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IN THE SUPREME COURT OF FLORIDA

CANAVERAL PORT AUTHORITY,
a political subdivision
of the State of Florida,

Petitioner

vs. CASE NO. 84,743

FLORIDA DEPARTMENT OF REVENUE,
JIM FORD, as Brevard County
Property Appraiser, and ROD
NORTHCUTT, as Brevard County
Tax Collector,

Respondents.
_____/

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# RESPONDENTS' BRIEF ON JURISDICTION

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## STATEMENT OF THE CASE AND OF THE FACTS

The Respondents, Jim Ford, Brevard County Property Appraiser, ("the Property Appraiser"), Rod Northcutt, Brevard County Tax Collector, ("the Tax Collector") and the Florida Department of Revenue, ("the Department") basically agree with the Petitioner's, Canaveral Port Authority ("the Authority"), statement of the case and of the facts. The Respondents suggest that rather than rely on the Authority's characterization of the trial court's and district court's decisions, this Court should rely on the plain reading of those decisions. *See* Appendix A and B to Petitioner's Brief on Jurisdiction.

Relying upon *Hillsborough County Aviation Authority v. Walden*, 210 So. 2d 193 (Fla. 1968), and *Broward County Port Authority v. Arundel*, 206 F. 2d 220 (5th Cir. 1953), the district court in this case, found that the Authority was not created as a "political subdivision" of the state and thus was not immune from taxation and reversed the trial court. *Id.*, 642 So. 2d at 1101. The district court likewise distinguished the instant case from *Sarasota-Manatee Airport Authority v. Mikos*, 605 So. 2d 132 (Fla. 2d DCA 1992), *rev. denied*, 617 So. 2d 320 (Fla. 1993), by concluding that the Legislature, with the passage of Ch. 91-358, § 18, Laws of Fla., had designated the Sarasota-Manatee Airport Authority as a "political subdivision" within the meaning of government property tax exemptions pursuant to § 196.199, Fla. Stat. In this case, the district court found that the Legislature had not labeled the Authority a "political subdivision". *Id.*, 642 So. 2d at 1099 and 1100.

## SUMMARY OF ARGUMENT

The Respondents do *not* agree that the Authority is a political subdivision of the state or that it is in the nature of a county and thus immune from taxation. The Authority is a body politic and corporate, created by special act. It is not, by any stretch of the imagination, a political subdivision in the nature of a county as suggested by the Authority. The Authority is only entitled to an exemption from ad valorem taxation for its properties which qualify for an exemption under § 196.199(4), Fla. Stat. The uses and purposes as established by the lessees do not qualify for an exemption under § 196.199(4), Fla. Stat. The actual use of the property determines its taxable status. The real property and improvements, owned by the Authority and which are leased to a nongovernmental lessee, are taxable because such property and improvements do not serve a statutorily recognized governmental, municipal or public purpose. Furthermore, those lessees are not using the property exclusively for literary, scientific, religious, or charitable purposes. Such property is taxable as real property subject to ad valorem taxation because it is not used for governmental-governmental purposes and is not exempt under § 196.199(4), Fla. Stat.

However, the Respondents cannot disagree with the Authority's contention that conflict exists between the decisions in *Sarasota-Manatee Airport Authority* (hereafter "SMAA") and *Canaveral Port Authority*. In both cases, the Authorities were created by a Special Act of the Florida Legislature. Both Authorities were

designated as a public body corporate.[1] In both cases, the Authorities' real property had become subject to a leasehold interest of a nongovernmental lessees. Finally, in both cases, the lessees were not performing a governmental or other exempt function pursuant to §§ 192.012(6), 196.199(2)(a) and 196.199(4), Fla. Stat.

The Second District Court of Appeal reversed the trial court and held that the Sarasota-Manatee Airport was a political subdivision of the State and therefore immune from taxation. *See* 605 So. 2d at 133. In the instant case, the Fifth District Court of Appeal reversed the trial court and held that the Authority was not a political subdivision and therefore not immune from taxation. *See* 642 So. 2d at 1102.

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[1] *Compare,* Ch. 31263, Laws of Fla. (1955), as amended, and as revised and consolidated in Ch. 91-358, Laws of Fla. (*Sarasota*), *with* Ch. 28922, Laws of Fla. (1953) (*Canaveral*).

## ARGUMENT

I.

**_FLORIDA DEPARTMENT OF REVENUE, ET AL. v. CANAVERAL PORT AUTHORITY_, 642 So. 2d 1097 (FLA. 5th DCA 1994), EXPRESSLY AND DIRECTLY CONFLICTS WITH _SARASOTA-MANATEE AIRPORT AUTHORITY v. MIKOS_, 605 So. 2d 132 (FLA. 2d DCA 1992), _REV. DENIED_, 617 So. 2d 320 (FLA. 1993).**

The Authority asserts that conflict exists because *Canaveral Port Authority* conflicts with the *SMAA* decision on the same question of law. The Respondents cannot viably contest the contention that express and direct conflict exists between *Canaveral Port Authority* and *SMAA*.[2]

Nevertheless, the nature of the apparent conflict between *Canaveral Port Authority* and *SMAA* should be examined. The Sarasota-Manatee Port Authority was created by special act of the Legislature in 1955. *See* Ch. 31263, Laws of Fla. (1955), as amended by Ch. 91-358, Laws of Fla. The Authority in the instant case was created by special act of the Legislature in 1953. *See* Ch. 28922, Laws of Fla. (1953), as amended. The *SMAA* owns property encompassing what is known as the Sarasota-Bradenton Airport. The Authority owns property encompassing what is known as the Canaveral Port. Both enabling acts which set up the Authorities, created them as a body politic and corporate.

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[2] While the district court in *Canaveral Port Authority* attempted to distinguish the instant case from *SMAA*, the district court's distinction is based upon an erroneous conclusion in *SMAA*, that the Legislature in labelling *SMAA* a "political subdivision" provides immunity from taxation and thereby, escaping the effects of this Court's decisions in *Straughn v. Camp*, 293 So. 2d 689 (Fla. 1974); *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975); and, *State ex rel. Charlotte County v. Alford*, 107 So. 2d 27 (Fla. 1958). *Id.* 642 So. 2d at 1100.

Neither were originally created as a political subdivision of either the State of Florida or the Counties of Sarasota or Manatee or Brevard.[3] The Authorities are not such entities which are immune from local taxation. The Authorities were not created by either the Florida Constitution or the Federal Constitution.

Included within the property, owned by the Authorities, are certain parcels which have been leased to lessees who perform a variety of functions. There are no contentions that the lessees together with the property leased perform a function, or service, which is an exempt function or service, or would it be an exempt function or service if performed by the authorities themselves.

The Authorities are entities which are only entitled to an exemption from ad valorem taxation for its properties which qualify for an exemption under Ch. 196, Fla. Stat. The uses and purposes as established by the lessees do not qualify for an exemption under § 196.199(4), Fla. Stat. The taxation of governmental property, in fact all property, is established by § 196.001, Fla. Stat. That section provides that, unless expressly exempt from taxation, all real and personal property in this state is taxable.

Section 196.199(4), Fla. Stat., provides for taxation of property *owned* by any municipality, agency, *authority* or other *public body corporate* of this state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee. This section does not have reference to the taxation of

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[3] *See* however, Ch. 91-358, § 18, Laws of Fla. (1991), amending Ch. 31263, Laws of Fla. (1955).

a *leasehold* interest but refers to the taxation of the referenced governmental unit and the property it owns.

Both *SMAA* and *Canaveral Port Authority* were created by Special Acts similar to the Hillsborough County Aviation Authority in *Hillsborough County Aviation Authority v. Walden*, 210 So. 2d 193 (Fla. 1968).[4] In that case, this Court determined that the Hillsborough County Aviation Authority, created by Special Act in 1947, was not immune from taxation but entitled to only claim exemption from ad valorem taxation.[5] The same theory applied in the case of *City of Orlando v. Hausman*, 534 So. 2d 1183 (Fla. 5th DCA, 1988), *rev. denied,* 544 So. 2d 199 (Fla. 1989), which involved the City of Orlando and the Orlando Airport Authority. When *real property* ceases to be used for appropriate governmental, municipal, or public purposes as provided for in §§ 196.199(1)(c) and (4), Fla. Stat., such property becomes taxable *just the same* as real property in private ownership used identically. *See, Sebring Airport Authority v. McIntyre, et al.*, 642 So. 2d 1072 (Fla. 1994); *Lykes Brothers, Inc. v. City of Plant City*, 354 So. 2d 878 (Fla. 1978).

However, in the *SMAA* case, the district court reversed the trial court and held that the real property which was leased to nongovernmental lessees, who were not performing a governmental-governmental function or other exempt purpose, was not subject to ad valorem taxation. *See* 605 So. 2d at 133-134.

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[4] *See* Ch. 24579, Laws of Fla. (1947), as amended.

[5] *See also, Walden v. Hillsborough Co. Aviation Authority*, 375 So. 2d 283 (Fla. 1979).

Considering that the district court in deciding *Canaveral Port Authority* relied upon this Court's opinions of *Hillsborough County*, *Straughn v. Camp* and *Sebring*, any conflict based upon announcing a rule of law that conflicts with a previously announced rule of law,[6] apparently would be between these cases of this Court and the Second District's decision in *SMAA*. Similarities between *Canaveral Port Authority, Hillsborough* and *SMAA* are striking. The Fifth District's decision in *Canaveral Port Authority* is consistent with this Court's decision in *Hillsborough, Straughn v. Camp, Sebring* and *Williams v. Jones*. The Second District's decision in *SMAA* conflicts with all of these cases.

II.

**NEITHER THE TRIAL COURT NOR THE DISTRICT COURT RULED ON THE VALIDITY OF § 196.199(4), FLA. STAT.**
**[PETITIONER'S POINT II IS ADDRESSED HEREIN.]**

The question of the application of § 196.199(4), Fla. Stat., was raised in both the instant case and in *SMAA*. In the district court's decision in *SMAA* and the trial court's decision in the instant case, both courts ignored the effect of § 196.199(4), Fla. Stat., on the Authority's property. The district court in the instant case gave it faint praise. *Id.*, 642 So. 2d at 1102.

The underpinning of the *SMAA* decision and the Authority's position in the instant case, is that the Authorities involved in the respective cases are immune from taxation and that the Legislature *lacks* the *power* to permit taxation of the Authority's

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[6] *See Nielson v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960).

property, when such property is leased to private parties and used for private purposes, as the Legislature has done with the enactment of § 196.199(4), Fla. Stat. This is in absolute express and direct conflict with *Dickinson v. City of Tallahassee,* 325 So. 2d 1 (Fla. 1975); *Capital City Country Club v. Tucker,* 613 So. 2d 448 (Fla. 1993); *Alford*; and *Williams, supra.*

Both *Dickinson* and *Alford* held that immunity *could be waived* by a proper legislative enactment. *See Dickinson*, 325 So. 2d at 3; and *Alford*, 107 So. 2d at 29. The *SMAA* decision and the Authority's position in the instant case begs the question - if § 196.199(4), Fla. Stat., did *not* waive any immunity the Authority may have had, then what did it do?

Section 196.199(4), Fla. Stat., provides for taxation of property *owned* by any municipality, agency, *authority* or other *public body corporate* of this state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee. 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. The statute also provides for an exemption if property owned by any municipality, agency, *authority*, or other *public body* corporate is subject to a lease and the lessee is an organization which *uses the property for a governmental purpose or exclusively* for literary, scientific, religious or charitable purposes.

The Legislature obviously saw fit to treat *all* government property owned by the entities listed in § 196.199(4), Fla. Stat., leased to private persons the same. The Second District's

decision in *SMAA* would tax municipal property leased to private entities and used for private purposes, but impose 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 identically. *Capital City Country Club*, 613 So. 2d at 451.

The real property and improvements, owned by the Authority and which are leased to a nongovernmental lessee, are taxable because such property and improvements do not serve a statutorily recognized governmental, municipal or public purpose, and they are not used exclusively for literary, scientific, religious, or charitable purposes. Such property is taxable as real property subject to ad valorem taxation because it is not used for governmental-governmental purposes and is not exempt under § 196.199(4), Fla. Stat. Because of the existence of two other cases involving this very point of law, currently pending before the Fourth District Court of Appeal,[7] the Court should take jurisdiction of this case and resolve the conflict between the district courts' opinions.

## CONCLUSION

Wherefore, based upon the foregoing arguments and authorities, Respondents believe that this Court should accept jurisdiction in the above-styled case in order to resolve the

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[7] *Florida, Department of Revenue v. Port of Palm Beach District*, Case No. 93-03053 (Fla. 4th DCA) (Appeal from trial court order holding the authority property that was leased to nongovernmental lessees was not subject to tax); *Port Everglades Authority v. Markham*, Case No. 94-2872 (Fla. 4th DCA) (Appeal from trial court order holding that the authority property that was leased to nongovernmental lessees was subject to tax).

conflicts between the districts as to the taxability vel non of governmental property leased to nongovernmental lessees.

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 **Harold T. Bistline**, Stromire, Bistline & Miniclier, 1970 Michigan Avenue, Bldg. E, Cocoa, FL 32922 on this 9th day of December, 1994.

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