

**FILED**

SID J. WHITE

APR 7 1995

CLERK, SUPREME COURT  
BY *[Signature]*  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

PORT OF PALM BEACH DISTRICT,  
etc., et al.,

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT  
REVENUE, et al.,

Respondent.

---

CASE NO.

85,434

FOURTH DISTRICT COURT  
OF APPEAL CASE NO. 93-03053

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the Fourth District Court  
of Appeal of Florida

ROBERT B. COOK, ESQUIRE  
Attorney for Petitioner  
11911 U.S. Highway One,  
Suite 308  
North Palm Beach, FL 33408  
(407) 627-8766

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Citation	ii
Jurisdictional Statement	iii
Statement of Case	1-2
Summary of the Argument	3
Argument	4-8
Conclusion	9
Certificate of Service	9

## TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Broward County Port Authority v. Arundel Corporation</u> , 206 F. 2d 220 (5th Cir.1953)	6
<u>Florida Department of Revenue, et al. v. Canaveral Port Authority</u> , 642 So. 2d 1097 (Fla. 5th DCA 1994), cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995)	2, 4, 5, 6, 7, 8
<u>Ford Motor Company v. Kikis</u> , 401 So. 2d 1341, 1342 (Fla.1981)	7
<u>Hardee v. State</u> , 534 So. 2d 706, 708 (Fla.1988)	7
<u>Hillsborough County Aviation Authority v. Walden</u> , 210 So. 2d 193 (Fla.1968)	6
<u>Jenkins v. State</u> , 385 So. 2d 1356 (Fla. 1980)	7
<u>Sarasota-Manatee Airport Authority v. Mikos</u> , 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla.1993)	4, 5, 7, 8
<u>The Florida Star v. B.J.F.</u> , 530 So. 2d 286, 288 (Fla. 1988)	7
<u>CONSTITUTIONAL PROVISIONS AND STATUTES</u>	
Art. IV, § 1(c); Art. V, §§ (b)(1), (3)(b)(3), Fla. Const.	iii, 4, 7
§ 315, <u>Fla. Stat.</u> (1991)	6
§ 189.403, <u>Fla. Stat.</u> (1991)	5, 6
§ 194.171, <u>Fla. Stat.</u> (1991)	1
§ 196.199, <u>Fla. Stat.</u> (1991)	2
Chapter 70-81, Laws of Florida	4
<u>COURT RULES</u>	
Fla. R. App. P. 9.030(a)(2)(A)(iv)	iii

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal on the same question of law. Art. V, § 3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

### STATEMENT OF THE CASE

The Port of Palm Beach District (Port) seeks review of the decision of the Fourth District Court of Appeal (Appendix A) which reversed the ruling of the Fifteenth Judicial Circuit Court that Port of Palm Beach is constitutionally immune from ad valorem taxation. (Appendix B)

Port filed suit against Respondents Florida Department of Revenue (DOR) and Palm Beach County Property Appraiser on October 6, 1992, pursuant to § 194.171, Fla. Stat. (1991), requesting declaratory relief as to Appraiser's right to tax its real property and as to DOR's right to tax the leasehold interests of its tenants. Port claimed its real property was immune from ad valorem taxation because it was a political subdivision of the State. Port alternatively claimed it was exempt from taxation for various reasons: by legislative decree, because it was a political subdivision, or because it served a governmental or public purpose.

Port had leased some of its property to nongovernmental Tenants. The leases provided that Tenants would be liable for ad valorem taxes assessed against the Port's real property. The Tenants were granted leave to intervene in the suit. The Tenants claimed they were exempt from ad valorem taxation because they leased government-owned real property improvements to serve a governmental or public purpose.

The trial court granted summary judgment in favor of Port, declaring it to be a political subdivision of the State and immune from ad valorem taxation. The court also granted summary judgment

for Tenants, finding that Port's property leased to them was immune from ad valorem taxation. Because of the finding of immunity, the trial court never reached the question of whether the Port was alternatively exempt from taxation pursuant to § 196.199, Fla. Stat. (1991). The assessment of Port's real property for 1992 and 1993 ad valorem taxes were declared invalid, and Appraiser was enjoined from taking action to enforce collection thereof.

Appraiser and DOR sought review of this order before the Fourth District Court of Appeal. On February 23, 1995, the appellate court filed its opinion reversing the finding of immunity and remanding the cause for determination of whether any statutory exemptions applied to the subject of ad valorem taxation. (Appendix A) The opinion relied upon the decision of Florida Department of Revenue, et al. v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994), in finding that Port was not a political subdivision of the State and, hence, not immune from taxation. The opinion declined to engage in further analysis because it adopted the reasoning of Canaveral Port Authority.

A Notice to Invoke the Discretionary Jurisdiction of this Court was filed with the Fourth District Court of Appeal on March 24, 1995. This Court has determined to accept jurisdiction in the decision relied upon by the Fourth District Court of Appeal, Canaveral Port Authority, cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995), which presented the same question considered in this case.

### SUMMARY OF ARGUMENT

This Court should accept discretionary jurisdiction to review the decision of the Fourth District Court of Appeal, finding the Port of Palm Beach District was not a political subdivision of the state and lacked immunity from ad valorem taxation, which conflicts with the decision of Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla.1993). The decision at issue expressly ruled on principles of law regarding political subdivisions of the state which conflicts with the ruling of the Second District Court of Appeal in Sarasota-Manatee Airport Authority. Additionally, the decision of the Fourth District Court of Appeal relied upon Florida Department of Revenue, et al. v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994), cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995) for which this Court has already accepted review on the basis of conflict jurisdiction with Sarasota-Manatee Airport Authority.

## ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION, ART. V, § 3(b)(3), FLA. CONST., TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BECAUSE IT CONFLICTS WITH A DECISION OF THE SECOND DISTRICT COURT OF APPEAL, SARASOTA-MANATEE AIRPORT AUTHORITY V. MIKOS, ON THE SAME QUESTION OF LAW

The opinion of the Fourth District Court of Appeal at issue found that the Port was created by special act of the legislature in 1915, Chapter 70-81, Laws of Florida, as amended, and was an independent taxing district. The decision recognized that Port is empowered to operate a regional deep water port which facilitates the importation and exportation of goods. Because of the recent opinion<sup>1</sup> Florida Department of Revenue, et al. v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994), cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995), the Court adopted the reasoning therein and declined to elaborate further in its finding that the Port was not a political subdivision and not immune from ad valorem taxation.

Because the Fourth District Opinion adopted Canaveral Port Authority for its reasoning, an argument in support of conflict jurisdiction must also include an analysis of this decision. In Canaveral Port Authority, the appellate court rejected the reasoning of the trial court that the port was immune from taxation because it was more in the nature of a county which enjoys this

---

<sup>1</sup> Canaveral Port Authority was rendered in August, 1995, subsequent to the briefing in this case, but prior to oral argument. It was additionally not considered in the trial court.



immunity, than a municipality, which does not. Id., at 1098. The trial court had found legislative labeling of specific political subdivisions irrelevant to a determination of political subdivision status for purposes of immunity. The trial court relied upon the decision in Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla.1993) that political subdivision status was determined by an analysis of the district's function as a local unit of special-purpose government according to "Uniform Special District Accountability Act of 1989," § 189.403, Fla. Stat. (1991), and by analysis of the special act of the legislature creating the port. Therefore, both the trial court in Canaveral Port Authority, at 1098-1099,<sup>2</sup> and the Second District

---

2

Although the Canaveral Port District is established with boundaries only within Brevard County, Florida, the Canaveral Port Authority serves and economically benefits more than the immediate area of Brevard County in which it is situated. The port at issue is the only port in east central Florida. The port's economic impact extends throughout the Central Florida region. The port exported 90 percent of all the citrus exported internationally out of Florida in this last citrus season and is essential for the movement of other physical goods in and out of the central Florida area as well. The cruise industry located at the port generates economic activity in excess of two hundred million dollars for the Central Florida region. The port serves as Central Florida's international gateway to international commerce. The port's activity benefits the nation's space program and supports national defense. The port is designated as a foreign trade zone. It is a legal port of entry, a customs port. Testimony also indicated that the port was not governed by Brevard County ordinances. It may levy Ad Valorem taxes to

in Sarasota-Manatee Airport Authority, looked to current legislation creating the district and the district's present function in deciding whether the special district were created as a political subdivision of the state.

The Fifth District in Canaveral Port Authority, in contrast, analyzed the question by determining "whether the entity claiming immunity acts as a branch of general administration of the policy of the state." Id., at 1101. In finding that the port did not, the decision relied upon Broward County Port Authority v. Arundel Corporation, 206 F. 2d 220 (5th Cir.1953) and Hillsborough County Aviation Authority v. Walden, 210 So. 2d 193 (Fla.1968). Arundel, was, however, decided prior to the "1959 Port Facilities Financing Law," Chapter 315, which defined the state ports' powers and purposes, and prior to the adoption of "Uniform Special District Accountability Act of 1989," Chapter 189, which provided for the definition, creation, and operation of special districts. Walden was also decided prior to the enactment of Chapter 189 and merely adopted the reasoning of Arundel. The Fifth District decision which relied upon these distinguishable cases, thus, failed to examine the current enabling legislation and the present function of the special district at issue.

---

support it on properties located from the north end of Brevard County to below the middle of the County (Titusville, Coca, Merritt Island, etc.). There are no residents within the enclave of the Port itself and the CPA has no authority over the landowners within the taxing district other than to levy and collect ad valorem taxes.

By constitutional amendment of 1980, this Court was vested with jurisdiction to review a decision of district court of appeal which expressly and directly conflicts with an opinion of another district court of appeal. Art. V, § 3(b)(3), Fla. Const.; Jenkins v. State, 385 So. 2d 1356 (Fla. 1980) This Court is empowered with subject-matter jurisdiction to determine whether conflict jurisdiction exists. Art. IV, § 1(c), Art. V, §§ (b)(1), (3), Fla. Const.; The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988). Conflict jurisdiction may be granted when an appellate court does not identify conflict but expressly discusses the legal principles upon which it decided to reverse the trial court, Ford Motor Company v. Kikis, 401 So. 2d 1341, 1342 (Fla.1981), and when it may be implied from the opinion that conflict clearly exists. Hardee v. State, 534 So. 2d 706, 708 (Fla.1988).


The opinion at issue clearly, although briefly, expressed that it was reversing the trial court judgment because it did not find Port to be a political subdivision of the state. This statement of the legal principles involved expresses a direct conflict with the reasoning adopted by Sarasota Manatee Airport Authority in which an airport authority was found to be a political subdivision of the state. Ford Motor Company. Additionally, the opinion at issue identified the reasoning in Canaveral Port Authority as the basis for its reversal of the trial court's finding of immunity from ad valorem taxation. A review of Canaveral Port Authority clearly shows that it expressly conflicts with Sarasota-Manatee Airport Authority. Furthermore, this Court has already determined that

Canaveral Port Authority conflicts with Sarasota-Manatee Airport Authority by its acceptance of review for conflict jurisdiction in the former case. Therefore, jurisdiction should be exercised because it may be additionally implied from the decision at issue that it conflicts with Sarasota-Manatee Airport Authority. Hardee.

CONCLUSION

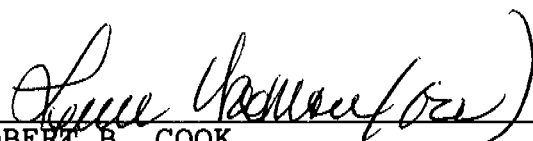
This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

ROBERT B. COOK, ESQUIRE  
Attorney for Petitioner  
11911 U.S. Highway One,  
Suite 308  
North Palm Beach, FL 33408  
(407) 627-8766

By:   
Robert B. Cook, Esquire  
Florida Bar #131356

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. mail to ROBERT A. BUTTERWORTH, ATTORNEY GENERAL, Tallahassee, and LEE R. ROHE, ASSISTANT ATTORNEY GENERAL, Office of the Attorney General, The Capitol, Tax Section, Tallahassee, FL 32399-1050, JAY R. JACKNIN, ESQUIRE and ERIC ASH, ESQUIRE, 1555 Palm Beach Lakes Blvd., Suite 1010, West Palm Beach, FL 33401; JACK J. AIELLO, ESQUIRE and DAVID P. ACKERMAN, ESQUIRE, 777 S. Flagler Dr., Suite 500, East Tower, West Palm Beach, FL 33401 this 6th day of April, 1995.

  
ROBERT B. COOK

IN THE SUPREME COURT OF FLORIDA

A P E N D I X

TO

PETITIONER'S JURISDICTIONAL BRIEF

INDEX TO APPENDIX

EXHIBIT

Fourth District Court of Appeal Opinion

A

Fifteenth Judicial Circuit Court Order on Summary  
Judgment and Final Order

B