IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA DEPARTMENT OF EDUCATION,

Appellant,

vs. CASE NO. 80,286

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,

Appellees.

_____/

APPELLANT'S REPLY BRIEF

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STATEMENT OF FACTS

Several statements by the School Board, though not all contained in the Statement of Facts section of its Answer Brief, are factual assertions which are incorrect or misleading.

In the category of misleading is the assertion that education finance has suffered "draconian state budget cuts" (School Board Brief, p. 10), without any reference to facts to support that statement. Moreover, Sarasota County, which desperately resists being labeled a "rich" school district, has continued to operate its school district without this additional revenue.[1/]

Finally, the School Board suggests that the result it urges would not cause much mischief. The School Board attempts to minimize the potential impact of its position by arguing that the amount of additional discretionary millage that would be available is only a small amount above what was available to school boards at the time of the Gindl decision.[2/] The School Board misses the point.

1/ The School Board may have cut back on some of its 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 ..." and other various educational programs. (School Board Brief, p. 2.)

2/ Gindl v. State Board of Education, 396 So.2d 1105 (Fla. 1979).

If the School Board prevails and this Court rules that the Legislature cannot cap the amount of discretionary millage levied by a school board, then the 2.0 mills set by statute could no longer be part of the formula. In other words, everything above required local effort up to 10 mills could be levied by the School Board for whatever purpose it wanted. Thus, the potential for a larger disparity in current operating dollars available does exist under the School Board's scenario.

SUMMARY OF ARGUMENT

The School Board and the Amici argue that the Legislature has "no power" over local government millage even though the Constitution clearly contemplates that millage is to be "authorized by law." Art. VII, §9(a), Fla. Const.

The controlling language on local government millage is not changed in the 1968 Revision from that in the 1885 Constitution and the very Legislature which proposed the 1968 Revision adopted legislation to restrict local government millage.

The use of the word "shall" -- the same word used in the 1885 Constitution -- does not make the provision on ad valorem taxation self-executing and comparison with other uses of the word "shall" illustrates this. Further comparison with truly self-executing provisions of the Constitution (such as the separation of powers) further demonstrates that Art. VII, §9(a) does not give all power

over ad valorem taxation to local government as the opposing parties contend. (Point I.)

The sweeping proposition advanced by the School Board and Amici would also invalidate important state tax policy such as the "TRIM BILL." (Point II.)

The School Board and the Amici have totally failed to respond to the argument that this case should be reversed based on the express authority of the Legislature to appropriate funds "upon such conditions as may be provided by law." Art. VII, § 8, Fla. Const. (Point III.)

The Appropriations Act properly set discretionary millage (Point IV) and, since this case involves the state system of funding of education, the Department of Education is the indispensable party. (Point V.)

Finally, the School Board and Amici rely too heavily on the lower court opinion which did not address the issues in this case. They also flatter counsel for the Department of Education by relying on a commentary written over twenty years ago and, if that commentary has misled opposing counsel, it was not intended. In any event, it is far better to look to the Constitution rather than to commentary to learn what is intended.

ARGUMENT

I.
THE SCHOOL BOARD AND AMICI ARGUE FOR A BOLD PROPOSITION, WHICH IS, THAT THE LEGISLATURE HAS NO POWER OVER LOCAL GOVERNMENT MILLAGE, EVEN THOUGH THE CONSTITUTION CLEARLY CONTEMPLATES LEGISLATION.

The School Board and the Amici Counties have put

before this Court a stark proposition, presented with admirable candor by the Amici: It is that the "state" (including, we assume, the Legislature) has "no power" to control local government millage rates because the Constitution authorizes local government to set ad valorem taxes without enabling legislation.[3/] This curious reading of Art. 7, §9(a), Fla. Const. does not explain why the words "shall ... be authorized by law" are included in this section, and why the very Legislature which proposed the 1968 Revision acted to reduce local government millage. These and other flaws in the reasoning of the School Board and the Amici counties are discussed below.

A. The Controlling Language Of the 1968 Revision Is Drawn From the 1885 Constitution.

It is important to realize that the critical language of Art. VII, §9(a), Fla. Const. (1968) is similar to language of the 1885 Constitution. A side-by-side comparison makes this point:

Art. IX, §5 1885 Constitution	Art. VII, §9(a) Revision of 1968
The Legislature shall authorize the several counties and ... cities ... to assess and impose taxes ... (Emphasis added.)	Counties, school districts, and municipalities shall ... be authorized by law to levy ad valorem taxes ... (Emphasis added.)

3/ The Amici Brief sets forth in quite direct language, the reach of this argument: " ... [I]f the interpretation urged by Amici is adopted by this Court, the state will have no say in local government ad valorem taxation." (p. 23, Amici Brief.)

If the Amici were correct, that the 1968 Revision accomplished a sweeping change in local government finance[4/] (Amici Brief, pp. 7-13), you would expect to see some change in the language of the Constitution -- a change which would eliminate any reference to the authorization by law. But there was no change. The Amici chides the Department for its reliance on authorities under the 1885 Constitution (Amici Brief, p. 8, n. 3), yet the operative language is the same in both the 1885 Constitution and the 1968 Revision. Therefore, the interpretation by this Court should be the same.

B. The Very Legislature Which Proposed the 1968 Revision Adopted a Millage Limitation For Local Governments.

Since the 1966-68 Legislature which proposed the 1968 Revision was dealing with a major ad valorem taxation crisis and was operating under the same controlling language which exists in its later proposed revision (see Point I-A, above), it is useful to see what authority that very Legislature assumed over local governments' powers to adopt ad valorem taxes. As anyone familiar with this

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4/ The Amici have their history half right, for there was a large constitutional (and statutory) change on local government powers, freeing local governments (municipalities and counties) from some legislative control under the "local bill" practice. But in the area of finance, the opposite occurred, and the 1966-68 Legislature stepped into local government finance in a most direct way, passing statutory and constitutional limitations on millage. See Chs. 67-395 and 67-396, Laws of Fla.

period would understand, the Legislature was under considerable pressure to control ad valorem taxes following massive court-ordered reassessments.[5] The Legislature did act, first by statute and then by amendment to the pending draft constitution.

Drawing on its power under the then Art. IX, §5 (the same power in Art. VII, §9(a)), the Legislature adopted a millage limitation for county and municipal governments. In Chs. 67-395 and 67-396, Laws of Fla., the Legislature limited county, district, and municipal millage[6]. This Legislation became law in July 1967, about a year before the very same Legislature proposed the constitution revision of 1968. The Legislature exercised a power it had used before.[7] It was also acting under the language in the 1885 Constitution, which it did not modify in submitting the 1968 Revision.[8]

5/ See Dade County v. Dickinson, 230 So.2d 130, 132-134 (Fla. 1969) which recounts some of this history.

6/ Since school board millage was already limited by Constitution, it was not necessary for the schools to be included in this legislation. See Art. XII, §8, Fla. Const. (1885).

7/ The Legislature restricted millage in 1963 and 1965. See footnote 9, infra.

8/ Of course, there were changes in the structure of the 1968 Revision and the new version brought all the local government taxation language into one section so that counties, municipalities and school boards were all governed by the same principles.

The School Board and Amici ask this Court to accept the theory that the same Legislature which exercised a power to control millage under constitutional language ("The Legislature shall authorize ...") and then proposes a revision containing essentially the same language ([Local government] "shall ... be authorized by law ...") is, in effect, proposing that there be a new constitutional order in which the Legislature loses this power. The proponents suggest no legislative history or case authority to support this alchemy.

C. The History of Constitution Revision Demonstrates That the Draft Sought to Keep Continuity in This Area of the Constitution.

Perhaps the point has been made, but it must be emphasized. There is no constitutional history to support the argument that the 1968 Revision intended to change the allocation of powers to control levels of ad valorem taxation and that this radical change was accomplished by continuing with the same language. Indeed, it would be a remarkable act of self-denial if the Legislature, which was so concerned with growth of ad valorem taxes that it adopted millage controls,[9/] were to surrender that authority. It would be all the more remarkable if the instrument of this surrender was the use of the same words

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9/ See Chs. 63-250; 65-258; 67-395; and 67-396, Laws of Fla.

from which the same Legislature derived its powers to limit millage.[10/]

The only attempt to address legislative history is made by the Amici. This effort consists principally of trying to "spin" the Constitution Revision Commission debate presented in the original brief of the Department. See Amended Initial Brief, pp. 14-17.[11/] It is quite impossible to read this entire debate without concluding that everyone engaged in the debate sought to retain the status quo of the 1885 Constitution. They succeeded and left the Legislature with the power to control local government millage.[12/]

If the drafters had wanted the result sought by the local governments in this case, they would certainly have changed the language and would have eliminated all references to implementing legislation. It is useful to compare Art. VII, §9(a), which contemplates "a law" with a provision which is truly self-executing like the requirement of Art. II, §3, that there be three branches of government:

> The powers of the state government shall be divided into legislative, executive and judicial branches.

[10/] Id.; see also Art. IX, §5, Fla. Const. (1885).

[11/] See also, Appellant's Notice of Lodging served November 6, 1992.

[12/] The Commission's draft was modified by the Legislature which added the millage cap contained in Art. VII, §9(b).

Note that there is no reference in this section to "law." If the drafters had not contemplated a legislative role, there was no reason to insert the language "authorized by law" because the self-executing provision does not need a law.

D. The Constitution Contains Many Provisions Which Contemplate the Exercise of Legislative Power.

The Amici suggest that the many examples of legislative power coupled with constitutional provisions is not persuasive because, Amici argue, many of these provisions are phrased "as provided by law," "when provided by law" or in other terms which are different, Amici argue, from the "mandatory" word of "shall," contained in Art. VII, §9(a). Of course, this argument fails because it ignores the fact that the language is the same as that in the 1885 Constitution and should be interpreted in the same way. (See Point I.A. above.)

But the argument also fails even if we accept its terms. The Amici concede that there is, as they say "one exception", (Art. II, §7) where the "mandatory" word -- "shall" -- appears:

> Adequate provision shall be made by law for the abatement of ... pollution.[13/]

The Amici concede, as they must, that this "shall" language is not self-executing, but they never offer a

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13/ See Ch. 67-346, Laws of Fla. (codified as Ch. 403, Fla. Stat.); Ch. 70-244, Laws of Fla. (codified as Ch. 376, Fla. Stat.).

principled reason why this "shall" is different from the "shall" in Art. VII, §9(a). Indeed, the explanation given by the Amici ("... the Constitution commands that something be done about certain problems, but leaves the details up to the Legislature") (p. 20 Amici Brief), is exactly how the word "shall," in Art. VII, §9(a), should be construed.

In fact, there is more than the "one exception" identified by the Amici. The following instances are additional constitutional uses of the word "shall" coupled with legislative power or authority:

Art. IV, §8(c)	The qualifications ... of the Commission shall be prescribed by law. (Parole and Probation Commission.) (Emphasis added.)
Art. IV, §9	The Commissioners exercise of executive powers in areas of ... budgeting ... shall be provided by law. (Game and Fresh Water Fish Commission.) (Emphasis added.)

One interesting use of the word "shall" appears in context of school board membership. Art. IX, §4(a) states: "[T]here shall be a school board composed of five or more members chosen by vote of the electors ... as provided by law." Now, this provision is partially self executing because it places a floor under the legislative authority.[14/] Though the Legislature is free to set the number of school board members, it is not free to have fewer than five.

14/ Kane v. Robbins, 556 So.2d 1381 (Fla. 1990).

A more direct example of a Constitutional provision which limits legislative power is that contained in the 1885 Constitution relating to the very subject at hand -- school board millage. In Art. XII, §8 of the 1885 Constitution, there is language which is self-executing to give school boards the authority to assess a certain level of millage, but which limits the upper levels which may be authorized. If the 1968 Legislature had wanted to have self-executing language, it could have used this pattern, empowering the school boards to set a certain millage without legislation. This is the 1885 Constitution self-executing language:

> Each county shall be required to assess and collect annually for the support of the public free schools therein, a tax of not less than three (3) mills, not more than ten (10) mills on the dollar on all taxable property in the same.

The opposing parties speak of the "plain meaning" of Art. VII, §9(a), but they never quite get around to explaining what the words "be authorized by law"[15/] contribute to their "plain reading." It is clear that the Constitution contemplates a legislative act and that is not

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15/ The phrase has been construed to mean a legislative enactment upon a specific subject matter. Lewis v. Florida State Board of Health, 143 So.2d 867, 869 (Fla. 1st DCA 1962), cert. denied, 149 So.2d 41 (Fla. 1963). See also Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979). The drafters of the 1968 Revision intended the meaning of "by law' to encompass both "by general law" and "by special or local law." Id. at 434. In each instance, legislative action is required.

denied. It is equally clear, but not acknowledged, that the Constitution which contemplates this legislative act does not limit the Legislature in its discretion any more than legislative discretion is limited in any of the other sections where the Constitution states that there "shall" be legislation.

Under the "plain meaning" as proposed by the School Board and the Amici, the following constitutional provision will be impacted. The language that they would read out of the Constitution is lined through and the underlined word will have to be added:

> Art. VII, §1(a). ~~No tax shall be levied except in pursuance of law.~~ No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.
>
> . . .
>
> Art. VII, §8. State funds may be appropriated to the several counties, school districts, municipalities or special districts. ~~upon such conditions as may be provided by general law. These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law.~~
>
> Art. VII, §9(a). Counties, school districts, and municipalities are ~~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, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.
>
> . . .

The opposing briefs never explain why a self-executing

constitutional provision would include the "provided by law" language and why this Court should now read that language out of the Constitution.[16/] Opposing counsel also fail to explain why this Court should read limitations on the Legislature which are not in the Constitution and are inconsistent with the history of the Constitution and the long time practice of the Legislature.

II.
THE LEGISLATURE HAS BUILT THE STATE TAX POLICY, INCLUDING THE "TRIM BILL," ON ITS AUTHORITY TO CONTROL MILLAGE

In Point I-B above, we made the point that the 1966-68 Legislature used the power to control local government millage just as previous Legislatures had used this power. That authority to control millage has also been exercised since the 1966-68 Session. Some appreciation of this fact is essential in analyzing the attempt in this case to wipe away all legislative control over millage, to establish a constitutional regime which, as the Amici phrases it, the Legislature will "have no say in local government ad valorem taxation." (Amici Brief, p. 23.) Actually, the sweeping argument is even more radical for it asserts that the "state," (presumably including the Department of Revenue), will have "no say" in local ad valorem taxation.

16/ In construing the Constitution, each section should be considered so that the Constitution will be given effect as a harmonious whole; a construction leaving without effect any part of the Constitution should be rejected. Askew v. Game and Fresh Water Fish Commission, 336 So.2d 556, 560 (Fla. 1976).

We have already made the point that the legislative effort to provide a uniform system of public schools rests on the legislative authority challenged in this case. That is not the end of the Legislature's exercise of this power. A particularly important illustration of this power is the enactment of the "TRIM" bill (Ch. 80-274, Laws of Fla). This legislation, still an important part of the tax policy of Florida (§200.065, Fla. Stat.), is an attempt to control local government millage rates through the device of "rollback," the requirement of procedures for notice, budget adoption, and the requirements for the manner of setting millage. It is doubtful that even these procedural requirements could stand in the face of Amici's sweeping assertion that if its position is adopted, the state would have "no say" in local government ad valorem taxation. That doctrine would undoubtedly render the TRIM Bill unconstitutional, along with the statutes now governing ad valorem taxation.[17/] That view truly differs from the legislative view which was enacted in §200.001(7), Fla. Stat. See also Wilson v. School Board of Marion Co., 424 So.2d 16 (Fla. 5th DCA 1983). (Two-mill tax levy imposed by School Board held invalid where Board failed to meet the notice requirements contained in §200.065.)

17/ See eg. §193.1145(7),(11), Fla. Stat. (Limitation on total revenues available from state or local sources.) §218.23(1)(f) and §218.63(1), Fla. Stat. (Legislative requirements placed upon local units of government to become eligible for State Revenue Sharing.)

If it is accepted, the argument by School Board and Amici will trigger vast consequences to the tax policy of Florida and cause not only a disruption in school finance, but chaos in the administration of ad valorem taxation.

III.
NEITHER THE SCHOOL BOARD NOR THE AMICI DEAL WITH THE CONSTITUTIONAL PROVISION WHICH ALLOWS THE LEGISLATURE TO PROVIDE FOR GRANTS TO LOCAL GOVERNMENT BASED "UPON CONDITIONS."

In the Department's Amended Initial Brief, there was reliance on Art. VII, §8, which states:

> State funds may be appropriated to the ... school districts ... upon such conditions as may be provided by general law....

This language is so much on point as an alternative analysis of legislative power, it seems strange that the School Board and Amici both avoided the question. Here, the Legislature granted school funds to the school districts and coupled that grant with a limitation on discretionary millage. Section 236.25, Fla. Stat. The opposing parties never explain why this simple language does not dispose of this case. Of course, it does dispose of the case even if the School Board and Amici were correct in their attempt to read legislative power out of Art. VII, §9(a).

IV.
THE APPROPRIATIONS ACT PROPERLY SET SCHOOL BOARD DISCRETIONARY MILLAGE

The Legislature's limitation on School Board millages expressed in §236.25(1), Fla. Stat., is without question constitutional. Additionally, the Legislature has not appropriated for itself the School Board's constitutional

authority to levy taxes and operate schools. However, the Legislature is providing for a uniform system of free public school pursuant to Art. IX, §1, Fla. Const. (See discussion pp. 29-37, Amended Initial Brief) and has implemented Art. VII, §9(a) and (b), Fla. Const.

The language in §236.25(1), Fla. Stat., accomplishes a number of points. First, it is the legislative authorization to the local school boards permitting them to levy a "nonvoted current operating discretionary" tax. Without this authorization, the School Board would not be permitted to levy the tax. Art. VII, §1, Fla. Const. ("No tax shall be levied except in pursuance of law.")

Second, it is a direction to the local school boards telling them of the "range" of discretionary tax they may levy. This statute does not set any particular millage rate, only the range in which the Legislature may prescribe annually that the local school boards may set. It is a notice to the local school boards of the maximum millage that can be levied under this law.

Finally, the statute directs the Legislature to prescribe annually the amount of the nonvoted discretionary millage that can be levied by the local school boards. And, that such annual prescription by the Legislature is to be included annually in the Appropriation Act.

Section 1, item 509, Ch. 91-193, Laws of Fla. meets the dual test of Brown v. Firestone, 382 So.2d 654 (Fla. 1980). Section 1, item 509, does not "change or amend existing law on subjects other than appropriations and the

qualifying language is directly and rationally related to an appropriation." Brown, 382 So.2d at 663-664. Section 1, item 509, furthermore, does just what the Legislature directs in §236.25(1), Fla. Stat., that the annual appropriation act will, "prescribe annually in the appropriation act the maximum amount of millage a district may levy" in nonvoted discretionary taxes.

In this case, the qualification language in §1, item 509, is directly and rationally related to an appropriation.[18/] To determine the amount of public funds that may be expended annually around the State on education, the Legislature uses a formula to determine the amount to be appropriated. Section 236.081, Fla. Stat. The amount of nonvoted discretionary funds are a part of that formula to determine the State's amount of funds to be distributed to and by the school districts.

Finally, the School Board relies on the decision in Gindl v. Department of Education, 396 So.2d 1105 (Fla. 1981) for the proposition that item 509, §1, Appropriation Act., Ch. 91-193, Laws of Fla., impermissibly modifies or alters §236.25(1), Fla. Stat. The School Board's reliance is misplaced, for it knows that the appropriation item in question did not modify or alter the millage authorized by

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18/ Indeed, this manner of providing state grants (appropriations) to local governments with conditions is exactly what is contemplated by Art. VII, §8, Constitution of Florida. See Point III, above.

§236.25(1), Fla. Stat. The Court in Gindl found that such a modification had occurred. In Gindl, §236.081(3), Fla. Stat., provided a set distribution formula for the determination of the district cost differentials which item 349 of the 1977 Appropriation Act was found to have modified by actually altering the distribution formula. (See, §236.081(3), Fla. Stat., (Supp. 1976), and item 349, Ch. 77-465, Laws of Fla.) In the instant case, §236.25(1), Fla. Stat., does not provide a set millage rate for nonvoted discretionary millage. Section 236.25(1), Fla. Stat., provides a permissible range for such millage rate, which item 509, §1, of the 1991 Appropriation Act does not modify, by exceeding the range provided.

V.
THE DEPARTMENT OF EDUCATION, NOT THE LOCAL TAX COLLECTOR, IS THE INDISPENSABLE PARTY TO THIS CASE.

The School Board's brief begins: "This lawsuit concerns a purely local issue -- the extent to which the School Board can raise money locally for the funding of its schools." It is difficult to imagine a lawsuit concerning school finance that is any more of a statewide issue than this one.

The School Board, as the plaintiff in Retail Liquor Dealers Association of Dade County v. Dade County, 100 So.2d 76 (Fla. 3rd DCA 1958), wanted an opinion from the trial court without the participation of any real adverse party. The School Board asked for, on an expedited basis, a construction of state statutes dealing with the state system of school funding.

Without adequate notice to the Department, the School Board requested the trial court to invalidate §236.25(1), Fla. Stat., and §1, item 509, of the 1991-92 General Appropriation Act (R6, 8 and 9) which the trial court did. (R58-65). Both of the laws are of a statewide application and are not limited solely to Sarasota County. Additionally, these laws have nothing whatsoever to do with any of the duties of the Tax Collector. While the School Board argues that the lack of notice and the inability to prepare a factual case on the part of the Department is of no consequence because this is a case involving a question of law, the School Board then proceeds to recite the testimony of the Superintendent of Schools as the basis for sustaining the decision of the trial court.

The School Board's controversy, if any, exists between it and the state agency, the Department, charged with the enforcement of the law regulating school funding. It was not shown, nor can it be, that the Tax Collector is charged with such responsibility. Moreover, the Tax Collector, in the instant case, undertook no defense of the laws in question.

Finally, the School Board argues in its brief that the Tax Collector has a "keen interest" in this case (Answer Brief at p. 33) because the School Board instructions to levy more taxes than allowed by law would confront her with a legal problem. The School Board's Answer Brief does not nor cannot refute the fact that the duties and functions of

the Tax Collector are ministerial, not discretionary. See §§192.001(4); 193.122; 197.332; and, 237.091, Fla. Stat. The extent of this "keen interest" is demonstrated by the lack of the Tax Collector's participation in this case. See Transcript of Final Hearing, June 27, 1991, p. 18, line 12, and p. 47, line 6.

The School Board cites Dickinson v. Segal, 219 So.2d 435 (Fla. 1969) (p. 40 of the Brief), questioning the Department's intervention and interest in this case. This Court, in State ex rel. Shevin v. Kerwin, 279 So.2d 836 (Fla. 1973), distinguished Dickinson v. Segal, when confronted with an analogous situation, by stating that "[i]n some cases of great magnitude or importance it might be necessary for the Attorney General to intervene in the cause even at the trial court level." Since the Department is charged with the enforcement of the statute at issue and since this is a case of "great magnitude," the Department has an interest and the duty to intervene. However, the School Board failed to mention to the Court the grounds set forth in the Department's Motion to Intervene, filed in the instant case, to which the School Board stipulated (R44-45). The Department's Motion to Intervene (R39-43) demonstrated an interest in these proceedings and showed that the Department would stand to lose by the direct operation and effect of the judgment already entered (See pp. 43-48, Amended Initial Brief). Wags Transportation System, Inc. v. City of Miami Beach, 88 So.2d 751 (Fla.

1956). The trial court's order allowing intervention was proper.

Thus, the trial court's order should be reversed by this Court and remanded with directions to set aside the order and dismiss the complaint for declaratory relief.

VI.
THE SCHOOL BOARD'S ALMOST EXCLUSIVE RELIANCE ON THE LOWER COURT OPINION AND THE COMMENTARY AUTHORED IN 1969 BY OPPOSING COUNSEL IS MISPLACED.

The School Board's Answer Brief takes a unique approach to the important constitutional issues raised by this case and it appears to rely largely on two authorities -- the opinion of the court below, the very opinion which is under review here, and the commentary to the Florida Constitution authored by one of the lawyers for the Department.

Reliance on the decision below is misplaced because the District Court did not deal with a number of the significant issues in this case. It failed to examine the historical context of the Constitution and fails to explain how Legislatures, including the very Legislature which proposed the 1968 Revision, acted to limit local government millage (Point I.B., above). The District Court did not explain how its ruling would impact other, similar, sections of the Florida Constitution (Point I-D, above), nor how it would destroy the entire public policy governing local taxation (Point II, above). Nor did the District Court explain how its decision could be reconciled with the explicit power of the Legislature to provide funding grants

to local government "upon conditions," Art. VII, §8, Fla. Const. Most important, it did not explain why a self-executing provision of the Constitution would contain a requirement for legislative action.

The reliance on the commentary authored by one of the appellate counsel in this case is equally curious, for that commentary, written in 1968-69, pre-dates a number of significant cases and, in any event, never takes a position on the issue of this case. The attempt by the School Board's Answer Brief to suggest otherwise, by underlining selected passages of the commentary, is easily answered: The commentary certainly should not be read to suggest that there is no legislative authority where the Constitution expressly references the Legislature. If it can be read that way, the author confesses to shoddy draftsmanship.

The Constitution itself should be the focus of the inquiry and, if the Constitution were not clear, we would look to the history of the Constitution and the context in which the Constitution was framed. Only if we are then in doubt do we look to such secondary sources as a commentary. It is flattering to be recognized as an authority by opposing counsel but greater deference to the Constitution is more appropriate for this occasion.

CONCLUSION

The Court should reverse the decision of the District Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief was sent by U.S. Mail to RICHARD E. NELSON, ESQ., Nelson, Hesse, Cyril, Smith, Widman & Herb, P. O. Box 2524, Sarasota, Florida 34230; A. LAMAR MATTHEWS, ESQ., Matthews, Hutton & Eastmoore, 1777 Main Street, Suite 500, P. O. Box 49377, Sarasota, Florida 34230; and ROBERT L. NABORS, Nabors, Giblin & Nickerson, 315 S. Calhoun St., Barnett Bank Building, Suite 800, P. O. Box 11008, Tallahassee, Florida 32302, on this 27th day of January, 1993.

Talbot D'Alemberte

TALBOT D'ALEMBERTE