

**SUPREME COURT
STATE OF FLORIDA**

Case No.: 96,674

**ROB TURNER, as Hillsborough County
Property Appraiser,**

Appellant.

v.

**HILLSBOROUGH COUNTY AVIATION
AUTHORITY, a body politic and
corporate NEW YORK YANKEES
PARTNERSHIP, an Ohio limited partnership,
TAMPA SPORTS AUTHORITY, a body corporate
and politic of the State of Florida,
HILLSBOROUGH COUNTY, a political
subdivision of the State of Florida, and DOUG
BELDEN, as Hillsborough County Tax Collector,**

Appellees

INITIAL BRIEF

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CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned counsel for Hillsborough County Property Appraiser hereby certifies that the type size and style for the brief is 14 point Times New Roman.

STATEMENT OF THE CASE

This case raises the issue of whether a county property appraiser has standing to challenge the constitutionality of a statute. The Second District Court of Appeals held that in the instant case, the property appraiser had no standing to challenge the constitutionality of a statute; however the court certified direct conflict with Fuchs v. Robbins, 24 FLW D2034 (Fla. 3d DCA 1999).

The Hillsborough County Aviation Authority leases property to the New York Yankees for use as a minor league training facility in Tampa, Florida. (R:6-7) The Aviation Authority and the Yankees sought an exemption from ad valorem property taxation for the subject property under the theory that the property served a government purpose as per the Florida Constitution, Article VII, Section 3 (a). (R:1-2) Petitioner Rob Turner, as Hillsborough County Property Appraiser denied the request for exemption. Hillsborough County and the Tampa Sports Authority, having obligated themselves to pay a portion of the Yankees' tax bill, joined with the Yankees and the Aviation Authority to challenge the denial of exemption at the administrative level before the Value Adjustment Board. (R:6-7) The Value Adjustment Board ruled in favor of the Yankees, granting a governmental exemption for the subject property. (R:1-2;10-11)

Turner filed the instant suit to challenge the decision of the Value Adjustment Board, seeking to have the denial of exemption reinstated by the circuit court.

(R:1-2) Again Hillsborough County, Tampa Sports Authority and the New York Yankees joined defendant Hillsborough County Aviation Authority in the suit.

The trial court dismissed Turner's lawsuit with prejudice on the grounds that he failed to include the Florida Department of Revenue as a party defendant. (R:59-61) On appeal, the Second District Court of Appeals did not resolve the issue of the requirement of the Department of Revenue as a party. Instead, the appellate court found that the complaint challenged the constitutionality of the portion of Florida Statute 196.012(6) relating to an exemption for "sports facilities with permanent seating" and affirmed the dismissal on the grounds that Turner as property appraiser did not have standing to challenge the constitutionality of a statute.

SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeals is in error for several reasons. First, Turner believes the court was premature in its decision regarding the nature of the complaint. Second, the appellate court's rationale regarding the ability of a property appraiser to challenge the constitutionality of a statute is incorrect and too broad in scope.

Turner's complaint never mentions Florida Statute 196.012(6), the statute that the appellate court alleges Turner was challenging on constitutional grounds. Thus, affirming the dismissal of the complaint on those grounds was clearly erroneous.

In addition, the appellate court's holding that a property appraiser cannot challenge the constitutionality of a statute is incorrect for the following reasons: (1) The general rule that a public officer cannot challenge the constitutionality of a statute does not apply in the context of the property appraiser's non-ministerial duties such as the determination of assessments or exemptions; (2) A public official can raise the constitutionality of a statute as a defense when the statute is raised by another party; (3) The property appraiser can challenge the constitutionality of a statute when public funds are at risk; and (4) The appellate court's assertion that Florida Statute

194.036(1)(a) limits or restricts the property appraiser's standing would result in the statute interfering with the judiciary's powers regarding procedural matters.

The appellate court also did not consider the option of granting standing based on the public interest in the substantive issues of the case.

Finally, Turner presents the option of less restrictive standing requirements for public officials.

ARGUMENT

I. Because the complaint never challenged the constitutionality of a statute, the appellate court improperly affirmed the dismissal of the complaint on the basis of lack of standing to challenge constitutionality of a statute.

The appellate court based its decision to affirm the trial court's dismissal on the theory that Turner had no standing to challenge the constitutionality of Florida Statute 196.012(6). However, a cursory review of Turner's complaint reveals that Florida Statute 196.012(6) is nowhere mentioned in the complaint. (R:1-2) Turner's complaint only alleges, as required by Florida Statute 194.036(1)(a), that the Value Adjustment Board's decision was in violation of the constitution. (R:1-2)

In ruling that the complaint was properly dismissed for lack of standing, the appellate court presupposed the future litigation strategy of the property appraiser. The appellate court assumed that the only basis for the property appraiser's claim that the Value Adjustment Board's decision violated the constitution was that 196.012(6) was unconstitutional. The statement in Turner's complaint that the *decision* of the Value Adjustment Board was contrary to the constitution is required by s. 194.036(1)(a). The required allegation that the Value Adjustment Board's decision was contrary to the Florida Constitution does not equate to a constitutional challenge to a

statute. Turner's options at the trial court, had an answer been filed raising 196.012(6), included asking the trial court to interpret the statute in a constitutional light with the result that the subject property was not exempt. Thus, directly challenging the constitutionality of the statute would have been only one of Turner's options at the circuit court level.

The proper chain of events should have been to allow the defendants to file an answer; one which in all likelihood would have raised 196.012(6) as a defense. The property appraiser could then file a reply stating that the statute was unconstitutional. Only at that point would the standing issue become ripe, and then only to the portion of the case addressing constitutionality of the statute, not the entire case.

II. The general rule prohibiting a ministerial officer from challenging constitutionality does not apply to the property appraiser's non-ministerial duties.

Florida court decisions use various terms interchangeably to describe the type of government official that is restricted by the general rule prohibiting the challenging of constitutionality.¹ By whatever title, the rule

¹ State ex. Rel. Atlantic Coast Line R. Co. v. State Bd. of Equalizers, 94 So. 681 (Fla. 1922); Steele v. Freel, 25 So. 2d 501 (Fla. 1946); Kaulakis v. Boyd, 138 So. 2d 505 (Fla. 1962); Green v. City of Pensacola, 108 So. 2d 897 (Fla. 1959). (“ministerial officers”); Dept. of Educ. v. Lewis, 416 So. 2d 458 (Fla. 1982); Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985) (“state officers and agencies”); City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950) (“executive or an administrative officer”); Watson v. Kirkman, 27 So. 2d 610 (Fla. 1946); Reid v. Kirk, 257 So. 2d 3 (Fla. 1972) (“public officials”).

appears to apply to all public officials. However, a consistent line of reasoning appears to be that the only prohibition against challenging the constitutionality of a statute is when the statute affects purely “ministerial duties.” In the seminal case of State ex. Rel. Atlantic Coast Line R. Co. v. State Bd. of Equalizers, 94 So. 681 (Fla. 1922), this court noted,

...executive officers of the state government have no authority to decline the performance of *purely ministerial duties* which are imposed upon them by a law, on the ground that it contravenes the Constitution.

Id at 685, quoting State ex. Rel. New Orleans Canal & Banking Co. v. State Auditor, 47 La. Ann. 1679, 18 So. 746., emphasis added. (See also the cases cited in 30 ALR 362.)

In State ex. Rel. Stephens Timber Co. v. Lang, 179 So. 401 (Fla. 1938), this court denied standing to a clerk of the circuit court, noting that under the act in question, the clerk was, “vested with nothing but ministerial duties... .” Id.²

Note the definitions of ministerial duties set forth in the following cases:

² The court, distinguishing Harrell v. Cone, 177 So. 854 (Fla. 1937), appeared to consider the expenditure of public funds exception (dealt with in Section IV of this brief) as an instance where the official’s duty were not ministerial in nature. Thus, perhaps the “public funds” exception to the no-standing rule is really just one example of a public official’s ability to challenge a statute when it effects his non-ministerial discretionary duties.

...a ministerial duty may be briefly defined to be some duty imposed expressly by law, not by contract or arising necessarily as an incident to the office, involving no discretion in its exercise, but mandatory and imperative. The distinction between merely ministerial and judicial and other official acts is that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment, it is not to be deemed merely ministerial.

State ex. Rel. Allen v. Rose, 167 So. 21, 23 (Fla. 1936); Escambia Cnty. v. Bell, III, 717 So. 2d 85 (Fla. 1998).

Where an officer's duty and authority require the examination of evidence in the determination of questions of law and fact before taking action thereon, his duty and authority is ordinarily not strictly ministerial, but may even be quasi-judicial, or discretionary in its character.

Hall v. State, 187 So. 392, 398 (Fla. 1939).

It seems only logical that where an official's duties are ministerial in nature, he has no authority to challenge statutes setting forth his duties. However, where the government official must weigh facts and the law and then exercise administrative discretion, those duties cannot be considered ministerial. In the course of carrying out those non-ministerial duties, the public official may well come upon facially conflicting laws. In that instance,

it is without reason to suggest that the public official, having the burden of applying facts to the law in a quasi judicial setting, cannot seek clarification of the law where a conflict is evident.³

In Green v. City of Pensacola, 108 So. 2d 897 (Fla. 1st DCA 1959), the court found that the comptroller had standing to challenge a statute. The court, distinguishing Barr v. Watts, 70 So. 2d 347 (Fla. 1953), pointed out that a constitutional officer (the comptroller) was different than the ministerial officers of statutory origin involved in Barr. The property appraiser is also a constitutional officer. Article VIII, Sec.1(d), Fla. Const.

This case deals with the property appraiser as a public official. To be sure, the property appraiser has ministerial duties: the production and certification of the tax roll, the duty itself to assess all the property in the county, etc. In Sanders v. Crapps, 45 So. 2d 484 (Fla. 1950), Justice Hobson's concurring opinion noted the distinction between the property appraiser's non-ministerial quasi judicial duties and his ministerial duties, stating,

It may be that the Tax Assessor when he originally fixes the valuation of lands for tax purposes acts as

³ It is the recognition of that quasi-judicial duty and its attendant administrative discretion that provides the property appraiser and other government officials, with a presumption of correctness. Hillsborough County Aviation Authority v. Taller & Cooper, Inc., 245 So. 2d 100 (Fla. 2d DCA 1971); Bystrom v. Equitable Life Assurance Soc. of U.S., 416 So. 2d 1133 (Fla. 3d DCA 1982), rev. den'd (Fla. 1983).

a quasi judicial officer - certainly he is vested with some discretion - but after the Board has met and performed its duties and exercised its power as provided in the statute, the functions of the Tax Assessor are purely ministerial.

Id at 488.

Thus, arriving at individual assessments or exemption decisions is not ministerial in nature. As this court so aptly noted, appraisal is an art, not a science. Powell v. Kelly, 223 So. 2d 305 (Fla. 1969). More specifically, in Dept. of Rev. v. Ford, 438 So. 2d 798 (Fla. 1983), this court stated,

Determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers.

Id at 802.

When administering exemptions, governmental, homestead, religious or otherwise, the property appraiser must use the same administrative judgment and discretion. The property appraiser must determine ownership (legal or equitable title)⁴, exempt use (governmental-governmental or governmental-proprietary, religious, educational), and extent of use (exclusive or

⁴ The property appraiser must determine who holds title to property for exempt purposes. In doing so, the property appraiser must consider both legal and equitable title. Leon Cnty. Facilities Auth. v. Hartsfield, 698 So. 2d 526 (Fla. 1997). Analysis of equitable title issues requires factual analysis and the application of judgment by the property appraiser.

predominant)⁵. The property appraiser is even given guidance by the courts on how to construe the maze of statutes dealing with various property tax exemptions in Florida. Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994)(statutes involving exemptions must be strictly construed). This court has noted that the administering of an exemption requires a factual determination. Hillsborough County Aviation Authority v. Walden, 210 So. 2d 193 (Fla. 1968); Gamma Phi Chapter of Sigma Chi Bldg. Fund Corp. v. Dade Cnty., 199 So. 2d 717 (Fla. 1967).

All the cases specifically dealing with the property appraiser's standing seem to follow this logic.

The Fourth District Court of Appeals found the property appraiser had no standing to raise the constitutionality of Florida Statute 194.181(1)(a), which establishes the proper plaintiff in a tax suit. Brazilian Court Hotel Condo. Owners Assoc., Inc. v. Walker, 584 So. 2d 609 (Fla. 4th DCA 1991). That statute has no relation to the property appraiser's non-ministerial duties.⁶

⁵ The Florida Constitution also requires that the property appraiser determine whether the property is being used "exclusively" for public purposes. Fla. Const. Art. VII. Sec. 3(a). Other exemptions require only predominant use for exempt purposes. Id. Again, factual analysis and judgment is necessary.

⁶ In addition, in Brazilian Court, the validity of the statute was not raised defensively. Turner will discuss this exception to the general rule in the next section of the brief.

Similarly, in Jones v. Dept. of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1988), the property appraiser had no standing to challenge a statute regarding how Department of Revenue determines the level of assessment for each county. Again, the statute did not deal with the discretionary duties of the property appraiser.

The remainder of the cases specifically denying standing to property appraisers to challenge constitutionality of a statute involved declaratory judgment actions. See Dept. of Revenue v. Markham, 396 So. 2d 1120 (Fla. 1981); Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985). Thus, those cases turn on the requirement that there be an actual case or controversy before the court will allow such a challenge. See Dept. of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994). Even then, a property appraiser was granted standing in a declaratory judgment action to determine the validity of a Department of Revenue directive which effected his non-ministerial assessment duties. Reid v. Kirk, 257 So. 2d 3 (Fla. 1972).

In the case at bar, the property appraiser's duty was to determine entitlement to a tax exemption requires the analysis of the law and the application of facts to that law. Given that burden and the apparent conflict between s. 196.012(6) and Article VII, Sec. 3(a) of the Florida Constitution, the property appraiser should be permitted to seek the guidance from the courts necessary to carry out his constitutional duty.

III. Barr v. Watts does not prohibit a challenge by a public official when a statute would force the official to violate his constitutional non-ministerial duties.

The Second District Court of Appeals relied upon Barr v. Watts, 70 So. 2d 347 (Fla. 1953) to reject the argument that a public official can challenge a statute when he believes it will cause him to violate his oath to support the state constitution. In a 4 to 3 decision, Barr v. Watts rejected the statements made in City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950) and State ex. rel. Harrell v. Cone, 177 So. 854 (Fla. 1937) to the effect that a public official's oath to uphold the state constitutional permits a challenge to the constitutionality of a statute. The impassioned dissent of Justice Terrell, joined by Justices Thomas and Drew, points out the distinction between a mere challenge by a public official to a statute related to his ministerial duties, and a challenge to a statute requiring an administrative or executive decision by that public official. In pointing out the innumerable Florida cases on the subject, Justice Terrell stated,

Some of the foregoing cases point out that when an officer's duties are ministerial and so subordinate in nature that no injury can result from their performance and no violation of duty can be imputed to him because of his obedience to the statute, he may not raise the question of its constitutional validity. This is not the rule as to the application of Chapter 26993. It involves the performance of important executive or

administrative duties that are of serious consequences to the bar and the people of this state. If such duties are unauthorized or illegal, mandamus cannot be invoked to coerce their performance.

Id at 353 (J. Terrell, dissenting).

In fact, in cases subsequent to Barr v. Watts, this court appeared to shift back to that rule, if indeed it was ever abandoned.

In Davis v. Gronemyer, 251 So. 2d 1 (Fla. 1971), the court, citing to City of Pensacola v. King, allowed a government agency to challenge the constitutionality of an ordinance which purported to repeal a state law.

There, this court noted that, “the Board would be remiss in performing its obligation to require and enforce observance of the [state law] if it permitted the repeal to go untested.” Id at 3. Thus, the decision appears to acknowledge the duty of a public official to challenge suspect legislation.

And, in Reid v. Kirk, 257 So. 2d 3 (Fla. 1972), this court acknowledged the standing of a property appraiser to challenge a directive from the Department of Revenue under the rule that standing exists, “when a public official is willing to perform his duties, but is prevented from doing so by others.” Id at 4.

Contrary directions arising from a statute and the state constitution in a discretionary non-ministerial setting effectively prevents the public official from performing his duties.

IV. A government official can raise unconstitutionality as a defense when another party raises the statute.

In Dept. of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982), this court specifically noted,

If, on the other hand, the operation of a statute is brought into issue in litigation brought by another against a state agency or officer, the agency or officer may defensively raise the question of the law's constitutionality.

Id at 458.

Cases in which the property appraiser apparently challenged the constitutionality of statutes in a defensive posture are plentiful. [See Valencia Center, Inc. v. Bystrom, 543 So. 2d 21 (Fla. 1989); ITT Community Development Corp. v. Seay, 347 So. 2d 1024 (Fla. 1977); Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973); Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968); Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1965).] Admittedly, the issue of standing was not specifically addressed in these cases.

However, in Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), the Fourth District Court of Appeals permitted the property appraiser to raise the constitutionality of a statute after the statute was raised by the property owner.

In the companion case to this matter, Fuchs v. Robbins, 24 FLW D1529 (Fla. 3d DCA 1999), the court found that the property appraiser had standing under this exception, citing to Dept. of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982).

In the instant case, should the defendants raise 196.012(6), then Turner's claim of unconstitutionality would only come in a defensive posture and the above exception would apply.

The Second District Court of Appeals disagreed that a constitutional challenge by Turner to a statute raised by the Yankees would be a defensive maneuver. The appellate court, disagreeing with Judge Sorondo's concurring opinion in Fuchs v. Robbins, 24 FLW D2034 (Fla. 3d DCA 1999), argues that the instant litigation began not with the filing of the complaint, nor with the Value Adjustment Board petition filed by the Yankees, but instead began with the original denial of the request for governmental exemption by Turner.

The definition of a lawsuit cannot reach so far. Even litigation at the circuit court level subsequent to a Value Adjustment Board decision is considered a de novo hearing. Fla. Stat. 194.036(3). To claim that the procedural aspects of a lawsuit begin with the factual scenario resulting in the suit itself is without a basis in the law.

V. The denial of the exemption constitutes a threat to public funds which is an exception to the general rule prohibiting a challenge to constitutionality of a statute.

One well recognized instance in which a public official may challenge a statute is when public funds are at stake. State ex. Rel. Florida Portland Cement Co. v. Hale, 176 So. 577 (Fla. 1937).

The beginning point for all property taxation is the Florida Constitution, Article VII Section 4, which mandates the taxation of *all property*. The only permitted exemptions from taxation are also set forth in the Florida Constitution. Because ad valorem property taxes are the primary source of funding for the counties in Florida, any statutory exemption not prescribed by the Florida Constitution must constitute a threat to the public funds that support the local counties, municipalities, school boards and other special districts.

Thus, in Green v. City of Pensacola, 108 So. 2d 897 (Fla. 1st DCA 1959), the court found that the comptroller had standing to challenge a statute exempting the City of Pensacola from the collection of an excise tax. The court's rationale was that the statute purporting to grant a tax exemption effected the control and disbursement of public funds. In that instance, as here, it was not a disbursement of funds at issue, but the collection of funds that was at issue.

VI. Florida Statute 194.036(1)(a) cannot restrict the standing of the property appraiser.

The Second District Court of Appeals claims that Florida Statute 194.036 precludes the property appraiser from relying on the common law exceptions to the general rule regarding standing. However, that interpretation would jeopardize the legitimacy of s. 194.036 itself.

It is well established that the separation of powers doctrine prohibits the legislature from impinging on the Supreme Court's jurisdiction over procedural rights. TGI Friday's, Inc. v. Dvorak, 663 So. 2d 606 (Fla. 1995); Haven Federal Savings & Loan Assoc., 579 So. 2d 730 (Fla. 1991). This court has stated numerous times that statutes affecting the

standing of a party infringes on that jurisdiction. Rogers & Ford Construction Corp. v. Carlandia Corp., 626 So. 2d 1350 (Fla. 1993); Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121 (Fla. 1988); Avila South Condo. Assoc., Inc. v. Kappa Corp., 347 So. 2d 599 (Fla. 1977).

Thus, the Second District Court of Appeal’s interpretation that Florida Statute 194.036 prohibits or restricts the standing of the property appraiser would result in its invalidity.⁷

VII. The appellate court did not consider the option of finding that public interest in determining tax exemptions permits a determination of the issue.

The Second District Court of Appeals overlooked the option of determining that the public importance of the issue of tax exemptions would permit the court to consider the constitutionality of Florida Statute 196.012(6).

In Barr v. Watts, 70 So. 2d 348 (Fla. 1953), the case relied upon in part by the Second District Court of Appeals, the court ultimately reached the constitutional question presented in that case. Although finding that the public official had no standing, the court held that, “public interest requires that this court answer the charge... .”

In Metropolitan Sports Facilities Commission v. County of Hennepin, 451 N.W.2d 319 (Minn. 1990), the Minnesota Supreme Court found that,

⁷ This would of course put Turner in the unusual position of challenging the validity of a statute which itself purports to prohibit Turner’s challenging the validity of any statute.

although the county had standing to challenge the constitutionality of a statute exempting a sports facility. The court found standing strictly on the basis of the public importance of the issue.

The appellate court in ruling against Turner did not consider that option.

VIII. Public policy concerns do not mandate a prohibition on a public official's challenge to a statute.

Finally, the concerns of the court that gave rise to prohibitions against public officials challenging a statute do not appear warranted. In Barr v. Watts, 70 So. 2d 347 (Fla. 1953), the court's concerns were expressed as follows,

And, indeed, the chaos and confusion which would result from the application of such a rule would be immediately apparent. We now have in this state to carry on the state's business almost 100 state agencies, boards and commissions, most of whose members hold office by virtue of executive appointment. 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 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.

Id at 351. The reality is that other states give public officials wide latitude in challenging statutes, without any apparent repercussions. In Texas, for example, the issue of standing is dealt with as follows:

Without doubt, ‘[t]he constitution is the highest law of the state, and all public officials are sworn to uphold and defend it.’ State governmental officials at all levels have not only the right, but the duty to challenge actions to be taken pursuant to a statute that is unconstitutional. State governmental officials represent the people in their respective sphere of authority and have a right and duty to protect the people from state action under oppressive unjust and unconstitutional laws.

Andrews v. Proctor, 950 S.W. 2d 750, 752-753 (Ct. App. Tx. 1997).

Similarly, this court’s decision in Davis v. Gronemyer, 251 So. 2d 1 (Fla. 1971) acknowledges a similar “duty” on the part of a public official to challenge suspect legislation.

In Arsenal Credit Union v. Giles, 715 S.W. 2d 918 (Mo. 1986), a similar case to the one at hand, the Missouri Supreme Court opined,

This is not a request for an advisory opinion in a non-adversary proceeding by parties who wish advice on the law. It is instead a hotly contested claim by taxpayers asserting a statutory exemption as a bar to the city’s power to tax met head on by the city’s counterclaim challenging the validity of such exemption. Under the *Groves* analysis either

party has standing to present the validity issue. The stake is almost \$19,000, who other than the taxpayer and the taxing authority would be better positioned to raise the question of the validity of a statute exempting the taxpayer from an ordinance of the taxing authority?

Id at 920-921 (citations omitted.)

Indeed, the question might be asked: “What “man on the street” taxpayer is going to spend his time, money and effort to challenge a tax exemption for sports facilities, knowing that even if successful, the likelihood of any reduction in his own personal tax liability as a result is nil?” Good Samaritans with deep pockets are few and far between. It is the property appraisers in this state and across the nation that rise to the call when questionable statutes provide tax breaks to various special interest groups.

CONCLUSION

Turner believes that the general rule in Florida regarding standing for public officials is as follows: A public official may not challenge the validity of a statute which relates to the official’s ministerial duties, except where public funds are at risk or where another party to the litigation raises the statute in the course of the litigation.

In addition, the court has the option of considering the public importance of the issue at hand, or relaxing the standing rules to permit the instant matter to go forward.

Moreover, in the case at bar, the issue of Turner's standing was not ripe at the time of dismissal, as Turner had not challenged a statutory provision.

Turner respectfully requests this court reverse the Second District Court of Appeals and remand this case back to the trial court for further proceedings.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S. Mail to Donald W. Stanley, Jr., Esquire, Post Office Box 2111, Tampa, FL 33601, Robert E.V. Kelley, Jr., Post Office 1288, Tampa, FL 33601-1288, Henry E. Thomas, Sr., Esquire, 601 E. Kennedy Blvd., 14th Floor, Tampa, FL 33602 and John I. Van Voris, Esquire, Post Office Box 3324, Tampa, FL 33601 this ____ day of October, 1999.

WILLIAM D. SHEPHERD