

IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC2024-0652, SC2024-0656,
SC2024-0664, SC2024-0681 (CONSOLIDATED)
L.T. CASE NO. 372022CA001562

STATE ATTORNEYS for the SECOND,
SEVENTH and NINTH JUDICIAL CIRCUITS,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, etc.,

Appellees.

ALACHUA COUNTY TAX COLLECTOR, et al.,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,

Appellees.

PALM BEACH COUNTY, FLORIDA, et al.,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,

Appellees.

ALACHUA COUNTY, FLORIDA, et al.,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,

Appellees.

AMICUS BRIEF OF THE FLORIDA TAX COLLECTORS
ASSOCIATION, INC.,
IN SUPPORT OF APPELLANTS

On Appeal from a Final Bond Validation Judgment
of the Second Judicial Circuit, in and for
Leon County, Florida

Thomas M. Findley (FBN 797855)
Peter D. Webster (FBN 185180)
CARLTON FIELDS, P.A.
215 South Monroe Street, Suite 500
Tallahassee, FL 32301-1866
Telephone: (850) 224-1585

***Attorneys for Amicus Curiae
The Florida Tax Collectors Association, Inc.***

TABLE OF CONTENTS

	Page
STATEMENT OF THE IDENTITY AND INTEREST OF THE FLORIDA TAX COLLECTORS ASSOCIATION AS AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	4
THE TRIAL COURT HAD NO POWER TO ORDER FLORIDA TAX COLLECTORS TO COLLECT NON-AD VALOREM ASSESSMENTS IMPOSED OUTSIDE OF THEIR COUNTIES' GEOGRAPHIC AREAS AS PART OF THIS BOND VALIDATION CASE	4
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF COMPLIANCE.....	12

TABLE OF AUTHORITIES

	Page(s)
<i>Fla. Bankers Ass’n v. Fla. Dev. Fin. Corp.</i> , 176 So. 3d 1258 (Fla. 2015)	3
<i>Alachua County v. Powers</i> , 351 So. 2d 32 (Fla. 1977)	4
<i>Joiner v. Pinellas County</i> , 279 So. 3d 860 (Fla. 2d DCA 2019).....	4
<i>Keys Citizens for Responsible Gov’t, Inc., v. Florida Keys Aqueduct Auth.</i> , 795 So. 2d 940 (Fla. 2001)	5
<i>Warner Cable Commc’ns, Inc. v. City of Niceville</i> , 520 So. 2d 245 (Fla. 1988)	5
<i>Walters v. City of Tampa</i> , 88 Fla. 177, 101 So. 227 (1924).....	6
<i>Halifax Hosp. Med. Ctr. v. State</i> , 278 So. 3d 545 (Fla. 2019)	6
<i>Escambia County v. Bell</i> , 717 So. 2d 85 (Fla 1st DCA 1998)	7

**STATEMENT OF THE IDENTITY AND INTEREST
OF THE FLORIDA TAX COLLECTORS ASSOCIATION
AS AMICUS CURIAE**

The Florida Tax Collectors Association, Inc. (“Association”), represents the interests of the duly elected Tax Collectors of Florida. Each Tax Collector is a constitutional officer. *See* art. VIII, § 1(d), Fla. Const. The Association has an interest in this case because Appellee Florida Pace Funding Agency (“FPFA”) seeks to impose upon the Association’s members certain collection responsibilities regarding non-ad valorem assessments without the consent of the local county Tax Collector or local government. The Association has a stake in the outcome because its members will be responsible for collecting these non-ad valorem assessments if FPFA’s position is upheld.

SUMMARY OF THE ARGUMENT

Section 163.08, Florida Statutes, provides that a homeowner may apply to FPFA for certain home improvement loans. Those loans are secured by the individual homeowner’s property on the tax rolls of the county. The legislation also provides that local governmental entities may enter into Interlocal Agreements, which will authorize such FPFA loans within the geographical boundaries of the parties to

the Interlocal Agreement. FPFA contends that, if the homeowner defaults on the loan, the Tax Collector must use its statutory powers to collect, including taking the owner's homestead property, even in counties that have not entered into an Interlocal Agreement and, therefore, have not consented to such a process within their geographic boundaries.

The trial court was charged with conducting a bond validation proceeding. However, it exceeded its authority by rendering rulings on collateral matters other than bond validation. The trial court not only exceeded its authority in ruling on such issues, but it also violated the applicable law by ruling that an Interlocal Agreement between only the City of Kissimmee and Flagler County applied statewide to include counties and Tax Collectors that did not wish to provide tax collection services for the private benefit of FPFA.

Relying on the trial court's improper rulings, FPFA now seeks to compel the county Tax Collectors to collect non-ad valorem assessments through the issuance of tax certificates and the sale of tax deeds, if necessary, even for those localities which are not parties to the Interlocal Agreement between Kissimmee and Flagler County.

The trial court had no authority in this bond validation proceeding to hold that loans made by FPFA outside the territory encompassed by the Kissimmee/Flagler County Interlocal Agreement are lawful. But even if the trial court did have such authority, its holding was wrong on the merits. The holding would permit FPFA to force Tax Collectors to collect on such assessments without the consent (or despite the opposition) of their local government. However, this Court has held that participation in the PACE program is “completely voluntary” for local governments. *Fla. Bankers Ass’n v. Fla. Dev. Fin. Corp.*, 176 So. 3d 1258, 1261 (Fla. 2015).

Because the trial court had no authority to reach such issues in a bond validation proceeding, and because its holding would permit FPFA to compel Tax Collectors to perform collection activities for FPFA in violation of the enabling legislation, the decision must be reversed, and remanded with directions to remove from the judgment all rulings on collateral matters.

ARGUMENT

THE TRIAL COURT HAD NO POWER TO ORDER FLORIDA TAX COLLECTORS TO COLLECT NON-AD VALOREM ASSESSMENTS IMPOSED OUTSIDE OF THEIR COUNTIES' GEOGRAPHIC AREAS AS PART OF THIS BOND VALIDATION CASE.

In Florida, Tax Collectors have the plenary power of sovereign office in their respective counties. *Alachua County v. Powers*, 351 So. 2d 32, 42 (Fla. 1977) (“a county officer pursuant to Article VIII, Section 1(d), Florida Constitution . . . is delegated a portion of the sovereign power.”) Such officers are responsible for the effective operation of their office. Tax Collectors serve only the people of their county, carrying out the duties prescribed in chapter 197, Florida Statutes, which mandates the “uniform, fair, efficient, and accountable collection of property taxes by county tax collectors.” §197.603, Fla. Stat. (2024). Each Tax Collector is an “autonomous, self-governing, political entity.” *Joiner v. Pinellas County*, 279 So. 3d 860, 865 (Fla. 2d DCA 2019).

Unlike the Tax Collectors, FPFA is not a part of the constitutional process for the collection of non-ad valorem tax assessments. It is merely a home improvement finance entity that was created by an Interlocal Agreement between the City of

Kissimmee and Flagler County, purportedly pursuant to section 163.08, Florida Statutes. However, nothing in either section 163.08 or the Interlocal Agreement permits such entities to operate beyond the territory of the parties to the Agreement.

The trial court erred in holding that FPFA had independent statewide authority under the Agreement between the City of Kissimmee and Flagler County. First, the trial court had no authority to make such rulings in a bond validation proceeding. *Keys Citizens for Responsible Gov't, Inc., v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001); *Warner Cable Commc'ns, Inc. v. City of Niceville*, 520 So. 2d 245, 256 (Fla. 1988). Second, FPFA had no right to issue its home improvement loans in a particular county without the consent and approval of that county and its Tax Collector.

Section 163.08 provides that a property owner within the geographical boundaries of an Interlocal Agreement may apply for funding for certain home improvements. If the local government and Tax Collector consent, the Tax Collector may include non-ad valorem assessments for such improvements as part of its tax collection responsibilities. However, if a local government is not a party to such an Interlocal Agreement and thus has not consented to permit FPFA

to make loans within its territory, the Tax Collector has no legal duty to act as a private debt collector for payments owed to FPFA by property owners.

FPFA claims it possesses the powers of a special district. But a special district may not exceed the specific powers enumerated by the law creating it. *See generally Walters v. City of Tampa*, 88 Fla. 177, 101 So. 227 (1924). In the Interlocal Agreement creating FPFA, the City of Kissimmee and Flagler County state they are creating FPFA as an “independent” special district. *See* Interlocal Agreement, § 2.01(l), p. 9. Yet, FPFA seeks to compel conduct beyond the geographical boundaries established by that Agreement, which would be forbidden for special districts. *See Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 548 (Fla. 2019).

The powers of a special independent district are derived from the Legislature. Under Florida law, “a special district is ‘a unit of local government created for a special purpose, as opposed to a general purpose, *which has jurisdiction to operate within a limited geographic boundary* and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.’” *Id.* at 547-48. As this Court explained:

By its terms, the Interlocal Act requires that any "power, privilege, or authority" that an agency commits to perform be one that it "might exercise separately" in the absence of an interlocal agreement. See § 163.01(4)[, Fla. Stat]. Because Halifax does not have the independent authority to establish and operate a hospital in Deltona, it does not gain this authority under the Interlocal Act.

Id. at 549.

Because the very essence of a chapter 189 "special district" is statutorily prescribed as operation within "a limited geographic boundary," § 189.012(6), that inescapably becomes the default authority for all special districts. In other words, although the Legislature certainly can grant a special district authority to operate outside of its defined geographic boundary, that extraordinary grant of authority would need to be express and unambiguous—clear enough to demonstrate that the Legislature has created a special district that will operate with a power not generally contemplated for chapter 189 special districts.

Id. at 549. Because FPFA was created by an Interlocal Agreement between the City of Kissimmee and Flagler County, FPFA does not possess independent authority to operate throughout the entire State of Florida.

FPFA has relied on *Escambia County v. Bell*, 717 So. 2d 85 (Fla 1st DCA 1998), arguing that Tax Collectors have no discretion and

are required, as a ministerial duty, to use the Uniform Method of Collection to collect the purported special assessments at issue. Both the facts and the holding in *Bell* are inapposite. In *Bell*, the parties stipulated that Escambia County had the authority to impose the assessments at issue, *id.* at 87, which is a fundamental distinction. The parties in *Bell* also agreed that Escambia County had the authority to use the Uniform Method to collect the assessments, pursuant to section 197.3632.

In contrast to the stipulated facts in *Bell*, the Tax Collectors have not agreed to waive the notice requirements contained in section 197.3632, and deny that the Uniform Method of Collection can be used to collect the payments for the loans absent a valid and active Interlocal Agreement. These distinctions render the *Bell* opinion inapposite. In fact, a fair reading of *Bell* supports the conclusion that the existence of a valid Interlocal Agreement is a condition precedent to the origination of any PACE loan.

According to the staff analysis of the bill that created section 163.08, it “provid[ed] supplemental authority to local governments (counties and municipalities) regarding qualified improvements to real property.” House Staff Analysis of CS/HB7179, at 1. If a

county or municipality

passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.

Id. In fact, section 163.08(16), itself, provides: “This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.” As this Court has recognized, “participation in the program by local governments . . . is completely voluntary.” *Fla. Bankers Ass’n*, 176 So. 3d at 1261.¹

Homestead property enjoys significant constitutional protection in Florida. With limited exceptions (one of which is for “payment of taxes and assessments thereon”), homestead property is exempt from the imposition of liens and forced sales. Art. X, § 4, Fla. Const. Chapter 197, Florida Statutes, outlines the procedures by which Tax

¹As Justice Lewis recognized in his concurring opinion, the program was essentially providing “individual home improvement loans to private property owners,” *Fla. Bankers Ass’n*, 176 So. 3d at 1269-70 (Lewis, J., concurring in result only), constituting “an unprecedented expansion of the concept of ‘special assessments.’” *Id.* at 1272.

Collectors may impose liens on and sell property, including homestead property, to pay tax assessments. Hence, Tax Collectors are responsible for ensuring they do not exceed their constitutional authority, and that the chapter 197 Uniform Method of Collection is appropriately exercised. The Uniform Method of Collection is not a collection tool for creditors generally. Instead, it is available only to governmental bodies so authorized by general law. Nothing in general law grants such power to FPFA.

CONCLUSION

The trial court had no authority in this bond validation proceeding to hold that loans made by FPFA outside the territory encompassed by the Kissimmee/Flagler County Interlocal Agreement are lawful. But even if the trial court did have such authority, its holding was wrong on the merits because it ignored this Court's previous holding in *Florida Bankers* that participation in the PACE program is "completely voluntary." 176 So. 3d at 1261. Accordingly, this Court should reverse, and remand with directions that the trial court remove from the judgment all rulings on collateral matters.

Respectfully submitted,

/s/ Thomas M. Findley
Thomas M. Findley (FBN 797855)
Peter D. Webster (FBN 185180)
CARLTON FIELDS, P.A.
215 S. Monroe St., Suite 500
Tallahassee, FL 32301
Telephone: (850) 224-1585
Email: tfindley@carltonfields.com
pwebster@carltonfields.com
rcbrown@carltonfields.com
sdouglas@carltonfields.com

***Attorneys For Amicus Curiae
The Florida Tax Collectors, Inc.***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 17, 2024, I electronically filed the foregoing with the Clerk of the Court using the Florida E-Filing Portal. I also certify that the foregoing is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by the Florida E-Portal.

/s/ Thomas M. Findley
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the word count in Florida Rule of Appellate Procedure 9.210(a)(2)(B), in that it contains 1,885 words. This document also complies with the Bookman Old Style 14-point font requirement set forth in Florida Rule of Appellate Procedure 9.045(b).

/s/ Thomas M. Findley
Attorney