IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,956

PALM BEACH COUNTY,

Petitioner,

vs.

TOWN OF PALM BEACH, a municipal corporation; CITY OF ATLANTIS, a municipal corporation; CITY OF BOYNTON BEACH, a municipal corporation; CITY OF DELRAY BEACH, a municipal corporation; TOWN OF GULF STREAM, a municipal corporation; TOWN OF HIGHLAND BEACH, a municipal corporation; TOWN OF JUNO BEACH, a municipal corporation; TOWN OF JUPITER, a municipal corporation; CITY OF LAKE WORTH, a municipal corporation; TOWN OF LANTANA, a municipal corporation; VILLAGE OF NORTH PALM BEACH, a municipal corporation; TOWN OF OCEAN RIDGE, a municipal corporation; CITY OF PALM BEACH GARDENS, a municipal corporation; CITY OF RIVIERA BEACH, a municipal corporation; TOWN OF SOUTH PALM BEACH, a municipal corporation; VILLAGE OF TEQUESTA, a municipal corporation; and CITY OF WEST PALM BEACH, a municipal corporation,

Respondents.

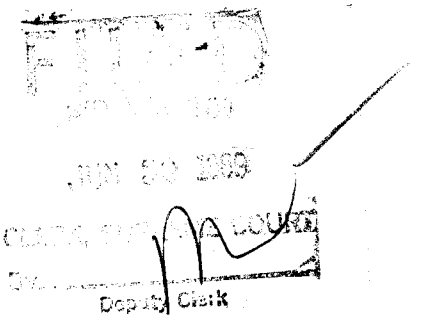

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES (Cont'd)

SUMMARY OF THE ARGUMENT

The original final judgment awarded the cities one-half of the tax monies used by Palm Beach County for roads and bridges during fiscal years 1977-78 through 1983-84, in accordance with the provisions of Section 336.59, Florida Statutes (1983) (repealed effective October 1, 1984). On appeal, the district court held that the county did not violate that statute for the fiscal years prior to 1982-83. However, as to fiscal years 1982-83 and 1983-84, the court held that the county must remit to the cities their share of all ad valorem tax monies expended for road purposes.

> "In the final analysis, a levy designed to be shared among all the municipalities in Palm Beach County, totalling less than $1,200, is absurd. Thus, based on the record before us, we not only agree with the trial judge that the County deliberately 'juggled its budget for the purpose of defeating the mandatory provisions of § 336.59,' but we go further and label the .0001 millage a 'sham' resulting, as a practical matter, in no tax at all. True, the trial judge did not go so far as to actually label the .0001 millage a sham, but his ruling bespoke it as such." Palm Beach County v. Town of Palm Beach, 507 So.2d 128, 130 (Fla.4th DCA 1986) ("Palm Beach I").

Following denial of cross motions for rehearing (507 So.2d at 131), neither party sought review in this Court.

On remand, the trial court entered an amended final judgment for the two fiscal years totaling $803,930, but refused to award post-judgment interest upon the basis of the doctrine of sovereign immunity. On appeal as to that issue, the district court reversed, holding under Section 55.03(1) and the applicable case law that the cities were entitled to post-judgment interest in the circumstances of this case and certified as a question of great public importance the following question:

> IS A GOVERNMENTAL ENTITY IMMUNE FROM THE PAYMENT OF POST JUDGMENT INTEREST UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY? Town of Palm Beach v. Palm Beach County, 537 So.2d 1055, 1056 (Fla.4th DCA 1989) ("Palm Beach II").

Palm Beach County's first attempt to assert the doctrine of sovereign immunity as a complete bar to its payment of ad valorem tax monies required to be shared with the municipalities pursuant to the road and bridge tax statute was rejected by the district court in Palm Beach I. The county's renewed attempt to assert the doctrine, this time as a bar to the payment of post-judgment interest on the award, was again rejected by the district court in Palm Beach II.

This Court should likewise decline to permit the county to avoid payment of post-judgment interest to these

municipalities under the doctrine of sovereign immunity because:

(1) where the state and its agencies are subject to suit under a statute which evidences no contrary statutory interest, they, like all other litigants, are subject to the post-judgment interest requirements of Section 55.03(1), Florida Statutes (1987), and

(2) where the doctrine of sovereign immunity has been held inapplicable to the underlying claim in a case, the law of the case doctrine prevents it from being reasserted as a bar to post-judgment interest.

ARGUMENT

I.

The Cities Are Entitled To Recover Post-Judgment Interest from Palm Beach County Pursuant to Section 55.03(1), Florida Statutes (1987).

Section 55.03(1), Florida Statutes (1987), provides, without any limitations relevant to this case, that "[a] judgment or decree . . . shall bear interest at the rate of 12 percent a year." Florida courts have uniformly recognized that, in the absence of a specific statute evidencing a contrary statutory intent, once the state and its agencies have been found subject to suit, this statute requires them to pay interest following entry of a final judgment.

In Roberts v. Askew, 260 So.2d 492 (Fla.1972), this Court addressed the issue of whether interest could be assessed against the Board of Trustees of the Internal Improvement Trust Fund. Roberts concerned a quiet title action in which the petitioners obtained a post-judgment award which the Board refused to pay. In ordering the payment of the judgment, together with interest at the statutory rate, this Court noted that:

> "Fla.Stat. § 55.03, F.S.A., provides that all judgments and decrees shall bear interest at the [statutory rate]. This statute and other applicable statutes make no exemption in favor of the Trustees from the obligation to pay

interest on a judgment rendered against the Trustees." Id. at 495.

The Roberts court cited prior decisions permitting the award of post-judgment interest against the state, including Treadway v. Terrell, 117 Fla.838, 158 So.512 (1935). In that case, the Court held that "in the absence of a contrary statutory intent," it will be assumed that a waiver of immunity from suit also constitutes a waiver of the right to recover interest (158 So.2d at 519). In Treadway, the plaintiffs relied upon a statute which authorized suit but was silent as to interest.

Likewise here, the statute under which the action was brought, Section 336.59, Florida Statutes (1983), does not contain a "contrary statutory intent" with respect to payment of interest, so as to shield the county from the payment of interest. Thus, under the holding in Treadway and Roberts, the cities, in the absence of a contrary statutory intent, are entitled to receive post-judgment interest from the date of the entry of the original judgment until the date of payment.

Two of the decisions heavily relied upon by Palm Beach County, on analysis, support the cities' contention that in the absence of a more specific statute, Section 55.03(1) requires the state to pay post-judgment interest where suit has otherwise been authorized.

In Florida Livestock Board v. Gladden, 86 So.2d 812 (Fla.1956) (County's Initial Brief at 9), the question at issue was whether the Florida Livestock Board, a state agency, was liable for interest on a judgment for destruction of diseased animals. Citing Treadway, Justice Thornal for the Court held that because a specific statute, Section 585.03, authorized the Board "to sue and be sued" without restriction on the "amount of the recovery" and without limitation of interest,

> "the authorizing statute may by reasonable intendment be construed to permit the award of interest against the state agency as a legal incident to the judgment even though the payment of interest by the state is not expressly provided by the statute." 86 So.2d at 813.

Palm Beach County also relies on Berek v. Metropolitan Dade County, 422 So.2d 838 (Fla.1982), a tort case brought under Section 768.28, a statute which waives sovereign immunity "only up to the maximum liability of $50,000." (422 So.2d at 840.) In refusing to permit post-judgment interest (or costs or the additional damages awarded by the jury), this Court clearly emphasized the result was based on the nature of the limited waiver:

> "The maximum amount of the state's liability to any one claimant arising out of any one incident or occurrence, therefore, is $50,000, including damages, costs and post-judgment interest . . . .

> ". . . If the damages are less than $50,000, then, of course, the post-judgment interest is recoverable from the state up to the $50,000 limit on total damages, costs, and interest." 422 So.2d at 840.

Thus, where the statute authorizing suit is a limited waiver, as in Berek, that limitation will be respected (whether applicable to the amount of damages or interest); however, where, as in Gladden, Treadwell, or here, the statute authorizing suit contains no limitation on judgment or reference to interest, the county, like any other litigant, is subject to statutory post-judgment interest.

The county relies upon several taxpayer actions in urging the Court not to permit the recovery of post-judgment interest against the state, including Mailman v. Green, 111 So.2d 267 (Fla.1959); Department of Revenue v. Goembel, 382 So.2d 783 (Fla.5th DCA 1980) (County's Initial Brief at 24-26). These cases involve the recoverability of interest from the date of the original tax payment to the time of the final judgment (i.e., prejudgment interest), and, therefore, have no application to this case.[1] In Mailman, the court held that taxpayers are

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[1] The cities did not below claim, and they are not here seeking, prejudgment interest from the dates the tax revenues should have been remitted to the cities. See Broward County v. Finlayson, 533 So.2d 817 (Fla.4th DCA 1988), review granted, ___ So.2d ___ 1989 WL 53139 (Fla.) (Fla. May 11, 1989) (TITLE, No.73475).

not entitled to pre-judgment interest on disputed tax payments. Similarly, in Goembel, the court refused to grant interest on a tax refund resulting from a lower liability classification. However, neither of these cases addressed the issue of whether the taxpayer could receive interest on the judgment, once it had been entered.

This critical distinction was noted by the Fifth District in Lewis v. Andersen, 382 So.2d 1343 (Fla.5th DCA 1980). The court there held that the award of interest on a tax refund from the date of payment to the date of judgment was erroneous. However, the court went on to note that an award of statutory "interest on the judgment appealed from in this case from the date of the judgment" would have been authorized under Section 55.03. Id. at 1343 n.1. Similarly, in Smith v. University Presbyterian Homes, Inc., 390 So.2d 79 (Fla.2d DCA 1980), aff'd, 408 So.2d 1039 (Fla.1982), the tax collector successfully challenged, on the basis of Mailman and its progeny, the awarding of pre-judgment interest to the taxpayer, but did not even challenge the award of interest from the date of the final judgment. 390 So.2d at 80.

Thus, in the absence of a contrary statutory intent in the statute on which the action was based (Fla.Stat. § 336.59, repealed effective October 1, 1984), the cities are entitled to post-judgment interest from the date of

the final judgment until paid, pursuant to the provisions of Section 55.031(1), Florida Statutes (1987).

II.

The Doctrine of Sovereign Immunity Has Previously Been Held Inapplicable to the Underlying Claim and thus Cannot Bar the Payment of Post-Judgment Interest.

In an attempt to avoid payment of the original claim, Palm Beach County asserted sovereign immunity as a complete bar. That defense was rejected by the trial court, and the district court correctly held that the doctrine of sovereign immunity did not insulate the county from suit and possible judgment in this case. Palm Beach County v. Town of Palm Beach, 507 So.2d 128, 131 (Fla.4th DCA 1986) ("[w]e find no merit in the appellant's assertion that the doctrine of sovereign immunity is applicable to this case"). The county did not seek review in this Court. The holding on that issue is consistent with the prior decision of this Court in a road and bridge tax decision involving the predecessor statute to the one relied upon in this case, Dade County v. City of Miami, 77 Fla.786, 82 So.354 (1919).

Under the doctrine of the law of the case, questions settled on an earlier appeal "become 'the law of the case' and . . . are no longer open to question on a subsequent

appeal." Dade County Classroom Teachers' Ass'n v. Rubin, 238 So.2d 284, 289 (Fla.1970), cert.denied, 400 U.S.1009 (1971). Accord Airvac, Inc. v. Ranger Insurance Co., 330 So.2d 467, 469 (Fla.1976) ("Enunciations in a prior appellate decision upon the same case becomes [sic] the law governing that case . . . ."); State v. Stabile, 443 So.2d 398, 400 (Fla.4th DCA 1984) ["The law of the case precludes relitigation of all issues necessarily ruled upon by the court . . . ." (emphasis in original)]. See also Barry Hinnant, Inc., v. Spottswood, 481 So.2d 80, 82 (Fla. 1st DCA 1986) (the doctrine of the law of the case requires that questions of law decided on an appeal "must govern the case in the same court and the trial court throughout all subsequent stages of the proceeding, whether correct on general principles or not, so long as the facts on which the decision was predicated continue to be the facts in the case").

As it applies to this case, then, the law of the case doctrine establishes that sovereign immunity is inapplicable to the county. The district court's prior holding that sovereign immunity did not bar the recovery of a money judgment for damages from the county and the county's failure to seek further review from that decision in this Court, now prevents the county from asserting that

sovereign immunity bars the recovery of interest on that judgment.

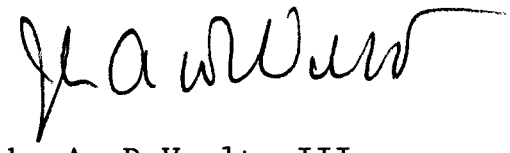
The county also attempts to appeal to the equitable conscience of this Court in an effort to avoid paying post-judgment interest (County's Initial Brief at 18). This case concerns the statutory interpretation of Section 55.03(1), Florida Statutes, not any equitable principles. Furthermore, if equity were applicable to this case, equity considerations clearly favor the cities' recovery of interest. Judge Letts, on behalf of the district court, directly disagreed with the county's assertion that this case concerns "two innocent parties" (County's Initial Brief at 22) by stating not only did the county juggle its budget to avoid the mandatory provisions of Section 336.59, but it also effectuated a "sham" to deprive the cities of those revenues. (507 So.2d at 130.)

CONCLUSION

For the foregoing reasons, the Court should answer the certified question in the negative, stating that a governmental entity subject to suit under a statute which does not express a contrary intent is not immune from the

payment of post-judgment interest, and affirm the opinion below.

Respectfully submitted,



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