12-30-86

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 69,701

LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT,

Petitioner,

vs.

THE SCHOOL BOARD OF PALM BEACH COUNTY,

Respondent.

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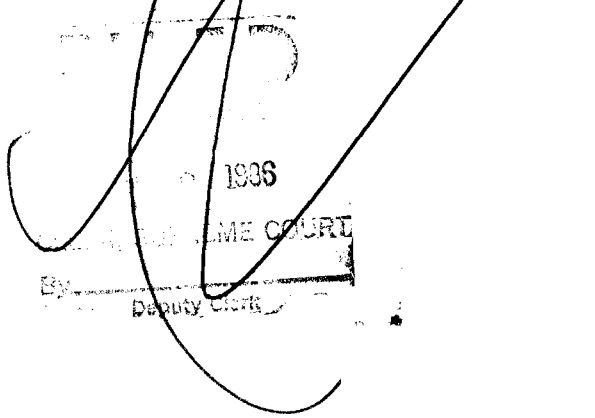

PETITIONER'S JURISDICTIONAL BRIEF

Appeal from the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

Petition for Review from the District Court of Appeal of the State of Florida, Fourth District

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STATEMENT OF CASE AND FACTS

This is an appeal from a decision of the Fourth District Court of Appeal affirming a certain Final Judgment entered by the trial court on July 8, 1985 [A30-A32]. The appellate decision was rendered on October 29, 1986 [A2 - A28]. Mandate issued from the District Court of Appeal on November 14, 1986 [A29], and this appeal was timely filed on November 26, 1986.

Petitioner is a special district of the State of Florida, created pursuant to the provisions of Chapter 71-822, Laws of Florida, as amended, whose purpose is to regulate and control sewage disposal, solid waste management, discharge of storm drainage and water supply drainage, and water supply within its geographic boundaries. Those boundaries encompass 72 square miles of lands located in northern Palm Beach County and southern Martin County. In furtherance of this purpose, Petitioner has constructed and is operating a regional sewage and wastewater treatment facility, servicing property owners in both Palm Beach and Martin Counties.

Respondent is responsible for construction and operation of primary and secondary public schools in only Palm Beach County.

The trial court action was one for injunctive and declaratory relief commenced on November 19, 1981 by the Respondent, requesting exemption from liability for three separate charges for sewer service, pursuant to the provisions of Section 235.26(1) Fla. Stat. (1981). The charges at issue consist of the Petitioner's Monthly Service Availability Standby Charge (SAS Charge), Regional Transmission System Line Charge (Line Charge), and Plant Connection Charge, all as described and defined in Chapter 31-10, Fla. Admin. Code.

The statute at issue is Section 235.26(1), Fla. Stat., as amended by Chapter 81-223, Laws of Florida, which provides, in pertinent part, as follows:

> "UNIFORM BUILDING CODE.--Educational facilities constructed by a Board . . . are 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."

In September 1981, Respondent began construction of a public middle school in Jupiter, Florida, within the area served by the Petitioner's wastewater treatment system. Pursuant to Rule 31-10.10, Fla. Admin. Code, and in accordance with past practice for new schools, Petitioner requested that Respondent execute a Standard Developer Agreement and pay the SAS and Line Charges for the new school. Additionally, the execution of the Standard Developer Agreement operated to "lock-in" the Plant Connection Charge rate for the new school at the 1981 rate structure, even though the Plant Connection Charge would not be due and payable until the time when actual physical connection of the new school to the Petitioner's regional wastewater treatment system was completed.

Respondent refused to execute the agreement or pay the charges, asserting that it was now exempt from payment of all three of these charges as "impact fees or service availability fees" under Section 235.26(1), as recently amended.

Instead, Respondent filed its Complaint for Declaratory and Injunctive Relief on November 19, 1981. Petitioner denied that the charges were "impact fees or service availability fees" under the Statute and contended that the Statute, as amended, was unconstitutional, both on its face and as implemented by the Department of Education in Rule 6A-2.01(45), Fla. Admin. Code..

The trial court, following a non-jury trial, entered its Final Judgment upholding the constitutionality of the statute and declaring that Respondent is exempt from payment of all three of the charges at issue [A30 - A32]. Notice of Appeal to the Fourth District Court of Appeal was filed by the Petitioner on July 25, 1985, which ultimately resulted in the rendition of the decision of that appellate court, from which this appeal is taken.

SUMMARY OF ARGUMENT

This Court should exercise its discretionary jurisdiction to review the decision of the Fourth District Court of Appeal, pursuant to Art. V, Section 3(b)(3), Fla. Const., on the following grounds:

1. Rule 9.030(a)(2)(A)(i), Fla. R. App. P., provides for discretionary jurisdiction to review decisions of district courts of appeal that expressly declare valid a state statute. In its finding on the first of two issues addressed on appeal, the District Court stated as follows:

> "I. Whether the trial court erred in finding that Section 235.26(1), Florida Statutes (1981), is a constitutional exercise of the legislature's power. We conclude it did not." [A6].

Thus, the decision appealed from expressly declares Section 235.26(1) to be valid.

2. Rule 9.030(a)(2)(A)(ii), Fla. R. App. P., provides for discretionary jurisdiction to review decisions expressly construing a provision of the state or federal constitutions. In its discussion of the constitutionality of Section 235.26(1), Fla. Stat. (1981), contained at Pages 10 through 12 of its decision [A11 - A13], the appellate court quotes the pertinent portion of Art. III, Section 6, Fla. Const., and

then expressly construes the language of that provision within the factual context of this case.

3. Rule 9.030(a)(2)(A)(iii), Fla. R. App. P., provides for discretionary jurisdiction to review decisions of District Courts of Appeal expressly affecting a class of constitutional or state officers. In its discussion of the equal protection issues raised in this appeal, contained at Pages 16 through 19 of its decision [A17 - A20], the Fourth District expressly acknowledges that it is considering this argument based upon the defined classification of all "publicly-owned utility providers", which consists of those constitutional and state entities which construct and operate public utilities. The effect of the decision of the Fourth District is to exempt the class consisting of all school boards from payment of impact fees or service availability fees charged by the class consisting of all publicly-owned utility providers. Thus, the decision expressly affects two distinct classes of constitutional and state entities.

4. Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., provides for discretionary jurisdiction for review of decisions that expressly and directly conflict with decisions of other district courts of appeal or of this Court on the same question of law. In its discussion on Pages 22 through 25 of its decision [A23 - A26], the Fourth District holds, as a matter of law, that impact fees are not fees for actual services or facilities provided by a utility. This holding directly conflicts with the ruling of this Court in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

Additionally, the Fourth District's decision that Art. III, Section 6, Fla. Const., is unavailing once a "law" has been re-enacted and

codified in the Florida Statutes [A13], is in direct conflict with Bunnell v. State, 453 So.2d 808 (Fla. 1984).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY DECLARES VALID A STATE STATUTE. RULE 9.030(a)(2)(A)(i).

As a cursory review of the Final Judgment [A30-A32], and the decision appealed from herein [A2 - A28] reveals, one of the key issues in the trial court and one of only two points raised on appeal in this case is the constitutionality of Section 235.26(1), Fla. Stat., as amended by the 1981 Laws of Florida.

Palm Beach County and the Department of Education requested and received permission to appear in this appeal, as amicus curiae, on opposite sides on the issue of constitutionality of this statute. In fact, a majority of the 27-page decision rendered by the Fourth District in this case addresses the issue of the validity of the statute.

The impact of the Fourth District's decision, that this statute, as applied only to publicly-owned utilities, is valid, is that school boards throughout the State of Florida, if they elect to construct new school facilities only within the geographical boundaries of publicly-owned utility providers, rather than privately-owned and franchised utility providers, will be exempt from the payment of any impact fees and service availability fees.

Thus, this Statute, if valid, requires consumers, who are unfortunate enough to reside within territories served by publicly-owned utilities, to bear all of the cost of providing utility services for new schools, while consumers, who contribute to the need for new school construction, but who reside in territories served by privately-owned utility

providers, are excused from paying their fair share of the cost of expanding utility services to meet their school needs.

The issue of the validity of this Statute, as amended in 1981, has not previously been addressed in any published decision of a District Court of Appeal in Florida, nor has it been previously addressed by this Court. It is respectfully submitted that, because of the impact of this decision on school boards and utility providers throughout Florida, this Court should exercise its discretionary jurisdiction and grant review.

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY CONSTRUES A PROVISION OF THE STATE CONSTITUTION. RULE 9.030(a)(2)(A)(ii).

On page 10 of its decision [A11], the Fourth District Court of Appeal expressly considers and construes the applicability of Art. III, Section 6, Fla. Const., to the amendment to Section 235.26(1), Fla. Stat., contained in Section 27 of Chapter 81-223, Laws of Florida.

The appellate court expressly rules that the twofold requirement of Art. III, Section 6, that laws embrace one subject and matter and that the subject be briefly expressed in the title, applies only so long as the subject statute remains a "law". Upon re-enactment and codification of this law as a portion of the Florida Statutes, the court determined that it was no longer subject to constitutional challenge, pursuant to Art. III, Section 6. [Citing: State v. Combs, 388 So.2d 1029, 1030 (Fla. 1980); and Santos v. State, 380 So.2d 1284, 1285 (Fla. 1980).]

This construction of the constitutional requirements of Art. III, Section 6, appears to be facially supported by the cited case law, however, constitutes an improper construction of the constitutional provision as it applies to the circumstances of this case.

In effect, the decision of the Fourth District Court of Appeal renders the provisions of Art. III, Section 6 meaningless and

ineffective. By determining that the constitutional requirement applies only so long as a legislative act remains a "law", the appellate court has effectively ruled that no statute will ever be subject to review, merely due to the time requirements necessary to file an action for declaratory relief in a trial court, pursue that action through Final Judgment, prosecute an appeal therefrom, and finally address the issue of constitutionality before this Court. Obviously, as was the case during the five (5) year period during which this case was pending, what was originally a "law" promulgated in Chapter 81-223, Laws of Florida, became codified as Section 235.26(1), Fla. Stat.

In Bunnell v. State, supra., the mere codification of a law enacted by the Legislature did not prohibit this Court or the appellate court from reviewing whether that law, as originally enacted, passed constitutional muster pursuant to Art. III, Section 6.

Thus, the Fourth District in this appeal has not only expressly construed the provisions of Article III, Section 6; it has done so erroneously.

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS TWO CLASSES OF CONSTITUTIONAL OR STATE OFFICERS. RULE 9.030(a)(2)(A)(iii).

The decision of the Fourth District expressly directs that school boards (which are constitutional entities pursuant to Art. IX, Section 4, Fla. Const.) are exempt from payment of impact fees and service availability fees charged by publicly-owned utility providers (which are both State entities, such as the Petitioner, and Constitutional entities, such as Palm Beach County).

Thus, the decision clearly affects two classes of constitutional or state officers, to-wit: school boards and publicly-owned utility providers.

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE SUPREME COURT ON THE SAME QUESTIONS OF LAW. RULE 9.030(a)(2)(A)(iv).

It is not necessary that a district court of appeal explicitly identify a conflicting decision, within the written parameters of its own decision, but only that the discussion of the legal principles applied by the district court of appeal supplies a basis for conflict review. [Ford Motor Company v. Kikis, 401 So.2d 1341 (Fla. 1981).]

The decision of the Fourth District Court of Appeal in this case expressly and directly conflicts with two prior decisions of this Court on identical questions of law.

First, the Fourth District, in its decision, expressly rules that, "impact and service availability fees need not be considered to be, in the language of the enabling law, fees or charges for services and facilities furnished by appellant's system" [A23]. The decision then expressly sets forth the rule that impact fees are not fees for actual services and facilities provided! [A23]. This statement of law is directly in conflict with and contradicted by this Court's landmark decision in Contractors and Builders Association of Pinellas County v. City of Dunedin, supra.

Clearly, since 1976, the law in Florida has been that impact fees are, in fact, permissible and legitimate, in that they are fees or charges for services and facilities provided by a utility.

Second, the Fourth District expressly ruled that the re-enactment and codification of a "law", as a portion of the Florida Statutes, removes that law from constitutional scrutiny pursuant to Art. III, Section 6, Fla. Const.. This ruling is directly in conflict with and contradicted by this Court's decision in Bunnell v. State of Florida,

supra. In Bunnell, the parenthetical comment is made that the law being attacked on constitutional grounds under Art. III, Section 6, although originally enacted as Chapter 82-150, Laws of Florida, was subsequently codified as Section 843.035, Fla. Stat. (Supp. 1982).

Despite the legislature's re-enactment and codification of the subject law, prior to this Court's 1984 review, this Court was not precluded from reviewing the constitutionality of the original enactment by the Legislature and, in fact, quashed the decision of the District Court of Appeal, in part, and held that Section 1 of Chapter 82-150, Laws of Florida, was unconstitutional as a violation of the one subject requirement of Art. III, Section 6.

Thus, the law in Florida is clear that a subsequent re-enactment of a "law", which is violative of Art. III, Section 6, Fla. Const., will not prohibit subsequent appellate review of the constitutionality of that law. For the law to be otherwise would render Art. III, Section 6, Fla. Const., meaningless and ineffective.

CONCLUSION

Thus, this Court has discretionary jurisdiction to review the decision of the Fourth District Court of Appeal in this case, on four of the six grounds enumerated in Rule 9.030(a)(2)(A), Fla. R. App. P..

Because of the far-reaching impact of the decision of the appellate court in this case on boards of education and publicly-owned utility providers, and because of the express and direct conflicts of the Fourth District's decision with prior decisions of this Court, it is of paramount importance that this Court exercise that discretionary jurisdiction to review the decision in this case on its merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Petitioner's Jurisdictional Brief have been furnished by regular U.S. Mail to RICHARD F. OFTEDAL, ESQUIRE, Attorney for School Board, 3323 Belvedere Road, Bldg. 503, Room 232, West Palm Beach, FL 33402; HERBERT D. SIKES, ESQUIRE, Attorney for DOE, Knott Bldg., Tallahassee, FL 32301; and PHILLIP C. GILDAN, ESQUIRE, Attorney for County, Post Office Box 3704, West Palm Beach, FL 33409, this 5th day of December, 1986.

By: _____
W. JAY HUMSTON, JR.