FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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October/December 2010

Editor's Note: The following case law summaries were reported from October1, 2010, through December 31, 2010.

Section 1. Recent Decisions of the Florida Supreme Court

Government in the Sunshine – Counties – Bond Validation – Trial Court Properly Validated Bonds Proposed for Issuance by City and County in Furtherance of Agreement Bringing Professional Baseball Team to City for Spring Training – Negotiations Team Which Was Formed by Deputy County Administrator and Which Served Only an Informational Role Was Not Subject to Requirements of Sunshine Law – County Did Not Violate Sunshine Law When Deputy County Administrator, Assisted by Other County Staff, Briefed Individual Members of Board of County Commissioners Prior to Public Meeting – Any Possible Violations that Occurred When Board Members Circulated E-mails Among Each Other Were Cured by Subsequent Public Meetings Regarding the Negotiations and Agreement with the Team.

In July 2009, the City of Sarasota entered into a Memorandum of Understanding (MOU) with the professional baseball organization, the Baltimore Orioles, for the purposes of relocating the team to Sarasota for spring training. County Administrator James Ley was chosen to complete this task. Ley ultimately designated the duty to negotiate to Deputy County Administrator David Bullock. The MOU explained the duties of all parties: the Orioles would lease the premises for the amount of $1.00 for a period of 30 years, and the city and county would provide $31.2 million to the project, with the City of Sarasota contributing $7.2 million through a bond issued serviced by funds from the Office of Tourism, Trade and Economic Development (OTTED). At various times during negotiations with the Orioles, e-mails were exchanged from constituents to members of the Board. In one instance, a comment was directly addressed from one Board member to another. Sarasota Citizens for Responsible Government (Citizens) alleged a Government in the Sunshine violation. At the trial court level, Citizens' complaint was dismissed. On appeal, Citizens alleged Bullock's consultations with Board members were in violation of the Sunshine provisions. In *City of Gainesville v. State*, 863 So.2d 138, 143 (Fla. 2003), the court laid out a test for proper bond validation: (1) whether the public body has the authority to issue the subject bonds; (2) whether the purpose of the obligation is legal; and (3) whether the authorization of the obligation complies with the requirements of law. The decision of the trial court was upheld as Bullock's negotiations were deemed only to play an informational role. Public officials may call upon staff members for factual information and advice without being subject to the Sunshine Law's requirements. The court also agreed that any possible violations that occurred when Board members circulated, and commented upon, e-mails among themselves were cured by subsequent public meetings wherein the allegedly "secret" issues were further discussed. *Sarasota Citizens for Responsible Government v. City of Sarasota, Florida*, 35 Fla. L. Weekly S627 (Florida Supreme Court Opinion filed October 28, 2010)

Section 2. Recent Decisions of the Florida District Courts of Appeal

Municipal Corporations – Development Orders – Trial Court Properly Found that Municipality's Denial of Application for Small-scale Amendment to Future Land Use Map, Zoning Change and Site Plan Approval Was Inconsistent with Comprehensive Plan – Complaint Properly Challenged Municipality's Denial of Proposed Comprehensive Plan Amendment.

Landowners, GREC, filed an application for a development order in which it sought a small-scale amendment to the Future Land Use Map of the City of Pinecrest. GREC's application also sought a zoning change from residential estate to residential multifamily high density in order to build an 18-unit condominium project. Pinecrest's planning director recommended that the City Council approve the project. Following a public hearing, the council denied GREC's application. Pinecrest admitted in the answer that: (1) GREC's application was consistent

with the comprehensive plan; (2) Pinecrest should have approved the application because the application furthered the objectives and policies in the comprehensive plan; and (3) Pinecrest's original zoning distinction was inconsistent with the comprehensive plan. Florida law requires a municipality to deny a rezoning application that is inconsistent with the adopted comprehensive plan. *Saadeh v. City of Jacksonville*, 969 So.2d 1079, 1083 (Fla. 1st DCA 2007). Post denial admissions on the part of the City of Pinecrest allowed GREC to make comprehensive plan amendment changes. Therefore, the court held that GREC's complaint made the requisite challenge to Pinecrest's denial of the comprehensive plan amendment. *Villages of Pinecrest, Florida v. GREC Pinecrest, LLC.*, 35 Fla. L. Weekly D2550 (Fla. 3rd DCA November 17, 2010).

Municipal Corporations – Challenge to Constitutionality of Downtown Development Authority (DDA) Was Barred by Statute of Limitations – Because City's Authorization of Millage for Properties Within the Downtown Development Authority's Boundaries Is Enacted Year by Year, Challenge to 2008 Property Tax Imposed to Fund DDA Is Not Barred by Statute of Limitations.

J. Milan Investment, an owner of property within the Miami Downtown Development Authority (DDA), appeals a final summary judgment dismissing, with prejudice, their challenge to the constitutionality of the DDA, as well as the property tax imposed upon the citizens which funds the DDA's activities. While the DDA is not an independent taxing district, it does operate under the governance of the City of Miami. Under that authority, the city argues it is allowed to levy an additional ad valorem tax on all real and personal property in the downtown district, not exceeding one-half mil on the dollar valuation on such property as defined in Sections 14-51 through 14-62 of the Code of the City of Miami. The city is authorized to impose a special levy of up to a half mil to fund the DDA. See *Keenan v. City of Edgewater,* 684 So.2d 226 (Fla. 5th DCA 1996). The court held that in the instant case, the City of Miami has not tied a special assessment or impact fee to any specific long-term financing for a municipal government and, therefore, affirmed summary judgment for Milan Investment Group while reversing the trial court's judgment that the four-year statute of limitations barred Milan's constitutional challenge to the 2008 City of Miami ordinance. *Milan Investment Group, Inc. v. City of Miami, et al*, 35 Fla. L. Weekly D2587 (Fla. 3rd DCA November 24, 2010).

Municipal Corporations – Code Enforcement – Action for Removal of Liens Resulting from Prior Code Enforcement Efforts, with Amended Counterclaim by City for Monetary Relief and Injunctive Relief to Compel Repair or Demolition of Unsafe and Dangerous Building – Trial Court Erred in Denying Relief on Amended Counterclaim on Ground that City Pled Violations of Public Nuisance Provisions of Code, Rather than Provisions of Code Relating to Unsafe Buildings and Structures.

The City of Jacksonville appealed a final order denying its amended counterclaim for injunctive relief and monetary penalties for alleged violations of its ordinance code by appellee, Blue Stone Construction, Inc. Blue Stone owns a dilapidated commercial building that has been subject to code enforcement proceedings by the city due to an unstable wall and various structural support deficiencies. Originally, Blue Stone sued to remove liens placed on the property due to past code enforcement actions. The city counterclaimed for injunctive and monetary relief. Eventually, the liens were removed, leaving only the city's amended counterclaim pending for trial. The city wrongfully alleged that Blue Stone violated code provisions in part 2 of Chapter 518, while the trial court felt that a better representation of the situation was found in part 3 of Chapter 518. Due to the city's incorrect pleading, the trial court denied relief on the counterclaim as well as denying the city the ability to amend the pleadings. The appellate court found that while the city did allege the incorrect provisions of the code, the city was not precluded from seeking compliance under part 2, which was alleged in the counterclaim. Therefore, the trial court's holding that the city failed to properly plead a cause of action of action for injunctive relief because Chapter 518 is inapplicable to the unsafe structure at issue was erroneous, and therefore reversed. *City of Jacksonville v. Blue Stone Construction, Inc.*, 35 Fla. L. Weekly D2605 (Fla. 1st DCA November 30, 2010).

Section 3. Recent Decisions of the United States Supreme Court

None Reported.

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

Civil Rights – Law Enforcement Officers – Deliberate Indifference to Serious Medical Needs of Pretrial Detainee – Qualified Immunity – It Was Not Clear Under Preexisting Law that Objectively Reasonable Officer Would Have Known that Four-Hour Delay for Booking and Interviewing a Detainee with Visible Abrasions on Head, Face, Shoulder, Elbow and Hand, None of Which Was Shown by Record to Have Been Bleeding and None of Which Ultimately Required Stitches, Was a Constitutional Violation – District Court Erred in Deciding that Defendant Was Not Entitled to Defense of Qualified Immunity.

This case involved the defense of qualified immunity. Plaintiff alleged that his Fourteenth Amendment rights

were violated due to the officer failing to have his cuts and bruises, which were bleeding at the time of detainment, looked at by medical staff. Plaintiff sued defendant (officer) in defendant's individual capacity for failing to tend to his wounds. Plaintiff-appellee was a pretrial detainee who was beaten in connection with his arrest on robbery charges (the defendant officer did not participate in the beating of the plaintiff). Defendant claimed qualified immunity, which the trial court denied. The facts showed the plaintiff was stopped on suspicion of robbery as he drove away from the scene of the crime. After briefly pulling over, plaintiff proceeded to drive away and a chase ensued. Once the police caught the plaintiff, he was beaten by a group of officers, arrested and then processed for booking. Roughly four hours passed between the time the plaintiff was beaten and the time that his medical needs were met. Plaintiff never requested or sought medical attention; however, he did groan multiple times. The purpose of qualified immunity is "to protect governmental officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 129 S. Ct. 808,815 (2009). The court looked to the intent and knowledge of the officer: "in deciding about qualified immunity, we are considering what an objectively reasonable official must have known at the pertinent time and place, whether it would be clear to a reasonable officer that his conduct was unlawful in the situation." *Brosseau v. Haugen*, 125 S. Ct. 596, 599 (2004). The court of appeals reversed the trial court, ultimately holding it was not clear in 2007 that an objectively reasonable policeman would have known that a four-hour delay for booking and interviewing a person with injuries of the kind in this case is a constitutional violation and continuing that government officials are not required to err on the side of caution in qualified immunity instances. *Marsh v. Butler Cnty, Ala*. 268 F. 3d 1014, 1032 (11th Cir.2001). *John Eugene Youmans v. Jacksonville Sheriff's Office, et al.*, 22 Fla. L. Weekly Fed. C1549 (U.S. 11th Cir. November 16, 2010).

Section 5. Recent Decisions of the United States District Courts of Florida

None Reported.

Section 6. Announcements

Mark Your Calendar

The 2011 Florida Municipal Attorneys Association Seminar will be held July 21-23 at the Breakers in Palm Beach.

FMAA Seminar Notebooks Available

Notebooks from the most recent FMAA Seminars are available for purchase. 2007 Annual Seminar notebooks are $25 each; 2008 Annual Seminar notebooks are $25 each; 2009 Annual Seminar notebooks are $50 each; and 2010 Annual Seminar notebooks are $75 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* to place your order.

Attorney General Opinions of Note

AGO 2010-47, November 9, 2010

Re: MUNICIPALITIES – COMMUNITY DEVELOPMENT AREA – NOTICE – notice requirements for lease of property located within community redevelopment area. Section 163.380, Florida Statutes.

Question: Is the City of Parker subject to limitations and notice procedures of Section 163.380, Florida Statutes, if the city leases a portion of city-owned property located within a community redevelopment area when that property was acquired prior to the creation of the community redevelopment area and was not acquired for redevelopment purposes?

Answer: The notice requirements for the disposal of real property acquired for redevelopment purposes in Section 163.380 (3) (a), Florida Statutes, do not apply to real property located within the city's community redevelopment area that was acquired for purposes other than community redevelopment prior to the creation of the city's community redevelopment area.

AGO 2010-46, November 5, 2010

Re: MUNICIPALITIES – FEES – IMPACT FEES – SOLID WASTE COLLECTION – UTILITIES – use of impact fees for other purposes. Section 163.31801, Florida Statutes.

Question 1: Whether impact fees collected by the City of Wildwood for purposes of expanding a particular utility service such as refuse/garbage collection may be used for another utility service that generally benefits the subject property which paid the impact fees?

Question 2: Whether the City of Wildwood must return impact fees that have been collected for a service which will be privatized to the owner of the property for which the fees were collected or to the person from whom the impact fees were paid.

Answer 1: Impact fees collected by the City of Wildwood for the purpose of refuse collection must be used for that purpose and for other solid waste-related purposes. Other utility services unrelated to solid waste collection may not be funded with surplus impact fees collected for refuse/garbage collection.

Answer 2: In the absence of any direction from the Legislature as to the return of validly collected impact fees for refuse collection, this office would suggest that the city utilize these fees for solid waste-related purposes as considered in *St. Lucie County v. City of Fort Pierce* (no citation included).

AGO 2010-43, November 5, 2010
RE: MUNICIPALITIES – BUILDING PERMITS – application of Section 380.06, Florida Statutes, as amended by the 2010 legislation to local government building permits. Section 380.06, Florida Statutes.
Question: Does Section 380.06, Florida Statutes, as amended by Chapter 2010-147, Laws of Florida, apply to building permits issued by the Village of Palmetto Bay?
Answer: Section 380.06, Florida Statutes, generally addresses developments of regional impact. However, during the 2009 legislative session, in recognition of 2009 real estate market conditions, the Legislature enacted Section 14, Chapter 2009-96, Laws of Florida, amending Section 380.06, Florida Statutes, to extend by two years any permit issued by the Department of Environmental Protection or a water management district, as well as development orders or building permits issued by local governments. Accordingly, the 2010 amendment to Section 380.06, Florida Statutes, applies to building permits issued by local governments.

AGO 2010-41, October 13, 2010
RE: LOCAL BUSINESS TAX – OCCUPATIONS – MUNICIPALITIES – general authority of a municipality to exempt or reclassify businesses under the local business tax act. Sections 205.042 and 205.0535, Florida Statutes.
Question 1: Must a municipality impose a local business tax pursuant to Section 205.042, Florida Statutes, on all businesses, professions and occupations within its jurisdiction?
Question 2: Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?
Question 3: May a municipality amend its local business tax ordinance adopted prior to October 1, 1995, to exempt state-licensed professionals employed by another?
Question 4: If a municipality amends its local business tax ordinance to include state-licensed professionals employed by another, must the amendment be passed by a majority plus one vote of the city council?
Question 5: Must a municipality establish an equity study commission before imposing a local business tax on state-licensed professionals employed by others?
Question 6: May a municipality impose differing rates of a local business tax on employers and employees?
Answer: A city may apply only the exemptions set forth in Chapter 205, Florida Statutes, to exclude individuals or entities from its local business tax. In the event the city has previously exempted an individual or entity not exempted by the statute, the imposition of the local business tax on that individual or entity would not appear to be subject to approval by a majority plus one vote of the governing body as it is not an increase of a rate on a class. Rather, the classification in which the professional would otherwise have fallen would be used to determine the rate of taxation. Moreover, it does not appear that the city must establish an equity commission before the business tax may be imposed on individuals or entities erroneously exempted from the provisions of Chapter 205, Florida Statutes, inasmuch as the city would not be reclassifying those subject to the tax, nor would it be revising its rates. If an employer and employee are in the same classification, the statute requires that the rate of taxation be uniform within that classification.