IN THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT DAY, et al.,

Appellants,

vs.

CASE NO. 69,519

HIGH POINT CONDOMINIUM RESORTS, LTD., et al.,

Appellees.

On Appeal from the Fifth District Court of Appeal of the State of Florida, Case No. 85-1403.

REPLY BRIEF OF APPELLANT, DEPARTMENT OF REVENUE, STATE OF FLORIDA

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT HOLDING THE PROVISIONS OF SECTION 192.037, FLA. STAT., FACIALLY UNCONSTITUTIONAL ON DUE PROCESS AND EQUAL PROTECTION GROUNDS CONSTITUTES REVERSIBLE ERROR. 1

POINT II

THE PROVISIONS OF SECTION 192.037, FLA. STAT., ARE NOT UNCONSTITUTIONAL DUE TO ALLEGED PROCEDURAL DEFECTS IN THE INTRODUCTION IN THE HOUSE OF REPRESENTATIVES OF CHAPTER 82-226, LAWS OF FLORIDA, IN THE 1982 LEGISLATURE. 3

POINT III

THE PROVISIONS OF SECTION 192.037, FLA. STAT., DO NOT CREATE A SEPARATE CLASSIFICATION OF REAL PROPERTY EXCEPTING FEE TIME-ESTATES FROM THE "JUST VALUATION" REQUIREMENTS OF FLORIDA LAW. 14

CONCLUSION 15

CERTIFICATE OF SERVICE 16

APPENDIX A-1-32

TABLE OF AUTHORITIES

CASE	PAGE
Appeal of VanDyke, 259 N.W. 700 (Wis. 1935)	10
Blake v. Xerox Corp., 447 So.2d 1348 (Fla. 1984)	8
City of St. Petersburg v. Briley, Wild & Assoc., Inc., 239 So.2d 817 (Fla. 1970)	7
Eastern Airlines, Inc. v. Dept. of Revenue, 455 So.2d 311 (Fla. 1984)	9
Escarra v. Winn Dixie Stores, Inc., 131 So.2d 483 (Fla. 1961)	8
Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950)	9
In Re Estate of Yohns, 238 So.2d 290 (Fla. 1970)	8
Just Valuation & Taxation League v. Simpson, 209 So.2d 229 (Fla. 1968)	9
Martin v. Riley, 123 P.2d 488 (Cal. 1942)	9
Spanish River Resort Corp., et al. v. Walker, et al., ___ So.2d ___, Case No. 86-1645 (Fla. 4 DCA, op. filed Nov. 19, 1986)	1,2
State v. Lee, 156 Fla. 291, 22 So.2d 804 (Fla. 1945)	5,6
Talbott v. Jones, 80 S.W.2d 566 (Ky. 1935)	10,11
Wood v. State, 98 Fla. 703, 124 So. 44 (Fla. 1929)	7

TABLE OF AUTHORITIES CONTINUED

	PAGE
FLORIDA STATUTES	
s. 11.2421 (1983)	5
s. 11.2424. (1985)	5
s. 192.037	1,2,3,4,5,6,14
s. 236.081(4)	11,12
OTHER AUTHORITIES	
Vol. 1A, Sutherland Statutory Construction, s. 28.08 (4th Ed.)	9
Ch. 82-226, Laws of Fla.	3,4,5,7,8,11,13
s. 28, Ch. 83-264 (1983), Laws of Fla.	6
s. 54, Ch. 82-226, Laws of Fla.	5
s. 204, Ch. 85-342, Laws of Fla.	6

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT HOLDING THE PROVISIONS OF SECTION 192.037, FLA. STAT., FACIALLY UNCONSTITUTIONAL ON DUE PROCESS AND EQUAL PROTECTION GROUNDS CONSTITUTES REVERSIBLE ERROR.

The Department hereby adopts the argument in Point I of the Reply Brief of the Appellant, Robert Day, Osceola County Property Appraiser.

The Department would also advise the Court of its reliance on the recent decision of the Fourth District Court of Appeal in the case of Spanish River Resort Corp., et al. v. Walker, et al., _____ So.2d _____, Case No. 86-1645 (Fla. 4th DCA, op. filed Nov. 19, 1986). (A. 1-14).

In the Spanish River Resort case, the Fourth District Court rejected similar due process and equal protection claims and held the provisions of s. 192.037 constitutional (A. 14). The Fourth District Court also expressly acknowledged its disagreement with the holding of the District Court below in this proceeding (A. 13).

The Department respectfully submits that the rationale underlying the decision of the Fourth District Court in the Spanish River Resort case is more compelling than that set forth in the opinion of the District Court below. Particularly persuasive is that portion of the opinion in the Spanish River Resort decision adopting a portion of the legal conclusion of the

trial judge as follows:

> 5. The Legislature has declared that the most efficient way to collect taxes on time share estates is for the Property Appraiser to make one listing on the tax rolls of the combined values of the time share estates, and simultaneously to notify the managing entity of the proportions to be used in allocating this aggregate number to the owners of time share estates themselves. The Court finds that the Legislature has the broadest freedom in classification, particularly where matters of taxation are involved, and that the method chosen by the Legislature for time share properties is reasonable, since it closely tracks the method already established by Spanish River to accomplish the efficient collection of taxes and maintenance fees. No additional costs are incurred by including an item in the maintenance bills for property taxes. The Court finds that an administrative nightmare and great expense would result were the Property Appraiser and Tax Collector required to send individual notices of assessed valuation (Truth In Millage Notices) and tax bills to the time-share estate owners at Spanish River. The managing entity is in a perfect position to represent the owners of the time share estates and to collect efficiently and effectively the taxes due for the time share estates. (A. 10-11).

The Department urges this Court to adopt the rationale and holding of the Spanish River Resort case sustaining the constitutionality of s. 192.037 and to quash the conflicting decision of the District Court in this proceeding.

POINT II

THE PROVISIONS OF SECTION 192.037, FLA. STAT., ARE NOT UNCONSTITUTIONAL DUE TO ALLEGED PROCEDURAL DEFECTS IN THE INTRODUCTION IN THE HOUSE OF REPRESENTATIVES OF CHAPTER 82-226, LAWS OF FLORIDA, IN THE 1982 LEGISLATURE.

The Department would direct the Court's attention to the following undisputed matters in this proceeding:

(1) One of the subjects set forth in the Governor's call for Special Session D of the 1982 Legislature was the "State Appropriations Act and necessary implementing legislation." (A 19).

(2) That Ch. 82-226, Laws of Fla. (1982), was expressly approved by Governor Graham on April 28, 1982. (A. 24).

(3) The Act was admittedly considered upon two-thirds vote of the Senate, where the bill was also passed by a vote of the Senate exceeding the two-thirds majority.

(4) Even though the House Journal does not clearly establish that House Bill 21-D (Ch. 82-226, Laws of Fla.), was technically introduced by a two-thirds vote of the House, the House Journal does establish that the Act was passed by the overwhelming majority of 98 affirmative votes out of a total of 112 votes cast. (A. 22). Thus, the Act challenged by the Taxpayers was approved by affirmative vote of 87% of the members of the Florida House of Representatives.

(5) The Act of the Legislature challenged in this proceeding, (House Bill 21-D) is not a bill limited strictly to

the taxation of fee time-share estates. The Act is an omnibus bill relating to "taxation and local government finance" and amends numerous sections of the Florida Statutes relating to ad valorem taxation. The Act consists of a total of 81 sections. Only 9 of the 81 sections (§§53-62) relate solely to the taxation of fee time-share estates. See, Ch. 82-226, Laws of Fla. (1982).

Despite the uncontroverted matters listed above, the Taxpayers would have this Court declare constitutionally invalid the enactment of the entire provisions of Ch. 82-226, Laws of Fla., merely because the Journal of the House of Representatives does not clearly reflect that the Bill was preliminarily considered by the House upon a two-thirds vote! The trial court considered and rejected the claim of the Taxpayers related to the alleged constitutional defect in the enactment of Ch. 82-226 by ruling that:

> (1) Chapter 82-226, Laws of Fla., and Ch. 83-264, Laws of Fla., do not embrace more than the subject and matters properly connected therewith and thus do not violate Art. III, §6, Fla. Const., and;
>
> (2) Ch. 82-226 was within the purview of the Governor's proclamation; or in the alternative, if it was not, Ch. 82-226 was introduced by consent of two-thirds of the membership of each house of the Legislature, and thus was not enacted in violation of Art. III, §3(a)(1), Fla. Const. (A. 16)

Even though the District Court held the provisions of s. 192.037 unconstitutional on equal protection and due process grounds, the District Court also rejected the Taxpayers' claim that s. 197.037 was unconstitutional due to alleged defects in the enactment of said statute during a special session of the

1982 legislative session. While overruling the trial court's determination that Ch. 82-226 was not within the purview of the Governor's Proclamation, the District Court proceeded to rule that any infirmity in the original enactment of s. 54, Ch. 82-226, Laws of Fla., ". . . was cured by the 1985 legislative re-enactment of all statutes set forth in 'Florida Statutes, 1983. . . ." The Department concurs with that portion of the opinion of the District Court ruling that, even assuming the existence of a procedural defect in the introduction of Ch. 82-226 in the House of Representatives during Special Session D of the 1982 Legislature, this procedural defect was subsequently cured by the successive reenactments of s. 192.037 in the 1983 and 1985 official Florida Statutes.

Section 11.2424, Fla. Stat. (1983) reads as follows:

> Laws enacted at the 1982 regular and special sessions, the March 1983 special session, and the 1983 regular session are not repealed by the adoption and enactment of the Florida Statutes in 1983 by s. 11.2421, as amended, but shall have full effect as if enacted after its said adoption and enactment. (e.s.).

In addition to the cited case of State v. Lee, 156 Fla. 291, 22 So.2d 804 (Fla. 1945), the District Court cited s. 11.2421, Fla. Stat. (1985), as authority for its conclusion that any alleged defects in the enactment of s. 192.037 were cured by its subsequent reenactment in the 1985 statutes. Said s. 11.2421, Fla. Stat. (1985), reads as follows:

> **11.2421 FLORIDA STATUTES 1985 ADOPTED.--** The accompanying revision, consolidation, and compliation of the public statutes of 1983 of a general and permanent nature, excepting tables, rules, indexes, and other related matter contained therein, prepared by the

> joint committee under the provisions of s. 11.242, together with corrections, changes, and amendments to and repeals of provisions of Florida Statutes 1983 enacted in additional reviser's bill or bills by the 1985 Legislature, is adopted and enacted as the official statute law of the state under the title of "Florida Statutes 1985" and shall take effect immediately upon publication. Said statutes may be cited as "Florida Statutes 1985," "Florida Statutes," or "F.S. '85." (e.s.).

Thus, it is undeniable that the challenged provisions of s. 192.037 have been twice reenacted by the Legislature as the official statutory law of this state in both the 1983 and 1985 revisions of the official Florida Statutes. In addition, the subject provisions of s. 192.037 have been amended by the Florida Legislature on two separate occasions subsequent to the 1982 special sessions of the Legislature. See, s. 28, Ch. 83-264, Laws of Fla. (1983); and s. 204, Ch. 85-342, Laws of Fla. (1985).

In the case of State v. Lee, supra, expressly relied upon in the opinion of the District Court below, this Court ruled that procedural defects in the enactment of the bill consisting of purported title deficiencies would be cured by a subsequent incorporation of the act in a general revision of the statutes. Id., at page 807. The Taxpayers attempt to distinguish the State v. Lee case in their "Cross-Appellants' Brief"; however, the Department submits that such attempt to distinguish the Lee case is not compelling.

On page 807 of its opinion in the Lee case, this Court excepted only "any unconstitutionality of content" of an act from the general rule that defects in an act are cured by a subsequent general revision of the Florida Statutes reenacting the

challenged provisions. It is undisputed here that the alleged defect asserted by the Taxpayers is limited solely to the introduction of the bill in the House of Representatives. Thus, the alleged defect raised by the Taxpayers undeniably, does not relate to the substance or content of Ch. 82-226, Laws of Fla. Consequently, the District Court's ruling that any alleged procedural defect in the introduction of Ch. 82-226 in the House of Representatives during Special Session D of the 1982 Legislature was subsequently cured by the reenactment of the Bill's provisions in the 1983 and 1985 official revisions of the Florida Statutes should be affirmed by this Court.

Only two Florida cases are cited in the "Cross-Appellants' Brief" filed by the Taxpayers in support of their contention that the subject provisions of s. 192.037 are unconstitutional because of alleged defects in the introduction of the bill in the House of Representatives during Special Session D of the 1982 Legislature. See, City of St. Petersburg v. Briley, Wild & Assoc., Inc., 239 So.2d 817 (Fla. 1970); and Wood v. State, 98 Fla. 703, 124 So. 44 (Fla. 1929).

However, the Taxpayers' reliance on the City of St. Petersburg and Wood cases is misplaced, since neither case presented this Court with a situation where a bill was attacked as being beyond the purview of the call of a special session. Furthermore, neither the City of St. Petersburg nor the Wood case presented a constitutional attack on the validity of an enactment of a bill where said bill was admittedly passed by a two-thirds of a majority of both Houses of the Florida

Legislature, but was allegedly defective merely because the bill was improperly introduced in one House.

The Taxpayers also cite several cases from other jurisdictions as purported authority for their position that the enactment of s. 192.037 is constitutionally defective. However, the dubious authority of these cases from other jurisdictions is evidenced by the fact that not one of these cases presented a constitutional attack on the enactment of a bill based on alleged procedural defects in the introduction of the bills for consideration in the respective Legislatures involved.

Even if this Court were to disagree with the District Court's ruling that the purported failure to introduce the subject act in the House of Representatives by a two-thirds majority was curable by repeated reenactments of the provisions in subsequent revisions of the official Florida Statutes, the Department submits that the validity of the enactment should still be upheld on the basis of the trial court's ruling that the subject matter of Ch. 82-226, Laws of Fla. ("taxation and local government finance"), was within the purview of the Governor's call for "appropriations and necessary implementing legislation."

It is the settled practice of this Court to affirm a finding or conclusion of a lower court based on an erroneous ground if the ultimate result reached below is supported or justified on other grounds appearing in the appellate record. See, Blake v. Xerox Corp., 447 So.2d 1348, 1351 (Fla. 1984); In Re Estate of Yohns, 238 So.2d 290, 295 (Fla. 1970); and Escarra v. Winn Dixie Stores, Inc., 131 So.2d 483, 485 (Fla. 1961).

The conclusion of the trial that "taxation and local government finance" is reasonably germane to "state appropriations and necessary implementing legislation" is supported by the fundamental rule of statutory construction relating to constitutional attacks on legislative enactments. This rule repeatedly cited with approval by this Court is that acts of the Legislature are presumed to be valid, and that the Courts should indulge every presumption in favor of the constitutional validity of a challenged statute. Eastern Airline, Inc. v. Dept. of Revenue, 455 So.2d 311 (Fla. 1984); Just valuation & Taxation league v Simpson, 209 So.2d 229 (Fla. 1968); and Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950).

This same strong presumption in favor of the constitutionality of an act passed at a regular session also applies to acts of the Legislature passed at a special session. See, Martin v. Riley, 123 P.2d 488 (Cal. 1942). In the Martin case, supra, the California Supreme Court ruled on page 495 of the opinion as follows:

> The same presumption in favor of the constitutionality of an act passed at a regular session apply to acts passed at a special session . . . . Inasmuch as the presumptions are in favor of the constitutionality of the act, it will be held to be constitutional if by any reasonable construction of the language of the proclamation it can be said that the subject of legislation is embraced therein. (e.s.).

On page 9 of the "Cross-Appellants' Brief" is set forth a quote from a portion of Vol. 1A, Sutherland Statutory Construction, §28.08 (4th Ed.) citing one case holding that if a bill has been declared by the courts to deal with a subject not

included in the Governor's call, then it would not be validated by reenactment in a Code. However, the same treatise on statutory construction also recites the general rule favoring a liberal construction by the courts when the subject matter of a bill enacted in a special session is attacked on grounds that it was beyond the purview of the call:

> The statute must be reasonably germane to the subject described in the governor's call, but unless the statute covers a matter entirely foreign to the purpose of the call it will be sustained. . . . (e.s.)

Id., at Vol. I, §5.08 at page 202.

Notwithstanding the above cited legal authorities supporting the established principle that the Courts have the duty of liberally construing acts of the Legislature in favor of their constitutional validity, the Taxpayers would have this Court reverse this basic rule of constitutional law and construe the challenged Act here strictly against the Florida Legislature. Typical of the decisions of other jurisdictions liberally construing challenged actions of legislatures during special sessions in favor of their validity are the cases of Smith v. VanDyke, 259 N.W. 700 (Wis. 1935); and Talbott v. Jones, 80 S.W.2d 566 (Ky. 1935).

In the Appeal of VanDyke case, the Supreme Court of Wisconsin upheld the validity of an enactment of an income tax on bonds in a special session by ruling that it could be reasonably construed to be within the purview of the Governor's call for relief of unemployed citizens. In the Talbott case, supra, the Court of Appeal of Kentucky upheld the validity of a section of

the "Uniform Operator's License Act" providing for license fees to be within the scope of the Governor's call for a special session of the Legislature to enact revenue measures and to make appropriations. On page 567 of the Talbott opinion, the Court stated:

> Aside from the presumption of validity attached to a legislative enactment, it should be observed that the Governor, who issued this call, approved and signed the bill in question. (e.s.).

Like the challenged Kentucky act in the Talbott case, the subject enactment of Ch. 82-226 challenged by the Taxpayers here was also expressly approved by the Governor on April 28, 1982 (A. 32). Obviously Governor Graham did not share the Taxpayers' view that Ch. 82-226 was not reasonably germane to his proclamation or he could have vetoed the bill or, at a minimum, simply allowed the bill to become law without his approval!

The conclusion that "ad valorem taxation and local government finance" is reasonably germane and necessarily connected to state appropriations should be evident to even the casual observer of the prevailing scheme for funding the cost of public education in the State of Florida. The intergral connection between state appropriations and taxation and finance of local school districts is clearly evidenced in the provisions of Ch. 236, Fla. Stat., dealing with finance and taxation of schools.

For instance, the provisions of s. 236.081(4), Fla. Stat., deal solely with the statutorily required minimum local effort millage that must be levied by all school districts in order to

be entitled to state funding under the Florida Educational Finance Program. The provisions of s. 236.081(4) read in pertinent part as follows:

> (4) **COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.**--The Legislature shall prescribe the aggregate required local effort for all school districts collectively as an item in the general appropriations act for each fiscal year. The amount that each district shall provide annually toward the cost of the Florida Education Finance Program shall be calculated as follows:. . . . (e.s.).

Thus, the direct connection between the general appropriations act, a substantial portion of which deals with educational funding, and ad valorem taxes levied by local school districts on the county tax rolls is clearly shown by the fact that it is only in the General Appropriations Act for each fiscal year that the Legislature prescribes the minimum ad valorem tax millage that is required to be levied by each of the local school districts in order to be entitled to participation in the Florida Educational Finance Program.

The general appropriations bill that was enacted by the Florida Legislature during the 1982 Session contained detailed provisions in appropriation Item 310 (A. 25-32) relating to ad valorem taxes to be levied by school districts, including a determination by the Legislature that the aggregrate required local effort for the fiscal year 1982-83 was $876,255,027 (A. 26). Also, in Item 310 of the State Appropriation Bill enacted in the 1982 legislative session, the Legislature expressly imposed a 1.6 mill cap on the discretionary ad valorem tax millage to be levied by local school districts (A. 25).

In view of the above , the integral connection between state appropriations for public schools and ad valorem taxes levied by local school districts under the Florida Educational Finance Program seems beyond resonable debate. Furthermore, when additional consideration is given to the general liberal rule of construction favoring the validity of legislative acts, the trial court's ruling that the "taxation and local government finance" matters contained in House Bill 21-D were reasonably germane to, and had a natural connection with, one of the subject matter of the Governor's call ("appropriations") is a reasonable conclusion. Consequently the trial court's ruling that the "taxation and local government finance" matters contained in Ch. 82-226 was within the purview of the Governor's proclamation dealing with "appropriations and necessary implementing legislation" should be affirmed by this Court, notwithstanding the District Court's bare conclusion to the contrary unsupported by any opposing rationale!

POINT III

THE PROVISIONS OF SECTION 192.037, FLA. STAT. DO DO NOT CREATE A SEPARATE CLASSIFICATION OF REAL PROPERY EXCEPTING FEE TIME-SHARE ESTATES FROM THE "JUST VALUATION" REQUIREMENTS OF FLORIDA LAW.

The Department suggests that this contention of the Taxpayers should be summarily dismissed by this Court in the same summary fashion as this claim has been presented in these proceedings. This issue was not raised by the Taxpayers in either the trial court or the District Court, and obviously is a "after-thought" not viewed by the Taxpayers as an essential part of their case in the lower courts.

Furthermore, this suggestion of the Taxpayers that the provisions of s. 192.037 constitute an impermissible exception to the "just valuation" of Florida law is so devoid of merit as to approach the realm of incredibility. To the contrary, the provisions of s. 192.037 actually foster the constitutional requirement of "just valuation" by authorizing the Property Appraiser to assess each individual fee time-share estate based on the fair market value of similar fee time-share periods, rather than assessing them as a single condominium unit or condominium development.

In fact, it is the geometrical increase in fair market value of condominium units divided into fee-time share estates that has compelled time-share developers to challenge the validity of s. 192.037. While the gross sales price of a condominium unit divided into fee time-share estates has dramatically increased,

the time-share developers are, nevertheless, unwilling to have this dramatic increase in fair market value of a condominium unit committed to fee time-share estates recognized by property appraisers for tax assessment purposes. Such inconsistent posturing on the part of the Taxpayers and other time-share developers should not be condoned by the Courts of this state!

CONCLUSION

The actions of the Legislature carry a strong presumption of validity and the Courts should indulge every presumption in favor of the constitutional validity of a challenged statute. Given this rule of liberal construction in favor of legislative actions, the challenged enactment of Ch. 82-226, Laws of Fla., should be upheld as this Act deals with "taxation and local government finance" and is reasonably germane to the Governor's call to consider "state appropriations and necessary implementing legislation." This conclusion is warranted in view of the integral connection between state appropriations for public schools and ad valorem tax levies of local school districts. Furthermore, any alleged procedural defects in introduction of the challenged Act in the House of Representatives was cured by the subsequent reenactment of its provisions in the 1983 and 1985, Fla. Stat.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appendix to the Reply Brief has been furnished by mail to R. Stephen Miles, Jr., Esq., 2727 13th St., St. Cloud,FL 32769, Murray W. Overstreet, Jr., Esq., P.O. Box 760, Kissimmee, FL 32741, Larry E. Levy, Esq., P.O. Box 82, Tallahassee, FL 32302, David L. Cook, Esq., & Claire A. Duchemin, Esq., P.O. Box 1883, Tallahassee, FL 32302, and Benjamin T. Shuman, Esq., 611 N. Pine Hills Rd., Orlando, FL 32808, this 31st day of December, 1986.

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