IN THE SUPREME COURT, STATE OF FLORIDA

CASE NO. 67-318

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.,	ON APPEAL OF FINAL JUDGEMENT OF VALIDATION FROM THE SEVENTH JUDICIAL CIRCUIT, STATE OF FLORIDA
DEFENDANT-APPELLANT,	
V.	
CITY OF DAYTONA BEACH, FLORIDA a municipal corporation of the State of Florida,	
PLAINTIFF-APPELLEE.	

REPLY 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

ARGUMENT

The answer brief of the Appellee, the City of Daytona Beach, was separated into three (3) issues. The State of Florida, Appellant, will deal with the first issue separately in this reply brief.

The first issue of the Appellees answer brief states:

> Each special district in Florida has a legislatively mandated purpose the enhancing of its tax base and therefore each is required to contribute to a redevelopment trust fund in accordance with constitutional and statutory law.

The Appellee starts its answer brief stating that the "State concedes that the Legislature intended to ascribe to special districts... the purpose of enhancing their tax base through participation in community redevelopment programs..." p.6 Appellees Answer Brief.

Then the Appellee continues for three (3) more pages saying that the Legislatures' intent was to include as part of the purpose of special taxing districts the preservation and enhancement of the tax base.

The State does not concede the above. What the State concedes is that the Legislature intended to unconstitutionally circumvent the 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 the St. Johns case) by implementing Florida Statutes (Supp. 1984) 163.335(4), 163.353, 163.207(2)(a) and Chapter 84-539 §3, Laws of Florida.

Representative Sam Bell admits that the statutes and the laws were adopted as a reaction to the St. Johns case.

He stated to a question posed to him concerning his knowledge of the enactments of the new laws this way:

> 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, (emphasis added), Appellant Appendix, Initial Brief, Testimony/Sam Bell, Page 6, lines 7-11.

Why is the preservation and enhancement of the tax base all of a sudden a purpose of special districts? The reason seems to be the Legislature's attempt to thwart the constitutional decision of the St. Johns case.

Why are water management districts now excluded as special districts required to contribute to redevelopment trust funds? Section 163.340(2), Florida Statutes (Supp. 1984). Could it be the Legislature does not want the St. Johns River Water Management District to contest the Downtown development trust fund? St. Johns River Water Management District includes Daytona Beach. Or is the Legislature conceding to the logic of the 1st DCA in the St. Johns case?

On page 9 of the answer the Appellee finds that the concept proposed by the 1st District Court of Appeal in the St. Johns case describing the relationship of ad valorem taxes to tax increment financing was erroneous. Whether or not the 1st DCA's concept of tax increment financing was erroneous was not the deciding factor in the St. Johns case. The 1st DCA agreed that the case of State v. Miami Beach Redevelopment Agency, 392 So. 2d 875 (Fla. 1981) which found tax increment financing constitutional was good law, but the basis for the St. Johns case was Article VII section 9(a) of the Florida Constitution, which stated not that tax increment financing was unconstitutional, but that special districts not shown to benefit from and created for a purpose unrelated to the community redevelopment did not have to contribute to the community redevelopment trust fund.

On Page 11 of the Appellees Answer Brief, the City asks the question "Does Article VII, Section 9(a) impose any limitation of legislative determination of the respective purpose of special districts?" The Appellee

concludes that the language is not a limitation but a grant of authority.

Article VII, Section 9(a) of the Florida Constitution 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 their respective purposes" which is set off in the section with commas is the important phrase concerning the instant case.

The Appellee tries to advance its conclusion that the language is not a limitation but a grant of authority with case law.

In the first case Board of Public Instruction v. State Treasurer, 231 So. 2d 1 (Fla. 1970) the challenge dealt with Article VII Section 9(b) of the Florida Constitution, not section 9(a). It was a challenge to the use of a school district's property tax revenue for support of a junior college which was not part of the school district's system. This was not a case where the school district's "respective purpose" was being called to question. In fact the local population and school district requested a junior college in their area. Additionally a junior college could and would fall in the area of a "respective purpose" of a school district.

As a matter of fact the idea that one government agency should not contribute to another that it has nothing to do with is expressed in this case.

The Court said:

> While the legislature may not circumvent the prohibition of state ad valorem taxation by any scheme or devise which requires local ad valorem taxes and then channels the proceeds into essentially state functions which are not also local functions, no such situation is here presented. The Board of Public Instruction of Brevard County v. The State Treasurer of Florida, 231 So. 2d 1, 4 (Fla. 1970).

The Appellee also cited Sandegren v. State ex rel. Sarasota County

Public Hospital Board, 397 So. 2d 657, (Fla. 1981). In this case the County objected to being compelled to match state funds for mental health purposes. The Appellee cites this case as justification for the legislative grant and not limitation of authority. In the first place this case does not present Article VII, Section 9(a) challenge and in the second place it deals with a county and not a special taxing district. But additionally it does express the Courts desire that a substantial benefit be shown before a taxing district be required to contribute.

The Court stated:

> Under this Chapter, the various local governments are benefited by having the mental health needs of their residents attended to. There is nothing in the state constitution which prohibits the legislature from enacting laws requiring the expenditure of local funds to support programs to the extent that such programs serve a local purpose. (emphasis added). Sandegren v. State ex rel. Sarasota County Public Hospital Board 397 So. 2d 657, 659 (Fla. 1981).

The Appellee then cited St. Johns River Water Management District v. Deseret Ranches of Florida, 421, So. 2d 1067 (Fla 1982). Once again the Court expressed the substantial benefit and relation policy the 1st DCA expressed in the St. Johns v. Gainesville case already cited which the Appellant in the instant case relies upon.

The Court stated:

> It is clear that simply because a water management district furthers a state function, policy, a purpose does not prevent it from levying ad valorem taxes where local function, policy, a purpose is similarly vital to the local district area. St. Johns River Water Management District v. Desert Ranches of Florida, 421 So. 2d 1067, 1071, (Fla. 1982).

In each of the above cases cited by the Appellee in its answer brief there was a substantial relation with the area involved and the taxing district.

In the instant case Mosquito Control, Port Authority, Halifax

Hospital and the Transportation District have no substantial relation to the Daytona Beach Downtown Development Area, nor do they substantially benefit from the community redevelopment.

On page 12 of the Answer Brief the Appellee states that the Legislature has plenary power to create special districts. The State does not refute that. The legislature can create what it wants but once created the special taxing district exists for its "respective purpose." The reason special districts exist is to address certain important problems i.e., Mosquito Control or Water Management. That is what the 1st DCA understood in its decision in the St. Johns case . Are these special districts special if each and everyone of them has as one its purpose the preservation and enhancement of the tax base? Will Mosquito Control now be called Mosquito Control and Preservation and Enhancement of the Tax Base District?

As the Appellee quoted from a Supreme Court of Florida case:

> The Legislature has plenary power to crystallize policies, opinions, ideas, and sentiments into statute law, limited only by constitutional prohibitions, and courts cannot substitute their judgement a will for the judgement of the Legislature, nor can the Courts interfere with the Legislature discretion, however erroneous as it may be (emphasis added) State v. Board of County Commissioners of Indian River County 138 So. 625, 628 (Fla. 1931).

The Legislature is limited by constitutional prohibitions, and the 1st DCA correctly pointed out the limitations in relation to the instant case in the St. Johns case.

The Appellee continues by saying the State is urging a benefit-tax nexus that the state feels each taxpayer of each special district should benefit from the Redevelopment program. That is an erroneous conclusion on the part of the Appellee.

The four special districts in question, have been created "for their

respective purposes" not for the purpose of developing the downtown area of Daytona Beach, Florida. The districts in question are not individual taxpayers which is the situation in the cases cited by the Appellee.

The Court stated:

> We have many times held that taxes raised for the purpose of one governmental unit may not be employed to accomplish the performance of the functions of another level of government. Okaloosa County Water and Sewer District v. Hillburn, 160 So. 2d 43, 45 (Fla. 1969).

In the Okaloosa case the Legislature provided that the first $12,500 of race track funds which were annually allocated to Okaloosa County could be allocated to the Water and Sewer District where boundaries were coterminous with the boundaries of Okaloosa County. The County objected but the Court upheld the act because of the constitutional reasons that money from pari-mutual betting can be distributed from the State to the Counties. But the same funds could not have been distributed to the cities.

The idea that money collected and used by governmental units for their special purposes only is not as unusual as the Appellee would like the Court to think.

In a case where the Supreme Court upheld the trial court in its ruling that funds allocated to the County could not be lawfully diverted to defray the governmental expenses of the municipality involved, the Court stated:

> It is a general rule that state taxes may be expended only for state purposes; that County taxes may be expended only for County purposes. City of Lynn Haven v. Bay County et al. 47, So. 2d 894, 895 (Fla. 1950).

That logic can be and was validly and constitutionally extended by the 1st DCA in the St. Johns case and Legislature cannot come later and change the constitution through statutory procedures.

And finally the fact that the calculation of the rolled-back ad

valorem property tax rate excludes redevelopment trust fund contributions from determination of the millage rate necessary to raise the same tax revenues as the previous year; the special districts are still denied access to an enhanced property base in an area they do not represent or function for. For up to 30 years these special districts that have nothing to do with the redevelopment area will get only 5% of what they should be getting.

In the instant case the Court should reverse the Circuit Court by holding that Article VII, Section 9(a) of the Florida Constitution prohibits a special taxing district to appropriate tax money to a city's redevelopment fund when the special district was created for a purpose unrelated to and not shown to substantially benefit from the redevelopment trust fund.

As to the other two issues in the Answer Brief the Appellant will reiterate its stand. The Halifax Hospital and the three other special districts have special purposes. It is unconstitutional to require them to contribute to a fund that they will not substantially benefit from and their purpose is unrelated to.

The Appellee quotes Harold Hubka, counsel for the Halifax Hospital on page 18 of the Answer Brief. The quote is:

> Obviously there is an impact to the extent that the tax increment funds are paid to the Redevelopment Trust Fund. On the other hand, I believe the Legislature had made a determination that the long-range impact of this type of funding is to allow an area to redevelop and, in fact, the area surrounding it to redevelop.

The only part of that quote that Mr. Hubka is qualified to make is the first sentence; The impact of the funds being diverted elsewhere.

Halifax Hospital as with the other special districts has been set up to do certain community functions. To divert funds from these functions for up to 30 years when those districts have little or nothing to do with the developing area seems a little harsh, and it cannot be what the Florida

Constitution means in Article VII, Section 9(a) when it says "for their respective purposes."

Finally on page 21 of the Answer Brief the primary purposes of each of the special districts is mentioned. Mosquito Control has a primary function for the preservation of airborne disease. The Public bus system provides for the poor, the infirm, the elderly and the port and inlet system promotes commerce. The State couldn't agree more. So why should needed money be diverted from these activities so an area that has little or no relation to these special districts can build a marina? The 1st DCA case was correct in its ruling in the St. Johns case. A special taxing district is not required to contribute or levy taxes for 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.

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 and correct 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 4th day of September, 1985.

GEORGE S. PAPPAS
ASSISTANT STATE ATTORNEY
125 East Orange Avenue
Daytona Beach, FL 32014
(904) 257-6020