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CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Case No. 79,839
DCA Case No. 91-01332

BOARD OF COUNTY COMMISSIONERS,
PINELLAS COUNTY, FLORIDA,

Petitioner,

v.

TOM F. SAWYER,

Respondent.

Discretionary Review from the
Second District Court of Appeals

AMICUS CURIAE BRIEF OF BOARD OF COUNTY
COMMISSIONERS OF LEON COUNTY

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PRELIMINARY STATEMENT

The Board of County Commissioners of Leon County by and through its undersigned attorneys, files this brief as Amicus Curiae pursuant to this Court's Order of October 23, 1992. Citations to the appendix will be made by the letter "A" and the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Leon County adopts the statement of the case and facts as stated in the Petitioner, the Board of County Commissioners of Pinellas County's brief and incorporate the same herein by reference.

SUMMARY OF ARGUMENT

The sole issue before this Court is whether the Second District Court of Appeals properly found that an acquitted criminal defendant's investigative costs are taxable costs subject to reimbursement by the County under § 939.06, Florida Statutes (1989). Leon County maintains that, by arriving at this holding, the Second District Court has engaged in the process of judicial legislation since investigative costs have not been specifically mandated by the legislature as reimbursable and because this conclusion conflicts with the more restrictive interpretations accorded § 939.06, Florida Statutes, by other Florida Courts. By applying the concept of mutuality, the Second District Court has improperly attempted to remedy what it considers to be a harsh effect of a statute and has produced a result never intended by the Florida Legislature.

ARGUMENT

THE SECOND DISTRICT COURT'S HOLDING THAT INVESTIGATIVE COSTS ARE TAXABLE COSTS IS JUDICIAL LEGISLATION

In the instant case, the Second District Court of Appeals held that investigative costs of an acquitted defendant are taxable costs within the meaning of § 939.06, Florida Statutes (1989) and are, therefore, reimbursable costs by Pinellas County. By so holding, Leon County maintains that the Second District Court has engaged in the process of judicial legislation. Florida Statutes, § 939.06 (1991) provides in pertinent part as follows:

"If he [an acquitted or discharged defendant] shall have paid any taxable costs in the case, the clerk or judge shall give him a certificate of payment of such costs, with the items thereof, which when audited and approved according to law, shall be refunded to him by the County."

In order to fully comprehend why the Court's finding that legislative costs are taxable costs results in judicial legislation, one must recognize the historical milieu within which this provision has evolved.

"Costs as such in criminal cases were unknown to common law. As a consequence, recovery and allowance of such costs rests entirely on statutory provisions and no right to or liability for costs exists in the absence of statutory authorization. Wood v. City of Jacksonville, 248 So. 2d 176, 177 (Fla. 1st DCA 1971) (emphasis added).

Thus, the court's interpretation of this provision should not arise in a vacuum, and the court is extremely limited in the construction it can give this provision.

Investigative costs, unlike witness fees and court reporter costs, have not been traditionally awarded by Florida courts. In

fact, both the Third and Fifth District Courts of Appeal have specifically held that investigative costs are not taxable costs subject to reimbursement by the County. Osceola County v. Otte, 530 So. 2d 478 (Fla. 5th DCA 1988); Benitez v. State, 350 So. 2d 1100 (Fla. 3rd DCA 1977). Recognizing the conflict in the districts created by the instant order, the Second District Court states on page 4 of the order that "Benitez was decided before the 1987 amendment to section 939.01, and Osceola County followed Benitez in 1988 without expressed consideration of that amendment."

(A-4) Leon County would maintain that both district courts recognized their inability to place an interpretation on a statute which was not specified by the legislature nor warranted by prior case law interpretations of the term "taxable costs." In Osceola County, the Court in rejecting investigative costs as taxable costs specifically stated and recognized that "the courts have limited the items which qualify as taxable costs under statute." Osceola County v. Otte, 530 So. 2d 478, 478 (Fla. 5th DCA 1988).

On page three of the instant order, the Second District Court states "that the legislature has not changed section 939.06 since the 1974 opinion of this Court in Doran may be taken to indicate legislative intent in approval of the Doran ruling . . ." (A-3) Leon County maintains, rather, that the failure of the legislature to amend section 939.06 since 1974 is indicative of legislative agreement with the limited manner in which courts had interpreted taxable costs and its specific agreement with court interpretations that investigative costs are not taxable costs within the meaning

of Section 939.06, Florida Statutes (1991).

By using the concept of mutuality, the Second District Court attempts to alleviate what it believes to be the harshness of section 939.06 by determining that since section 939.01, as amended in 1987, provides for the taxation of costs against convicted criminal defendants of investigative costs incurred by law enforcement agencies, it would follow that investigative costs are also taxable within the meaning of section 939.06. Courts have no authority to alleviate the harshness of laws where such relief is not provided for in statutes. Fleming v. Hillsborough County, 107 So. 2d 163, 166 (Fla. 2d DCA 1958) Even more to the point, a court applies the law as it finds it and has no authority to amend or change the law or enact law in accordance with its views. Webb v. Hill, 75 So. 2d 596, 605 (Fla. 1954). By use of the concept of mutuality, the Second District Court expanded the definition of taxable costs beyond what was intended by the legislature and previously recognized by the courts of Florida.


The Second District Court states on page 4 of its order that, if the legislature had not intended for investigative costs to be taxable costs, it would have provided otherwise especially after the Powell decision. (A-4) A more accurate assessment of legislative intent would seem to be that if the legislature had intended to provide that investigative expenses were reimbursable to an acquitted defendant, it would have so provided. It is well settled law that the judiciary cannot compel the legislature to exercise a purely legislative prerogative. Dade County Classroom

Teacher's Association, Inc. v. Legislature, 269 So. 2d 684, 686 (Fla. 1972). By its order, it would appear that the Second District Court is attempting to compel the legislature to mandate that counties reimburse investigative costs of acquitted or discharged persons in criminal cases. The legislature has not so provided nor have other Florida courts found such an interpretation of taxable costs to be a reasonable one.

Conclusion

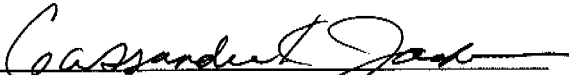
In agreement with the Petitioner, the Board of County Commissioners of Pinellas County, the Second District stands alone in its reasoning, interpretation and conclusion that investigative costs are taxable costs under Section 939.06, Florida Statutes (1991). The Second District Court, by arriving at such a conclusion, has engaged in the process of judicial legislation and, thus, imposed without a legislative mandate unknown and staggering costs on Pinellas County.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to James T. Miller, Esquire, 407 Duval County Courthouse, Jacksonville, Florida 32202; Sondra Goldenfarb, Esquire, 2454 McMullen Booth Road, Suite 501-A, Clearwater, Florida 34619; Susan Daly, Esquire, Office of County Attorney, 315 Court Street, Clearwater, Florida 34616; Cory J. Ciklin, Esquire, 515 North Flagler Drive, Suite 19, West Palm Beach, Florida 33401; and Andrea Karns Hoffman, Broward County Attorney's Office, 115 South Andrews Avenue, Suite 423, Ft. Lauderdale, Florida 33301; this 6th day of November, 1992.


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