevelopment in such areas, when complete, will enhance such tax base and provide increased tax revenues to all affected taxing authorities, increasing their ability to accomplish their other respective purposes; and that the preservation and enhancement of the tax base in such areas through tax increment financing and the levying of taxes by such taxing authorities therefor and the appropriations of funds to a redevelopment trust fund bears a substantial relation to the purposes of such taxing authorities and is for their respective purposes and concerns.

And §163.353 Florida Statute (1984 Supp.) states:

Notwithstanding any other provision of general or special law, the purposes for which a taxing authority may levy taxes or appropriate funds to a redevelopment trust fund include the preservation and enhancement of the tax base of such taxing authority and the furthering of the purposes of such taxing authority as provided by law.

And §163.387(2)(a), Florida Statutes (1984 Supp.) states:

Except for the purpose of funding the trust fund pursuant to subsection (3), upon the adoption of an ordinance providing for funding of the redevelopment trust fund as herein provided, each taxing authority shall, by January 1 of each year, appropriate to such fund for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed 30 years) a sum which is no less than the increment as defined and determined in subsection (1) accruing to such taxing authority. If the community redevelopment plan is amended or modified pursuant to s 163.361(1)(b), each such taxing authority shall make such annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan. No taxing authority is exempt from the provisions of this section. (emphasis added).

It is obvious the legislature's intent is to vitiate and circumvent the constitution as enunciated by the 1st District Court of Appeal of Florida.

In fact, Volusia County State Representative Sam Bell at the March 8, 1985 hearing answered a question posed by Daytona Beach City Attorney, Frank Gummey in this manner:

Q Are you familiar with Chapter 84-356, Laws of Florida, which enacted Amendments to Chapter 163 Part 3, Florida Statutes now appearing in the 1984 supplement?

A Yes, I am. That, of course was adopted during the same session as we adopted the Halifax Hospital Special Act and was adopted really in response, I suppose to a case involving a water management district and it's participation in tax increment financing.

Q What was the intent of that legislation?

A The intent of that legislation was to clarify that special district, taxing districts shall include or are to

include as part of their purpose the preservation and enhancement of the tax base as stated in 163.353. And I think that's further clarified, as I see it and as I recall it from the consideration of that legislation when there were some specific exemptions that were placed in the law that clarified specifically and dealt with water management districts. (Appendix, Testimony/Sam Bell, Page 6, lines 4-21)

Another question posed to Representative Bell was:

Q So, does this mean, Representative Bell, that this statute 163.353, is this making mandatory on all special taxing districts other than the ones that have been excluded in 340, that one of their purposes is the preservation and enhancement of the tax base?

A That's my understanding.

Q Is that any special district? Does that even include any special taxing districts that haven't been made yet?

A If they don't come within one of the exceptions, that would be my view. (Appendix, Testimony/Sam Bell, Page 7, lines 13-23)

In fact most of the 28 pages of Sam Bell's testimony dealt with the intent of the legislature when their new laws were enacted. The intent was to vitiate the St. Johns case.

What benefits for their special purpose are these districts deriving from their contributions? The Bonds involved in the instant case can be up to 30 year bonds. §163.387(2)(a) Fla. Stat. (1984 Supp.) (As of this writing no time limit has yet been established for the Bonds in this case). Since the equation to determine the contribution to the trust fund is 95% of the difference between the amount of ad valorem taxes levied each year by each taxing authority and the amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by each taxing

authority then for up to the next 30 years these special taxing districts will only get 5% back of the increased difference in the increment.

§163.335(4), Florida Statute (1984 Supp.) states in part:

that community redevelopment in such areas, when complete, will enhance such tax base and provide increased tax revenues...(emphasis added).

When will the community redevelopment be complete? The tax increment funds can be obligated for 30 years. Also what happens if the surrounding cities, Ormond Beach, Holly Hill, Port Orange, Ponce Inlet, and Ormond-by-the-Sea create their own community redevelopment project? All four of these special taxing districts encompass these municipalities. These other cities will also be able to use tax increment financing. The special districts that have nothing to do with the community redevelopment of those cities will be forced to contribute even more ad valorem money that is supposed to fund "their respective purposes."

The intent of the Florida Constitution cannot be that up to 30 years later these four special districts can start reaping the benefits while getting only 5% of an enhanced tax base during all that time period.

Article VII, Section 9(a) of the Florida Constitution is clear in its intent and the 1st DCA clarified the tax increment question with Article VII, Section 9 of the Florida Constitution stating:

Since we conclude that the §163.387 redevelopment ad valorem tax increment appropriation may not be required of the respondent special taxing district, created for a purpose unrelated to and not shown to substantially benefit from community redevelopment, we decline to grant the relief requested. State of Florida ex rel. City of Gainesville v. St. Johns River Water Management District, 408 So.2d 1067,1069 (Fla. 1st DCA, 1982).

The four taxing districts in question were created for purposes unrelated to the Downtown project. Additionally §163.353 Florida Statute (1984) states

in part:

the purposes for which a taxing authority may levy taxes or appropriate funds to a redevelopment trust fund include the preservation and enhancement of the tax base of such taxing authority and the furthering of the purposes of such taxing authority as provided by law. (emphasis added).

Why should the special taxing authorities involved have as one of their special purposes the preservation and enhancement of the tax base when for up to 30 years, over a generation, 95% of that enhancement is of no use to them. Meanwhile during that possible 30 year period Volusia County grows and the four special districts involved are deprived of money they will need. What is their "substantial benefit" from the community redevelopment?

The St. Johns case still controls the area of tax-increment financing when applied to special districts and that §163.353 Florida Statute (1984 Supp.); §163.335(4) Florida Statute (1984 Supp.); §163.387(2)(a) Florida Statute (1984 Supp.) and Chapter 84-539 §3 Laws of Florida should be found unconstitutional as applied:

where, in adjudicating litigated rights under a statute, it appears beyond all reasonable doubt that the statute is in conflict with some express or implied provision of the constitution, it is then within the power and the duty of the court, in order to give effect to the controlling law, to adjudicate the existence of the conflict between the statute and the organic law, whereupon the constitution, by its own superior force and authority eliminates the statute or the portion thereof that conflicts with organic law. (emphasis added).

State of Florida ex rel. Nuveen v. Greer et. al., 88 Fla. 249, 102 So. 739,743 (Fla. 1924)

Even though the above case is over 60 years old, it is basic organic law which has not changed throughout the years.

The new laws which Judge Johnson based his decision on are in direct

conflict with the St. Johns case.

Judge Johnson in the final judgement cited Powell v. State, 345 So.2d. 724 (Fla. 1977) concerning his duty on the constitutionality of statutes. He cited:

It is a fundamental principle that this court has the duty if reasonably possible, consistent with protection of constitutional rights, to resolve all doubts as to the validity of a statute in favor of its constitutionality, and if reasonably possible a statute should be construed so as not to conflict with the constitution. Every presumption is to be indulged in favor of the validity of the statute and the case is to be considered in light of the principle that the State is primarily the judge of relations in the interest of public safety and welfare. (emphasis added). Powell v. State, 345 So.2d 724 (Fla. 1977).

Both the Powell and the Greer case approach the constitutionality of a statute in the "reasonable" light.

Are the new statutes and laws reasonable when they are construed in a way that the special taxing districts are told that one of the special purposes is the preservation and enhancement of the tax base even though, as in the instant case, they have nothing else to do with the area involved? Are those laws reasonable as applied if the only possible benefit these districts will derive is up to thirty years down the road? Meanwhile, the tax base of the development area rises through inflation alone.

It is unconstitutional to collect money for a Redevelopment Trust Fund from special taxing districts which have no substantial relation to the redeveloping area.

CONCLUSION

The four taxing districts; Port Authority, Halifax Hospital, Mosquito Control and the Transportation District were created for a purpose unrelated to the Daytona Beach Downtown Redevelopment Improvement Project. Additionally they will not substantially benefit from the Downtown Improvement Project.

Article VII section 9(a) of the Florida Constitution prohibits a special taxing district to appropriate tax money to a city's redevelopment fund. And notwithstanding §163.387(2)(a) Florida Statute (1984 Supp.); §163.353 Florida Statute (1984 Supp.); §163.335(4) Florida Statute (1984 Supp.) and Chapter 84-539 §3 Laws of Florida it is unconstitutional for a special taxing district from levying tax for, or making appropriation to a city's redevelopment trust fund if it was created for a purpose unrelated to and not shown to substantially benefit from the redevelopment trust fund.

Respectfully Submitted,

STEPHEN L. BOYLES
STATE ATTORNEY
SEVENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

BY: George S. Pappas
GEORGE S. PAPPAS
ASSISTANT STATE ATTORNEY

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to FRANK GUMMEY, III, City Attorney, P.O. Box 551, Daytona Beach, Florida, and DAVID A. MONACO, Esq. 150 Magnolia Avenue, P.O. Box 191, Daytona Beach, Florida, this 23rd day of July, 1985.



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