

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

CASE NO. ~~90~~ 76,090

JUN 11 1990

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

DICK LOCKE,  
Petitioner,

v.

PAUL M. HAWKES,  
Respondent.

**PETITIONER'S JURISDICTIONAL BRIEF**

On Review from the District Court  
of Appeal, Fifth District  
State of Florida

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STATEMENT OF THE CASE AND OF THE FACTS

This action arose in the context of the unsuccessful effort of the Respondent, Paul M. Hawkes, to unseat the incumbent, Petitioner Dick Locke, in the November, 1988 general election in House of Representatives District 26. Prior to the election, Hawkes filed suit invoking the provisions of Chapter 119, Florida Statutes, seeking to compel the production of records relating to Locke's district office allotments received pursuant to Section 11.13(4), Florida Statutes. Locke refused to recognize the applicability of Chapter 119 to the Florida Legislature; instead, Locke produced records pursuant to legislative policy (consisting of 425 pages of the Record on Appeal) reflecting the receipt and deposit of each allowance received by him pursuant to Section 11.13(4), Florida Statutes, and each item of expenditure. Thereafter, Locke filed a Motion To Dismiss Hawkes' Chapter 119 petition.

Following the general election, Hawkes sought to compel the deposition testimony of Locke and Locke's attendance before the trial court. Locke responded by filing a Motion For Protective Order.

Locke's Motion To Dismiss was argued in the circuit court on January 31, 1989. On March 2, 1989, the trial judge entered his final order dismissing Hawkes' action on the ground that the court

was without subject matter jurisdiction under the separation of powers doctrine and deciding as a matter of statutory interpretation that Chapter 119, Florida Statutes, does not apply to the legislative branch of Florida government. (Appendix 1) An appeal was filed to the Fifth District Court of Appeal and on March 8, 1990, the district court reversed the order of the trial court. The district court held that the separation of powers doctrine was not applicable in this case and that as a matter of statutory construction Chapter 119, Florida Statutes, applies to the Florida Legislature. (Appendix 2)

Rehearing was denied on April 30, 1990 and the Petitioner's Notice To Invoke the Discretionary Jurisdiction of this Court was timely filed on May 30, 1990. No factual issues were decided by either court below and no factual issues are in dispute on appeal.

#### SUMMARY OF ARGUMENT

The district court of appeal held in unequivocal terms that Chapter 119, Florida Statutes, applies to the Florida Legislature. The court did so notwithstanding that a rule of the Florida House of Representatives governs records in a manner different from and incompatible with the manner in which public records are governed under Chapter 119. Accordingly, the decision of the district court directly and expressly affects each and every member of the Florida Legislature - a class of constitutional officers.

Further, the District Court of Appeal, by asserting

jurisdiction, determined that the constitutional doctrine of separation of powers had no applicability to this case. The holding of the district court cannot be reconciled with the previous decision of this Court in Moffitt v. Willis, 459 So.2d 1018 (Fla. 1984), where, in the context of legislative meetings, it was held that the judiciary was without jurisdiction to invade the legislative province to make, interpret and enforce its internal procedures. Thus, the decision of the district court expressly and directly conflicts with a previous decision of this Court.

#### JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly affects a class of constitutional officers and which expressly and directly conflicts with a decision of the Supreme Court on the same point of law. Article V, Section 3(b)(3) Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iii), (iv).

#### ARGUMENT

I. THE DECISION OF THE DISTRICT COURT EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.

The district court of appeal stated broadly that Chapter 119

"includes members of the legislature". As such, each and every member of the legislature is expressly and directly affected by the decision. The legislature constitutes a class of constitutional officers by virtue of Article III, Section 1, Florida Constitution which provides:

The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district.

Accordingly, the Court is possessed of jurisdiction and the Petitioner urges the Court to exercise its jurisdiction because of the far-reaching constitutional effect of the district court's decision.

II. THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN MOFFITT V. WILLIS, 459 So.2d 1018 (Fla. 1984).

In Moffitt v. Willis, 459 So.2d 1018 (Fla. 1984), this Court held that it was without jurisdiction, by reason of the separation of powers doctrine, to involve itself in a dispute relating to assertions that the legislature had violated various constitutional and statutory provisions regarding legislative meetings. In Moffitt v. Willis the Court reasoned that the doctrine of separation of powers gives exclusive power to the legislature to govern its internal procedures and that it would be improper for the Court to insert itself into the internal activities of the

legislature. The Court was properly unwilling to undertake even the threshold inquiry into whether a violation of constitutional or statutory provisions had taken place:

The petitioners [legislators] have never conceded that the meetings complained of were secret legislative committee meetings. In our view, a judicial determination of this matter hinges on the meaning of legislative committee meeting and what activity constitutes such a meeting. At this point, the judiciary comes into head-to-head conflict with the legislative rule-making prerogative.  
459 So.2d 1021.

The district court in this case exercised no such restraint. It disposed of the separation of powers doctrine as articulated in Moffitt v. Willis in two sentences:

Under the separation of powers provision of the constitution of the State of Florida, Article II, Section 3, there may be a problem when the legislature enacts a statute affecting the executive branch or the judicial branch of government but there can be no separation of powers problem as to the legislature enacting a statute that applies to the legislature.

It is emphasized that this case involves the application of the public records act, Chapter 119, Florida Statutes, to the records in the office of a particular member of a particular legislature, and not to the internal records of the legislature itself, and therefore, this case does not present the issue that was involved in Moffitt v. Willis, 459 So.2d 1018 (Fla. 1989). [sic]

...  
[Footnote 1] See, e.g., In re Advisory Opinion Concerning the Applicablity [sic] of Ch. 119, Florida Statutes, 398 So.2d 466 (Fla. 1981).

Page 3 of district court opinion.

Chapter 119, Florida Statutes, makes government records open for inspection except for statutorily designated exemptions. Rule 1.11 of the House of Representatives entitled "Legislative Records"



takes a different approach. The House Rule enumerates specifically which papers and records developed and received in the course of legislative business are available for public inspection. Statutory regulation of records addressed in Chapter 119 is inapposite to and incompatible with the legislative procedures governing records pursuant to House Rule 1.11.

In drawing its conclusion that it had jurisdiction, the district court had to either find that the legislative rules and policies on legislative records could be harmonized with the statutory scheme or it had to find that the incompatibility of the legislative approach was immaterial to the meaning of the statute and to the jurisdiction of the court. Either path involves an invasion of the legislative prerogative. The district court ventured where Moffitt v. Willis said the courts may not venture.

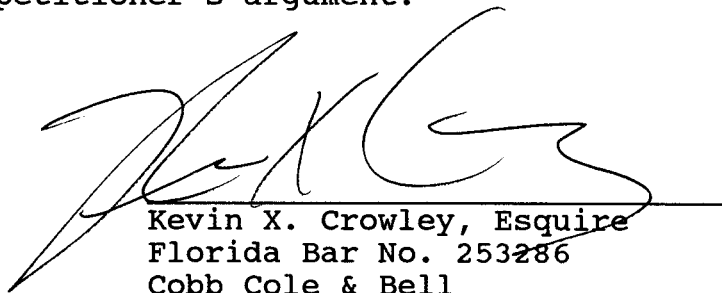
It is, of course, unnecessary for conflict jurisdiction that the court of appeal state that its decision conflicts with a decision of the Supreme Court. Ford Motor Company v. Kikis, 401 So.2d 1341 (Fla. 1981), on remand 405 So.2d 1061 (1981). It is sufficient that the court of appeal address the same legal principles and in this case, the court of appeal addressed the separation of powers issue and established a point of law contrary to Moffitt v. Willis. See The Florida Star v. B. J. F., 530 So.2d 286 (Fla. 1988).

This Court correctly defined the limits of its jurisdiction in Moffitt v. Willis. The Court should accept discretionary review in this case to reaffirm the legislature's province to govern its

internal activities. In the absence of a Supreme Court resolution of the conflict, incongruity prevails. Under Moffitt v. Willis, meetings of legislators are governed by legislative rule and policy in contrast to a statutory scheme (Chapter 286, Florida Statutes) which governs other governmental meetings. Under the district court's decision, the legislative rules and policies which govern legislative papers would be nullified in favor of an incompatible statutory scheme.

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Valerie W. Evans, Esquire, 1808 Kalurna Court, Orlando, Florida 32806 and to Charles P. Horn, Esquire, Hawkes & Horn, 5641 W. Gulf To Lake Highway, Crystal River, Florida 32629, by United States Mail, on this 11th day of June, 1990.



Kevin X. Crowley