IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC01-1562
(L.T. CASE NO. 3D00-2754)

THE CITY OF MIAMI, a municipal corporation,

Appellant,

vs.
PATRICK MCGRATH III, MIAMI-DADE COUNTY, a political subdivision of the State of Florida and LAUREEN VARGA,

Appellees,

CITY'S SUPPLEMENTAL BRIEF

ON APPEAL FROM
A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE

A. Proceedings

Since the filing of the briefs in this case, the Florida Legislature enacted laws amending Section 218.503(5)(a), Fla.Stat., the statute being challenged in this case ("Original Statute"), and ratifying all acts taken pursuant to the Original Statute. The City filed a notice of supplemental authority on December 19, 2001 notifying the Court of the recently enacted laws. This Court entered an order on December 28, 2001 requesting that appellant, City of Miami ("City"), file a supplemental brief addressing what effect, if any, Senate Bill 54-B, the November 30, 2001 amendment to the Original Statute, and Senate Bill 64-C, signed on December 17, 2001 (collectively, the "Acts"), have on the resolution of this case.

B. Statement Of The Facts

Appellees, Patrick McGrath III ("McGrath") and Miami Dade County ("County"), claim that the Original Statute is not a valid general law because it creates a closed class of cities to which a surcharge on non-residential parking places in the City ("Surcharge") can apply.[1] The Appellees claim that the Original Statute is an unconstitutional special law because it limits the class of cities eligible to apply the Surcharge to those having a population of 300,000 on April 1, 1999.

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[1] / The City enacted Ordinance No. 011813 on July 13, 1999, based upon the Original Statute and began collecting Surcharge revenue soon thereafter.

On November 30, 2001, Governor Jeb Bush signed S.B. 54-B which amended Section 218.503, Fla.Stat. (the "Amendment"). It permits municipalities which have been declared in a state of financial emergency and which have a resident population of 300,000 or more on or after April 1, 1999, to enact a 20% surcharge on parking facilities open for use to the general public.

On December 17, 2001, S.B. 64-C was signed by Governor Bush (the "Ratification"). This law clarifies the Legislature's intent with regard to the Amendment and ratifies any Surcharge imposed pursuant to the Original Statute. The Ratification provides that all acts and proceedings previously taken in connection with the prior law "are ratified, validated, and confirmed, and the surcharge is declared to be legal and valid in all respects from the date of enactment of Chapter 99-251, Laws of Florida [Original Statute]."

SUMMARY OF ARGUMENT

The recently enacted Acts address the sole concern set forth in the decision of the Court of Appeal, Third District, and also ratify the collection of Surcharge revenue by any municipality in accordance with the Original Statute. If this Court finds that the Acts are valid and enforceable, there is no need for the determination of the constitutionality of the Original Statute.

On the other hand, there are at least two circumstances when a decision as to the constitutionality of the Original Statute would be required. If the Court determines that either of the Acts is invalid or unenforceable, then a decision on the constitutionality of the Original Statute is needed. Similarly, if this Court declines to consider the validity and enforceability of the Acts, a determination of the constitutionality of the Original Statute must also be made. Current and future requests for refunds and challenges to the collectability of the Surcharge will remain unresolved without such an opinion from this Court. As a result, under these circumstances, the City urges the Court to consider the City's appeal on the merits with regard to the constitutionality of the Original Statute.

ARGUMENT

I. oVERVIEW

The Court of Appeal, Third District, found the Original Statute to be unconstitutional based upon a single aspect of the Original Statute. The Court held that the Original Statute improperly restricts the class of potential users to municipalities with a population of 300,000 or greater on a specific date; namely, April 1, 1999. The Third District noted that by anchoring the population classification to April 1, 1999, cities that reach the population threshold after this date are forever excluded from the class.

In its initial brief and reply brief, the City argues that the Third District's analysis is contrary to current Florida law, which requires only that there exist a reasonable relationship between the classification created by the legislature and the purpose of the law. The reasonable relationship test (and not the "open class/closed class" test) is specifically prescribed by the Florida Constitution as well as cases decided by this court, *State of Florida v. City of Miami Beach*, 234 So.2d 103, 106 (Fla. 1970) and *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535, 536 (Fla. 1985).

The Legislature addressed the concern of the Third District by the enactment of the Amendment. The Amendment permits municipalities which have been declared in a state of financial emergency and which have a resident population of 300,000 or

more on or after April 1, 1999 to enact a 20% surcharge on parking open for use to the general public. Thus, the issue of a "closed classification" anchored to April 1, 1999 no longer applies.

In addition, the Ratification provides that any Surcharge enacted and collected pursuant to the Original Statute is "ratified, validated and confirmed." This precludes anyone who paid any Surcharge to the City from seeking a refund on the grounds that the Original Statute authorizing the Surcharge was invalid.

II. ANALYSIS

The Amendment eliminates the only defect the Third District identified in the Original Statute and the Ratification validates and ratifies the Surcharge funds collected under the Original Statute. If this Court determines that the Acts are valid and enforceable, there is no longer a need for a determination of the validity of the Original Statute. Judicial review of the Acts will serve the public interest and judicial economy because it will forever resolve the issue of the City's ability to collect the Surcharge. The Court would not need to determine whether a classification made up of the three largest cities in the state is "reasonably related" to the purpose of the law, because the class now potentially includes every municipality in the state. As long as the Ratification is held valid by this Court, a ruling on the validity of the Original Statute would no longer affect previously collected Surcharge funds.[2]

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[2] / In addition, even without the Ratification, the City would have no obligation to refund Surcharge revenue collected pursuant to the Original Statute. The City acted in good-faith reliance on a presumptively valid statute and equitable considerations do not require a refund. *Gulesian v. Dade County School Board*, 281 So.2d 325 (Fla. 1973). In *Gulesian*, this Court also noted that the returning of funds would impose an "intolerable burden on the school board; . . . [and would] further complicate its budgetary problems and cause immense administrative difficulties . . . ." In this case, returning Surcharge revenue to individuals who paid for parking in public lots would not only be impossible, but it would likewise impose an "intolerable burden" on the City. Accord *Dryden v. Madison County*, 696 So.2d 728 (Fla. 1997) (No refund where challenged special assessments were non-discriminary and provided commensurate benefits to effected property owners), affirmed *Dryden v. Madison County,* 727 So.2d 245 (Fla. 1999).

However, if this Court determines that either of the Acts is invalid and unenforceable, or if this Court declines to review the validity and effect of the Acts, then the Court must make a determination as to the constitutionality of the Original Statute. A determination that the Original Statute is constitutional would put to rest any possible challenges to it, to the previously collected Surcharge revenue, or to the Acts.

The Court should determine the validity of the Original Statute in light of the Amendment and the validity of the Surcharge revenue already collected in light of the Ratification. In previous cases, the Court has considered curative legislation

and determined that it was effective to validate prior administrative acts. *Coon v. Board of Public Instruction*, 203 So. 2d 497 498 (Fla. 1967). It is the duty of the Supreme Court to take judicial notice of a validating statute enacted pending an appeal, *citing Charlotte Harbor and N. Y. Co. v. Welles*, 82 So. 770 (1919). This Court has previously stated that it is "bound to take judicial notice of said validating act of the Legislature, and to give it due recognition and effect." *Cranor v. Board of Com'rs of Volusia County*, 45 So. 455, 456 (Fla. 1907). Doing so in the instant case will promote judicial economy and finality by eliminating future challenges to the already collected Surcharges based on alleged defects in the Acts.

There is substantial precedent from this Court holding that ratification is appropriate and enforceable where an administrative act found to be illegal or unenforceable was within the power of the Legislature to do itself. *Smith Brothers v. Williams*, 131 So. 335 (Fla. 1930); *Cranor v. Volusia County*, 45 So. 2d 455 (Fla. 1907); *State v. Sarasota County*, 155 So. 2d 543 (Fla. 1963); *Coon v. Board of Public Instruction*, 203 So. 2d 497. This Court has also held that "[b]y a curative statute, the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place." *Dover Drainage District v. Pancoast,* 135 So. 518 (Fla. 1931), as cited in *Coon* at 498. *See also United States Fidelity & Guaranty v. Highway Engineering Construction Co.,* 51 F.2d 894 (5th Cir. 1931) (Interpreting Florida law and held assessments validated by curative act even though laid under

invalid statute.) Ratification of previously collected Surcharge revenue is appropriate under existing Florida law, since the Legislature had the power to enact a parking surcharge directly.[3] *Belcher Oil Co. v. Dade County*, 271 So. 2d 118 (Fla. 1972) (State, through the legislative branch of the government, possesses an inherent power to tax.)

If either Act is determined to be invalid or unenforceable, then the determination of the constitutionality of the Original Statute remains a viable and necessary decision. If this Court declines to address the validity of the Original Statute or the validity of the Acts, then the Third District's ruling will become final. Under these circumstances, the City will effectively lose its appeal without this Court's consideration of the merits of the appeal. The City will then be faced with claims for refunds of the Surcharge without this Court ever having passed on the constitutionality of the Original Statute.

The City strongly believes that the Acts are valid and enforceable but, of course, potential plaintiffs may still mount challenges to the Acts. This Court's consideration of the validity and enforceability of the Acts will resolve this matter once and for all.

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[3]/ Furthermore, there does not appear to be any question as to the authority of the Legislature to authorize the City to collect the Surcharge via general law. Accordingly, it is undisputed that the Legislature could authorize the Surcharge.

CONCLUSION

To the extent that the Acts are found by this Court to be valid and enforceable, no further need exists to determine the constitutionality of the Original Statute. If the Court declines to review the validity of the Acts, or determines that either Act is unenforceable, then the City urges the Court to consider the merits of this appeal and find that the Original Statute is constitutional.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via Federal Express this 3rd day of January**,** 2002, to MARK J. HEISE, ESQ., Heise Markarian Foreman, Co-Counsel for Appellees, 1950 Miami Center, 201 South Biscayne Blvd., Miami, FL 33131; THOMAS J. KORGE, ESQ. Korge & Korge, Co-Counsel for Plaintiff, 230 Palermo Avenue, Coral Gables, Florida, 33134; and to JESS M. MCCARTY, ESQ.; Robert A. Ginsburg, Miami-Dade County Attorney, Counsel for Intervenors, Stephen P. Clark Center, Suite 2810, 111 N.W. First Street, Miami, Florida 33128.

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Joseph H. Serota

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the font used in this brief is Times New Roman, 14 point, which complies with Rule 9.210(a)(2).

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Joseph H. Serota