IN THE FLORIDA SUPREME COURT

	*	**Supreme Ct. Case No. 93,470**
W. A. BROWN, etc.,	*	
	*	
Petitioner,	*	**District Court of Appeal,**
	*	**2nd District - Case No. 97-01376**
v.	*	
	*	**Lower Court Case No. 96-5184(C)**
	*	**Hillsborough Circuit Civil**
CITY OF TAMPA,	*	
	*	
Respondent	*	

* * * * * * * * *

AMICUS CURIAE BRIEF OF LEE COUNTY

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STATEMENT OF THE CASE AND FACTS

Amicus Curae LEE COUNTY (Lee County) hereby adopts the Respondent, City of Tampa's Statement of the Case and Facts contained in Respondent's Answer Brief as its own Statement as if set forth herein.

SUMMARY OF ARGUMENT

This Court's conflict jurisdiction should be exercised to affirm the Second District Court of Appeal's reversal of the trial court in *City of Tampa v. W.A. Brown, as Trustee of the One Hundred Eleven on Hundred Thirteenth Street Trust*, 711 So.2d 1188 (Fla. 2d DCA 1998)(*Brown)*, and quash the Third District's decision in *Personal Representative of the Estate of Jacobson v. Attorney's Title Insurance Fund*, 685 So.2d 19 (Fla. 3d DCA 1996)(*Jacobson*), to the extent the latter case holds § 162.09, Fla. Stat. (1995)(all subsequent statutory cites refer to Fla. Stat. (1995), unless otherwise stated), requires the statutory notice of § 162.12, to be provided when a local government's code enforcement board or hearing officer (tribunal) serves its orders imposing fines and liens. *Brown* correctly holds there is no statutory requirement for a code enforcement tribunal in Florida to provide a respondent with a copy of its order imposing a fine and lien. Thus, the issue of whether such orders are to be served by certified mail, return receipt requested, or regular United States Postal Service (U.S.) mail, is one addressed through application of constitutional protections for procedural due process. In *Brown*, the Second District wisely held the provision of code orders by regular U.S. mail was sufficient to meet those constitutional protections. As a result, whether a local government's code

enforcement tribunal provides a copy of its order by U.S. mail, or otherwise, is an exercise of the tribunal's inherent discretion.

In comparison, copies of orders rendered by the Florida judiciary, even in analogous cases involving solely property interests, are routinely provided via regular U.S. mail. This is so even though no specific type of mailing is set forth under Florida law for such orders. Thus, as a matter of logic alone, the orders of a quasi-judicial code enforcement tribunal, limited solely to the legal remedy of imposing administrative fines, should not, absent some lawful requirement, have to meet a more stringent form of service for its orders than superior courts with legal **and** equitable powers capable of imposing much greater burdens on a defendant. To conclude otherwise leads to the illogical result that a circuit court's judgment rendered in favor, and as part of, a local government's foreclosure of a lawful code enforcement lien, would be effective if sent by U.S. mail (even against a defaulting party), while the underlying order imposing the fine (from which the lien arose) would have to have been sent by certified mail, return receipt requested. *See*, § 162.09 (3).

ARGUMENT

This Court's conflict jurisdiction under Article V, § 3(b)(3), Fla. Const., should be exercised to affirm *Brown* and quash *Jacobson* to the extent it conflicts. Nothing in §162.07 or § 162.09, mandates the statutorily "required notice" of § 162.12, to be applied to orders of code enforcement tribunals imposing administrative fines which may become statutory liens. As a matter of constitutional protection, respondents are afforded procedural due process by §§ 162.07 and 162.09, requiring the statutory notice of § 162.12 and the opportunity to be heard on the alleged violations in a public hearing. No public policy rationale supports a higher standard for providing a code enforcement respondent with a copy of the quasi-judicial tribunal's orders than that which courts authorized under Article V, Fla. Const., must meet. Copies of orders rendered by the Florida judiciary in cases involving property interests are traditionally provided via regular U.S. mail, even though no specific "type" of mailing is set forth. *See*, Fla. R. Civ. P. 1.080(h), Service of Orders, including the Committee Notes for the 1976 Amendment, second paragraph, which states, ". . . copies of any order entered by the court must be *mailed* to all parties . . . for purposes of advising them of the date . . . as well as the substance of [the court's] action." (Italics added.)

As a practical matter, if this Court were to rule in favor of Petitioner and approve *Jacobson*, unintended, and undesirable, consequences would result. These might include, consistent with the statutory notice requirements authorized in § 162.12 (2), F.S., local governments publishing the text of their code enforcement tribunal's written orders, or posting those orders, so as to provide the supposedly required statutory notice. If the Third District's decision, to the extent it purports to hold code enforcement liens are void if the order giving rise to the liens are not served as provided for in § 162.12, is not quashed, then conceivably those respondents who successfully avoid receipt of the local government's certified mail, or who refuse to sign or return the certified mail return receipt, might next successfully argue on appeal from an unfavorable code enforcement tribunal's order, that the local government's subsequent failure to publish or post the objectionable code enforcement order deprived them of due process. By logical extension of *Jacobson*, any liens on their property arising from those orders imposing fines would then supposedly be void.

Simply put, the *Jacobson* court's finding on the statutory root of the "administrative" lien against the code violator's property was in error. Section 162.09(3), Fla. Stat. (1989), on through to the currently effective statute, provides authority for a fine imposed in a written code enforcement order to ripen into a lien.

The lien then attaches to all of a respondent's real or personal property in the jurisdiction. The only statutory requirement for this to occur is that a certified copy of the order must first be recorded in the jurisdiction's public records. Any failure to provide the statutorily required notice of § 162.12 in serving such orders is irrelevant. This interpretation is supported by § 162.07 (2), which concludes with the phrase, ". . . included in the lien authorized under § 162.09 (3)." Thus, § 162.12, plays no role in the imposition of a code enforcement fine or its subsequent ripening into, and attachment as, a lien.

Indeed, § 162.12 only applies to "notices required by" Part I of Chapter 162, F.S., and LEE COUNTY's reading of this section leads to the conclusion that the "required" statutory notices are found only in §§ 162.06 (2), & (3). There, specific references to § 162.12 are made. This conclusion is bolstered by the use of the mandatory term "shall" in each of the cited sub-sections to reflect the "required" nature of the notice set forth in § 162.12. In contrast, the use of the term "notice" in §§ 162.07 (1) & (4), is not the type of "required" notice contemplated by § 162.12. Rather, the term is more synonymous with "notification." In § 162.09 (1), the term "due notice" in the sub-section's last sentence arguably refers back to the "reasonable effort to notify" set forth in § 162.06 (4), pertaining to violations that are "irreparable or irreversible in nature." These provisions implicitly authorize a "notification"

standard that is, or may be, less than the statutory notice set out in § 162.12. Lastly, the concluding phrase of § 162.12, refers to "alleged" violators, i.e., those whose cases have not yet been heard or found to have committed a violation. By inference, an "alleged" violator has not had an order imposing fine or lien issued against them. Likewise, absent such an order no statutory lien under § 162.09 (3), can arise on an "alleged" violator's property. Accordingly, it would be illogical and inconsistent with the well-established rules of statutory construction under Florida's jurisprudence to hold the provisions of § 162.12 apply to a code enforcement tribunal's orders imposing fines and liens.

To require a local government's code enforcement tribunal to serve or provide a copy of its orders imposing fines or liens by certified mail, return receipt requested, would impose a greater financial and administrative burden than the law requires or good public policy can justify. In fact, judicial imposition of such a standard would tip the balance of compliance with local codes in favor of those few respondents who routinely seek to avoid lawful regulations through procedural delays. Similar to that which would have to be borne by the City of Tampa, should the Court rule in favor of the Petitioner, the costs to all local governments throughout the State, including Lee County, would not be limited to merely additional mailing costs for certified, return receipt mail versus regular U.S. mail. Added labor costs would also be

incurred for staff time to process and track the certified mailing, as well as return of receipt, for each order. Given Lee County's most recent experience with return receipts being withheld by code enforcement respondents, staff time to follow-up to ensure return of said receipts would be unduly burdensome. This is especially true in light of the absence of any legal requirement to do so.

CONCLUSION

Based upon the foregoing, the Court should uphold the Second District Court of Appeal's decision in *Brown*, and find that the "required notice" set forth in § 162.12, does not apply to a code enforcement tribunal serving or providing copies of its code enforcement orders imposing fines or liens, or to the creation or attachment of statutory liens under § 162.09 (3), and quash *Jacobson* to the extent it conflicts with those findings and *Brown.*

Respectfully submitted this 11th day of February, 1999, by Attorneys for Amicus Curae, Lee County, Florida:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express on Jeff D. Jackson, Esq., 412 East Madison Street, Suite 900 Tampa, Florida 33602, and on Jorge I. Martin, Esq., Assistant City Attorney, City of Tampa, 315 East Kennedy Boulevard, Tampa, Florida 33602, on this 11th day of February, 1999. I FURTHER CERTIFY that the size and style of type used in this Amicus Brief is 14 point, nonproportional Times New Roman.

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