IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

CANAVERAL PORT AUTHORITY,

Petitioner,

v. CASE NO.: 84,743

FLORIDA DEPARTMENT OF REVENUE, et al.,

Respondents.

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BRIEF *AMICUS CURIAE* OF SARASOTA-MANATEE AIRPORT AUTHORITY In support of Petitioner

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PRELIMINARY STATEMENT

This Court has accepted certiorari jurisdiction over this cause on the basis of an alleged conflict between Department of Revenue v. Canaveral Port Authority, 642 So.2d 1097 (Fla. 5th DCA 1994) and Sarasota-Manatee Airport Authority v. Mikos, 605 So.2d 132 (Fla. 2nd DCA 1992), *review denied,* 617 So.2d 320 (Fla. 1993). *Amicus Curiae* Sarasota-Manatee Airport Authority ("SMAA") was the appellant/respondent in the Sarasota-Manatee case upon which conflict jurisdiction has been granted in this cause.

SUMMARY OF THE ARGUMENT

The state, its agencies and authorities, and its political subdivisions are immune from taxation. The SMAA is an independent special district. By virtue of the recognition given independent special districts as separate local governmental entities by the 1968 Florida Constitution, such independent special districts are political subdivisions of the state and partake of its immunity. Only municipalities, and their agencies and authorities, lack such immunity, though they are still eligible for exemption from taxes.

ARGUMENT

UNDER THE 1968 FLORIDA CONSTITUTION, INDEPENDENT SPECIAL DISTRICTS ARE "POLITICAL SUBDIVISIONS OF THE STATE," AND THUS IMMUNE FROM AD VALOREM TAXATION.

The Sarasota-Manatee Airport Authority ("SMAA") is a body politic and corporate created by the Florida Legislature through Chapter 31263, Laws of Florida (1955), and revised by Chapter 91-358, Laws of Florida. Section 18 of Chapter 91-358 designates the SMAA as a "political subdivision" within the meaning of government property tax exemptions granted under Section 196.199, Florida Statutes.

The Second District Court of Appeal, in Sarasota-Manatee Airport Authority v. Mikos, 605 So.2d 132 (Fla. 2nd DCA 1992), *review denied,* 617 So.2d 320 (Fla. 1993), ruled that the SMAA was immune from ad valorem taxation on its leased fee interest in property which has been leased to tenants for private or non-governmental purposes.[1] The trial court had determined that the SMAA was more like a municipality, eligible only for exemption from taxation, rather than a county, which is immune from taxation. The

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[1]The Florida Legislature has enacted laws (§196.199) taxing the leasehold interest in government property leased to nongovernmental lessees and used for nongovernmental purposes. It is the underlying fee interest, owned by the governmental entity, which is the subject of this litigation.

appellate court disagreed and stated:

> Special districts that are created as political subdivisions of the state enjoy the same immunity from taxation as does the state. See *Andrews v. Pal-Mar Water Control Dist.*, 388 So.2d 4 (Fla. 4th DCA 1980), rev. den., 392 So.2d 1371 (Fla. 1980).

Therefore, the underlying fee interest in the SMAA is immune just as if the airport was an operation of the state or of one of the two counties. As a result of the Sarasota-Manatee case, the Property Appraisers in Sarasota and Manatee counties do not presently assess the leased fee of the SMAA in any of its lands, including those leased to non-governmental tenants.

In Department of Revenue v. Canaveral Port Authority, 642 So.2d 1097 (Fla. 5th DCA 1994), the Fifth District Court of Appeal ruled that Canaveral Port Authority ("CPA") is not a political subdivision of the state and is not immune from ad valorem taxation. The Court distinguished the Sarasota-Manatee ruling on the basis that the SMAA was designated by the Legislature as a "political subdivision," whereas the Canaveral Port Authority ("CPA") was not so designated.[2] Based on Canaveral, the Fourth District Court of Appeal in Department of Revenue v. Port of Palm Beach District, 20 Fla. Law Weekly D510 (4th DCA 1995), recently reached the same conclusion as to the Port of Palm Beach.

Courts applying Florida law have historically viewed the state and its agencies, such as counties and school boards, as being

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[2]While not emphasized by the Court, another possible distinction is that the SMAA, unlike the CPA, has district boundaries embracing more than one county. However, the geographic area served and economically benefitted by CPA, clearly extends beyond the boundaries of a single county.

immune from taxation. Commissioners of Duval County v. City of Jacksonville, 18 So. 339, 36 Fla. 196 (1895); Broward County Port Authority v. Arundel Corporation, 206 F.2d 220 (5th Cir. 1953); Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957); State v. Alfred, 107 So.2d 27 (Fla. 1958); Hillsborough County Aviation Authority v. Walden, 210 So.2d 193 (Fla. 1968) (herein referred to as "Walden I"); Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975).

Prior to 1968, however, special districts were *not* regarded as political subdivisions immune from taxation. Sugar Bowl Drainage District v. Miller, 162 So.2d 707, 120 Fla. 436 (1935); Broward County v. Arundel, supra; and Walden I, supra.

In Walden I, this Court found that real property owned by the Hillsborough County Aviation Authority was exempt from ad valorem taxes, but not immune, "since the aviation authority, unlike a county, is not a political subdivision or division of the state." Id. at 194-195. It is critical to realize, however, that this holding was decided under the Constitution of 1885, which did not recognize special districts as separate local government entities.

The 1968 Constitution changed all that: In Eldred v. North Broward Hosp. Dist., 498 So.2d 911 (Fla. 1985), this Court found that the 1968 Constitution elevated special districts by recognizing them as being one of four types of local government entities, along with counties, school districts, and municipalities. These four constitute "independent establishment[s] of the state" within the sovereign immunity provisions

of Section 768.28, Florida Statutes. The Court gave the following rationale for its ruling:

> With regard to the first point, the 1968 Constitution identified special taxing districts as one of four local governmental entities, authorizing each to levy ad valorem taxes. Art. VII, § 9, Fla. Const. Special taxing districts are also considered local government entities for the transfer of powers and functions with counties or municipalities. Art. VIII, § 4, Fla. Const. Additionally, special taxing districts, along with other local government entities, are authorized to issue bonds, article VII, section 12, and to establish civil service systems, article III, section 14.

Id. at 913.

Special district immunity from taxation was briefly acknowledged by DOR in the adoption of Florida Administrative Code Rule 12B-1.207 in 1972. That regulation provided that:

> ...(C) Property owned and used exclusively by the United States, the state, or a political subdivision thereof is immune from taxation. No application for exemption of this property shall be required. Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957);
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> 2. A political subdivision of the state shall include the following: "special tax districts, counties, county authorities, and agencies and instrumentalities of the state or county." (emphasis added)

Curiously, the DOR amended the regulation in 1974 to delete the references to "special tax districts" and "counties," leaving only "county authorities, and agencies and instrumentalities of the state or county" within the definition of a "political subdivision of the state." There was no change in the statutory or case law to explain such abridgment of the definition.

Subsequent to 1968, with the exception of the Canaveral and Port of Palm Beach cases, judicial decisions involving the taxation

of special district property consistently recognized the enhanced status of special districts, by limiting the taxable assessments to the ***leasehold*** interests of the ***tenants.*** Hertz Corp. v. Walden, 299 So.2d. 121 (Fla. 2nd DCA 1974), adopted 320 So.2d 385 (Fla.) (herein referred to as "Walden II"); Walden v. Hillsboroush County Aviation Authority, 375 So.2d 283 (Fla. 1979) (herein referred to as "Walden III"; Parker v. Hertz, 544 So.2d 249 (Fla. 2nd DCA 1989).

In Parker, supra, this court upheld the taxation of tenant-owned improvements, where the tenant was a rental car company leasing land from the aviation authority under a ground lease at Tampa International Airport. There again, the Property Appraiser did not seek to assess the underlying fee simple interest of the aviation authority, apparently in recognition of the aviation authority's changed status under the 1968 Constitution, and in contrast to the treatment by the Property Appraiser's predecessor in Walden I, supra.

Consistent with this recent line of cases is Andrews v. Pal-Mar Water Control District, 388 So.2d 4 (Fla. 4th DCA 1980), rev. den. 392 So.2d 1371 (Fla. 1980), where the Fourth District Court of Appeal addressed the status of a water management district, formed under Chapter 298, Florida Statutes. That statute, prior to 1980, permitted the majority of the owners of any contiguous wetlands in one or more counties to petition the local circuit court for the

formation of a district. The appellate court held that:

> We find no error by the trial court in its determination that the district was a political subdivision of the state. Once that determination was made, it is clear under the authorities cited, ***supra,*** that the district was ***immune*** from tax liability and hence entitled to a refund of the 1976 taxes paid under protest.

Id. at 5 (emphasis supplied).

If such a local drainage district, created by circuit court decree, is recognized as a political subdivision of the state, then it is axiomatic that the SMAA, created by the Florida Legislature, enjoys at least equal status.[3]

The predecessor to Article VII, Section 3 of the 1968 Constitution was a combination of Article IX, Section 1 and Article XVI, Section 16 of the 1885 Constitution. These provisions were held to be a "limitation upon and not a grant of the power of the legislature to exempt property from taxation." Walden I, supra. However, while both provisions dealt with exemptions based solely upon use (i.e. municipal purposes), neither provision dealt with ownership.. By contrast, Article VII, Section 3(a) of the 1968 Constitution applies an ownership and use test on municipal property. The 1968 Constitution permits a grant of exemption for property used for "education, literary, scientific, religious or charitable purposes," regardless of ownership. The silence of the

[3]The Court relied upon an Attorney General opinion, which in turn held that water management districts serve purposes which could be directly served by the state itself. This says little more than that such districts serve a public purpose. Operation of an airport is surely a public purpose. In fact, SMAA's enabling legislation states that SMAA is performing an essential governmental function. Chapter 91-358, Sec. 3(1), Laws of Florida. See, also, Section 189.403, Florida Statutes.

1968 Constitution with regards to property of the United States, the state, and its political subdivisions is a recognition that such entities are immune from taxation. Thus, the waiver of governmental immunity by the Legislature in taxing leaseholds of governmental property for non-governmental purposes (Section 196.199(2), Florida Statutes) applies specifically, and only, to the United States, the state and its political subdivisions. Under Section 196.199(2), the underlying fee of such entities remains immune. With municipalities, as soon as the use of the property is converted to a non-governmental purpose (by way of a lease) the entire constitutional exemption is lost and the entire property becomes taxable. For example, if a city leases some of its property for a public marina, that property becomes taxable, including the city's underlying fee interest.

Thismunicipality-specific limitation presumably justified the disparate treatment by various Florida courts, of property owned by municipalities, compared with other governmental entities. Sebring Airport Authority v. McIntire, 642 So.2d 1072 (Fla. 1994); Capital City Country Club v. Tucker, 613 So.2d 488 (Fla. 1993); City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988); Mikos v. City of Sarasota, 636 So.2d 83 (Fla. 2nd DCA 1994). Nothing in those cases imply that their holdings should be extended to special districts other than those which are "dependent" on a municipality, and thus subject to the same limitations as a municipality, e.g. Hausman (dealing with property owned by the City of Orlando), and McIntire, (an agency of the City of Sebring), supra.

The Fifth District Court of Appeal, in Canaveral, acknowledged that Florida has "political subdivisions" other than counties which are immune from taxation, and cited the SMAA as an example, noting that the SMAA had been legislatively designated as a "political subdivision". Id. at 1099-1100. At the same time, the Court declined to rule on whether the Legislature has the power to create or designate political subdivisions, the suggestion being that the Legislature may lack such power.

While counties, school districts, special districts, and municipalities are empowered by the Constitution, the actual *creation* of the local governments is left to the Legislature. Counties are created, named and assigned boundaries in Chapter 7, Florida Statutes, pursuant to Article VIII, Section l.(a) of the Florida Constitution. ("...Counties may be created, abolished and changed by law ..."). In creating counties the Legislature simultaneously created school districts, since each county also constitutes a school district. Article IX, Section 4, Florida Constitution. Similarly, municipalities issue forth from the Legislature. Article VIII, Section 2, Florida Constitution ("Municipalities may be established or abolished and their charters amended pursuant to general or special law ...").

Thus, "creation" of a local government by the *Legislature* is a "given"; but, once created, the status of the local government as a tax immune political subdivision derives from the Constitution rather than the legislature. Each of the four types of local governments (counties, school districts, special districts, and

municipalities) are "political subdivisions" under the 1968 Constitution. Municipalities (and their agencies, authorities, and dependent special districts) are the only such entities which are clothed with sovereign immunity for all other purposes but are granted a limited tax exemption.

Consequently, the legislative designation of the SMAA as a political subdivision for tax purposes, in Chapter 91-358, Section 18, is merely a confirmation and clarification that it is a political subdivision of the state for all purposes. The suggestion that such a determination by the Legislature is beyond the Legislature's constitutional power requires unequivocal, explicit, and unambiguous language specifically stating that only counties and school districts are political subdivisions for tax purposes.

As a final note, the suggestion in the Canaveral opinion that political subdivisions of the state are limited to those entities that act as a branch of the general administration of the policy of the state may have been true under the 1885 Constitution. But the 1968 Constitution conferred on the counties andmunicipalities such extensive powers of local self-government that it is no longer accurate to view them merely as "puppets" whose function is to administer ***state*** policy. Article VIII, Sections 1 and 2, Florida Constitution. Further, to suggest that only those entities having the general administrative powers and duties of the state (i.e. counties) can be classified as political subdivisions of the state, is to then deny that school districts (whose functions, duties, and

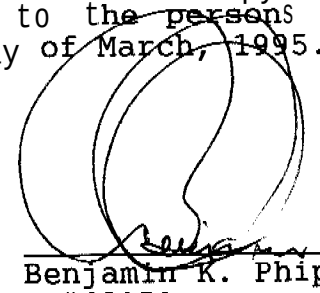
responsibilities are limited) are political subdivisions. This is, of course, absolutely contrary to one hundred years of precedent.

CONCLUSION

Amicus Curiae SMAA requests that this Court reverse the decision of the Fifth District Court of Appeal, which held that the Canaveral Port Authority is not immune from taxation. On the contrary, CPA is a "political subdivision of the state", like a county or a school district, and is immune from taxation. Only municipalities and their dependent special districts lack such immunity under the 1968 Constitution; they are only eligible for an exemption. In the alternative, SMAA suggests that the Second District Court of Appeal ruling that the SMAA has been legislatively (and specifically) determined to be a political subdivision for tax purposes, results in there being no conflict with the Fifth District's holding in Canaveral.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the persons listed on the attached service list this 28th day of March, 1995.



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