

IN THE SUPREME COURT  
STATE OF FLORIDA

FRANCIS W. CLARK, SR., etc. et al ]  
 ]  
 Petitioner, ]  
 ]  
 vs. ]  
 ]  
 CITY OF ST. PETERSBURG, a ]  
 municipal corporation, ]  
 ]  
 Respondent. ]

CASE NO. 69,306

APPLICATION FOR DISCRETIONARY REVIEW OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF  
FLORIDA

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BRIEF OF RESPONDENT ON JURISDICTION

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ATTORNEYS FOR RESPONDENT

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PREFACE

For the purposes of this brief Wallace Salley, Charlie C. Jones, Charlie Byrd, William Brown, Theodis Wright and Calvin Hicks, Jr., as successor trustees of Masonic Lodge No. 109 will be collectively referred to as "Petitioner". Although named in the caption, Clark, White, Haley and O. Sanford Jasper, who were parties in the trial court, are not really involved in the appeal. Respondent will refer to itself as "City".

SUMMARY OF ARGUMENT

The district court's decision does not expressly and directly conflict with the decisions of other courts upholding the principle that there shall be no law respecting the establishment of religion and the order denying Petitioner's motion for attorney fees does not conflict with decisions that condemnees are entitled to attorneys fees even where they do not prevail on an appeal by the condemnor.

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT, DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH ANY DECISIONS UPHOLDING PROSCRIPTIONS AGAINST ASSISTING THE ESTABLISHMENT OF RELIGION.

Petitioner seeks to invoke the discretionary jurisdiction of this Court over decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. The term "expressly" within this context means within the written district court opinion. Cf. Sch. Bd. of Pinellas Cty. v. Dist. Ct. of App. 467 So.2d 986 (Fla. 1985) Clearly, there is nothing in the instant district court opinion that expressly or directly collides with the decisions of any other district courts of appeal or this court.

The Second District Court of Appeals, in reviewing a final judgment for compensation to be paid to the Petitioner, held that the circuit court had exceeded its authority by converting a municipal administrative resolution, expressing policy only with reference to negotiating purchases of several parcels of church-owned land within a redevelopment area, into a commitment by the

City to later use the same method of valuation when taking the Petitioner's Masonic Lodge property through condemnation. This decision of the district court of appeals that the lower court improperly required application of the resolution although, by its clear language, it did not apply to Petitioner's property, is not at odds with any other decision cited by the Petitioner, and, indeed, it is unlikely that it could be in view of the very narrow point of law involved - construction of the language of the specific resolution, which is not even a law but merely a statement of policy.

Petitioners argument that the City's resolution was unlawful in that it favored religion, and that it can only be made constitutional if petitioner is able to reap its allegedly unlawful benefits as well is specious and reveals no basis for "conflict" jurisdiction to attach. The decision of the district court here does no violence to the principle that there shall be no law respecting the establishment of religion and does not even suggest that any contrary principle should apply.

ARGUMENT

POINT II

THE ORDER DENYING THE MOTION FOR ATTORNEYS FEES DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH CASES HOLDING THAT CONDEMNEDS ARE ENTITLED TO ATTORNEYS FEES FOR SERVICES IN THE APPELLATE COURTS ON APPEALS INSTITUTED BY THE CONDEMNOR ALTHOUGH THE CONDEMNOR PREVAILS.

As to the matter of attorneys fees for the appeal to the Second District Court of Appeals, Petitioner need only to read the opinion in State Road Dept. of Fla. v. Hancock, 250 So.2d 307 (Fla. 2d DCA 1971) (photocopy at Appendix I), which is cited in the Brief of Petitioner on Jurisdiction, to see that the decision denying its cursory motion for attorneys fees (Appendix II) is in accordance with that appellate court's approved procedure of having the trial court assess such fees and is not in conflict with the decisions allowing such attorneys fees to condemnees where the condemnor has prevailed on its appeal. The case was remanded by the district court, and applying the procedure outlined in Hancock, on remand the Petitioner can obtain attorneys fees for the appeal by filing an appropriate notice with the trial court, where evidence may be taken if necessary to determine a reasonable fee.



### CONCLUSION

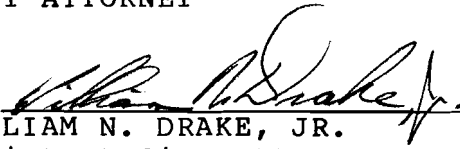
Discretionary review should be denied in this case because the decision of the Second District Court of Appeal does not expressly and directly conflict with any decision of another district court of appeal or of this court. There simply is nothing in the opinion of the district court that is contrary to other courts' decisions upholding the prohibition against laws respecting the establishment of religion. The opinion merely holds that the trial court improperly converted a city resolution regarding properties in which the Petitioner had no interest into a commitment to compensate the Petitioner in a certain way for its property.

As to the argument that the denial of the Petitioner's motion for attorneys fees creates a conflict with other court decisions, the opinion in State Road Department of Florida v. Hancock, 250 So.2d 307 (Fla. 2d DCA 1971) shows that there is no conflict created by the district court's ruling on this motion and that Petitioner may obtain such fees through proper application in the trial court, which is better suited to take evidence on reasonableness of the fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Respondent on Jurisdiction has been furnished by U. S. Mail this 25<sup>th</sup> day of September, 1986 to H. REX OWEN, Esquire, and BRUCE CRAWFORD, Esquire, 157 Central Avenue, St. Petersburg, Florida 33701 and RICHARD A. ZACUR, Esquire, 5200 Central Avenue, St. Petersburg, Florida.

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