SUPREME COURT OF FLORIDA

CASE NO. 88,407

DISTFUCT COURT OF APPEAL
SECOND DISTRICT NO. 95-018867

POLK COUNTY,

Petitioner,

VS.

DONNA M. SOFKA,

Respondent.

INITIAL BRIEF OF AMICUS CURIAE ORANGE COUNTY

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STATEMENT OF THE CASE AND FACTS

Orange County, amicus curiae, accepts the Statement of the Case and Facts as set forth in the **Initial Brief** of Polk County.

STATEMENT OF THE ISSUES

Orange County, amicus curiae, is submitting this brief in support of Appellant's issues regarding sovereign immunity, **Issue** I and all **its** subparts. The amicus curiae, Orange County, will be addressing solely that issue.

SUMMARY OF THE ARGUMENT

Sovereign immunity bars **Ms.** Sofka's claim. Governmental entities had no Liability for failure to erect stop signs or other traffic control signs either before or after passage of Fla. Stat, $768.28. That enactment did not impose any greater liability on Polk County **than** the liability imposed upon a private landowner. **A** private landowner would not be liable under the circumstances presented by Polk County. The sovereign immunity of Polk County **is** well established by a long line of cases from Florida **and** elsewhere,

Section 316.125, Florida Statutes, provides specific guidance for persons in the position of **Ms.** Sofka. That statute requires persons entering public thoroughfares from **a** private road to stop before entering and yield to all vehicles which are so close thereto **as** to constitute an immediate hazard. Section 316.072(2) also provides instruction to motorists on what to do when approaching or entering uncontrolled intersections. These rules of the road *are* clear and motorists obeying ***these*** rules of the road need no further signage. In addition, Polk County did not create any known dangerous condition. The private road **and** the lack of signage was created by the private landowners, not Polls; county.

In addition to conflicting with clearly established ***case*** law, **this** opinion constitutes an encroachment by the judiciary into the legislative and executive branches of government which violates the separation of powers. Governmental entities cannot

lawfully provide even minor work or **repairs** on private roads and cannot expend governmental funds for the. purpose of signage on private roads. Furthermore, to perform the new duties imposed by the lower court decision, governmental entities would be forced to hire new employees and create entirely new programs despite the fact that Florida law clearly defines motorists' obligations. The opinion of the Second District Court of Appeals below should be reversed.

ARGUMENT

I. SOVEREIGN IMMUNITY PROTECTS POLK COUNTY FROM MS. SOFKA'S CLAIM AND BARS HER ACTION

(A) BOTH BEFORE AND AFTER PASSAGE OF FLA. STAT. *5768.28*, GOVERNMENTAL ENTITIES HAD NO LIABILITY FOR FAILURE TO ERECT STOP SIGNS.

It is respectfully submitted that the opinion of the Second District Court of Appeals in Polk County v. Sofka, 675 So.2d 615 (Fla. 2d DCA 1996), conflicts with prior decisional case law of both the Supreme Court and other District Courts of Appeal on the same subject. As amicus curiae, Orange County would like to also discuss the onerous burdens this decision would impose on not only it, but all governmental entities, the State of Florida, all other counties of the state, all municipalities of the state and all governmental entities having use or control of roadways within this large state. These new duties and responsibilities are presently unfunded, a significant number of new employees would of necessity have to be hired and complete new programs would have to be developed for the evaluation of all private road and driveway interfaces with every public street within the entire state. Thus, the decision below represents an unconstitutional intrusion by the judiciary into the discretionary, judgmental functions of both the legislative and executive branches of government.

Florida's decisional case law has uniformly rejected liability for failure to erect stop signs. Before Hargrove v. Town of Cocoa Beach, 96 So.2d 130 (Fla. 1957), such a

theory was rejected by the Florida Supreme Court in Rosen v. City of Miami, 193 So. 749 (Fla. 1940). In Rosen, the Supreme Court affirmed a Final Judgment on demurrer. The Florida Supreme Court held that the City of Miami was not liable for an automobile collision which allegedly resulted from the removal of a stop sign by the City of Miami which had been at the intersection for some time and which was required by city ordinance as a safety device. The Supreme Court also noted that the accident would have been avoided if either vehicle had slowed up or given the other the right-of-way. Thus it appears that the Supreme Court considered both the common sense driving habits of motorists and, without specifically mentioning them, the rules of the road in **Rosen.**

After the changes in governmental liability established by Hargrove, the case of Raven v. Coates, 125 So.2d 770 (Fla. 3d DCA 1961) was decided. The Court of Appeal in Raven affirmed the dismissal of a Complaint which alleged that the City of Hialeah knew or should have known that a stop sign had been taken down, fallen dawn or collapsed, thus causing an intersectional collision. At 771-772, the court stated:

> "In the instant case, damages were sought from the municipality for the failure of one or more municipal employees to place or replace a traffic control device at a particular intersection. Such a theory of liability is not within the scope of the holding of the Supreme Court of Florida in Hargrove v. Town of Cocoa Reach, supra. The placing of a policeman or a traffic control device at a particular intersection is a matter of judgment by city officers."

The court in Raven also noted a doubtful causal relationship between the lack of a stop sign and the accident because of the driver's duties in using a roadway to exercise his faculties in such a manner as to discover and avoid all dangers.

After waiver of sovereign immunity by Fla. Stat. 5768.28, the more recent case of Beseclcer v. Seminole County, 421 So.2d 1082, **1083** (5th Cir. 1982) also affirmed the dismissal of a Complaint. Id. At 1083. In Besecker, no stop sign had ever been placed at the intersection. The Complaint was dismissed for sovereign immunity reasons despite the fact the Plaintiff claimed there had been near accidents at the intersection and the county had been told that a stop sign was needed. Id. At 1083. Neither Seminole County in the Beseclcer case nor Polk County in the instant case admitted that the intersection was dangerous or that the installation of a device to protect motorists was required. At every stage in the development of the decisional law on this subject, the courts have rejected liability on the part of governmental entities for failing to erect stop signs or other signs at intersections.

(B) THE WAIVER OF SOVEREIGN IMMUNITY DID NOT INCREASE LIABILITY OF GOVERNMENTAL ENTITIES WHICH REMAINS NO GREATER THAN PRIVATE LANDOWNERS.

Section 768.28(1), Florida Statutes, is a limited waiver of sovereign immunity for tort liability and the waiver is only to "the extent specified in this act." Section 768.28(1), Florida Statutes?authorizes actions "under circumstances in which the state

or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state... ." (Emphasis added). Thus, the limited waiver of sovereign immunity is only to the extent that a private person, similarly situated, would be liable - and only then, where the private person has liability consistent with the general laws of the State of Florida.

It is well established that the waiver of sovereign immunity creates no new **cause** of action. In this regard, Trianon Park Condominium Association, Inc. v. City of Hialeah, 468 So.2d 912 **(Fla.** 1985) stated at 914:

> "We first emphasized that 5768.28, Florida Statutes (1975), which waived sovereign immunity, created no new causes of action, but merely eliminated the immunity which prevented recovery for existing common **law** torts committed by the government."

As noted by the Florida Supreme Court, taxpayers of governmental entities should not assume the role of insurers against acts or omissions of private individuals. Id. At 915. Polk County has no greater liability than a private owner of adjoining **property.**

(C) **PRIVATE LANDOWNERS WOULD NOT BE LIABLE IN THE CIRCUMSTANCES OF POLK COUNTY.**

A private subdivision developer constructed a street which intersected Old Polk City Road on its west side roughly opposite the private road, East Lamp Post Lane, upon which Ms. Sofka had been traveling, No stop signs or other traffic control devices or warnings were installed at the intersection after the private subdivision developer connected West Lamp Post Lane to Old Polk City Road. This private developer **was**

sued by the Plaintiff and received a summary judgment which was affirmed on appeal. Thus it appears to be law of this case, which is consistent with other decisions discussed below, that the private subdivision developer had no liability for any signage omission on the private road located across the street.

This result is entirely consistent with the Supreme Court case of Britz v. LeBase, 258 So.2d 811, 814 (Fla. 1972) where a directed verdict was approved. In Britz, a minor Plaintiff attempted to impose liability on an adjoining landowner for loss of an eye when the minor ran into a yucca plant located between six and eight feet beyond the Defendant's property line and the yucca plant was within an adjacent lot. Id. at 812. The Supreme Court held that where there was no underlying actual knowledge of the potential danger of the yucca plant and the potential danger did not exist on property owned or legally connected to the Defendants, this private landowner had no liability, Id. at 814.

The same result was reached by Maraabe v. Graves, 97 So.2d 498, 499 (Fla. 1st DCA 1957) where the First District Court of Appeal affirmed the dismissal of Plaintiff's Complaint. In Margrabe, Adams Realty Company and the Graves owned adjoining parcels of land. It was alleged that a sunken driveway some four feet deep existed on the Adams Realty Property "close" the boundary between the two parcels of land, Id. at 498-499, Between the Adams property and the Graves property? there was a growth of shrubs, flowers, long grass and vines which allegedly concealed the sunken driveway from

view. Id. at 499. After parking their car in the daylight in a parking lot on the Graves property, guests of tenants of the Graves walked back toward their car at night, crossed over the unmarked boundary between the two parcels and fell into the sunken driveway on the Adams property, sustaining injuries Id. at 499. It was alleged that both Graves and Adams Realty Company had a duty to provide either a fence, barrier, lights or some other warning device and that theory was entirely rejected. Id. at 499. Both of these private landowners were properly dismissed from the Margrabe lawsuit.

Even if analysis is stopped at this point, it logically follows that Polk County has no liability. Polk County had no duty to install a traffic sign at the terminus of the private road, East Lamp Post Lane, when there was an original T intersection with no adjoining subdivision, Besecker, Raven, Rosen, supra. The private landowners of East Lamp Post Lane had any signage duty pursuant to Fla. Stat. §3 16.0747(3) and the Opinion of the Attorney General 9 1-82 decided October 17, 1991. When the new subdivision was installed by a private developer, it is the law of this case that the private developer had no liability for lack of signage despite placing another private road in the vicinity of East Lamp Post Lane. This conclusion is also supported by the decisions in Britz and Margrabe, supra. Since the private developer had no such duty, no duty for additional signage was imposed upon Polk County when it accepted the private developer's side of the road for maintenance. See Trianon and Fla. Stat. §768.28(1),

supra. To conclude otherwise would be to depart from the Supreme Court's mandate in Trianon that the waiver of sovereign immunity created no new causes of action

(D) A LONG LINE OF CASES SUPPORT SOVEREIGN IMMUNITY UNDER THESE CIRCUMSTANCES.

In Hyde v. Florida Department of Transportation, 452 So.2d 1109 (Fla. 2d DCA 1984), the Court of Appeal affirmed a judgment on the pleadings and held on 1111:

> "In our view, the decision to warn the public of, or protect the public from, conditions created by private landowners along the state's network of roads is a decision arising at the judgmental, planning level."

In Hyde, the Plaintiff contended DOT owed a duty to warn regarding excavated, unbarricaded roadside bodies of water. The court further stated:

> "Plaintiff has presented this court with no authority that has construed the decision to warn so broadly."

Id. at 1111. In the instant case, the private road was certainly not "created" by Polk County. The private road upon which the Plaintiff traveled before this accident was individually owned, maintained and paved by private landowners. Thus, any problems created by that private road or failures to warn of conditions ahead, were the responsibility of the private landowners. As Hyde specifically ruled, Polk County has no duty to warn under these circumstances.

Numerous other cases have held that decisions regarding placement of traffic control devices are planning level, judgmental decisions for which the governmental unit has sovereign immunity, The Florida Supreme Court in Department of Transportation

v. Neilson, 419 So.2d 1071 (Fla. 1982), held at 1077-1078 that decisions to change a road or place traffic control devices are not actionable because sovereign immunity bars liability. Likewise, in Garza v. Hendry County, 457 So.2d 602, 603 (Fla. 2d DCA 1984) the Court of Appeal affirmed a directed verdict in favor of Hendry County where it was alleged that Hendry County failed to post warning signs of a jog in the road allegedly causing a vehicle to plunge into a canal at an intersection of a rural county road. In Harrison v. Escambia County School, Board, 4 19 So.2d 640 (Fla. 1st DCA 1982), aff'd. 434 So.2d 3 16 (Fla. 1983) the Court of Appeal approved the dismissal of a Plaintiff's Complaint which alleged, among other things, the school board failed to place a sign warning motorists of a school bus stop location. The logic of the lower court's decision was approved by the Supreme Court characterizing the decision as one which was well reasoned. In Harrison, the Court of Appeal stated:

> "We accordingly decide, based on our analysis of the pertinent cases, that the decision to place or not to place traffic control or warning devices at a given school bus stop location involves policy making, planning or judgmental governmental functions, rather than operational-"

Id. at 647. In McFadden v. County of Orange, 499 So.2d 920 (Fla. 5th DCA 1986), a summary judgment in favor of Orange County was affirmed with the court holding:

> "Decisions regarding the installation of appropriate traffic control methods and devices are discretionary decisions which implement police power and are judgmental, planning level functions to which absolute immunity attaches." (Citations omitted).

Id. at 922

Other sovereign immunity cases are in accord. In Denartment of Transnortation v. Wallis, 659 So.2d 429,430 (Fla. 5th DCA 1995), the denial of a Motion to Dismiss based on sovereign immunity was reversed and remanded. In this pedestrian accident case, one of the allegations was that DOT was liable for lack of a nearby stop light and lack of a sidewalk. Failure to upgrade an intersection and failure to install additional traffic devices are judgmental, planning level decisions to which absolute immunity applies. Department of Transportation v. Konney, 587 So.2d 1292 (Fla. 199 1) at 1296. In Konney, the Supreme Court remanded for entry of judgment in favor of the Department of Transportation. Perez v. Metropolitan Dade County, 662 So.2d 42 1, 422 (Fla. 3d DCA 1995) affirmed a summary judgment and held that sovereign immunity barred liability for decisions to install or extend speed zone locations. Department of Transnortation v. Stevens, 630 So.2d 1160, 1162 (Fla. 2d DCA 1994), rev. **den.** 640 So.2d 1108 (Fla. 1994) reversed a judgment for the Plaintiff and remanded for entry of judgment in favor of the Department of Transportation, The court there held that decisions to upgrade roadways or install improved guardrails are decisions protected by sovereign immunity. Jefcoat v. State Denartment of Transnortation, 584 So.2d 167, 168 (Fla. 1st DCA 1991), rev. den. 595 So.2d 557 (Fla. 1992) affirmed a summary judgment in favor of the Department of Transportation and held there was no liability for alleged negligence in the design of a bridge or failure to upgrade it. Hosey v. City of Ft. Lauderdale, 533 So.2d 956, 957 (Fla. 4th DCA 1988) affirmed a summary

judgment in favor of the city and held that placement of a street light pole on a divider island was a decision protected by sovereign immunity. State Department of Transportation v. Vega, 414 So.2d 559, 560 (Fla. 3d DCA 1982), rev. den. 424 So.2d 763 (Fla. 1983) reversed a jury verdict against the Department of Transportation and held that decisions regarding erecting a guardrail were planning level decisions protected by sovereign immunity, Romine v. Metropolitan Dade County, 401 So.2d 882, 884 (Fla. 3d DCA 198 1), rev. den. 4 12 So.2d 469 (Fla. 1982) affirmed a summary judgment for the county and held that sovereign immunity barred recovery in an automobile accident case for decisions pertaining to controlling an intersection with a device or devices different from those chosen.

Even where duties to warn have been discussed, they have been discussed in cases where there is no doubt that the governmental entity itself created a known dangerous condition on the very land owned or occupied by it. See generally, City of St. Petersburg v. Collom, 4 19 So.2d 1082 (Fla. 1982); Freeman v. Tavlor County, 643 So.2d 44 (Fla. 1 st DCA 1984); Clarke v. Florida Department of Transportation, 506 So.2d 24 (Fla. 1st DCA 1987). The condition of the private road and any problems related to lack of signage are problems existing on adjoining private property, which were not created by Polk County, and, as so aptly put in Hyde, both the decision to warn the public of and to protect the public from private landowners' conditions, are decisions for which entities have sovereign immunity. Hyde, at 1111.

Other cases on the creation issue support the grant of sovereign immunity to Polk County under these facts, In Tomblin v. Town of Palm Beach, 552 So.2d 1182, 1183 (Fla. 4th DCA 1989), the court held that granting a permit did not impose liability on the town for an injury to a subcontractor working within the town's right-of-way. In Barrera v. State Department of Transportation, 470 So.2d 750, 752 (Fla. 3d DCA 1985), rev. den. 480 So.2d 1293 (Fla. 1985), the court affirmed a summary judgment on the basis of sovereign immunity because a bridge was designed and built by Dade County, not DOT. Sovereign immunity was granted DOT even though DOT made decisions not to place a new clearance warning sign on the bridge subsequently. A dismissal of a Complaint with prejudice was affirmed in Hill v. City of Lakeland, 466 So.2d 1231, 1232 (Fla. 2d DCA 1985), rev. den. 476 So.2d 674 (Fla. 1984) where the city did not create the weedy condition of a lake. The court stated:

> "A governmental entity has no duty to warn of a known dangerous condition which it did not create."

Id. at 1232. Summary judgment was affirmed in Johnson v. Collier County, 468 So.2d 249, 25 1 (Fla. 2d DCA 1985) app'd. 474 So.2d 806 (Fla. 1985) where Collier County did not design, construct, own, operate or maintain the temporary service pole at the construction site where a person was electrocuted. Collier County's personnel had inspected the construction site to determine electrical code compliance.

It is only where an entity owns or is in possession of both sides of an alleged illusion that any arguable duty to warn would arise. In Hollywood Corporate Circle

Associates v. Amato, 604 So.2d 888 (Fla. 4th DCA 1992), the court imposed liability on a private landowner where the configuration of its private road created an optical illusion and it owned both sides of the illusion. The court noted:

> "But the jury also might have found that the Defendant so maintained its property that it knew or should have known that others would reasonably believe the property to be a public highway and that Defendant's act of creating the optical illusion of a through street and its failure to do anything on its property to warn of the illusion was a contributing factor to the accident." (Emphasis supplied).

Id. at 891. Even where a duty to warn exists because of ownership of both sides of the illusion, a duty to warn exists only "on its property," Even under the best case scenario for Ms. Sofka, some sort of a warning could be placed on three sides of this alleged intersection but the county would have no duty to put any warning or signage on the private property. Additional signage on the other three sides of this area would have availed the Plaintiff nothing.

In cases where private roads adjoin public roadways in a way misleading drivers to believe they are remaining on a public road, cases in other states have held that the private landowner has the duty to warn, Aluminum Company of America v. Walden, 322 SW. 2d 696, 701 (Ark. 1959) held that a private landowner had a duty to erect proper warning signs on the arivate road which warned of a water filled pit which the private road ran into. See also Southern v. Cowan Stone Company, 221 SW, 2d 809, 811 (Tenn. 1949). It would also appear to be the weight of authority across the nation that governmental units have no liability for failing to place signage at particular

locations along roadways. See e.g., Jones v. Bountiful City Cornoration, 834 P.2d 556, 560 (Utah App. 1992); Bendas v. Township of White Deer, 569 A.2d 1000, 1001 (Commonwealth Court of Pennsylvania 1990); Slavin v. City of Tucson, 495 P.2d 14 1, 143 (Ariz. App., Division 2, 1972); Belt v. City of Grand Forks, 68 N.W. 2d 114, 12 1 (N.D. 1955). In these cases, the governmental entities were either granted summary judgment, directed verdict or received the equivalent of a directed verdict.

(E) RULES OF THE ROAD GOVERN MOTORISTS' RESPONSIBILITIES EVEN ABSENT ANY WARNING.

The respective duties and obligations of motorists approaching intersections are well covered by Florida Statutes even without any signage. Obedience to traffic laws is mandatory and required by Fla. Statute §316.072(2). A driver is presumed to know the law and comply with its requirements. Akins v. Bethea, 33 So.2d 638, 640 (Fla. 1948). As the Florida Supreme Court stated in Florida Motor Lines, Inc v. Ward, 137 So. 163, 167 (Fla. 193 1):

> "The law of the road is now embraced in statutes, ordinances, and regulations, is promulgated for the protection of life and property, it is an essential part of the common knowledge of every traveler, and he who goes on the highway and negligently or otherwise fails to observe it, does so at his peril."

Sections 3 16.12 1(1) and (2), Florida Statutes, deal with the respective duties of vehicles approaching uncontrolled intersections. These sections state the following:

316.121 Vehicles approaching or entering intersections.-

(1) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway,

(2) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

Particularly applicable is Section 3 16.125, Florida Statutes, which requires Ms. Sofka to come to a stop even without a sign.

316.125 Vehicle entering highway from private road or driveway or emerging from alley, driveway or building.-

(1) The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered which are so close thereto as to constitute an immediate hazard.

(2) The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon and shall yield to all vehicles and pedestrians which are so close thereto as to constitute an immediate hazard.

As the Florida Supreme Court also noted in Florida Motor Lines at 167:

"AU travelers on the public streets and highways have the right to assume that other travelers will observe the law of the road, obey all regulations relative to the use of the highways, and, in general, exercise reasonable care to avoid injury to their fellow travelers."

If all travelers on the public streets have a right to make such assumptions, certainly Polk County has the right to make the same assumptions. It is presumed that persons will obey the law. Atlantic Coast Line R, Co, v. Mack, 57 So.2d 447, 4.52 (Fla. 1952). Section 3 16.125, Florida Statutes, provides a specific procedure to be followed by Ms. Sofka which requires her to come to a stop before entering Old Polk City Road. Further, this statute imposes an obligation on Ms. Sofka to yield to all vehicles which are so close to the intersection as to constitute an immediate hazard. These two statutes impose clear duties upon Ms. Sofka even in the absence of any signs or warnings. Section 3 16.125 serves as the functional equivalent of a stop sign under these very facts and a governmental entity could rightfully assume no further signage was needed on this private road.

(F) UNDER THE SEPARATION OF POWERS, THE JUDICIARY CANNOT ENCROACH UPON EITHER THE LEGISLATIVE OR EXECUTIVE BRANCHES OF GOVERNMENT.

Our state and federal governments are founded upon the fundamental separation of the coordinate functions of government. Under our tripartite form of government, no branch can intrude or encroach upon the functions of another. As stated by the Florida Supreme Court in Trianon Park Condominium Association. Inc. v. Citv of Hialeah, 468 So.2d 912, 923 (Fla. 1985), the judiciary cannot intrude into the discretionary, judgmental functions of either the legislative or executive branches of

government. Deciding in **what** manner laws are to be enforced is a judgmental decision of the executive branch. Carter v. Crtv of Stuart, 468 So.2d 955, 957 (Fla. 1985). The legislative aspects of **government** have absolute power over the public purse. State ex Rel. Caldwell v. Lee, 27 So.2d 84, 87 (Fla. 1946). The judiciary cannot require acts to be performed which would exceed appropriations by the legislature. State Department of Health and Rehabilitative Services v. Brooke, 573 So.2d 363, 370 (Fla. 1st DCA 1991). Decisions regarding financing of public projects cannot be mandated by the judiciary. State v. Sarasota Countv, 372 So.2d 1115, 1118 (Fla. 1979).

Strict compliance with the new and unanticipated duty imposed by the Second District Court of Appeal in Polk Countv v. Sofka would require expenditures of huge sums of money by the state, all counties and all municipalities because all private roadways and perhaps alleyways, access ways and driveways would have to be evaluated for the purpose **of** determining if signage is necessary. This **would** require hiring of a multitude of employees, the expenditure of large sums of money and the establishment of entire new programs within street and highway departments for the purpose of evaluating private roads, driveways and access ways. Compliance with these new obligations would no doubt exceed present budgetary restraints and also would effectively mandate new programs to be administered by the executive branch of government. The new duties imposed by the Second District Court of Appeal unconstitutionally intrude into the legislative and executive branches of government.

driveways or private access ways. Already overburdened governmental street and highway departments have neither the funding nor the manpower to evaluate all of these intersections. Establishment of new programs would require large amounts of money to be funded statewide and many new employees to be added to street and highway departments. These onerous burdens are completely unnecessary in light of the fact that Fla. Stat. §316.125 requires all motorists to stop and yield to approaching vehicles without the need for any additional signage whatsoever.

Furthermore, a county cannot legally provide even minor work or repairs on private roads and cannot expend county funds for those purposes as set forth in the Opinions of the Attorney General, 073-222, June 20, 1973 and 79-14, February 16, 1979. Attorney General Opinion 92-42, decided May 22, 1992, held that the county may not expend county funds to repair or maintain private roads even where school buses travel upon them. Attorney General Opinion 85-101, decided December 16, 1995, held that a municipality may not collect money for the operation and maintenance of a private bridge, See also. Attorney General Opinion 85-90, decided October 30, 1985. Brumby v. City of Cl-, 149 So, 203, 204 (Fla. 1933) held that Clear-water could not use public funds to dredge for the benefit of a private individual. It would thus appear that the county is without authority to erect signage and therefore spend county money on private roads.

If the county is prohibited from providing even minor work or repairs on private roads, then certainly the county is under no obligation to evaluate private roads to determine if signage, repair or other work is necessary. When the county cannot lawfully perform work on private roads and specific Florida Statutes advise motorists how to conduct themselves at the intersections of private roads and public roadways, then surely the judiciary cannot require the legislature to appropriate funds and the executive branch to create new programs of this wide ranging nature.

CONCLUSION

Polk County did not create a known dangerous condition and owed no legal duty to Donna M. Sofka. Sovereign immunity should be granted to the Petitioner, Polk County. Accordingly, this Honorable Court should reverse the judgment of the Second District Court of Appeal below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail on August 6, 1996 to: Hank B. Campbell, Esq., Post Office Box 3, Lakeland, Fl 33802-0003 and to John W. Frost, II, Esq., Post Office Box 2 188, Bartow, F13383 1-2 188.

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