

>> WE WILL NOW TAKE UP CASE  
22-741, CITY OF GULF BREEZE.

>> MAY IT PLEASE THE COURT.

I AM HERE WITH LINDSAY HALEY,  
ASSISTANT, WE HAVE THE HONOR OF  
REPRESENTING THE PETITIONER, THE  
CITY OF GULF BREEZE.

THANK YOU FOR ACCEPTING US IN  
THIS CASE.

WE UNDERSTAND YOUR LIMITED  
JURISDICTION AND WE DO NOT HAVE  
A MATTER OF RIGHT TO FILL THIS  
CASE.

THE COURT BELOW CONSIDERED IT TO  
BE OF GREAT PUBLIC IMPORTANCE.

THANK YOU FOR DOING IT.

THE ISSUE BEFORE YOU HERE TODAY  
IS NOT WHETHER A SPRAY FIELD IS  
A MUNICIPAL USE OR A GOLF COURSE  
IS RECREATIONAL USE, THE ISSUE  
IS NOT WHETHER THOSE TWO  
PROPERTIES CONTINUE TO BE USED  
AS A SPRAY FIELD OR AS A GOLF  
COURSE, BEFORE AND AFTER PROJECT  
MANAGEMENT COMPANY WAS FILED.

THE ISSUE IS NOT WHETHER A  
PRIVATE MANAGEMENT COMPANY,  
PRIVATE FOR-PROFIT MANAGEMENT  
COMPANY DESTROYS THE IMMUNITY.  
THE COURT BELOW, THE MAJORITY  
WENT TO GREAT LENGTHS TO CORRECT  
THE DESCENDENT AND SAY THAT IS  
NOT WHAT WE ARE SAYING.

WE ARE NOT SAYING THE EXISTENCE  
OF A FOR-PROFIT MANAGEMENT  
COMPANY MANAGING OTHERWISE  
EXEMPT USES DEFEATS THE  
IMMUNITY.

THE ISSUE TODAY IS VERY NARROW  
AND THAT IS WHETHER THE METHOD  
OF COMPUTING THE PROFIT FOR THE  
FOR-PROFIT COMPANY DESTROYS  
IMMUNITY.

WE WOULD RESPECTFULLY SUBMIT  
THERE'S NO PRECEDENT, NO  
AUTHORITY, NO LOGIC, NO PUBLIC  
POLICY THAT WOULD SUPPORT DOING  
SO.

>> CAN WE TAKE IT AS A GIVEN  
BASED ON THE RECORD HERE THAT  
THERE IS NO DISPUTE THAT UNDER  
THIS MANAGEMENT AGREEMENT THAT  
THE CITY WOULD STILL ULTIMATELY

BE IN CONTROL OF THE USE OF THE PROPERTY.

THE FIRST DCA HAD THE PROPHET TEST.

IF WE WANT TO CLARIFY THE RELEVANT CONSIDERATION HERE, IT SEEMS IN TERMS OF DECIDING WHO IS THE EXCLUSIVE USE OF THE PROPERTY THE CONTROL THING IS PART OF IT.

SHOULD WE TAKE IT AS UNDISPUTED THAT THE CITY IS THE ONE THAT CONTROLLED THE PROPERTY?

>> IT WAS, THE DEPOSITIONS, THE TESTIMONY BY ALL THE WITNESSES BEFORE THE ADJUSTMENT BOARD AS WELL AS BEFORE THE CIRCUIT COURT ESTABLISHED THAT WHILE CITY PERSONNEL SAT IN THE SEAT OF THE MANAGEMENT OFFICE FOR RECREATIONS, THAT'S WHAT HIS NAME WAS, AFTER PRIVATE MANAGEMENT COMPANY TOOK OVER, WAS CONTROLLED BY THE DIRECTOR OF RECREATION.

IT WAS CONTROLLED BUT NOT CHANGED.

PURPOSE DID NOT CHANGE, THE ONLY THING THAT CHANGED IS A CONTRACT MANAGER UNDER MANAGEMENT AGREEMENT VERSUS CITY EMPLOYEES TAKING DIRECTIONS FROM THE CITY TO USE CITY-OWNED PROPERTY, WHEN EVERYONE ADMITS WERE MUNICIPAL OR PUBLIC PURPOSES, DISPOSABLE GROUNDWATER, WASTEWATER TREATMENT AREA OR RECREATIONAL GOLF COURSE.

>> TO THE TEXT OF THE CONSTITUTION, ALL PROPERTY OWNED BY MUNICIPALITY, SHALL BE EXEMPT FROM TAXATION.

WALK ME THROUGH YOUR READING OF THE WORDS USED EXCLUSIVELY BY IT FOR OTHER PURPOSES.

YOUR LAST ANSWER SAYS THE CONTROL OF THE PROPERTY DIDN'T CHANGE.

THE USE OF THE PROPERTY CHANGE AND PRIVATE ENTITY, LET'S LEAVE ASIDE THE MODE OF COMPENSATION OF THE PRIVATE ENTITY, ASSUME THAT IS IRRELEVANT TO THE ANALYSIS WHICH OF A PRIVATE

ENTITY IS ALSO USING THE PROPERTY TO MAKE A PROFIT, HOW THAT SQUARES WITH THE TEXT OF THE CONSTITUTION.

>>

>> THAT'S THE ANALYSIS, AS THE COURT POINTED OUT MANY TIMES, EVERY WORD USED IN THE CONSTITUTION IN ITS BRIEFING, I WOULD NOTE NO LESS THAN 6 TIMES THE PHRASE YOU JUST QUOTED USED EXCLUSIVELY FOR MUNICIPAL OR PUBLIC PURPOSES WAS CUT OFF AFTER IT.

AND DIDN'T SAY FOUR MUNICIPAL OR PUBLIC PURPOSES.

SO IT IS USED BY THE ENTITY FOR MUNICIPAL PURPOSES.

HOW DID THE CITY USE THE PROPERTY.

YOU COULD HAVE A FOR-PROFIT ELECTRICAL COMPANY BENEFITED IN SELLING POWER TO THEM, YOU COULD HAVE SOMEONE WHO DEVELOPS GOLF COURTS BENEFITS YOUR --

>> A READING OF THE CONSTITUTION IS AS LONG AS THE CITY IS USING THE PROPERTY FOR MUNICIPAL PURPOSES IT IS AD VALOREM EXEMPT.

DOES THAT ANALYSIS BECAUSE THE DISCUSSION TO DROP OUT OF THE EQUATION.

AS LONG AS THE CITY IS USING THE GOLF COURSE FOR MUNICIPAL PURPOSES INTO A LEASE AGREEMENT?

>> LEASE AGREEMENT IS ANALYZED OVER DIFFERENT STANDARD.

A LEASE, STATE AND PROPERTY TO ANOTHER PERSON.

>> IF THE VENDING MACHINE COMPANY HAD A LEASEHOLD INTEREST, IS NOT OVER EXCLUSIVELY USED BY THE CITY OR MUNICIPAL PURPOSES.

>> NO BECAUSE YOU CAN HAVE ANCILLARY USES.

YOU CAN HAVE A DRINK MACHINE AND PUBLIC PARK, IT DOESN'T CONTROL THE IMMUNITY WHICH IS ANCILLARY USE, YOU CAN HAVE A PRO SHOP SUPPORTIVE OF RECREATIONAL GOLF COURSE, DOESN'T DESTROY IMMUNITY.

YOU CAN HAVE TENNIS PRO-PLAPS --  
>> OF THIS MANAGEMENT AGREEMENT  
HAD BEEN CONVERTED INTO A LEASE,  
THE SAME SOURCE OF THINGS GOING  
ON, THERE IS A LEASE WHO HAS  
THAT INTEREST IN ALL THE OTHER  
THINGS.

WOULD THAT BE YOUR POSITION TO  
SAY THE LEASEHOLDER IS THE  
ENTITY THAT IS USING THE  
PROPERTY?

THERE'S NOT A LEASEHOLD BUT  
MANAGEMENT AGREEMENT, THE CITY  
IS USING THE PROPERTY.

>> PRECISELY.

WHEN YOU GIVE THAT, YOU CAN ACT  
AS THE OWNER FOR THIS PROPERTY  
WITH THE EXCEPTION BEING YOUR  
OWNERSHIP EXPIRES AT THE END OF  
THE LEASE.

A LEASE COMPLETELY CHANGES THE  
DYNAMICS OF THIS.

IT TRANSFERS A PORTION OF THE  
OWNERSHIP, THE BUNDLE WE TALK  
ABOUT IN LAW SCHOOL ALL THE  
TIME.

IT'S PART OF THAT BUNDLE OF  
STICKS, THE TENANT LOOKS LIKE  
THE OWNER.

THE TENDENCY OF THE PROPERTY.  
I UNDERSTAND IT IS A DISSENT AND  
THE DISSENT, WHEN THE COURT IS  
BEING REVIEWED BY SUPERIOR  
COURT, LOOKED AT AND OFTEN  
BECAUSE THE MAJORITY IN THE  
COURT.

THAT IS WHAT I AM HOPING FOR.  
LIKE ALL PETITIONERS.

>> VERY WELL.

YOU ABSOLUTELY HIT ON THE ISSUE.  
YOU LOOK AT THE ENTIRE LANGUAGE  
BY THE CITY, MUNICIPALITY, NOT  
USED BY A THIRD-PARTY THAT IS  
IMPORTANT, THE MANAGEMENT  
COMPANY HOPE TO MAKE A PROFIT  
FOR MANAGING THE PROPERTY?  
SURE.

PATROL OF THE PROPERTY REMAINED  
WITH THE CITY AND USED FOR THE  
SAME PURPOSES IT WAS USED WHEN  
PROPERTY APPRAISER SAID THIS IS  
EXEMPT.

WE TALKED TO THE DEPUTY PROPERTY  
APPRAISER AND SAID WHAT CHANGED?

I DON'T KNOW IF ANYTHING  
CHANGED.

THEY SPRAYED WATER ON IT, BROWN  
WATER, THEY PLAYED GOLF ON IT  
BEFORE, THEY PLAY GOLF ON IT  
NOW.

IT WAS UNDER CONTROL OF THE CITY  
BEFORE.

IT IS UNDER CONTROL OF THE CITY  
NOW.

WHAT CHANGED?

IF THE FACT THAT MANAGEMENT  
COMPANY CAN MAKE A PROFIT  
DOESN'T ALTER THE DYNAMICS, THE  
MAJORITY --

>> YOU WOULD ACKNOWLEDGE IN CASE  
LAW THERE'S THE TALK ABOUT  
PROFITMAKING, THAT'S A BAD  
THING.

>> THE OLDER CASES, THERE IS.  
THE NEWER CASES, THE MANAGEMENT  
COMPANIES ARE RECOGNIZED.  
PRIVATE MANAGEMENT COMPANIES AND  
THE BASIS OF MAKING A PROFIT.  
THEY CAN HAVE LOSSES.

WHAT DID THE MAJORITY SAY THAT  
WAS DIFFERENTIATED?

IF THEY PAY THE MANAGEMENT  
COMPANY A FIXED FEE AND THEIR  
PROFIT WAS DETERMINED BY THE  
DIFFERENCE BETWEEN THE FIXED FEE  
AND COST, THAT WOULD BE OKAY.  
IF THE FIXED FEE WAS 3 MILLION,  
THE COSTS WERE 500,000, THEY  
HAVE HALF \$1 MILLION PROFIT BUT  
IF YOU HAVE A VARIABLE SOURCE OF  
REVENUE SUCH AS ENCOURAGEMENT TO  
THE MANAGEMENT COMPANY TO  
MAXIMIZE USE OF THE GOLF COURSE  
THROUGH GREENPEACE, A GOOD THING  
FOR THE PUBLIC MAXIMIZING USE OF  
THE RECREATION, ALL THAT DEFEATS  
IT.

NEITHER ONE OF THOSE CHANGED USE  
BY THE MUNICIPALITY.

THE USE REMAINED UNCHANGED.

THAT IS THE POLITICAL POINT  
BEFORE THE COURT.

>> IS IT RELEVANT AT ALL THAT  
THE MANAGEMENT AGREEMENT  
PURPORTS TO SET OUT THE  
CONTRACTOR SHALL PAY IN THE AD  
VALOREM TAXES.

>> NO.

YOU CANNOT CHANGE BY CONTRACT  
THE CONSTITUTION.

OF THE STATE OF FLORIDA.

THE CONTRACT COULD HAVE SAID  
THIS PROPERTY IS IMMUNE PURSUANT  
TO SECTION 738, THE FLORIDA  
CONSTITUTION WOULD THEN HAVE AN  
IMPACT.

THE CITY COULD HAVE PURCHASED AN  
INSURANCE POLICY FROM LLOYD'S OF  
LONDON SAYING IF THIS PROPERTY  
IS EVER TAX YOU WILL REIMBURSE  
THE TAXES.

WOULD THAT CHANGE THE IMMUNITY  
ANALYSIS?

NOT AT ALL.

THE RATIONALE, THE RULE IN THIS  
COURT HAS HELD UNLIKE A LOT OF  
EXEMPTIONS WHERE THE EXEMPTIONS  
ARE STRICTLY CONSTRUED, THE  
EXEMPTION FOR MUNICIPAL HE OWNED  
PROPERTY HAS THE REVERSE AND IT  
IS THE BURDEN OF A PROPERTY  
APPRAISER TO DEFEAT THAT  
PRESUMPTION.

THE RATIONALE IS SIMPLE THAT  
TAXING THE GOVERNMENT IS BAD  
POLICY.

THAT ISSUE WAS DISCUSSED IN THE  
CASE THAT WAS CITED IN THIS  
COURT'S DECISION THAT CAME IN  
THE DISSENT.

THE DEPARTMENT OF REVENUE VERSUS  
THE CITY OF GAINESVILLE.

WISE THAT BAD POLICY?

YOU SHIFT THE TAX BURDEN FROM  
THE COUNTY, RATES WOULD INCREASE  
BY TAXING THIS PROPERTY IN THE  
CITY OUR RESIDENTS, THEIR TAX  
BASE WOULD INCREASE, THAT IS  
SHIFTING, EACH SIDE SHOULD PAY  
THEIR OWN TAXES, THAT'S THE  
PHILOSOPHY BEHIND THAT RULE THAT  
IT IS PRESUMPTIVELY VALID, THE  
MUNICIPALITY GOES, THAT DEFEATS  
THE IMMUNITY?

BUILDING A HOTEL IS NOT A  
TRADITIONAL MUNICIPAL PURPOSE  
AND MAKING A PROFIT FROM THE  
HOTEL IS NOT THE PURPOSE OF  
MUNICIPALITY, THAT'S THE REASON  
IT IS DEFEATED BUT IT IS  
ESTABLISHED, NOT EVEN IN THIS  
CASE, OPERATING A RECREATIONAL

GOLF COURSE FOR ENVIRONMENTALLY SOUND DISPOSAL OF GROUNDWATER ARE MUNICIPAL PURPOSES TRADITIONALLY SUCH AS UTILITY AND BY CASE LAW THE RECREATIONAL FACILITY LIKE A TENNIS COURT OR GOLF COURSE MORRO MARINA ARE A PUBLIC PURPOSE.

>> HELP US WITH OF THE TEST.

WHERE THIS LANGUAGE IS, THERE IS PRIOR CASE LAW THAT SAID PRIVATE ENTITY COULD USE ITS PROPERTY AND THINGS COULD BE EXEMPT, THE DAYTONA SPEEDWAY SO THE LANGUAGE COMES IN, EXCLUSIVELY, YOU ARE FOCUSING ON THE MUNICIPAL PURPOSE PART, HOW WOULD YOU WANT US TO ARTICULATE THE TEST FOR WHEN THE PROPERTY IS USED EXCLUSIVELY BY THE MUNICIPALITY? IT DOESN'T MEAN LITERALLY USED EXCLUSIVELY, THE PUBLIC COMES AND PLAYS GOLF OR WHATEVER, SO WHAT IS THE TEST?

>> YOU WOULD CONCENTRATE ON OWNERSHIP AND CONTROL.

WHO OWNS THE PROPERTY?

WHO CONTROLS PROPERTY.

IS OWNED BY THE MUNICIPALITY ARE CONTROLLED BY MUNICIPALITY.

IS THAT EXERCISE TO

ACCOMPLISH THE SPRAY FIELD, THE PUBLIC SERVICE OF RECREATIONAL FACILITY AND THE COURT WENT TO GREAT LENGTHS LOOKING, GOING WELL BEYOND WHAT YOU HAD TO DO, CASE AFTER CASE IF YOU ADDRESS THIS ISSUE TO PROVIDE SOME CLEAR LINES THAT PROPERTY APPRAISERS AND MUNICIPAL OWNERS COULD FOLLOW.

YOU HAVE TO LOOK AT HOW THE PROFIT IS COMPUTED BY PRIVATE MANAGEMENT COMPANY TO DETERMINE IF THE USE IS EXCLUSIVE OR NOT IS A FUZZY DIFFICULT TO FOLLOW TEST THAT WOULD CREATE CHAOS AMONG MUNICIPALITIES THROUGHOUT THE STATE IF THE RULE IS ALLOWED TO STAND?

>> THANK YOU.

>> I REPRESENT GREG BROWN, THE PROPERTY APPRAISER.

IF I COULD START WITH THE

QUESTION LAST LEFT WITH MR. FLEMING.

WHAT WAS MEANT BY THE 1968 CHANGE, WHENEVER A GOVERNMENT ALLOWS A PRIVATE FOR-PROFIT BUSINESS TO USE CITY PROPERTY, MUST LOSE THE ENTITLEMENT TO THE EXEMPTION, THE PRECISE PURPOSE THE 1968 CONSTITUTION WAS AMENDED.

>> WHEN YOU STATE IT THAT WAY, WHO'S USING THE PROPERTY ON THE CORE OF THE ISSUE HERE, THE QUESTION, IS THE PROPERTY USED BY THE CITY OR IS IT USED BY THE MANAGEMENT COMPANY THAT THE CITY CONTRACTED WITH TO RUN THE OPERATION SUBJECT TO ALL SORTS OF RESTRICTIONS AND OVERSIGHT, THAT'S WHAT THIS IS ABOUT, RIGHT?

>> ULTIMATE COMES DOWN TO WHAT THE COURT SHOULD LOOK AT AS OPPOSED TO CONTROL BUT WHEN THEY SAY THIS DOES NOT HAVE AN ACCENT OUT HERE, HERE'S A RECREATIONAL ASSET, THAT WAS HER RACEWAY WHICH WAS A RECREATIONAL ASSET AND THE CITY SAYS I HAVE AN ASSET --

>> THEY LEASED IT AND THAT IS WHAT WE DON'T HAVE HERE.

>> WE DON'T HAVE A LEASE HERE.

>> AM I CORRECT IN UNDERSTANDING, THINGS IN THE CASE LAW, THE FOCUS IN THESE CASES TENDS TO BE ON THE FACT THAT THERE IS A LEASE AND THAT'S EVERY CURRENT FACT PATTERN IN THE CASE.

>> THE REASON WHY IS THAT IS HOW CITIES INTERACT WITH ENTITIES THAT USE THEIR PROPERTY AND WHAT'S GOING ON BEFORE THE 1968 CHANGE.

OF THE CONSTITUTION WERE AMENDED TO SAY MUNICIPALLY OWNED PROPERTY USED EXCLUSIVELY SHALL BE EXEMPT FROM TAXATION UNLESS THE PROPERTY IS LEASED WE COULD DRAW THE LINE AT LEAST VERSUS MANAGEMENT AGREEMENT. JUST ONE MOMENT.

IF THIS COURT WERE TO DRAW THE

LINE AND THE DISTINCTION BETWEEN  
LEASE AND MANAGEMENT AGREEMENT  
WE WILL EVISCERATE  
CONSTITUTIONAL PROTECTION  
BECAUSE NO PRUDENT CITY ATTORNEY  
WILL EVER DRAFT ANOTHER  
AGREEMENT WITH A PRIVATE USER OF  
GOVERNMENT FACILITIES AS A  
LEASE, THEY WILL CALL OUR AN  
OPERATING AGREEMENT, ARTICLE 7  
SECTION 3, NO MORE PRACTICAL  
PURPOSES, THAT IS WHAT THEY ARE  
URGING GET.

THEY ACKNOWLEDGE IF WE LEASED  
THE PROPERTY IT WOULD BE  
TAXABLE.

IT SAID SO IN CAPITAL CITY BUT  
BECAUSE WE DIDN'T LEASE IT,  
SOMEHOW THE CONSTITUTION MUST BE  
READ --

>> WHAT I'M STRUGGLING WITH IS  
BACK TO THE WORDS OF THE  
CONSTITUTION BECAUSE WHEN I LOOK  
AT IT, PROPERTY HAS TO BE OWNED  
BY MUNICIPALITY SO THIS IS ALL  
TO THE PHRASE USED EXCLUSIVELY  
BY MUNICIPAL PURPOSES AND IT  
SEEMS TO ME UNDERSTANDING THAT,  
THE LEASEHOLD INTEREST, THAT IS  
SUBJECT TO LEASEHOLD INTEREST,  
TO THE LEASEHOLDER.

IF IT IS PROPERTY OF THE IS  
BEING OPERATED PURSUANT TO A  
MANAGEMENT AGREEMENT WE WOULD  
ORDINARILY THINK OF THAT AS  
PROPERTY BEING USED BY THE OWNER  
OF THAT HAPPENS TO BE SUBJECT TO  
A MANAGEMENT AGREEMENT.

THE DISTINCTION BETWEEN THE  
LEASE AND THE MANAGEMENT  
AGREEMENT IS QUITE MATERIAL.  
IT IS A DIFFERENT ARRANGEMENT  
THAT AFFECTS OF THE WAY WE  
WOULDN'T THINK ABOUT WHO'S USING  
THE PROPERTY.

WHAT AM I MISSING?

>> INTO DISTINCTION WITHOUT A  
DIFFERENCE.

THE DISTINCTION WITH THE  
MANAGEMENT AGREEMENT IS NOT  
MENTIONED IN THE CONSTITUTION,  
THE BASIS FOR DISTANT WISHING  
PRIVATE USES.

WHEN YOU GET AT THE MANAGEMENT

AGREEMENT, WHAT JUMPS OUT AT YOU?

THE ENTITY THAT IS BEING HIRED TO MANAGE THIS PROPERTY?

THEY GOT ALL THE RESPONSIBILITIES YOU WOULD SEE IN A TRIPLE NET LEASE?

WHETHER THEY PAY TAXES OR NOT, ATYPICAL EARMARK OF A TRIPLE LEASE.

AS A CITY ATTORNEY, THE DOCUMENT SAYS LEASE AT THE TOP AND YOU WRITE MANAGEMENT AGREEMENT AND ALL OF A SUDDEN THE PROPERTY IS NO LONGER --

>> IN THE COURSE OF THAT CASE EXACTLY WHAT HAPPENED HERE, YOU SAY THIS IS A LEASE AND A JUDGE DETERMINES WHETHER IT IS OR ISN'T, BECAUSE THE DOCUMENT SAYS ON ITS FACE IT'S NOT A LEASE, IT IS TRANSFERRED, YOU LOST THAT ARGUMENT.

IS IN THIS PARADE A HORRIBLES, THE CITY SCRATCHES THEM, THAT DOESN'T HOLD UP.

YOU WOULD ESTABLISH IF SOMETHING WAS A LEASE MASQUERADING AS SOMETHING ELSE.

THEY ARE NOT CLOSED TO THAT ARGUMENT.

>> IF YOU WERE TO SAY IN THIS CASE, THE MANAGEMENT COMPANY IS PAYING RENT AND HAS OTHER OBLIGATIONS THAT FORM OF AN AGREEMENT WOULD ALLOW THE EXEMPTION, WOULD NOT DESTROY IT. I'M NOT SURE THERE WOULD BE ANOTHER MANAGEMENT AGREEMENT.

>> GLAD YOU'VE TAKEN US BACK TO THAT.

THAT ISN'T THE END OF THE SENTENCE AND YOUR FRIEND MADE THE POINT IN YOUR BRIEFING OVER AND OVER AGAIN, OMIT THE REST OF THE PROVISION AND THE CONSEQUENCES OF THAT CHOICE, IF YOU'RE READING IS CORRECT, AM I RIGHT THAT IF SOMEONE DECIDED TO HIRE A GOLF PRO AT THIS COURSE TO TEACH THEM THE GAME OF GOLF, THE PROPERTY APPRAISER'S POSITION WOULD BE THAT THE CITY LOST ITS CONSTITUTIONAL

EXEMPTION FOR AD VALOREM  
TAXATION BECAUSE THE GOLF COURSE  
IS BEING USED NOT EXCLUSIVELY BY  
THE CITY.

ANYTIME GOLF PRO IS HIRED, THAT  
IS ENOUGH?

>> I WOULDN'T BELIEVE SO.

LET ME TRY TO DISTINGUISH IT  
THIS WAY.

OF THE GOLF ROW WITHIN THE GOLF  
COURSE, THAT IS YOURS, YOU GET  
TO USE THAT TO DO GOLF LESSONS  
AND NO ONE GETS TO USE IT AND  
YOU KEEP WHATEVER MONEY YOU GET  
FOR MAKING THOSE GOLF LESSONS,  
IT WOULD BE TAXABLE.

>> FOR YOU IT WOULD HAVE TO BE  
AN EXCLUSIVE AGREEMENT BUT IF  
THERE ARE FIVE GOLF PRO-PLAPS  
THE TAX-EXEMPT IS RETAINED?

>> THAT'S WHAT I WAS TRYING TO  
EXPLAIN.

YOU WOULD HAVE AN EXCLUSIVE AREA  
FOR USE OF THAT.

THIS COMPANY WAS ALLOWED TO USE  
THE GOLF COURSE, THE RESTAURANT,  
ALL OF THAT, TO GENERATE  
BUSINESS, RAN THE ENTIRE COURSE,  
NO OTHER ENTITY WAS ALLOWED TO  
DO THE SAME.

>> WHY SHOULD PROFIT MATTER?

SAY THERE'S A CHARITY  
TOURNAMENT, A GOLF SPREAD, A  
WHOLE COURSE ANNUALLY FOR THIS  
CHARITY, IT IS USED TO RAISE  
MONEY FOR THE GULF BREEZE  
RENOVATION PROJECT.

EVERY YEAR, THAT WEEKEND, GOLF  
COURSE WILL BE USED FOR THAT  
PURPOSE.

ARE WE NOW, IS THE TAX EXEMPTION  
NOW GONE?

>> NOT ON AN INFREQUENT BASIS  
NOR WOULD IT BE IF THAT WAS THE  
ONLY THING YOU COULD DO, THE  
LEGISLATURE TO SAY SUCH PORTIONS  
USED FOR CHARITABLE PURPOSES MAY  
BE EXEMPTED, OPERATING UNDER  
THAT PROVISION.

BACK TO THE 1968 CHANGE, THIS  
COURT HAS SAID THAT IS THE  
SIGNIFICANT LINE SINCE 1968, IT  
DID NOT CHANGE.

THAT DEFINITION IS NOT CHANGED,

IT IS USED EXCLUSIVELY.  
AND EXCLUSIVELY BY IT, THIS  
COURT MANY TIMES OVER --  
>> I INSIST -- I INSIST THE REST  
OF THE SENTENCE IS THERE, USED  
FOR PURPOSE.  
>> I AGREE THE REST OF THE  
SENTENCE IS STILL THERE, THE  
CHANGE WAS EXCLUSIVELY BY IT SO  
THAT PRIVATE USERS OF  
GOVERNMENTAL PROPERTY ARE  
REQUIRED TO PAY THEIR FAIR SHARE  
OF AD VALOREM TAXES, THE COURT  
TALKS ABOUT IT IN SUBSEQUENT  
CASES, ALMOST LIKE  
ANTI-COMPETITIVE NATURE.  
WHY SHOULD A BUSINESS USING  
GOVERNMENT PROPERTY TO RUN ITS  
BUSINESS AND GENERATE PROFITS.  
>> YOU KEEP ASSUMING WHAT IS IN  
DISPUTE AND TO EVERYONE AGREES  
IT DOESN'T MEAN USED EXCLUSIVELY  
SO WE HAVE TO HAVE A WAY OF  
UNDERSTANDING WHAT IT MEANS.  
TO UNDERSTAND HOW EVERYBODY  
WOULD CHANGE THE TITLE OF THE  
AGREEMENT, ARE YOU SUGGESTING  
EVERY GOVERNMENT ENTITY LEASING  
OVER THIS PROPERTY WOULD WANT TO  
TAKE RESPONSIBILITY FOR THE  
LEVEL OF CONTROL FOR WHAT IS  
GOING ON, IN A WAY THAT'S  
PRESENT HERE.  
THE QUESTION IS NOT THE LABEL ON  
THE TOP BUT SUBSTANTIVE CONTENT  
OF THE AGREEMENT.  
IF THE CITY IS CONTROLLING  
EVERYTHING, THIS AND THAT, WHEN  
YOU GET PERMISSION, THAT  
DISTINGUISHES IT FROM THE LEASE.  
NOT WHAT YOU CALL IT.  
>>  
>> THEY USE THEIR FACILITIES,  
THEY WANT TO HAVE SOME LEVEL OF  
CONTROL OVER WHAT THAT PERSON IS  
DOING IN A LEASE.  
YOU GOT TO CLOSE THE POCKET  
PURSUANT TO TERMS OF THE  
MANAGEMENT.  
ALL GOVERNMENTS HAVE SOME LEVEL  
OF CONTROL.  
WHAT'S THE LEVEL OF CONTROL  
HERE?  
IT DOES THE DAY-TO-DAY

OPERATIONS AND A MONTHLY REPORT AND ANNUAL REPORT FOR THE CITY, MAINTAINS THE RIGHT TO UTILIZE IRRIGATION EQUIPMENT BUT THE RECORD TESTIMONY, OFF COURSE SUPERINTENDENT DETERMINES ON THE COURSE, ONLY IF THE POND IS 8.5 FEET.

WOULD WE LEAN IN AND PUT MORE WATER ON THE COURSE THAN THE SUPERINTENDENT MAY DEEM NECESSARY.

IT HAD NEVER HAPPENED IN HIS TIME AT THE GOLF COURSE.

THE LEVEL OF CONTROL THAT THE CITY WAS EXERCISING, NOT FAIR TO CHARACTERIZE IT SAYING ON A DAY-TO-DAY BASIS WHAT MUST BE DONE.

OPEN BOOKS TO PROVIDE THOSE BOOKS TO THE CITY, FOR CUSTOMER COMPLAINTS.

WHEN IT GOT DOWN TO HOW IT WOULD BE RUN ON A DAY-TO-DAY BASIS, THAT'S THE BUSINESS OF THE CONTRACTOR.

I DON'T SEE HOW THAT LEVEL OF CONTROL IS SIGNIFICANTLY DIFFERENT.

I DON'T THINK A CITY WOULD SIMPLY SAY YOU WOULD DO ANYTHING WITH IT AT ANY HOUR OF THE DAY THAT YOU WOULD CHOOSE.

CERTAINLY NOT AN ELEMENT --

>> YOU ARE CREATING OR PROJECTING THIS IDEA THAT CITIES ALWAYS WANT TO AVOID, THE PROPERTY FROM THEM PAYING A TAX BUT WOULDN'T IT BE CIRCUMSTANCES, AREN'T THERE CIRCUMSTANCES THIS CITY SAYS WE ARE LEASING IT OR PAY THE TAX. DOES THAT HAPPEN?

>> I BELIEVE IT DOES.

>> THEY DON'T WANT TO BE INVOLVED IN IT.

I THINK THIS KIND OF SPECTER THAT YOU SUGGESTED ISN'T ALWAYS THE CASE.

THE IDEA OF GIVING IT TO THIS MANAGEMENT COMPANY TO USE, FROM ANOTHER PERSPECTIVE, THE CITY'S PERSPECTIVE, THEY INVOLVE THE MANAGEMENT COMPANY TO LOSE

MONEY, THEY KNOW HOW TO OPERATE IT.

BUT SOMEBODY WHO CAN OPERATE IT AND REDUCE LOSSES BEING SUFFERED.

ANOTHER WAY OF LOOKING AT IT.

>> THIS WAS THE EXACT REASON PROFFERED IN THE RACE.

THE CITY OPERATED THE RACEWAY FOR YEARS AND LOST MONEY.

THEY CONTINUE TO LOSE MONEY, PRUDENT OPERATOR, THEY LEASED IT.

THEIR ARGUMENT IF THAT'S A MANAGEMENT AGREEMENT, THIS COURT SHOULD HAVE REACHED A DECISION.

I DON'T THINK THE CONSTITUTION SHOULD BE READ IN SUCH A FASHION, NOT IN THE LANGUAGE OF THE CONSTITUTION AND THE COURTS

--

>> YOUR FRIEND ANSWERS IT, IT IS EVIDENT IN THE FIRST PART.

IN A LIMITED SENSE, OWNERSHIP HAS CHANGED.

YOU DON'T OWN ALL THE STICKS IN THE BUNDLE WHEN YOU LEASE SOMETHING.

THE TENANT HAS A RIGHT OF QUIET INVOLVEMENT, ALL THINGS THAT ARE LEASED TO A CERTAIN INTEREST.

IF YOU FOCUS LESS ON THE SECOND PART OF THE SENTENCE OR THE BEGINNING OF THE SENTENCE THE ARGUMENT WOULD BE IF I TRANSFERRED A LEASEHOLD INTEREST I DON'T OWN THE PROPERTY, I OWN SUBJECT TO THE LEASEHOLD INTEREST.

IS THAT A WAY TO SQUARE THE COURT AFTER JURISPRUDENCE WITH THE TEXT OF THE CONSTITUTION?

>> YES, BUT IT WOULD NOT BE APPROPRIATE TO SAY MANAGEMENT AGREEMENT IS SOMEHOW DIFFERENT.

THIS COMPANY HAD THE RIGHT TO RUN THIS GOLF COURSE AND TRY TO MAXIMIZE PROFITS AS BEST AS IT SAW, CAPABLE OF DOING.

NO OTHER COMPANY TO DO IT.

THE CITY, ONLY COULD COME IN AND DO IT IF THE CONTRACTOR WAS NOT LIVING UP TO ITS OBLIGATIONS.

THE CITY HAD TRANSFERRED PART OF

ITS BUNDLE OF RIGHTS.

THIS WAS A 7 YEAR DEAL.

THE CITY AGREED THEY SHOULD SELL  
IT DURING THAT TIME PERIOD, THE  
REFUSE ALL, YOU CAN MAKE THE  
DECISION AND THE CITY COULD NOT  
TURN AROUND AND DECIDE WE WANT  
TO LEASE IT TO SOMEBODY ELSE.

WE DON'T HAVE THE ABILITY TO GO  
TO THE GOLF COURSE ITSELF.

IF THE CITY COULD HAVE RUN THE  
GOLF COURSE PROFITABLY, INTO THE  
CITY'S BUDGET.

I DON'T SEE A MATERIAL  
DIFFERENCE IN CHARACTERIZING  
AGREEMENT WITH A PRIVATE ENTITY  
AS A MANAGEMENT AGREEMENT OR  
OPERATING AGREEMENT OR LEASE.  
IT DOESN'T MAKE A CONSTITUTIONAL  
DIFFERENCE.

IS THIS AGREEMENT A LEASE?

>> IT WOULDN'T BE DIFFERENT IF  
THERE WAS A FIXED FEE FOR THE  
MANAGEMENT COMPANY?

THEY ARE PAID X DOLLARS A YEAR?

WOULD THAT CHANGE HOW THIS  
SHOULD BE HANDLED?

>> TAKES A STEP AWAY FROM  
FUNCTIONING MORE LIKE A LEASE.  
YOU GET TO USE THE PROPERTY, THE  
MANAGEMENT AGREEMENT IS THE  
SAME.

THE FIRST DISTRICT COURT WHEN  
THEY POINTED THAT OUT, TRYING TO  
ANSWER QUESTION, AS MUCH AS THEY  
NEED TO.

I WOULD LIKE THE COURT TO SAY IT  
DOESN'T MATTER IF THE USE IS  
PURSUANT TO THE MANAGEMENT  
AGREEMENT, MORE EXPANSIVE  
DECISION.

>> REPRESENTING MR.

BROWN.

>> YES, SIR.

HE CERTAINLY HAS.

MY OFFICE HAS BEEN INVOLVED IN A  
LOT OF OTHER CASES IN THIS AREA.  
IT DOES APPEAR TO US WHEN YOU  
LOOK AT HOW WE GOT WHERE WE ARE,  
THE CONSTITUTION WAS CHANGED  
INTENTIONALLY IN 1968 SO PRIVATE  
OPERATORS ON GOVERNMENT PROPERTY  
SHOULD PAY AD VALOREM TAXES LIKE  
THE FOLKS THEY COMPETE WITH.

>> TO CLOSE OUT, YOU THINK THE EARLIER FIRST DCA CASE THAT SAID THE FLAT FEE MANAGEMENT AGREEMENT DIDN'T CHANGE THE TAX STATUS, WAS THAT WRONG? WASN'T THERE ANOTHER CASE WHERE THERE WAS A FLAT FEE AND THE COURT SAID THAT DIDN'T AFFECT THE TAX EXEMPTION, THE FIRST DCA SEEMED TO THINK CHANGING THE NATURE OF COMPENSATION WAS RELEVANT TO THE TAX STATUS. DO YOU DISAGREE?

>> THE FIRST DISTRICT COURT POINTED OUT THE GOLF COURSE OPERATED FOR NONPROFIT BASIS AND A MANAGEMENT COMPANY INVOLVED ON APPEAL AND IN THAT DECISION -->> ONE SECOND.

THE 1968 CHANGE A LONG TIME AGO, IN 1968, 1998, VOTERS IN THE STATE OF FLORIDA ASKED TO AMEND THIS PROVISION IN A WAY THAT WOULD ALLOW THE EXEMPTION UNDER THESE CIRCUMSTANCES AND THEY VOTED IT DOWN.

THEY ACKNOWLEDGED IT THAT WAS A FAIR AMOUNT OF THE PURPOSE WE SHOULD BE LOOKING AT, IF WE SHOULD ASK TO AFFIRM THE DISTRICT COURT OF APPEAL THE DECISION.

>> USED BY, MANAGED BY, COULD BE DEEMED TO WHATEVER PROPERTY MANAGED TO USE IT.

IF THAT DESTROYS THE IMMUNITY FOR PRIVATE MANAGEMENT COMPANIES.

THE LEAGUE OF CITIES POINT OUT, HIRING PROFESSIONALS TO MANAGE CITY SERVICES IS A GROWING TREND BECAUSE PROFESSIONALS IN MANAGING SERVICES TEND TO DO A BETTER JOB.

WHAT DID THE FACT IN THIS CASE SHOW?

THE CITY MANAGING THESE PROPERTIES WITH ITS OWN STAFF LOST MONEY YEAR AFTER YEAR.

THEIR PRIMARY GOAL IS TO STOP LOSING MONEY.

THEY WROTE THIS MANAGEMENT AGREEMENT FAVORABLE TO THE TAXPAYERS OF GOLF BREEZE.

I WOULDN'T HAVE SIGNED IT IF I HAD BEEN A MANAGEMENT COMPANY OR RECOMMENDED HAD I BEEN A LAWYER FAVORABLE TO THE TAXPAYERS THAT STOP THE LOSSES.

THE MANAGEMENT COMPANY DID WHAT THE CITY TOLD IT TO DO, WHAT THE CITY WANTED IT TO DO AND THE USES OF THE PROPERTIES REMAIN UNCHANGED.

THE ONLY THING THAT CHANGED IS THE CITY WASN'T LOSING MONEY EVERY YEAR AND MANAGEMENT OF THESE COMPANIES.

DO WE WANT TO DISCOURAGE THAT AS A MATTER OF PUBLIC POLICY?

I WOULD THINK NOT.

THAT IS AN ISSUE WE DON'T WANT TO DISCOURAGE AND NO COURT HAS DONE THAT.

>> SOMETHING I MEANT TO ASK EARLIER.

THE GOLF COURSE IS OUTSIDE MUNICIPAL LINES.

IS THAT RIGHT?

IS THERE ANY RELEVANCE TO THAT FACT, GIVEN THE SECOND SENTENCE OF SECTION A TO OUR ANALYSIS?

OR IS THAT JUST NOT AN ISSUE HERE BECAUSE OF THE GENERAL ARE REQUIRING TAXATION?

>> IT IS NOT AN ISSUE AND COURTS LOOKED AT THE FACT THE TRANSMISSION LINES CONVEYING ELECTRICITY IN THE PROPERTY OF GOVERNMENTAL ENTITY PROVIDING THE POWER DOESN'T MATTER. IT IS HOW THE PROPERTY IS BEING USED.

IN THIS CASE THE FACTS SHOW THAT BEFORE THE CITY PURCHASED THIS PROPERTY, IT WAS USING IT, FOR FACTS SHOW WHEN THEY WERE USING IT AS A SPRAY PHIL THEY WERE CONSTANTLY HAVING TO FIGHT, GOLF COURSE SAYING WE ARE SATURATED, IT'S RAINING A LOT, DON'T PUT ANY MORE GROUNDWATER IN, WE HAVE TOO, DON'T HAVE ANYTHING ELSE TO DO WITH IT, WE HAVE TO DO IT SO THERE WERE CONSTANT BATTLES. WHEN THE GOLF COURSE CAME UP FOR SALE THE CITY SAID WE NEED IT FOR OUR GROUNDWATER SPRAY FIELD,

LET'S BUY IT.

WAS THEIR INTENT TO MAKE A  
PROFIT?

WAS THEIR INTENT FOR THE  
MANAGEMENT COMPANY TO MAKE A  
PROFIT?

NO.

THEIR INTENT WAS TO HAVE A  
RELIABLE PLACE TO DISPOSE OF  
GROUNDWATER AND THE ANCILLARY  
USE OF RECREATION FOR CITIZENS  
IN THE CASE WHERE A MARINA IS  
USED BY RESIDENTS OF THE  
JURISDICTION AND NONRESIDENTS OF  
THE JURISDICTION IS DEEMED TO BE  
A PUBLIC PURPOSE.

THERE WAS NO QUESTION IN THIS  
CASE THE USE OF THIS PROPERTY  
WAS FOR PUBLIC PURPOSE.

THE COURT SAID THAT AND THE  
PROPERTY APPRAISER NEVER  
CHALLENGED THAT.

THE PROPERTY APPRAISER GRANTED  
THE IMMUNITY FOR THIS PROPERTY  
BASED ON THE PROVISION OF THE  
CONSTITUTION AND CHANGED IT WHEN  
AND ONLY WHEN THERE WAS A  
MANAGEMENT AGREEMENT WHICH IT  
CLAIMED WAS A LEASE.

THE ARGUMENT EVERYONE CHANGED  
THE NAMES TO MANAGEMENT  
AGREEMENT, DISINGENUOUS FOR THE  
SIMPLE REASON THE COURT CAN LOOK  
TO THE FORM OF THE DOCUMENT,  
THAT MR.

BROWN SUCCESSFULLY HELD WHICH  
THE DOCUMENTS WERE CALLED  
LEASES.

THIS COURT FOUND THAT THEY WERE,  
BECAUSE THEY WERE PERPETUAL  
LEASES, ADVANCES BECAUSE IT CAME  
BACK TO THE OWNER WHO WAS IMMUNE  
FROM TAXATION.

>> WE WILL TAKE A SHORT BREAK  
AND BE BACK FOR THE LAST TWO  
CASES.