IN THE SUPREME COURT OF THE STATE OF FLORIDA

THE SEBRING AIRPORT AUTHORITY
and SEBRING INTERNATIONAL
RACEWAY, INC.

Appellants/Petitioners,

vs. CASE NO. 82,489

C. RAYMOND MCINTYRE, ET AL.,

Appellees/Respondents.
_____/

On Petition for Discretionary Review of Case
No. 92-04403, District Court of Appeal, Second District

APPELLEE/RESPONDENT, DEPARTMENT OF REVENUE'S BRIEF ON JURISDICTION

Respectfully submitted,

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STATEMENT OF THE CASE AND FACTS

In their jurisdictional brief, the Appellants/Petitioners rely on the order of the Second District Court of Appeal ("Second District") and only set out a brief statement of the facts. The Department of Revenue, State of Florida ("Department") agrees with the statement of facts, but believes that the quoted portion set out on page 2 of the jurisdictional brief should be further explained. That language is a direct quote from this Court's holding in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So. 2d 498 (Fla. 1976), appeal dismissed, 434 U.S. 804, 98 S. Ct. 32, 54 L. Ed. 2d 61 (1977).

Furthermore, in the last paragraph of its Order affirming the circuit court, the Second District stated in pertinent part:

> 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.

Subsequent to the issuance of the Second District's opinion, the Appellants/Petitioners, petitioned the Second District to certify conflict between the instant decision and the First District Court of Appeal's decision in Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992), rev. denied,

____ So. 2d ____ (Fla. May 6, 1993) to the Florida Supreme Court. In response, both the Property Appraiser and the Department admitted conflict existed and requested the Second District to certify the same basic two questions. See, Response to Motion filed by Appellants dated August 18, 1993 (The Property Appraiser's) and dated August 23, 1993 (the Department's).

By Order dated September 1, 1993, the Second District denied the motion for certification, and Appellants/Petitioners' timely filed a Notice to Invoke Discretionary Jurisdiction of this Court.

SUMMARY OF ARGUMENT

The Second District Court of Appeal has admitted that it is "unable to properly distinguish Page" (Slip Opinion at 4), but has denied the motion to certify conflict and has not certified the two questions requested by the Property Appraiser and the Department. While the Department can ascertain a factual distinction between Page (operation of a marina in the nature of a city park) and Sebring Airport Authority (operation of a racetrack), it believes that § 196.199(4), Fla. Stat., has clearly made land leased by a municipality, agency, authority, or other public body corporate to a nongovernmental lessee other than that described in § 196.199(2)(a), Fla. Stat., subject to ad valorem tax. Capital City Country Club v. Tucker, 613 So. 2d 448 (Fla. 1993). Section (2)(a), provides that the leasehold is

exempt only when the lessee serves or performs a governmental, municipal, or public purpose or function. Clearly, pursuant to the holding in Daytona Beach Racing, and the holding of the Second District in this case "operating an automobile racetrack for profit is not even arguably the performance of a 'governmental-governmental' function." (Slip Opinion at 4) However, the Department fails to see how in Page the operation of a marina could be said to be the performance of a "governmental-governmental" function. Therefore, although the Second District refused to certify conflict, it did recognize that Page appeared to be contra to the Daytona Beach Racing case and its own holding. Based on the above, the Department believes that it would be proper for this Court to exercise its discretionary jurisdiction to ensure consistent tax treatment by the District Courts of the properties leased to private corporations but owned by municipalities, agencies, authorities, or other public body corporates.

ARGUMENT

DOES THE APPLICATION OF THE RULE OF LAW IN THIS CASE PRODUCE A DIFFERENT RESULT FROM A CASE IN ANOTHER DISTRICT WHICH INVOLVED SUBSTANTIALLY THE SAME FACTS.

As stated in Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975), the jurisdiction of the Supreme Court to review decisions of courts of appeal because of alleged conflicts requires that there be:

> (1) [T]he announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different

> result in a case which involves substantially the same facts as a prior case. In this second situation, the facts of the case are of the utmost importance.

In this case, the Second District did everything but say that there was direct conflict with the First District Court of Appeal's opinion in Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992), rev. denied, ____ So. 2d ____ (Fla. May 6, 1993). Further, the Second District indicated that it thought the Page decision conflicted with the decisions of this Court in Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993) and Daytona Beach Racing. (Slip Opinion at 4).

In the Page case, the Court appeared to believe that the operation of a marina for profit by a non-governmental entity could still be considered to be for a public purpose. That is, operation of a marina for use by the public, even though operated by a for-profit entity, would be entitled to ad valorem tax exemption. See, Page, 608 So. 2d at 522-524.

Under almost identical fact situations, the Courts, in Daytona Beach Racing, Capital City Country Club, and this case, have determined that no exemption exists under § 196.199(2)(a) and (4), Fla. Stat. In Daytona Beach Racing, a private corporation leased public property from a legislatively created racing and recreational facilities district. The Supreme Court, quoting with approval Williams v. Jones, 326 So. 2d 425, 433 (Fla. 1975), specifically said:

> The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, related 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.

Daytona Beach Racing, at 502.

Also, quoting with approval Straughn v. Camp, 293 So. 2d 689, 695 (Fla. 1974), the Court in Daytona Beach Racing, at 502, stated, "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." In this case, the property is leased from a public entity by a for-profit entity and used for a racetrack (almost identical to Daytona Beach Racing) and the Second District found it was bound by this Court's decision in Daytona Beach Racing. (Slip Opinion at 4).

In Capital City Country Club, a for-profit entity leased land from the City of Tallahassee to be used as a golf course. Again, because the property was being used for private non-municipal purposes under Art. VII, § 3, Fla. Const., the fee interest in the property became subject to ad valorem taxation. Capital City Country Club, 613 So. 2d at 450.

With the possible exception of Capital City Country Club, all the cases mentioned above concern the leasing of property from a public entity (other than the sovereign) to a private corporation to be used as a recreational facility for the public. In every instance, except Page, the Courts have ruled that such leases subject the property to ad valorem taxation. See, e.g., Capital City Country Club.

In Page, the Court determined that the exemption set out in § 196.199(2)(a), Fla. Stat., still applied because the lessee was performing a valid public purpose. Page, 608 So. 2d at 523. However, the properties leased to the lessees in Daytona Beach Racing and the Appellants/Petitioners were found to have lost any exemption they may have had because they were being used in a "governmental-proprietary" function as opposed to a "governmental-governmental" function. Daytona Beach Racing, 341 So. 2d at 502; Sebring Airport Slip Opinion at 4.

Section 196.199(4), Fla. Stat., provides that:

> (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 charitable purposes. (e.s.)

Section 196.199(2)(a), Fla. Stat., provides in pertinent part:

> (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 s. 196.012(6). (e.s.)

The Florida Supreme court has repeatedly interpreted these provisions to require the lessee to perform a "governmental-governmental" function, and that if the operation of the lessee is "proprietary and for profit" then it is not exempt. See,

Williams v. Jones; Daytona Beach Racing; and Straughn v. Camp, supra.

Based on the facts in this case, the Department believes that the Second District arrived at a correct conclusion. Also, the Second District refused to certify conflict with the First District's decision in Page. However, it does appear that application of the above-quoted rules of law by the two District Courts causes the Courts to arrive at diametrically opposed answers for property that is leased to private corporations and used for recreational purposes.

Although the factual situations can be distinguished, the Department believes that it would not be outside the Supreme Court's jurisdiction to find that the two cases have substantially the same factual situation, but have reached opposite outcomes. Pursuant to Art. V, § 3(b)(3), Fla. Const., this Court has conflict jurisdiction when a district court applies a rule of law to produce a decision which conflicts with a previous decision that involves substantially the same facts. See, Smith v. Jack Eckred Corp., 577 So. 2d 1321, 1322, n.1 (Fla. 1991)(Barkett, J., dissenting); Mancini, supra; and Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). Therefore, the Department respectfully requests that this Court exercise its discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const., and review this case. This will ensure that the District Courts provide consistent ad valorem tax treatment of properties leased

to private corporations, but owned by municipalities, agencies, authorities, or other public body corporates.

CONCLUSION

This Court should accept the Petitioners/Appellee's petition and grant discretionary jurisdiction to review the opinion of the Second District, because the results in this case appear to be in direct conflict with the decision of the First District in Page and this Court's opinion in Capital City Country Club. Finally, this Court's guidance is needed to ensure consistent ad valorem tax treatment of properties leased to private corporations but owned by municipalities, agencies, authorities or other public body corporate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on Jurisdiction has been furnished by U.S. Mail this 25th day of October, 1993 to: Larry E. Levy, Esq., P.O. Box 10583, Tallahassee, FL 32302; Clifford M. Ables, III, Esq., 130 E. Center St., Sebring, FL 33870 and Hala A. Sandridge, Esq., P.O. Box 1438, Tampa, FL 33601.

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