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D.A. 5-7-93

IN THE SUPREME COURT OF FLORIDA

Case No. 80,158

FILED

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CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, etc., et al.

Petitioner,

vs.

FLORIDA DEPARTMENT OF COMMUNITY
AFFAIRS,

Respondent.

_____ /

AMENDED BRIEF OF ORANGE COUNTY, FLORIDA
AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTRODUCTION

This Brief of Amicus Curiae is filed in support of the Petitioner, Board of County Commissioners of Hernando County, by the Board of County Commissioners of Orange County, Florida.

The following terms will be used in this brief to refer to the entities noted. "Petitioner" refers to the Board of County Commissioners of Hernando County. The Amicus Curiae in support of Petitioner will be referred to as "Orange County." The references to the Appendix of Orange County will be cited as "OA- " followed by the appropriate page number.

STATEMENT OF THE CASE AND THE FACTS

The *amicus curiae* filing this Brief accepts and incorporates the Statement of the Case and Facts contained in Petitioner's Brief on the Merits, and for purposes of the Brief of Amicus Curiae, offers the following additional facts:

Chapter 80-555, Laws of Florida, authorized the creation of the Orange County Library District, subject to the approving vote of electors residing within the proposed district and within the corporate limits of the City of Orlando. (OA-1) On September 9, 1980, a special referendum election was held whereby the majority of eligible voters approved the creation of the Orange County Library District and approved the levy of an ad valorem tax for operational expenses and for debt service on Library Revenue Bonds.

The Orange County Library District ("Library District") is comprised of all areas of Orange County, Florida, except the incorporated areas of the Cities of Winter Park and Maitland.

Prior to passage of the Uniform Special District Accountability Act of 1989, Chapter 89-169, Laws of Florida, the Library District was classified as an "independent" special district for purposes of Chapter 200, Florida Statutes. The millage levied by the Library District was not included as part of the general county-wide millage of Orange County. Subsequent to the passage of Chapter 89-169, the Library

District was classified as a "dependent" special district by the Florida Department of Community Affairs due to the fact that the governing board of the Library District was composed entirely of the members of the Board of County Commissioners.

Concern was immediately raised by both Orange County and Library District officials over the effect the inclusion of the Library District millage with the Orange County millage would have, particularly in view of the voters decision to keep the functions and millage separate. The Library District decided to try to amend the Special Act (Chapter 80-555, Laws of Florida) to change its status to an "independent" district.

The Library District filed a Petition for Declaratory Statement with the Department of Community Affairs in November 1990, seeking a determination as to whether certain proposed amendments to the Special Act would result in a determination from the Department that the Library District was an "independent" district pursuant to Section 189.403, Florida Statutes. (OA-9)

The Department of Community Affairs issued a Declaratory Statement on December 24, 1990, finding that the proposed amendment to Chapter 80-555, Laws of Florida, (the Special Act) if enacted by the Legislature, would render the Library District "independent" pursuant to Section 189.403, Florida Statutes. (OA-13)

In 1991, the Library District persuaded the Florida Legislature to pass a special act (Chapter 91-372, Laws of Florida) for the sole purpose of obtaining a re-classification of the Library District as an independent special District. (OA-18) Chapter 91-372 amended Section 2 of Chapter 80-555 to provide for an additional member of the governing board of the Library District to be appointed by the City Council of the City of Orlando. That amendment acted to remove the Library District from the criteria set forth in Section 189.403(2)(a), Florida Statutes.

As a result of passage of Chapter 91-372, Laws of Florida, the Department of Community Affairs re-classified the Library District from a "dependent" to an "independent" special district. (OA-24)

SUMMARY OF ARGUMENT

The Florida Legislature, through passage of Chapter 89-169, Laws of Florida, effectively denied the citizens and voters within the Orange County Library District of the right to create and operate an independent library system and to support said library system with ad valorem revenues voted and levied independently from the general ad valorem millage of Orange County, Florida.

Chapter 89-169, Laws of Florida, operates as an unconstitutional impairment of the ad valorem taxing power granted counties under Article VII, Section 9, of the Florida Constitution.

ARGUMENT

POINT I

THE AD VALOREM MILLAGE LIMITATIONS APPLICABLE TO COUNTIES AND DEPENDENT SPECIAL DISTRICTS IN SECTION 200.071, FLORIDA STATUTES, ARE AN UNCONSTITUTIONAL DENIAL OR IMPAIRMENT OF THE AD VALOREM TAXING POWER GRANTED COUNTIES DIRECTLY UNDER ARTICLE VII, SECTION 9, THE FLORIDA CONSTITUTION.

It is unrealistic in this day of tight budgets to believe that a Florida county can reduce its county-wide millage without an overwhelming impact on the level of services provided to its citizens. The classification scheme created by the Legislature pursuant to Chapter 89-169, Laws of Florida, however, had the effect of doing just that. The Act re-classified many special districts heretofore considered "independent" into "dependent" districts. The immediate effect on counties in Florida was the same as if the Legislature unilaterally amended the Florida Constitution to reduce the overall millage cap available to counties under Article VII, Section 9.

When voters approve an ad valorem millage for a special district, it is with the clear understanding that this millage will be separate from, and in addition to, any other millages currently levied by a local government. That was the case with the Fire Districts and the Recreation District located within Petitioner's jurisdiction which are the subject matter of this

appeal and was certainly the situation with the Orange County Library District.

The reasons for creation of the Library District were both political and fiscal. They are spelled out clearly in the letters to Representative Fred Jones from Mayor Bill Frederick of the City of Orlando and Linda W. Chapin, Chairman of Orange County, but in summary, the residents of the City of Orlando did not wish the public library to become a department of Orange County government. (OA-25) The residents of Winter Park and Maitland wanted none of their tax dollars going for library services. Thus, to solve the political problems with the City of Orlando, and the perceived "double taxation" problems with Winter Park and Maitland, a special district independent from Orlando and Orange County was formed and approved by the voters.

The Legislature, through the passage of Chapter 89-169, has effectively denied the elected leaders and the voters within the Orange County Library District the right to create and operate a library system of their own choosing.

We so often hear of the failure of local governments to interact and communicate effectively with one another. The Library District is an example of effective cooperation between the municipalities of Orange County and Orange County itself. It should not be thwarted by a poor revision of a Florida Statute based on an incorrect interpretation of the Constitution.

Orange County, the Library District and the City of Orlando, with the cooperation of the Florida Department of Community Affairs, were able to overcome the problems created by Chapter 89-169 by obtaining an amendment to the Library's Charter through the passage of Chapter 91-372, Laws of Florida. To require each affected special district and local government to seek amendments to its creating special act each time Section 189.403, Florida Statutes, is amended is an unreasonable expectation.

Petitioner has set forth ample grounds in its Brief on the Merits as to why Sections 189.403 and 200.071, Florida Statutes, operate as an unconstitutional impairment of the ad valorem taxing power granted counties under Article VII, Section 9, of the Florida Constitution. Orange County joins in Petitioner's arguments.

CONCLUSION

The situation encountered by Hernando County with respect to certain of its "dependent" special districts is not an isolated one. Orange County experienced a similar budgetary crisis involving the Orange County Library District.

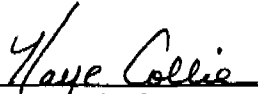
Orange County asks this Court to declare the Uniform Special District Accountability Act and Section 200.071, Florida Statutes, unconstitutional on their face and as applied in the instant cases.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Brief of Orange County, Florida as Amicus Curiae in Support of Petitioner, has been furnished by U.S. Mail to the parties on the Service List, this 18th day of March, 1993.



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