

IN THE SUPREME COURT OF FLORIDA

ROBERT F. MILLIGAN,)
Comptroller,)
Florida Office of the Comptroller,)
and Head of the Department of)
Banking & Finance,)

Appellant,)

vs.)

PALM BEACH COUNTY BOARD)
of COUNTY COMMISSIONERS,)
BURT AARONSON, Chairman,)

Appellee.)

FLORIDA S. CT. # 91,533

4th DCA CASE # 97-02927
L.T.CASE CL 97-3951 AE

Florida Bar #475696

[Handwritten signature]
BY _____

Chief Appellate Counsel

BY _____

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REPLY BRIEF OF APPELLANT THE STATE OF FLORIDA

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ISSUE

WHETHER THE TRIAL COURT'S DISMISSAL OF COMPLAINT FOR
WRIT OF MANDAMUS WAS AN ERRONEOUS
INTERPRETATION OF STATUTORY LAW.

POINT I

Florida law requires the payment of appellant filing fees to the district court of appeal; when the appeal is taken by an indigent defendant the county wherein the crime was committed is mandated to pay the fee.

1

POINT II

The dictates of Article VII, Section 1(a), Florida Constitution, are not offended by Palm Beach County's payment of indigent appellant filing fees.

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The dictates of Article VII, Section 9(a), Florida Constitution, are not offended by Palm Beach County's payment of indigent criminal appellant filing fees.

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SUMMARY OF THE ARGUMENT

Florida law requires the county in which a crime is committed to pay the filing fees of an indigent criminal appellant. Although section 939.15, Florida Statutes, is the directive for payment by a county, the legislature has enacted laws that compliment, facilitate and explain the statutory mandate. The legislative enactments are not in violation of the Florida Constitution.

ARGUMENT

POINT I

Florida law requires the payment of appellant filing fees to the district court of appeal; when the appeal is taken by an indigent defendant the county wherein the crime was committed is mandated to pay the fee.

While this Court most recently stated that “[c]ounties are obligated by statute to pay attorney fees and costs for indigent defendants, both at trial and on appeal[,]”¹ appellee and amicus curiae contend there exists a statutory waiver of the filing fee for indigent criminal appellants, pursuant to sections 57.081 and 924.17, Florida Statutes. Contextually, Chapter 57, Florida Statutes, falls within Title VI, Florida Statutes. Title VI is the umbrella for Civil Practice and Procedure. Section 57.081, Florida Statutes, applies to civil practice and procedure. The application of the argued waiver of appellant filing fees for indigent criminal defendants as a result of Chapter 57, Florida Statutes, is not consistent with the legislative scheme.² Title XLVII, Florida Statutes, incorporates criminal practice and procedure. Logically, any exemption of payment of appellant filing fees for indigent criminal defendants would fall within this title. Section 939.15, Florida Statutes, does not exempt the indigent appellant, nor the county from payment. Section 924.17, Florida Statutes, waives the prepayment of the fee for the insolvent appellant, but does not exempt the county from paying.

¹ *Orange County v. Williams*, 22 FLW S552 (Fla. September 11, 1997).

² Two Attorney General opinions, attached hereto, concur in determining that section 57.081, Florida Statutes, does not apply to the clerk of the district court of appeal. AGO 078-116 (September 15, 1978) and AGO 079-85 (September 21, 1979). A third, AGO 80-86 (November 4, 1980), determined that section 57.081, Florida Statutes, applies to *civil* appellate cases

Appellant, however, is not blind as to the case law that cites to Chapter 57, Florida Statutes. There are both criminal and civil cases involved. An appropriate example that relies on section 57.081, Florida Statutes, for the granting of a waiver of an indigent criminal defendant's payment for transcripts for his appeal, grants the waiver only as to those portions of the transcript that are relevant to the appeal as it "requires the *expenditure of public funds*", is *Daniels v. State*, 441 So. 2d 186, 187 (Fla. 5th DCA 1983), accord, *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992). *Daniels* is a negation of appellee's and the amicus curiae's argument that section 57.081, Florida Statutes, exempts the county from payment.³

Appellant reiterates that the section 57.081, Florida Statutes, waiver is not an exemption, and posits that section 939.15, Florida Statutes, requires the county to pay the filing fees at issue. Therefore, the question presented, and answered in Appellant's Initial Brief, is whether the 1989 amendment was an indication of legislative intent to eliminate payment of the filing fees of indigent criminal defendants represented by the public defender.

CHAPTER 89-129
Committee Substitute for Senate Bill No. 1042

An act relating to financial affairs; amending s. 939.15, F.S.; providing that costs incurred pursuant to s. 27.54(3), F.S., by the public defenders shall

³ Case law interpretation of section 57.081, Florida Statutes, appears to be mostly through civil and administrative cases. It further appears that the district courts have a variety of interpretations as to its applicability.

be paid by the counties upon certification by the public defender;

authorizing counties to contest the reasonableness of expenses... .⁴

The amendment did not change section 27.54(3), Florida Statutes, costs.⁵

Those enumerated costs remained untouched. What did change was the requirement for certification of the *necessity* of those costs, **and** the elimination of a further certification of insolvency when the defendant is represented by the public defender. Florida's 67 counties all paid the filing fees, without question, prior to the 1989 amendments thereto. The county is still mandated, in the first sentence of section 939.15, Florida Statutes, to pay the filing fees in question. *Batson, et al. V. State of Florida*, 22 FLW D2492 (Fla. 5th DCA October 24, 1997). "It appears that the intent of the 1989 amendment adding the last two sentences to section 939.15 was to make clear that the types of costs referred to in section 27.54(3), Florida Statutes. . . are to be certified by the . . . public defender. . . . We hold, therefore, that the county's obligation to pay indigent costs has not been changed by the appointment of a public defender." *Id.*

POINT II

The dictates of Article VII, Section 1(a), Florida Constitution, are not offended by Palm Beach County's payment of indigent appellant filing fees.

Payment by Palm Beach County of indigent appellant filing fees is not the equivalent of a state ad valorem tax, whether Palm Beach County uses county

⁴ Record page 19.

⁵ A subsequent amendment to section 27.54(3), Florida Statutes, was made pursuant to Chapter 91-303, Laws of Florida. The additions to expenses to be reimbursed by the county are not relevant *sub judice*.

ad valorem taxes to pay the fees or not.⁶ First, the use of ad valorem taxes for payment of indigent appellant filing fees is not what section 939.15, Florida Statutes, mandates. Second, the legislature has created a fine and forfeiture fund, section 142.01, Florida Statutes (1997), that is to be used for the payment of filing fees, among the other enumerated criminal expenses of the county.

There shall be in every county of this state a separate fund to be known as the fine and forfeiture fund. Said fund shall consist of all fines and forfeitures collected in the county under the penal laws of the state, except [costs pursuant to 775.0835(1), 938.21, 938.23 and 938.25]; all costs refunded to the county; all funds arising from the hire of or other disposition of convicts; and the proceeds of any special tax that may be levied by the county commissioners for expenses of criminal prosecutions. **Said funds shall be paid out only for criminal expenses, fees, and costs, where the crime was committed in the county and the fees and costs are a legal claim against the county, in accordance with the provisions of this chapter.**

Section 142.01, Florida Statutes (1997) (emphasis added). In 1964 an opinion of the attorney general was issued which states that **payment of filing fees for indigent appellants should be charged against the fine and forfeiture fund of the county and not against the office expenses of the Public Defender. AGO 064-158 (October 22, 1964)**, attached hereto. The legislature has further provided for the disposition of fines, forfeitures and civil penalties.

[A]ll fines imposed under the penal laws of this state in all other cases, and the proceeds of all forfeited bail bonds or recognizances in all other cases, shall be paid into the fine and forfeiture fund of the

⁶ Section 142.01 authorizes the proceeds of any special tax to be used for criminal expenses. Additionally the legislature contemplated that the county commission would levy said special taxes.

county in which the indictment was found or the prosecution commenced, and **judgment must be entered therefor in favor of the state for the use of the particular county.**

Section 142.03, Florida Statutes (1997)(emphasis added). The plain language quoted mandates that the fine and forfeiture fund of the county be used exclusively to benefit the state in the state's furtherance of county interests.

In addition to sections 142.01 & 142.03, Florida Statutes, the legislature determined that funds collected pursuant to section 938.05(1), Florida Statutes (1997), shall be used to reimburse the county for expenses paid out of county coffers, the fine and forfeiture fund, to pay for court related expenditures. "Such funds shall be used exclusively for those purposes set forth in s. 27.3455(3)."

Section 938.05(3), Florida Statutes. Section 27.562, Florida Statutes, states that all funds collected pursuant to section 938.29, Florida Statutes, shall be remitted to the county commissioners of the appropriate county. Section 938.29, Florida Statutes, authorizes collection of attorney fees from defendants, payment for the costs of depositions, etc. The "funds shall be placed in the fine and forfeiture fund of that county to be used to defray the expenses incurred by the county in defense of criminal prosecutions." Section 27.562, Florida Statutes.

There is no requirement that the county use ad valorem taxes to pay the costs incurred pursuant to section 939.15, Florida Statutes. The legislature by enacting section 57.091, Florida Statutes, mandates the state to reimburse counties for funds expended on indigent appellant filing fees when the indigent appellant is incarcerated in state prison. *Shuman v. State*, 358 So. 2d 1333

(Fla. 1978). Concomitantly, and assuming *arguendo* that Chapter 57, Florida Statutes, is applicable, section 57.081, Florida Statutes, is not meant to exempt the appropriate county from payment of indigent criminal appellate filing fee expenses; the legislation waives the payment by the insolvent defendant appealing a conviction. *Daniels*, supra. Why else would section 57.091, Florida Statutes, require state reimbursement to the county for an incarcerated appellant?

Succinctly, section 939.15, Florida Statutes, requires payment by the county for indigent appellant filing fees. The county receives money from the fine and forfeiture fund, section 142.01, Florida Statutes, to be used for state expenditures. The fine and forfeiture fund is fed, in part, by fines and forfeitures collected in the county under the penal laws of the state. Section 938.05(1), Florida Statutes, requires the clerks of the circuit courts to set up a fund in the particular county to be used to reimburse the county for expenditures for indigent criminal appellate filing fees. Section 57.091, Florida Statutes, reimburses the county for appellate costs incurred by indigent defendants incarcerated in a state correctional facility. Reliance on ad valorem taxes is not mandated by statute, hence there is no violation of article VII, section 1(a), Florida Constitution, in the requirement specified in section 939.15, Florida Statutes.

POINT III

**The dictates of Article VII, Section 9(a), Florida Constitution,
are not offended by Palm Beach County's payment of
indigent criminal appellant filing fees.**

Amicus curiae postulates that Palm Beach County's use of ad valorem taxes for indigent appellant filing fees is a violation of the Florida Constitution. This interpretation of the Florida Constitution, article VII, section 9(a), is erroneous, notwithstanding appellant's contention that ad valorem taxes are not mandated, and indulges in an overly restrictive approach as to what is considered to be *service of a county purpose*.

This Court, referencing *Board of Public Instruction of Brevard County v. State Treasurer*, 231 So. 2d 1 (Fla. 1970), holds that "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." *Sandegren v. State*, 397 So. 2d 657, 659 (Fla. 1981). This Court reaffirmed the *Sandegren* holding in *St. John's River Water Management District v. Deseret Ranches of Florida, Inc.*, 421 So. 2d 1067 (Fla. 1982).

Analogous to the water district question posed and answered in *St. John's*, is the question presented by amicus curiae in the case at bar. To paraphrase the district court below in *St. John's*:

The fact that [operation of the court system] are state functions does not make them exclusively so. The availability of [the state court system] is of critical local interest. . . . It is clear that simply because [the state court system] furthers a state function, policy, or purpose does not prevent it from levying ad valorem

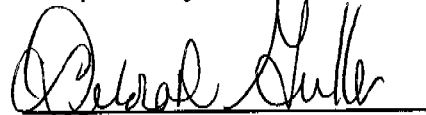
taxes where the local function, policy, or purpose is similarly vital to the local interest.

St. John's at 1070-71. It is disingenuous to argue that a state court system is not vital to local interest. Accordingly, the argument of amicus curiae Pinellas County must fail. Section 939.15, Florida Statutes, is not enforced in violation of article VII, section 9(a), Florida Constitution.

CONCLUSION

Appellant respectfully requests this Court to reverse the trial court's dismissal of appellant's Complaint for Writ of Mandamus, and in so doing hold that section 939.15, Florida Statutes, mandates payment by the county for indigent defendant appellate filing fees. "[I]t is too well settled in our law to contest that we are obliged to construe the statute at hand in a manner that would sustain its constitutionality if there is any reasonable basis for doing so." *State v. Ellis*, 1997 WL 268503, 268507 (Fla. 1st DCA 1997)(and cases cited therein).

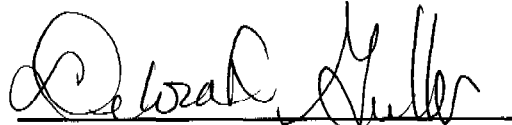
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the following has been sent by U.S. mail to Daniel P. Hyndman, Esq., attorney for appellee, Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402, Suzanne T. Smith, Esq., Senior Assistant County Attorney, Pinellas County Attorney's Office, 315 Court Street, Clearwater, Florida 33756, George Dorsett, Esq., Orange County Attorney's Office, P.O. Box 1393, Orlando, Florida 32802, Jason Bloch, Assistant County Attorney, Dade County Attorney's Office, Stephen P. Clark Center, #2810, 111 N.W. 1st Street, Miami, Florida 33128-1993, to Anthony C. Musto, Chief Appellate Counsel, Broward County Attorney's Office, Governmental Center, #423, 115 S. Andrews Avenue, Ft. Lauderdale, Florida 33301 and to Patrick T. Kinni, Esq., Assistant County Attorney, Florida Association of Counties, 301 S. Monroe Street, #443E, Tallahassee, Florida 32301 on this 20th day of November, 1997.


Deborah Guller, Esq.