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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

ROBERT F. MILLIGAN, )  
Comptroller, )  
Florida Office of the Comptroller, )  
and Head of the Department of )  
Banking & Finance, )  
  
Appellant, )  
  
v. )  
  
PALM BEACH COUNTY BOARD )  
OF COUNTY COMMISSIONERS, )  
BURT AARONSON, Chairman, )  
  
Appellee. )

Supreme Court Case: 91,533  
  
4th DCA Case: 97-02927  
L.T. Case: CL97-3951 AE

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AMICUS CURIAE BRIEF OF PINELLAS COUNTY  
ON BEHALF OF APPELLEE, PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

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## SUMMARY OF THE ARGUMENT

The State Comptroller seeks an order from this Court directing Palm Beach County to pay indigent criminal appellate filing fees in the absence of express statutory authority. Local ad valorem tax dollars are the sole source of funds from which Palm Beach County may draw in order to pay the fees. Pursuant to Section 35.22(6), Florida Statutes, the funds used to pay the filing fees are deposited directly into the State General Revenue Fund. The direct deposit of county ad valorem tax dollars into the State General Revenue Fund violates Article VII, Section 1(a), Florida Constitution, which prohibits the State from levying ad valorem tax dollars and Article VII, Section 9(a), Florida Constitution, which limits the use of local ad valorem tax dollars to local purposes.

## ARGUMENT

I.    **THE USE OF COUNTY AD VALOREM TAX DOLLARS TO  
PAY INDIGENT CRIMINAL APPELLATE FILING FEES  
VIOLATES ARTICLE VII, SECTION 1 (a) OF THE  
FLORIDA CONSTITUTION.**

The mandate sought by the State Comptroller directing Palm Beach County to pay indigent criminal appellate filing fees violates the Constitutional prohibition against state ad valorem taxes. Pinellas County asserts that the State is indirectly levying an ad valorem tax by demanding that Palm Beach County pay appellate filing fees because the Palm Beach must use county ad valorem tax dollars to pay the fees.

Historically, the Florida Constitution has barred the State from levying ad valorem taxes. Article IX, Section 2 of the 1885 Florida Constitution, as amended in 1940, stated in part:

"...but after December 31st A.D. 1940, no levy of ad valorem taxes upon real or personal property except intangible property, shall be made for any State purpose whatsoever."

Article VII, Section 1(a) of the present Florida Constitution states in part:

'No state ad valorem taxes shall be levied upon real estate or tangible personal property. All

other forms of taxation shall be preempted to the State except as provided by general law."

The 1968 Revision reiterates the prohibition against state ad valorem taxes on real and tangible personal property. The intent of the framers of the Constitution is clearly expressed. The State shall have no authority to levy ad valorem taxes.

Pinellas County argues that the language of Section 35.22, Florida Statutes(1995), creates a conduit through which county ad valorem tax dollars flow directly into the State General Revenue Fund. Section 35.22(3), Florida Statutes(1995), requires the Clerk of the District Court to charge and collect a service charge, i.e., a filing fee, of \$250.00 for each case docketed upon the filing of a notice of appeal. Section 35.22(6), Florida Statutes (1995), requires the Clerk to deposit all fees collected "in the State Treasury to the credit of the General Revenue Fund." See also, Section 25.241(3) and (5), Florida Statutes(1995).

In cases such as the one at bar, counties have mistakenly paid the appellate filing fee of indigent criminal defendants in the absence of express statutory language authorizing the payment and contrary to Rule 9.430, Fla.R.App.P. In addition, counties have used their locally collected ad valorem tax dollars to pay the

appellate filing fee because counties have had no other statutory stream of revenue with which to pay.

Pursuant to Section 35.22(6), Florida Statutes, county ad valorem tax dollars are deposited directly into the State General Revenue Fund. Pinellas County asserts that by directly receiving ad valorem tax dollars through the conduit of appellate filing fees the State is levying ad valorem taxes contrary to Article VII, Section 1(a) of the Florida Constitution.

11. THE USE OF COUNTY AD VALOREM TAX DOLLARS TO PAY INDIGENT CRIMINAL APPELLATE FILING FEES VIOLATES ARTICLE VII, SECTION 9 (a) OF THE FLORIDA CONSTITUTION.

The mandate sought by the State Comptroller directing Palm Beach County to pay indigent criminal appellate filing fees violates the Constitutional requirement that county ad valorem tax dollars are to be used solely for county purposes. Pinellas County asserts that local ad valorem tax dollars deposited directly into the State General Revenue Fund pursuant to Section 35.22(6), Florida Statutes, as filing fees do not serve a local purpose.

Traditionally, counties have been given taxing power with the express limitation that the dollars raised be used exclusively for county purposes.<sup>1</sup>

Article IX, Section 5 of the 1885 Florida Constitution stated:

'The Legislature shall authorize the several counties and incorporated cities or towns in the state to assess and impose taxes for county and municipal purposes, and for no other purposes...'

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<sup>1</sup>See FLA. CONST. of 1838, art. VIII, §4; FLA. CONST. of 1861, art. VIII, §4; FLA. CONST. of 1865, art. 8, §4; FLA. CONST. of 1868, art. XII, §6.



Presently, Article VII, Section 9(a) states in part:

'counties ... shall ... be authorized by law to levy ad valorem taxes . . . for their respective purposes."

A question for the consideration of this Court in the instant case is whether the Palm Beach County ad valorem tax dollars used to pay indigent criminal appellate filing fees serve a county purpose as required by Article VII, Section 9(a).

In Sandegren v. State, 397 So.2d 657 (Fla. 1981), the State brought a mandamus action against Sarasota County to force it to pay a twenty-five percent local match for the provision of mental health services as required under Chapter 394, Florida Statutes(1977). This Court issued the mandamus and stated:

There is nothing in the state constitution which prohibits the legislature from enacting laws requiring the expenditure of local funds to support programs to the extent that such programs serve a local purpose." Id. at 659.

This Court noted that the express statutory language of Chapter 394 provided for mental health services on a local basis. Id. Accordingly, this Court found that the Legislature could lawfully require that a share of the costs be locally funded by Sarasota County without improperly infringing on local taxing power. See generally State v. Florida State Improvement Commission, 47 So.2d

627, 630 (Fla. 1950). (Court stated the general rule that a legislative determination that a project serves a county purpose is limited by the clear and explicit language of constitutional provisions).

Factually, the case at bar is clearly distinguishable from Sandegren. First, there is no express statutory language requiring counties to pay appellate filing fees unlike the unequivocal statutory language of Chapter 394 in Sandegren. Secondly, there is no identifiable local purpose expressed in the statutory language relied upon by the State Comptroller.

Pursuant to §35.22(6), Florida Statutes, county ad valorem tax dollars are deposited directly into the State General Revenue Fund. The State has exclusive control of the appropriations made from the State General Revenue Fund. Article VII, Section 1(c), Florida Constitution states:

No money shall be drawn from the treasury except in pursuance of appropriations made by law."

Section 215.32(2) (a), Florida Statutes, states:

'The General Revenue Fund shall consist of all moneys received by the State from every source whatsoever . . . . Such moneys shall be expended pursuant to the General Revenue Fund appropriations acts . . . ."

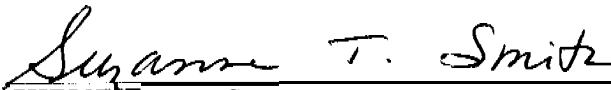
The contributing county has no control over the State's subsequent appropriation of its ad valorem tax dollars. Pinellas County argues that unlike Sandegren, where county match funds were specifically authorized by the Legislature to be used to fund local mental health services, there is no statutory requirement that indigent criminal appellate filing fees be returned to the county for funding a local program with a local purpose. The State has no statutory obligation to return filing fees paid from local ad valorem tax dollars to the County for local use.

Pinellas County asserts that, in the absence of an express statutory requirement that filing fee dollars be returned to counties for their respective purposes, the State is infringing on counties' local taxing power through its exclusive control of appropriations from the General Revenue Fund. The unrestricted ability of the State to appropriate local ad valorem tax dollars derived from filing fees for State purposes violates Article VII, Section 9(a) of the Florida Constitution.

**CONCLUSION**

Pinellas County, **as** Amicus in support of Palm Beach County, respectfully requests that this Court uphold the lower court ruling that there is no statutory mandate requiring counties to pay indigent criminal appellate filing fees; to hold otherwise would violate Article VII, Sections 1(a) and 9(a) of the Florida Constitution.

Respectfully submitted,



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The undersigned hereby certifies that a true copy of the foregoing has been sent by U.S. Mail to the following individuals this 12<sup>th</sup> day of November, 1997:

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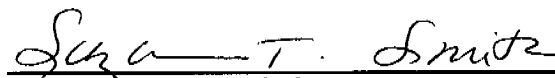
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