O/A 5-4-94

IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

ORIGINAL

THE SEBRING AIRPORT AUTHORITY and SEBRING INTERNATIONAL RACEWAY, INC.,

Appellants/Petitioners,

v.

C. RAYMOND McINTYRE, PROPERTY APPRAISER OF HIGHLANDS COUNTY, FLORIDA, THE DEPARTMENT OF REVENUE, STATE OF FLORIDA, and J. T. LANDRESS, TAX COLLECTOR OF HIGHLANDS COUNTY, FLORIDA,

Appellees/Respondents.

CASE NO. 82,489

ANSWER BRIEF OF AMICUS CURIAE JOHN W. MIKOS, PROPERTY APPRAISER OF SARASOTA COUNTY, FLORIDA

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PRELIMINARY STATEMENT

THE SEBRING AIRPORT AUTHORITY and SEBRING INTERNATIONAL RACEWAY, INC., will be referred to herein as the "APPELLANTS". THE SEBRING AIRPORT AUTHORITY, individually, will be referred to herein as the "AUTHORITY", and THE SEBRING INTERNATIONAL RACEWAY, INC., will be referred to herein as the "RACEWAY". Appellee, C. RAYMOND McINTYRE, PROPERTY APPRAISER OF HIGHLANDS COUNTY, FLORIDA, will be referred to herein as the "APPRAISER", THE DEPARTMENT OF REVENUE, STATE OF FLORIDA, will be referred to herein as the "DEPARTMENT", and J. T. LANDRESS, TAX COLLECTOR OF HIGHLANDS COUNTY, FLORIDA, will be referred to herein as the "COLLECTOR". Amicus Curiae, John W. Mikos, will be referred to herein as "MIKOS". References to the record on appeal will be delineated as (R) followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae, JOHN W. MIKOS, as Property Appraiser of Sarasota County, Florida, hereby adopts the statement of the case and facts presented by the APPRAISER and DEPARTMENT.

SUMMARY OF THE ARGUMENT

The AUTHORITY is not immune from taxation as is the Federal government, the State and its political subdivisions. With one exception, the cases cited in this brief have involved the issue of whether an authority's property is exempt from taxation and not immune. The exception mentioned is Sarasota-Manatee Airport Authority v. MIKOS, 605 So.2d 132 (Fla. 2d DCA 1992),rev. den., 617 So.2d 320 (Fla. 1993), which held that an Airport Authority's property was immune from taxation. The Supreme Court should resolve this issue holding that an authority's property is only exempt from taxation and not immune as would be a political subdivision of the State.

Since the AUTHORITY is more in the nature of a municipality, property owned by it is only entitled to an exemption from taxation if used exclusively by it for municipal or public purposes. It is undisputed in this case that the property is not used exclusively by the AUTHORITY.

Municipal property leased to a non-governmental lessee may be exempt if it can be demonstrated that the lessee serves or performs a governmental, municipal or public purpose or function or the property is used exclusively for literary, scientific, religious or charitable purposes. It has previously been determined by the Florida Supreme Court in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976) that an auto race track does not serve or perform an exempt government purpose. The ultimate use to which

the AUTHORITY's property has been put in furtherance of the "Twelve Hours of Sebring" is not a governmental, municipal or public purpose or function.

ARGUMENT

I. THE TRIAL COURT CORRECTLY GRANTED THE APPRAISER'S AND DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT.

A. THE AUTHORITY IS NOT IMMUNE FROM TAXATION AS WOULD THE UNITED STATES, THE STATE OF FLORIDA OR THE STATE'S POLITICAL SUBDIVISIONS

The issue in this case involves the denial of an exemption from ad valorem taxation of real property and improvements owned by the AUTHORITY which is leased to the RACEWAY. While MIKOS agrees that exemptions should be the primary focus of this Court, the tax immunity of authorities should also be addressed in light of conflicting Supreme Court and Appellate Court cases. See Hillsborough County Aviation Authority v. Walden, 210 S.2d 193 (Fla. 1968); Ocean Highway and Port Authority v. Page, 609 S.2d 84 (1 DCA 1992); Sarasota-Manatee Airport Authority v. MIKOS, 605 So.2d 132 (2 DCA 1992), rev. den., 617 So.2d 320 (Fla. 1993); and City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5 DCA 1988), rev. den., 544 So.2d 499 (Fla. 1989).

It is basic to ad valorem tax law that certain governmental entities have immunity from taxation. This immunity was established by the courts of Florida as opposed to the legislature.[1] Those governmental entities, entitled to immunity from taxation for their property owned and used exclusively by them, include the United States, the State and its political subdivisions (counties). Park-n-Shop Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957); Dickinson v. City of Tallahassee.

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[1] See Dickinson v. City of Tallahassee, 325 So.2d 1,3 (Fla. 1975).

An exemption presupposes the existence of a power to tax whereas immunity connotes, the absence of that power. Orlando Utilities Commission v. Milligan, 229 So.2d 262 (4 DCA Fla. 1969) cert. den. 237 So.2d 539 (Fla. 1970). The State and its political subdivisions, like a county, are immune from taxation since there is no power to tax them. Id. at 264.

Statutes often refer to the word exemption in referencing the taxability of the property owned of the Federal government, the State, or its political subdivisions. In Park-n-Shop Inc. v. Sparkman, the Court said that:

> property of the State and of a county ... is immune from taxation, and we say this despite the references to such property in [statutes] as being exempt.

In Alford v. State, 107 So.2d 27, 29 (Fla. 1958), the Supreme Court reiterated that same view.

> Although our statutes specifically exempt such State owned lands, such exemption is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government.

Chapter 67-2070 Laws of Florida, Special Acts, created the AUTHORITY as a body politic and corporate, whose members of the governing board are appointed by the City Council for the City of Sebring (R-2). Pursuant to said Special Act, all property owned by the City of Sebring known as the Sebring Air Terminal was transferred to the AUTHORITY. Said Act provides at Page 4239:

> All of that property now owned by the City of Sebring and known as the Sebring Air Terminal shall be gratuitously transferred and conveyed to the Sebring Airport Authority, subject to any

> reservations or restrictions of record or existing leases and subject to the restriction that none of said property may be sold at any time without consent of the City of Sebring.

FL Const. art. VIII, Sect. 1(a), provides:

> POLITICAL SUBDIVISIONS The State shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

By defining political subdivisions of the State as counties, the framers of the Constitution precluded legislative creation of public bodies within the counties attaining the character of a county. The AUTHORITY is, thus, not a political subdivision of the State entitled to immunity from taxation.

An authority is an entity created by statute to administer specific facilities which may be state-wide, regional or within counties or municipalities. Authorities do not function within a particular defined area as does a district nor may it raise revenues in the form of levying taxes. Funds are raised through bonds and user and/or rental fees of the specific facility which it operates.

Examples of authorities can be found in Chapter 348, Florida Statutes, which creates expressway and bridge authorities within the State to govern roads and bridges. Expressway authorities raise funds through bonds and tolls in order to acquire, construct and maintain its facilities. Chapter 348 exempts from taxation authority property on the grounds authorities benefit the people of Florida, increase commerce and improve living

conditions. The AUTHORITY does not serve the same purpose as expressway and bridge authorities.

Chapter 331, Florida Statutes, governs the Spaceport Florida Authority whose mission is to establish faciliites and activities to provide commercial space-related development opportunities for business. This Authority is a public corporation body politic and subdivision of the State having the power to issue bonds in order to raise funds. It is exempt from taxation by authority of Section 331.354, Florida Statutes, although such exemption is unnecessary. Park-n-Shop Inc. v. Sparkman. No such exemption or designation of subdivision of the State was given by the legislature for the AUTHORITY.

We must now examine the relevant case law to determine if an authority is immune from taxation as a political subdivision of the State or if it is more in the nature of a municipality and only entitled to an exemption.

The Hillsborough County Aviation Authority v. Walden is controlling on the issue of immunity from taxation of an aviation Authority. In this case, the Hillsborough County property appraiser assessed certain properties either owned outright by the Aviation Authority or which had been placed under the Aviation Authority's control or supervision by leases or agreements from their owners, Hillsborough County and the City of Tampa. The lower court upheld the assessment on these properties for the years 1963, 1964 and 1965.

The Florida Supreme Court held that the real property owned by the Plaintiff, Hillsborough County Aviation Authority, was exempt from ad valorem taxation and not immune since the Aviation Authority, unlike a county, was not a political subdivision of the State. Id. at 195. The Court went on to state that the exempt status of the Aviation Authority property may be lost or legally abandoned when the same is leased or otherwise used for predominantly private purpose and only incidentally for a public purpose. Id. at 195. It is interesting to note that as to the property owned by Hillsborough County but controlled by the Aviation Authority, the Court found that such property is immune from ad valorem taxation under the authority of Park-n-Shop Inc. v. Sparkman.

The holding in this case is controlling because the Hillsborough County Aviation Authority was created by the Florida legislature in Chapter 24-579, Laws of Florida (1974) in the same manner as the AUTHORITY. Thus, under the holding of Hillsborough County Aviation Authority, the AUTHORITY would be entitled to only claim exemption from ad valorem taxation since it is not a political subdivision of the State entitled to immunity from taxation.

The AUTHORITY may attempt to distinguish Hillsborough County Aviation Authority solely on the grounds that it was decided under the Constitution of 1885 as opposed to the more recent revision of 1968. The 1968 Constitution elevated the status of special tax districts recognizing them as on par with counties.

The AUTHORITY, however, is not a special tax district but an authority created as a body corporate to govern the Sebring Airport.

The drafters of the 1968 Constitution, perceiving inequities in the tax structure of the 1885 Constitution, further limited tax exemptions for municipalities demonstrating an intent to narrow, as opposed to broaden, the scope of taxation for certain government entities such as authorities and municipalities. Volusia County v. Daytona Beach Racing and Recreation Facilities District, 341 So.2d 498 (Fla. 1977).

In City of Orlando v. Hausman, the City itself, a municipal corporation, the Greater Orlando Aviation Authority, an agency of the City, and tenants of property leased from either the City or the Authority filed an action to contest real property assessments made by the property appraiser of Orange County.

The Court held the Airport Authority was not entitled to immunity from taxation but only an exemption if the property in dispute was held and used exclusively for municipal or other exempt purpose. The Court determined that the tenants' use of the properties was private and commercial and not for municipal or public purpose and, therefore, no exemption from ad valorem taxation would apply. City of Orlando v. Hausman is important in demonstrating that governmental entities such as municipalities and authorities are not immune from taxation but merely applicable for an exemption if one is available under Chapter 196, Florida Statutes.

Yet another case examining the potential exemption and not immunity of an authority property was Ocean Highway and Port Authority v. Page. The Port Authority and Ocean Highway was formed in 1947 by Florida Law, Chapter 21418, as a body politic created for the purpose of benefiting the public by operating a port or harbor in Nassau County. At no time does the Appellate Court discuss the issue of immunity. To the contrary, the case is analyzed strictly on the basis of whether the authority was entitled to an exemption for improvements under Section 196.192 Florida Statutes (1989). If, in fact, immunity applies to Authorities therein, the improvements owned by the Ocean Highway and Port Authority would not have been taxable by the Nassau County property appraiser. Ocean Highway and Port Authority v. Page lends support to the argument that authorities are more in the nature of a municipality than a political subdivision of the State.

Finally, the very court which decided Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2d DCA 1993), on the basis of exemptions also decided Sarasota-Manatee Airport Authority v. MIKOS. For the 1991 tax roll, MIKOS placed the fee simple interest in property owned by the Sarasota-Manatee Port Authority upon the tax roll. The Sarasota-Manatee Airport Authority filed a complaint for declaratory judgment which was ultimately dismissed with prejudice by the trial court.

On appeal, the Second District determined that the Sarasota-Manatee Airport Authority was more in the nature of a county than a municipality and was, therefore, immune from

taxation. The Court traced creation of the Airport Authority through special laws enacted by the Florida legislature. The Sarasota-Manatee Airport Authority was created in the same fashion as was the Hillsborough County Aviation Authority and also the AUTHORITY.

The record also reflected that the Sarasota-Manatee Airport Authority was an independent special district as defined by Section 189.403, Fla. Stat. (1991). The court held that special districts that are created as political subdivisions of the State enjoy the same immunity from taxation as does the State. Andrews v. Pal-Mar Water Control District 388 So.2d 4 (Fla. 4 DCA 1980) rev. den. 392 So.2d 1371 (Fla. 1980). The Court found the City of Orlando v. Hausman and Hillsborough County Aviation Authority v. Walden to be inapplicable.

Immunity from taxation should not be based upon whether the legislature designated a newly created Authority either as a special district or an agency of the municipality. Immunity from taxation is a limited concept applying only to the Federal government, the State and its political subdivisions. Entities created by the Florida legislature that govern a specific facility or improvement should not be political subdivisions of the State.

The Supreme Court should take this opportunity to resolve once and for all whether Authorities such as the one at issue in this case, as well as other authorities found throughout the State are immune from taxation. They are either political subdivisions

of the State immune from taxation or municipality-like entities eligible for an exemption from taxation.

The AUTHORITY in the case at bar is not a political subdivision of the State but is directly tied to the City of Sebring both in the appointment of its members and in the property that it owns. The AUTHORITY's real property and improvements which are the subject of this litigation should not be immune from taxation.

B. THE RACEWAY'S USE OF THE REAL PROPERTY, IMPROVEMENTS AND OTHER FACILITIES OWNED BY THE AUTHORITY IS A GOVERNMENTAL PROPRIETARY FUNCTION AND DOES NOT ENTITLE THE AUTHORITY TO AN EXEMPTION FROM AD VALOREM TAXATION.

Having determined that immunity is inapplicable, Authorities are taxable entities entitled to exemptions under certain statutory conditions. The enquiry into the question of ad valorem tax exemptions must begin with Section 196.001, Fla. Stat. (1991), which provides:

> Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
>
> 1. All real and personal property in this State and all personal property belonging to persons residing in this State; and
>
> 2. All leasehold interests in property in the United States, of the State, or any political subdivision, municipality, agency, authority or other public body corporate of the State.

The legislative intent of this statute is to recognize that all property within this State is taxable unless immune or expressly exempted by law.

Since authorities are not immune from taxation, their property is only entitled to exemption if it is owned and used exclusively by the authority for municipal or public purposes or

other exempt purposes.[2] Article VII, Section 3(a) of the Florida Constitution provides:

> (a). all property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation ....[3]

The legislative implementation of this exemption of municipal property is found in Section 196.199, Fla. Stat. (1991) which states:

> (1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions...
>
> > (c) All property of the several political subdivisions and **municipalities** of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, **which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.**

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[2] An argument could be made under Article VII, Section 3(a) of the Florida Consitution that only municipalities are entitled to exemptions and not authorities or other entities created by general or special law which are not otherwise immune from taxation. See also Archer v. Marshall, 355 So.2d 781 (Fla. 1978); Capital City Country Club Inc. v. Tucker, 613 So.2d 448 (Fla. 1993)

[3] The Constitution mandates that for municipally owned property to be exempt, it must be used exclusively by the municipality. In the instant case, the property is not being used by the AUTHORITY but is in fact being used by a private commercial lessee, the RACEWAY, through lease with the City of Sebring's sub-agency, the AUTHORITY.

> (2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions...
>
> > (a) **Leasehold interests in** property of the United States, of the state or any of its several political subdivisions, or **of municipalities**, agencies, authorities, and other public bodies corporate of the state **shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal or public purpose or function**, as defined in Section 196.012(6), Florida Statutes (1991). In all such cases, all other interests in the leased property shall also be e empt from ad valorem taxation. However, a leasehold interest in property of the state may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility...
>
> > (c) Any governmental property leased to an organization which uses the property exclusive for literary, scientific, religious, or charitable purposes shall be exempt from taxation...
>
> (4) **Property owned by any municipality**, agency, authority, or other public body corporate of the state **which becomes subject to a leasehold interest** or other possessory interest **of a nongovernmental lessee** other than that described in paragraph (2)(a), after April 14, 1976, **shall be subject to ad valorem taxation** unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or other charitable purposes. (emphasis added)

Section 196.199(1)(c) specifically implements the above constitutional provision that property of a municipality is entitled to an exemption from taxation when used for governmental, municipal or public purposes. This statutory provision expands

beyond municipalities to other entities created by other or special law. Therefore, Authorities would be covered under this statute.

Section 196.199(2)(a) applies only to leasehold interest in the property of all governmental entities. It provides that the leaseholds may become exempt when the lessee serves or performs a governmental, municipal, or public purpose or function.

From the record, it does not appear that the APPRAISER has sought to assess the leasehold interest of the RACEWAY. He appears to be assessing the real property and improvements of the AUTHORITY which is subject to the lease with the RACEWAY. Therefore, Section 196.199(2)(a) is not directly involved.

The property APPRAISER would have acted pursuant to subsection 196.199(4). That provides that when a municipality leases its property to a non-governmental lessee, that property is subject to taxation. This provision provides an exception when the leasehold is one described in Paragraph 2(a) above.[4]

The property of the AUTHORITY is subject to taxation under Section 196.199(4), unless it can be demonstrated that the leasehold interest of the RACEWAY is found to serve or perform a governmental, municipal or public purpose of function described in subsection 2(a). Section 196.199(2)(a), Fla. Stat. (1991).

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[4] This subsection also provides for exemption if the lessee uses the property for other exempt uses; however, the AUTHORITY and RACEWAY have not made any argument that the use by the RACEWAY is for a literary, scientific, religious or charitable purposes.

The definition for governmental, municipal or public purpose or function in Section 196.199(2)(a), is defined in Section 196.012(6), Fla. Stat. (1991), which provides:

> Governmental, municipal or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property in the United States, the State or any of its political subdivisions or any municipality, agency, authority or other public body corporate of the State is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which has demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds....

The above statutory section has been construed by the courts to determine its appropriate application for entitlement to exemption. It is the Appellant's position that the RACEWAY's use of its property is such an exempt use, or that the construction of a RACEWAY would be a valid subject for the allocation of public funds.

It is axiomatic in tax law that the burden is on the one claiming the exemption to clearly show an entitlement to the tax exemption. The APPELLANTS argue the rule of strict construction of a statute granting an exemption may not be invoked against municipality asserting an exemption. State ex rel. Green v. City of Pensacola, 126 So.2d 566 (Fla. 1961); Saunders v. City of Jacksonville, 25 So.2d 648 (Fla. 1946). The case of Volusia County v. Daytona Beach Racing and Recreational Facilities District demonstrates the application of the strict construction rule to a governmental entity.

The district was created by special act of the Florida legislature in 1955. This governmental body acquired certain lands from the City of Daytona Beach and, in turn, leased the entire acreage to a private corporation to construct a race track facility at the corporation's own expense. The district claimed an exemption from taxation on the leasehold interest under Section 196.199(2)(a).

The Florida Supreme Court placed the burden on the claimant, i.e., the District to show clearly an entitlement to tax exemption. The Court stated "the rule is that all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them". Id. at 341. Thus, the Florida Supreme Court applied the rule of strict construction to a governmental body similar to a municipality.

Two other cases involving municipalities and the lease of governmental property have failed to apply the rule argued by the APPELLANTS that strict construction is inapplicable where the question of an exemption is raised by a municipality. See City of Orlando v. Hausman; City of Bartow v. Roden, 286 So.2d 228 (Fla. 2d DCA 1973).

The APPRAISER's motion for summary judgment, requests for admissions and the remaining record before this court demonstrate that the AUTHORITY could not establish entitlement to an exemption from ad valorem taxation for the subject property. The APPRAISER adequately demonstrated his entitlement to a summary judgment based

upon the RACEWAY's use of the subject property for a governmental-proprietary function pursuant to Chapter 196 Florida Statutes.

In Williams v. Jones, 326 So.2d 425 (Fla. 1975), the Supreme Court outlined the test to determine whether a non-governmental lessee of government property is performing the requisite public purpose. As stated therein:

> ... It is the utilization of leased property from a governmental source that determines whether it is taxable under the constitution. Straughn v. Camp, 293 So.2d 689 (Fla. 1974). Williams, 326 So.2d at 433

The Supreme Court, later in the opinion, stated:

> The exemptions contemplated under Sections 196.012(5) (now subsection 6) and 196.199(2(a) Fla. Stat. (1991) relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions.... Thus all privately used property bears a tax burden in some manner and that is what the Constitution mandates. Williams, 326 So.2d at 432.

To determine the extent of the exemption of the subject property when leased to a non-governmental lessee, we must examine the abundant case law to determine the status of the use by the lessee. The examination must begin with the landmark decision in Williams v. Jones.

This case concerns a class of taxpayers consisting of commercial and residential leaseholders of property from the Santa Rosa Island Authority. These taxpayer challenged the assessment of their leasehold for ad valorem tax purposes.[5] The Circuit Court

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[5] This decision was rendered on the prior statute which did not break out some leaseholds for separate treatment as intangibles as provided in the current version of this section and its subsection.

rendered judgment for the county property appraiser and the lessees appealed.

The commercial taxpayers operated barber shops, plumbing businesses, beauty shops, laundries, rental cottages or rental units, motels, restaurants and camp grounds. They argued that the operation of their facilities constituted a governmental or public purpose or function defined in Section 196.012(6). The court held that the operation of these commercial establishments was proprietary and for profit and not for exempt governmental functions or purposes.

The AUTHORITY would distinguish Williams v. Jones on the grounds that it did not involve recreational facilities. Recreational facilities such as parks and zoos which are funded and built by governments and utilized by the general public would certainly be exempt from taxation. However, the construction of stadiums for use by professional baseball teams, and the construction of race tracks utilized for professional auto racing are proprietary functions similar to barber and plumbing shops making the Williams v. Jones decision applicable.

Leasehold interests previously held exempt are no longer entitled to an exemption from taxation because of their proprietary nature. See Daytona Beach Racing and Recreational Facilities District v. C.S. Pall, 179 So.2d 349 (Fla. 1965). There is no difference in the proprietary use by these commercial establishments in Williams v. Jones and that of the RACEWAY. Therefore, the leasehold interest of the RACEWAY does not serve to

establish a governmental-governmental function, entitling the AUTHORITY to an exemption from taxation for the subject property.

The AUTHORITY's argument that the lease of the subject property to the RACEWAY promotes tourism is equally misplaced. In Williams v. Jones, the commercial establishments supported tourism on the island, but they primarily were to profit their owners. The "predominant public use" test is dead and the actual use of the lessee is controlling. St. John's Assoc. v. Mallard, 366 So.2d 34 (Fla. 1978).

The Supreme Court followed the Williams v. Jones decision with Volusia County. The Court was faced with whether the use of leased governmental property as an auto racetrack was an governmental purpose and thus exempt from taxation under Section 196.199(2)(a). The Supreme Court specifically held again that the lessee did not serve an exempt governmental purpose and that the corporation's operation of the speedway was purely proprietary and for profit. Id. at 502.

This decision reversed earlier decisions prior to the 1968 Constitution granting exemption to the same raceway in Daytona Beach Racing and Recreational Facilities District v. C.S. Paul.

The APPELLANTS argue reliance upon Volusia County by the Second District Court of Appeal was misplaced. The APPELLANTS stated that the governmental unit in Volusia County was not operating public property in a manner that served a public function.

The APPELLANTS seem to lose sight of the ultimate issue for determination by the Courts. As stated in Williams v. Jones, "it is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution". The ultimate use of the property in Volusia County and in the case at bar is for the operation of a race track. The RACEWAY benefits from the use of the AUTHORITY's property by conducting a professional auto race known as the "Twelve Hours of Sebring". Therefore, Volusia County is directly on point and should control this Court's decision.

The APPELLANTS further argue that no evidence was introduced in Volusia County that the race was an integral part of the community's economic development or that a race was previously operated by a public body. First, it is ludicrous to argue that the Daytona Beach Raceway is not an integral part of that community's economic well-being. Second, the AUTHORITY's prior use of this property as an automobile race track for conducting professional automobile racing could not serve or perform a governmental, municipal, or public purpose or function as required by the Florida Constitution, Florida Statutes, and the legion of cases which are set out further in this brief. MIKOS disagrees with the APPRAISER only insofar as MIKOS would not have granted an exemption to this property when it was operated and used solely by the AUTHORITY.

The APPELLANTS also argue that there was no evidence in Volusia County that public funds had been allocated to any future

race on the soon to be constructed race track. The statement ignores the case history involving the Daytona Raceway.

The Florida Supreme Court, in a series of cases concerning the Daytona Raceway considered both the validity and use of public funds to construct such a facility and subsequently its taxability when leased to private enterprise. In State v. Daytona Beach Racing and Recreational Facilities District, 89 So.2d 34 (Fla. 1956), the Florida Supreme Court validated government bonds for construction of a racing and recreational facility.[6]

The validity of these bonds would have been highly questionable in light of subsequent decisions involving this same property. See Daytona Beach Racing and Recreational Facilities District v. Paul and Volusia County; see also City of West Palm Beach v. State, 113 So.2d 374 (Fla. 1959).

The APPELLANTS rely primarily upon Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (1 DCA 1992), rev. den. 620 So.2d 761 (Fla. 1993). In Sebring Airport Authority v. McIntyre, the Appellate court's decision, which is the subject of this appeal, was unable to properly distinguish Page on the basis that it was contrary to and does not refer to Volusia County. Page also was prior to the decision in Capitol City Country Club Inc. v.

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6 The District never issued the bond but instead leased all 448 acres to the National Speedway Corporation who undertook to construct a race track facility at its own expense, the principal consideration for the leasehold. Volusia at 500.

Tucker.[7] The Second District Court correctly relied upon the decisions of the Supreme Court and ignored Page.

In Page, the District Court of Appeal, First District, adopted the final judgment of the trial court. The trial judge found that construction or promotion of a public marina constituted a valid public purpose. Id. at 523. The two cases cited in support of this proposition, State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1981) and Panama City v. State, 93 So.2d 608 (Fla. 1957) are clearly distinguishable in that neither involves the taxation of governmental property leased to a non-governmental lessee under Section 196.199, Fla. Stat. (1991). See also City of West Palm Beach v. State.

The trial court's judgment also states that the City of Fernandina Beach was never taxed while it operated the marina and the tenants' use was identical to that of the City's, i.e., a marina. MIKOS would again argue that a municipality's use of government property for the operation of a private marina does not constitute a valid governmental, municipal or public purpose or function sufficient to grant an exemption from ad valorem taxation.

The Page decision oddly fails to cite any of the Florida Supreme Court decisions on the issue of exemptions from taxation for leased government property previously cited in this brief.

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[7] This court held that municipal property leased to a non-governmental lessee for use as a golf course was subject to real estate taxation.

The Page court attempts to distinguish the City of Orlando v. Hausman decision relied upon by the Nassau County property appraiser on two grounds. First, the Court believed that private entities involved in the City of Orlando v. Hausman case admitted that their use of the leased property was for private purposes. Page at 524. However, the Page Court seems to ignore later in the City of Orlando v. Hausman opinion where the Court makes its own independent determination that the property was being used for private purposes and not exempt from ad valorem taxation. Id. at 1185. City of Orlando v. Hausman was relied upon and approved by this court in Capital City Country Club v. Page.

Second, the Page Court states that it is the use of the subject property and not the institutional character of the entity using the property which determines whether an exemption applies under the statute. Id. at 524. However, the Page Court here ignores Fernandina Harbor Joint Ventures' proprietary use of the government property as a commercial marina. Having failed to follow the utilization test found in Williams v. Jones and City of Orlando v. Hausman, the Page decision is of little presidential value.

Other cases dealing with these issues and supporting the position of the APPRAISER, DEPARTMENT and MIKOS are Orlando Utilities Commission v. Milligan; Markam v. MacCabee Investments Inc., 343 So.2d 16 (Fla. 1977); City of Bartow v. Roden.

CONCLUSION

The trial court correctly granted the Appraiser's motion for summary judgment on the grounds that the lessee did not serve or perform a governmental, municipal or public purpose or function as required by the Florida Statutes to grant an exemption from taxation to municipally owned property. The use to which this property is put, i.e., an automobile raceway, has already been determined by the Supreme Court of this State to not be exempt from taxation. The relief requested by the APPELLANTS should be denied and the decision of the appellate court affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: HALA A. SANDRIDGE, ESQ., Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Post Office Box 1438, Tampa, Florida 33601; LARRY E. LEVY, Esq., Post Office Box 10583, Tallahassee, Florida 32302; CLIFFORD M. ABLES, III, Esq., 130 E. Center Street, Sebring, Florida 33870; RALPH R. JAEGER, Esq., Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida 32399-1050; and, MICHAEL S. DAVIS, Esq., Post Office Box 2842, St. Petersburg, Florida 33731 on this 22 day of March, 1994.

Robert K. Robinson

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