IN THE SUPREME COURT
STATE OF FLORIDA

FLORIDA DEPARTMENT OF REVENUE, and **THE SEBRING AIRPORT AUTHORITY** and **SEBRING INTERNATIONAL RACEWAY, INC.**,

Appellants,

vs.

CONSOLIDATED
CASE NOS. 94,105 & 94,118

2nd DCA Case No. 97-02707

LT. Case No. 94-424,
10th Jud. Cir.

C. RAYMOND MCINTYRE, Property Appraiser of Highlands County, Florida; and, **J. T. LANDRESS**, Tax Collector of Highlands County, Florida,

Appellees.

APPELLANT, FLORIDA DEPARTMENT OF REVENUE'S INITIAL BRIEF

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PRELIMINARY STATEMENT

The Plaintiffs in the trial court below, two of the Appellants before the Second District Court of Appeal, and two of the Appellants in this appeal are the Sebring Airport Authority, and Sebring International Raceway, Inc., referred to in this Initial Brief as "the Authority" and "the Raceway" respectively. Collectively they will be referred to "the Appellants."

One of the Defendants in the trial court below, an Appellant before the Second District Court of Appeal, and an Appellant in this appeal is the Department of Revenue, State of Florida, and will be referred to as "the Department" in this Initial Brief.

The other Defendants in the trial court below, the Appellees before the Second District Court of Appeal, and the Appellees in this appeal are C. Raymond McIntyre, Property Appraiser of Highlands County, Florida, and J.T. Landress, Tax Collector of Highlands County, Florida. In this Initial Brief, they will be individually referred to as "the Property Appraiser" and "the Tax Collector" respectively, collectively as "Appellees."

The trial court below was the Honorable J. Dale Durrance, Circuit Court Judge, Tenth Judicial Circuit in and for Highlands County, Florida. He will be referred to as "the trial court" in this Initial Brief.

References to the record on appeal will be prefixed with the letter R followed by the appropriate page number, e.g., R-001-005.

STATEMENT OF THE CASE AND FACTS

The Appellants are contesting the 1994 real property tax assessment upon the real property owned by the Authority and leased to the Raceway. R-001. The Appellants also contest the denial of the exemption from ad valorem taxes on said property. R-001.

The factual use of the subject property is identical to the use involved in the case involving prior tax years in which the trial court's decision finding the involved property taxable, was upheld by both the Second District Court of Appeal in Sebring Airport Authority v. McIntyre, 623 So. 2d 541 (Fla. 2d DCA 1993), (Sebring I), and the Florida Supreme Court in Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994)(Sebring II). The factual uses of the subject property included the operation of a racetrack by the lessee for profit and attendant functions, such as food stands, drink stands, souvenirs, all of which are, per se, proprietary, activities. See, Sebring Airport Authority, et al., v. McIntyre, et al., 718 So. 2d 296, 297 (Fla. 2d DCA 1998)(Sebring III).

The factual use of the subject property is not in dispute. The property involved is owned by the City of Sebring and leased to the Sebring International Raceway, Inc. It has permanent seating at a racetrack at which is annually held a race at which vehicles are raced. It is an event that is well-known in Florida and elsewhere.

The Appellants, based their claim for an exemption upon the enactment of Ch. 94-353, section 59, Laws of Fla., ("the 1994 amendment"), which amended section 196.012, Fla. Stat. (1993). The Appellants' position is that this Court's decision in Sebring II, no longer controls because of the 1994 amendment to section 196.012, Fla. Stat. (1993). The Appellants contended that the legislature possesses the power to declare a proprietary activity to be a governmental/sovereign activity and that such a legislative factual determination is binding on the judiciary.

The Property Appraiser contended that the legislature cannot, by legislative fiat, transform a purely proprietary activity into a sovereign/governmental activity and circumvent the Florida tax laws and constitutional limitations. The Property Appraiser further contended that governmental property, in the instant case, cannot be used for private proprietary purposes tax free.

The Appellants contended that it is a "sports facility with permanent seating" within the 1994 amendment and otherwise meets the requirements of the statutes since it is open to the public "with or without" charge, and therefore is exempt from taxation by virtue of the 1994 amendment.

The Department contended that the trial court should have construed the language contained in the 1994 amendment as not allowing for exemption for this particular property and thus avoid the constitutional issue. See Lykes Bros. v. City of Plant

City, 354 So. 2d 878 (Fla. 1978) (recognizing that legislature did not have constitutional authority to exempt municipally-owned property leased to a private lessee using the property for a proprietary purpose but interpreting statute to avoid declaring it unconstitutional), and Capital City Country Club v. Tucker, 613 So. 2d 448, 452 (Fla. 1993), (the court avoided declaring the statute unconstitutional, however, by holding that it did not apply to leases of property by private entities using the property for proprietary purposes).

Section 196.012(6), Fla. Stat., was amended in 1994 by Ch. 94-353, section 59, p. 2566, Laws of Fla., and states in pertinent part as follows:

> The use by a lessee, licensee or management company of real property or a portion thereof as a convention center, visitor center, a sports facility with permanent seating, concert hall, arena, stadium, park or beach is deemed a use that serves a governmental, municipal or public purpose or function when access to the property is open to the general public with or without a charge for admission.[1]/ (e.s.)

The Appellants contended that by amending section 196.012(6), Fla. Stat., the legislature added "sports facility with permanent seating" to the definition of the terms "governmental, municipal, or public purpose, or function," and therefore, the 1994 amendment included its racetrack operation. R-002-004.

The Property Appraiser challenged the constitutionality of

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[1]/ The 1994 amendment is applicable to the 1994 tax roll and subsequent tax rolls. Ch. 94-353, section 59, Laws of Fla.

section 196.012, Fla. Stat., in his second and third affirmative defenses, as follows:

Second Affirmative Defense

> If section 196.012, Florida Statutes (1993), contains language which purports to authorize exemption to plaintiffs based on the use of the described property, said statute is unconstitutional as authorizing an exemption for use of publicly-owned property not authorized in the Florida Constitution.

Third Affirmative Defense

> Section 196.012, Florida Statutes (1993), is unconstitutional, null, and void insofar as it purports to exempt the subject property leased to Sebring International Raceway, Inc., from ad valorem taxation.

R-029.

In its Final Summary Judgment, the trial court found that "[t]he factual uses of the subject property include the operation of a racetrack by the lessee for profit and attendant functions, such as food stands, drink stands, souvenirs, all of which are, per se, proprietary activities." R-132.

The trial court further found that section 196.012(6), Fla. Stat., as amended by Ch. 94-353, Laws of Fla., to be unconstitutional as an attempt to create an exemption not found in the Florida Constitution. The trial court struck and set aside the following language of section 196.012(6), Fla. Stat.:

> The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for

admission.

R-158.

Subsequently, the Second District Court of Appeal agreed with and affirmed the trial court's Final Summary Judgment, and held as follows:

> The statutory provision, section 196.012(6), under which the raceway now claims an exemption was amended in 1994 and provides, in pertinent part, as follows:
>
> > The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission.
>
> There is no doubt that the raceway falls within this provision of section 196.012(6). The question, however, is whether the legislature can by statutory enactment change the meaning of the term "governmental, municipal, or public purpose or function." We agree with the trial judge that the language quoted above is an impermissible attempt by the legislature to create a tax exemption that is not authorized by the Florida Constitution.

Sebring III, 718 So. 2d, at 297.[2]/

The Department, timely appealed the Second District's decision to this Court. The Appellants' also timely appealed the Second District's opinion to this Court. Upon motion this Court consolidated the two appeals.

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[2]/ The only provision of the 1994 amendment was this particular sentence, not the entire amendment. If this provision is found invalid, it is severable from the 1994 amendment. See, Ch. 94-353, section 60, Laws of Fla.

SUMMARY OF ARGUMENT

The issue in this case is whether the real property owned by the Authority, which is leased to the Raceway, is exempt from ad valorem taxation under sections 196.012(6) and 196.199(4), Fla. Stat.

The trial court and the Second District Court of Appeal erred in finding that part of section 196.012(6), Fla. Stat., as amended by Ch. 94-353, section 59, Laws of Fla., unconstitutional.

Section 196.012(6), Fla. Stat., was amended in 1994 by Ch. 94-353, section 59, p. 2566, Laws of Fla., and states in pertinent part as follows:

> The use by a lessee, licensee or management company of real property or a portion thereof as a convention center, visitor center, a sports facility with permanent seating, concert hall, arena, stadium, park or beach is deemed a use that serves a governmental, municipal or public purpose or function when access to the property is open to the general public with or without a charge for admission. (e.s.)

The Appellants contended that by amending section 196.012(6), Fla. Stat., the legislature added "sports facility with permanent seating" to the definition of the terms "governmental, municipal, or public purpose, or function," and therefore, the 1994 amendment included its racetrack operation.

The Property Appraiser contended that the legislature cannot, by legislative fiat, transform a purely proprietary activity into a sovereign/governmental activity and circumvent the Florida tax laws and constitutional limitations. The

Property Appraiser further contended that governmental property, in the instant case, cannot be used for private proprietary purposes tax free.

ARGUMENT

I. THE TRIAL COURT AND THE SECOND DISTRICT COURT OF APPEAL ERRED IN FINDING SECTION 196.012(6), FLA. STAT., AS AMENDED BY CH. 94-353, SECTION 59, LAWS OF FLA., UNCONSTITUTIONAL.

The issue in this case is whether the real property owned by the Authority,[3]/ which is leased to the Raceway, is exempt from ad valorem taxation under sections 196.012(6) and 196.199(4), Fla. Stat. Basically these provisions provide for exemption from ad valorem taxation when property, leased to a non-governmental lessee, is being used for a "governmental purpose" where the non-governmental lessee is performing a function or serving a governmental purpose.

This Court decided in 1994 that the leased property at issue in the instant case was subject to ad valorem tax, in a prior tax year. Sebring II. The factual uses of the property included the operation of a racetrack by the lessee for profit. The use of the property is identical to the use of the property in Sebring Airport Authority II. See, Sebring III, 718 So. 2d, at 297.

A. PROPER CONSTITUTIONAL INTERPRETATION OF A STATUTE

The trial court erred when it struck and set aside the following language of section 196.012(6), Fla. Stat.:

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[3]/ Canaveral Port Authority v. Department of Revenue, et al., 690 So. 2d 1226 (Fla. 1996).

> The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission.

R-158.[4]/ The Department submits that a proper analysis of the constitutional issues raised in the instant case necessitates the application of this Court of the following basic guidelines to actions challenging the constitutionality of tax statutes.

The Legislature is presumed to know the law as it exists when a statute is enacted and is also presumed to be acquainted with the judicial construction placed on the former laws on the subject. Williams v. Jones, 326 So. 2d 425, 435 (Fla. 1975). Nicoll v. Baker, 668 So. 2d 989, 991 (Fla. 1996). Furthermore, the Legislature is presumed to know the meaning of the words used and to have addressed its intent by using them in the enactment. S.R.G. Corporation v. Department of Revenue, 365 So. 2d 687 (Fla. 1978); Zukerman v. Alter, 615 So. 2d 661, 663 (Fla. 1993); and, Zukerman v. Hofrichter & Quiat, P.A., 646 So. 2d 187, 188 (Fla. 1994).

When assessing the constitutionality of a statute a court should resolve all doubts as to the validity of the statute, provided the statute may be given a fair construction that is

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[4]/ The only provision of the 1994 amendment was this particular sentence, not the entire amendment. If this provision is found invalid, it is severable from the 1994 amendment. See, Ch. 94-353, section 60, Laws of Fla.

consistent with the federal and state constitutions as well as legislative intent. State v. Stadler, 630 So. 2d 1072, 1076 (Fla. 1994). If an issue can be determined without declaring a statute unconstitutional, a court should endeavor to do so. Lloyd Enterprises, Inc., v. Department of Revenue, 651 So. 2d 735, 738 (Fla. 5th DCA 1995).

Florida courts have consistently held that examinations of the constitutionality of a statute must be restricted to the issue of whether any state of facts, either known or assumed, afford support for the challenged statute. See, e.g., State v. Bales, 343 So. 2d 9, 11 (Fla. 1977); State ex rel. Adams v. Lee, 122 Fla. 639, 166 So. 249, 254 (1935), aff'd on rehearing, 122 Fla. 670, 166 So. 262 (1936), cert. denied, 299 U. S. 542, 57 S. Ct. 15. (1936). In taxation, even more than other fields, the Legislature possess the greatest freedom in classification; and the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it. Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383, 385 (Fla. 4th DCA 1983), rev. denied, 434 So. 2d 888 (Fla. 1983). The polestar for judging the validity of a particular classification is whether that classification rests upon some ground of difference having a fair and substantial relation to the object of legislation, so that all persons similarly circumstanced shall be treated alike. Department of Revenue v. Amrep Corp., 358 So. 2d 1343, 1349 (Fla. 1978), quoting with approval, Ohio Oil Co. v. Conway, 281 U. S.

146, 50 S. Ct. 310 (1929).

Florida has been given a great latitude in making tax classifications, and the burden is very heavy on one who seeks to overturn such classification on the basis that it violates equal protection clause. See, R.R. Donnelley & Sons v. Fuchs, 670 So. 2d 113 (Fla. 1st DCA 1996), rev. denied, 677 So. 2d 841 (Fla. 1996), cert. denied, __ U.S. __, 117 S.Ct. 540 (1996). The state is accorded a wide range of discretion when classifying for taxation purposes, provided the classification is reasonable, non-arbitrary, and rests one some ground of difference having a fair and substantial relation to the object of legislation. In Re Advisory Opinion to the Governor, 509 So. 2d 292, 303 (Fla. 1987).

It is beyond peradventure that every law is presumed valid. Bunnell v. State, 453 So. 2d 808 (Fla. 1984); Metropolitan Dade County v. Bridges, 402 So. 2d 411 (Fla. 1981). Given this presumption, the burden of proving a statute unconstitutional is upon the party challenging the act. Peoples Bank of Indian River County v. State, Department of Banking and Finance, 395 So. 2d 521 (Fla. 1981). The challenging party must prove beyond all reasonable doubt that the challenged act is in conflict with some designated provision of the constitution. Metropolitan Dade County v. Bridges, supra; A.B.A. Industries, Inc., v. City of Pinellas Park, 366 So. 2d 761 (Fla. 1979).

Furthermore, the Florida courts will not pass upon the

wisdom of the Legislature in enacting the tax or question the choice made by the Legislature among the various options available to it. See, Fraternal Order of Police, Metro. Dade County, Lodge No. 6, v. Department of State, 392 So. 2d 1296 (Fla. 1980). Rather, once the Legislature makes a determination that the law has an important public purpose, such as taxation for revenue sources, the party challenging the determination must show that this legislative determination was so clearly wrong that it was beyond the power of the Legislature to enact. State v. Orange County Industrial Development Authority, 417 So. 2d 959 (Fla. 1982). Public purpose determinations are reserved for Legislature and the party challenging such determination must demonstrate that law enacted was beyond power of Legislature. State v. Hodges, 506 So. 2d 437 (Fla. 1st DCA 1987), rev. denied, 515 So. 2d 229 (Fla. 1987). Finally, legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous. University of Miami v. Echarte, 618 So. 2d 189 (Fla. 1993), cert. denied, __ U.S. __, 114 S. Ct. 304 (1993).

Exemptions to the taxing statutes are special favors granted by the Legislature and are to be strictly construed against the taxpayer. State ex rel. Szabo Food Service of North Carolina v. Dickinson, 286 So. 2d 529 (Fla. 1973); Wanda Marine Corporation v. State, Department of Revenue, 305 So. 2d 65 (Fla. 1st DCA 1974). It is well settled that one who would shelter himself

under an exemption clause contained in a taxing statute must clearly show that he is entitled under the law to such exemption. Green v. Pederson, 99 So. 2d 292 (Fla. 1957).

Statutes are presumed to be constitutional and the courts must construe them in harmony with the constitution. Florida Department of Education v. Glasser, 622 So. 2d 944, 946 (Fla. 1993). Statutes are presumed constitutional and if there is any reasonable way for the statute to be construed not in conflict with the constitution, it must be so construed. State v. Globe Communications Corp., 648 So. 2d 110, 113 (Fla. 1994); Florida League of Cities v. Administration Commission, 586 So. 2d 397, 412(Fla. 1st DCA 1991). When reasonably possible, a court is obligated to interpret a statute in such a manner as to uphold its constitutionality. Capital City Country Club v. Tucker, 613 So. 2d 448, 452 (Fla. 1993); Lykes Bros., Inc., v. City of Plant City, 354 So. 2d 878 (Fla. 1978).

The Legislature is presumed not to pass meaningless legislation. Smith v. Piezo Technology and Professional Administrators, 427 So. 2d 182 (Fla. 1983). The Courts are not to presume that a given statute employs "useless language." Piper Aircraft Corporation v. Schwendmann, 564 So. 2d 546, 547 (Fla. 3d DCA 1990).

In sum, because every presumption is indulged in favor of the validity of the Legislature’s action, the trial court erred by invalidating the statute in question because it has not been

shown that the Legislature has clearly usurped its power. Eastern Air Lines v. Department of Revenue, 455 So. 2d 311, 314 (Fla. 1984), (citing, Walters v. City of St. Louis, 347 U. S. 231, 74 S. Ct. 505 (1954)).

CONCLUSION

The Department moves this honorable Court to reverse the trial court and the Second District Court of Appeal, and uphold section 196.012(6), Fla. Stat., as amended by Ch. 94-353, section 59, Laws of Fla., as a constitutionally valid statute.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of November, 1998 to: **Paul Pizzo**, **Esq.**, and **Hala A. Sandridge**, **Esq.**, Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., P.O. Box 1438, Tampa, FL 33601; **Larry E. Levy**, **Esq.**, The Levy Law Firm, 1828 Riggins Road, Tallahassee, Florida 32308; **J. Wendell Whitehouse**, **Esq.**,J. Wendell Whitehouse, P.A., 445 S. Commerce Ave., Sebring, FL 33870; and, **Steven L. Brannock**, **Esq.**, Holland & Knight, P.O. Box 1288, Tampa, Florida 33601.

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