

SUPREME COURT OF FLORIDA

JOSEPH J. JOZWIAK,  
Petitioner,

VS.

ROBERT LEONARD, as Sheriff  
of Suwannee County, and  
SUWANNEE COUNTY, FLORIDA, a  
political subdivision of the  
State of Florida,

Respondents.

---

FILED  
FEB 20 1987  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk  
CASE NO. 69,745

PETITIONER'S REPLY BRIEF

MICHAEL H. LAMBERT, P.A.  
Tanner and Lambert  
630 North Wild Olive Avenue  
Suite A  
Daytona Beach, Florida 32018

Attorney for the Petitioner

INDEX

CITATION OF AUTHORITY.....ii  
SUMMARY OF ARGUMENT.....1  
ARGUMENT.....2  
CERTIFICATE OF SERVICE.....3

CITATION OF AUTHORITY

(CASES CITED)

<u>Avallone v. Board of County Commissioners of</u> <u>Citrus County, _____ So.2d _____ (Fla.</u> <u>1986), Opinion filed July 10, 1986 {11 FLW</u> <u>312} . . . . .</u>	3
<u>Levine v. Dade County School Board, 442 So.2d</u> <u>210 (Fla. 1983) . . . . .</u>	3

(OTHER AUTHORITIES)

Florida Statute Section 286.28 . . . . .	3
Florida Statute Section 30.55 . . . . .	3
Florida Statute Section 768.28 . . . . .	3

SUMMARY OF ARGUMENT

The Brief submitted to this Court by the Respondent Leonard ignores the issue presented to this Court by the First District and alleges facts not contained within the record and which for the first time have been asserted.

## ARGUMENT

The question certified by the First District Court of Appeal to this Court is:

"Does the Supreme Court's holding in Avallone v. Board of County Commissioners of Citrus County, So.2d \_\_\_\_\_ (Fla. 1986) Opinion filed July 10, 1986 {11 FLW 312}, that the purchase of liability insurance pursuant to section 286.28 constitutes a waiver of sovereign immunity up to the limits of insurance coverage negate the necessity of the plaintiff to comply with the notice provisions of section 768.28(6) found by this Court in Burkett v. Calhoun County, 441 So.2d 1108 (Fla. 1st DCA 1983)?"

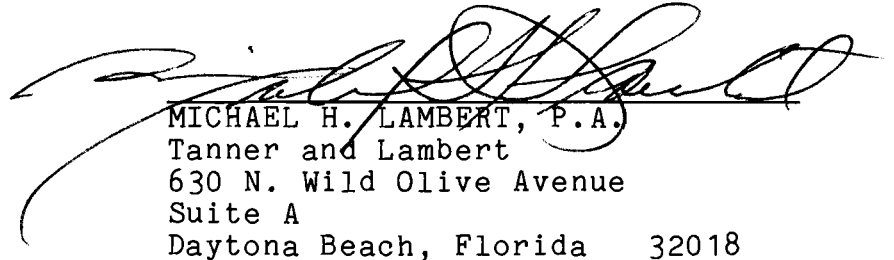
Having reached the final tier of our appellate system, the Respondent now wishes to allege facts never before presented to the Trial Court or the First District Court of Appeal in an effort to have this Court favor him in its ruling. The first two points of the Respondent's three point Brief deal with issues never before presented, nor a part of the record. A determination of the issue presented cannot be based upon these new allegations since they have not been presented in a forum where they can be appropriately and adequately developed beyond the assertion of counsel for the Respondent. It is therefore, the Petitioner's intention to address them no further as they are not part of any of the proceedings that have been provided to this Court.

Point three of the Respondent's Brief further ignores the issue certified to this Court and this Court's opinion in

Avallone v. Board of County Commissioners of Citrus County,  
\_\_\_\_\_ So.2d \_\_\_\_\_ (Fla. 1986), Opinion filed July 10, 1986 {11  
FLW 312}. The Respondent ignores Florida Statute Section  
286.28 and Florida Statute Section 30.55 when he cited to  
this Court the case of Levine v. Dade County School Board,  
442 So.2d 210 (Fla. 1983). The Levine case dealt with an  
action brought pursuant to Florida Statute Section 768.28  
and this Court therefore held that the notice requirement  
contained within that subsection, i.e. 768.28(6) was  
mandatory despite its wisdom or propriety. The issue certified  
to this Court deals with the purchase of liability insurance  
pursuant to Section 286.28 or Section 30.55 and if  
that would, in light of Avallone, negate the necessity of a  
plaintiff to comply with the notice provisions of Section  
768.28(6).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Julius F. Parker, Esquire, Forum Building, 318 North Monroe Street, Tallahassee, Florida 32302, this 19th day of February, A.D., 1987.



MICHAEL H. LAMBERT, P.A.  
Tanner and Lambert  
630 N. Wild Olive Avenue  
Suite A  
Daytona Beach, Florida 32018

Attorney for the Petitioner