

## FINANCE & TAXATION

### Finance & Taxation: Adequacy of Notice

*Patricia Weingarten Associates, Inc. v. Jocalbro, Inc.  
and Joe C. Brown, Etc.,*  
974 So. 2d 559 (Fla. 5th Dist. App. 2008)

A government-issued notice of a tax deed sale that complies with Florida's statutory requirements may nonetheless violate constitutional due process requirements if the government knows or has reason to know the property owner did not receive the notice, yet the government fails to take additional reasonable steps, practicable under the circumstances, to provide the owner with notice.

#### FACTS AND PROCEDURAL HISTORY

Patricia Weingarten Associates (Weingarten) was the record owner of fourteen parcels of real property in Marion County, Florida. In 1993 she failed to pay the property taxes on the parcels. In December 2000, Jocalbro, Inc. and Joe C. Brown, trustee for Jocalbro, Inc. Profit Sharing Plan Trust (Jocalbro), purchased tax certificates for the parcels, which Weingarten failed to satisfy. After the purchasers filed applications for tax deeds, Marion County conveyed the fourteen parcels to them in 2004. Subsequently, the purchasers filed suit to quiet title to the parcels. Weingarten filed an answer in which it alleged it had not received notice of the tax deed sale until it received service of Jocalbro's complaint to quiet title. Weingarten further alleged it had notified the Marion County Tax Collector (Tax Collector) of its correct Missouri address and consequently received 2001, 2002, and 2003 tax bills at that address for other properties it owned. Based on these allegations, Weingarten asserted the Clerk of the Circuit Court (Clerk) failed to update its records adequately and, as a result, failed to provide constitutionally sufficient notice.

The trial court entered final judgment in favor of Jocalbro, and Weingarten appealed to the Fifth District Court of Appeal. While the appeal was pending, the United States Supreme Court issued its *Jones v. Flowers* opinion, which held when a state's mailed tax sale notice is returned as undeliverable, due process

dictates that before selling the property, the state must, when practicable, take additional reasonable steps to notify the property owner of the sale. 547 U.S. 220, 225 (2006). The *Jones* Court further held that a taxpayer's failure to update its address with taxing authorities does not constitute forfeiture of the right to constitutionally sufficient notice.

In light of the *Jones* ruling, Florida's Fifth District Court of Appeal reversed the final judgment and remanded the case for determination of the reasonableness of additional steps taken, if any, by the Clerk to provide Weingarten with notice of the tax sale.

On remand, the trial court found that other than publishing notice in a local newspaper, the Clerk took no additional steps to notify Weingarten after mailed notices were returned unclaimed. Additionally, the evidence showed that although Weingarten notified the Tax Collector of its Missouri address sometime between 1999 and 2001, and the Tax Collector mailed tax bills for several of Weingarten's other properties to that address, the Clerk failed to update the addresses for the fourteen parcels in question. However, the trial court again entered judgment quieting title in favor of the purchasers.

On appeal, the Fifth District Court of Appeal reversed—holding the Clerk's failure to take additional steps to provide adequate notice violated due process—and remanded with instructions that the trial court enter final judgment in favor of Weingarten.

## ANALYSIS

Weingarten argued the tax deeds conveyed to Jocalbro should be cancelled because the Clerk failed to give constitutionally adequate notice of the tax sale. Weingarten asserted that because it sent the Tax Collector its correct address, the Clerk should have updated all records accordingly. Weingarten also contended that because the Clerk did not follow up after notices sent by certified mail were returned unclaimed, the taxing authorities violated *Jones*' "additional reasonable steps" standard. Jocalbro argued the notice procedure followed by the Clerk satisfied constitutional due process requirements because it adhered to Florida's statutory scheme.

The Fifth District held that the Clerk's notice violated due process because the Clerk failed to make additional efforts to notify Weingarten after it was known the certified letters had not reached the property owner. The court noted the relevant Florida statutes require taxing authorities to mail a tax sale notice to the legal titleholder at the address listed on the most recent assessment roll. Fla. Stat. §§ 197.522, 197.502(4)(a). The court further stated that if taxing authorities follow Florida's statutory notice requirements, the record owner's failure to receive notice will not affect the tax deed's validity, so long as the taxing authorities take additional reasonable steps, practicable under the circumstances, to notify the property owner of the sale.

The court relied on *Vosilla v. Rosado*, which held that notice which is compliant with Florida's statutory requirements can violate constitutional due process if it is not reasonably calculated under the circumstances to advise the record owner of the tax deed sale. 944 So. 2d 289 (Fla. 2006). It also relied on *Jones*, in which the United States Supreme Court held that when a mailed tax sale notice is returned unclaimed, the government must take additional reasonable steps to notify the legal owner of the sale.

The court asserted that although the Clerk need not have searched all public records, "some reasonable follow-up measures must be employed when the government knows or has reason to know that the notice did not reach the property owner." *Weingarten*, 974 So. 2d at 564. The court noted that the Clerk knew the tax sale notice had not reached Weingarten because the notices sent by certified mail to four addresses were returned unclaimed. The court reasoned that under the circumstances—specifically, where the Clerk need only have looked to other, existing Tax Collector records to obtain Weingarten's correct address because Weingarten previously sent an address update—the additional step the Clerk took, publishing a newspaper notice, was not reasonably calculated to provide Weingarten with notice. Because the Clerk failed to take additional reasonable steps—readily available and practicable under the circumstances—to provide Weingarten with notice, the court held the Clerk's notice procedure violated due process, and it reversed and remanded with instructions to enter final judgment in favor of Weingarten.

### SIGNIFICANCE

*Weingarten* establishes that government notices of a tax sale must not only satisfy Florida's statutory requirements, but also must further comply with the heightened due process standard established by the United States Supreme Court in *Jones*. The *Jones* standard requires that when government authorities know or should know that notice has not reached the property owner, they must make additional reasonable efforts, practicable under the circumstances, to provide the owner with notice. The government's failure to take such additional steps may constitute a violation of due process that may invalidate the tax sale.

### RESEARCH REFERENCES

- 52 Fla. Jur. 2d *Taxation* § 1700 (2006 & Supp. 2008).
- 72 Am. Jur. 2d *State and Local Taxation* § 837 (2001 & Supp. 2008).

Jamie Marcario

### Finance & Taxation: Ad Valorem

***Palm Beach County v. City of Boca Raton,***  
995 So. 2d 1017 (Fla. 4th Dist. App. 2008)

Use of county funds to finance county-wide services does not result in a double taxation if the services provide a minimum level of benefit to residents of municipalities within the county. There is no transfer of powers when a county encourages rather than requires municipality participation in its programs.

### FACTS AND PROCEDURAL HISTORY

The cities of Boca Raton and Delray Beach (Cities) challenged Palm Beach County's (County) use of tax funds to operate a fire-rescue dispatch system. Historically, the Cities operated their own dispatch systems with the use of tax funds from their residents. In 2005, the County began using county funds to finance the County Dispatch System (CDS). The CDS dispatched fire rescue and other services to both unincorporated areas and participating cities within the County. The County furnished dispatch

equipment to participating cities to encourage participation in the CDS.

The Cities filed a declaratory action alleging the County's funding of the CDS amounted to double taxation. The Cities argued that they do not widely use some services provided by the CDS, that they do not want to use others, and that still others provide no actual benefit. The County identified twelve benefits the CDS provided to the residents of the Cities. The trial court found that the CDS did not provide substantial benefits to the residents of the Cities and entered an injunction precluding the County's use of county ad valorem tax funds to finance the CDS. The County appealed to the Fourth District Court of Appeal.

#### ANALYSIS

Article VIII, Section 1(h) of the Florida Constitution precludes a county from taxing property within a municipality for services that solely benefit residents of unincorporated areas. The court noted that some of the CDS services were not used by the Cities, that the Cities were dissatisfied with other services, and that some of the benefits from the CDS were only potential and not actual. Accordingly, the primary issue before the court was whether the Florida Constitution prohibited the County to use county-wide funds for the CDS.

The court began by reviewing the Florida Supreme Court's decision in *Town of Palm Beach v. Palm Beach County*, where the Florida Supreme Court interpreted Article VIII, Section 1(h). 460 So. 2d 879 (Fla. 1984). In *Town of Palm Beach*, the Florida Supreme Court held that a county is prohibited from taxing property located in a municipality for any services rendered that provide no real or substantial benefit to property owners in a municipality. However, a minimal level of benefit, either actual or potential, to the residents of a municipality will satisfy the requirement under Section 1(h). The Florida Supreme Court noted that the plaintiff has the heavy burden of proving the service funded by county-wide tax revenues has no real or substantial benefit.

Relying on *Town of Palm Beach*, the court held the CDS must provide a minimum benefit to the residents of the Cities. The Cities' argument on the number of actual uses of the CDS system failed because the benefit to the Cities can be either actual or potential. The court noted that the "Cities' preference for their own,

different systems does not warrant a finding that [the] Cities do not receive real and substantial benefit from county funded service.” *Palm Beach County*, 995 So. 2d at 1022. The court reiterated that the burden to show no real or substantial benefit is very heavy and concluded the Cities failed to meet that burden. Consequently, the county’s use of funds to finance the CDS did not amount to double taxation.

The court then addressed whether the County’s incentive program to encourage participation in the CDS was an unconstitutional transfer of power from the Cities to the County. The court observed that the dispatch function was not being absorbed by the County and that the Cities maintained the right to retain their dispatch systems. The court concluded that no transfer of power occurred because the Cities were not required to participate in the County’s incentive program.

#### SIGNIFICANCE

*Palm Beach County* reaffirms that county use of funds for county-wide services requires only a minimum level of benefit to the residents of a municipality and that benefit may be direct or indirect. More importantly, a plaintiff has a heavy burden when trying to prove no real or substantial benefits to the residents of a municipality. Additionally, *Palm Beach County* clarifies that no transfer of power occurs when a city encourages, rather than requires, municipality participation in its programs.

#### RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Counties* § 254 (2005 & Supp. 2009).
- 50 Fla. Jur. 2d *Tax* § 49 (2006 & Supp. 2009).

J. Chris Bristow

#### **Finance & Taxation: Calculating Claims of Lien**

***Stratton v. Sarasota County*,**  
983 So. 2d 51 (Fla. 2d Dist. App. 2008)

Florida statutory law prohibits counties from including payroll expenses for code-enforcement employees in its lien calculations against property owners for violations.

## FACTS AND PROCEDURAL HISTORY

Nancy Stratton (Stratton) purchased a waterfront house subject to an existing condemnation order from Sarasota County (County). The land surrounding the house was eroding and posed a threat to beachgoers near the property. Stratton unsuccessfully sought a historical landmark designation for her home, which would have allowed her to restore it to a safe condition. Consequently, the County demolished portions of Stratton's house after it began to collapse into the encroaching Gulf. The County filed a claim of lien for \$129,315.23 on the remaining portion of Stratton's home, which included \$24,498.54 for payroll expenses for code enforcement, fire department, and sheriff's office employees involved in the demolition project.

The trial court entered a final judgment of foreclosure. The house's foreclosure sale was stayed, partially because Stratton disputed the trial court's inclusion of the County employees' payroll expenses in both liens. Stratton appealed to the Second District Court of Appeal, arguing that county employees' time should not have been included in determining the cost of a demolition project. The County argued that its local ordinance allowed inclusion of payroll expenses in its claim of lien as part of the "cost of repair."

## ANALYSIS

On appeal, the Second District Court of Appeal reversed the trial court's decision to include payroll expenses for code-enforcement officers in the claim of lien. However, the court held that law enforcement and fire department expenses were properly included in the claim of lien.

The court reasoned that the County's reliance on the local ordinance was improper because Florida Statutes Section 162.09 limits recovery in municipal code-enforcement actions to the actual costs of repair. The plain language of the statute did not provide for the recovery of payroll expenses, and the court declined to adopt such an expansive interpretation. Thus, the local ordinance conflicted with a state statute and the County could not rely upon the ordinance to collect its payroll expenses. The proper method for recovering payroll expenses would be to include them in increased fines rather than collecting payroll expenses only upon filing claims of lien.

Moreover, the court explained that the statute did not contemplate recovering running costs associated with running a code-enforcement system. The court opined that payroll expenses were routine expenses that would have been incurred regardless of any one violation of the County's building code. "[T]he County's operating costs for its code enforcement department are a constant overhead, and no one particular portion can be considered a separate cost actually incurred by the County in prosecuting a particular code violation." *Stratton*, 983 So. 2d at 56.

Finally, the court distinguished the types of employment expenses that were incurred in correcting the code violations. While the County included all code-enforcement employees in its lien calculations, the law enforcement and firefighters who were on hand for the house's demolition perform duties unrelated to the specific code violations. Therefore, these departmental expenses could be included in the County's claim of lien. However, the code-enforcement employees' time was part of the County's constant overhead, not a separate cost that could be apportioned to this particular house's violations. Because the code-enforcement employees were performing routine code-enforcement duties, their time could not be included in the County's claim of lien.

Accordingly, in the absence of statutory authority permitting code-enforcement employees' payroll expenses to be included in lien calculations, any local ordinance that prescribes these penalties is improper.

#### SIGNIFICANCE

Counties may not recover code-enforcement employee costs by including payroll expenses as an independent cost in a claim of lien. The proper mechanism for counties to offset code-enforcement employment costs is to increase fines for code violations rather than including payroll expenses as a distinct cost when calculating the amount of a lien.

#### RESEARCH REFERENCE

- 62 C.J.S. *Municipal Corporations* § 173 (2008).

Scott Feather



**Finance & Taxation: Exemptions*****Turner v. Florida State Fair Authority,***  
974 So. 2d 470 (Fla. 2d Dist. App. 2008)

An instrumentality of the State that enters into an agreement allowing a third party to use its land can claim certain tax exemptions, provided that the agreement does not give the third party a possessory interest in the land.

**FACTS AND PROCEDURAL HISTORY**

The Florida Legislature created the Florida State Fair Authority (Authority) for the purpose of hosting an annual fair for the State. The Authority owned 355 acres of land in Hillsborough County known as the Florida State Fairgrounds (Fairgrounds). Because the Fairgrounds were used for only part of the year, the Authority signed an agreement with Roadmaster Driver's School, Inc. (Roadmaster), allowing Roadmaster access to part of the Fairgrounds to conduct a truck-driving school at times when the Authority did not require use of the property. The Hillsborough County Property Appraiser (Appraiser) assessed an ad valorem tax against the portion of the Fairgrounds property that Roadmaster used during 2004 and 2005.

The Authority challenged the 2004 and 2005 assessments, arguing that the land was immune from taxation because it was part of the State. The Appraiser contended that the Authority's status as a legislatively created entity enabled it to claim certain tax exemptions, but such status did not make the Authority's land immune from the ad valorem taxation. The circuit court disagreed with the Appraiser, and determined that the Authority had immunity from the Appraiser's assessment.

**ANALYSIS**

The Second District Court of Appeal held that, irrespective of its possible status as an immune entity, the Authority could claim an exemption to the tax because the Agreement with Roadmaster constituted a license rather than a lease. Florida Statutes Section 196.199 subjects an instrumentality of the State, such as the Authority and its Fairgrounds, to ad valorem taxation if it leases its land. However, the court determined that the Agreement merely

permitted Roadmaster to use the land but “[did] not make Roadmaster a tenant or give it any possessory interest in the subject parcel.” *Turner*, 974 So. 2d at 474. Accordingly, the Agreement constituted a license that rendered Section 196.199 inapplicable; the Authority was exempt from ad valorem taxation.

#### SIGNIFICANCE

*Turner* encourages instrumentalities of the State, such as the Authority, to continue finding ways to generate revenue that will allow them to claim a statutory exemption from taxation. Notably, the court sidestepped the broader question of whether the Authority could claim immunity from taxation, focusing instead on the nature of the Agreement between the Authority and Roadmaster. As long as instrumentalities of the State carefully craft revenue-generating agreements with third parties as licenses, as opposed to leases, these entities may claim an exemption from ad valorem taxation.

#### RESEARCH REFERENCE

- James L. Buchwalter, *When Is Property Owned by State or Local Governmental Body Put to Public Use So As to Be Eligible for Property Tax Exemption*, 114 A.L.R.5th 561 (2003 & Supp. 2008).

Scott Feather

#### **Finance & Taxation: Exhaustion of Administrative Remedies**

*Orange County v. Expedia, Inc.*,  
985 So. 2d 622 (Fla. 5th Dist. App. 2008)

A taxing agency does not have to exhaust all available administrative remedies associated with tax-collection lawsuits before seeking declaratory judgment as to the meaning or application of a tax statute or ordinance.

#### FACTS AND PROCEDURAL HISTORY

Expedia, Inc. (Expedia) is an online travel company that purchases hotel rooms at wholesale prices and re-sells the rooms at a

marked-up price to its customers. In Florida, counties are authorized to levy and impose a tourist development tax (TDT) on rental accommodations, including the following: hotels, motels, and other accommodations being rented for less than six months. Further, Florida Statutes Section 212.03(1) requires that the TDT be levied on the total rent charged for living quarters, sleeping, or housekeeping by the person charging or collecting the rental. Orange County (the County) has taken this option and self-administers its TDT on hotel accommodations.

Expedia pays the TDT to the County on only the discounted price of the hotel rooms it rents, not on the retail price the consumer actually pays. The County filed a complaint seeking a declaratory judgment from the Circuit Court for Orange County. The County wanted the court to verify that the TDT is due based on the full retail price for which consumers rent the rooms. The circuit court subsequently dismissed the complaint with prejudice for failure to meet the requisite elements of a cause of action for declaratory relief and for the County's failure to exhaust the requisite administrative remedies. The County appealed the circuit court's decision to the Fifth District Court of Appeal, raising the following question: May a taxing agency seek a declaratory judgment as to the meaning of a tax statute or ordinance before exhausting all administrative remedies associated with tax-collection lawsuits?

#### ANALYSIS

Expedia argued that the County did not satisfy the prerequisites for declaratory judgment, did not have standing, and most importantly, that it did not exhaust the necessary remedies before filing suit. The County argued that declaratory relief was a proper form of relief and that it had standing even though the County had not yet pursued an administrative remedy through a tax-collection action.

In analyzing whether the County should be entitled to declaratory relief, the court considered the following: (1) whether there was a bona fide, actual, present practical need for the declaration; (2) whether the declaration dealt with present facts; and (3) whether the relief sought was more than legal advice or the answer to a legal question. The court held that the dispute over the amount that should be taxed was a bona fide, present dispute

and that there were sufficient facts presented about the dispute. Further, the complaint dealt with a taxing power, and the parties were adverse to each other. Second, the court reasoned that the County was not simply asking for instructions as to how it should proceed against Expedia. Rather, the County was seeking a declaration as to its legal entitlement to assess TDT on the difference between the wholesale price and Expedia's retail price. Thus, the court found that the County's complaint established a prima facie case for declaratory relief.

The Court disagreed with Expedia's claim that the County lacked standing to pursue declaratory relief. Generally, government officials may not bring a declaratory suit merely because it disagrees with a constitutional or statutory duty. However, the County was not challenging the laws governing the TDT. Rather, it had a practical need for a declaration of its rights as it was performing its duty of assessing and recovering the TDT from Expedia.

Finally, the court addressed Expedia's assertion that the County was barred from seeking declaratory relief because it did not exhaust all available administrative remedies. The court held that the County was not barred, distinguishing between a tax collection action and a dispute of law. While an exhaustion of administrative remedies is a prerequisite for tax-collection actions, the County was not yet initiating such an action. In its complaint, the County was not seeking to enforce TDT collection, but instead, was seeking a declaration of whether, under the applicable ordinance, Expedia was liable for TDT on the marked-up price of the hotel rooms. The court stated that the distinction between an actual tax-collection action, and a dispute that had not yet ripened to that level, as in the instant case, was critical, and the latter did not require an exhaustion of administrative remedies. Thus, the court concluded that "the trial court abused its discretion in concluding that the plaintiffs were obligated to pursue administrative remedies prior to obtaining a judicial declaration as to whether the defendants are legally obligated to pay the TDT on retail charges they collect." *Expedia*, 985 So. 2d at 630.

#### SIGNIFICANCE

The court in *Expedia* held that a taxing agency does not have to exhaust all available administrative remedies before seeking

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declaratory relief, so long as the agency has asserted a valid claim for declaratory relief, has standing, and is seeking a judicial declaration of rights to enforce taxes rather than merely seeking to recover unpaid taxes. The practical result of this case is that it permitted the taxing agency to ascertain whether additional taxes were due without incurring the significant expense of determining how much tax was avoided.

**RESEARCH REFERENCE**

- 53A Fla. Jur. 2d *Local Option Tourist Development Tax* §§ 2894, 2907 (2008).

April Justus

**Finance & Taxation: Joint Ownership**

*Jackson-Shaw v. Jacksonville Aviation Authority*,  
2008 WL 5245640 (Fla. Dec. 18, 2008)

Under Article VII, Section 10 of the Florida Constitution, a public body that attempts to generate revenue by leasing its land to a private entity does not become a joint owner nor does it impermissibly lend its credit, provided that it assumes no responsibility for financing, promoting, or developing a project nor does it obligate itself to answer for the debts of the private entity.

**FACTS AND PROCEDURAL HISTORY**

The Jacksonville Aviation Authority (JAA), a public body responsible for planning, managing and overseeing four airports in the Duval County area, owned a 328-acre property near the Jacksonville International Airport. In order to generate revenue, JAA actively sought to lease the tract to private entities. In 2005, JAA's board of directors unanimously approved the lease of the property to Majestic Realty Company (Majestic). The two-part agreement (Agreement) with Majestic consisted of an option to designate and lease sub-parcels of the property for five years (Option), with a right to extend the option for another fifteen years conditioned only upon Majestic achieving certain performance benchmarks, and a participating ground lease for sixty-five years.

The first part of the agreement enabled Majestic to develop the property under the Option without having to pay any rent. Even if Majestic failed to meet minimal performance benchmarks with respect to construction, JAA's only remedy was to terminate the Option without receiving any rent. Moreover, JAA was potentially responsible for pre-development costs and approved infrastructure costs if the Option was terminated or expired. Additionally, JAA was obligated under the Option to construct a \$750,000 road extension through the property and to provide up to fifty acres of wetlands mitigation at no cost to Majestic.

Under the second part of the Agreement, the participating ground lease, JAA would receive the greater of (1) a fixed rent of \$1,380 per acre per year or (2) sharing in 50% of the net revenue generated from the sub-lease of the parcels. However, the leasehold interest was subject to foreclosure by Majestic's lenders. The lenders could assume a preferred position to recover Majestic's debt through the net revenue payments that JAA would normally be entitled to share. Accordingly, while Majestic's failure to pay its loans would not obligate JAA to assume its debts, it necessarily followed that JAA would be relegated to collecting only the fixed rent rather than a share of the net revenues.

Jackson-Shaw Company (Jackson-Shaw) is a private development company that owned land near JAA's property. Jackson-Shaw contended that JAA's obligations under the Agreement made it a joint owner, in violation of Article VII, Section 10 of the Florida Constitution. Moreover, Jackson-Shaw argued that JAA was pledging its credit to Majestic under the Agreement, which also violated the same provision of the Florida Constitution.

Jackson-Shaw challenged the lease agreement in federal district court; however, the court rejected Jackson-Shaw's interpretation of the Agreement. The district court found that the requirements for a joint venture were missing, in part, because Majestic was fronting all construction costs; JAA had no control over development; Majestic bore all the risk as the sole investor if the Agreement failed to make a profit; and JAA would not share in any of the losses.

The district court also concluded that JAA had not pledged its credit to Majestic because JAA was not responsible for any of Majestic's debts. Moreover, the court determined that JAA's commitment to extend a road through the property and provide wet-

lands mitigation did not constitute a pledge of credit. These commitments were necessary obligations JAA had anticipated fronting before the Agreement with Majestic, a fact reflected in JAA's 2005 capital budget.

On appeal, the Eleventh Circuit determined that the constitutionality of the Agreement turned on the interpretation of unsettled Florida case law. Accordingly, the Eleventh Circuit certified two questions to the Florida Supreme Court—whether JAA was a joint owner and whether it had pledged credit to Majestic. The Florida Supreme Court held that the agreement did not violate the Florida Constitution's joint-ownership limitation and that JAA did not impermissibly pledge its credit to benefit a private entity.

#### ANALYSIS

Interpreting Article VII, Section 10 of the Florida Constitution, the Florida Supreme Court first held that JAA's obligations under the two-part agreement did not render JAA a joint owner with Majestic. The Court explained that "a public entity thus does not become a joint owner with a private entity merely by entering into a lease." *Jackson-Shaw*, 2008 WL 5245640 at \*14. While the Court agreed with the district court's conclusion that the Agreement failed to satisfy the test for establishing a joint venture, the Court primarily focused on JAA's lack of financial responsibilities under the Agreement and the nature of the parties' relationship under the Agreement in reaching its ultimate conclusion that the Agreement did not violate the Florida Constitution's joint-ownership limitation.

The Court noted that JAA's financial responsibilities for the project did not implicate the Florida Constitution's proscription on joint ownership. Nothing in the agreement assigned responsibility to JAA for financing, promoting, or developing the proposed project. *Jackson-Shaw* argued JAA's allotment of \$750,000 for the road extension was a prohibited use of public funds to further a private project. However, the Court explained that JAA did not use funds to create an impermissible form of joint ownership; rather, the Option obligated JAA to complete a project that it already intended to pursue. Further, JAA's obligation to facilitate wetlands mitigation for the project was permissible because JAA already owned the property set aside for mitigation prior to enter-

ing into the Agreement. Additionally, the property set aside for mitigation would be subject to a conservation easement.

Moreover, the nature of the relationship born from the Agreement with Majestic was one of lessor and lessee. JAA, at a minimum, would receive a fixed rent once Majestic entered into the participating ground lease. Although the participating ground lease potentially allowed JAA to split the net revenues from the sub-leasing, a right commonly associated with joint ownership, the net revenue sharing provision was merely a substitute for the fixed rent on the occasion that the development turned out to be extremely profitable. Accordingly, nothing in the nature of the relationship under the Agreement supported a finding that JAA was a joint owner of the project.

The Court also held that JAA did not impermissibly lend its credit to Majestic. Under Article VII, Section 10 of the Florida Constitution, a public body is prohibited from lending credit to a private company unless it is done to serve paramount public purpose. The term “credit” in Article VII, Section 10 connotes the requirement that a public body assume a private party’s debts. Stated differently, in order to violate Article VII for impermissibly lending credit, JAA would need to assume financial liability on behalf of Majestic.

Jackson-Shaw argued that JAA’s use of public money for the road extension and wetlands mitigation constituted the lending of credit to Majestic. However, the Court explained that the mere expenditure of public funds does not amount to lending credit under Article VII, Section 10. Moreover, neither the favorable rental structure for Majestic nor the potential creditor’s claims to the leasehold interest imposed any financial obligations on JAA or threatened JAA’s fee simple title to the property. Consequently, JAA bore no direct or indirect financial obligations to answer for Majestic’s debts, which court precedent required in order to find that credit was lent to Majestic. Instead, the Agreement amounted to nothing more than a lease that provided favorable terms for the lessee.

Because the Court concluded that JAA did not lend credit to Majestic, the Court needed to find only that the Agreement served a public purpose, rather than the stricter paramount public purpose standard, in order for the development project to be constitutional. And the ultimate objective of the Agreement—to generate



revenue—satisfied the public purpose requirement. The Court noted that JAA was attempting to use the Agreement with Majestic as a vehicle to produce cash flow and maximize the value of the undeveloped land. JAA's board of directors considered the potential revenue from the Agreement with Majestic to benefit the Jacksonville International Airport and to provide potential tax relief. Accordingly, even though Majestic could decline to exercise the Option and nothing in the Agreement guaranteed that JAA would receive any revenue, the possibility of generating revenue from non-producing land was in the public's interest and served a public purpose.

#### SIGNIFICANCE

*Jackson-Shaw* can be read to grant broad power to public bodies to enter into leasing agreements that could potentially generate revenue. The existence of a benefit to a private entity is not a dispositive factor in determining whether agreements violate Article VII, Section 10 of the Florida Constitution. The Court suggested that the potential revenue generated by the lease of public property to a private entity will most likely be in the public's interest, provided the public body does not assume any new financial responsibilities on behalf of the private entity.

#### RESEARCH REFERENCES

- 63C Am. Jur. 2d *Public Funds* § 3 (1997 & Supp. 2008).
- 46 Am. Jur. 2d *Joint Ventures* § 8 (2006 & Supp. 2008).

Scott Feather

#### **Finance & Taxation: Tax Increment Financing**

*Bay County v. Town of Cedar Grove,*  
992 So. 2d 164 (Fla. 2008)

Where bond holders cannot compel ad valorem taxation to repay tax-increment-financed bonds issued to fund a community redevelopment project under the Community Redevelopment Act (Act), bonds may be validated without the local government holding a referendum. The Act does not require two public readings for adoption of resolutions.

## FACTS AND PROCEDURAL HISTORY

In February 2001, the Town of Cedar Grove (Cedar Grove), located in Bay County, identified a redevelopment area. Finding blight and a need for a community redevelopment agency (CRA), the town established a CRA. In May 2007, Cedar Grove established a redevelopment trust fund (Trust Fund) to finance the redevelopment and authorized an amount equal to 95% of the incremental increase in each year's levied ad valorem taxes for the redevelopment area to be paid into the Trust Fund. This tax-increment revenue was the only pledged source of revenue for the Trust Fund. Cedar Grove then passed two ordinances authorizing the issuance of bonds to fund capital expenditures; the bonds were to be payable solely from the Trust Fund. The bond ordinance provided that bondholders did not have the right to compel ad valorem taxation by the State, Bay County, or by any other government entity.

Cedar Grove filed complaints seeking validation of the bond proposals, and Bay County intervened. The circuit court validated the bonds. Bay County appealed, arguing that Cedar Grove failed to hold two public readings as required by Section 163.346 of the Act and that tax-increment-financed bonds are unconstitutional without a referendum. The Florida Supreme Court affirmed the circuit court and validated the bonds.

## ANALYSIS

The Court began by noting that the trial court must determine three things when validating bonds: (1) whether the public body has the authority to issue the bonds; (2) whether the bonds' purpose is legal; and (3) whether the authorization of the obligation complies with the law. On appeal, the Florida Supreme Court will review the trial court's findings of fact for competent, substantial evidence and will review conclusions of law *de novo*.

The Court first considered whether the Act required Cedar Grove to hold two public readings of the resolutions authorizing the bonds. Section 163.346 of the Florida Statutes (2006) requires municipalities to provide public notice pursuant to Section 166.041(3)(a) prior to adopting a resolution or enacting an ordinance under the Act. Section 166.041(3)(a) contains notice requirements and additional procedures for enacting municipal ordinances, including a requirement that ordinances be read on two

separate days. The Court concluded that “two readings are not required for municipal resolutions adopted pursuant to the Community Redevelopment Act.” *Bay Co.*, 992 So. 2d at 167.

The Court next considered the constitutionality of validating the bonds without a referendum. Article VII, Section 12 of the Florida Constitution provides that “local governmental bodies with taxing powers may issue bonds . . . payable from ad valorem taxation . . . only when approved by vote of the electors.” In *State v. Miami Beach Redevelopment Agency*, the Court determined the language “payable from ad valorem taxation” in Article VII, Section 12 of the Florida Constitution did not prevent issuance of tax-increment-financed bonds without a referendum because the bondholders could not compel the levy of ad valorem taxes. 392 So. 2d 875, 894 (Fla. 1981). The Court held that Cedar Grove’s bond financing was analogous to the financing approved in *Miami Beach*. Cedar Grove’s bonds pledged only the money in the Trust Fund to repay the bonds, so no lien would attach to the funds until the money was deposited into the Trust Fund. Therefore, if the Trust Fund was ever insufficient, bondholders would not be able to compel the levy of ad valorem taxes in order to meet the bond obligations. Thus, the Court concluded the bonds did not fall within the referendum requirement of Article VII, Section 12.

Justice Kenneth B. Bell wrote an opinion concurring in part and dissenting in part, with which Chief Justice Peggy A. Quince concurred. Justice Bell disagreed with the majority’s interpretation of Article VII, Section 12, finding the plain meaning of “payable from ad valorem taxation” clearly encompassed more than the pledge of ad valorem taxing power. Rather, “ad valorem taxation” refers to the imposition of the tax as well as expenditure of the taxes obtained. He further opined that this Section of the Florida Constitution was originally designed to restrict local borrowing and prevent municipalities from going bankrupt. Because the majority’s interpretation of “payable from ad valorem taxation” vitiates this critical restraint, Justice Bell urged the Court to recede from *Miami Beach* and require a referendum in order to validate Cedar Grove’s bonds.

Justice R. Fred Lewis wrote a dissenting opinion also disagreeing with the majority’s decision regarding Article VII, Section 12. Justice Lewis distinguished *Miami Beach* from *Bay County* on the facts. In *Miami Beach*, the incremental increase in

taxes was only one of multiple funding sources for the trust fund. Here, the incremental increase constitutes the only currently designated funding source. Thus, Justice Lewis concluded that Cedar Grove's bonds required a referendum.

#### SIGNIFICANCE

*Bay County* establishes that only one public reading is required for resolutions adopted under Florida Statutes Section 163.346 of the Act.

#### RESEARCH REFERENCES

- David E. Cardwell & Harold R. Bucholtz, *Tax-Exempt Redevelopment Financing in Florida*, 20 Stetson L. Rev. 667 (1991).
- Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 Stetson L. Rev. 647 (1991).

Kristin M. Tolbert

### **Finance & Taxation: Tax Increment Financing**

***City of Parker v. State*,**  
992 So. 2d 171 (Fla. 2008)

Where bond holders cannot compel ad valorem taxation to repay tax-increment-financed bonds issued to fund a community redevelopment project under the Community Redevelopment Act (Act), bonds may be validated without the local government holding a referendum. Nothing in the Act requires municipalities issuing tax-increment-financed bonds to levy ad valorem taxes.

#### FACTS AND PROCEDURAL HISTORY

In December of 2006, the City of Parker (Parker), located in Bay County, identified a redevelopment area, finding blight and a need for a community redevelopment agency (CRA), and established the Parker CRA. Parker further created a redevelopment plan for the area and found the redevelopment plan consistent with Parker's Comprehensive Plan. To fund the redevelopment, Parker established a redevelopment trust fund (Trust Fund) and

authorized an amount equal to 95% of the incremental increase in each year's levied ad valorem taxes for the redevelopment area to be paid into the Trust Fund. This tax-increment revenue was the only pledged source of revenue for the Trust Fund. Parker does not levy ad valorem taxes, so the tax-increment revenues would come from other taxing authorities such as Bay County. Parker then passed an ordinance authorizing the issuance of up to \$40,995,891 in bonds to fund capital expenditures; the bonds were to be payable solely from the Trust Fund. The bond ordinance provided that bondholder did not have the right to compel ad valorem taxation by the State, Bay County, or by any other government entity.

Bay County filed for an injunction to prevent Parker from continuing with the redevelopment project, and Parker filed a complaint seeking validation of its bond issuance. The circuit court found: (1) Parker does not levy ad valorem taxes as required to issue bonds under the Act, so the bonds could not be validated; (2) Bay County's challenges to the consistency of Parker's findings of blight and redevelopment plan with the Comprehensive Plan were without merit; and (3) Bay County's challenge of the constitutionality of tax-increment-financed bonds as used by Parker without a referendum was without merit. Parker appealed the circuit court's determination that it could not issue tax-increment-finance bonds because it did not levy taxes. Bay County cross-appealed, contesting the circuit court's findings that there was blight, that the redevelopment plan was consistent, and that tax-increment-financed bonds are constitutional without a referendum. The Florida Supreme Court affirmed in part, reversed in part, and validated the bonds.

#### ANALYSIS

The Court began by noting that the circuit court must make three determinations when validating bonds: (1) whether the public body has the authority to issue the bonds; (2) whether the bonds' purpose is legal; and (3) whether the authorization of the obligation complies with the law. On appeal, the Florida Supreme Court will review the circuit court's findings of fact for substantial competent evidence and will review conclusions of law de novo.

The Court first considered whether the Act required Parker to levy taxes in order to issue tax-increment-financed bonds. The

circuit court had used Section 163.387(1)(b) of the Act to support a finding that the government body issuing tax-increment-financed bonds must levy ad valorem taxes. Florida Statutes Section 163.387(1)(b) provides that, if a governing body in a home-rule-charter county under Section 163.410 does not meet certain deadlines and is not authorized by the home-rule-charter county at the time it issues the bonds, the contribution of the taxing authority is limited. Specifically, the millage rate used by the taxing authority to calculate its tax increments may not exceed the millage rate of the governing body that established the Trust Fund. Because Parker does not levy ad valorem taxes, its millage rate is zero. Though the Court noted that the effect of this Section would preclude Parker's use of tax-increment financing because its millage rate would be zero, the parties agreed the Section was inapplicable since Parker met the statutory deadlines. Accordingly, the Court concluded that Parker was not required to levy ad valorem taxes in order to issue tax-increment-financed bonds.

The Court next considered Bay County's arguments that the redevelopment plan was inconsistent with Parker's Comprehensive Plan, that there was not competent substantial evidence of blight on the record, and that the circuit court applied the wrong standard for the blighted conditions finding. The Court noted the circuit court's standard of review was to determine if Parker's findings were patently erroneous because such legislative determinations are presumed correct and upheld if the record contains competent, substantial evidence. The Court held that the circuit court correctly applied this standard and that the record contained competent, substantial evidence to support the finding. Specifically, Parker had compiled a report listing multiple areas of deterioration and found, based on the report, nine of the fourteen statutory factors of blight. Regarding the redevelopment plan, the Court noted that there were many references to Parker's Comprehensive Plan in the redevelopment plan and that the Comprehensive Plan itself called for redevelopment plans during the planning period. The Court therefore rejected Bay County's arguments and affirmed the circuit court on both of these issues.

Finally, the Court considered the constitutionality of validating the bonds without a referendum. Article VII, Section 12 of the Florida Constitution provides that "local governmental bodies with taxing powers may issue bonds . . . payable from ad valorem

taxation . . . only when approved by vote of the electors.” In *State v. Miami Beach Redevelopment Agency*, the Court determined the language “payable from ad valorem taxation” in Article VII, Section 12 did not prevent issuance of tax-increment-financed bonds without a referendum because the bondholders could not compel the levy of ad valorem taxes. 392 So. 2d 875, 888–889 (Fla. 1981). The Court reasoned that Parker’s bond financing was indistinguishable from the financing approved in *Miami Beach*. Parker’s bonds pledged only the money in the Trust Fund to repay the bonds, so no lien will attach to the funds until the money is deposited into the Trust Fund. Because “[t]he bondholders have no right, if the trust fund were insufficient to meet the bond obligations, to compel the levy of ad valorem taxation . . . the proposed tax-increment-financed bonds are constitutional without a referendum.” *City of Parker*, 992 So. 2d at 180.

Justice Kenneth B. Bell wrote an opinion concurring in part and dissenting in part, in which Chief Justice Peggy A. Quince concurred. Justice Bell disagreed with the majority’s interpretation of Article VII, Section 12, arguing that the plain meaning of “payable from ad valorem taxation” clearly encompassed more than the pledge of ad valorem taxing power. Rather, “ad valorem taxation” refers to the imposition of the tax as well as the taxes obtained. He further opined that the history of this Section of the Florida Constitution was originally designed to restrict local borrowing and prevent municipalities from going bankrupt. Because the majority’s interpretation of “payable from ad valorem taxation” vitiates this critical restraint, Justice Bell believes the Court should recede from *Miami Beach* and find a referendum was required to validate Parker’s bonds.

Justice R. Fred Lewis wrote a dissenting opinion disagreeing with the majority’s decision regarding Article VII, Section 12. Justice Lewis distinguished *Miami Beach* from *City of Parker* on the facts. In *Miami Beach*, the incremental increase in taxes was only one of multiple funding sources for the trust fund. Here, the incremental, property-tax increase constitutes the only currently designated funding source. Thus, Justice Lewis argued Parker’s bonds, unlike the bonds in *Miami Beach*, required a referendum.

## SIGNIFICANCE

*City of Parker* establishes that nothing in the Act requires municipalities to levy ad valorem taxes, although the Court noted that Section 163.387(1)(b) now limits the millage rate for calculating the increment contributed by a taxing authority so that the millage rate does not exceed that of the governing body that established the trust fund if the governing body is in a home-rule-charter county and has not been authorized under Section 163.410. For cities like Parker that do not levy ad valorem taxes, this means tax-increment financing is not a viable future funding option for community redevelopment.

Further, *City of Parker*, along with *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008), and *Bay County v. Town of Cedar Grove*, 992 So. 2d 164 (Fla. 2008), reaffirm the Court's holding in *Miami Beach* that tax-increment-financed bonds are constitutional as long as the bondholders cannot compel the levy of ad valorem taxes. Tax-increment-financed bonds are a powerful tool for CRAs to pay for redevelopment projects and for local governments to fund long-term capital improvements. Requiring referendums to validate tax-increment-financed bonds could severely limit the usefulness of this financing tool. The Court's decisions in *Strand*, *City of Parker*, and *Bay County* have, for now, established how the Court will interpret the language "payable from ad valorem taxation" in Article VII, Section 12 of the Florida Constitution. However, Justice Lewis' and Justice Bell's detailed and compelling dissents indicate a lack of unanimity concerning the referendum requirement. One might reasonably conclude that many Florida property taxpayers would hold the view expressed in the dissents and support an interpretation that requires a referendum if property tax dollars are to be used to fund community redevelopment districts or long-term capital projects.

## RESEARCH REFERENCES

- David E. Cardwell & Harold R. Bucholtz, *Tax-Exempt Redevelopment Financing in Florida*, 20 Stetson L. Rev. 667 (1991).



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- Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 Stetson L. Rev. 647 (1991).

Kristin M. Tolbert

**Finance & Taxation: Tax Increment Financing*****Strand v. Escambia County*,**  
992 So. 2d 150 (Fla. 2008)

Under the Florida Constitution, a county is not required to obtain approval through referendum for bonds issued to fund a road-widening project when the bonds do not pledge the county's taxing power; and the county does not covenant to maintain services or programs to generate income to pay the bonds.

**FACTS AND PROCEDURAL HISTORY**

On May 4, 2006, Escambia County (County) adopted an ordinance that established the Southwest Escambia Improvement District and the Southwest Escambia Improvement Trust Fund. In conjunction with the ordinance, the County also adopted a resolution that authorized the issuance of bonds not exceeding \$135,000,000 to finance a four-lane road-widening project within the improvement district. The bonds were to be payable from funds deposited by the County into the trust fund and were to reach maturity within thirty-five years of the County's initial deposit into the trust fund.

The County was required to appropriate an amount equal to the tax increment into the trust fund each year. If that amount was insufficient to secure the indebtedness, the County was also required to appropriate non-ad valorem revenues to the trust fund. However, the County was not required to maintain any services or programs to generate such non-ad valorem tax revenue, and the bonds did not pledge the full faith and credit or taxing power of the County.

On May 16, 2006, the County filed a complaint in the trial court to seek validation of the bond issuance. The state attorney filed his answer, and Dr. Gregory Strand (Strand) intervened pursuant to Florida Statutes Section 75.07. The trial court vali-

dated the bond issuance, and Strand appealed the final judgment to the Florida Supreme Court. On September 6, 2007, the Court issued its initial opinion, in favor of Strand. *Strand v. Escambia Co.*, 2007 WL 2492294 (Fla. Sept. 6, 2007); Thomas Bumgardner, Student Author, *Recent Developments: Strand v. Escambia County*, 37 Stetson L. Rev. 661, 668–669 (2008).

Following a motion for rehearing by the County, the Court heard combined oral arguments on Strand's appeal and two related cases—*City of Parker v. State*, 992 So. 2d 171 (Fla. 2008), and *Bay County v. Town of Cedar Grove*, 992 So. 2d 164 (Fla. 2008). Following oral arguments, the Court withdrew its earlier opinion in favor of Strand and substituted a new opinion in favor of the County.

#### ANALYSIS

The main issue on appeal was whether the disputed bond issuance required a referendum pursuant to Article VII, Section 12 of the Florida Constitution, which states that

[c]ounties . . . with taxing powers may issue bonds . . . payable from ad valorem taxation and maturing more than twelve months after issuance only: (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors . . . .

As a threshold matter, the Court concluded that the County's attempt to issue bonds was based upon Florida Statutes Section 125.01 and that the dispute was controlled by *Penn v. Florida Defense Finance & Accounting Service Center Authority*—a case in which the Court affirmed the validation of bonds issued under similar circumstances. 623 So. 2d 459 (Fla. 1993). *Penn*, in turn, was based upon *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980).

In *Miami Beach*, the Court reviewed the validation of bonds issued by a county and city to finance redevelopment pursuant to Chapter 163 of the Florida Statutes (1977). These bonds were payable from a trust fund that received revenue from two sources—(1) funds received from leases, sales, and charges for the use of the redeveloped property; and (2) the tax increment on the redevelopment district. Analyzing the funding structure of these bonds, the Court determined that the county and city were obli-

gated only to appropriate an amount equal to the tax increment from the ordinary, general levy of ad valorem taxes. Because that appropriation was not limited to any specific source of revenue, the bonds were not “payable from ad valorem taxation, in the constitutional sense of the term.” *Miami Beach*, 392 So. 2d at 898. Instead, the Court concluded that “[w]hat is critical to the constitutionality of the bonds is that, after the sale of bonds, a bondholder would have no right . . . to compel by judicial action the levy of ad valorem taxation.” *Id.* at 898.

Analyzing the bond issuance disputed by Strand, the Court concluded that the financing mechanism was indistinguishable from the bond issuance validated in *Miami Beach*. Strand could not prevail, therefore, without the Court’s recession from *Miami Beach*. The Court identified three criteria that should be used in determining whether to recede from precedent. First, whether the prior decision had become unworkable because of its reliance upon an impractical legal fiction. In this case, the Court did not find such evidence. Instead, it concluded that the reasoning in *Miami Beach* had been scrutinized and tested by dissenters in that case and in subsequent decisions. Second, the Court must determine if the precedent could be reversed without causing injustice and disruption. In this case, the Court found

widespread reliance upon the *Miami Beach* decision in the issuance of bond financing by local government authorities . . . [and] receding from the precedent of *Miami Beach* would cause serious disruption to the governmental authorities that have relied upon that precedent for planning public works that are in various stages of development and approval.

*Strand*, 992 So. 2d at 159–160. Third, the Court must determine if the factual premise of the prior decision had changed so drastically as to leave the prior decision’s holding without legal justification. In this case, the Court found no changes that would undermine the *Miami Beach* holding.

After rejecting Strand’s call to recede from *Miami Beach*, the Court addressed his alternative argument that this issue should be controlled not by *Miami Beach* but by *County of Volusia v. State*, 417 So. 2d 968 (Fla. 1982). In *County of Volusia*, the Court dealt with a bond validation issue in which the county had

pledged all available revenues *other than* ad valorem taxes to the payment of the bonds but also promised to do all things necessary to continue to receive those revenues. Because that structure would “inevitably lead to higher ad valorem taxation during the life of the bonds,” the *County of Volusia* Court determined that the structure required a referendum. 417 So. 2d at 972.

The Court found the funding structure at issue in Strand’s appeal to be distinguishable from the one in *County of Volusia*. Specifically, the Court pointed to the fact that the County’s non-ad valorem revenues were to be used only as a supplemental source of revenue and noted that the County expressly did not covenant to maintain services or programs to generate income to repay the bonds.

Writing in dissent, Justice R. Fred Lewis criticized the majority for expanding *Miami Beach* beyond its original context. Justice Lewis noted that the bond issuance at issue in *Miami Beach* was authorized by the Community Redevelopment Act and used ad valorem tax revenue as a supplemental source. In contrast, the bond issuance addressed in Strand’s appeal was intended to fund road widening—a typical capital project—and used ad valorem tax revenue as the primary funding source. According to Justice Lewis, Article VII, Section 12 was clearly intended to limit a local government’s ability to finance such capital projects with long-term debt payable from ad valorem taxation. As a result, this dispute should be controlled by *County of Volusia*—not *Miami Beach*. Justice Lewis argued that under *County of Volusia* the County “cannot circumvent the [Article VII, Section 12] referendum requirement because its bond-financing scheme inevitably requires that it pay for its debt with ad valorem tax revenue.” *Strand*, 992 So. 2d at 164 (Lewis, J., & Quince, C.J., dissenting).

Justice Lewis also argued that an analysis of Article VII of the Florida Constitution further undermined the rationale of *Miami Beach*. Article VII, Section 10 limits a county’s ability to “give, lend or use its taxing power or credit.” Article VII, Section 12, in contrast, limits a county’s ability to “issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation.” A comparison of these two provisions, Lewis argued, showed the drafters’ clear intent to distinguish between taxing *power* and tax *revenue*. The majority’s decision to follow the taxing power rationale of *Miami Beach*

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“amends [A]rticle VII, [S]ection 12 through judicial fiat by removing and rendering meaningless the phrase ‘payable from ad valorem taxation’ and replacing it with materially different language drawn from a separate, distinct constitutional provision (i.e., [A]rticle VII, [S]ection 10).” *Id.* at 163.

#### SIGNIFICANCE

[Refer to combined significance for *City of Parker v. State.*]

#### RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Counties and Municipal Corporations* §§ 272, 276 (2005 & Supp. 2008).
- 42 Fla. Jur. 2d *Public Securities and Obligations* § 19 (2007 & Supp. 2007).

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