IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1556

THE CROSSINGS AT FLEMING ISLAND
COMMUNITY DEVELOPMENT DISTRICT,

petitioner,

vs.

LISA REINHARDT ECHEVERRI, et al.,

respondents.

ON PETITION FOR DISCRETIONARY REVIEW

INITIAL BRIEF OF PETITIONER ON MERITS

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PRELIMINARY STATEMENT

All references to the record are referred to herein by the letter "R" followed by the page number.

The Crossings At Fleming Island Community Development District, petitioner herein and plaintiff at the trial level, will be referred to as the "District." Wayne Weeks, Clay County Property Appraiser, respondent herein and defendant at the trial level, will be referred to as "Weeks." Florida Department of Revenue, respondent herein and defendant at the trial level, will be referred to as "DOR."

STATEMENT OF THE CASE AND FACTS

The District is a community development district located in Clay County, Florida, created in November 1989 pursuant to Chapter 190 Florida Statutes. Beginning with the tax year 2000, the District applied for exemption of certain parcels within the District pursuant to Section 196.199(1) Florida Statutes. (R-I-1-29). After Weeks denied the District's request for property tax exemption for those parcels, the District filed suit against Weeks and other defendants to obtain a judicial determination that the District was entitled to property tax exemption on those certain parcels within the District. (R-I-1-29).

The District made similar applications for the tax years 2001 and 2002, and after Weeks denied those applications, the District filed complaints again seeking a judicial determination that the District was entitled to property tax exemption on those parcels. (R-I-110-140; R-III-435-459). Upon motion to consolidate, the foregoing three actions were consolidated for purposes of trial. (R-IV-491-493; 502-503).

Weeks defended at the trial level by asserting, among other defenses, the defense that Section 189.403(1) Florida Statutes was unconstitutional. (R-I-30-42; 154-167; IV-481-490). Section 189.403(1) provides that special districts

shall be treated as municipalities for the purpose of Section 196.199(1) Florida Statutes. The District contended that Weeks did not have standing to raise unconstitutionality of the statute as a defense, and moved to strike the affirmative defense in the 2002 case (R-IV-498-501). The District later moved to strike the defense in the 2000 and 2001 cases. (R-IV-588-590; 591-593).

During the course of the litigation, the District served on Weeks its Third Request for Admissions. Pursuant to the request, Weeks admitted that the only way properties owned by the District can be exempt from property taxes is if they are used for municipal, governmental, or public purposes, but flatly denied that he would exempt from property taxes those properties owned by the District that are used for municipal, governmental or public purposes. (R-196-197; 200-201)

By order dated September 30, 2003, the trial court granted the District's motion to strike Weeks's affirmative defense of the unconstitutionality of Section 189.403(1), ruling that Weeks did not have standing raise this challenge. (R-IV-586-587; 594-595; 596-597).

After a non-jury trial, the trial court entered judgment finding that property tax exemption should be applied to certain parcels within the District, which

judgment was appealed by Weeks and DOR to the First District Court of Appeal. (R-VIII-1298-1302; 1303-1307; 1309-1312; IX-1473-1486; 1489-1496). The First District dismissed the appeal as being non-final and remanded to the trial court. (R-XI-1665). On remand, the trial court entered an amended final judgment. (R-XI-1780-1789). Weeks and DOR appealed the amended final judgment to the First District Court of Appeal. (R-XI-1790-1802; 1805-1823).

The First District Court of Appeal issued its opinion on May 8, 2007. Zingale v. Crossings at Fleming Island Community Development District, 960 So.2d 20 (Fla. 1st DCA 2007). In its decision, the First District affirmed the trial court's rulings with respect to the tax exempt status of the parcels in question, but reversed the trial court on the issue of Weeks's standing to challenge the constitutionality of Section 189.403(1) Florida Statutes.

In its discussion of the issue of Weeks's standing, the First District considered the decision of the Second District Court of Appeal in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001), but declined to follow that Court's rationale. Relying instead on what the Court characterized as explicit language in this Court's decision in Fuchs v. Robbins, 818

So.2d 460 (Fla. 2002), the First District held that Weeks was entitled to bring a constitutional challenge to the statute, since he was in the procedural posture of a defendant. Zingale, at 27, 28.

Judge Kahn agreed with the majority's opinion affirming the trial court's ruling on the tax exempt status of certain parcels within the District, but dissented on the issue of Weeks' standing to challenge the constitutionality of the statute. Judge Kahn agreed with the holding in Sun 'N Lake, found that decision to be consistent with existing law, and observed that Justice Bell's concurring opinion in Sunset Harbour Condominium Assn. v. Robbins, 914 So.2d 925 (Fla. 2005) amply established that the so-called defensive posture exception to standing is aberrational and not a controlling principle of Florida law. Zingale, at 29.

The District timely filed a motion to certify conflict with the Second District Court of Appeal by virtue of its decision in Sun 'N Lake. On June 26, 2007, the First District granted the District's motion, and certified conflict with Sun 'N Lake on the issue of whether the property appraiser has standing to defensively raise the constitutionality of a statute.

The District timely filed its notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

It is a general principle of Florida common law that ministerial officers charged with faithfully executing the laws of the State may not challenge the constitutionality of statutes. Court decisions over the years have set forth three exceptions to this prohibition: first, when the officer can show that he or she will be injured in person, property or rights by enforcement; second, when the statute in question involves disbursement of public funds; and third, when the officer is raising the constitutional challenge in a defensive posture. The prohibition on ministerial officers' right to assert constitutional challenges is founded on sound public policy and is consistent with the separation of powers doctrine concerning the functions of the judicial and executive branches.

In the instant proceeding, the District was forced to initiate litigation against Weeks only after Weeks unilaterally decided not to follow the law. By his violation of the law and his oath of office, Weeks succeeded in manipulating himself into a "defensive" posture by forcing the District to file suit, since the District's only other alternative was to accept Weeks's decision and lose the benefit of the tax exemption statute.

Such a tactic is not "defensive," and courts should not countenance such conduct.

The procedural posture of, and the relevant facts in, the instant proceeding and that presented in Sun 'N Lake of Sebring v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001) are identical. The holding and reasoning in Sun 'N Lake are consistent with general principles of Florida law and the decisions of this Court and should be approved. The trial court's ruling striking Weeks's affirmative defenses challenging the constitutionality of Section 189.403(1) Florida Statutes should be affirmed.

STANDARD OF REVIEW

The issue of the property appraiser's standing to defensively assert a constitutional challenge to a statute he is required to administer is a pure question of law. Accordingly, this Court's review is de novo. Waste Management, Inc. v. Mora, 940 So.2d 1105 (Fla. 2006); Shaw v. Tampa Electric Company, 949 So.2d 1066 (Fla. 2nd DCA 2007); Allstate Ins. Co. v. Regar, 942 So.2d 969 (Fla. 2md DCA 2006); American Honda Motor Co. v. Cerasani, 955 So.2d 543 (Fla. 2007); Mid-Chattahoochee River Users v. Florida Dept. of Environmental Protection, 948 So.2d 794 (Fla. 1st DCA 2006).

ARGUMENT

I. WHETHER THIS COURT SHOULD APPROVE THE HOLDING OF THE SECOND DISTRICT COURT OF APPEAL IN SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT V. MCINTYRE, 800 So. 2nd 715 (FLA. 2ND DCA 2001), DISAPPROVE THE HOLDING OF THE FIRST DISTRICT COURT OF APPEAL IN THE INSTANT ACTION, AND HOLD THAT THE PROPERTY APPRAISER DOES NOT HAVE STANDING TO DEFENSIVELY CHALLENGE THE CONSTITUTIONALITY OF SECTION 189.403(1) FLORIDA STATUTES

Under Florida law, property owned by political subdivisions and municipalities is exempt from ad valorem taxation if the property is used for governmental, municipal, or public purposes. Section 196.199(1)(c) Florida Statutes provides as follows:

> All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a non-profit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law. (emphasis added)

Independent special districts such as the District are treated as municipalities for ad valorem tax purposes under Florida law. Section 189.403(1) Florida Statutes reads as follows:

> "Special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality. (emphasis added)

Because independent special districts are treated as municipalities for ad valorem tax purposes, property owned by the district that is used for "governmental, municipal or public purposes" is exempt from ad valorem taxation.

In this litigation, Weeks was unequivocal and clear that he would not follow the dictates of the Florida Statutes which are set forth above. In Weeks's response to the District's third request for admissions, Weeks denied the following statement: "I will exempt from property taxes those properties owned by The Crossings at Fleming Island Community Development District that are used for a municipal, governmental or public purpose." (R-195-197;

200-201). This admission, which was also made in Weeks's response to the District's first request for admissions, is a flagrant admission from this state officer that he refuses to follow the law. (R-69-72; 93-94)

The law governing constitutional challenges after a refusal by ministerial officers to follow the law, and the public policy reasons therefor, were well enunciated by this Court in its decision in State ex rel. Atlantic Coast Line R. Co. v. State Board of Equalizers, 94 So. 681 (Fla. 1922). In Atlantic Coast Line, a petition for a writ of mandamus was issued against the State Board of Equalizers, challenging a valuation made by the Comptroller. The petition alleged that the State Board refused to entertain the appeal because it decided it had no jurisdiction to do so. In its response, the State Board admitted the allegation, the effect of which was to admit that it refused to obey the statutes in question because it considered them unconstitutional.

This Court framed the question as follows: has a ministerial officer the right or power to declare an act unconstitutional, or to raise the question of its unconstitutionality without showing injury in person, property, or rights by its enforcement.

This Court answered the question in the negative. The Court noted that every law upon the statute books is presumptively constitutional until declared otherwise by the courts. The Court explained this principle as follows:

> The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it is, I think, without merit. The fallacy in it is that every act of the Legislature is presumptively constitutional until judicially declared otherwise, and the oath of office "to obey the Constitution" means to obey the Constitution, not as an officer decides, but as judicially determined.

The Court recognized that the proposition that ministerial officers can refuse to enforce a law because it would violate their oath to obey the Constitution is simply a reincarnation of the ancient and discredited doctrine of nullification. This Court observed that the authority to determine the constitutionality of statutory law lies solely with the courts, and to permit otherwise would abrogate or limit this power of the courts. This Court stated succinctly: "[t]he right to declare an act unconstitutional is purely a judicial power, and cannot be exercised by the officers of the executive department under

the guise of the observance of their oath of office to support the Constitution." Atlantic Coast Line, at 597.

This Court discussed the fundamental public policy furthered by its holding. The Court, quoting a Louisiana case, stated:

> [I]n a well-regulated government obedience to its laws is absolutely essential and of paramount importance. Were it not so, the most inextricable confusion would inevitably result, and produce such collisions in the administration of public affairs as to materially impede the proper and necessary operations of government.

Based on the foregoing reasoning, this Court held that the State Board response raising unconstitutionality of the statute was unwarranted, unauthorized, and afforded no defense to the allegations of the writ.

The principle that ministerial officers must obey statutes until their validity has been determined by the Courts was re-iterated by this Court many times. State ex rel. Gillespie v. Thursby, 139 So. 372 (Fla. 1932); State ex rel. Ship Canal Authority v. Lancaster, 170 So. 126 (Fla. 1936); Steele v. Freel, 25 So.2d 501 (Fla. 1946). It should be noted that in both Ship Canal Authority and Steele, the ministerial officer in question, in both instances the clerk of the circuit court, defensively raised a constitutional challenge to the statute in

question. In both cases, this Court held that the clerk was not entitled to rely on alleged unconstitutionality as grounds for refusing to carry out ministerial duties imposed by the statutes.

In Barr v. Watts, 70 So.2d 347 (Fla. 1953), this Court had the opportunity to re-affirm the principles enunciated in Atlantic Coast Line. In Barr, the relator sought to compel the State Board of Law Examiners to permit her to take the examination for admission to the practice of law. The State Board had rejected her application for permission to take the bar examination. The State Board defended against Barr's petition by taking the position that the statute upon which Barr relied was unconstitutional, and it would violate their oath of office to administer the act. In support of their position, the State Board relied upon dictum in the cases of City of Pensacola v. King, 47 So.2d 317 (Fla. 1950) and State ex rel. Harrell v. Cone, 177 So. 854 (Fla. 1938).

This Court held that the State Board did not have standing to defensively challenge the constitutionality of the applicable statute. This Court reiterated the reasoning and public policy enunciated in Atlantic Coast Line, noting that the only exceptions to the prohibition against ministerial officer constitutional challenges is

when the officer will be injured in person, property, or rights by enforcement, or when administration of the act in question will require the expenditure of public funds, citing for the latter proposition the decision in Steele v. Freel, 25 So.2d 501 (Fla. 1946).[1]

This Court rejected the State Board's reliance upon dictum in City of Pensacola and Harrell. The Court observed that a careful reading of those cases revealed that each involved disbursement of public funds in the administration of the act in question, so the cases could have turned on that point alone, and the Court had never receded from the rule adopted in Atlantic Coast Line.

This Court described the chaos and confusion that would result if ministerial officers were permitted to declare acts unconstitutional under the guise of observing their oath of office. As aptly stated by this Court:

> The people of this state have the right to expect that each and every such state agency will promptly carry out and put into effect the will of the people as expressed in the legislative acts of their duly elected

[1] This Court also suggested the latter exception in Atlantic Coast Line when it distinguished the decision in Board of Public Instruction for Santa Rosa County v.Croom, 48 So. 641 (Fla. 1908), in which the State Treasurer was faced with paying money out of the treasury under the provisions of an unconstitutional act. Atlantic Coast Line, at 601.

> representatives. The state's business cannot come to a stand-still while the validity of any particular statute is contested by the very board or agency charged with the responsibility of administering it and to whom the people must look for such administration. (Barr, at 351).

After expressing its view that the public interest will be best served by channeling all such attacks on the validity of statutes through the Attorney General, the duly elected officer whose duty it is to protect the public interest,[2] this Court held that the State Board had no standing to attack the act in question.

The Second District Court of Appeal was clearly mindful of the foregoing precedent and the principles in support thereof when it decided Sun 'N Lake of Sebring Imp. Dist. v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001). In Sun 'N Lake, the district was a creation of Highlands County for the purpose of funding the construction and maintenance of infrastructure. Pursuant to Section 196.199(1)(c), the district requested from the property appraiser exemptions from ad valorem taxation for lots

[2] See, for example, State ex rel. Landis v. S.H. Kress, 155 So. 823 (Fla. 1934), in which this Court stated that it is within the authority of the Attorney General to attack the constitutionality of statutes, and that the holding in Atlantic Coast Line did not contravene this view. State ex rel. Landis, at 826, 827.

within the district. The property appraiser denied the exemption. The district made subsequent applications, all of which were again denied.

As a result of the denial, the district initiated lawsuits challenging the denials, and the cases were consolidated for disposition. At the trial level and on appeal, the property appraiser challenged the constitutionality of Section 189.403(1).[3] The Second District, citing to its earlier decision in Turner v. Hillsborough County Aviation Authority, 739 So.2d 175 (Fla. 2nd DCA 1999),[4] acknowledged the common law rule that state officers must presume legislation affecting their duties to be valid, and therefore do not have standing to initiate litigation for the purpose of determining otherwise. Sun 'N Lake, at 721. The property appraiser attempted to distinguish Turner by pointing out that the district had initiated the suit, and thus he was raising the constitutionality of the statute as a proper defense.

The Second District rejected this attempt to distinguish Turner. The Court, quoting from Turner, stated:

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[3] This factual and procedural history is identical to that presented in the case at bar.

[4] Discussed further below.

> In Turner, however, we stated, if the property appraiser had followed the law initially, as State ex rel. Atlantic Coast Line Railway Co. [v. State Board of Equalizers], 84 Fla. 592, 94 So. 681 (1922)] dictates he is obligated to do, the taxpayer would not have been forced to petition the VAB and set the litigation in motion. It both defies logic and violates the rule of State ex rel. Atlantic Coast Line Railway Co. to suggest that Turner can ignore the law by denying an exemption based on his belief that it is unconstitutional and then be allowed to ask the court to approve his disobedience by upholding his denial. Sun 'N Lake, at 721, 722.

The court went on to say that the mere fact that the property appraiser was not the named plaintiff in the suit did not permit him to avoid the dictates of Turner, and held that the property appraiser did not have standing to raise the constitutionality of Section 189.403(1).

It is evident that the Second District was well aware of this Court's concern about separation of powers and the chaos that would result if officers choose to ignore the laws which by their oaths they are required to uphold and administer. The suit by the Sebring Improvement District was preceded by, and precipitated by, the property appraiser's refusal to follow the law, and it was the property appraiser's refusal to follow the law that allowed him to manipulate himself into the status of a party

defendant in the litigation. The Second District properly refused to countenance such conduct.

Despite the procedural and factual similarities between Sun 'N Lake and the case at bar, the First District declined to follow that opinion. In support of its holding, the First District relied upon this Court's opinion in Fuchs v. Robbins, 818 So.2d 460 (Fla. 2002). The District respectfully suggests that the First District's reliance on Fuchs is misplaced.

In Fuchs, this Court was called upon to resolve a conflict between the Third District Court of Appeal in Fuchs v. Robbins, 738 So.2d 338 (Fla. 3rd DCA 1999) and the Second District in Turner v. Hillsborough County Aviation Authority, 739 So.2d 175 (Fla. 2nd DCA 1999). In both cases, the property appraisers had initiated actions which, among other things, challenged the constitutionality of the statutes at issue. This Court framed the initial question as whether, in an action filed by a property appraiser seeking review of an adverse decision of the VAB which has overturned the appraiser's ad valorem tax assessment on a subject property, the appraiser may, within an appeal pursuant to Section 194.036 Florida Statutes (1997), challenge the validity of a statute on the basis that such statute is contrary to limitations imposed by the United

States and Florida Constitutions. Thus, in both Fuchs and Turner, the property appraiser was the party that initiated the litigation.

This Court, citing approvingly to its earlier decisions in Atlantic Coast Line and Barr v. Watts, among others, concluded that the property appraiser could not make such a challenge, approved the decision in Turner, and reversed the decision in Fuchs.

In the instant case, the First District focused on two sentences in this Court's decision in Fuchs. The First District quoted, with emphasis supplied, the holding in Fuchs, in which this Court stated, "We conclude that an appraiser may not, in that context, challenge the constitutionality of an applicable valuation statute." Fuchs, at 463. The First District then quoted from Fuchs, again with emphasis supplied, as follows: "The appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment."

The First District acknowledged Justice Bell's concurring opinion in Sunset Harbour Condominium Assn. v. Robbins, 914 So.2d 925 (Fla. 2005), in which Justice Bell opined that there was no adequate support in Florida case law for the defensive posture dictum in Fuchs, and that

such a holding is contrary to this Court's holding Atlantic Coast Line. However, in light of the above quoted language from Fuchs, the First District followed what it believed to be the clear dictate of the majority opinion in Fuchs and held that Weeks did have standing to defensively challenge the constitutionality of Section 189.403(1) as this case was postured.

The District respectfully submits that the First District places too much reliance on this language in Fuchs. As stated previously, in both Fuchs and Turner, the property appraiser had initiated the litigation. When this Court stated that the property appraiser may not challenge the constitutionality of a statute "in that context," this Court was merely, and appropriately, limiting its holding to the facts presented in order to avoid future potential mis-reading of its holding that might occur if this Court made a broader statement. That certainly does not mean that there might not be other contexts in which this Court would also hold that the property appraiser does not have standing.

Additionally, this Court's reference to the defensive posture exception in Fuchs was clearly unnecessary to the result. This Court has recognized that this statement is merely dictum. In Sunset Harbour Condominium Assn. v.

Robbins, the majority wrote: "As support for this argument that the affirmative defense was properly asserted, Robbins relies on obiter dictum from Fuchs. This dictum states that a property appraiser may raise a defensive challenge to the constitutionality of a statute." Sunset Harbour, at 928.

Moreover, as authority for this proposition in Fuchs, this Court cited to its earlier decision in Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982). In Lewis, this Court was presented with a constitutional challenge made by the Commissioner of Education and the trustee of a community college in both their official and individual capacities. The challenge was asserted offensively, so this Court was not faced with a situation in which the constitutional challenge was being asserted defensively. In that context, this Court observed parenthetically that a state agency or officer may defensively raise the question of a law's constitutionality, Lewis, at 458, but, again, this was clearly unnecessary to the result.

Indeed, the District is unaware of any case in which this Court permitted a ministerial officer to defensively challenge the constitutionality of a statute that did not involve either the public funds exception or a situation in which the officer will be injured in person, property or

rights. The cases cited for the defensive posture exception in Lewis all involve the public funds exception.

In City of Pensacola v. King, 47 So.2d 317 (Fla. 1950), this Court observed that the act in question would require the agency in question to have a hearing requiring the expenditure of public funds, and held that the commission had met the public funds exception. City of Pensacola, at 319.

In State ex rel. Harrell v. Cone, 177 So. 854 (Fla. 1938), a comptroller refused to disburse road funds and a mandamus action was filed. As a defense, the comptroller challenged the constitutionality of the law requiring the disbursement of funds. This Court, while acknowledging the general rule in Atlantic Coast Line, found the challenge was proper under an exception where a ministerial officer is charged with control and disbursement of public funds. Cone at 856, 857.

Finally, in State ex rel. Florida Portland Cement Co. v. Hale, 176 So. 577 (Fla. 1937), the State Road Department was sued to force compliance with a statute, and the Department challenged the constitutionality of the statute. This Court found that the act would require the Department to expend public funds, and stated that the Department had

standing the challenge the statute. Florida Portland Cement, at 609.

As noted above, in Barr v. Watts, this Court expressly limited City of Pensacola and Harrell v. Cone to their facts, in which the public funds exception alone was necessary to the rulings, rejecting the Board of Law Examiners' attempt to utilize those cases as support for the proposition that they could defensively challenge the constitutionality of a statute when there was no issue of public funds, and no issue that they would be injured in their persons, property or rights by enforcement of the statute.

Given the continued vitality of Atlantic Coast Line and Barr v. Watts, and the factual and procedural situations presented in Lewis and Fuchs, it seems clear that one should read into the dictum in Fuchs a qualification, to read that the appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment, so long as the appraiser shows injury to person, property or rights, or when administration of the statute will require the expenditure of public funds.

Even with such a qualification, Weeks cannot defensively challenge Section 189.403(1). Weeks has not

contended that administration of Section 189.403(1) would injure his property, person or rights. Nor can he seriously contend that his duties involve the disbursement of public funds. The office of property appraiser is created by Article VIII(d) of the Florida Constitution. The property appraiser's duties are defined by Section 192.001(3) Florida Statutes, which charges the property appraiser only with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied. This clearly falls far short of the nexus required in order to assert this exception.[5] The Second District in Turner, which was approved by this Court, held that the public funds exception does not apply to property appraisers (relying in part on Section 194.036(1)(a) Florida Statutes). Turner, at 177, 178. Indeed, the property appraiser is very much like the clerks of court in State ex

[5] See, for example, Kaulakis v. Boyd, 138 So.2d 505 (Fla. 1962)(tort action against the county which would require expenditure of public funds to satisfy any judgment); Harrell v. Cone, 177 So. 854 (Fla. 1938)(state comptroller who would be required to disburse public funds pursuant to act); Green v. City of Pensacola, 108 So.2d 897 (Fla. 1st DCA 1959)(special act directly affected public funds and comptroller's duty to collect, control and disburse such funds.)

rel. Ship Canal Authority v. Lancaster, 170 So. 126 (Fla. 1936) and Steele v. Freel, 25 So.2d 501 (Fla. 1946).

In Sun 'N Lake, the Second District was entirely correct when it determined to follow this Court's dictates and holding in Atlantic Coast Line, since the property appraiser, while nominally in a defensive posture (manufactured by him as result of his refusal to follow the law), did not (and could not) argue that administration of Section 189.403(1) would injure him in his person, property or rights, and the case did not involve disbursement of public funds. Since the factual and procedural posture in the case at bar is identical to that presented in Sun 'N Lake, this Court should resolve the conflict by approving Sun 'N Lake and reversing the First District's decision in Zingale, and hold that Weeks does not have standing to defensively challenge the constitutionality of Section 189.403(1).

CONCLUSION

On the issue of the property appraiser's standing to defensively challenge the constitutionality of Section 189.403(1), the District respectfully requests this Court to approve the decision in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001), disapprove the decision in Zingale v. Crossings at Fleming Island Community Development District, 960 So.2d 20 (Fla. 1st DCA 2007), and affirm the trial court's order striking the property appraiser's affirmative defense challenging the constitutionality of Section 189.403(1).

Dated this __ day of January, 2008, at Jacksonville, Florida.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Nicholas Bykowsky, Esq., Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, Larry E. Levy, Esq., The Levy Law Firm, 1828 Riggins Road, Tallahassee, Florida 32308, Robert M. Bradley, Esq., Kopelousos and Bradley, P.A., Post Office Box 562, Orange Park, Florida 32067-0562, Elliott Messer, Esq., Messer, Caparello & Self, P.A., 2618 Centennial Place, Post Office Box 15579, Tallahassee, FL 32317, and Sherri L. Johnson, Esq., Dent & Johnson, Chartered, 3415 Magic Oak Lane, Post Office Box 3259 Sarasota, FL 34230, by United States Mail Delivery on the _____ day of January, 2008.

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Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared using the font known as Courier New, font size 12.

_____

Attorney