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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA DEPARTMENT OF EDUCATION,

Appellant,

v. Case No. 80,286

KAY E. GLASSER, et al.,

Appellees.
_____/

Appeal from the District Court of Appeal
Second District of Florida

ANSWER BRIEF OF APPELLEES, KAY E. GLASSER, JANICE K. MEE, NANCY C. DETERT, E. LEE BYRON, and M. JANE HARTMAN, individually and as members of the School Board of Sarasota County, Florida

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III. STATEMENT OF CASE AND FACTS.

In its statement of the case and facts, Appellant, State of Florida Department of Education ("DOE"), liberally intersperses argument with its recitation of the facts and, more importantly, omits several pertinent facts which are relevant to the inquiry before the Court. For these reasons appellees submit their own brief statement of the case and facts.

Appellees, members of The School Board of Sarasota County, Florida, individually and as members of the School Board (collectively the "School Board"), filed suit in Sarasota County against Defendant Barbara Ford-Coates, Tax Collector of Sarasota County. (R.1-9) The School Board sought declaratory relief concerning the constitutionality of Section 236.25(1), Florida Statutes, and Section 1, Item 509 of Chapter 91-193, Laws of Florida, the 1991-92 General Appropriations Act (the "Appropriations Act"). Pursuant to Section 86.091, Florida Statutes, State Attorney Earl W. Moreland, Jr., was furnished a copy of the School Board's complaint by hand delivery on the same day the complaint was filed. (S.R. 1)

In response to the complaint, Defendant Barbara Ford-Coates filed an answer denying the School Board's allegations concerning the invalidity of Section 236.25(1) and Section 1, Item 509 of the Appropriations Act. (R.10-12) The parties agreed to an expedited final hearing.[1] (R.13-15) The School Board notified the Attorney

[1] The parties agreed to an expedited hearing because of the Truth in Millage ("TRIM") requirements of Chapter 200, Florida Statutes.

General, via telecopy, that an expedited final hearing on the matter was to be held on June 27, 1991. (DOE's Brief at 1) The Attorney General filed a Notice of Appearance and, in fact, appeared at the final hearing on June 27, 1991. (T.3) At the hearing the Attorney General moved for dismissal or, in the alternative, postponement of the final hearing. In support of his motion, the Attorney General filed the affidavit of William C. Golden, Deputy Commissioner, Florida Department of Education. (R.33-35) The trial court denied the Attorney General's motion. (T.12) The Attorney General actively participated in the proceedings below. (T.3-52)

At hearing, Dr. Charles W. Fowler, Superintendent of Schools, testified without contradiction that if the offending portions of Section 236.25(1) and Section 1, Item 509 of the Appropriations Act were not stricken, the School Board would face larger class sizes, greater numbers of students assigned to support personnel and greater difficulty in offering quality programs. (T.29-30) Dr. Fowler also testified that as a result of the Legislature's actions, the School Board has had to eliminate programs such as the academic olympics, the science fair, the Spanish Pointe local history study, the Crowley Nature Center, the Carefree Learner boat on Sarasota Bay, as well as student attendance at Florida West Coast Symphony concerts, opera concerts, and Asolo Theater productions. (T.30) In addition to the reduction of programs, the School Board has been negatively impacted in the area of availability of textbooks, library books and instructional

materials. (T.31) Dr. Fowler testified that the financial difficulties experienced by the School Board were, in large part, created by the Legislature's usurpation of local control over educational funding. (T.24-25)

At the conclusion of the final hearing, the trial court, the Honorable Gilbert A. Smith, entered an order finding: (1) Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act unconstitutional to the extent that each enactment limits the right of the School Board to assess nonvoted discretionary millage within the 10 mill constitutional limit; (2) Section 236.25(1) unconstitutional to the extent that it attempts to inject substantive law into an appropriations bill in violation of Article III, section 12 of the Florida Constitution; and (3) Section 1, Item 509 of the Appropriations Act unconstitutional to the extent that it amends substantive law in violation of Article III, section 12 of the Florida Constitution, and to the extent that it amends Section 236.25(1) by reference to its title or number only in violation of Article III, section 6 of the Florida Constitution. The trial court ordered Defendant Barbara Ford-Coates to collect and remit to the School Board taxes assessed against the nonvoted discretionary millage as set by the School Board pursuant to its constitutional right without regard to Section 236.25(1) or Section 1, Item 509 of the Appropriations Act. (R.58-65)

On July 8, 1991, the Attorney General filed a motion for rehearing to afford the State Board of Education, the entity the

Attorney General then claimed was the proper defendant, the opportunity to be heard and DOE moved to intervene on July 9, 1991. (R.36-38; 39-43) On July 16, 1991, the parties stipulated to the intervention of DOE and the trial court entered an order permitting DOE to intervene. (R.44-45) On July 19, 1991, the Attorney General withdrew his motion for rehearing and clarification. (R.46-47) That same day the Attorney General, representing DOE, filed a notice of appeal to the Second District Court of Appeal. (R.66-67) On July 25, 1991, the School Board filed a motion to vacate the automatic stay. (R.48-51) On July 31, 1991, the trial court granted the School Board's motion and on August 1, 1991, the trial court entered an amended order vacating the stay, and directing the School Board to deposit all nonvoted discretionary millage collected in excess of .510 mills into a separate reserve account until final resolution of the issues herein. (R.53-54; 55-56)

On July 31, 1992, following briefing and oral argument, the Second District Court of Appeal filed an extensive per curiam opinion affirming the trial court's ruling. (A.9-23) In its opinion the district court explicitly found Section 236.25(1), Florida Statutes, and Item 509 of the Appropriations Act unconstitutional to the extent those laws attempt to restrict the right of the school board to levy ad valorem taxes within the ten mill constitutional limit. (A.22)

DOE filed a timely notice of appeal from the district court's decision and on September 11, 1992 filed its initial brief and appendix in this Court. The School Board moved to strike DOE's

initial brief and appendix because each contained numerous matters which were outside the record on appeal. This Court granted the School Board's motion and struck DOE's initial brief and appendix. DOE served its amended initial brief on November 4, 1992 and it is that brief which the School Board now answers.

IV. SUMMARY OF ARGUMENT.

This lawsuit concerns a purely local issue--the extent to which the School Board can raise money locally for the funding of its schools. In this action the School Board does not seek to alter the amount of funds going to or coming from the State in any way; instead, it simply seeks the right to exercise its own constitutional authority to raise revenue from its own local citizens for its own local schools.

The district court properly declared unconstitutional the Legislature's attempt to usurp the right of the School Board to levy nonvoted discretionary millage within the 10 mill limit set by the Florida Constitution. Both Article VII, section 9, and Article IX, section 4(b) of the Florida Constitution expressly authorize school boards, not the Legislature, to levy up to 10 mills of ad valorem taxes. Pursuant to Article IX, section 4(b) of the Constitution, the School Board is empowered to determine the rate of school district taxes within the limits prescribed in Article VII, section 9. The Legislature may not constitutionally preempt the School Board from levying ad valorem taxes by placing restrictions on the School Board's right to independently determine millage rates. See Mallard v. Tele-Trip Co., 398 So.2d 969 (Fla. 1st DCA), rev. denied, 411 So.2d 384 (Fla. 1981).

The district court, citing St. Johns County v. Northeast Florida Builders Association, Inc., 583 So.2d 635 (Fla. 1992), correctly held that the levy of ad valorem taxes by school districts up to the constitutional 10 mill limit does not conflict

with the constitutional mandate of a "uniform" system of free public schools. The Constitution does not require that every school district receive equal funding nor does it require all school districts to keep their educational programs at an artificially low level for the sake of "uniformity."

Further, Section 236.25(1) and Section 1, Item 509, are unconstitutional because substantive law is injected into an appropriations bill in violation of Article III, section 12 of the Florida Constitution. See Gindl v. Department of Education, 396 So.2d 1105 (Fla. 1979). Additionally, Section 1, Item 509 is unconstitutional to the extent that it seeks to amend Section 236.25(1) by reference to its title or number only in violation of Article III, section 6 of the Florida Constitution. The trial court properly found that Section 1, Item 509, attempts to revise the statutory formula set forth in Section 236.25(1), an existing substantive law, by reference to its number only in violation of Article III, section 6.

The State Attorney was properly notified of the School Board's complaint for declaratory relief in accordance with Section 86.091, Florida Statutes. The trial court, therefore, correctly denied the Attorney General's motion to dismiss, or in the alternative, to postpone. Further, DOE, with the stipulation of the School Board, intervened below and had the opportunity to be heard but, instead, the Attorney General, who has appeared and actively participated throughout these proceedings, withdrew his motion for rehearing and filed this appeal on behalf of DOE.

Contrary to DOE's argument, Barbara Ford-Coates was not merely a nominal defendant; she has a keen interest in this proceeding. As the Tax Collector for Sarasota County, Ms. Ford-Coates is a constitutional officer charged with the responsibility of billing and collecting all validly assessed ad valorem taxes. See §§197.332, 237.091, Florida Statutes. The district court properly concluded that DOE was not an indispensable party to this action and that the trial court correctly entered judgment on the School Board's request for declaratory relief.

V. ARGUMENT.

A. THE DISTRICT COURT CORRECTLY HELD THAT SECTION 236.25(1), FLORIDA STATUTES, AND SECTION 1, ITEM 509 OF CHAPTER 91-193, LAWS OF FLORIDA, ARE UNCONSTITUTIONAL TO THE EXTENT EACH ATTEMPTS TO LIMIT THE RIGHT OF SCHOOL BOARDS TO LEVY DISCRETIONARY MILLAGE WITHIN THE 10 MILL LIMIT SET BY THE FLORIDA CONSTITUTION.

This case concerns one school board's attempt to regain some measure of local control over the funding of its own schools so that it can raise additional local money to improve educational opportunities for its district's school children. DOE argues that no such local financial decision-making should be permitted and, indeed, the Legislature, notwithstanding constitutional directives to the contrary, has attempted to effectively remove all local control over education funding by strictly limiting school boards' authority to levy ad valorem taxes. As both the circuit and district courts agreed, such a broad usurpation of power by the Legislature violates the Florida Constitution's clear grant of authority to school districts to levy ad valorem taxes for school purposes within the Constitution's ten mill limit. The district court's thorough analysis and well reasoned opinion should be affirmed.

In its amended initial brief, DOE devotes the entire first section of its argument to a discussion of the views held by various former governors of Florida on education funding and property taxes. While DOE's attempted historical dissertation offers more of a cursory summary of Arthur O. White's book, One Hundred Years of State Leadership in Florida Public Education, than a cogent analysis of the issues before the Court, it is useful in

highlighting the fact that free public education has been a fundamental right of school-aged children in Florida for over a century.

Although DOE accurately recognizes that free public education is a "great and enduring program" dating back to the Florida Constitution of 1868, the remainder of its recapitulation of Mr. White's historical analysis is misleading in the context of this case. DOE's brief portrays an ongoing struggle between "rich" and "poor" school districts fighting over the same limited financial resources. In this conception, the Legislature and DOE act as virtuous Robin Hoods taking education dollars from "rich" districts to give to "poor" districts in an effort to equalize funds available for education. DOE, with its repeated references to Sarasota as a "rich" district, thus implies that Sarasota is somehow trying to selfishly hoard its resources and oppose "poor" districts' attempts to improve their children's educational opportunities. This implication is absolutely false.

DOE praises former Governor Spessard Holland for his work in supporting strong educational goals and for his belief that counties and school districts should bear their share of public school costs to the full limit of their abilities. DOE brief at 8. This is precisely what the School Board of Sarasota County is attempting to do. The School Board is trying to maintain and improve its schools in the face of draconian state budget cuts in the only way it can--by increasing the financial burden on its own local residents. The School Board, with remarkable popular

support, is raising money locally for local use. In so doing the School Board has not sought to alter the amount of funds going to or coming from the State in any way; instead, it simply seeks the right to exercise its constitutional authority to raise additional revenue from its own local citizens for its own local schools. In this way, the School Board is merely seeking to insure that all children of Sarasota County will be able to obtain what is and has been their fundamental right for over 100 years, the right to an adequate, free public school education.

In its well reasoned opinion, the district court correctly recognized that the Legislature cannot, by statute, preempt the right granted to local school boards by the Florida Constitution to levy ad valorem taxes to support their schools. As the district court held, both Article VII, section 9 and Article IX, section 4(b) of the Florida Constitution expressly grant to school boards, not the Legislature, the authority to levy ad valorem taxes for school purposes. The court, therefore, properly invalidated the Legislature's attempt to usurp local school boards' constitutional right to levy ad valorem taxes within the constitution 10 mill limit.

Article VII, section 9, reads in pertinent part:

> (a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, ...

> (b) Ad valorem taxes, . . . shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: . . . for all school purposes, ten mills . . .

(Emphasis added.)

The term "shall" is mandatory. The district court held that this unequivocal constitutional command was itself sufficient to show that the School Board's power to levy ad valorem taxes is expressly authorized by the Florida Constitution. Notwithstanding this plain, mandatory language, DOE continues to argue that school districts have no authority to levy ad valorem taxes absent legislative authorization. In support of its argument, DOE cites dicta from the case of Wilson v. School Board of Marion County, 424 So.2d 16 (Fla. 5th DCA), rev. denied, 434 So.2d 888 (Fla. 1983), in which the court stated that when taxing power is "exercised by a tax authority which does not have inherent power to tax, such as cities and school boards, courts read the statutes granting the tax power strictly." Id. at 19-20.

Wilson involved the method of levying taxes, not the Legislature's authority to limit the amount of taxes. The Wilson court simply held that the school board's tax levy was illegal and void where the board's notice of intent to levy was defective and not in substantial compliance with the statutory requirements for notice and publication. DOE's reliance on a single line of dicta in Wilson is misplaced; the Second District's opinion below demonstrates that school boards have been granted the authority to tax directly by the Constitution.

Regardless, DOE's entire argument concerning the genesis of a school board's right to tax only serves to obscure the true issue before the Court. Whether this Court concludes the Constitution itself gives school boards the direct authority to levy ad valorem taxes or whether it concludes the Constitution requires an act of the Legislature to accomplish precisely the same result, the real issue raised in this case is whether the Legislature can preempt a school board's right to tax (from whatever origin) by placing restrictions on the school board's right to independently determine millage rates. Caselaw as well as Dean D'Alemberte's commentary to the Florida Constitution of 1968 fully support the district court's conclusion that the Legislature has no such preemptory power.

In Mallard v. Tele-Trip Co., 398 So.2d 969 (Fla. 1st DCA), rev. denied, 411 So.2d 384 (Fla. 1981), the First District Court of Appeal directly addressed the rights of counties to levy ad valorem taxes under Article VII, section 9. The Mallard court held that the use of the word "shall" in Article VII, section 9 requires the Legislature to authorize counties to levy taxes and that the Legislature "has no power to revoke the counties' authority to levy such taxes in part or in full."[2] Id. at 973.

The First District has had occasion to speak to this issue again, albeit in dicta, in its recent opinion in Board of County Commissioners v. Florida Department of Community Affairs, 598 So.2d 182 (Fla. 1st DCA 1992). In that case, which involved the taxing

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[2] Although Mallard involved counties, identical reasoning applies to school districts because they are treated identically under Article VII, section 9 of the Florida Constitution.

authority of special districts, the court stated that, although it need not directly reach the issue, "[t]he county persuasively argues that while the Legislature may place reasonable restrictions on the method of levying ad valorem taxes, it may not restrict the allowable amount which may be levied by a county." Id. at 184 (emphasis added).

The commentary to Article VII, section 9 of the Constitution fully concurs with this view. While DOE references a single line from the commentary which states that the section contemplates a legislative act,[3] DOE conveniently chooses to ignore the opening portions of the commentary which state:

> This section empowers counties, school districts and municipalities to levy ad valorem taxes within the limitations of subsection (b) below.
>
> . . . .
>
> The Revision Commission had recommended that counties and municipalities be authorized to levy any taxes for their respective purposes except those prohibited by the constitution. That language was changed in the new constitution so that only counties, municipalities and school districts have constitutional authority to levy ad valorem taxes. The language, mandatory in tone, does contemplate a legislative act for they "shall be authorized by law" to levy ad valorem taxes....

[3] In fact the Legislature in §236.25(1) has given school boards the authority to levy ad valorem taxes as mandated by the Constitution. Section 236.25(1) has not been completely invalidated. The only portion of §236.25(1) that has been stricken is the provision infringing upon the School Board's right to levy nonvoted discretionary millage.

Commentary, Fla. Stat. Ann., Art. VII, §9, Fla. Const., pp. 142-43 (emphasis added).

Thus, even Dean D'Alemberte's own commentary explicitly recognizes that it is school districts which have the constitutional authority to levy ad valorem taxes. It is school districts, not the Legislature, which have been empowered to tax for school purposes up to the 10 mill limit embodied in Article VII, section 9(b). As the district court correctly found, neither the text of the Constitution nor the commentary indicates that the Legislature is to have any authority to levy ad valorem taxes or to restrict the school district's power to tax in any way.

In addition to the taxing authority guaranteed to school districts in Article VII, section 9, Article IX, section 4(b) also grants taxing authority to school districts. St. Johns County v. Northeast Florida Builders Association, Inc., 583 So.2d 635, 642 (Fla. 1991) ("[A]rticle IX, section 4(b) is only a grant of taxing authority to the school boards.").

Article IX, section 4(b) of the Florida Constitution commands school boards to "operate, control and supervise" all public schools within the district and to "determine the rate of school district taxes within the limits prescribed herein." (Emphasis added.) This express grant of authority to school boards requires even DOE to concede that "school districts can determine the rate of school district taxes . . . ." DOE brief at 33. DOE continues, however, by arguing that the School Board's authority to levy taxes is limited by the phrase "within the limits prescribed herein." As

the district court correctly held, the phrase "within the limits prescribed herein" obviously places a limitation on the School Board's authority but it is not a limitation that involves the Legislature in any way.

Clearly the Constitution's phrase "within the limits prescribed herein" refers generally to the Constitution itself and, specifically, to Article VII, section 9(b) which establishes millage limitations for school purposes. Certainly the framers of the Constitution did not include this phrase as a reference to any statutory law the Legislature might subsequently enact as DOE now appears to suggest. Indeed, the commentary to Article IX, section 4(b) discusses the clause "limiting the tax rate within the limits prescribed in the constitution" by referencing Article VII, section 9(b). Commentary, Fla. Stat. Ann., Art. IX, §4(b), Fla. Const., p. 371. When Article IX, section 4(b) and Article VII, section 9(b) are properly read together, it is clear that the School Board has the right to determine the rate of school district taxes within the limits prescribed in the Constitution (i.e., 10 mills). See 1969 Op. Att'y Gen. Fla. 069-109 (November 14, 1969).

The millage limitations in Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act, contradict the clear intent of these constitutional provisions. In enacting these limits the Legislature has infringed upon the School Board's constitutional authority in the area of ad valorem taxation. The Legislature may not restrict and appropriate for itself the School Board's constitutional authority and obligation

to levy taxes and operate schools. Cf. Mallard, 398 So.2d at 973 ("the legislature . . . cannot constitutionally 'preempt' the counties from levying ad valorem taxation."). If the framers of the Constitution had intended the Legislature to have the power to completely control all school financing by limiting school millage, the Constitution would contain such a limiting phrase. No such phrase exists.

Thus, contrary to DOE's rather flippant and disrespectful accusations that the district court "did not understand the Constitution it attempted to apply" and that "the District Court rather carelessly ignored these other sections of the Florida Constitution in much the same way it ignored the history of the Constitution," DOE brief at 19, 25, it is obvious that the district court quite clearly understood the Constitution as well as the commentary to it and relevant caselaw, all of which support the district court's conclusion. The well-reasoned opinion of the district court should be affirmed.

In a final attempt to sustain its argument, DOE contends that the Legislature, in providing for the "uniform system" of free public schools required by Article IX, section 1, of the Florida Constitution,[4] has broad legislative authority even to the point of

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[4] Article IX, section 1 provides in its entirety:

> Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

setting the maximum millage rate that a school district may be authorized to levy. DOE asserts that the Legislature has defined what shall constitute the "uniform system" of free public schools prescribed by Article IX, section 1 of the Florida Constitution, as follows:

> To guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.

§236.012(1), Fla. Stat.

The Legislature enacted the Florida Education Finance Program ("FEFP") formula to provide equalization of educational opportunities. Through the FEFP formula the Legislature determines the total amount of dollars to be spent per student and the percentage of dollars to come from state funds versus local funds. In enacting Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act, however, the Legislature went far beyond determining the percentage of local funds required for participation in state funding. In addition, the Legislature has attempted to cap the amount of local dollars, raised through ad valorem taxes, that a school board may levy and utilize within its own district. While the Legislature undoubtedly has wide latitude in establishing and funding a statewide system of public schools, its discretion does not go so far as to render all local control and the clear mandate of the Constitution nugatory. This, however, is precisely what the Legislature has attempted to do and what DOE

has attempted to defend in the name of "uniformity" of the free public schools.

This Court recently stated that

> The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or differences in millage assessments, will always favor or disfavor some districts.

St. Johns County, 583 So.2d at 641 (emphasis added). Notwithstanding St. Johns County, DOE argues that a "uniform system" requires that substantially equal dollars be spent per student in each school district. The district court below, citing St. Johns County, held that the levy of ad valorem taxes by school districts up to the constitutional 10 mill limit does not conflict with the mandate of a "uniform" system of free public schools.

DOE asserts that the Second District's interpretation of St. Johns County is overbroad and implies that this Court's opinion in St. Johns County is limited to impact fees and capital needs, not taxes and operational expenses. DOE cites School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977), in support of its proposition that a "uniform system" requires equalized pupil funding (but not equalized physical plants and curriculum). DOE misreads Escambia County. Escambia County dealt with the Minimum Foundation Program which established a base or minimum tax level that school boards were required to levy in order to receive any

state revenues. It did not require equalization of all dollars spent per pupil; there was no ceiling on school board taxing authority locally.

Moreover, this Court's opinion in St. Johns County nowhere limits its holding to the capital, rather than operational, needs of a school district. Such a distinction would be arbitrary and unsupported by the Constitution. Article IX, section 1 states that there must be adequate provisions made for "a uniform system of free public schools . . . ." This language neither acknowledges nor intimates that there should be differing standards for capital and operational needs. As this court recognized in St. Johns County, every student must have the opportunity to achieve basic educational goals. This constitutional mandate does not make or countenance the capital/operational distinction urged by DOE.

DOE, therefore, cannot attempt to "save" Section 236.25(1) and Section 1, Item 509 of the Appropriations Act with the argument that discretionary millage is inextricably interwoven into the FEFP formula and is necessary for the provision of a "uniform system" of free public education. A uniform system of free public education does not require that equal dollars be spent per student in each school district. St. Johns County, 583 So.2d at 641. In providing for a uniform system, the Legislature is required only to insure that minimum standards and adequate educational opportunities are available for all children.

After winding through its historical and philosophical discussion of school board millage and substantial uniformity in

funding, DOE appears to be arguing in circles. It maintains that a uniform system requires substantially equalized funding, yet, citing Gindl v. State Board of Education, 396 So.2d 1105 (Fla. 1979), it later concedes that some disparity in per pupil funding is constitutionally permissible. Under Gindl, discretionary millage for current operations was set at 1.6 mills. This is approximately one-half a mill greater than the discretionary millage levied by the School Board in this case.

Further, DOE's analysis concerning the impact of the district court's opinion on the funding formula and potential disparity of per pupil funding is extremely misleading. DOE states that at the time of the initial filing in this case, required local effort was set at 6.373 mills leaving a potential of 3.627 of millage within the 10 mill cap. This is technically correct; however, 2 mills of the 3.627 mills were available to the school districts for capital outlay. Accordingly, the true amount of millage available to school districts for discretionary operational millage was only 1.627 mills. This figure is only .027 mills greater than the 1.6 mills cited approvingly by DOE and affirmed in Gindl.

Finally, and perhaps most importantly, what DOE overlooks in its self-proclaimed "quest for equalization," DOE brief at 8, is that Article IX, section 1 does not give it carte blanche to equalize millage by superseding the School Board's constitutional right to set ad valorem tax rates; rather, as this Court has stated, the Legislature is simply required to insure that all students be given an equal chance to achieve basic educational

goals. This laudable constitutional mandate is not inimical with the School Board's constitutional obligation and right to operate its schools and levy ad valorem taxes.

DOE and apparently the Legislature have taken the myopic view that they must control millage rates to insure that a uniform system of schools is maintained. Only by artificially limiting the educational opportunities which might exist in some districts by constructing a financial ceiling above which no school district is permitted to rise does DOE believe it can achieve desired uniformity. That the uniformity achieved is at the lowest, rather than highest, common denominator apparently is of no moment. Legally, this is nothing more than sacrificing one set of constitutional principles upon the altar of another; educationally, it deprives many children of extra opportunities because not every district desires to have them by raising extra money locally.

Thankfully and not surprisingly, DOE's conception of education at the lowest common denominator is not supported, let alone required, by the Florida Constitution. Rather than viewing the uniformity mandate, as DOE does, as a ceiling above which no district is allowed to reach, uniformity can and should be viewed as a floor below which no district is permitted to fall. In this way, all the public school children of Florida will receive an opportunity to achieve the same common goals but districts will not be constrained from allowing their students to reach beyond those goals in whatever manner and by whatever means they believe appropriate. If equalization above the constitutionally mandated

floor of educational opportunities is still desired by DOE and the Legislature, they then, of course, have the authority to appropriate more money to certain districts to "power equalize" those districts up to whatever level they desire. In no event, however, does the Constitution require any or all districts to keep their educational programs artificially depressed simply for the sake of uniformity.

The Legislature does not have the authority to limit a school district's constitutional right to levy additional ad valorem taxes to raise its programs beyond the constitutionally required minimum. Article VII, section 9 and Article IX, section 4(b) of the Florida Constitution specifically provide taxing authority to school districts. It is inescapable that Section 236.25(1) and Section 1, Item 509 unconstitutionally infringe upon the school district's right to levy ad valorem taxes. Consequently both enactments must fail.

B. THE TRIAL COURT CORRECTLY CONCLUDED THAT SECTION 236.25(1), FLORIDA STATUTES, AND SECTION 1, ITEM 509 OF THE APPROPRIATIONS ACT ARE UNCONSTITUTIONAL TO THE EXTENT THAT THEY IMPERMISSIBLY CONTAIN SUBSTANTIVE LAW AND THAT SECTION 1, ITEM 509 OF THE APPROPRIATIONS ACT IS UNCONSTITUTIONAL TO THE EXTENT THAT IT PURPORTS TO AMEND SUBSTANTIVE LAW BY REFERENCE TO ITS TITLE ONLY.

In addition to the reasons already addressed, the trial court also found Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act unconstitutional because each contained and amended substantive law in violation of Article III, section 12 of the Florida Constitution. Further, the trial court found Section 1, Item 509 of the Appropriations Act

unconstitutional because it attempted to amend a substantive law by reference to its title only in violation of Article III, section 6 of the Florida Constitution. As DOE stated in its amended initial brief, neither ruling was reviewed by the district court but each was correct and serves as an additional basis to invalidate these legislative enactments.

1. Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act Violate Article III, Section 12 of the Florida Constitution by Containing and Amending Substantive Law.

Article III, section 12 of the Florida Constitution states:

> Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

This simple and direct command of the Florida Constitution prohibits the Legislature from passing an appropriations act containing any subject other than the appropriation of public money. See Commentary, Fla. Stat. Ann., Art. III, §12, Fla. Const., p. 660.

This Court has defined an "appropriation of money" as:

> Setting [money] apart officially, out of the public revenue for a special use or purpose, in such manner that executive officers of the government will have authority to withdraw and use that money, and no more, for that object, and for no other.

State ex rel. Kurz v. Lee, 163 So. 859, 867, 121 Fla. 360, 381 (1935). Similarly, Black's Law Dictionary defines "appropriation" as:

> The act by which the legislative department of government designates a particular fund, or sets apart a specified

> portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense.
>
> . . . .
>
> A specific appropriation is an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand.

Black's Law Dictionary p. 131 (4th Ed.) (emphasis added) (citations omitted).

These definitions of "appropriation" show quite clearly that the invalidated portions of the Appropriations Act did not constitute an appropriation--no sum of public money was identified and earmarked for payment of a governmental expense.[5] Rather than appropriating money, the Legislature instead attempted to establish a millage rate in the Appropriations Act. It is beyond dispute that a millage rate is not "a named sum of money" nor is it equivalent to one. A millage rate does not identify any particular sum. The mere establishment of a millage rate neither sets apart a particular portion of the State's revenue nor directs that any revenue be devoted to pay any particular expense. Indeed, the fixing of a millage rate for local school districts does not even directly affect the State budget; it neither causes the State to expend funds nor does it retire any debt owed by the State. The

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[5] The relevant portion of Section 1, Item 509 of the Appropriations Act reads:

> The maximum nonvoted discretionary millage which may be levied pursuant to the provisions of s. 236.25(1), Florida Statutes, by district school boards in 1991-92 shall be 0.510 mills.

invalidated portion of Section 1, Item 509 simply purports to establish a millage rate. Accordingly, it is not an "appropriation" and is, therefore, violative of Article III, section 12 of the Florida Constitution.

A corollary to the requirement that appropriations bills contain only appropriations is the requirement that appropriations bills may "not change or amend existing law on subjects other than appropriations." Brown v. Firestone, 382 So.2d 654, 664 (Fla. 1980). Section 1, Item 509 of the Appropriations Act does just that, however. Section 1, Item 509 changes Section 236.25(1), Florida Statutes, by purporting to limit the amount of discretionary millage a local school board may levy. Section 236.25(1), Florida Statutes, is a substantive law granting school boards the authorization to levy ad valorem taxes. In attempting to place a limit on school boards' authority to levy such taxes, Section 1, Item 509 clearly "changes or amends" the provisions of Section 236.25(1), Florida Statutes, in violation of Article III, section 12 of the Florida Constitution. See Florida Defenders of the Environment v. Graham, 462 So.2d 59 (Fla. 1st DCA 1984), aff'd sub nom, City of North Miami v. Florida Defenders of the Environment, 481 So.2d 1196 (Fla. 1985).

DOE attempts to excuse this amendment of substantive law by arguing that because Section 236.25(1) itself authorizes amendment in the Appropriations Act, the prohibition contained in Article III, section 12 against an Appropriations Act amending substantive law does not apply. This argument fails to recognize that it is

the Florida Constitution rather than the Legislature's statutory pronouncements which is the supreme law of this State. It is clear that the Legislature may not, simply by passing a statute, give itself the authority to contravene the clear mandate of the Constitution. Article III, section 12 unequivocally prohibits the action taken by the Legislature here; neither DOE nor the Legislature can give itself authority, statutory or otherwise, to supersede the Constitution.

Finally, DOE attempts to justify this injection of substantive law into the Appropriations Act by arguing that the substance contained in Section 1, Item 509 is related to an appropriation and, therefore, is validly included in the Appropriations Act. This same argument was raised by DOE and rejected by this Court in Gindl v. Department of Education, 396 So.2d 1105 (Fla. 1981). In Gindl, members of the School Board of Escambia County, as the school board and individually, sought to have a particular item of the Appropriations Act of 1977 declared unconstitutional as violative of, inter alia, Article III, section 12 of the Florida Constitution. The school board argued that Item 349 of the Appropriations Act relating to district cost differentials (a component of the State's education funding program) was unconstitutional because it purported to amend Section 236.081(3), Florida Statutes, a substantive law. After finding that the school board members, as the school board and individually, had standing, the Court initially affirmed the trial court's judgment in favor of DOE. Id. at 1105-06. On rehearing, however, this Court reversed

itself and held that Item 349 of the Appropriations Act was unconstitutional because it "impermissibly modified another statute--Section 236.081(3), Florida Statutes (Supp. 1976)." Id. at 1106. The Court came to this conclusion despite the fact that Section 236.081, Florida Statutes, entitled "Funds for Operations of Schools," is indisputably a major component in the State's education financing system. Section 236.081 is, in fact, the FEFP formula for equalization of educational opportunities.

Here, just as in Gindl, DOE attempts to excuse the substantive aspects of the Appropriations Act by arguing that such substance is permitted because it somehow relates to educational appropriations. This issue was squarely presented in Gindl and this Court concluded that an item in the Appropriations Act could not properly modify a formula used to allocate state education funds. Id. at 1106. Thus, the fact that a substantive change made by an appropriations act may have some relation to overall state education funding does not exclude it from the constitutional prohibition against placing substantive law in an appropriations act. This is precisely what the Legislature has attempted to do in Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act. The trial court was entirely correct in finding these items unconstitutional. Accordingly, the trial court's judgment should be affirmed.

2. Section 1, Item 509 of the Appropriations Act Violates Article III, Section 6 of the Florida Constitution by Amending Section 236.25(1), Florida Statutes, by Reference to its Number Only.

Article III, section 6 of the Florida Constitution states:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection, or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida:".

If the words of the Constitution are not plain enough, Dean D'Alemberte's commentary makes the meaning of Article III, section 6 even clearer: "Mere reference to the title of a law which is to be revised or amended does not meet the requirements of this section." Commentary, Fla. Stat. Ann., Art. III, §6, Fla. Const., p. 560. Section 1, Item 509 clearly attempts to revise Section 236.25(1), Florida Statutes, by simply referencing its number. The trial court correctly found Section 1, Item 509 of the Appropriations Act violative of Article III, section 6.

Although in its brief DOE has chosen to ignore this portion of the trial court's order, Florida courts have long recognized that the requirements of Article III, section 6 merit equal dignity with all other constitutional provisions.

> [T]he constitutional requirements as to the title of a legislative act are mandatory, and it is the duty of the courts to adjudge any act, or portion thereof, invalid and void in cases where it is clear that the requirements of Article III, §16 [now Section 6], have been violated or ignored.

County of Hillsborough v. Price, 149 So.2d 912, 915 (Fla. 2d DCA 1963) (citations omitted).

The Appropriations Act purports to place a limit on the power of school boards to levy ad valorem taxes despite the authority granted to school boards in the Florida Constitution and Section 236.25(1), Florida Statutes. In revising the taxing authority of school boards under Section 236.25(1), the Legislature simply referenced the statute by number and neglected to set forth any of the provisions contained in Section 236.25(1). This Court has recognized that this type of legislative "shortcut" is violative of the Constitution.

> By prior decision, this court has held that the provisions as to the publishing at length of an act as revised or a section as amended do not relate to the matter of the title of the statute but that such requirement is mandatory and regulates the form in which the body of the amendatory act is to be put. The effect is that when the new act as amended is a revision of the entire original act or is an amendment of a section, sections, subsection of a section or paragraph of a subsection of a section, that the new act, section, subsection of a section, or paragraph of a subsection of a section, as the case may be, shall be set forth at length, so that the provisions as amended may be seen and understood in their entirety by the Legislature.

Lipe v. City of Miami, 141 So.2d 738, 741-42 (Fla. 1962) (emphasis in original). Since the Appropriations Act did not set out, in whole or in part, Section 236.25(1), this Court should affirm the trial court's ruling that Section 1, Item 509 of the Appropriations Act is unconstitutional.

C. THE DISTRICT COURT PROPERLY CONCLUDED THAT THE DEPARTMENT OF EDUCATION WAS NOT AN INDISPENSABLE PARTY TO THIS ACTION AND THAT THE TRIAL COURT CORRECTLY ENTERED JUDGMENT ON THE SCHOOL BOARD'S REQUEST FOR DECLARATORY JUDGMENT.

Notwithstanding the constitutional infirmities inherent in both the invalidated portions of Section 236.25(1), Florida Statutes, and Section 1, Item 509 of the Appropriations Act, DOE nevertheless continues to argue that the School Board is not entitled to relief because it sued the wrong party. DOE's argument is premised on its dual assertions that the Tax Collector is nothing more than a mere ministerial actor and that only it, DOE, has an interest in this proceeding. The district court thoroughly analyzed this argument and correctly concluded that DOE was not an indispensable party to this action and that the trial court properly entered judgment on the School Board's request for declaratory relief.

DOE first tries to win its case by denigrating the powers, duties, and responsibilities of Sarasota County's popularly elected Tax Collector. Far from a mere clerical worker, the Tax Collector holds one of the very few public offices explicitly established and mandated by the Florida Constitution. Fla. Const. Art. VIII, §1(d). As the district court accurately recognized, it is the Tax Collector who is given the authority and who is charged with the responsibility of billing, collecting and remitting all taxes levied by the various counties, school boards, special taxing districts, and municipalities which may be within his or her jurisdiction. Fla. Stat. §§192.001(4), 197.332, 237.091. It is

the Tax Collector, not DOE, the Attorney General, or anyone else, who must act if the School Board is to receive the taxes it is constitutionally entitled to levy. It is the Tax Collector, therefore, whom the trial court correctly ordered to act in this case. Without the compliance of the Tax Collector neither the School Board nor any other local governmental body would be able to receive its revenue. Clearly, the Tax Collector's function is more than ministerial; indeed, without the Tax Collector as a party, full and complete relief could not have been granted.

DOE's second argument, that the Tax Collector has no interest in this proceeding, is equally incorrect. This Court has articulated the elements necessary for a valid declaratory judgment action as follows:

> that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

May v. Holley, 59 So.2d 636, 639 (Fla. 1952). See also Martinez v. Scanlan, 582 So.2d 1167, 1170 (Fla. 1991) (declaratory judgment act should be liberally construed).

Each of these elements is present in this case. Certainly the School Board has a present, actual, practical need for a declaration which deals with a present, ascertainable set of facts. At the time that the complaint was filed, the School Board knew that it desired to levy taxes in accordance with its authority under the Florida Constitution but in excess of that amount permitted by statute. The School Board's authority to fully exercise its taxing right, therefore, was dependent upon the court's decision concerning the constitutionality of Section 236.25(1). The School Board's interest in having this matter adjudicated was in no way hypothetical or abstract but, rather, was essential for it to exercise its constitutional authority to levy ad valorem taxes and to operate the public schools in Sarasota County.

Similarly, the Tax Collector has a keen interest in this proceeding. As stated above, it is the Tax Collector's duty to collect all validly assessed taxes. In order for her to properly exercise her authority, the Tax Collector must first know what taxes are lawfully assessed. Had the court not declared whether Section 236.25(1) was constitutional, the Tax Collector would have been confronted with a situation in which the School Board instructed her to collect taxes in direct contravention of a state statute. The Tax Collector, therefore, had to have the answer, which only the court could provide, in order to faithfully execute the power entrusted to her. Thus, she was a most interested party in this litigation. See Bell v. Associated Independents, Inc., 143

So.2d 904, 907-08 (Fla. 2d DCA 1962) (primary purpose of declaratory judgment act to render practical help in ending controversy where other legal relief not immediately available).

The district court recognized the critical interest the Tax Collector has in this controversy and upheld the trial court's declaration. Rather than being content with simply disagreeing with the district court's decision, however, DOE once again finds it necessary to impugn either that court's comprehension of the law or its motivation for its ruling by suggesting "[t]he District Court seemed to rewrite the law . . . " and "[t]he District Court attempts to create a controversy in its opinion . . . ." DOE initial brief at 48. Of course, neither is true. The district court "rewrote" no law in its opinion; to the contrary, it simply applied well-settled precedent of this Court and concluded that the School Board had stated a valid declaratory judgment cause of action. Similarly, the district court created no controversy, as if it had any desire to do so; it merely perceived and correctly adjudicated the very real controversy before it.

For an agency so eager to opine that a District Court of this State does not "understand the Constitution it attempted to apply" and would impermissibly "rewrite the law" of declaratory judgments, DOE itself quite freely attempts to rewrite, or at least ignore, the facts of this case. Conspicuously absent from its fifty page amended initial brief is <u>any</u> mention that another governmental entity, apart from the Tax Collector, was immediately notified of the School Board's declaratory judgment action.

Pursuant to Section 86.091, Florida Statutes, the School Board served a "notice of pending action" on Earl Moreland, State Attorney for the Twelfth Judicial Circuit, notifying him of the suit and providing him with a copy of the complaint by hand delivery on the very day suit was filed.[6] Although DOE now complains that the School Board did not give the Attorney General adequate notice of the proceedings below, it is clear that the School Board was under no obligation to give the Attorney General any notice at all. Section 86.091 explicitly states, in pertinent part:

> If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the State Attorney of the Judicial Circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

(Emphasis added.)

The School Board has fully complied with the requirements of Section 86.091 by giving timely notice to the State Attorney, who, in fact, appeared at the hearing through his chief assistant. As the Legislature apparently recognized in enacting Section 86.091, the State Attorney has as much responsibility and capability in defending the constitutionality of state statutes as does the Attorney General. If DOE and the Attorney General believe that the

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[6] The 1991-92 Appropriations Act was not available for review until May 1991. Faced with the TRIM requirements of Chapter 200, Florida Statutes, the School Board had to file suit on an immediate basis in order for the court to make a determination concerning the Legislature's ability to limit millage as the School Board was required to hold a public hearing on the budget and millage rates on July 25, 1991.

Attorney General's office should always be formally notified of constitutional challenges to state statutes, then they should direct their argument to the Florida Legislature, not this Court. See Mayo v. Nat'l Truck Brokers, Inc., 220 So.2d 11 (Fla. 1969) (purpose of statute is to give either Attorney General or State Attorney notice of action and opportunity to be heard); Watson v. Claughton, 160 Fla. 217, 34 So.2d 243 (1948) (Attorney General is not a necessary party when constitutionality of a statute is assailed).

Moreover, the Attorney General did appear at the hearing below and did defend the constitutionality of Section 236.25(1) and the relevant portion of the Appropriations Act. He was heard by the trial court and conducted cross-examination. Further, to the extent that DOE would have wanted additional representation present at the hearing it could have had it. The School Board consented to DOE's motion to intervene when it was filed. DOE could have joined the Attorney General's then pending motion for clarification or rehearing at that time. Instead, once DOE was given intervenor status, the senior assistant Attorney General, who argued DOE's case before the district court and who joins DOE in signing the amended initial brief before this Court, chose to withdraw his motion. Thus, DOE's lack of notice argument rings hollow. The School Board notified everyone to whom the Legislature declared it owed that obligation. The Attorney General, in fact, appeared and actively participated at the hearing, and DOE was given, with the consent of the School Board, the opportunity to be heard below.

The problem DOE has with this lawsuit is not who had the ability to be heard, but the result the trial court and the district court reached. See Mills v. Doyle, 407 So.2d 348, 350 (Fla. 4th DCA 1981) (no error in proceeding where alleged indispensable parties were permitted to present arguments to the trial court and intervene in appellate proceedings).

Finally, DOE argues that it is the only entity capable of properly defending the constitutionality of Section 236.25(1). This argument, of course, completely overlooks the fact that it is the role of either the Attorney General or State Attorney to perform this function, not another executive agency like DOE. Further, DOE is not directly affected by this suit. This action is concerned with a purely local issue--the extent to which a local school board can tax the residents of its district for local purposes. The action in no way seeks to require DOE or any other agency to provide additional state money to localities nor does it attempt to limit any obligation placed on the School Board by DOE. Rather, in this action the School Board simply seeks the right to exercise its constitutional authority to levy additional taxes on its own residents to support its own school system.[7]

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[7] In support of its argument DOE cites the case of Olson v. Ford-Coates, Case No. 87-3295 CA-01 (12th Jud. Cir. 1987). This citation is curious as the judgment in that case was vacated at the insistence of DOE as part of a settlement agreement. Moreover as part of the settlement agreement reached with DOE in that case, the Sarasota County School Board was able to keep the additional revenue it sought to raise. In any event, the previous case may well show that DOE has some "interest," in the non-legal sense of the word, in this case. The same can certainly be said of thousands of students, teachers, and parents whose school system has been decimated by state budget cuts. But just as those

Contrary to the Attorney General's position below, the action of the School Board in seeking to help fund its school system does not impinge upon DOE's role in insuring that the State has a uniform system of schools.[8] As recently as last year, this Court recognized that local governmental bodies may unilaterally enhance the revenue of a local school district without running afoul of the uniform system of schools requirement. St. Johns County, 583 So.2d at 641. Although quoted earlier in this brief, the School Board again quotes, as a convenient and ready reference to the Court, from this Court's recent opinion. In St. Johns County, the unanimous Court explicitly held:

> The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or differences in millage assessments, will always favor or disfavor some districts. We hold that the ordinance [imposing impact fees for education in St. Johns County] does not violate the requirement of a uniform system of public schools.

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thousands of citizens are not indispensable parties to this action, neither is DOE.

[8] Article IX, Section 1 of the Florida Constitution states:

> Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Id. (citation omitted). Thus, since the issue involved in this case does not directly affect its revenues, DOE cannot claim to be an essential party to this action.

The Third District opinion on which DOE primarily relies, Retail Liquor Dealers Assoc. v. Dade County, 100 So.2d 76 (Fla. 3rd DCA 1958), offers it no support. In Retail Liquor Dealers, plaintiffs, retail liquor vendors, sued "Dade County" seeking a declaratory judgment concerning whether state law prohibited the sale of alcoholic beverages on the date set for a special charter election. Id. at 77. The court dismissed the liquor dealer's complaint because it found that an agency of the State of Florida rather than the Board of County Commissioners was properly charged with the responsibility of enforcing state liquor laws. Because the Dade County Commission had no role to play regardless of the outcome of the declaratory judgment action, the court found that the Commission was an improper defendant. Id.

Here, by contrast, the Tax Collector is required to act because she must determine the appropriate amount of taxes to bill and collect. Thus, unlike the Dade County Commission in Retail Liquors, she is not merely a spectator but is, by law, required to take action to bill and collect all lawfully assessed taxes. In further contrast to Retail Liquors, here the Tax Collector filed an answer and appeared at the hearing below along with the Attorney General. Although the Tax Collector did not take an active role at the hearing below, this is easily explained from a reading of the transcript as the Attorney General appeared and made clear in no

uncertain terms that it was he who would be responsible for the defense of the statute.

A case much more factually similar to this case is Dickinson v. Segal, 219 So.2d 435 (Fla. 1969). In Dickinson, Segal filed a mandamus proceeding against the Dade County tax assessor to compel the assessor to comply with Section 193.271, Florida Statutes. The tax assessor defended by asserting that Section 193.271 was unconstitutional. The trial court agreed with the assessor's argument and declared that Section 193.271 was "unconstitutional, null and void." Id. at 435-36. After the time for post-trial motions had expired, a petition was filed by the State of Florida's Comptroller to intervene for purposes of appeal. The Comptroller's motion was granted by the trial court because the court found that:

> . . . the Comptroller has the duty, insofar as is possible, to see to the uniformity of ad valorem taxation throughout the State of Florida . . . . Uniformity of taxation throughout the state is not only a desirable condition, but constitutionally mandated not only to all tax assessors, but also the Comptroller as well.

Id. at 436 n.2. Once permitted to intervene, the only error argued by the Comptroller was the trial court's conclusion that Section 193.271 was unconstitutional. Id. at 436.

On appeal, this Court held that the Comptroller should not have been permitted to intervene and in so doing noted that "[t]he Comptroller clearly was not a necessary party to the proceeding in the trial court . . . ." Id. at 436 n.3 (emphasis in original). Thus, the Court concluded that the State Comptroller, though generally having duties regarding the uniformity of ad valorem

taxation, was not a necessary party to an action against a local tax assessor. Similarly here, DOE is not a necessary party to this action concerning educational funding on a local, rather than state, level. Thus, the district court properly permitted the School Board to proceed against the appropriate defendant, the Tax Collector of Sarasota County, and its judgment should be affirmed.

VII. CONCLUSION.

Based upon the foregoing argument and authorities, the judgment below should be affirmed.

Respectfully submitted,

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VIII. CERTIFICATE OF SERVICE.

I hereby certify that a copy of the above has been furnished to by United States Mail on this 30th day of November, 1992 to:

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