IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CANAVERAL PORT AUTHORITY,

Appellant/Petitioner,

Case No.: 84,743

vs.

FLORIDA DEPARTMENT OF REVENUE, et al.,

Appellees/Respondents.
_____/

ON CERTIORARI FROM THE FIFTH DISTRICT COURT OF APPEAL

INITIAL BRIEF OF HILLSBOROUGH COUNTY AVIATION AUTHORITY AS AMICUS CURIAE

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INTRODUCTORY STATEMENT

On February 16, 1995, this Court accepted certiorari jurisdiction over this case on the basis of an alleged conflict between Florida Department of Revenue v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994), and Sarasota-Manatee Aviation Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), review denied, 617 So. 2d 320 (Fla. 1993). Since this Court's acceptance of certiorari jurisdiction, the Fourth District Court of Appeal in Florida Department of Revenue v. Port of Palm Beach District, 20 Fla. L. Weekly D510, (February 23, 1995), in express reliance on the Fifth District's decision in Canaveral Port Authority, held that the Port of Palm Beach District was not a political subdivision of the state entitled to immunity from taxation.

Pursuant to this Court's order dated March 15, 1995, the Hillsborough County Aviation Authority (hereinafter referred to as "HCAA") hereby files this brief, as amicus curiae. Petitioner/Appellant, Canaveral Port Authority, will be referred to as "Port Authority." Respondent/Appellee, Florida Department of Revenue, will be referred to herein as the "Department." Respondents/Appellees, Brevard County Property Appraiser and Brevard County Tax Collector, will be referred to herein as the "Property Appraiser" and the "Tax Collector," respectively, or collectively as "Brevard County."

AMICUS CURIAE

HCAA is a public body corporate created by the Florida Legislature pursuant to Chapter 23339, Laws of Florida (1945), which enactment has been amended, superseded and codified by Chapter 83-424, Laws of Florida. HCAA is an independent special district within the definition found in Fla. Stat. § 189.403(3)(1993) and is identified as such in the official list of special districts maintained by the Florida Department of Community Affairs pursuant to Fla. Stat. § 189.4035 and § 189.4 12(3)(1993). Pursuant to its enabling legislation, HCAA's governing body consists of five members, three of whom are appointed by the Governor, The other two members are the Mayor of the City of Tampa and a member of the Board of County Commissioners of Hillsborough County, each of whom serves ex-officio.

HCAA owns and operates Tampa International Airport ("TIA") as well as three general aviation facilities (Plant City Airport, Peter 0' Knight Airport, and Vandenberg Airport). TIA is a regional airport and is classified as a large hub airport by the Federal Aviation Administration ("FAA"). It is part of the national airport system, TIA's primary service area consists of Hernando, Hillsborough, Pasco, and Pinellas Counties, including the Tampa/St. Petersburg/Clearwater metropolitan areas. Its secondary service area includes Citrus, DeSoto, Hardee, Manatee, Sarasota and Sumter Counties, as well as a portion of Polk County+ HCAA and its airport facilities are a part of the state airport system. See Fla. Stat. §332.001(1993)("it shall be the duty, function, and responsibility of the Department of Transportation to plan airport systems in this state").

STATEMENT OF THE CASE AND OF THE FACTS

HCAA hereby adopts and incorporates by reference the Statement of the Case and of the Facts contained in the Initial Brief of the Port Authority.

SUMMARY OF THE ARGUMENT

The very important question presented in this case is whether an independent special taxing district created by the Florida Legislature to perform some specialized public and state purpose, and to advance important state policies, should be deemed a political subdivision of the state so as to enjoy sovereign immunity from taxation. Florida law is clear that counties (which are political subdivisions of the state under the Constitution) are immune from taxation. Municipalities, on the other hand, enjoy only an exemption from taxation. This Court has yet to address in a general fashion, however, the tax status of independent special taxing districts. The Fifth District Court of Appeal found that the Port Authority was not a political subdivision of the state and, hence, not immune from taxation.

HCAA respectfully submits that the Fifth District Court of Appeal's decision is erroneous for a number of reasons. First, the court applied the wrong test to determine whether the Port Authority was a political subdivision of the state. In essence, the court measured the Port Authority's status as a political subdivision by reference to the definition of a county.

The Court also failed to appropriately consider whether the 1968 Constitution, which first recognized special taxing districts as one of the four types of local governmental units, requires a finding that such special taxing districts are political subdivisions of the state. HCAA submits that this recognition of special taxing districts in the Constitution without any express grant of exemption from taxation can only mean that such districts are, like counties and school districts, immune from taxation. For the same reason, the Fifth District's reliance on pre-1968 cases was misplaced.

Finally, the Court should consider that independent special taxing districts created by the Florida Legislature to perform important public and state purposes, and to advance important state policies, are in fact performing functions which, in their absence, would likely fall to the state or to the several counties. Nothing in the Constitution suggests that the state intended to relinquish its sovereign immunity from taxation by electing to perform certain specialized state functions through independent special taxing districts.

ARGUMENT

THE COURT ERRED IN FINDING THAT THE CANAVERAL PORT AUTHORITY WAS NOT A POLITICAL SUBDIVISION OF THE STATE ENTITLED TO SOVEREIGN IMMUNITY FROM AD VALOREM TAXATION.

Although the decision of the Fifth District Court of Appeal presents a number of issues for determination by this Court, HCAA, as amicus curiae, shall focus on the threshold question raised by the lower court's opinion: Whether the Port Authority is a political subdivision of the state entitled to sovereign immunity from ad valorem taxation?

A. The property of state and political subdivisions of the state is immune from taxation.

Property of the state, and of the political subdivisions of the state, is immune from taxation. Dickinson v. City of Tallahassee, 325 So. 2d 1 (Fla. 1975); State ex rel. Charlotte County v. Alford, 107 So. 2d 27 (Fla. 1958); Park-N-Shop, Inc. v. Sparkman, 99 So. 2d 571 (Fla. 1958). The state's freedom from tax liability depends not upon any legislative grace or statutory enactment; rather, it "rests upon broad grounds of fundamental in government." Alford, 107 So. 2d at 29.

While "exemption" presupposes the power to tax, "immunity" derives from the absence of that power. The property of the state and its political subdivisions is immune -- not exempt -- from taxation because there is no power to tax it. Orlando Utilities Comm'n

v. Milligan, 229 So, 2d 262 (Fla. 4th DCA 1969), cert. denied, 237 So. 2d 539 (Fla. 1970). Moreover, the property of the state is immune from taxation despite various statutory references to it as "exempt," &&-N-Shop, 99 So. 2d at 573-74.

B. All counties are political subdivisions of the state, but not all political subdivisions of the state are counties.

Counties are political subdivisions of the state. Art. VIII, § l(a), Fla. Const.; see also, Park-N-Shon, supra; City of Tampa v. Easton, 198 So. 753 (Fla. 1940); Keggin v. Hillsborough Countv, 71 So. 356, 71 So. 372 (1916). The Constitution mandates that "The state shall be divided by law into political subdivision called counties," and that mandate has been construed to require that all of the state be divided into counties. Linscomb v. Gialourakis, 101 Fla. 1130,133 So. 104 (193 1). But the Constitution does not itself establish the several counties or fix their respective boundaries. Those matters are left to the legislature. See, Fla. Stat. §7.01-7.67 (1993). The legislature may also create, change or abolish counties. Art. VIII, § 1 (a), Fla. Const.

While all counties are political subdivisions of the state, the Constitution does not compel the converse conclusion. It simply does not follow from Art. VIII, §1 (a) that the only political subdivisions of the state are the several counties, Moreover, nothing else contained in the Constitution warrants such a conclusion. The Fifth District conceded as much when it observed that "[I]t appears that Florida has 'political subdivisions' other than counties which are immune from taxation." Canaveral, 642 So. 2d at 1099.

This conclusion is also borne out by case law. Various other units of local government have been held to be "political subdivisions of the state" entitled to sovereign immunity from taxation, including school districts, Dickinson v. Citv of Tallahassee, 325 So. 2d 1 (1975), a water control district, Andrews v, Pal-Mar Water Control District, 388 So. 2d 4 (Fla. 4th DCA), rev. denied, 392 So. 2d 1371 (Fla. 1980), and an aviation authority, Sarasota-Manatee Aviation uthority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla. 1993).

C. The Fifth District Court of Appeal applied the wrong standard and ignored significant constitutional issues in Canaveral Port Authority.

In Canaveral Port Authority, the Fifth District expressed what it believed to be the proper test to determine whether a special taxing district is a political subdivision of the state:

> What makes an entity a political subdivision of the state entitled to immunity from taxation is its role as a branch of the general administration of the policy of the state. See Commissioners of Duval County v. City of Jacksonville, 36 Fla. 196, 18 So, 339, 343 (Fla. 1895).

Canaveral Port Authority, 642 So. 2d at 1101. The court then emphasized the Port Authority's "limited purpose" and found that it did not meet this test. It should come as no surprise that the Port Authority could not meet the test established by the Fifth District. A careful reading of Commissioners of Duval County v. City of Jacksonville, 36 Fla. 196, 18 So. 339 (Fla. 1895), demonstrates that what the Fifth District set up as the test for a political subdivision was, in fact, the definition of a county.

The issue in Commissioners of Duval County v. City of Jacksonville, 36 Fla. 196, 18 So. 339 (Fla. 1895), was whether the county could properly turn over to the city a portion of the proceeds of a county tax for use by the city for street maintenance within the city limits. In short, the question was whether the use of county tax revenue for the maintenance of city streets was a valid county purpose. Id. at 343.

To answer this question, this Court looked to the nature and function of a county. The Court observed:

> In Commissioners v. Mighels, 7 Ohio St. 109, the court [said]: 'A county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for general administration of justice. With scarcely an exception, all of the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are in fact but a branch of the general administration of that policy.

18 So. at 343. (e.s.)

In essence, the Fifth District found that the Port Authority was not a political subdivision of the state because it was not a county, even though the court had already conceded that there are political subdivisions of the state other than counties. Canaveral Port Authority, 642 So. 2d at 1099. Moreover, the Fifth District established what may well be an impossible standard. Counties are unique; a Florida county holds a "peculiar office as a branch of the general administration of the policy of the state." Keggin v. Hillsborough County, 71 Fla. 356, 71 So, 372 (Fla. 1916). The question is whether independent special

taxing districts created by the Florida Legislature to perform public and state purposes and to advance state policies are political subdivisions of the state, not whether they are counties.'

The Fifth District also gave little consideration to the Port Authority's argument that the adoption of the 1968 Florida Constitution recognized special taxing districts as political subdivisions of the state. See Canaveral Port Authority, 642 So. 2d at 1101 n.9. The court's summary rejection of that argument appears to be based, again, primarily on the fact that special districts perform a specialized, rather than a general, function. Id. HCAA submits that this constitutional question warrants more careful analysis by this Court.

Prior to 1968, special districts were not regarded as political subdivisions of the state immune from taxation. Hillsborough County Aviation Authority v. Walden, 210 So. 2d 193 (Fla. 1968) (referred to herein as "Walden I"); Sugar Bowl Drainage District v. Miller, 162 So. 2d 707, 120 Fla. 436 (Fla. 1935); Broward County Port Authority v. Arundel Corp., 206 F.2d 220, (5th Cir. 1953).

With the adoption of the 1968 Constitution, special taxing districts were recognized, for the first time, as one of the four types of local governmental entities, along with counties,

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[1] In the process of distinguishing Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), the Fifth District questioned the validity of Andrews v. Pal-Mar Water Control District, 388 So. 2d 4 (Fla. 4th DCA 1980), rev. denied, 392 So. 2d 1371 (Fla. 1980). While the Fifth District's analysis of Andrews is rather oblique, it is clear that the court questions the result reached in that case. Canaveral Port Authority, 642 So. 2d at 1100 n.7. The court's distaste for Andrews is curious, especially since the Fifth District has itself recently held that a water control district was a political subdivision of the state. See, Water Control District of South Brevard v. Davidson, 638 So. 2d 521, 526 (Fla. 5th DCA 1994) (holding that the district was "a political subdivision of the State of Florida").

school districts and municipalities. In Eldred v. North Broward Hosnital District, 498 So. 2d 911 (Fla. 1985), this Court held that special taxing districts were "separate local governmental entities" and "independent establishments of the state." The Court also noted the new status granted to special taxing districts under the 1968 Constitution:

> 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 governmental entities for the transfers of powers and the functions with counties or municipalities. Art. VIII, §4, Fla. Const. Additionally, special taxing districts, along with other local governmental entities, are authorized to issue bonds, article VII, section 12, and to establish civil service systems, article III, section 14.

Eldred, 498 So. 2d at 913. The court concluded that, "the provisions of the 1968 Constitution leave no doubt that special taxing districts are included as one of four types of local governmental entities, along with the counties, school districts and municipalities." Id. at 914.

This court must consider that while the 1968 Constitution recognized special taxing districts as a type of local governmental entity and as "independent establishments of the state," the new constitutional provisions did not include a grant of tax exempt status like the one already provided for municipalities in Art. VII, §3(a) ("All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.") Thus, the 1968 Constitution is silent on the question of the tax status of counties, school districts and special taxing districts. By recognizing special taxing districts for the first time in the 1968 Constitution without expressly granting such districts tax

exempt status, the new constitutional provisions can only mean that special taxing districts were intended to share in the immunity from taxation enjoyed by counties and school districts.[2]

The Fifth District's reliance on Walden I is also misplaced for a number of reasons. First, the opinion in Walden I merely concludes that HCAA "unlike a county, is not a political division or subdivision of the state," but does not offer any guidance into the test that may have been applied to reach this conclusion or provide any analysis that might be useful in this case. The two cases cited as authority for this conclusion in Walden I suggest that the Court, as the Fifth District did in Canaveral Port Authority, compared the special districts, which by definition perform some specialized function, to a county, which by definition performs a general governmental function:

> Examination of the corporate nature of the Port Authority as outlined in prescribed in the Acts of the Florida Legislature incorporating it and its predecessors and defining its powers, functions and duties, leads to the conclusion that Port Authority does not enjoy the immunity from the payment of interest on its obligations which a Florida county does vicariously as an agent of the state by virtue of its peculiar office as a branch of the general administration of the policy of the state. Keggin v. Hillsborough County, 71 Fla. 356, 71 So. 372.

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[2] The Fifth District also noted in its analysis that the Port Authority was originally granted an exemption from taxation in its enabling act. Canaveral Port Authority, 642 So. 2d at 110 1. Even assuming arguendo that the state can legislatively waive any immunity from taxation granted under the Constitution, see, State ex rel. Charlotte County v. Alford, 107 So. 2d 27, 29 (Fla. 1958), the mere granting of an "exemption" in the enabling statute of the special taxing district seems inadequate to constitute such a waiver, especially in view of the legislature's historical inability to distinguish between an exemption and immunity. See Canaveral Port Authority, 642 So. 2d at 1102 n. 11, and authorities cited therein.

Broward County Port Authority v. Arundel Corp., 206 F.2d 220, 222-23. The other case cited as authority in Walden I, Aerovias Interamericanas De Panama S.A. v. Board of County Commissions of Dade County, 197 F.2d 230 (SD. Fla. 1961), merely relies on Arundel without further analysis. Id. at 254. Of course, both Walden I and the cases relied upon in that opinion were decided prior to the adoption of the 1968 Constitution Given the lack of analysis contained in Walden I and the elevated status granted to special taxing districts under the 1968 constitution, HCAA respectfully submits that Walden I is not determinative of the issue before this Court.

D. Special taxing districts created by the legislature are functionally and constitutionally political subdivisions of the state entitled to sovereign immunity from taxation.

Florida has long recognized the power of the legislature to create special districts. North Brevard County Hosnital District v. Roberts, 585 So. 2d 1110 (Fla. 5th DCA 1991). These districts are creatures of the legislature created "to serve an important, and usually specialized public purpose." Id. at 1112 n.4. The special acts creating such districts "take away from the county commission their ordinary powers of supervision and control. . . ." Id. at 1112. Thus, special taxing districts perform functions recognized to be important public purposes and the performance of which, in their absence, would likely fall to the counties or to the state. See also Fla. Stat. §189.402(3)(a)(1993), in which the legislature finds that "an independent special district can constitute a timely, efficient, effective, responsive, and economic way to deliver these basic services, thereby providing a means of

solving the state's planning, management, and financing needs for delivery of capital infrastructure facilities, and services in order to provide for projected growth without overburdening other governments and their taxpayers,"

Port authorities and airport authorities, for example, carry out and advance the important state policies of providing adequate intrastate, interstate and international transportation and promoting business, commerce, tourism and industry within the state. The duties and functions of these special districts are recognized in the state comprehensive plan, which provides "long-range policy guidance for the orderly social, economic, and physical growth of the state." Fla. Stat. § 187.101(1) (1993). By way of illustration, Fla. Stat. § 187.201(20) (1993) sets forth the state's goals and policies with respect to transportation. The state's goal is an efficient, intermodal transportation system: "Florida shall direct future transportation improvements to aid in the management of growth and shall have a state transportation system that integrates highway, air, mass transit, and other transportation modes." Fla. Stat §187.201(20)(a) (1993). The policies adopted by the state to achieve this goal include the following:

> (b) Policies. --
>
> * * *
>
> 3. Promote a comprehensive transportation planning process which coordinates state, regional and local transportation plans.
>
> * * *

> 5. Ensure that existing port facilities and airports are being used to the maximum extent possible before encouraging the expansion or development of new port facilities and airports to support economic growth.

Fla. Stat. §187.201(20)(b)(3) and (5)(1993)(e.s.)

Given that such special taxing districts carry out important state policies the performance of which would otherwise fall to the several counties or to the state, public policy dictates that the independent special taxing districts enjoy the same sovereign immunity from taxation as the counties and the state, Any other conclusion produces incongruous results. For example, a county owned and operated airport would be immune from taxation. Yet, a similar, competing airport owned and operated by a special taxing district and advancing the same important state policies of providing transportation and promoting business, tourism, commerce and industry within the state, would enjoy no such immunity. Nothing in the Constitution suggests that the state intended to give up its sovereign immunity from taxation when it elects to perform certain specialized functions, in the furtherance of important state policies, through independent special taxing districts.

CONCLUSION

For all of the foregoing reasons and upon the cases and authorities cited herein, the Hillsborough County Aviation Authority, as amicus curiae, respectfully submits that this Court should find that independent special taxing districts created by the Florida Legislature to perform specialized functions on behalf of the state and to advance important state policies, including the Canaveral Port Authority, are political subdivisions of the state

entitled to sovereign immunity from taxation. The Court should reverse the decisions in Florida Department of Revenue v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994) and Florida Department of Revenue v. Port of Palm Beach District, 20 Fla. L. Weekly D5 10 (Fla. 4th DCA Feb. 23, 1995).

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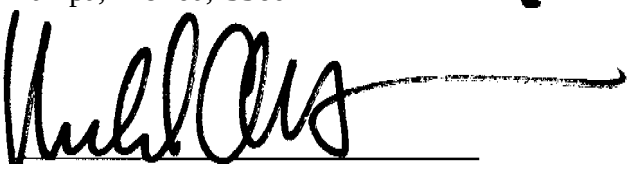

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CERTIFICATE OF SERVICE

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

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