017

In The Supreme Court of Florida

FILED
SID J. WHITE
JUN 28 1996
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

CASE NO. 87,769

Leon County Educational Facilities Authority,

Petitioner,

v.

Bert Hartsfield, Leon County Property Appraiser,

Respondent.

DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT ON CERTIFIED CONFLICT

BRIEF OF THE SCHOOL BOARD OF VOLUSIA COUNTY, AMICUS CURIAE

C. ALLEN WATTS of
COBB COLE & BELL
Post Office Box 2491
150 Magnolia Avenue
Daytona Beach, FL 32115-2491
(904) 255-8171
ATTORNEYS FOR AMICUS CURIAE

CWA\KPE\BRIE\161346.1

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

CITATION OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICUS CURIAE 1

ISSUE PRESENTED BY AMICUS CURIAE 3

SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. HAS THE DISTRICT COURT CORRECTLY INTERPRETED THE LEGISLATIVE REQUIREMENT "OWNED BY AN EXEMPT ENTITY" AS A PRECONDITION OF AD VALOREM TAX EXEMPTION FOR GOVERNMENTAL AND PUBLIC EDUCATIONAL USES? 6

A. IS THE STATUTORY REQUIREMENT OF OWNERSHIP APPLICABLE TO EDUCATIONAL OR GOVERNMENTAL USES OF PROPERTY? 10

B. ASSUMING THAT THE STATUTORY REQUIREMENT OF OWNERSHIP IS APPLICABLE, DOES BENEFICIAL OWNERSHIP SATISFY THE REQUIREMENT? 13

CONCLUSION 16

CERTIFICATE OF SERVICE 17

CITATION OF AUTHORITIES

Cases: Page

Bell v. Bryan, 505 So.2d 690 (Fla. 1st D.C.A. 1987) 10

Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975) 8. 9

First Union National Bank v. *Ford,* 636 So.2d 523 (Fla. 5th D.C.A. 1993) 5, 9

Georgia Casualty Co. v. O'Donnell, 147 So. 267 (Fla. 1933) . . . , ... 14

Hoffman v. *Semet,* 316 So.2d 649 (4 D.C.A. Fla., 1975) 14

Marathon Air Services, Inc. v. Higgs, 575 So.2d 1340
(Fla. 3d D.C.A. 1991) . . . . , ... , ... 10

Marden v. *Elks Club,* 190 So. 40 (Fla. 1939) . . . . , ... , ... 14

Mastroianni v. Memorial Medical Center, 606 So.2d 759
(Fla. 1st D.C.A. 1992) . . . . , ... , ... 6, 10, 12

Ocean Highway & Port Authority v. *Page,* 609 So.2d 84 (Fla. 1st D.C.A. 1992) 15

Parker v. Hertz, 544 So.2d 249 (Fla. 2d D.C.A. 1989) . . . , ... , 10

Sarasota-Manatee Airport Authority v. Mikos, 605 So.2d 132
(Fla. 2d D.C.A. 1992), *rev. den.* 617 So.2d 320 (Fla. 1993) 8, 9

State v. Florida Development Finance Corp., 650 So.2d 14 (Fla. 1995) 15

State v. School Board of Sarasota County, 561 So.2d 549 (Fla. 1990) . . . . , ... , 1

Statutes:

Fla. Stat. $697.01 14

Fla. Stat. 5697.02 14

Section 126.25(2), Florida Statutes 1

Section 196.011, Florida Statutes 6

Section 196.011(2), Florida Statutes 6
Section 196.012, Florida Statutes 11
Section 196.012(6), Florida Statutes 11, 12
Section 196.192, Florida Statutes 4, 6, 10, 12, 13
Section 196,195, Florida Statutes 4, 6, **12**
Section 196.196, Florida Statutes 4, 12
Section 196.197, Florida Statutes 6
Section 196.198, Florida Statutes 4, 11, 13
Section 196.199, Florida Statutes 10, 11, 13
Section 196.199(1)(a), Florida Statutes 9
Section 196.199(1)(b), Florida Statutes 9
Section 196.199(1)(c), Florida Statutes 9
Section 196.199(2)(c), Florida Statutes 9
Section 230.23(9)(b)5, Florida Statutes 1
Section 235.056(2)(a), Florida Statutes 1
Section 236.25(2)(e), Florida Statutes 1
Section 243.33, Florida Statutes 4, 9, 13

Other Authorities

Article IX, §4, Florida Constitution 10
Article VII, §3, Florida Constitution 8
Article VIII, § 1, Florida Constitution 10

STATEMENT OF INTEREST OF AMICUS CURIAE

This amicus is one of Florida's 67 school districts, The members of the School Board are *ex* ***officio*** members of Volusia School Board Leasing Corporation, a not-for-profit corporation. A copy of the Charter of the Corporation is included in the Appendix.

The Board has entered into a master lease program for the construction and leasing of schools, which precisely follows the guidelines approved by ***this Court*** in Slate ***v. School Bourd*** *of Sarasota* **County,** 561 So.2d 549 (Fla. 1990).

Fla, Stats. §§ 236.25(2)(e), 235.056(2)(a) and 230.23(9)(b)5. expressly authorize such agreements. A School District is authorized to expend up to one-half of the discretionary millage authorized by Fla. Stat. §126.25(2), in such lease-purchase agreements.

The elected members of the School Board serve *ex officio* as the members and directors of the Volusia School Board Leasing Corporation, The Corporation leases land from the Board under a master lease, erects leasehold improvements (schools and ancillary facilities), and sublets the improved land back to the Board on a year-to-year lease. The Corporation assigns to a Trustee its rights and revenues in the year-to-year lease, and the Trustee repays investors who have provided the funds for construction of the improvements. At the end of the master lease, the land reverts to the Board, with the improvements thereon. Upon dissolution of the Corporation, its assets are distributed to the School Board.

The case at bar is of vital interest to this Board and the several school boards of the State which have entered such agreements under statutory and judicial imprimatur. Although the School Board continues to own legal title to its school sites, the buildings and improvements thereon are not now the property of the Board but of the Leasing Corporation,

and as such may be arguably taxable under the last sentence in Fla. Stat. §196.199(2)(b) if this decision were upheld without modification. Nor can it be said that the improvements would "revert" to the Board at the end of the ground lease, under statutes treating the right of reversion as ownership. Reversion necessarily implies a former ownership, and the improvements were not initially the property of the Board.

ISSUE PRESENTED BY AMICUS CURIAE

I.

HAS THE DISTRICT COURT CORRECTLY INTERPRETED THE LEGISLATIVE REQUIREMENT "OWNED BY AN EXEMPT ENTITY" AS A PRECONDITION OF AD VALOREM TAX EXEMPTION FOR GOVERNMENTAL USES?

A. IS THE STATUTORY REQUIREMENT OF OWNERSHIP APPLICABLE TO EXEMPT GOVERNMENTAL USES OF PROPERTY?

B. ASSUMING THAT THE STATUTORY REQUIREMENT OF OWNERSHIP IS APPLICABLE, DOES BENEFICIAL OWNERSHIP SATISFY THE REQUIREMENT?

SUMMARY OF ARGUMENT

The **only** full property tax exemption expressly required by the Constitution is for property owned by a municipality and used exclusively for municipal or public purposes.

All other exemptions are created by general law, where otherwise authorized by the Constitution. The Constitution allows the Legislature to exempt such portions of property as are used predominantly for *educational, literary, scientific, religious or charitable* purposes. The Legislature has set up an annual application process and a twofold requirement only for *charitable, religious, scientific or literary* exemptions: there must be an exempt (nonprofit) entity, and there must be an exempt use.

There is no express constitutional exemption for *governmental* use of property, nor is the assumed immunity of the United States, the State and its political subdivisions from taxation to be found anywhere in the text of the Constitution.

Assuming that the Legislature has the power to implement and condition such immunity, the Legislature has treated *educational and governmental* "exemptions" differently from religious, literary, scientific and charitable exemptions.

The District Court incorrectly applied Fla. Stat, §§ 196.192 and its corollaries 196.195 and 196.196 to the case at bar. The correct statutes are §§243.33, 196.198 and 196.199. The Legislature has neither the intention nor the power to limit the nontaxability of property used for public educational or governmental purposes.

Assuming that the Legislature intended to require an "exempt owner" as a precondition of tax exemption, the district court failed to apprehend that in ***Ford,*** the real owner was not the trustee First Union, but the trust which was ultimately distributable to the immune County. Interests of investors protected by the trust were, under conventional Florida lien law, not ownership interests.

ARGUMENT

I. HAS THE DISTRICT COURT CORRECTLY INTERPRETED THE LEGISLATIVE REQUIREMENT "OWNED BY AN EXEMPT ENTITY" AS A PRECONDITION OF AD VALOREM TAX EXEMPTION FOR GOVERNMENTAL AND PUBLIC EDUCATIONAL USES?

The decision of the First District purports to adhere to its prior decision in *Mastroianni* v. *Memorial Medical Center, 606* So.2d 759 (Fla. 1st D.C.A. 1992), but actually departs from the underlying rationale of that decision.

In *Mustroianni,* the district court was faced with a situation where a nongovernmental, not-for-profit corporation had conveyed its property to a for-profit owner, and then leased back the property. The court properly held that under the 1988 amendments to Fla. Stat. $196.192, both the ownership and the use must be exempt in order to qualify for a charitable exemption.

In the instant case, the district court overlooked the distinction between the "religious, literary, scientific or charitable" exemptions, and the educational and governmental exemptions.

Fla. Stat. $196.195 spells out the general criteria for determining an "exempt owner". [1] However, it begins with the language "Applicants requesting exemption shall supply . . .". Accordingly, it is applicable to "applicants".

In turn, Fla. Stat. § 196.011 provides for annual applications for exemption. However, there are significant exclusions from the group of "applicants" which were not material in the *Mastroianni* case but are material here. For example, § 196.0 11(2) excuses municipalities from

[1] As the *Mastroianni* court noted, there are additional requirements for hospitals and nursing homes under $196.197.

any duty to apply for exemption on property used exclusively for municipal or public purposes. [2]

The statute does not otherwise excuse any other body of government, including school boards or the state itself, from seeking an annual "exemption". Yet it is commonly understood that government property, such as the building which houses this Court, is not subject to taxation, nor to any requirement that an annual application for exemption be filed. A study of why this is so, will lead to an understanding of the error in the district court's analysis.

There are three bases for the nontaxability of property. Nontaxability may be *required* under the Constitution; it may be *authorized* under the Constitution, and implemented by general law; or an immunity may be *assumed* as an aspect of sovereignty unless it has been *waived* by some legislative act.

Constitutionally required exemptions:

There are only four (one full, and three valuation) exemptions which are constitutionally *required.* They are as follows:

1. Property owned by a municipality and used exclusively by it for municipal or public purposes.

2. Household goods and effects of a head of household, not less than $1,000.

3. Property of widows, widowers, blind and disabled persons, not less than $500.

4. Legal or equitable title to homestead real estate, not less than $5,000.

---

[2] This provision of the statute is surplusage. Article VII, $3 of the Constitution expressly mandates an exemption for such municipal property, and the Legislature is powerless to condition it upon the filing of an annual application.

Constitutionally authorized exemptions:

Article VII, §3 authorizes, but does not require, the Legislature to grant the following exemptions:

1. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes.

2. [By local referendum, as authorized under general law:] economic development exemptions for new and expanded businesses.

3. Renewable energy source devices and the property on which they are installed, up to ten years.

4. [By local action, as authorized under general law:] historic preservation exemptions.

Constitutionally assumed, legislatively limited exemptions:

The assumed immunity from taxation of the Federal government, the state government and its political subdivisions cannot be found in the text of the Constitution, but such immunity is recognized in caselaw.[3] Further, the Legislature has the power to confer immunity upon districts created by special act. For example, in *Sarasota-Manatee Airport Authority v. Mikos*, 605 So.2d 132 (Fla. 2d D.C.A. 1992), rev. *den.* 617 So.2d 320 (Fla. 1993), the district court found that the Legislature had intended to create a special district as a "political subdivision" of the state which was immune from taxation,

[3]In *Dickinson* v. *City of Tallahassee, 325* So.2d 1 (Fla. 1975), this Court acknowledged (at 4, n.9) that nothing in the Constitution creates an express exemption for the State, but held that the state is nevertheless immune and (at 3, n.6) that "the principle of immunity is not constitutionally dependent".

The Legislature, often using the language of "exemption" rather than immunity, has both recognized and, in some cases, limited[4] the nontaxability of the following:

1. All Federal property (unless subject to tax under Federal law). [Fla. Stat. §196.199(1)(a)].

2. All state property *used for governmental purposes* (except as provided by law.) [Fla. Stat. §196.199(1)(b)].

3. All property of political subdivisions and municipalities of the state (including property conveyed to a nonprofit corporation *which would revert* to the government) which is used for governmental, municipal or public purposes. [Fla. Stat. §196.199(1)(c)]

4. Leasehold interests in Federal, state, political subdivision or municipal property, where the lessee performs a governmental, municipal or public purpose, or uses the property exclusively for literary, scientific, religious or charitable purposes. [Fla. Stat. § 196.199(2)(c)].

5. Various exemptions and immunities declared by the Legislature in general law or special law, but not specifically codified in Chapter 196 of the Florida Statutes; *e.g. Sarasota-Manatee Airport Authority, supra.* The relevant exemption in this case for county higher educational facilities authorities, is set forth in Fla. Stat. 5243.33.

---

[4]This Court in *Dickinson v. City of Tallahassee, supra* n. 3, observed in dictum that the Legislature may waive immunity. *Cf. First Union National Bank* v. *Ford,* 636 So.2d 523 (Fla. 5th D.C.A. 1993), at 525: "Absent a waiver in the state constitution itself, which does not exist, counties do not need to qualify for statutory tax exemptions pursuant to Chapter 196, because the legislature lacks the power to tax them by passing statutes."

A. IS THE STATUTORY REQUIREMENT OF OWNERSHIP APPLICABLE TO EDUCATIONAL OR GOVERNMENTAL USES OF PROPERTY?

The District Court opinion in this case relies on its prior decision in ***Mastroianni,*** which involved only private parties. In the case at bar, the District Court fmds in the 1988 amendments to Fla. Stat. § 196.192 an intent to apply also to governmental transactions. Yet § 196.192 is, by its express terms, inapplicable to determination of "the exemption for property owned by governmental units pursuant to Fla. Stat. $196,199."

Article VIII, $1 of the Constitution provides for the division of the state into political subdivisions called "counties". Article IX, §4 provides that each county shall constitute a school district.[5] It is therefore assumed that county school districts are political subdivisions of the state whose tax status is one of immunity, not exemption, where property is legally owned by the school district. The instant case, as applied to this amicus, involves a mixed situation in which the unimproved real estate continues to be owned by the school district, but leasehold improvements are owned by a not-for-profit corporation and annually subleased by the school district. It is thus possible to read the district court opinion as requiring the taxation of the leasehold improvements. ***See,*** *e.g.*, ***Parker v. Hertz,*** 544 So.2d 249 (Fla. 2d D.C.A. 1989); ***Marathon Air Services, Inc. v.*** *Higgs*, ***575*** So.2d 1340 (Fla. 3d D.C.A. 1991).

Where land is ground-leased by an immune entity and improvements are constructed thereon which become the property of the lessor upon installation, there are decisions holding that the improvements are not taxable. *Bell* v. ***Bryan,*** 505 So.2d 690 (Fla. 1st D.C.A. 1987).

---

[5]Under certain circumstances, two or more contiguous counties can be combined into a single school district under Article IX, §4. This constitutional invitation has never been accepted by any counties. *Cf.* Article VIII, §4, authorizing permanent transfer of county governmental powers by a similar method.

However, in the case of school lease-purchase agreements, the leasehold improvements do not become the property of the school board until the end of the groundlease,

There are two provisions in § 196.199 which protect the interests of this amicus and of other school districts similarly situated, The first is contained in subsection (2)(a):

> Leasehold interests in property of the . . . state or any of its several political subdivisions . . . and other public bodies corporate of the estate shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal or public purpose or function, as defined in s. 196.012(6). In all such cases, *all other interests in the leased property shall also he exempt from ad valorem taxation.* (Emphasis supplied).

Less directly applicable, but still useful in showing legislative intent, is the following provision in subsection (9):

> *Improvements* to real property *which are located on state-owned land and which are leased to a public educational institution shall be deemed owned* by the public educational institution for purposes of *this* section where, by the terms of the lease, the *improvements will become the property of the public educational institution* or the State of Florida *at the expiration of the lease.* (Emphasis supplied).

In turn, the definitions contained in Fla. Stat. $196.012, which apply to the entirety of Chapter 196, are instructive. "Public educational institution" is not separately defined, but "educational institution" in § 196.012(5) means a federal, state, parochial, church or private school, college or university *andfacilities located on the property of eligible entities which will become owned by those entities on a date certain.* Fla. Stat. § 196.198 thereupon provides:

> "Educational institutions within this state *and their property used by them or by any other exempt entity* . . . for educational purposes shall be exempt from taxation . . . . Property *used* exclusively for educational purposes shall be *deemed owned* by an educational institution if the entity owning 100 per cent of the educational institution is owned by the identical persons who own the property.

This amicus assumes, notwithstanding the breadth of the statutory definition of "educational institutions", that the free public schools of the State are the property of immune governmental subdivisions rather than exempt educational institutions. The more relevant term "Governmental or public purpose" is defined in § 196.012(6), which ends by saying:

> "For purposes of determination of "ownership", buildings and other real property improvements which will revert to the . . . governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee."

The 1988 amendments to Fla. Stat. § 196,192 added the words "owned by an exempt entity" to the previous provision for exemption of property used for exempt purposes. The district court properly construed the intent of that amendment, as applied to private ownership, in *Mastroianni.* But the district court improperly expanded the reach of that decision in the case at bar, to apply to situations involving at least governmental exemptions (an intent which the Legislature had expressly abjured in the last sentence of § 196.192) and perhaps governmental immunities as well.

The only general statutory provisions for determining an "exempt entity" are set forth in Fla. Stat. $196,195. This section provides standards for determining the bona fides of an asserted nonprofit status, but is limited by its own terms to applicants for "religious, literary, scientific or charitable" exemptions. In turn, §196.196 provides the general provisions for determining the "exempt use" of property for religious, literary, scientific or charitable purposes.

Sections 196.192, 196.195 and 196.1 96, taken together, provide a coherent system for determining the dual "exempt user, exempt use" requirements for religious, literary, scientific or charitable exemptions. But this does not exhaust the Legislature's treatment of exemptions.

Governmental exemptions (or immunities) under 5196.199 are expressly not covered by § 196.192. Further, the Legislature has separated the "religious, literary, scientific or charitable" exemptions from the one remaining Constitutionally-mentioned exemption, which is educational. "Educational" exemptions are separately addressed in $196.198. That section not only refers to "use" rather than "ownership" as the determining factor[6], but expressly authorizes an exemption to be granted where the legal owner is a different entity comprised of the same persons.

B. ASSUMING THAT THE STATUTORY REQUIREMENT OF OWNERSHIP IS APPLICABLE, DOES BENEFICIAL OWNERSHIP SATISFY THE rEQUIREMENT?

In *First Union National Bank* v. *Ford, supra*, the Fifth District held that the Bank was not the owner, and that the County had sufficient indicia of ownership to qualify for a governmental immunity from taxation.

Perhaps it would have been more helpful to the present analysis if the Fifth District had articulated the distinction between trust and trustee. In the *Ford* decision, it is accurate to say that First Union National Bank held legal title, but it would be as accurate to say that First Union might be the "legal" owner of hundreds of admittedly charitable trusts. In such a case, is it the trust, or the trustee who is the owner? Another example might be a Roman Catholic bishop, who holds title to church property as a corporation sole. He may also have some personal real estate, obviously not entitled to tax exemption. In short, he is the "legal owner" of both groups of properties, but in the one case he is the repository of his diocese's property

---

[6] *Cf.* Fla. Stat. $243.33, applicable to the Petitioner Educational Facilities Authority, which refers to property *acquired or used* by the authority, without mention of ownership.

a

and in the other, the property is entirely his own, Can it be said that because the church's property is titled in the bishop, it is no longer exempt?

The real question before the Fifth District in ***Ford*** was not whether First Union National Bank was the legal owner, but whether the trust which it served as trustee was an exempt trust. The Fifth District found sufficient evidence that the County was the preponderant and ultimate beneficiary of the trust, to deem that the trust was in its essence governmental in purpose.

The Fifth District was correct in its analysis, and the instrument used (though far more complicated) is not dissimilar to the "deed of trust" which is in legal effect a mortgage. See, ***e.g.,*** *Marden* v. ***Elks*** Club, 190 So. 40 (Fla. 1939).

Fla. Stat. 5697.01 provides that:

> "All conveyances. . , conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor ***or from the debtor to some third person in trust for the creditor,*** shall be deemed and held mortgages. , , "

Fla. Stat. $697.02 further provides that a mortgage is a specific lien on the property therein described and ***not a conveyance of the legal title.*** With respect to such security instruments, Florida is thus considered a "lien theory" state rather than a "title theory" state[7]. The legal title to the property does not transfer to a trustee whose duty is to protect the rights of creditors until paid, and then return the property to its transferor.

Florida governments often issue revenue bonds, in which the full faith and credit of the government is not pledged, but the income from some particular asset or revenue source, be

---

[7] *Georgia* ***Casualty Co. v. O'Donnell,*** 147 So. 267 (Fla. 1933); ***Hoffman v. Semet, 316*** So.2d 649 (4 D.C.A. Fla., 1975).

it a utility system or an airport, or even the earnings of the State Transportation Trust Fund,[8] is placed with a trustee for the security of investors who contributed the capital which produced the asset. This Court has often validated such issues, never considering for a second that "legal title" to the asset or the revenue had somehow migrated to some named trustee which is in all likelihood a for-profit financial institution. Yet under the First District's reading of the statute in question, property admittedly "owned" by a not-for-profit corporation, for the protection of investors, is no longer eligible for ad valorem taxation, no matter whether the use and beneficial ownership remains with the government.

Finally, the First District failed to recognize that the trust in ***Ford*** (as distinguished from its trustee) was an entity which met the requirements of Fla. Stat. $196.195, whereas there is no evidence of a mortgagee or a not-for-profit trust in either of the cases on which the First District relies ***(Mastroianni v. Memorial Medical Center,*** *supra;* ***Ocean Highway & Port Authority*** v. ***Page,*** 609 So.2d 84 (Fla. 1st D.C.A. 1992). If that distinction is made, ***Mastroianni*** and ***Ocean Highway*** are not controlling,

---

[8]*See* ***State v. Florida Development Finance Corp.,*** 650 So.2d 14 (Fla. 1995).

CONCLUSION

This amicus urges the Court to quash the decision below, or if the Court approves the result below, the Court is requested to clarify that its decision is not intended to have effect upon school lease-purchase programs, nor to make leased school improvements taxable.

Respectfully submitted,

COBB COLE & BELL

By:

C. Allen Watts
FLA. BAR, NO. 139759
150 Magnolia Avenue
Post Office Box 2491
Daytona Beach, FL 32115-2491
(904) 255-8171
ATTORNEYS FOR AMICUS CURIAE
SCHOOL BOARD OF VOLUSIA COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Henry Van Assenderp, Post Office Box 1833, Tallahassee FL 32302-1833; to Robert L. Hinkle, Post Office Box 11307, Tallahassee, FL 32302-3307; and to Richard Benton, 1415 E. Piedmont Drive, Suite 4, Tallahassee, FL 32308, this 26th day of June 1996.

Attorney

INDEX TO APPENDIX

Title **Tab**

Articles of Incorporation of Volusia School Board
Leasing Corporation . . . . , ... 1

Appendix

ARTICLES OF INCORPORATION

OF

VOLUSIA SCHOOL BOARD LEASING CORPORATION

(A Florida Corporation Not-For-Profit)

In order to form a corporation under and in accordance with the provisions of the State of Florida for the formation of corporations not-for-profit, we, the undersigned, do hereby associate ourselves together as a corporation for the purposes and with the powers hereinafter set forth, and to accomplish that objective we do hereby make, adopt and subscribe these Articles of Incorporation.

I

NAME OF CORPORATION

The name of this corporation shall be:

Volusia School Board Leasing Corporation.

II

PURPOSES

The purposes for which this corporation are formed are:

(a) To acquire and construct, from time to time, various projects, consisting of real and/or personal property (the "Projects").

(b) To lease, from time to time, the Projects to the School District of Volusia County, Florida (the "District"), to. lease-purchase agreements or master lease-purchase agreements, between the corporation as lessor, and the District as lessee.

(c) To deposit or cause to be deposited with a trustee or trustees certain sums of money from time to time to be credited, held and applied in accordance with a trust agreement or agreements.

(d) To provide, together with the trustee or trustees and the District, for the payment of the cost of constructing, acquiring and installing the Projects by the issuance and sale from time to time of certificates of participation, which represent undivided proportionate interests in payments made by the District pursuant to a lease-purchase agreement or master lease-purchase agreement, or of lease revenue bonds issued by the corporation (collectively, the "Obligations").

(e) To assign to a trustee or trustees all of the corporation's right, title and interest in and to a lease-purchase agreement or master lease-purchase agreement (other than any rights specifically

preserved thereunder), including its right to receive payments under such lease-purchase agreement or master lease-purchase agreement.

(f) To carry on or engage in any other activity which the corporation may deem proper or convenient in connection with the purposes hereinabove stated, provided, however, that the corporation shall at all times be operated as a non-profit organization as provided in Chapter 617, Florida Statues.

(g) All assets, revenues and income, if any, of the corporation shall be used exclusively for the payment of the Obligations or for the Projects, including the payment of expenses incidental thereto, and no part of the assets, revenues or income, if any, of the corporation shall inure to the benefit of any private person, entity or individual.

(h) In the event of dissolution of this corporation, all assets of the corporation remaining after paying or making provisions for the payment of all of the liabilities of the corporation shall be distributed to the District and used only for governmental purposes.

No part of the revenues or income, if any, of the corporation shall inure to the benefit or be distributable to its members, trustees, officers, directors or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

III

MEMBERSHIP

The sole members of the corporation shall be the members of the School Board of the District, who shall be ex-officio members. The sole membership, or any interest in such membership, shall not be assignable or otherwise transferrable.

I v

TERM OF EXISTENCE

The term for which this corporation shall exist shall be perpetual. The date and time of commencement is the time these Articles are subscribed and acknowledged if filed with the Department of the State Florida within five days after such date, but if not filed within five days, the time of filing with the Department of State.

V

POWERS

The corporation shall have all powers under law which are necessary to carry out its purposes as described in Article II hereof. The corporation is prohibited from engaging in any business other than owning, financing, acquiring, constructing, installing and leasing the Projects as provided herein. The corporation may incur no debt other than the Obligations. The corporation may not dispose of or

encumber the Projects except as provided in any lease-purchase agreement or master lease-purchase agreement relating thereto and any trust agreement relating thereto.

VI

BOARD OF DIRECTORS

(a) The affairs of the corporation shall be managed by a Board of Directors. Unless the members at their annual meeting shall determine otherwise, the Board of Directors shall consist of the members of the School Board of the District, who shall be ex-officio members. Said Board of Directors shall have the rights and duties of directors of corporations under Chapter 607, Florida Statutes. Upon taking the position as members of the School Board of the District, the persons holding such positions shall immediately become members of the Board of Directors as long as such members continue to serve in such capacity. In the event the number of directors shall be less than three, the remaining member or members of the Board of Directors shall appoint, on a temporary basis, such member or members sufficient to bring the number of directors to three; provided such temporary member or members shall be replaced as soon as the School Board of the District has at least three members. Unless the members at their annual meeting shall determine otherwise, the Chairman of the School Board of the District shall be the ex-officio President of the Board of Directors of the corporation, and the Vice-Chairman of the School Board of the District shall be the ex-officio Vice-President of the Board of Directors of the corporation.

(b) The name and address of each person who is to serve as an initial Director of this corporation are set forth below:

Name	Address
Dr. Jeff Timko	200 N. Clara Avenue, DeLand, FL 32721
Ms. Anne E. McFall	200 N. Clara Avenue, DeLand, FL 32721
Mr. William L. Ross, Jr.	200 N. Clara Avenue, DeLand, FL 32721
Ms. Judith G. Conte	200 N. Clara Avenue, DeLand, FL 32721
Mr. Earl C. McCrary	200 N. Clara Avenue, DeLand, FL 32721

VII

OFFICERS

The officers of the corporation shall consist of a president, one or more vice-presidents, a secretary/treasurer and such additional officers as may be designated in the corporate bylaws. Unless the Board of Directors shall provide otherwise at their annual meeting or special meeting, the Chairman of the Board of Directors shall be the ex-officio President of the corporation, the Vice-Chairman of the Board of Directors shall be the ex-officio Vice-President of the corporation, and the Superintendent of the District shall be the ex-officio Secretary/Treasurer of the corporation. The duties of the officers

shall be as set forth in the corporate bylaws. The name and address of each person who is to serve as an initial officer of this corporation are set forth below:

Name	Position	Address
Dr. Jeff Timko, Chairman	President	200 N. Clara Avenue DeLand, FL 32721
Ms. Anne E. McFall, Vice-Chairman	Vice-President	200 N. Clara Avenue DeLand, FL 32721
Dr. Joan P. Kowal, Superintendent	Secretary/Treasurer/ Vice President	200 N. Clara Avenue DeLand, FL 32721
Mr. William L. Ross, Jr.	Vice-President	200 N. Clara Avenue DeLand, FL 32721
Ms. Judith G. Conte	Vice-President	200 N. Clara Avenue DeLand, FL 32721
Mr. Earl C. McCrary	Vice-President	200 N. Clara Avenue DeLand, FL 32721

IN THE SUPREME COURT OF FLORIDA

LEON COUNTY EDUCATIONAL FACILITIES AUTHORITY,

Petitioner,

v. CASE NO. 87,769

BERT HARTSFIELD, LEON COUNTY PROPERTY APPRAISER,

Respondent.

MOTION FOR LEAVE TO APPEAR AMICUS CURIAE

The School Board of Volusia County moves pursuant to Rule 9,370 for leave to appear and to file its attached brief as amicus curiae herein, and shows:

1. The members of the School Board of Volusia County are ex officio members and directors of Volusia School Board Leasing Corporation, a private not-for-profit corporation. Upon its dissolution, all assets of the Leasing Corporation will devolve upon the School Board.

2. The School Board and its Leasing Corporation in 1991 entered into a master lease program precisely following the guidelines approved by this Court in State v. School Board of Sarasota County, 561 So.2d 549 (Fla. 1990). The construction and lease-purchase of approximately $60 million in new Volusia County schools is completed or authorized under the program.

3. The District Court of Appeal, Fifth District, has heretofore held that interests such as those of the Volusia County School Board are sufficient to warrant ad valorem tax exemption for such schools. Nevertheless the District Court of Appeal, First District has lately