IN THE SUPREME COURT OF THE STATE OF FLORIDA

CITY OF SARASOTA,
a municipal corporation,

Appellant/Petitioner,

vs.

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

Appellee/Respondent.
_____/

Supreme Court
Case No. 83,177

Second District
Case No. 92-04486

ON PETITION FOR DISCRETIONARY REVIEW OF CASE NO. 92-04486,
DISTRICT COURT OF APPEAL, SECOND DISTRICT

BRIEF OF APPELLANT/PETITIONER CITY OF SARASOTA ON JURISDICTION

Sarah A. Schenk
Fla. Bar No. 0436739
Taylor, Lawless & Singer, P.A.
Suite 21
46 North Washington Blvd.
Sarasota, Florida 34236
(813) 366-0911
Attorneys for Appellant/Petitioner
CITY OF SARASOTA

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

The Circuit Court entered a Final Summary Judgment against the Petitioner, CITY OF SARASOTA, finding that the CITY was not entitled to an exemption from ad valorem tax for a stadium owned by the CITY and leased to the Chicago White Sox and their farm team affiliate under § 196.199, Fla. Stat. (App 1-2) [1] [2] The CITY challenged 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). (App 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. (App 4) The Sebring Airport Authority and Sebring International Raceway, Inc. filed a Notice to Invoke Discretionary Jurisdiction of this Court stating that the decision in Sebring Airport Authority, 623 So. 2nd 541, expressly and directly conflicts with a decision of another District Court of Appeal on the same question of law. (App 5-6) The Florida Supreme Court, by an Order dated January 21, 1994, accepted jurisdiction in Sebring Airport Authority, 623 So.2d 541. (App 7) The CITY filed a timely Notice to Invoke Discretionary Jurisdiction.

---

[1] The Petitioner, City of Sarasota, will be referred to as "CITY". The Respondent, J.W. Mikos, Property Appraiser for Sarasota County, will be referred to as "MIKOS".

[2] References to the Appendix shall be made by use of the letters "App" followed by the appropriate page.

SUMMARY OF ARGUMENT

The per curiam opinion of the Second District cites as controlling authority Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2nd DCA 1993), a decision that is pending review in the Florida Supreme Court, based upon express and direct conflict with a decision of the First District on the same question of law.[3] Therefore, the per curiam opinion continues to constitute prima facie express conflict and allows the Supreme Court to exercise its jurisdiction.

The instant case involves the imposition of an ad valorem tax on a stadium owned by the CITY and leased to the Chicago White Sox, a for-profit corporation, for their spring training games. (App 1-2) Under the present circumstances, stadiums located within the jurisdiction of the First District will be exempt from ad valorem tax when leased to for-profit lessees conducting spring training games, but will not be so exempt elsewhere in the State. Therefore, the CITY respectfully requests this Court to exercise its discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const., and review this case to insure that the district courts provide consistent ad valorem tax treatment of such properties.

---

[3] The First District case is Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1st DCA 1992); rev. den. 620 So. 2d 761 (Fla. 1993) as referenced in the Petitioners' Brief on Jurisdiction in Sebring Airport Authority v. McIntyre, Supreme Court Case No. 82,489. (App 8-24)

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 OF PUBLIC RECREATIONAL FACILITIES OWNED BY GOVERNMENTAL ENTITIES, WHILE THE LATER PROHIBITS SUCH AN EXEMPTION.

This Court may exercise its discretionary jurisdiction where an appellate court expressly and directly conflicts with a decision of another appellate court pursuant to Art. V, § 3(b)(3), Fla. Const. Although the general rule is that mere citation PCA decisions remain non-reviewable by the Supreme Court, where a district court PCA cites as controlling a case that is pending review in the Supreme Court, the Supreme Court may exercise jurisdiction. Jollie v. State of Florida, 405 So.2d 418, 420 (Fla. 1981).

The reference in Jollie, 405 So.2d 418 to "controlling authority...that is...pending review" refers to a case in which the petition for jurisdictional review has been granted and the case is pending for disposition on the merits. Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987). Because the Florida Supreme Court has accepted conflict jurisdiction of Sebring Airport Authority, 623 So.2d 541, the Supreme Court also has jurisdiction of the instant case under Art. V, § 3(b)(3), Fla. Const. Childers v. Hoffmann-LaRoche, 540 So.2d 102 (Fla. 1989).

The nature of the conflict is the announcement of a rule of law by the Second District that conflicts with a rule of law previously pronounced by the First District. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). Specifically, the First District in Page v. Fernandina Harbor Joint Venture, 608 So.2d 520, 523 (Fla. 1st DCA 1992) determined that a governmentally owned public marina leased to a for-profit corporation

was exempt from ad valorem tax under § 196.199(2)(a), Fla. Stat. because the operation of recreational facilities, including a marina, constitutes a valid public function. The First District in Page reached this conclusion by the following inquiry:

> ...[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 to which the property is put in the ownership of the property." [citation omitted] (emphasis added) 608 So.2d 524.

In contrast, the Second District in Sebring Airport Authority, 623 So.2d 541 determined that a publicly-owned automobile raceway leased to a for-profit corporation for public recreational purposes was not exempt from ad valorem tax under § 196.199(2)(a), Fla. Stat. because the operation of the raceway for-profit was not a governmental function, announcing the following rule of law:

> 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. (emphasis added) 623 So.2d 542 quoting from Volusia County v. Daytona Beach Raceway and Recreational Facilities Districts, 341 So.2d 498 (Fla. 1976).

The Second District narrowly focuses on the institutional character of the lessee using the property, whereas the First District looks to the public recreational purpose served by the lessee.

The Florida Supreme Court should exercise discretion and accept jurisdiction to prevent disparate treatment of similarly situated taxpayers. Otherwise, the determination of whether a governmentally owned stadium leased to a Major League team for spring

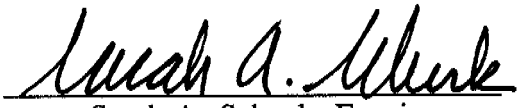
training games is subject to ad valorem tax will be based upon the geographical location of the stadium, rather than the statutory criteria in § 196.199, Fla. Stat.

CONCLUSION

The Florida Supreme Court has accepted jurisdiction in Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2nd DCA 1993), which case was cited as controlling authority by the Second District in its per curiam opinion affirming the Final Summary Judgment against the CITY. Therefore, the per curiam opinion continues to constitute express conflict and allows the Supreme Court to exercise its jurisdiction. In order to avoid inconsistent tax treatment of the numerous public recreational facilities owned by governmental entities throughout the state and leased to for-profit lessees, the Florida Supreme Court should elect to hear this case.

Respectfully submitted,

Taylor, Lawless & Singer, P.A.
Suite 21
46 North Washington Blvd.
Sarasota, Florida 34236
(813) 366-0911
Attorneys for Appellant/Petitioner
CITY OF SARASOTA

By: 
Sarah A. Schenk, Esquire
Fla. Bar No. 0436739

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that she has served a true copy of the foregoing upon Attorneys for Appellee/Respondent, John C. Dent, Jr., Esquire, and Robert K. Robinson, Esquire, Dent, Cook and Weber, 1844 Main Street, Sarasota, Florida 34236, and Attorney for Amicus Curiae, Michael S. Davis, Esquire, P.O. Box 2842, St. Petersburg, Florida 33731, by U.S. mail this 7th day of February, 1994.

Taylor, Lawless & Singer, P.A.
Suite 21
46 North Washington Blvd.
Sarasota, Florida 34236
(813) 366-0911
Attorneys for Appellant/Petitioner
CITY OF SARASOTA

By: Sarah A. Schenk
Sarah A. Schenk, Esquire
Fla. Bar No. 0436739

IN THE SUPREME COURT, STATE OF FLORIDA

CITY OF SARASOTA,
a municipal corporation,

Appellant/Petitioner,

vs.

Supreme Court
Case No. _____

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

Second District
Case No. 92-04486

Appellee/Respondent.
_____/

ON PETITION FOR DISCRETIONARY REVIEW OF CASE NO. 92-04486,
DISTRICT COURT OF APPEAL, SECOND DISTRICT

APPENDIX OF BRIEF ON JURISDICTION OF APPELLANT/PETITIONER CITY OF SARASOTA

Sarah A. Schenk
Fla. Bar No. 0436739
Taylor, Lawless & Singer, P.A.
Suite 21
46 North Washington Blvd.
Sarasota, Florida 34236
(813) 366-0911
Attorneys for Appellant/Petitioner
CITY OF SARASOTA

APPENDIX - INDEX

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

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

Plaintiff,

vs.

CASE NO. 91-3877-CA-01

CITY OF SARASOTA, a municipal corporation,

Defendant.
_____/

NOV 5 1992

FINAL SUMMARY JUDGMENT

THIS CAUSE having come to be heard on motions for summary judgment filed by Plaintiff, J. W. MIKOS, and Defendant, CITY OF SARASOTA, and the Court having considered the pleadings, affidavits, and admissions of the parties on file with the Court as well as the argument of counsel, the Court finds that there are no genuine issues of fact and that this cause may be resolved as a question of law by summary judgment. The Court further finds that there are no issues of fact or law as to the percent allocation by the Plaintiff between the public and proprietary use of the Ed Smith Sports Complex. It is, therefore,

ORDERED AND ADJUDGED that Plaintiff's motion for summary judgment is granted and Defendant's motion for summary judgment is denied.

Based upon the cases presented, including 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), and the statutory authority found in Section 196.199, Florida Statutes, the use by the Chicago White Sox and their farm team affiliate of this stadium for training and exhibition games is purely proprietary and for profit. This use is a governmental proprietary function as opposed to a governmental-governmental function and therefore the Defendant is not entitled to an exemption from taxation for this use of the subject property. There being no other factual issues and no issue as to the proper allocation between the use by the Chicago White Sox and other governmental-governmental functions, Plaintiff's valuation of the subject property shall be returned to the tax roll for the year in question, 1990. The Tax Collector shall prepare and send to the Defendant a revised tax bill in accordance herewith. Defendant shall have 30 days from the date of the tax bill to pay; thereafter, the Tax Collector shall collect the taxes in accordance with law.

DONE AND ORDERED in Chambers at Sarasota, Sarasota County, Florida, this 3rd day of Nov., 1992.

ROBERT J. BOYLSTON

ROBERT J. BOYLSTON
Circuit Judge

Copies furnished to:

Robert K. Robinson, Esq.
Sarah A. Schenk, Esq.

M14-3446.FSJ\L23

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CITY OF SARASOTA, a municipal corporation,

Appellant,

v.

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

Appellee.

CASE NO. 92-04486

Opinion filed November 24, 1993.

Appeal from the Circuit Court for Sarasota County; Robert J. Boylston, Judge.

Sarah A. Schenk of Taylor, Lawless and Singer, P.A., Sarasota, for Appellant.

Michael S. Davis, City Attorney, St. Petersburg, Special Counsel for Florida League of Cities, Amicus Curiae.

Robert K. Robinson and John C. Dent, Jr. of Dent, Cook & Weber, Sarasota, for Appellee.

PER CURIAM.

Affirmed. See Sebring Airport Authority v. McIntyre, 623 So. 2d 541 (Fla. 2d DCA 1993).

CAMPBELL, A.C.J., and HALL and THREADGILL, JJ., Concur.

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

JANUARY 10, 1994

CITY OF SARASOTA,
a municipal corporation,

Appellant(s),

v.

J. W. MIKOS, Property
Appraiser, Sarasota Co.,

Appellee(s).

Case No. 92-04486

BY ORDER OF THE COURT:

Counsel for appellent having filed a motion for rehearing and for a stay in this case, upon consideration, it is

ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c: Sarah A. Schenk, Esq.
Michael S. Davis, Esq.
John C. Dent, Jr., Esq.
Robert K. Robinson, Esq.

/JM

DISTRICT COURT OF APPEAL
SECOND DISTRICT
STATE OF FLORIDA

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT
LAKELAND, FLORIDA

THE SEBRING AIRPORT AUTHORITY and SEBRING INTERNATIONAL RACEWAY, INC.,	:	
Appellants,	:	
v.	:	CASE NO.: 92-04403
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.	:	

NOTICE TO INVOKE DISCRETIONARY JURISDICTION OF THE SUPREME COURT

NOTICE IS GIVEN that Appellees, Petitioners, The Sebring Airport Authority and Sebring International Raceway, Inc., by and through their undersigned counsel, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this Court dated July 30, 1993, and rendered final by the Order Denying Motion for Certification entered on September 1, 1993. The decision expressly and directly conflicts with a decision of another District Court of Appeal on the same question of law.

Respectfully submitted,

FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
Attorneys for Appellants

By: Hala Sandridge
Hala A. Sandridge, Esquire

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.

IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

THE SEBRING AIRPORT AUTHORITY AND SEBRING INTERNATIONAL RACEWAY, INC.,	Supreme Court Case No.: 82,489
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.	

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

TABLE OF AUTHORITIES

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 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.	)	CASE NO. 92-04403
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.	)	

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.