IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

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.	Supreme Court Case No.: 82489

PETITIONERS' BRIEF ON JURISDICTION

Hala A. Sandridge, Esquire
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL AND BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
Florida Bar No.: 0454362
Attorneys for Petitioners

TABLE OF CONTENTS

PAGE

STATEMENT OF THE CASE AND FACTS 1

JURISDICTION ISSUE 3

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

AN EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN THE FIRST AND SECOND DISTRICT COURTS OF APPEAL BECAUSE THE FORMER PERMITS AN AD VALOREM TAX EXEMPTION TO FOR PROFIT LESSEES OPERATING PUBLIC RECREATIONAL FACILITIES, WHILE THE LATTER PROHIBITS SUCH AN EXEMPTION. 5

CONCLUSION 8

CERTIFICATE OF SERVICE 9

APPENDIX 10

TABLE OF AUTHORITIES

PAGE

Decisional Authority

Dodi Publishing Company v. Editorial America, S.A.
385 So. 2d 1369 (Fla. 1980) 5

Jenkins v. State
385 So. 2d 1356 (Fla. 1980) 5

Nielson v. City of Sarasota
117 So. 2d 731 (Fla. 1960) 5

Page v. Fernandina Harbor Joint Venture
608 So. 2d 520 (Fla. 1st DCA 1992)
rev. den., ____ So. 2d ____ (Fla. 1993) 1, 2, 4-7

Sebring Airport Authority v. C. Raymond McIntyre
___ So. 2d ____ (Fla. 2d DCA 1993) 4, 7

Volusia County v. Daytona Beach and Racing and Recreational Facilities Districts
341 So. 2d 498 (Fla. 1976)
dismissed, 434 U.S. 804
98 S.Ct. 32
54 L.Ed.2d 61 (9177) 2, 6

Statutory Authority

Article V, Section 3(b)(3), Fla. Const., (1980) 5

STATEMENT OF THE CASE AND FACTS

As their statement of the case and facts, Petitioners, The Sebring Airport Authority and Sebring International Raceway, Inc., hereby adopt by reference the decision of the Second District Court of Appeal in this matter. (A.1-4)[1/2/] The Petitioners provide this brief summary of the relevant case and facts contained within the opinion:

The Authority and Raceway had requested the Government to grant a public purpose exemption from ad valorem taxation for a racetrack owned by the Authority and leased to the Raceway. (A.2) The Government denied the request and the trial court affirmed the denial of the exemption on a summary judgment motion. (A.2) On appeal to the Second District, the Authority and Raceway relied upon the First District's decision in Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992), rev. den., ____ So. 2d ____ (Fla. 1993) to support their request for an ad valorem tax exemption. (A.4) The Authority and Raceway urged that the Page decision permitted an exemption to a for profit governmental

---

1/ The Petitioner, The Sebring Airport Authority, will be referred to as the "Authority." The Petitioner, The Sebring International Raceway, Inc., will be referred to as the "Raceway." The Respondents, 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, will be collectively referred to as the "Government."

2/ All references to the Appendix on appeal will be referred to by the symbol "A." followed by the appropriate page number from the Appendix.

lessee operating a public recreational facility. The Second District expressly refused to follow the First District's decision in Page. (A.2) Instead of following the First District's decision in Page, the Second District announced the rule of law as follows:

> Other statutory provisions exempt privately held leaseholds of governmental property from taxation "only when the lessee . . . is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or . . [sic] which would otherwise be a valid subject for the allocation of public funds." The lessee in the present case does not serve a governmental purpose. The Corporation's operation of the speedway is "purely proprietary and for profit." The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." . . . Operating an automobile racetrack for profit is not even arguably the performance of a "governmental-governmental" function.

(A.3-4) (citations omitted) (emphasis added)[3/] Based upon this rule of law, the Second District refused to permit an ad valorem tax exemption to a for profit lessee that was operating a racetrack for the public. (A.4) This timely appeal followed.

[3/] This rule of law is a direct quote from this Court's decision in Volusia County v. Daytona Beach and Racing and Recreational Facilities Districts, 341 So. 2d 498 (Fla. 1976), dismissed, 434 U.S. 804, 98 S.Ct. 32, 54 L.Ed.2d 61 (9177).

JURISDICTION ISSUE

WHETHER AN EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN THE FIRST AND SECOND DISTRICT COURTS OF APPEAL BECAUSE THE FORMER PERMITS AN AD VALOREM TAX EXEMPTION TO FOR PROFIT LESSEES OPERATING PUBLIC RECREATIONAL FACILITIES, WHILE THE LATTER PROHIBITS SUCH AN EXEMPTION.

SUMMARY OF THE ARGUMENT

The decision of the Second District expressly and directly conflicts with the decision of Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992). In Page, the First District determined that recreational property leased by a governmental entity to a for profit corporation and used for governmental purposes is exempt from ad valorem taxation. Conversely, in Sebring Airport Authority v. C. Raymond McIntyre, ___ So. 2d ____ (Fla. 2d DCA 1993), the Second District held that the lease of recreational property by a governmental entity to a for profit company cannot be a government function exempt from ad valorem taxation. The Second District's rule of law conflicts with the First District's pronouncement. The Second District recognized that it could not distinguish the facts in this case from the facts in Page. This Court should, therefore, exercise its discretion and review this case on the merits.

ARGUMENT

AN EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN THE FIRST AND SECOND DISTRICT COURTS OF APPEAL BECAUSE THE FORMER PERMITS AN AD VALOREM TAX EXEMPTION TO FOR PROFIT LESSEES OPERATING PUBLIC RECREATIONAL FACILITIES, WHILE THE LATTER PROHIBITS SUCH AN EXEMPTION.

Under Article V, Section 3(b)(3), Fla. Const., (1980), this Court may exercise its discretionary jurisdiction where an appellate decision expressly and directly conflicts with a decision from another Florida appellate court. That conflict must be expressed and contained within the written rule announced by the Court. Jenkins v. State, 385 So. 2d 1356 (Fla. 1980); Dodi Publishing Company v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980). This Court has recognized two situations which authorize the invocation of its conflict jurisdiction. The first situation is when the decision announces a rule of law which conflicts with the rule previously announced by another appellate court. The second is when there has been an application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case decided by another appellate court. Nielson v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). In this case, the decision of the Second District Court of Appeal expressly and directly conflicts with a decision from the First District Court of Appeal because the Second District's decision announces a rule of law that conflicts with a previously pronounced First District rule of law.

In Page, the First District was required to decide whether the lease of a recreational facility by the City of Fernandina Beach to

a joint venture was a governmental function exempt from ad valorem taxation. The First District noted that the government's opposition to the exemption from ad valorem taxation was based, in part, on the government's opinion that it "does not consider the operation of a marina for profit by a non-governmental entity to be a public purpose." Id. at 524. In rejecting this contention, the First District stated:

> The inquiry as to whether an exemption under the statute applies is to be governed by the use of the subject property and not by the institutional character of the entity using the property: "A right of exemption . . . is to be determined by the use to which the property is put in the ownership of the property."

Id. at 524. Consequently, the First District held that the joint venture, who leased the marina from the city and operated it for the public's use, was entitled to an ad valorem exemption.

The Second District, following this Court's decision in Volusia County, reached a contrary result. The rule of law announced by the Second District is as follows:

> The lessee in the present case does not serve a governmental purpose. The Corporation's operation of the speedway is purely proprietary and for profit. The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution.

(A.3) (emphasis added) This rule of law is directly contrary to the rule of law pronounced by the First District. The Second District erroneously focused on the institutional character of the

entity using the property. Because the lessee in Sebring was operating for profit, the Second District held that the leasehold could not be exempt from ad valorem taxation. The First District in Page, however, refused to focus on the institutional character of the entity using the property. The fact that the lessee was a for profit company did not preclude the First District from allowing the ad valorem tax exemption when the lessee was operating a public recreational facility which served a public function.

The result of these conflicts is clear. Within the jurisdiction of the First District, a non-governmental for profit lessee, operating a recreational facility for the public, is entitled to an ad valorem tax exemption. Throughout the rest of the state, however, a taxpayer operating a similar facility, will not be entitled to an ad valorem tax exemption because it is a for profit corporation. This disparate treatment gives an unfair advantage to taxpayers who are residing in one area of Florida over another area of Florida. All taxpayers should be treated similarly. Therefore, the decision of the Second District directly and expressly conflicts with the First District's decision and confers upon this Court the authority to exercise its discretionary jurisdiction.

CONCLUSION

The decision of the Second District Court of Appeal provides this Court with the ability to exercise its discretionary jurisdiction to hear this case on the merits. The decision expressly and directly conflicts with a rule of law announced by the First District. The ramifications of the Second District's decision is far reaching and provides more than ample justification for this Court to exercise its discretion and review this matter. These Petitioners request this Court to exercise that discretion and to hear this case.

Respectfully submitted,

FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL AND BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
Bar #: 0454362
Attorneys for Appellants/
Petitioners

BY: Hala Sandridge
Hala A. Sandridge, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: LARRY E. LEVY, Esquire, Post Office Box 10583, Tallahassee, Florida 32302; CLIFFORD M. ABLES, III, Esquire, 130 E. Center Street, Sebring, Florida 33870; and RALPH R. JAEGER, Esquire, Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida 32399-1050 on this the 30th day of September, 1993.

Hala Sandridge

Hala A. Sandridge, Esquire

APPENDIX

The Sebring Airport Authority v. C. Raymong McIntyre - opinion rendered by Second District Court of Appeal on July 30, 1993.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

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

Appellants,

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.

CASE NO. 92-04403

Opinion filed July 30, 1993.

Appeal from the Circuit Court for Highlands County; J. David Langford, Judge.

Paul R. Pizzo and Hala A. Sandridge of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tampa, for Appellants.

Larry E. Levy, Tallahassee, for Appellee C. Raymond McIntyre, as Property Appraiser for Highlands County, Florida.

Robert A. Butterworth, Attorney General, and Ralph R. Jaeger, Assistant Attorney General, Tallahassee, for Appellee Department of Revenue, State of Florida.

CAMPBELL, Judge.

Appellants, The Sebring Airport Authority and Sebring International Raceway, Inc., challenge the final summary judgment entered against them in their action against appellees, Raymond McIntyre, the Highlands County Property Appraiser; the Department of Revenue; and J.T. Landress, Highlands County Tax Collector. Appellants, relying on section 196.199, Florida Statutes (1989), had requested and been denied a public purpose exemption from ad valorem taxation for the property used by the raceway. We affirm.

The pertinent parts of section 196.199 provide as follows:

> (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 . . . 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).

In affirming, we rely upon Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993) and Volusia County v. Daytona Beach Racing and Recreational Facilities Districts, 341 So. 2d 498 (Fla. 1976), dismissed, 434 U.S. 804, 98 S.Ct. 32, 54 L.Ed.2d 61 (1977). In Volusia County, the supreme court held as follows:

Other statutory provisions exempt privately held leaseholds of governmental property from taxation "only when the lessee," Section 196.199(2)(a), Florida Statutes (1975), "is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or . . [sic] which would otherwise be a valid subject for the allocation of public funds." Section 196.012(5), Florida Statutes (1975). The lessee in the present case does not serve a governmental purpose. The Corporation's operation of the speedway "is purely proprietary and for profit." Williams v. Jones, 326 So.2d 425, 433 (Fla.1975) (reh. den. 1976). The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." Straughn v. Camp, supra, at 695.

The burden is on the claimant to show clearly any entitlement to tax exemption. "The rule is that all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them. State ex rel. Wedgworth Farms, Inc. v. Thompson, 101 So.2d 381 (Fla.1958)." Williams v. Jones, supra, at 435. Mr. Justice Sundberg, writing for the Court in Williams v. Jones, supra, delineated the scope of the exemption at issue here in the following words:

> The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions. With the exemption

> being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either directly or indirectly through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates. At 433.
>
> Operating an automobile racetrack for profit is not even arguably the performance of a "governmental-governmental" function.

341 So. 2d at 502 (emphasis in original).

Appellants, however, rely upon Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992), rev. denied, ___ So. 2d ___ (Fla. May 6, 1993). Page, which does not refer to Volusia County and was prior to the decision in Capital City, does appear to be contra to the holdings in those cases and we are unable to properly distinguish Page. We are bound by the decisions of our supreme court which appear to us to be on point. See Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). Inasmuch as the supreme court in Volusia County has held that "[o]perating an automobile racetrack for profit is not even arguably the performance of a 'governmental-governmental' function," we are prohibited from holding otherwise.

Affirmed.

FRANK, C.J., and THREADGILL, J., Concur.