SUPREME COURT OF THE STATE OF FLORIDA

CITY OF SARASOTA, a municipal corporation,

Appellant/Petitioner,

v.

Case No. 83,177

J. W. MIKOS, Property Appraiser for Sarasota County, Florida,

Appellee/Respondent.

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On Appeal from the
Second District Court of Appeal
in and for the State of Florida

INITIAL BRIEF OF APPELLANT/PETITIONER, CITY OF SARASOTA

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STATEMENT OF THE CASE

On July 18, 1991, Appellant/Petitioner J. W. MIKOS, Property Appraiser for Sarasota County, Florida ("MIKOS")[1] filed a Complaint in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, naming the CITY OF SARASOTA, a municipal corporation, as Defendant ("CITY OF SARASOTA") (R55-58).[2] The Complaint sought a mandatory injunction restoring certain real property, together with a baseball stadium ("Stadium") owned by the CITY OF SARASOTA and under lease to the Chicago White Sox, Ltd. to the Sarasota County Tax Roll after the Sarasota County Property Appraisal Adjustment Board had granted a 100% exemption to said property (R56-57). MIKOS filed a Motion for Summary Judgment (R176-185) and the CITY OF SARASOTA filed a Motion for Summary Judgment (R186-274). The CITY OF SARASOTA filed two Affidavits of David R. Sollenberger, City Manager, stating the public recreational uses of the Stadium (R304-355, 356-407). The Court, after a hearing on both Motions for Summary Judgment (R1-54), entered a Final Summary Judgment (R466-467) granting MIKOS' Motion for Summary Judgment and denying the CITY OF SARASOTA's Motion for Summary Judgment, on the basis that the use by the Chicago White Sox and their farm team affiliate of the CITY's stadium for training and exhibition games is purely proprietary and for profit. The trial court in the Final Summary

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[1] The Petitioner, CITY OF SARASOTA, FLORIDA, will be referred to as "CITY OF SARASOTA." The Respondent, J. W. MIKOS, Property Appraiser for Sarasota County, will be referred to as "MIKOS."

[2] References to the Record on Appeal shall be made by use of the letter "R" followed by the appropriate page.

Judgment relied upon: Williams v. Jones, 326 So.2d 425 (Fla. 1975); Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976); Brandes v. City of Deerfield Beach, 186 So.2d 6 (Fla. 1966); and City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988).

The CITY appealed the Final Summary Judgment before the Second District Court of Appeal and the Appellate Court entered a per curiam opinion affirming the Final Summary Judgment relying upon Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2nd DCA 1993) (Sup.Ct.App3).[3] This opinion was rendered final on January 10, 1994, when the Appellate Court entered an Order denying the CITY's Motion for a Rehearing and for a Stay (Sup.Ct.App4). The CITY OF SARASOTA sought conflict jurisdiction before this Court.

The CITY OF SARASOTA in its Jurisdictional Brief stated that since the case which the per curiam opinion cited as controlling authority, Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2nd DCA 1993), was under review by the Supreme Court based on conflict, the per curiam opinion continued to constitute express conflict with Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992), rev.den. 620 So.2d 761 (Fla. 1993). The Jurisdictional Brief of the CITY OF SARASOTA demonstrated that the First District permits a for-profit lessee serving a public purpose to utilize the ad valorem tax exemption set forth in §196.199, Fla.Stat. In contrast, the Second District focuses solely on the institutional character of the lessee to determine

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[3] References to the Appendix of this Brief shall be made by use of the letters "Sup.Ct.App." followed by the appropriate page.

that a public function cannot be served by a for-profit lease. Based upon this express conflict, this Court accepted jurisdiction.

STATEMENT OF FACTS

The CITY and the Chicago White Sox, Ltd. entered into a Baseball Facility Lease dated August 3, 1988, covering the property, the tax exempt status of which is disputed in this litigation (R89,170). Commencing with the 1990 tax year, MIKOS assessed the real property upon which the Stadium is located proportionately for the use by the Chicago White Sox (R56). The CITY OF SARASOTA filed an application for a 100% exemption of the property under §196.199(2)(a), Fla.Stat. (1993) (R56). MIKOS denied the request for a total exemption and the CITY OF SARASOTA appealed to the Sarasota County Property Appraisal Adjustment Board who did grant a total exemption (R56-57). The Stadium functions as a public park for athletic purposes, including during the major league training games of the Chicago White Sox, Ltd. and the minor league games of their farm team affiliate (2DCA App.5,18).[4] The baseball games of the Chicago White Sox, Ltd. and its farm team affiliate are required to be open to all members of the public as recognized in the Baseball Facility Lease (2DCA App.5,18). There is a fee charged for admission to the baseball games of the Chicago White Sox and their farm team affiliate (2DCA R173-174).

The use of the Stadium by the Chicago White Sox is a nonexclusive use (2DCA App.21-22). There are numerous public park and recreational activities occurring at the Stadium in addition to games of the Chicago White Sox including football games and

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[4] References to the Appendix of the CITY OF SARASOTA's Initial Brief before the Second District shall be made by use of the letters "2DCA App." followed by the appropriate page.

soccer games of local youth teams and baseball games of five high school teams (2DCA App.21-22).

The spring training games of the Chicago White Sox promote tourism by being a major draw for tourists to the CITY OF SARASOTA and provide a substantial economic benefit to the community (2DCA App.22-23,26-70). The Affidavit of David R. Sollenberger, City Manager, indicates the direct dollar impact to be in excess of $9 million with a total economic impact of over $15 million (2DCA App.23).

The Stadium is not being operated solely as a profit-making enterprise for the benefit of the Chicago White Sox, Ltd. The CITY OF SARASOTA has subsidized the cost of the operation of the Stadium from its General Fund each year because revenues generated by the Stadium are not sufficient to cover the operating expenses of the facility (2DCA App.24). The amount of this subsidy has been approximately $200,000 per year (2DCA App.24,71).

The electorate of the CITY OF SARASOTA voted to approve the financing of the CITY OF SARASOTA Sports Complex ("Stadium") through the sale of general obligation bonds (R90,170). The Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County in City of Sarasota v. The State of Florida and Several Property Owners, Taxpayers, and Citizens of the City of Sarasota, et al., Case No. 86-5596-CA-01; validated the General Obligation Bonds for the CITY to construct the Stadium (2DCA App.4,8,18). The judgment in said bond validation proceeding contained as a conclusion of law that the issuance of the $8.5 million General Obligation Bonds had

been approved as required by and in all respects in accordance with the provisions of Article VII, Section 12, Fla.Const. (2DCA App.4,8,18).

SUMMARY OF ARGUMENT

The proper inquiry in determining whether a nongovernmental lessee is entitled to an ad valorem tax exemption is the **use** of the property, **not** whether the lessee is operating for-profit.

The CITY OF SARASOTA is entitled to a total exemption from ad valorem tax for the Stadium parcel. The Second District erred in affirming the granting of Summary Judgment in favor of MIKOS because under §196.199(2)(a) and §196.012(6), Fla.Stat., the use by the Chicago White Sox of the Stadium for their spring training games serves at least two governmental-governmental functions: (1) public recreation and (2) promotion of tourism. §196.199(2)(a), Fla.Stat., provides an express exemption from ad valorem tax for leasehold interests in property of municipalities used by nongovernmental lessees when the lessee serves or performs a governmental, municipal, or public purpose or function. Clearly this criterion has been satisfied as to the lease of the Stadium to the Chicago White Sox.

The Chicago White Sox perform a public purpose which would be a valid subject for the allocation of public funds; thus satisfying the second criterion in §196.199(2)(a), Fla.Stat. The construction of the Stadium by the CITY OF SARASOTA was financed by the issuance of General Obligation Bonds which were validated by the Circuit Court as serving a public purpose. Additionally, the CITY has subsidized the cost of the operation of the Stadium with tax revenues each year because revenues generated by the Stadium are insufficient to cover the operating expenses of the Stadium.

The Legislature enacted House Bill 2557 in 1994 which amended §196.012(6), Fla.Stat., to expressly list the types of public recreational facilities which when leased to nongovernmental lessees, serve a governmental, municipal, or public function to include stadiums and sports facilities with permanent seating. House Bill 2557 served to clarify the definition of the phrase "governmental, municipal, or public purpose or function" used in §196.199(2), Fla.Stat. rather than change the definition, and thus is an excellent indication of the original intent of the Legislature. The cases cited in Section II of this Brief provide that the above statement is especially true when the courts have issued conflicting statutory interpretations as in the case sub judice. The amendment in House Bill 2557 clearly indicates that the Legislature always intended to include sports facilities with permanent seating and stadiums as governmental, municipal, or public functions.

The First District in Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992), implemented the intent of the Legislature by focusing on the public recreational use of the leasehold, and not the for-profit nature of the lessee. For the foregoing reasons, this Court should reverse the Summary Judgment in favor of MIKOS.

ARGUMENT

I. THE SECOND DISTRICT ERRED IN AFFIRMING SUMMARY JUDGMENT IN FAVOR OF MIKOS AND AGAINST THE CITY OF SARASOTA WHEN THE CITY'S REQUEST FOR AD VALOREM TAX EXEMPTION WAS DENIED.

A. THE CITY OF SARASOTA HAS MET ITS BURDEN OF PROOF THAT THE CITY OF SARASOTA IS ENTITLED TO AN AD VALOREM TAX EXEMPTION SINCE THE CRITERIA IN §196.199(2)(A) AND §196.012(6), FLA.STAT., HAVE BEEN SATISFIED AS TO THE CITY OF SARASOTA SPORTS COMPLEX AND ED SMITH STADIUM AS A MATTER OF LAW.

The criteria to determine whether the lease by the CITY OF SARASOTA of the Stadium to the Chicago White Sox is exempt from ad valorem taxation is whether the Chicago White Sox perform functions or serve governmental purposes which could be properly be performed or served by the CITY or which would be a valid subject for the allocation of public funds. This criteria derives from §196.199(2)(a), Fla.Stat. (1993), which provides as follows:

> 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**

> **§196.012(6).** In all such cases,all other interests in the leased property shall also be exempt from ad valorem taxation... (emphasis added);

and, §196.012(6), Fla.Stat. (1993):

> 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 of 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 is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds... (emphasis added).

MIKOS argues that the CITY's claim for exemption for ad valorem tax for the City of Sarasota Sports Complex and Ed Smith Stadium should be strictly construed against the CITY and in favor of the taxing power. It is the CITY's position that the Florida Supreme Court in Saunders v. City of Jacksonville, 25 So.2d 648 (Fla. 1946), held that the general rule of construing claims for exemption strictly against the claimant does not apply when a municipality is claiming the exemption. Specifically, the court stated:

> Many of our opinions have been cited to sustain the principle that exemptions from taxes are frowned upon and each claim should be strictly construed. This rule does **not** apply where the question is raised by a municipality asserting the exemption by virtue of a statute duly passed pursuant to the Constitution. In the latter case exemption is the rule and taxation is the exemption. Saunders, 25 So.2d at 651 (Emphasis added.)

Similarly, in R. K. Overstreet v. Indian Creek Village, 239 So.2d 149 (Fla. 3rd DCA 1970), the court in considering whether a municipality qualifies for an exemption for ad valorem tax stated:

> Two rules impel us to affirm the judgment. First is the rule that although statutes granting exemptions are to be construed strictly against the claimant and in favor of the taxing authority in cases of doubt, strict construction may not be invoked against a municipality asserting an exemption. State ex rel. Green v. City of Pensacola, Fla. 1961, 126 So.2d 566. R. K. Overstreet, 239 So.2d at 151.

In fact, the courts have a duty to recognize and give effect to exemptions from taxes. In Green v. Eglin AFB Housing, Inc., 104 So.2d 463 (Fla. 1st DCA 1958), the court in considering a claim for exemption from tangible personal property tax stated: "It is as much the duty of the court to recognize and give effect to exemptions from taxes as it is to enforce the payment of taxes on those transactions not exempted." 104 So.2d at 467.

B. THE USE BY THE CHICAGO WHITE SOX OF THE CITY OF SARASOTA SPORTS COMPLEX AND THE ED SMITH STADIUM FURTHERS PUBLIC RECREATIONAL PROGRAMS AND THUS SERVES A GOVERNMENTAL-GOVERNMENTAL FUNCTION.

The First District Court of Appeal has correctly addressed the issue of whether the governmental construction or promotion of recreational facilities constitutes a valid public purpose in Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992). This case involves an appeal from a final order entered by a circuit court granting a motion for summary judgment in favor of a nongovernmental lessee of

a marina owned by the City of Fernandina Beach. As in the present case, the nongovernmental lessee claimed a 100% exemption from ad valorem tax under §196.199(2)(a) and §196.012(6), Fla.Stat. The court determined that this criteria had been satisfied by stating:

> Under the first definition, Florida courts have long recognized that governmental construction or promotion of recreational facilities, including a public marina, constitutes a valid public function. Page, 608 So.2d 523

The court determined that the nongovernmental lessee's use of the property had been identical to that previously undertaken for years by the city. The only change pursuant to the lease had been which entity, the nongovernmental lessee or the city, was responsible for operating the marina. The court concluded that because the city owns the improvements and the nongovernmental lessee uses them for a valid public purpose, the lessee has carried its burden of demonstrating that the improvements are not taxable to the lessee or the city. This case is directly applicable to the Stadium since the CITY OF SARASOTA has constructed the Stadium and has used it to promote public recreational programs and simply because some of these public recreational programs are in the form of spring training games of the Chicago White Sox as lessee, the public recreational purpose is nonetheless present. In fact in Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992), the court appropriately emphasized the use of the leasehold rather than the for-profit status of the lessee by stating:

> ... [T]he 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 by which the property is put in the ownership of the property." Page, 608 So.2d 524

There is ample evidence in the record that the Stadium functions as a public park for athletic purposes including during the major league training games of the Chicago White Sox, Ltd. and the minor league games of their farm team affiliate (2DCA App.5,18). The Affidavits of City Manager David R. Sollenberger clearly describe the public recreational programs scheduled along with the spring training games of the Chicago White Sox, Ltd. at the Stadium. Specifically, these public recreational programs include football games of the Sarasota Ringling Redskins team, Sarasota youth soccer games, practice games of the Sarasota County Little League, and soccer games of the Sarasota High School soccer team, baseball games of five high school teams, baseball games of the Sarasota County Little League, Sarasota High School Alumni baseball games, and baseball clinics for various organizations, all of which are held at the Stadium (2DCA App.22-23).

The Second District's reliance on Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2nd DCA 1993), in the per curiam opinion in the case sub judice was misplaced. The following two cases cited for legal authority in Sebring Airport Authority, 623 So.2d 541, are clearly not applicable to the operation of a municipal stadium for spring training games.

Specifically, Capital City Country Club v. Katie Tucker, 613 So.2d 448 (Fla. 1993), involved the lease of municipally owned property for purposes of operating a ***private*** golf course. Whether the lease of the private golf course furthered a governmental-

governmental function was not an issue in the case. The nongovernmental lessee conceded that the golf course was not being used for municipal or public purposes. The sole issue was whether the imposition of real estate taxes on the fair market value of the land and the imposition of intangible taxes on the leasehold interest constituted a double taxation of the property. The court concluded that it did not constitute double taxation. Even if one were to assume arguendo, as MIKOS asserts, that the holding in Capital City Country Club stands for the proposition that a private golf course was not a governmental-governmental function, the lease of the Stadium to the Chicago White Sox is an entirely different situation. It would appear that a private golf club would restrict its membership to only those individuals who could afford to pay membership fees in the range of at least $1,000.00 per year and would not allow members of the public access to the course in accordance with certain selective criteria of membership which would be established by the private club. In contrast, the only requirement for admission to a Chicago White Sox game would be the purchase of a ticket for approximately $9.50 The key issue MIKOS overlooks in his comparison is access by members of the general public which is critical to a finding of public purpose.

The other case cited by the Second District in Sebring Airport Authority, 623 So.2d 541, was Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976). The court's reliance upon Volusia County is misplaced. Indeed the court determined that public property leased to a private corporation for an automobile racetrack is not the performance of a "governmental-governmental" function and thus not tax exempt. However, the decision in this case

was factually specific to the particular use: an automobile racetrack; and none of the uses occurring at the City of Sarasota Sports Complex is a use of that nature. The facts in Volusia County, 341 So.2d 498 at 500 were that the Daytona Beach Racing and Recreational Facilities District leased 448 acres of raw land to the International Speedway Corporation who undertook to construct a racetrack facility at its own expense as the principal consideration for the leasehold. The *sole* use of the leasehold was the operation of an automobile racetrack for profit by the lessee. In contrast, in the case at bar the CITY OF SARASOTA constructed and operates the Stadium. No evidence was introduced in Volusia County that public funds had been used to subsidize the operation of the racetrack. Additionally, the CITY OF SARASOTA presented evidence of the numerous public recreational programs occurring at the Stadium in addition to the games of the Chicago White Sox, Ltd. (2DCA App.21-22).

One of the principal cases relied upon by the Trial Court in the Final Summary Judgment was City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988), rev.den. 544 So.2d 199 (Fla. 1988). In fact, the issue in City of Orlando, 534 So.2d 1183, was *not* whether the tenant's use of the leased property was for a municipal or public purpose. The City of Orlando argued that §196.199(2)(b), Fla.Stat., was applicable to subject the tenants to *only* intangible personal property taxation. The issue was not a claim of tax exemption but rather the type of tax payable. Therefore the trial court erred in relying upon City of Orlando, 534 So.2d 1183.

The court discussed the inapplicability of City of Orlando, 534 So.2d 1183, in Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992), as follows:

> Page's [property appraiser's] legal interpretation of §196.199(2)(a) turns on the fact that the marina is now operated by a private entity. Page's view was stated more explicitly in his deposition testimony wherein he claimed that the case of City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA), rev. denied, 544 So.2d 199 (Fla. 1988), stands for the proposition that when there is a lease from a governmental entity to a private entity, the exemption allowed by §196.199(2)(a) is inapplicable. The court finds that this is an erroneous view of the law for several reasons.
>
> First, in direct contrast to the undisputed facts in this case, the private entities involved in the Hausman case **admitted** that their use of the leased property was for private purposes. The district court of appeal found this to be dispositive of the statutory question of public purpose. Second, as the court in Hausman correctly pointed out, 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. [Citation omitted.] (Emphasis added.) Page, 608 So.2d. 524

The logic of the opinion in Page, 608 So.2d 520, is compelling in the instant case to totally negate MIKOS' argument that merely because the Chicago White Sox, Ltd. and Sarasota White Sox are for-profit corporations, the leasehold is not exempt from taxation under §196.199(2)(a), Fla.Stat.

Another case misapplied by the trial court and cited in the Final Summary Judgment is Williams v. Jones, 326 So.2d. 425 at 428 (Fla. 1975) in which the court determined that the uses described as: ..."[b]arber shops, plumbing businesses, beauty

shops, laundries, rental cottages or rental units, motels, restaurants, and camp grounds," were governmental-proprietary functions and thus not qualified for tax exemption. However, none of the uses considered by the court in Williams, 326 So.2d 425, involved a municipal stadium and sports complex. The court recognized that governmental-governmental functions are within the exemption contemplated by §196.012(6), Fla.Stat., by stating at Page 433: "The exemptions contemplated under §196.012(6) and 196.199(2)(a), Fla.Stat., relate to 'governmental-governmental' functions" as opposed to 'governmental-proprietary' functions. The public park and recreational purposes served by the CITY's Stadium are governmental-governmental functions which are only enhanced by the spring training games.

The facts in Walden v. Hillsborough County Aviation Authority, 375 So.2d 283, (Fla. 1979), cited by MIKOS involved lessees of the Hillsborough County Aviation Authority at Tampa International Airport who sold food and beverages to the public by way of a buffet, dining room, cocktail lounges, and fast food service facilities in addition to the sale of newspapers, tobacco products, magazines, books, and other types of merchandise. These commercial uses which were found to be nonexempt from ad valorem taxation are factually distinguishable from the public recreational purposes served by the City of Sarasota Sports Complex and the Ed Smith Stadium. None of the above enumerated commercial uses were part of a larger recreational complex open to the general public for the types of public recreational programs occurring at the Ed Smith Stadium.

Another case cited by MIKOS which is factually distinguishable is Markham v. MacCabee Investments, Inc., 343 So.2d 16 (Fla. 1977), in which a leasehold interest used primarily for theater productions was found to be taxable. This case is not relevant to the case at bar since, as in all the other cases cited by MIKOS, it does not address the situation of a municipally owned sports complex providing public recreational programs. The facts as stated in MacCabee Investments, Inc. v. Markham, 311 So.2d 718, 719 (Fla. 4th DCA 1975), involved a lease between a municipality and Parker Theater, Inc. who in turn entered into an agreement providing MacCabee Investments, Inc. the *sole and exclusive right* to operate the theater for the staging of shows for seven years. In contrast, in the case at bar, the Chicago White Sox do not have the sole and exclusive use of the Stadium during their lease term (R305-306). Numerous public recreational activities occur at the Stadium in addition to games of the Chicago White Sox (2DCA App.21-22).

Similarly, MIKOS relies upon Orlando Utilities Commission v. Milligan, 229 So.2d 262 (Fla. 4th DCA 1969), cert.den. 237 So.2d 539 (Fla. 1970), to argue that property owned by the Orlando Utilities Commission which was used as a recreational area for its employees was determined not to be exempt from ad valorem taxation. However, the issue is whether property owned by a public utility and used as a recreation area for the *exclusive* use of the utilities' employees and their families which was located several miles from the utilities' operating facilities was used for municipal purposes. The court held that the subject property was not used exclusively for municipal purposes and thus not tax exempt, given the private nature described as:

> The utility used the property as a recreation area for the *exclusive* use of its employees and their families. The subject property had recreational facilities on it consisting of a recreational hall, a swimming area, a boat ramp, picnic tables and barbecue pits. The **public was excluded**, without exception, from any use or enjoyment of that property. ...(emphasis added). Orlando Utilities, 222 So.2d 263

In contrast, the evidence presented by CITY demonstrates that the subject property is open to the general public and thus the private recreational uses in Orlando Utilities, 229 So.2d 262, are clearly and distinguishable from the public park and recreational uses occurring at the Stadium. (2DCA App.21-22).

C. THE USE BY THE CHICAGO WHITE SOX OF THE CITY OF SARASOTA SPORTS COMPLEX AND THE ED SMITH STADIUM PROMOTES TOURISM AND SERVES A GOVERNMENTAL-GOVERNMENTAL FUNCTION.

A second governmental-governmental function served by the use of the Chicago White Sox of the Stadium in addition to promoting public recreational purposes is the promotion of tourism. Specifically, the Affidavit of City Manager David R. Sollenberger (2DCA App.22-23) references as an exhibit a copy of a study entitled "Economic Impact Study Baseball in Sarasota County" prepared by David E. Wilkinson, Consultant in Economic/Marketing Research, dated July, 1986, stating that expenditures by fans attending spring training games in Sarasota County for 1986 is calculated as $6,541,000.00 (2DCA App.64). The summary of the direct dollar impact in Sarasota County for spring training games is calculated as $9,461,000.00 (2DCA App.64). Finally,

the Economic Impact Study concludes that the total economic impact of major league baseball in Sarasota County for 1986 was $15,137,600.00 (2DCA App.65).

The Florida Supreme Court in State of Florida v. City of Miami, 379 So.2d 651 (Fla. 1980), has determined that the promotion of tourism is a valid public purpose:

> In the instant case, it is our view that the convention center-garage does serve a valid public purpose. As noted by the trial court, this facility will provide a forum for educational, civic, and commercial activities and organizations. Further testimony at the bond validation proceeding indicated that ***this facility will also increase tourism*** and international trade. ***We have previously held that these interests serve a public purpose***. ...(Emphasis added.) City of Miami, 379 So.2d 653

The promotion of tourism is clearly a governmental-governmental function satisfying the criteria in §196.199(2)(a), Fla.Stat., for tax exemption of the Stadium.

D. THE LEASE OF THE CITY OF SARASOTA SPORTS COMPLEX AND THE ED SMITH STADIUM BY THE CHICAGO WHITE SOX SERVES A PURPOSE WHICH WOULD BE A VALID SUBJECT FOR THE ALLOCATION OF PUBLIC FUNDS.

Specifically, as it pertains to the second criteria in §196.199(2)(a), Fla.Stat., the Baseball Facility Lease with the Chicago White Sox, Ltd. serves a public purpose which would be a valid subject for the allocation of public funds. The acquisition, construction, and operation of a park for baseball games and sports arenas have traditionally been determined by the courts as a valid subject for the allocation of public funds. The Florida Supreme Court in State, et al. v. City of Jacksonville, 53 So.2d 306 (Fla. 1951), addressed the following:

> The first question urged is whether or not the acquisition of lands for recreational facilities such as **baseball parks, sports arenas**, playgrounds, and off-street parking is a proper and valid municipal purpose. (Emphasis added.)
>
> * * *
>
> ... State and City legislatures have found that recreational facilities are proper subjects for the expenditure of public funds. It is a proper exercise of legislative power and so long as reasonable and in the range of legislative ambit this court is without power to strike it down. City of Jacksonville, 53 So.2d 307

Additionally, the Florida Supreme Court in State of Florida v. City of Tampa, 146 So.2d 100 (Fla. 1962), involving the validation of bonds to finance the construction of a convention center, stated:

> This court has frequently approved the construction of an auditorium, **stadium**, warehouse, inter-American cultural and trade center, and other such structures as an international trade mart as a proper public purpose. (Emphasis added.)
>
> * * *
>
> ... [T]his court approved the doctrine that is a valid public purpose will be effectuated by a proposed plan of acquisition and improvement of property by a public body, the fact that a sale or lease of a portion of the improvements to private parties was contemplated would not invalidate the plan. City of Tampa, 146 So.2d 103

The electorate of the CITY OF SARASOTA approved the financing of the Stadium through the sale of General Obligation Bonds on August 4, 1986, (2DCA R90,170). The Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County rendered a judgment in City of Sarasota v. The State of Florida and Several Property Owners, Taxpayers, and Citizens of the City of Sarasota, et al., Case No. 86-5596-CA-01; on

January 21, 1987, in the bond validation proceeding for the General Obligation Bonds to construct the Stadium (2DCA App.4,18). The Judgment in said bond validation proceeding contained as a conclusion of law that the issuance of the $8.5 million General Obligation Bonds had been approved as required by and in all respects in accordance with the provisions of Article VII, Section 12, Fla.Const. (App.4,18). The Final Summary Judgment of the trial court in the case sub judice cites as one of the cases relied upon Brandes v. City of Deerfield Beach, 186 So.2d 6 (Fla. 1966), which involved the validation of revenue bonds secured by certain franchise taxes used to finance the construction by the City of Deerfield Beach of a facility for training by the Pittsburgh Pirates. The **entire** facility once constructed would be leased to a private corporation in contrast to the case at bar in which the CITY OF SARASOTA operates the Stadium for numerous public recreational activities in addition to games of the Chicago White Sox (2DCA App.21-22). The court construed Article IX, Sections 5 and 10, of an earlier version of the Florida Constitution (i.e. not the 1968 Florida Constitution containing Article VII, Section 12, referenced in the CITY OF SARASOTA's bond validation proceeding) to determine that the revenue bonds were being issued for a private purpose. The issue in the Brandes v. City of Deerfield Beach case related to the City of Deerfield Beach loaning its credit to a private corporation through the guise of revenue bonds. This case is clearly inapplicable to validation of the CITY OF SARASOTA's General Obligation Bonds to construct the Stadium since the constitutional issues relative to whether those bonds were issued for a public purpose have already been adjudicated by the Twelfth Judicial Circuit in City of Sarasota v. The State of

Florida and Several Property Owners, Taxpayers, and Citizens of the City of Sarasota, et al., Case No. 86-5596-CA-0-1, on January 21, 1987 (2DCA App.4,18). The appropriate forum for MIKOS to have raised the issue of whether the CITY's General Obligation Bonds were for a valid public purpose was in the above cited bond validation proceeding. Having failed to do so, MIKOS cannot reopen the issue in the case sub judice.

In relation to the financing of the operational expenses of the Stadium, it is important to note that the Stadium is not being operated solely as a profit-making enterprise for the benefit of the Chicago White Sox, Ltd. The CITY has subsidized the cost of the operation of the Stadium from its General Fund each year because revenues generated by the Stadium are not sufficient to cover the operating expenses of the facility (2DCA App.24). The amount of the subsidy has been approximately $200,000.00 per year (2DCA App.24,71). This evidence is identical to the evidence before the First District in Page, 608 So.2d 520, wherein the court noted:

> Historically, the City had never been taxed for either the marina or the improvements thereon, and had paid the annual operating deficits for the marina's operation. 608 So.2d 521
>
> * * *
>
> As for the second definition, it is undisputed in this case that for years the City used tax revenues to pay operating expenses for the city marina. 608 So.2d 523

Due to this use of public funds for the marina, the First District found that the second element of the statutory public function definition had been met.

II. The original legislative intent of §196.012(6), Fla.Stat., as clarified by the amendment in House Bill 2557 is that recreational facilities serve a governmental, municipal, and public function.

In 1994 the Legislature amended §196.012(6), Fla.Stat., to explicitly set forth certain uses by a lessee which would constitute a governmental, municipal, or public purpose or function, and thus qualify for the exemption from ad valorem tax. The amendment in House Bill 2557 merely clarified the original legislative intent of §196.012(6), rather than change the law. The Legislature always intended to include the recreational facilities enumerated in House Bill 2557 (i.e. sports facility with permanent seating and stadium) as evidenced by this amendment. §59 of House Bill 2557 at 63 in its entirety provides as follows:

> Section 59. Effective upon this act becoming law and **applying to the 1994 and subsequent tax rolls**, subsection (6) of section 196.012, Florida Statutes, is amended to read:
>
> 196.012 Definitions.--For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:
>
> (6) 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 of 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 is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the

administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal, or public purpose or function. **The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission.** If property deeded to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historical preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose. The term "governmental purpose" also includes a direct use of property on federal lands in connection with the Federal Government's Space Exploration Program. Real property and tangible personal property owned by the Federal Government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. "Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership," buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee. (Words stricken are

deletions; words underlined are additions; darker print added for emphasis.) (Sup.Ct.App36)

The finding that an amendment to a statute such as HB 2557 is not a change in the law but rather a clarification of the original legislative intent is mandated by the decision in State ex rel. Szabo Food Services, Inc. of N.C. v. Dickinson, 286 So.2d 529 (Fla. 1974). In Szabo, 286 So.2d 529, the taxpayer sold food and drink from vending machines and paid sales tax on the sale of the food from the vending machines. In 1971 the Legislature amended the sales tax statute to provide that "foods and drinks sold ready for immediate consumption from vending machines" would be an exception to the general exemption from taxation of food and drink for human consumption. Upon discovering the enactment of this amendment, the taxpayer demanded a refund of the sales taxes that he had paid on the sale of food from vending machines for prior years. The Florida Supreme Court held that this amendment did not necessarily mean that the statute prior to the amendment did not intend to tax food and drink sold from vending machines. Rather, the Supreme Court held that:

> The mere change of language does not necessarily indicate an intent to change the law for the intent may be to clarify what was doubtful and to safeguard against misapprehension as to existing law. [Citations omitted.] The language of the amendment in 1971 was intended to make the statute correspond to what had previously been supposed or assumed to be the law. The circumstances here are such that the Legislature merely intended to clarify its original intention rather than change the law. 286 So.2d at 531

MIKOS may argue that Szabo, 286 So.2d 529, is distinguishable because unlike the amendment to §196.012(6), Fla.Stat., the 1971 amendment was not expressly made

prospective in application. If this argument were made, it would be factually incorrect. The statutory amendment in Szabo, 286 So.2d 529, was effectuated through Ch. 71-360, Laws of Florida (Sup.Ct.App 26-33). Notably, Ch. 71-360, §10, at 1876, states:

> The tax imposed by this Act on coin-operated vending machines and on cable television shall take effect on October 1, 1971, and all other provisions of this Act shall take effect on July 1, 1971. (Sup.Ct.App53)

The above quoted provision is relevant due to the fact that §59 of HB 2557 provides in the first sentence that the amendment to §196.012(6), Fla.Stat., applies prospectively commencing with the 1994 tax roll and subsequent tax rolls. Thus, in both Szabo, 286 So.2d 529, and in the case sub judice the statutory amendments were to begin on a date certain. Yet the Supreme Court in Szabo, 286 So.2d 529, did not determine that this language in anyway limited its conclusion that the amendment was a clarification of what the law always had been. Based upon the foregoing, the amendment to §196.012(6), Fla.Stat., in House Bill 2557 is an expression of the Legislature's intention to clarify its original intent, rather than change the law. See Ocala Breeder Sales Co., Inc. v. Division of Pari-Mutuel Wagering, Department of Business Regulation, 464 So.2d 1272 (Fla.1st DCA 1985).

Another exception to the general rule of the prospective application of new legislation exists where an amendment to a statute is enacted soon after a controversy such that the courts may consider the amendment in interpreting the original legislative intent. Specifically the court in Federal Deposit Insurance Corp. v. Cherry, Bekaert & Holland, 129 F.R.D. 188 (Fla. M.D. 1989), stated:

> An exception to the general rule of the prospective application of new legislation exists when a statute has been the subject of conflicting interpretations in the courts and is subsequently amended without any indication in legislative history that the amendment was intended to change the law. In such a case the amendment is deemed not to change the law but to remove the dispute surrounding the interpretation of the section and to clarify the original intent of Congress in enacting the statute. 129 F.R.D. 193

There has clearly been a controversy concerning the construction of §196.012(6), Fla.Stat. Some courts have held that a recreational facility does not serve a public function to qualify for an exemption from ad valorem tax. See Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976). Conversely, other courts have determined that recreational facilities do serve a public purpose. See Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla.1st DCA 1992). The existence of conflict among the courts is an indication that a subsequent amendment is intended to clarify rather than change the existing law. See In Re Fielder, 799 F.2d 656 (11th Cir. 1986), and State v. Sedia, 614 So.2d 533 (Fla.4th DCA 1993).

In light of this controversy concerning the construction of §196.012(6), Fla.Stat., the Legislature's amendments to the definition of public purpose to include recreational facilities in HB 2557 is an obvious clarification of what it had always intended. The clarification of the legislative intent provided by HB 2557 supports the position of the CITY OF SARASOTA that the Legislature anticipated that for-profit entities in the capacity of lessees would operate governmental functions; otherwise, §196.199(2)(a), Fla.Stat., would not have been enacted.

MIKOS is attempting to add an additional requirement for the tax exemption (i.e. nonprofit status) that is simply not indicated in the legislative intent or by the terms of the statute itself. In Ford v. Orlando Utilities Commission, 19 Fla. Law Weekly S17 (Fla. Jan. 6, 1994), the Florida Supreme Court determined whether the Florida Constitution permitted an exemption from ad valorem taxation for a municipality's property located in another county. This case construed Art.VII, §3(a), Fla.Const., which provides:

> (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located.

The subject property was an electrical generating plant that supplied most of that municipality's electricity to the municipality's residents but did not supply any electrical power to the residents of the county in which the plant was located. This court rejected the argument made by the property appraiser that the municipality was not entitled to an ad valorem tax exemption because the property did not provide a public benefit to the residents of the county in which the generating plant was located. Specifically this court held:

> We find that the language in Art.VII,§3(a), is clear and unambiguous and fully approve the decision reached by the district court. Art.VII,§3(a), contains no limitation on the location of the municipal property -- only a limitation on the property's use. Because the Orlando Utility Commission property is used for a valid municipal purpose, we find that the constitutional exemption applies. 19 Fla. Law Weekly S18

Similarly, §196.199(2)(a), Fla.Stat., contains no limitation on the status of the lessee. The only limitation set forth in the statute is the use to which the property is put by the nongovernmental lessee.

CONCLUSION

For the foregoing reasons, summary judgment was improperly entered in favor of MIKOS. The lease of the Stadium to the Chicago White Sox serves at least two governmental functions: public recreation and the promotion of tourism. Further, the evidence showed that the provision of public recreation and tourism is a valid subject for the allocation of public funds. The legislative intent of §196.199(2)(a) and §196.012(6), Fla.Stat. as clarified by House Bill 2557 is that public recreational facilities, such as stadiums and sports facilities with permanent seating, when leased to nongovernmental lessees, serve a governmental, municipal or public purpose or function. The exemption for the above functions is applicable to nongovernmental lessees regardless of whether the lessee operates as a for-profit entity. Therefore, the summary judgment entered in favor of MIKOS and against the CITY OF SARASOTA should be reversed.

Respectfully submitted,

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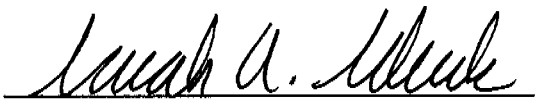

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has served a true and correct copy of the foregoing upon Attorneys for Appellee/Respondent John C. Dent, Jr. and Robert K. Robinson; Dent, Cook & Weber; 1844 Main Street, Sarasota, Florida 34236; and upon Attorneys for Amicus, Michael S. Davis, P.O. Box 2842, St. Petersburg, Florida 33731, and Harry Morrison, General Counsel, Florida League of Cities, P.O. Box 1757, Tallahassee, Florida 32302, by U.S. mail this 11th day of July, 1994.

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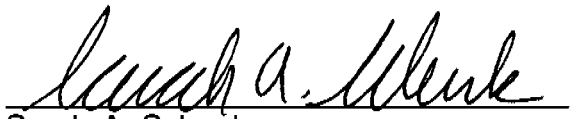

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