IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,384

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Plaintiff - Appellant

v.

ERNIE LEE MAGAHA,
Clerk of the Court for Escambia County, Florida

and

ESCAMBIA COUNTY, FLORIDA,

Defendants - Appellees

ON CERTIFIED QUESTIONS FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(Case Number 98-2962)

ANSWER BRIEF OF APPELLEE ERNIE LEE MAGAHA
Clerk of Court for Escambia County, Florida

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CERTIFICATE OF TYPE SIZE AND STYLE

The text of this brief contains 14 point Times New Roman type size and style.

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (continued)

STATEMENT OF THE CASE AND FACTS

Pursuant to Fla. R. App. P. 9.210(c) an answer brief may omit the statement of the case and the facts if there is no disagreement with the information stated in this regard by the Appellant in the initial brief. Mr. Magaha agrees generally with most of the statements made by Frankenmuth which describe the history of the case and facts giving rise to the litigation. However, Mr. Magaha feels that Frankenmuth did not recite the entire set of facts pertinent to this matter, and therefore adds the following information.

The subject matter of this lawsuit is a Master Lease Purchase Agreement containing three equipment and payment schedules (hereafter "Master Lease" or "Lease") entered into between former Escambia County Comptroller Joe Flowers and Unisys Leasing Corporation (hereafter "Unisys") over a period of two years from May 1992 to May 1994 to acquire and finance computer equipment for use in the Comptroller's office. Vol. 1, Doc. 1. The Lease was a long term obligation with a term exceeding five years, and was designated as a tax-exempt obligation meaning the interest earned on the instrument is tax exempt in the hands of the holder, in this case Frankenmuth Mutual Insurance Company (hereafter "Frankenmuth"). Doc.1, Vol. 1, Appendix A, paragraph 7. Frankenmuth acquired the Lease by an assignment from Chicorp Financial Services which had taken it by assignment from Unisys. Vol. 1, Doc. 1, Exhibits F to J. This Lease is the subject of litigation because the Office of the Comptroller for Escambia

County was abolished by the Florida Legislature as of August 1, 1995 [Vol.1, Doc. 1, Ex. K-3] and thereafter, neither Escambia County (the "County") nor Ernie Lee Magaha, Clerk of the Court, accepted responsibility for the Lease. Vol. 1, Docs. 26 and 30.

Frankenmuth in the recitation of facts in its brief omitted the reason for the abolition of the Comptroller's Office. Although the act of the Legislature abolishing the office of Comptroller did not set out specific reasons for doing so, the basis for the action can be inferred from events that happened earlier in 1995. Mr. Flowers was indicted by the Escambia County Grand Jury for illegal activities in office which included entering into the subject Lease without legal authority. Vol. 1, Doc. 13, Exhibit A. Mr. Flowers pled no contest to these and other charges on September 28, 1995. Id. at Exhibit B.

Ernie Lee Magaha holds the office of Clerk of Court for Escambia County, and until August 1, 1995, performed only duties relating to the administration of the courts in the County. Prior to August 1995, the duties relating to the financial matters of the County were performed by a separately elected Comptroller who served as ex-officio clerk to the Board of County Commissioners, recorder, auditor, and custodian of County funds. Until he was indicted and removed from office, the County Comptroller was Joe A. Flowers. Vol. 1 Doc. 1. This split in duties was authorized under Article V §16 of the Constitution of the State of Florida which provides that the statutory duties of a county clerk of the court can be divided between two elected county officials by general or

special law. The Florida legislature enacted two special acts in 1972 dividing these duties in Escambia County between the Clerk of Court and a Comptroller. Vol. 1, Doc. 1, Exhibits K-1 and K-2. After Mr. Flowers was indicted and his office abolished, the duties delegated under these special acts to the Comptroller returned by operation of law to the Clerk of Court. Vol. 1, Doc. 30.

However, at the time the office of Comptroller was abolished in Escambia County, there were duties being performed by that office which were not specifically delegated to the Clerk of Court under the Florida Constitution. Vol. 2, Doc. 93, Appendix 7. Pursuant to a Memorandum of Understanding entered into between the Clerk of Court and Escambia County on July 27, 1995 (hereafter the "Memorandum"), these extra duties which included data processing, purchasing and fuel distribution were returned to the purview of the County effective on August 1, 1995. Id. at page 1. The Clerk of Court accepted responsibility only for duties as ex-officio clerk to the Board of County Commissioners, auditor, recorder and custodian of county funds. Id. Control over all of the computer equipment acquired under the Lease, except the imaging system acquired under Schedule 02, reverted to the County. Id. at pages 2,3. The Memorandum also set forth conditions under which the existing computer equipment and software acquired under the Lease would be replaced. Id. at pages 2 - 5. The County and the Clerk of Court had by this time discovered that the computer systems acquired under the Lease

were not suitable for nor capable of running the programs necessary for comprehensive financial or data management of a county. Vol. 2, Doc. 93, Appendices 6, 7, 8. The Memorandum further specifically stated that references in the Memorandum to the computer equipment acquired under the Lease was not to be construed as a ratification of any purchase, lease purchase or other contract entered into by the former Comptroller in connection with computer equipment or software. Id. at page 3.

When Mr. Flowers entered into the original Master Lease in 1992 he did not obtain the approval of the County as required under §125.031, Florida Statutes. Vol. 2, Doc. 97, 11/30/95 Deposition of Joe Flowers at page 64. The subject Lease clearly came within the parameters of this statute in that the term of the Lease exceeded 5 years. Vol. 1, Doc. 1, Exhibits C to E. Mr. Flowers also signed documents in connection with the Lease pledging ad valorem taxes as a source of payment for the Lease. Vol. 2, Doc. 97, 11/30/95 Deposition of Joe Flowers at pages 84, 85 & 87.

Mr. Magaha was not a party to, did not sign, and did not have any knowledge of the Lease entered into by the Comptroller until the content of the Lease became public knowledge in 1995. Vol. 3, Doc. 104. The only parties to the Master Lease and its subsequent schedules were Mr. Flowers and Unisys until the Lease was assigned by Unisys to Chicorp and later to Frankenmuth. Vol. 1, Doc. 1.

Because the legality of the Lease was in question, payments due under the Lease

on September 1 and September 30, 1995 were not made. Vol. 1, Docs. 1 and 30. Frankenmuth filed suit in September 1995 for declaratory judgment to determine the validity of the Lease claiming that both Escambia County and Ernie Lee Magaha , the Clerk of the Court, were liable under the Lease, and sought an injunction to prevent the exercise of the non-appropriation of funds termination provision or any substitution of equipment should the lease be terminated. Vol. 1, Doc. 1. The District Court granted motions for summary judgment filed by the County and Mr. Magaha finding that the Comptroller, Mr. Flowers, did not comply with the requirements of Florida law when he entered into the Lease but that the County through its subsequent actions had ratified the Lease with the exception of the non-substitution provisions therein which were contrary to Florida law and consequently null and void. Vol. 4, Doc. 140. The Court further found that Mr. Magaha had no liability or responsibility of any kind under the Lease. Id.

SUMMARY OF THE ARGUMENT

The questions certified by the Eleventh Circuit Court of Appeals are directed to the issues of (1) whether or not Escambia County's acts or omissions with respect to the Lease were sufficient to find the County had ratified the Lease entered into by the County Comptroller and Unisys Leasing Corporation, and (2) whether the non-substitution clause of the Lease violates Article VII, §12, of the Florida Constitution.

Neither of these questions raises an issue as to the liability or responsibility of Appellee Ernie Lee Magaha under the Lease. From the reasons stated by the Court of Appeals for certifying the questions to this Court, it is apparent that the Appeals Court accepts the district court's finding that Mr. Magaha has no responsibility under this lease. Mr. Magaha has taken no position in the federal appeal on the issues raised in the certified questions. Mr. Magaha believes it is more appropriate for him to defer to Escambia County for a response to the arguments raised by Frankenmuth in its brief pertaining to the County's liability under the lease, the powers of counties to enter into contractual obligations, and whether non-substitution clauses are authorized in contracts with counties in Florida. Mr. Magaha did address the issue of the non-substitution clause in his motion for summary judgment before the district court, and specifically concurs with the position of the County that the non-substitution clause violates Article VII, §12, of the Florida Constitution.

Frankenmuth has independently raised the issue of the liability of the Clerk of the Court under the lease and urges this court to take up the question as to the power of constitutional officers to independently enter into long term lease contracts without first obtaining County Commission approval as required under §125.031, Fla. Stat. Mr. Magaha submits that the Eleventh Circuit Court of Appeals did not seek guidance on this issue, and therefore, this Court should not consider the issue. If the Court chooses to make a determination in this regard, the Court should agree with the decision of the district court that (1) county constitutional officers are not authorized to independently enter into long term lease contracts under Florida law, and (2) under the provisions of §125.031, Fla. Stat., only counties have the authority to enter into long term lease contracts after said contracts are approved by their boards of county commissioners.

ARGUMENT

I. THE QUESTIONS CERTIFIED TO THE FLORIDA SUPREME COURT INVOLVE ISSUES WHICH PERTAIN TO THE POWERS AND DUTIES OF FLORIDA COUNTIES TO ENTER INTO CONTRACTS AND LEASES; THE STANDARDS BY WHICH COUNTIES MUST "APPROVE" CONTRACTS; AND THE VALIDITY OF NON-SUBSTITUTION CLAUSES CONTAINED IN COUNTY CONTRACTS. THESE ISSUES SHOULD BE ADDRESSED EXCLUSIVELY BY ESCAMBIA COUNTY WHICH IS ALSO A PARTY TO THIS APPEAL INASMUCH AS THE CLERK OF COURT HAS NOT TAKEN A POSITION IN THE FEDERAL APPEAL ON THESE ISSUES.

The questions certified by the Eleventh Circuit Court of Appeals are directed to the issues of (1) whether or not Escambia County's acts or omissions with respect to the Lease were sufficient to find the County had ratified the Lease entered into by the County Comptroller and Unisys Leasing Corporation, and (2) whether the non-substitution clause of the Lease violates Article VII, §12, of the Florida Constitution.

Neither of these questions raises an issue as to the liability or responsibility of Appellee Ernie Lee Magaha under the Lease. From the reasons stated by the Court of Appeals for certifying the questions to this Court, it is apparent that the Appeals Court accepts the district court's finding that Mr. Magaha has no responsibility under this lease. Mr.

Magaha has taken no position in the federal appeal on the issues of whether or not the actions of the County were sufficient for ratification of the Lease, or whether non substitution clauses can validly be included in contracts with counties in Florida. As the County is separately represented in this proceeding, Mr. Magaha feels it would be more appropriate for the County to address these issues. Mr. Magaha further wishes to avoid duplication of arguments and unnecessary use of judicial resources. Mr. Magaha defers to Escambia County to respond to the arguments raised by Frankenmuth in its brief pertaining to the County's liability under the lease, the powers of counties to enter into contractual obligations, and whether non-substitution clauses are authorized in contracts with counties in Florida. For the record, Mr. Magaha did include argument in his motion for summary judgment in the proceedings before the district court regarding the validity of the non-substitution clause in the Lease. Mr. Magaha specifically concurs with the position of the County that the non-substitution clause violates Article VII, §12, of the Florida Constitution.

II. THE COURT SHOULD NOT ADDRESS THE ISSUE RAISED BY FRANKENMUTH REGARDING THE LIABILITY OF THE CLERK OF COURT UNDER THE LEASE AS NO CERTIFIED QUESTION PERTAINS TO THIS ISSUE; IF THE COURT DOES ADDRESS THE ISSUE, IT SHOULD

CONCLUDE THAT THE CLERK OF COURT HAS NO OBLIGATION OR LIABILITY UNDER THE LEASE ENTERED INTO BY THE FORMER ESCAMBIA COUNTY COMPTROLLER.

Frankenmuth has independently raised the issue of the liability of the Clerk of the Court under the Lease and urges this court to take up the question as to the power of constitutional officers to independently enter into long term lease contracts without first obtaining County Commission approval as required under §125.031, Fla. Stat. Mr. Magaha submits that the Eleventh Circuit Court of Appeals did not seek guidance on this issue, and therefore, this Court should not consider the issue. If the Court chooses to make a determination in this regard, the Court should agree with the decision of the district court that (1) county constitutional officers are not authorized to independently enter into long term lease contracts under Florida law, and (2) under the provisions of §125.031, Fla. Stat., only counties have the authority to enter into long term lease contracts after said contracts are approved by their boards of county commissioners.

Article V §16 of the Constitution of the State of Florida authorizes the statutory duties of the clerk of the court in Florida counties to be divided between two elected officials by general or special law. Under this constitutional provision, the duties related to the administration of the county courts are handled by the clerk of the court, with duties related to the financial matters of the county delegated to a comptroller who serves as ex-

officio clerk to the Board of County Commissioners, auditor, recorder and custodian of all county funds. The special act of the legislature which created the office of the Escambia County Comptroller in 1972 was repealed effective August 1, 1995 following the indictment of the then sitting Comptroller, Mr. Joe Flowers, and his subsequent resignation from office. This action resulted in the statutory Comptroller duties being returned to the office of Clerk of the Court.

Frankenmuth contends that Mr. Magaha, as Clerk of Court, is the "successor" to former Escambia County Comptroller Joe Flowers due to the abolishment of the office on August 1, 1995, and as that "successor" Mr. Magaha succeeds to all "valid obligations of the office of the Comptroller," including the Lease. Frankenmuth further contends that because Mr. Magaha now is required by law to perform the duties of ex-officio clerk to the Board, auditor, recorder and custodian of all county funds, and the computer equipment acquired by the Lease was used for a period of time in the Clerk's performance of these duties, this Lease has become legally enforceable against the Office of the Clerk of Court. These contentions are not supported by law or fact.

The subject Lease is a long term financial obligation which was designated as a government obligation the interest on which is excluded from taxation under federal and state laws. See Vol. 1, Doc. 1, Exhibit A, paragraph 7. This designation brought the Lease within the definition of a county bond. See §215.43(1)(c), Fla. Stat. The property

acquired under the Lease, and the payment provisions, are shown on three schedules attached to the Lease documents which are Exhibit A to the Complaint. Vol. 1, Doc. 1. According to the three schedules, the length of the lease term is 88 months and the total payments to be made under the Lease exceed $4,800,000. Vol. 1, Doc. 1, Exhibits C-E.

The Lease was executed by Mr. Flowers in his capacity as Comptroller of Escambia County. Vol. 1, Doc. 1, Exhibit A. It is undisputed that Mr. Flowers did not obtain the approval of the Escambia County Board of County Commissioners at any time either before or after the subject Lease was executed on May 20, 1992. Vol. 1, Doc. 97, 11/30/95 Deposition of Joe Flowers at page 64. It is also undisputed that the Escambia County Grand Jury indicted Mr. Flowers for exceeding his authority in entering into the Lease without County approval [Vol. 1, Doc. 13, Exhibit A] and that Mr. Flowers pled no contest to this and other charges on September 28, 1995. Id. at Exhibit B.

Whether or not Mr. Magaha was the "successor" to Mr. Flowers, the former Comptroller, really does not matter to the outcome of this case. The key phrase as stated by Frankenmuth at note 5 on page 19 of its brief is whether the Lease is a "valid obligation" of the office of the Comptroller. The district court correctly determined that the Lease was not a valid debt or obligation of the Comptroller's office in that only the County could enter into the Lease obligation under Florida law, and if the actions of the County indeed ratified the Lease, then the County was obligated under the valid

provisions of the Lease. Mr. Magaha is not taking a position on whether or not the County actually ratified the Lease. Mr. Magaha agrees with the district court that the Clerk of Court is not obligated under the Lease.

It is important in considering this matter to understand where the power of the County and its constitutional officers is derived. The Florida Constitution established counties as political subdivisions of the State of Florida, created the categories of county officers, including Clerks of Court, and declared the powers and duties of the County and its officers would be as set forth by general or special law. Article VIII, § 1, Florida Constitution. The Florida Supreme Court in the case Amos v. Mathews, 126 So. 308 (1930), clearly delineated that counties and their officers have only such powers as are granted by the legislature. Regarding counties, the court found:

> "All local powers must have their origin in grant by the state; Constitution clearly implies that, save as otherwise clearly contemplated, state functions shall be performed by state officers and county functions of exclusively local concern by county officers (Const.arts. 3,4,5, art. 8, §§ 1-6, art. 12, §15, art. 18, §10, art. 13 §3, art. 7 §3, and art. 16, §4). It is fundamentally true that all local powers must have their origin in a grant by the state, which is the fountain and source of authority....A county is an arm or agency of the state, having no inherent powers, but deriving its powers wholly from the sovereign state."

Regarding county officers, the court found:

> "Although the Constitution itself recognizes the existence of local county officers for the performance of governmental functions of exclusively local concern, under sections 5 and 6 of article 8 of the Constitution the Legislature possesses powers of the broadest possible nature consistent with the constitutionally recognized existence of these local officers in determining the extent of their local powers and duties."

Therefore, under Florida law, counties and their local officers, including the clerks of the court and county comptrollers where the duties have been divided, have only that power and authority granted to them by the acts of the Florida Legislature. See also State v. Walton County, 112 So. 630 (Fla. 1927) [County commissioners are constitutional officers whose powers and duties shall be fixed by the legislature];Cone v. King, 196 So. 697 (Fla. 1940) [Duties and compensation of tax assessors are, under the Constitution, prescribed by law and hence are statutory and not contractual]; Alachua County v. Powers, 351 So.2d 32 (Fla. 1977) [discussed elsewhere in this brief]; Weaver v. Heidtman, 245 So. 2d 295 (1st DCA 1971) [Counties do not possess any indicia of sovereignty but are creatures of the legislature, created by constitutional provision, and are accordingly subject to legislative prerogatives in the conduct of their affairs]. Further, the Florida Supreme Court has held that when the Constitution prescribes the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Amos v. Mathews, supra.

Examination of the Florida Statutes clearly establishes that the district court

was correct in its determination that only the County had the power to enter into the Lease.

The powers and duties of Counties are set forth primarily in Chapter 125, Florida Statutes. §125.01(1), Fla. Stat., provides that the legislative and governing body of a county shall have the power to carry on county government, including the power to borrow and expend money; issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner and subject to such limitations as may be provided by general law. See § 125.01(1)(r), Fla. Stat. Under §§ 125.01 (3)(a) and (b), Fla. Stat., the legislature granted broad home rule powers to counties to insure their ability to effectively govern:

> "(a) No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated, including specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.
>
> (b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."

§125.031, Fla. Stat., further clarifies the county's power to enter into lease or lease-purchase arrangements for properties needed for public purposes. That section reads:

> **§125.031 Lease or lease-purchases of property for public purposes.**

> Counties may enter into leases or lease-purchase arrangements relating to properties needed for public purposes for periods not to exceed 30 years at a stipulated rental to be paid from current or other legally available funds and may make all other contracts or agreements necessary or convenient to carry out such objective. The county shall have the right to enter into such leases or lease-purchase arrangements with private individuals, other governmental agencies, or corporations. When the term of such lease is for longer than 60 months, the rental shall be payable only from funds arising from sources other than ad valorem taxation. Such leases or lease-purchase arrangements shall be subject to approval by the board of county commissioners, and no such lease or lease-purchase contract shall be entered into without said approval.

The office of Clerk of the Court is established in Article V, Section 16 of the Florida Constitution, and Article VIII, §1(d). The duties of the Clerk of Court (or the Comptroller) with respect to the county commission are set forth as "ex-officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds." The legislature codified these duties under §125.17 and §28.12, Fla. Stat., which collectively provide:

> "The clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners. He or she shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct. The clerk shall have custody of their seal, shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed, and may give copies of writings in his or her custody as clerk of said board, attested by his or her signature and authenticated by said seal."
>
> The powers and duties of the clerk of court generally are set forth in Chapter 28, Florida Statutes. Examination of Chapter 28, the sections of the Florida Constitution

which refer to Clerks of Court, and Chapter 125 reveals no authority for the Clerk of Court to exercise any powers reserved to the counties under Chapter 125, and other laws of Florida. Specifically, there is no authority to enter into long term leases, give certificates of indebtedness, issue bonds or exercise the other powers incident to "carrying on county government" exclusively reserved to the County. As the office of Comptroller of Escambia County was created to undertake those duties of the Clerk of Court as they related to acting as clerk to the Board, recorder, auditor and custodian of county funds, the Comptroller had no greater powers than those conferred on the Clerk of the Court in that capacity. Examination of the special acts creating the office of Comptroller of Escambia County reveals no authority to issue or incur debt. Vol. 1, Doc. 1, Exhibits K-1 and K-2.

The duties of the clerk of court are largely ministerial in that the Clerk has no discretion in the carrying out of the duties mandated to his or her office under the Florida Constitution or the Florida Statutes. See Times Pub. Co. v. Ake, 645 So.2d 1003 (2nd DCA 1994), rev. granted 651 So.2d 1194, approved 660 So.2d 255 (Fla. 1995); Alachua County v. Powers, supra. The County has the power to govern and all

of the powers associated with that authority. County elected officials have only those duties and powers enumerated in the statutes pertaining to their offices.

Frankenmuth claims that Clerks of Court, including their "alter ego" county comptrollers, have a portion of the sovereign power and therefore they have the right to exercise whatever sovereign powers they need to further their ability to fulfill their statutory and constitutional obligations. Taking this argument to its logical conclusion, Frankenmuth, in claiming that Comptroller Flowers had the independent authority to enter into the Lease, wants this Court to find that constitutional officers can independently incur debt, pledge ad valorem taxes, and enter into long term lease purchase agreements without the consent of the governing body of the county in which they operate. As support for this contention Frankenmuth cites Alachua County v. Powers, 351 So.2d 32 (Fla. 1977). The Florida Supreme Court in the Alachua County case did not advocate a grant of a portion of the sovereign power to Clerks of Court in order to allow the Clerk to take over duties specifically delegated by the Florida legislature to the County governing body. The case arose when the Clerk of the Circuit Court of Alachua County sued the Alachua County Board of County Commissioners seeking a declaratory judgment to clarify his fiscal duties as auditor, accountant, custodian, and investor of county funds. The reference to the delegation of a portion of the sovereign power to the Clerk of Court was made in connection with an analysis of

whether Alachua County could require the Clerk's office to include its employees in a county wide uniform pay plan. The Court carefully analyzed the provisions of the Florida Statutes and the Florida Constitution as they pertained to the duties and powers of the Clerk of Court, and other constitutional county officers, and concluded that the County could not set a uniform pay plan for employees of county constitutional officers. In particular, as to the Clerk's office, the Court found that §28.06, Fla. Stat. authorizes the Clerk to appoint deputies to assist in the constitutional and statutory duties of the office, and consequently, the Clerk had the authority to determine their wages and duties. The Alachua County case was premised on the holding that counties and constitutional county officials derive their authority and responsibility from both constitutional and statutory provisions. This case in no way supports the sweeping grant of power Frankenmuth attributes to it.

As neither Mr. Flowers, as Comptroller, nor Mr. Magaha, as Clerk of the Court had the authority under the special acts, statutes, or constitutional provisions which created their offices and under which they performed their duties, to enter into lease purchase instruments, issue bonds or other forms of long term debt, Frankenmuth's assertion that the Lease obligation is a valid debt of the former Comptroller's office cannot be supported. The district court correctly concluded that the validity and enforceability of this Lease turns on whether or not the County ratified it or is otherwise

estopped from denying responsibility.

It should also be noted that the Clerk of the Court is specifically prohibited by Florida law from paying any claims against county funds which are not authorized by law and would be held personally liable for doing so. §129.08, Fla. Stat. Mr. Magaha has no statutory authority as Clerk of Court to enter into a Lease such as the one in issue here, and unless and until a determination is made that the County is liable under the Lease, cannot authorize any payments to be made on the Lease.

Consideration should also be given to the facts that Mr. Magaha was not a party to the Lease, did not sign the Lease and was not aware of its existence until 1995 when it became a matter of public knowledge. Vol. 3, Doc. 104. The office of Clerk of the Court was not involved in any manner in the acquisition of the computer equipment by the Comptroller's office. Id. Mr. Magaha could not and would not accept responsibility under the Lease and the district court correctly recognized that his office should not be held responsible or liable under the instrument. All of the cases cited by Frankenmuth on corporate mergers and assumption of corporate debt do not apply to this set of facts. Matters of public policy take precedence over certain legal principals applicable to private business transactions. Private parties who enter into contracts with public bodies and officials are held responsible for knowing whether or not the contracting party had the authority to contract. Unless a contract which has been entered into by a public agent

acting without authority is ratified by the public body, then the contract is not enforceable against the public body or payable from public funds. The reason for the rule is found in public policy, and the rule is indispensable in order to guard the public against losses and injuries arising from the fraud, or mistake, or rashness and indiscretion of their agents. See 10A Eugene McQuillan, The Law of Municipal Corporations, §29.17- Contract made by wrong officer or board.

Under all the facts and circumstances of this case, the Clerk of Court should not be held responsible under the Lease unlawfully entered into by the former Escambia County Comptroller.

CONCLUSION

The questions certified to the Florida Supreme Court are directly related to the ultimate issue of whether Escambia County ratified the subject Lease and do not address any issues on which the Clerk of the Court has taken a position in the appeal currently pending before the Eleventh Circuit Court of Appeals. Consequently, Mr. Magaha defers to Escambia County for the responses to the certified questions, but does concur with the County's conclusion that the non-substitution clause of the Lease violates Article VII, §12, of the Florida Constitution.

Frankenmuth urges this Court to find that the former Escambia County Comptroller had independent authority to enter into the Lease without the approval of the Board of County Commissioners, and consequently the Clerk of Court should succeed to the duties and obligations of the Lease. The Eleventh Circuit Court of Appeals did not ask for guidance by this Court on that issue, and from the facts stated in the Court of Appeals order certifying the questions, it appears that the Eleventh Circuit agrees with the district court's finding that the Comptroller had no independent authority to enter into the Lease, and consequently, the Clerk of Court could not be held responsible under the Lease provisions. Under these circumstances, the Florida Supreme Court should not take up this issue. However, if the Court chooses to address the authority of county constitutional officers to independently enter into long term lease contracts, the Court

should rule that no such authority exists under established Florida law.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

It is hereby certified that the original and seven copies of this Answer Brief were forwarded to the Clerk for the Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927 by U.S. Mail, and that a copy of this brief was served on J. Lofton Westmoreland, attorney for Frankenmuth Mutual Insurance Company, Appellant, by hand delivery to SunTrust Tower, 9th Floor, Pensacola, Florida 32501, and on David Tucker, Janet Lander and James Messer, attorneys for Escambia County, Appellee, by hand delivery to 14 W. Government Street, Room 411, Pensacola, Florida 32501, on this 5th day of October, 1999.

/s/
Paula G. Drummond