IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 69,701

DCA CASE NO. 85-1743

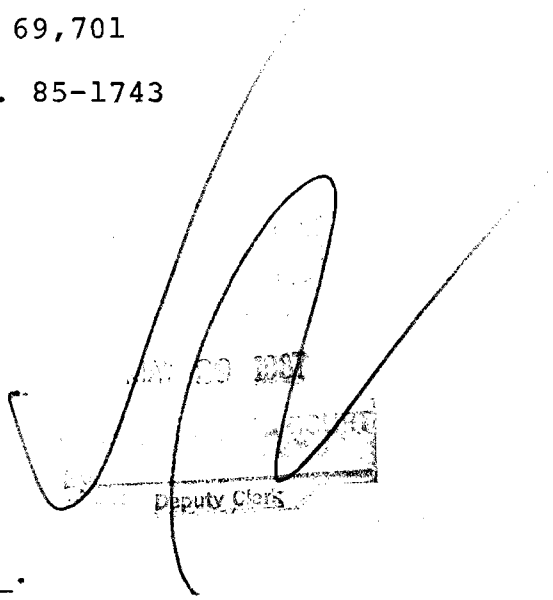
LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT,

Petitioner,

vs.

THE SCHOOL BOARD OF PALM BEACH COUNTY,

Respondent.




# BRIEF OF AMICUS CURIAE, FLORIDA DEPARTMENT OF EDUCATION, IN SUPPORT OF RESPONDENT, THE SCHOOL BOARD OF PALM BEACH COUNTY

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## DESIGNATION OF THE PARTIES AND THE RECORD

For purposes of this Brief, Petitioner, Loxahatchee River Environmental Control District, shall be referred to as "ENCON". Respondent, the School Board of Palm Beach County shall be referred to as the "School Board". Palm Beach County, Amicus, shall be referred to as the "COUNTY". The Florida Department of Education, Amicus, shall be referred to as "DOE". The State Board of Education shall be referred to as "SBE". The District Court of Appeal of the State of Florida, Fourth District, shall be referred to as "Fourth District".

## STATEMENT OF THE CASE

The Florida Department of Education adopts the Statement of the Case and Facts as set forth by School Board and as set forth in the opinion appealed from the Fourth District Court of Appeal.

## POINTS ON APPEAL

### POINTS I

WHETHER THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S FINDING THAT EACH OF PETITIONER'S THREE (3) CHARGES AT ISSUE ARE IMPACT FEES OR SERVICE AVAILABILITY FEES FROM WHICH SECTION 235.26(1), FLORIDA STATUTES (1981), EXEMPTS RESPONDENT.

### POINT II

WHETHER THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S FINDING THAT SECTION 235.26(1), FLORIDA STATUTES (1981), IS A CONSTITUTIONAL EXERCISE OF THE LEGISLATURE'S POWER.

## SUMMARY OF ARGUMENT

ENCON first attacks those factual findings by the trial judge as affirmed by Fourth District holding that the Service Availability Standby Charge, the Regional Transmission Line Fee and the Plant Connection Fees imposed are impact fees or service availability fees within the purview of Section 235.26(1), Florida Statutes. A review of the evidence reveals that all of the said fees are within the statutory definition provided for by Rule 6A-2.01, Florida Administrative Code. The SBE was directed to promulgate rules to implement Section 235.26(1), Florida Statutes. The definition does not limit the impact and service availability fees to only building impact fees. In accordance with the expressed intent of the Legislature, the rule implements the statute which exempts the school boards from all impact and service availability fees imposed by any other governmental agency or body. The exemption provided in Section 235.26(1), Florida Statutes, follows the appropriate and reasonable legislative intent to reduce the costs of school construction.

ENCON and Palm Beach County both contend Section 235.26(1), Florida Statutes (1983), fails to pass constitutional muster. In support of their argument, ENCON raises six grounds upon which this Court should declare the legislation unconstitutional. None of the grounds asserted show beyond a reasonable doubt that the law is unconstitutional. Instead, the

legislation is sufficiently clear to put a reasonable and ordinary person on notice as to its meaning and effect. Particularly is there no violation of the Equal Protection Clause of the Florida Constitution. Furthermore, the Act serves an important purpose in facilitating the construction of public schools through the elimination of conflicting State, county, district or local building codes, impact fees, or service availability fees.

The impact fees in question come within the legislative exemption. The statute and implementing rules are not constitutional infirm. The decision of the Fourth District should be affirmed.

## ARGUMENT

### POINT I

THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S FINDING THAT EACH OF PETITIONER'S THREE (3) CHARGES AT ISSUE ARE IMPACT FEES OR SERVICE AVAILABILITY FEES FROM WHICH SECTION 235.26(1), FLORIDA STATUTES (1981), EXEMPTS RESPONDENT.

ENCON and County boldly assert that DOE has usurped the legislative powers and is now in the business of regulating utilities. This argument is patently erroneous as a matter of fact as well as a matter of law.

The Legislature by Section 1, Chapter 81-223, Laws of Florida, enacted the "Education Facilities Act of 1981". This Act sets forth the legislative intent. Section 235.002(2), Florida Statutes, provides:

> "To utilize, as far as practical, innovative designs, construction techniques, and financing mechanisms in building education facilities for the purpose of reducing costs, creating a more satisfactory educational environment, and reducing the amount of time necessary for design and construction to fill unmet needs." (emphasis supplied)

Futhermore, the Legislature amended Chapter 235, Florida Statutes, to create the Uniform Building Code (UBC) [Section 235.26(1), Florida Statutes]. This change in the statute is what has created the controversy. The Court is now called on to settle the meaning of the new words that were added to Section 235.26(1), Florida Statutes.

The statute in question, Section 235.26(1), Florida Statutes (1981), as amended reads:

> "UNIFORM BUILDING CODE--All educational facilities constructed by a board shall incorporate the State Uniform Building Code for Public Educational Facilities Construction and are hereby exempt from all other state, county, district, municipal, or local building codes, interpretations, building permits and assessments of fees for building permits, ordinances and impact fees or service availability fees." (emphasis supplied)

Chapter 235, Florida Statutes, is a lengthy, comprehensive Act. It contains a myriad of directions and provisions to the State Board of Education and the Department of Education in administering the same. The Legislature, after providing a comprehensive framework, realized there were certain portions of the Act that would have to be implemented through the promulgation of rules. Therefore, the Legislature, by Chapter 81-223, Laws of Florida, amended Section 235.01, Florida Statutes, to include this new directive.

> "235.01 Purpose; rules.--
>
> * * *
>
> (2) The State Board of Education shall adopt rules to implement the provisions of Chapter 235."

In accordance with the foregoing legislative mandate, the State Board of Education adopted the appropriate rules to implement the UBC. These rules are found in Rule 6A-2.01, et seq., F.A.C.

The rule that the Petitioner and County find offensive is

Rule 6A-2.01(45), F.A.C., which defines the term "impact or service availability fees" referred to in the new Section 235.26(1), Florida Statutes (1981). Rule 6A-2.01(45)(a)(b)(c), F.A.C., reads:

> "Impact or service availability fees. A fee, tax, user charge or assessment imposed by a municipality or other governmental agency for:
>
> (a) The privilege of connecting to a system for which there is not immediate specific requirement for a capital improvement, expansion or installation at the utility source necessitated by the connection; or
>
> (b) An assessment imposed on board-owned property for the installation of a contiguous utility line except for that length and size of line actually needed to service the educational or ancillary plant on that site; or
>
> (c) For an intangible service which is not clearly established at a cost."

The State Board of Education's right and obligation to promulgate this rule is unquestioned. Deltona Corporation v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969).

ENCON and County argue at great lengths that 1) Chapter 71-822, Laws of Florida, which created the public utility is a special act, 2) Section 235.26(1), Florida Statutes, which requires the establishment of a Uniform Building Code for public school is a general act, and 3) that a conflict exists between the statutes and therefore, the special statute prevails over the general.

There is no conflict between the statutes other than an attempted conflict created by argument of ENCON and County. Section 235.26(1), Florida Statutes, and the implementing Rule 6A-2.01(45), F.A.C., do not attempt to tell ENCON how to run its affairs or suggest how ENCON should set rates, fees and charges. Section 235.26(1), Florida Statutes, simply provides that schools shall not be required to pay impact fees charged by any other governmental body.

It is a fundamental rule of statutory construction that if two statutes address related subject matter, the statutes should be construed together and in harmony with each other, if possible. Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1978).

ENCON and County further erroneously contend the fees are not really "impact fees" and thus the school board is not exempt from payment. As the Fourth Distict clearly points out, ENCON's own witness testified these fees are not for present services or present use of facilities. The school board has already installed the requisite wastewater lines on the property. When the sewer system's southernly connector line is eventually installed, there will be need only for a connecting link between the school's lines and the southernly connector line. There is no need for any specific capital expenditure by ENCON to accommodate the school's need. Loxahatchee River Environmental Control District v. School

Board of Palm Beach County, 496 So.2d 930, 935 (Fla. 4th DCA 1986).

When faced with ENCON's ludicrous argument that a fee it demoninated service availability standby charges is not really a service availability fee, both courts below easily pierced this smokescreen and called the fees what they really were--impact fees. Then based on the legislative intent set forth in Section 235.002(2), Florida Statutes, which speaks to "reducing costs" of school construction, when read in conjunction with the plain meaning of Section 235.26(1), Florida Statutes, which clearly expresses that school boards are exempt from these charges, both courts had no difficulty in determining the school board did not have to pay these improper assessments.

The rule under attack clearly should be upheld because the courts hold the rules of an administrative agency which implement a statute should be given great weight in construing the statutes. Heftler Construction Co. v. Department of Revenue, 334 So.2d 129 (Fla. 3d DCA 1976); Natelson v. Department of Insurance, 454 So.2d 31 (Fla. 1st DCA 1984).

In construing administrative regulations, the ultimate criterion is the administrative interpretation, which becomes a controlling weight unless it is plainly erroneous or inconsistent with the regulation. U.S. v. Larionoff, 431 U.S. 864, 97 S.Ct. 2110, 53 L.Ed.2d 48 (1977). The construction of a

statute or regulation by the administrative agency charged with its enforcement and interpretation is entitled to great weight and persuasive force and the courts will not depart from that interpretation unless it is clearly erroneous. Cohen on behalf of Cohen v. School Board of Dade County, Florida, 450 So.2d 1238 (Fla. 3d DCA 1984).

The law concerning the appellate court's deference to an agency's interpretation of the statute is set forth in Natelson v. Department of Insurance, supra, where the court held:

> "Agencies are afforded wide discretion in the interpretation of a statute which it administers and will not be overturned on appeal unless clearly erroneous. Pan American World Airways, Inc. v. Florida Power & Light Company, 427 So.2d 716, 719 (Fla. 1983). The reviewing court will defer to any interpretation within the range of possible interpretation. Department of Health and Rehabilitative Services v. Wright, 439 So.2d 937 (Fla. 1st DCA 1983); Department of Administration v. Nelson, 424 So.2d 852 (Fla. 1st DCA 1982); State Department of Health and Rehabilitative Services v. Framat Realty, Inc., 407 So.2d 238 (Fla. 1st DCA 1981)." (emphasis supplied)

The sound reasoning in Natelson, supra, has been followed in Florida Waterworks Association v. Florida Public Service Commission, 473 So.2d 237, 240 (Fla. 1st DCA 1985); Retail Grocers Association, etc. v. Department of Labor Employment Security, etc., 474 So.2d 379, 384 (Fla. 1st DCA 1985). This rule reinforces the principles earlier laid down by the Florida

Supreme Court in King v. Seamon, 59 So.2d 859, 861 (Fla. 1952):

> "The contemporaneous construction placed upon a statute by the officials charged with the duty of executing it should not be disregarded or overturned by this court except for the most cogent reasons, and unless clearly erroneous."

The State Board of Education's interpretation that the words "impact or service availability fees" include utilities impact fees as well as building impact fees is clearly within the range of possible interpretations permitted under Natelson. The Legislature easily could have limited the exemption to "building" impact fee but it did not. On the contrary, it inserted and added the word "other" when it amended the statute. The statute now includes all other "impact fees and service availability fees". That unquestionably includes utility impact fees.

The construction placed on the statute and rule by the Department of Education is not clearly erroneous. There is no conflict between this statute, Section 235.26(1), Florida Statutes, and the other statutes that regulate utilities. The various statutes can live together in harmony within their respective areas of influence as the two courts below easily found.

County's argument that the Department of Education could not issue Rule 6A-2.01(15), F.A.C., without specific Legislature directive contrary to the express terms of Section 153.11(1)(b), Florida Statutes, (County Brief, page 17), is totally and

and absolutely erroneous. As previously pointed out, the Legislature specifically directed the State Board of Education to promulgate rules necessary to implement Chapter 81-223, Laws of Florida.

Furthermore, rules adopted by the State Board of Education have the full force and effect of law. Section 229.041, Florida Statutes, provides:

> "Regulations and standards have force of law.--All rules and regulations and minimum standards adopted or prescribed by the state board in carrying out the provisions of the school code shall, if not in conflict therewith, have the full force and effect of law."

The Department of Education was fully cognizant of the need to amend Section 235.26(1), Florida Statutes, to reduce the costs of school construction as set forth in the legislative intent. Section 235.002(2), Florida Statutes. The rule under attack specifically carries out that intent by exempting school boards from payment of all "other" impact fees--again in accordance with legislative intent.

The argument that exemption of schools from payment of these impact fees somehow creates a tax which is imposed on others is likewise erroneous. In Home Builders v. Board of Palm Beach County Commissioners, 446 So.2d 140, 145 (Fla. 4th DCA 1983), the court found an impact fee is not a tax. Thus, if these impact fees are not a "tax", then obviously there is not an imposition of tax on other taxpayers.

The Fourth District's conclusion these impact fees and service availability charges imposed by ENCON were within the statutory exemption is not clearly erroneous. The Fourth District's opinion on Point I should be affirmed.

## POINT II

THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S FINDING THAT SECTION 235.26(1), FLORIDA STATUTES (1981), IS A CONSTITUTIONAL EXERCISE OF THE LEGISLATURE'S POWER.

ENCON and County have launched a broadside attack on both the original legislation, Chapter 81-223, Laws of Florida [and the codified statute, Section 235.26(1), Florida Statutes], and the rule that was promulgated in following the directive of the Legislature, Rule 6A-2.01(45), F.A.C. This statute, Section 235.26(1), Florida Statute, is presumed to be constitutional and ENCON is required to show beyond a resonable doubt that the statute conflicts with some designated provision of the state constitution.

As a general rule, a statute creating or governing an administrative agency should be fairly interpreted to carry out legislative intent. In construing such a statute, the legislative intent should be sought for and obtained and the statute should be construed as to make it effective to advance and not defeat the object sought to be accomplished if its language permits. The statute must be construed so as to achieve its object in a way that renders it reasonable, fair and harmonious with its manifest purpose and will avoid mischievous and absurd consequences. Warnock v. Florida Hotel and Restaurant Commission, 178 So.2d 917 (Fla. 3d DCA 1965), appeal dismissed, 188 So.2d 811 (Fla. 1966); State ex

rel. Davis v. Rose, 97 Fla. 710, 122 So. 225 (1929).

A statute creating or empowering an administrative agency is presumptively constitutional until declared otherwise by the courts and one who asserts the unconstitutionality of such a statute should show beyond all reasonable doubt the statute conflicts with some designated provision of the constitution. State ex rel. Davis v. Rose, supra. It is the duty of the court to uphold the statute because of its alleged unconstitutionality and not hold the act unconstitutional unless it is clearly made to appear beyond a reasonable doubt that the statute is unconstitutional. Ex parte Lewis, 101 Fla. 624, 135 So. 147 (1931); State ex rel. Davis v. Rose, supra.

If the language so permits, it should be given such meaning as will save it from condemnation as unconstitutional. State ex rel. Davis v. Rose, supra.

Where the constitutionality of the statute is challenged and there are two possible constructions by one of which the statute would be unconstitutional and by the other, it would be valid, it is the duty of the court to adopt that interpretation which brings the statute into harmony with the constitution if the language employed will permit. State ex rel. Wolyn v. Apalachicola N.R. Co., 81 Fla. 394, 88 So. 310 (1921).

A comparison of these principles with the arguments raised by ENCON and County reveals their arguments are without

merit and non-persuasive

A. ARTICLE III, SECTION 6, FLORIDA CONSTITUTION

ENCON and Palm Beach County argue that Chapter 81-233, Laws of Florida, enacted in 1981 and subsequently codified as Section 235.26(1), Florida Statutes (1982), is unconstitutional since the title did not specifically refer to utility rates, charges or impact fees. The Department of Education suggests this is a narrow, technical argument unsupportable by judicial decisions in this state.

The Supreme Court, in King Kole, Inc. v. Bryant, 178 So.2d 2, 4 (Fla. 1965), stated that Article III, Section 6, Florida Constitution, formerly Article III, Section 16, Florida Constitution, served the following purposes:

> "The primary purpose of the requirements is to prevent 'hodge-poge or log-rolling' legislation. Its object is to avoid surprise or fraud by fairly apprising the Legislature and the public of the subject of the legislation being enacted."

Again, the Supreme Court in Florida Power Corp. v. Pinellas Utility Board, 40 So.2d 350 (Fla. 1949), held that if the title to an act fairly gives notice of the subject of the act so as to reasonably lead to an inquiry into the body of the act, it is sufficient. It is not necessary that the title contain an index to the contents of the act.

ENCON, on page 16 and 17 of its Brief, quotes the title to Chapter 81-223, Laws of Florida. An examination of the title clearly reflects a rather broad statement concerning

educational facilities, construction and funding. It certainly is no surprise to anyone that certain fees relating to costs of construction of public schools would be contained in the body of the statute. This squares directly with the legislative intent articulated in Section 235.002, Florida Statutes. The Florida courts have universally held that the title need not contain an index to the statute's content. Williams v. State of Florida, 370 So.2d 1143 (Fla. 1979).

Notwithstanding the foregoing, the court need not address the issue of whether or not the title was deficient and violative of Article III, Section 6, Florida Constitution, since Chapter 81-223, Laws of Florida, was codified as Section 235.26(1), Florida Statutes. The courts held in Polston v. State of Florida, 137 So.2d 602 (Fla. 2d DCA 1962) and Spangler v. Florida State Turnpike Authority, 106 So.2d 421 (Fla. 1958), any defect in the title of the original act is cured by a subsequent codification of the act into Florida statutes.

B. VAGUENESS AND AMBIGUITY

There is nothing at all vague or ambiguous about the statute except in the minds of ENCON and County. The definition of impact fee or service availability fee contained in Rule 6A-2.01(45), F.A.C., in no way exceeds the bounds of the statutory authority.

The Legislature did not see fit to specifically limit

the impact fees just to building impact fees. Instead, it chose to apply no limiting language to Section 235.26(1), Florida Statutes. On the contrary, it specifically said the school board is exempt from "all other . . . impact fees" (e.s.). That language appears to be unequivocal. A reasonable possible definition has been promulgated by the Department of Education. This court should sustain the statute and definition. Natelson v. Department of Insurance, supra.

C. EQUAL PROTECTION ARGUMENT

It is not a judicial function for courts to inquire into the wisdom of a statute enacted by the Legislature. The Legislature is vested with the power to enact legislation, and the only limitation on the exercise of that power is that the statute must not violate the Federal or State Constitutions. U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980).

It is within the discretion of the Legislature to enact Section 235.26(1), Florida Statutes, which provides that school boards shall not be required to pay impact fees imposed by publicly owned utility providers. Permitting private owned utility companies to charge an impact fee is not an improper classification which violates the Equal Protection Clause of the Florida Constitution.

The Legislature certainly considers public education of great importance to the citizens of the State of Florida.

Indeed, funding of public education is the largest item in the annual appropriations. The Legislature may simply be of the view that public owned and operated utilities could bear the cost of impact charges better than the 67 school districts in the State of Florida. Whatever the motive or reason for the enactment of Section 235.26(1), Florida Statutes, the court must confine its inquiries to constitutional limitations placed upon the Legislature and not become involved in the wisdom or soundness of the statutes.

Whenever a court is confronted with an equal protection challenge to an act which involves statutory classification, the court's first task is to determine if the class falls into a "suspect class" or the action of the State abridges some fundamental right, such as freedom of religion or free speech. If it is determined the classification or action of the state does not fall within that category, then the statute is subject to a "rational basis" standard. The Florida High School Activities Association, Inc. v. Thomas, 434 So.2d 306 (Fla. 1983). Once it is determined that the statutory classification bears some reasonable relationship to a legitimate state purpose, the judicial inquiry should end. Khoury v. Carvel Homes South Inc., 403 So.2d 1043 (Fla. 1st DCA 1981).

The Fourth District said it best:

> "Hence the test is not one of strict scrutiny, but only whether there is a rational basis for the classification made by the legislature; that is, does the classification bear some

> rational relationship to a legitimate state purpose. E.g., In re Estate of Greenberg, 390 So.2d 40 (Fla. 1980), appeal dismissed sub nom Pincus v. Estate of Greenberg, 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981). The burden is on the party challenging the statute to show there is no conceivable factual predicate rationally able to support the classification being attacked. The Florida High School Activities Association v. Thomas, 434 So.2d 306, 308 (Fla. 1983). That the statute results in some inequality will not invalidate it; the statute must be so disparate in its effect as to be wholly arbitrary. E.g., Greenberg, 390 So.2d at 42. It is not the court's function to determine whether the legislation achieves its intended goal in the best manner possible, but only whether the goal is legitimate and the means to achieve it are rationally related to the goal. Khoury v. Carvel Homes South, Inc., 403 So.2d 1043, 1045 (Fla. 1st DCA 1981)."

Loxahatchee River Environmental Control District, supra, at 937, 938.

Excluding private profit-making utility companies from Section 235.26(1), Florida Statutes, does not render the statute unconstitutional. It is not a constitutional requirement that classification by the Legislature be all inclusive. If the statute applies equally to all members of the class and bears a reasonable relation to some legitimate state interest, it complies with the constitutional standard. LeBlanc v. State of Florida, 382 So.2d 299 (Fla. 1980).

In Reserve Insurance Co. v. Gulf Florida Terminal Co., 386 So.2d 550 (Fla. 1980), the court upheld the validity of Section 677.403(1)(b), Florida Statutes, based on the financial resources of the parties. The court stated in Reserve

Insurance Co., supra, at 551, 552:

> "This enactment must be reviewed to determine whether the monetary damage classification has a reasonable relation to a permissible legislative objective. If such relationship exists, there is no violation of the equal protection clause. Lasky v. State Farm Insurance Co., 296 So.2d 9 (Fla. 1974).
>
> The Legislature possesses wide latitude in devising classification which regulate commercial transactions. Broad enough, in fact, to classify based upon the financial resources of the parties and the amount involved in the transaction...."

It is apparent that financial resources of the parties can be used in classification statutes. Hence, an exemption of payment of the impact fees of a public utilities while requiring payment to a private utilities is a valid exercise of legislative power.

ENCON was established by the Legislature of the State of Florida and has no power or authority other than granted it by the Legislature. The Legislature has the power to fund the public utilities by taxation, authorize the utility to issue bonds or the utility could be required to support itself by revenue from customers. Since both the school board and ENCON are governmental bodies serving a useful purpose, the Legislature, in its wisdom and without offending the constitution, could determine a cost or expense should be placed upon one at the expense of the other.

A public utility does not need to make an economic profit

to remain in business. The private utility must make a profit to remain in business. The private utility must make a profit or it will cease to exist. A statute which accommodates this is not constitutional infirm on equal protection grounds. Lasky v. State Farm, supra.

D. DUE PROCESS OF LAW

The school board has never refused to pay any direct costs attendant to the water and sewer hookup for the school. It pays on the same basis as others for these direct costs. The Legislature did not exempt the school board from all costs. The Fourth District was correct in its rejection of this argument.

DOE defers to and concurs in the school board's arguments on this point.

E. AMENDMENT OF SPECIAL ACT BY NONCOMPREHENSIVE GENERAL ACT

ENCON suggests DOE has expanded Section 235.26, Florida Statutes, by definition to regulating and rescinding the authority and obligation of public utilities to charge uniform rates and charges under the law.

ENCON is in error. The Fourth District is correct. The rule is consistent with the statute as amended.

Where the empowering provision of a statute states that the agency may "make such rules and regulations as may be necessary to carry out the provisions of this act", the

validity of regulations promulgated thereunder will be sustained so long as they are reasonably related to the purposes of the enabling legislation and are not arbitrary and capricious. Florida Beverage Corp. v. Wynne, 306 So.2d 200 (Fla. 1st DCA 1975); General Telephone Co. v. Florida Public Service Commission, 446 So.2d 1063 (Fla. 1984).

An administrative rule or regulation is deemed prima facie, reasonable and valid. The Fourth District correctly construed and applied the rule to make it conform to the powers conferred upon DOE rather than as being an assumption of power not conferred or as being in conflict with another statute. Forehand v. Board of Public Instruction, 166 So.2d 668 (Fla. 1st DCA 1964); State v. Atlantic C.L.R. Co., 56 Fla. 617, 47 So. 969 (1908).

Section 235.26, Florida Statutes, although it does not specify the prior conflicting statutes whose conflicting provision it repeals, it does state in so many words that any such conflicting provisions are repealed. ENCON cites no constitutional authority for the proposition that a noncomprehensive act may not without specific references to a prior special act alter that special act. It seems clear the legislative intent to repeal is obvious here. This satisfies one of the rules stated in In Re Wade, 150 Fla. 440, 7 So.2d 797 (1942).

DOE submits there is no conflict between Section

235.26(1), Florida Statutes, and Chapters 153 and 180, Florida Statutes. The Legislature, in its wisdom, if it seems fit, may relieve one public agency from paying fees to another public agency without violating some constitutional standard. The Fourth District correctly concluded that the legislative exemption from impact fees did not vest in DOE or school boards the power of supervision or regulation.

The additional reasons for rejection of this argument were correctly and well articulated by the Fourth District. Loxahatchee River Environmental Control District, supra, at 941. We urge this Court to likewise reject ENCON's argument and affirm the holdings of the courts below.

F. COMITY

ENCON's novel arguments that the principles of comity should apply between intrastate entities fails to cite a single case. This is not surprising since the theory has absolutely no legal basis.

We agree with and defer to School Board's Brief on this point which discusses the holding of the Fourth District.

Again, rejection of this argument of ENCON is not only necessary but mandated in view of its absence of legal basis.

None of the constitutional objections asserted by ENCON are sufficient to create a reasonable doubt as to the unconstitutionality of the statute. The Fourth District's holding is correct and not clearly erroneous. We urge affirmance.

## CONCLUSION

The court below correctly found the fees and charges assessed by ENCON were within the purview of Section 235.26(1), Florida Statutes, and therefore, the school board was exempt from payment of the same. In addition, the court found the statute was not constitutionally infirm and therefore upheld the same. These conclusions are not clearly erroneous and therefore the opinion and decision of the Fourth District should be affirmed.

DOE respectfully urges affirmance.

Respectfully submitted,

SYDNEY H. McKENZIE III
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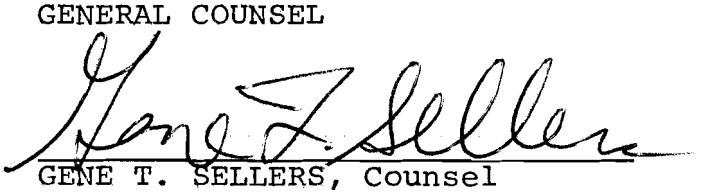

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to W. JAY HUNSTON, JR., Esquire, Law Firm of DeSantis, Cook, Gaskill & Silverman, 11891 U.S. Highway 1, North Palm Beach, Florida 33408, Attorney for Petitioner; RICHARD L. OFTEDAL, Esquire, School Board of Palm Beach County, 3323 Belvedere Road, West Palm Beach, Florida 33402, Attorney for Respondent; and, PHILLIP C. GILDAN, Esquire, Nason, Gildan, Yeager and Gerson, P.A., 1645 Palm Beach Lakes Boulevard, Suite 650, West Palm Beach, Florida 33409, Attorney for Amicus Curiae, Palm Beach County, this 29th day of May, 1987.

GENE T. SELLERS