IN THE SUPREME COURT
STATE OF FLORIDA

CANAVERAL PORT AUTHORITY,

Petitioner,

v.

FLORIDA DEPARTMENT OF REVENUE, et al.

Respondents.
_____/

SUPREME COURT NO.: 84, 743

BRIEF AMICUS CURIAE OF THE SARASOTA COUNTY PROPERTY APPRAISER In support of Respondents

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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 Authoritv v. Mikos, 605 So.2d 132 (Fla. 2nd CDCA 1992), review denied, 617 So.2d 320 (Fla. 1993). Amicus Curiae Sarasota county Property Appraiser was the appellee/petitioner in the Sarasota-Manatee case upon which conflict jurisdiction has been granted in this cause. Petitioner, Canaveral Port Authority, (plaintiff and appellee below), will be referred to in this brief as "CPA". Sarasota Manatee Airport Authority will be referred to as "SMAA", Sarasota County Property Appraiser will be referred to as "MIKOS".

SUMMARY OF THE ARGUMENT

Certain governmental entities such as the United States, The State and its political subdivisions are immune from ad valorem taxation. Other governmental entities such as municipalities are entitled to an exemption from taxation if their property is utilized for certain governmental purposes.

SMAA is more in the nature of a municipality and entitled only to an exemption from taxation. SMAA is not a political subdivision of the state as it does not act as a branch of general administration of the policy of the state. Reference in the enabling legislation to SMAA being a political subdivision is in the context of exemptions granted under Chapter 196, Florida Statutes.

SMAA status as an independent special district does not confer upon it immunity from ad valorem taxation. The 1968 Constitution elevated the status of not only special districts but also municipalities in the context of levying ad valorem taxes, issuing bonds, and to establish civil service systems. Since municipalities and counties are'treated differently for ad valorem tax purposes, the changes to the 1968 Constitution did not confer immunity upon either special districts or municipalities.

Assuming that authorities have some immunity from taxation, §196.199(4), Florida Statutes (1991) is the legislative waiver of tax immunity for property owned by an authority leased to a non-governmental lessee which lessee does not serve or perform a governmental municipal or public purpose or function.

ARGUMENT

I. AUTHORITIES CREATED AS BODY POLITICS DO NOT CARRY OUT THE GENERAL ADMINISTRATION OF THE POLICY OF THE STATE AND ARE THEREFORE NOT POLITICAL SUBDIVISIONS ENTITLED TO IMMUNITY FROM TAXATION.

A basic proposition of ad valorem tax law is that certain government entities have immunity from ad valorem taxation. This immunity was created by the Courts of Florida as opposed to the legislature. Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975). Those governmental entities entitled to immunity for property owned and used exclusively by them include the United States, the state, and its political subdivisions. Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957).

In Sarasota-Manatee Airport Authority v. Mikos, 605 So.2d 132 (Fla. 2nd DCA 1992), review denied, 617 So.2d 320 (Fla. 1993), the Second District Court of Appeal held that SMAA was immune from taxation. As grounds for its decision, the Court cited the special act of the Florida Legislature which created SMAA in Chapter 31263, Laws of Florida (1955). These laws were revised by Chapter 91-358 Laws of Florida (1991) which states in part:

> Section 18 tax exemption.--
> (1) the authority as a public body corporate is deemed a political subdivision within the meaning of the exemptions granted under $196.199 Florida Statutes (1991) (emphasis added).

Together with the designation as a political subdivision, the Court found SMAA to be an independent special district enjoying the same immunity from taxation as does the state.

In Department of Revenue v. Canaveral Port Authority, 642 So.2d 1097 (Fla. 5th DCA 1994), the Fifth District Court of Appeal

ruled that CPA is not a political subdivision of the state and is not immune from ad valorem taxation. The Supreme Court granted jurisdiction on the apparent conflict between the immunity granted SMAA by the Second District, but not granted CPA by the Fifth District.

The Fifth District Court of Appeal distinguished- Sarasota-Manatee on the basis that the legislature had expressly designated the SMAA as "political subdivision". Chapter 91-358 Laws of Florida (1991). The Fifth District did not discuss whether the legislature can create or designate political subdivisions of the state that are not immune from taxation because the enabling legislation of CPA did not contain the express labeling of CPA as a political subdivision. The Fifth District turned to the case law to determine whether CPA was acting as a branch of general administration of the policy of this state.'

In both cases, the property appraiser sought to assess the fee interest of property owned by the authority and leased to a non-governmental lessee. Both SMAA and CPA body politics and corporates created by special act of the Florida Legislature in 1955 and 1953 respectively.

Immunity from ad valorem taxation should not be made on the basis of mere labels placed upon a governmental entity by the Florida Legislature. SMAA and CPA are not "political subdivisions"

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[1]If the sole basis for granting immunity from ad valorem taxation is whether the legislature refers to a governmental entity as a political subdivision in the enabling legislation then every authority or district must be flocking to Tallahassee to amend its enabling legislation.

of the State as defined by Art. VIII §1(a) of the Florida Constitution (1968). Nor are they a branch of the general administration of the policy of the state. They are body politics and corporate created by and subject to change by the Florida legislature. SMAA is directed and authorized to develop, maintain and operate an airport. CPA is. directed and authorized to do the same for a seaport. They do not possess the usual incidents and powers of a governmental subdivision of the state. They are business corporations discharging an authorized proprietary function.

In its well reasoned decision, the Fifth District has set forth ample authority why CPA is not a branch of the general administration of the policy of the state. See Keggin v. Hillsboroush County, 71 So. 372 (Fla. 1916); Broward County Port Authority v. Arundel, 206 F.2d 220 (5th Cir. 1953); and North Brevard County Hospital District v. Roberts, 585 So.2d 1110 (Fla. 5th DCA 1991). For these same reasons and based on the same authority, SMAA is not a political subdivision of the state entitled to immunity from ad valorem taxation.

Both SMAA & CPA meet the definition of independent special districts found in §189.403(1) and (3) Florida Statutes (1991) and are registered with the Department of the Community Affairs (DCA). Chapter 189, Florida Statues was created to provide uniform procedures to establish, operate and dissolve units of special purpose government who manage and finance capital intrastructure and facilities. The act was also designed to keep track of these

entities by requiring them to register with the DCA. Chapter 189, Florida Statutes does not provide any statutory immunity from ad valorem taxation.

SMAA argues that changes in the 1968 constitution elevated special districts recognizing them as being one of the'four types of local government entities, along with counties, school districts and municipalities. Art. VII 54, 9, and 12 and Art. III, $14, Fla. Const. (1968). The fallacy of SMAA's argument is readily apparent. Municipalities were included within this so called enhanced status. It is also a basic proposition of ad valorem tax law that municipalities are not immune from taxation but merely entitled to an exemption for property owned and used for governmental purposes. City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988) review denied, 544 So.2d 199 (Fla. 1989). Therefore, SMAA's argument would entitle municipalities to immunity also.

In support of this enhanced constitutional status SMAA cites the case of Eldred v. North Broward Hospital District, 498 So.2d 911 (Fla. 1986). This case involved a special taxing district which SMAA and CPA are not.

Eldred was a tort liability case involving a special taxing district hospital and whether the provisions of 8768.28 Florida Statutes (1994) waiving sovereign immunity and limiting liability of governmental entities was intended to apply to such a special tax district. In defining state agencies or subdivisions as that phrase is used in the statute, the Court found a special taxing district to be an independent establishment of the state. What is

important to note about 5768.28, Florida Statues (1994) is that it applies to all entities of government including counties, municipalities, and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities. Thus 9768.28 Florida Statutes (1994) would apply to all governmental entities including SMAA. The Eldred case then becomes inapplicable as governmental entities are treated differently for purposes of immunity or exemption from taxation.

Canaveral rejected the enhanced status argument of CPA citing North Brevard County Hospital District, (the carrying out of an important specialized public purpose at the direction of the legislature does not make the entity a political subdivision). The Second District in Sarasota-Manatee never addressed the enhanced status argument of SMAA.

SMAA argues that several cases have recognized the enhanced status of special districts by limiting the taxable assessments to the leasehold interest of the tenants. Hertz Corporation v. Walden, 299 So.2d 121 (Fla. 2nd DCA 1974), adopted 320 So.2d 385 Florida; (Walden v. Hillsboroush County Aviation Authority, 375 So.2d 283 (Fla. 1979); Parker v. Hertz, 544 So.2d 249, Florida Second DCA 1989. None of these cases dealt with the issue of whether the underlying fee property of the authority was immune from taxation. All of these cases instead dealt with the taxation of the leasehold interest of improvements constructed by tenants on authority property. These cases are therefore not applicable and do not stand for the proposition that authority property-is immune

from taxation.

In Sarasota-Manatee, the Second District relied primarily upon the case of Andrews v. Pal-Mar Water Control District, 388 So.2d 4 (Fla. 4th DCA 1980) review denied, 392 So.2d 1371 (Fla. 1980). By combining the political subdivision label given by the legislature together with SMAA meeting the definition of special district, the Court found Andrews controlling.

The Andrews case involves a special tax district which is inapplicable to our facts. In the case the court was faced with the issues as to whether the water management district was entitled to an exemption from ad valoremtaxation pursuant to the'provisions of Chapter 196 Florida Statutes (1975). The Court found no error by the trial court in its determination that the district was a political subdivision of the state and thus immune from taxation. In support of its opinion, the Court cites in a footnote to Op. Atty. Gen. 076-87 (April 8, 1976), §1.01(9) Florida Statutes (now known as §1.01(8), Florida Statutes), and Chapter 298 Florida Statutes (1975).

The Fifth District Court in Canaveral addresses reliance by Sarasota-Manatee on both the Andrews case and the opinion of the attorney general. The Fifth District notes that Andrews was decided despite prior authority indicating no such immunity. See Sugar Bowl Drainage District v. Miller, 162 So. 707 (Fla. 1935) (Lands of Water Drainage District not used for public purposes are not exempt from taxation). Canaveral at p. 1100 n7.

The Court also discredits the opinion of the attorney general

on the grounds that it was based upon a repealed revenue ruling which in any event would not control the question whether a particular entity was immune from taxation. Id. at p.1100 n7. Thus the Fifth District in Canaveral has called into question the primary authority upon which the Second District reached its decision in Sarasota-Manatee,

Special districts are not immune from taxation. They are not units of general purpose government such as counties. They can be created by either the legislature, counties or municipalities. All special districts cannot therefore be immune when they can be created by an entity only entitled to an exemption (municipalities).

Hillsborough County Aviation Authority v. Walden, 210 So.2d 193 (Fla. 1968) is controlling on the issue of the taxation of an authority such as SMAA and CPA. In the case the Hillsborough County Property Appraiser accessed certain properties either owned outright by the aviation authority or which have been placed under the aviation authority's control or supervision by lessees or agreements from their owners, Hillsborough County and the City of Tampa. The lower court upheld the assessment on these properties for the year 1963, 1964 and 1965. The Florida Supreme Court held that real property owned by the Plaintiff, Hillsborough County Aviation Authority was exempt from ad valorem taxation and not immune since the aviation authority, unlike a county, was not a political subdivision of the state. Id. at 195. It is interesting to note that as to the property owned by Hillsborough County but

controlled by the aviation authority, the Court 'found that such property is immune from ad valorem taxation under the authority of Park-N-Shop, Inc. v. Sparkman.

The holding in this case is controlling because the Hillsborough County Aviation Authority was created by the Florida Legislature in Chapter 24,579 Laws of Florida (1947), as in the same manner as SMAA and CPA.

Thus under the holding of Hillsborough County Aviation Authority, SMAA and CPA would be entitled to only claim exemption from ad valorem taxation on real property leased to a non-governmental entity since it was not a political subdivision of the state entitled to immunity from taxation.

SMAA's own revised enabling legislation referring to itself as a "political subdivision", was called into question by the 5th District in Canaveral. Canaveral at p.1100 n8. The Fifth District noted that the word exemptions was used instead of immunity. Certainly one could imply that had the legislature intended SMAA to be immune it would have used the correct terminology.

II. ASSUMING ARGUENDO THAT THE AUTHORITY WAS IN THE NATURE: OF A POLITICAL SUBDIVISION, THEN §196.199(4) FLORIDA STATUTES (1991) WAS A LEGISLATIVE WAIVER OF ANY IMMUNITY FROM AD VALOREM TAXATION THAT THE AUTHORITY MIGHT OTHERWISE ENJOY.

Assuming authorities are immune from taxation, The Florida Legislature has waived this immunity in §196.199(4) which provides:

> Property owned by an municipality,.agency, authority or other public body corporate of the state which becomes subject to a leasehold interest or other possessory interest of a non-governmental lessee other than that described in paragraph 2a, after April 14, 1976 shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for

> literary, scientific, religious or charitable purposes. This section does not have reference to the taxation of a leasehold interest but refers to the taxation of the referenced governmental unit and the property it owns. (emphasis added)

In State v. Alfred, 107 So.2d 27 Fla. 1958, the Supreme Court stated that the legislature, within certain constitutional limits may provide for the taxation of lands or other property of the state which might ordinarily be exempt based upon broad grounds of fundamentals in government. Id at 29. Waiver of immunity from taxation is also recognized in Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975) wherein the Supreme Court addressed the question of whether S166.231 Florida Statutes constituted a legislative waiver of the state immunity from City imposed utility taxes. The Supreme Court ultimately held in that case that it did not.

The taxation of governmental property, in fact all property, is established by §196.001 Florida Statutes (1971). That statute provides that unless expressly exempt from taxation, all real and personal property in this state is taxable.

The thrust of 6196.001 and $196.199, Florida Statutes is to permit taxation of government owned property. Unlike the general act in Dickinson and the special act in Alfred, the legislative waiver is clear in §196.199(4), Florida Statutes (1991). As pointed out by the Department of Revenue in its briefs to the Fifth District Court of Appeal, if §196.199(4), Florida Statute (1991) did not waive immunity to the public bodies named, then what did it do?

In Sarasota-Manatee, the Second District Court of Appeal noted that it had reviewed §196.199(4), Florida Statutes (1991) but found it to be inapplicable based upon the court's determination that SMAA was immune from taxation. That statement merely begs the question of what affect §196.199(4), Florida Statutes (1991) have upon the taxability of authority property.

Likewise the Fifth District Court of Appeal briefly discussed, the taxing authorities argument that the legislature has waived immunity for its political subdivisions by enactment of S196.199, Florida Statutes (1991). Canaveral at p.1102 nll. The Fifth District acknowledges the limited authority of waiver found in Alfred and Dickinson. However the Court questions whether Chapter 196.199, Florida Statutes (1991) is a clear legislative waiver of immunity similar to that found in S768.28 Florida Statutes (1994). However, the Court does give credence to the taxing authorities arguments by noting that without the waiver of immunity, the basis of many of Chapter 196 exemptions is unclear.

The legislature obviously saw fit to treat- all government property leased to private persons the same. The Sarasota-Manatee Court's holding would tax municipal property leased to private entities and used for private purposes but place no financial burden on private lessees of authority owned property in spite of the fact that the legislature clearly intended that both authority and municipal lessees be treated identical. Capital City Country Club Inc. v. Tucker, 613 So.2d 448 (Fla. 1993). The decision in Canaveral would not allow such a result.

CONCLUSION

Authorities created as body politics by the legislature are not political subdivisions of the state entitling them to immunity from ad valorem taxation. Labels such as "political subdivision" and "special district" should not govern whether a particular governmental entity is immune or exempt from taxation. If such were the case, municipalities which are included as one of the four types of local governmental entities and who might be defined as special districts would be immune as opposed to exempt from taxation. Authorities have been determined by the courts of this state to be more in the nature of a municipality and therefore only entitled to an exemption from taxation. Hillsborough County Aviation Authority v. Walden; City of Orlando v. Hausman; Florida Department of Revenue v. Canaveral Port Authority and Department of Revenue v. Port of Palm Beach District, 20 Fla. L. Weekly D510 (4th DCA 1995). The Supreme Court should hold that authorities such as SMAA and CPA are entitled only to an exemption from taxation under certain circumstances regardless of the labels placed upon them by non ad valorem statutes. Such will insure uniformity in taxation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all those listed on the attached service list, on this 21 day of April, 1995.

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