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.

RESPONDENT'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.

RICHARD L. OFTEDAL
School Board of Palm Beach County, Florida
3323 Belvedere Road
P. O. Box 24690
West Palm Beach, FL 33416
(305) 684-5080
Attorney for Respondent

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STATEMENT OF THE CASE AND FACTS

Respondent, School Board of Palm Beach County, Florida (hereafter the "School Board") is in substantial agreement with the Statement of the Case and Facts as contained in Petitioner's Jurisdictional Brief.[1/] Unmentioned, however, is the fact that although the School Board has been paying the subject Service Availability Standby (S.A.S.) charges and Regional Transmission Line Charges since 1982, the Environmental Control District has yet to provide sewer service to the School Board for the Jupiter Middle School constructed in 1981. [A5-6]. Instead, the School Board has had to provide for its own sewage needs from the construction and maintenance of its own package treatment plant. Finally, it should be noted that there is no need for any specific capital expenditure by the Environmental Control District to accommodate the school's needs. [A-10]. Instead, the needs of the District were such that the system would be designed to provide for substantial capacity to serve the new Jupiter Middle School regardless of whether or not the school was added to the system.

SUMMARY OF ARGUMENT

Petitioner urges this Court to exercise its discretionary jurisdiction to review the decision of the Fourth District Court of Appeals pursuant to Article V, Section 3(b)(3), Fla. Const. For the following reasons, neither of the four grounds asserted by the Petitioner warrants further review of the Fourth District's decision:

1/ We do not address the argument or contents of the jurisdictional brief filed on behalf of Palm Beach County whose Motion for Leave to File Brief as Amicus Curiae was denied by this Court on December 9, 1986.

1. Although Rule 9.030(a)(2)(A)(i), Fla.R.App.P., permits the Supreme Court to exercise its jurisdiction to review decisions of district courts of appeal that expressly declare valid a state statute and even though the District Court upheld the constitutionality of Section 235.26(1), Florida Statutes, this Court should nonetheless decline to accept jurisdiction. Petitioner has grossly misstated the effect and impact of the Fourth District's decision upon utility customers and consumers served by the Petitioner. The actual burdens and obligations to be borne by the rate-payers resulting from application of Section 235.26(1) are neither so unfair, inequitable, or far-reaching as to require additional appellate review.

2. Similarly, although Rule 9.030(a)(2)(A)(ii), Fla.R.App.P., provides for discretionary jurisdiction to review decisions expressly construing provisions of the state or federal constitution and although the District Court found that there is no violation of Article III, Section 6,Fla.Const., this Court should decline Petitioner's invitation for review. Closer examination of the District Court's opinion reveals that it merely followed and adhered to the unambiguous rule of law announced by this Court in State v. Combs, 388 So.2d 1029 (Fla. 1980) and Santos v. State, 380 So.2d 1284 (Fla. 1980).

3. Petitioner seeks to include the School Board members and a group it denotes as "publicly-owned utility providers" within the purview of Rule 9.030(a)(2)(A)(iii), Fla.R.App.P., providing for discretionary jurisdiction to review decisions of district court's of appeal expressly affecting a class of constitutional state officers. This seldom invoked category of discretionary jurisdiction is inapplicable where, as in the case below, the District Court's decision fails to expressly and directly impact upon the statutory rights, functions, duties or responsibilities of a class of school board members or state officers.

4. Finally, Petitioner argues that the opinion of the Fourth District is in direct conflict with two prior decisions of this Court, to wit: Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Bunnell v. State, 453 So.2d 808 (Fla. 1984). However, as to the former, examination of the actual opinion of the Fourth District reveals no conflict as to prior Court rulings on impact fees. In fact, the two decisions are in substantial accord and if they differ at all, it is only upon the facts of the case. In any event, jurisdiction need not be exercised since the Fourth District has caused no uncertainty or confusion by its decision.

As to any resulting conflict with the Bunnell case, it appears that Bunnell did not expressly address or consider the issue raised by the Petitioner. Instead, the issue of whether Article III, Section 6, Fla. Const. applied to subsequent codified sections of the Florida Statutes was specifically addressed in this Court's prior decisions in Combs and Santos, supra, which the District Court faithfully applied. Thus, no conflict and no confusion exist as a result of the District Court's ruling on this issue and conflict jurisdiction should be denied.

ARGUMENT

Petitioner seeks to invoke the discretionary jurisdiction of this Court pursuant to Article V, Section 3(b)(3), Fla. Const., on the grounds that the decision of the Fourth District Court of Appeals: (1) expressly declared valid a State statute, (2) construed a provision of the State Constitution, (3) expressly affected two classes of constitutional and state officers and (4) expressly and directly conflicts with decisions of the Supreme Court on the same question of law. The School Board shall, for the dual purposes of clarity and simplicity, address each ground in seriatum. At the outset, however, the School Board notes the oft-stated philosophy that district courts of appeal

were not intended to be intermediate courts; it was the intention of the framers of the constitutional amendment which created district courts that the decisions of those cases would, in most cases, be final and absolute. Spradley v. State, 293 So.2d 697,701 (Fla. 1974) and Julius v. Wainwright, 253 So.2d 873 (Fla. 1971). Review of the case sub judice by this Court is not only unwarranted and unnecessary, but threatens violence to this time-honored axiom of discretionary review.

I.

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS EXPRESSLY DECLARES VALID A STATE STATUTE. RULE 9.030 (a)(2)(A)(i), Fla.R.App.P.?

Petitioner correctly notes that a majority of the 27 page opinion rendered by the Fourth District in this case addresses the constitutional validity of Section 235.26(1), Florida Statutes (1981). The length of the opinion is no doubt a direct result of Petitioner's shot-gun attack on the statute, alleging no fewer then six constitutional infirmities.

Despite the Fourth District's decision upholding the constitutionality of the statute, this Court should, nonetheless, refuse to exercise jurisdiction. Petitioner, in seeking to impress upon the Court the urgency for additional appellate review, again grossly misstates the effect and impact of the Fourth District Court of Appeals' opinion. Most notably, the validity of the statute does not require consumers residing within territories served by publicly owned utilities to bear all the cost of providing utility services for new schools. Instead, it was stipulated that the School Board would pay and be obligated for the monthly service charges that would become due at such time when (and if) the subject middle school was actually hooked up to the wastewater system. [A-5]. Furthermore, the statute does not require school boards be given a

"free-ride" inasmuch as any specific capital expenditures by the public utility to accommodate the school's needs would be borne by the School Board and not the rate-payers. [A-10]. It is undisputed that all wastewater lines and service to the new school have been supplied at the School Board's expense. [A-11].

The Statute simply addresses the legislative purpose of keeping school construction costs within reasonable bounds and "[I]n as much as both school districts and sewer districts are creatures of the people and regulable by the legislature, it is logical for the legislature to decide not to require money needlessly to pass from one agency to the other in the form of impact fees". [A-18]. Thus, the constitutional blessing bestowed upon the statute by the District Court neither warrants nor requires further review by this Court.

II.

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

Petitioner argues that the Fourth District Court "not only expressly construed the provisions of Article III, Section 6; it has done so erroneously" (Petitioner's Brief at 7). Neither contention is correct. First, to the extent Article III, Section 6 was construed at all, it was by the Supreme Court in the cases of State v. Combs, 388 So.2d 1029,1030 (Fla. 1980) and Santos v. State, 380 So.2d 1284,1285 (Fla. 1980). The Fourth District merely applied the unequivocal and unambigious rule of law announced therein:

> In Santos v. State (citation omitted), we held that "Article III, Section 6, does not require sections of the Florida Statutes to conform to the single subject requirement. The requirement applies to 'laws' in the sense of acts of the legislature." ...Once re-enacted as a portion of the Florida Statutes it was not subject to challenge under Article III, Section 6.

State v. Combs, supra at 1030.

Significantly, no case, including Bunnell v. State, 453 So.2d 808 (Fla. 1984) overrules or recedes from the opinion announced in either the Combs or Santos case. Indeed, Bunnell does not even seem to address this narrow issue or to in any way distinguish the aforecited cases as might be expected were there to be a true conflict. Such a straight-forward application by the Fourth District of a previously announced decision by this Court most certainly is an inadequate basis upon which the Court should exercise its discretionary jurisdiction.

III.

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

Grasping at any straw, Petitioner argues that the decision of the Fourth District Court of Appeals upholding the right of the legislature to exempt school board's from impact or service availability fees "expressly" affects a class of constitutional state officers so as to confer discretionary jurisdiction upon this Court. Following Petitioner's reasoning, any case involving a district school board (i.e. a constitutional entity) would meet the jurisdiction prerequisites of Rule 9.030 (a)(2)(A)(iii), Fla.R.App.P. Similarly, Petitioner seeks to extend such reasoning even further to a self-designated group called "publicly-owned utility providers" and include them within a class of state officers. Neither line of reasoning is sufficient to confer jurisdiction upon this Court.

That this Court accepts very few cases on the jurisdictional ground that a requisite class of officers was expressly affected by a district court's decision may be attributed to the fact that so few cases "decided by the district court fall into the narrow area for which this category of cases has now been

reserved". Shevin v. Cenville, Inc., 338 So.2d 1281, 1282-3 (Fla. 1976).[2/] Only those cases which "directly and, in some way, exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers" satisifies the threshold requirements for discretionary review. Spradley, supra at 701.

This case cannot be said to expressly affect School Board's members duties or powers as those terms are defined in Section 230.23, Florida Statutes. Even less tenuous is the argument that publicly-owned utility companies fall within the narrow purview of Article V, Section 3(b)(3) of the Fla. Const. Because all decisions which review cases involving school boards or other public officials impose upon boards and officials a requirment to follow the law as stated therein is similar situations is no reason to recede from the prior narrow jurisdictional holdings of this Court. See, Spradley, supra at 701.

IV.

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE SUPREME COURT ON THE SAME QUESTIONS OF LAW. RULE 9.939(a)(2)(A)(iv)?

While Petitioner is correct that it is not necessary that district courts of appeal expressly identify a conflicting decision in order to obtain conflict review, it is equally true that the Court will not invoke its discretionary jurisdiction unless the decision appealed from contains "irreconciable statements of law ... which will inevitably cause uncertainty and confusion". Sroczyk v. Fritz, 220 So.2d 908,911 (Fla. 1969). Against this backdrop it becomes apparent that any conflict between the decision sub judice and the two cases cited by Petitioner (neither of which was ever cited by Petitioner in its initial or reply briefs to the District Court) is more illusory than real.

2/ Indeed, Justice England commented that despite the many assertions made, only two cases were accepted by the Court in over a two and one half year period on the jurisdictional grounds urged by the Petitioner. Id at 1283.

Petitioner's attempt to manufacture conflict with this Court's prior decisions in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) is based upon that portion of the Fourth District's decision stating that "impact fees 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". [A-23]. Such a statement, when read in the context of the entire paragraph from which it was excised reveals no actual or direct conflict with the Contractors and Builders Association case. Rather, the Fourth District merely stated the obvious, that impact fees and service availability fees are not within that category of "fees and charges" argued to be exclusively within the purview of the utility authority pursuant to Chapter 71-822, Laws of Florida. The Contractors and Builders Association case, dealing with a municipal ordinance rather than a regulatory statute, never even addressed this issue.

On at least one important issue, the two cases are in complete accord. This Court has stated that "[T]he cost of new facilities shall be borne by new users to the extent new use requires new facilities, but only to that extent". Contractors and Builders Association at 321. Both the trial court and the Fourth District both found that "[T]here is no need for any specific capital expenditure by the Environmental Control District to accommodate the schools 'needs'". [A-11]. In keeping with Contractors and Builders Association and Section 231.26(1), Florida Statutes, the School Board does remain obligated for a connecting link between the school's lines and the southerly connector line.

For reasons previously touched upon, there is also no apparent conflict with the opinion of the Fourth District and this Court's holding in Bunnell, supra. Even the Petitioner grudgingly acknowledges that the decision is "facially supported by the cited case law", i.e. State v. Combs, 388 So.2d 1029 (Fla. 1980) and Santos v. State, 350 So.2d 1284 (Fla. 1980). In fact,

the Fourth District's decision is mandated by this Court's holding in Combs and Santos. The issue of whether Article III, Section 6 requires subsequently codified sections of the Florida Statutes to conform to the single subject requirement was not even directly addressed in Bunnell. Had the Court intended to directly overrule or distinguish Combs or Santos it again seems obvious that it would have done so explicitly rather than by implication.

Finally, we note that regardless of whether Article III, Section 6 applies to subsequently codified sections of the Florida Statutes, the Fourth District expressed the opinion that "the inclusion of Section 217 as part of Chapter 81-223, Laws of 1981, was fairly in conformity with the requirements of Article III, Section 6, of the Fla. Const. [A-13; emphasis supplied]. Hence, not withstanding the opinions and application of Combs and Santos, the session law in question was found to have passed constitutional muster, thereby further obviating the need for conflict review.

CONCLUSION

None of the grounds advanced by Petitioner adequately demonstrated the right, need or necessity for this Court to exercise its discretionary jurisdiction and review the otherwise final decision of the Fourth District Court of Appeals. The decision of the appellate court neither directly or expressly conflicted with any prior decisions of this Court nor do any other reasons exist which would warrant further appellate review. Accordingly, the Respondent, School Board of Palm Beach County, Florida, respectfully requests that this Court decline jurisdiction and dismiss the appeal.

Respectfully submitted,

RICHARD L. OFTEDAL, ESQUIRE
School Board of Palm Beach County
3323 Belvedere Road
Building 503, Room 232
West Palm Beach, FL 33402
(305) 684-5080
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has on this 22 day of December, 1986, been furnished by United States first class mail to W. Jay Hunston, Jr., Post Office Drawer 14127, 11891 U.S. Highway One, North Palm Beach, Florida 33408 and to Gene Sellers, Esquire, Department of Education, Knott Building, Tallahassee, Florida 32301, and Phillip C. Gildan, Esquire, Post Office Box 3704, West Palm Beach, FL 33409.

RICHARD L. OFTEDAL, ESQUIRE