



FLORIDA MUNICIPAL LAW REPORTER

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JANUARY-MARCH 2015

Editor's Note: The following case law summaries were reported for the period January 1, 2015, through March 31, 2015.

Section 1. Recent Decisions of the Florida Supreme Court.

None Reported.

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

Public records – Exemptions – Security systems – Trial court erroneously found that video footage from surveillance cameras installed on buses was not exempt from disclosure – Video footage is exempt from public inspection because it directly relates to and reveals information about a security system

Television station brought declaratory judgment action against bus company under the Florida Public Records Act, seeking to inspect video footage captured by surveillance security system cameras on buses. 5th DCA held that footage was confidential and exempt from disclosure under the act's exemptions for security systems and security-system plans. *Central Florida Regional Transp. Authority v. Post-Newsweek Stations, Orlando, Inc.*, 40 Fla L. Weekly 306 (Fla. 5th DCA February 6, 2015).

Eminent domain – Attorney's fees – Appellate court's granting landowner's entitlement to appellate attorney's fees became law of the case, and trial court was not free to thereafter deny award of appellate attorney's fees to landowner – In eminent domain proceedings, landowner cannot be denied appellate attorney's fees simply because he was not the prevailing party in the appeal – Landowner was entitled to trial-level attorney's fees incurred in connection with motions for disbursement of funds held in court registry to extent he was litigating whether city's filing of motion in eminent domain proceedings was a proper vehicle for city to collect on its code enforcement liens

– Landowner is not entitled to attorney's fees for litigation of other matters that did not directly arise from or directly relate to eminent domain proceedings

Several years after entry of consent judgment in city's condemnation action against property owner, property owner moved to withdraw proceeds for property from court registry, and city filed its own motion to withdraw the proceeds to satisfy code enforcement liens. The 4th District Court of Appeal held that: (1) property owner's entitlement to appellate fees became the law of the case, and thus, on remand, the district court was precluded from revisiting the issue and could not properly deny property owner's motion for appellate fees on the basis his appeal over how to obtain such funds was not directly related to the underlying condemnation proceedings; (2) property owner was entitled to appellate attorney fees pursuant to statute that governed appeals in an eminent domain action; and (3) property owner was entitled to trial-level attorney fees incurred in connection with his motions for disbursement of \$99,000 held in the court's registry, and his challenge to city's resort to eminent domain proceedings to enforce its code enforcement lien. *Ryan v. City of Boyton Beach*, 40 Fla. L. Weekly 345 (Fla. 4th DCA February 13, 2015).

Constitutional law – Excessive fines – Florida Contraband Forfeiture Act – Forfeiture of home used in cultivation of cannabis was a violation of Excessive Fines Clause of Eighth Amendment to U.S. Constitution where the owner of home faced an 11-year maximum penalty and \$11,000 maximum fine for his criminal convictions, and the home was valued at between \$238,000 and \$295,000

After homeowner was convicted of several offenses relating to cultivation and possession of marijuana at home, city brought civil forfeiture proceeding regarding home. Homeowner died during pendency of proceeding, and homeowner's estate was substituted as defendant. On rehearing, the 5th District Court of Appeal held that forfeiture of home violated Eighth Amendment's Excessive Fines Clause. *Agresta v. City of Maitland*, 40 Fla. L. Weekly 483 (Fla. 5th DCA February 27, 2015).

Public officials – Public disclosure of public officers’ financial interests – Constitutional law – Declaratory action challenging constitutionality of statute that allows public officers to file financial disclosure statements without disclosing the value of individual assets contained within qualified blind trusts – Because no public officer or candidate for public office has used the type of qualified blind trust authorized by the statute, plaintiff has failed to present a justiciable case or controversy, and trial court erred in exercising its jurisdiction to render declaratory judgment – Remand for trial court to dismiss complaint with prejudice

Citizen brought action against the secretary of state, seeking a declaration that statute authorizing public officials' use of qualified blind trusts violates the full and public financial disclosure requirement of the state constitution. The 1st District Court of Appeal held that there existed no bona fide present need for a declaration that statute was unconstitutional, and thus action did not present a justiciable controversy. *Apthorp v. Detzner*, 40 Fla. L. Weekly 490 (Fla. 1st DCA February 27, 2015).

Public records – Delay in responding to request – Attorney’s fees – County’s delay in responding to plaintiff’s request for email addresses of county employees did not amount to an unlawful refusal where plaintiff made request in a suspicious email that could not be easily verified, directed to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything, and then sued the county, claiming a right to attorney’s fees – Further, county provided records to plaintiff soon after it learned that the request had been made by a person on behalf of a Florida corporation that did, in fact, exist – Trial court correctly denied plaintiff’s request for attorney’s fees

Public-records requestor filed lawsuit against county under public records law, seeking injunctive relief, writ of mandamus, and attorney fees. The circuit court found in favor of the county. Requestor appealed. The 1st District Court of Appeal held that county's delay in responding to records request was not tantamount to unlawful refusal to produce records. *Consumer Rights, LLC v. Union County*, Fla., 40 Fla. L. Weekly 533 (Fla. 1st DCA March 6, 2015).

Real property – Bert J. Harris, Jr., Private Property Rights Protection Act – Action against city alleging that city’s construction and operation of a fire station on city property inordinately burdened plaintiffs’ adjacent property by making it effectively unmarketable as a luxury home site, entitling plaintiffs to relief under Harris Act – Harris Act is not applicable where plaintiffs’ prop-

erty was not itself subject to any governmental regulatory action – Trial court erred in finding that plaintiffs were entitled to relief under act – Question certified: May a property owner maintain an action pursuant to the Harris Act if that owner has not had a law, regulation or ordinance directly applied to the owner’s property which restricts or limits the use of the property?

Property owners brought action against city pursuant to Bert J. Harris, Jr., Private Property Rights Protection Act, asserting that the city's construction and operation of a fire station next to their property “inordinately burdened” their property pursuant to the act. The circuit court determined owners had been left with an inordinate burden placed on the property as to its viability for luxury home use, and directed that a jury be impaneled to determine amount of loss of property's value. City appealed. The 1st District Court of Appeal held that as a matter of first impression, the act did not apply where the owners' property was not itself subject to any governmental regulatory action. Case was certified to Florida Supreme Court and they have accepted certiorari. *City of Jacksonville v. Smith*, 40 Fla. L. Weekly 516 (Fla. 1st DCA March 6, 2015).

Taxation – Ad valorem – Immunity – Property owned by United States – Buildings and improvements to property being leased to private for-profit corporation and being improved and operated pursuant to a public-private partnership between the U.S. Navy and a private developer as housing complexes serving Naval Air Station – Property is immune from taxation because Navy retained equitable and beneficial ownership of property – Navy is equitable owner of property where Navy has its ultimate purpose of providing military housing served by agreement, oversees construction, controls access to properties, supervises operations, directs the rental of the properties, continues to benefit from the revenue, receives a lion’s share of the profits, and takes back title to properties at the end of the lease within the useful life of the improvements

For-profit corporation, created by U.S. Navy and private developer pursuant to their public-private partnership to improve Navy's five military complexes, challenged county property appraiser's decision to tax the improvements. The Circuit Court, Monroe County, entered final judgment for corporation. Appraiser appealed. The 3rd District Court of Appeal held that: (1) the Navy had retained equitable ownership of the properties, therefore properties were immune from Florida ad valorem taxes; and (2) Navy had not consented to be taxed. *Russell v. Southeast Housing, LLC*, 40 Fla. L. Weekly 621 (Fla. 3rd DCA March 20, 2015).

Criminal law – Traffic infraction – Red light cameras – Petition for second-tier certiorari review of opinion of appellate division of circuit court, which reversed trial court’s finding that photographic and video evidence obtained from red light cameras needed to be authenticated prior to being admitted into evidence – Because Section 316.0083(1)(e), Florida Statutes (2012), is vague as to whether photographic and video evidence obtained from red light cameras is self-authenticating, appellate division did not violate a clearly established principle of law in finding that photographs and video were admissible without authentication – Petition for writ of certiorari denied

Motorists challenged the traffic citations issued to them after red light cameras allegedly captured their vehicles running red lights. The trial court found that photographs and video from the red light cameras was not self-authenticating and dismissed the citations for failure to prove the infractions. State appealed, and the Ninth Judicial Circuit Court, Orange County, acting in its appellate capacity, reversed, finding the photographs and video admissible without authentication. Motorists sought second-tier certiorari review. On rehearing, the District Court of Appeal held that circuit court's ruling did not violate a clearly established principle of law. *Clark v. State*, 40 Fla. L. Weekly 645 (Fla. 5th DCA March 20, 2015).

Section 3. Recent Decisions of the U.S. Supreme Court.

None Reported.

Section 4. Recent Decisions of the U.S. Court of Appeals, Eleventh Circuit.

None Reported.

Section 5. Recent Decisions of the U.S. District Courts for Florida.

None Reported.

Section 6. Announcements.

The Florida Municipal Attorneys Association’s Annual Seminar will be held July 28-30, 2016, at the Hyatt Regency Coconut Point, in Bonita Springs, Florida.

The International Municipal Lawyers Association’s 80th Annual Conference will be held October 3-7, 2015, in Las Vegas, Nevada. Visit the website at <http://www.imla.org> for seminar and registration information.

FMAA Seminar Notebooks Available

Notebooks from the 2015 and 2014 FMAA seminars are available for \$125 each. Please contact Tammy Revell at (850) 222-9684 or trevell@flcities.com to place your order.

Attorney General Opinions of Note.

AGO 2015-01

January 28, 2015

Is the recording and sound of a voice of the caller in an E911 call requesting emergency service considered "information which may identify any person" which is made confidential by Section 365.171, Florida Statutes?

While Section 365.171(12), Florida Statutes, makes confidential information obtained by a public agency which may identify a person requesting emergency services or reporting an emergency in an E911 call, there is no clear indication that the Legislature intended to include the sound of a person’s voice as information protected from disclosure to the public at large.

AGO 2015-02

January 28, 2015

Do the provisions of Section 119.071(4)(c), Florida Statutes, which exempt "[a]ny information revealing undercover personnel of any criminal justice agency" authorize the City of Oviedo to exempt from public disclosure the names of law enforcement officers of the city who are assigned to undercover duty when a request is made for a personnel roster of any type (pay roster, etc.) or a listing of all law enforcement officers of the city when the record does not identify the officers as being assigned to undercover duty?

Pursuant to Section 119.071(4)(c), Florida Statutes, information regarding law enforcement officers of the city who are assigned to undercover duty and whose names appear on personnel rosters or other lists of all law enforcement officers of the city without regard to whether the record reveals the nature of their duties may constitute "[a]ny information revealing undercover personnel of any criminal justice agency[.]" The Legislature's determination that such information is exempt from disclosure and copying under the Public Records Law, rather than making such information confidential, conditions the release of exempt information upon a determination by the custodian that there is a statutory or substantial policy need for disclosure.

AGO 2015-03

January 28, 2015

Does a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement which have not been fulfilled by the parties operate to

conclude litigation for purposes of Section 286.011(8), Florida Statutes, to permit the release of a transcript of a settlement or litigation strategy session closed to the public while the litigation was ongoing?

A dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement would operate as a conclusion of the litigation for purposes of Section 286.011(8), Florida Statutes, making the transcript of a settlement or litigation strategy session which was closed to the public while the litigation was ongoing, open for inspection and copying.

AGO 2015-04

January 28, 2015

Does Section 255.05(7), Florida Statutes, require that a municipality accept alternate forms of security from a contractor for public construction projects?

Section 255.05(7), Florida Statutes, authorizes a contractor to file alternative forms of security with the city for public construction projects and provides no discretion in the municipality to refuse to accept the alternate forms of security authorized in that subsection provided these alternate forms of security are determined to be of sufficient value.

AGO 2015-05

January 28, 2015

May the City of Lauderdale Lakes, through an adopted ordinance, change the Commission of the Lauderdale Lakes Redevelopment Agency from the original commission adopted pursuant to Section 163.357(1), Florida Statutes, to one established under Section 163.356(2), Florida Statutes?

Having exercised its authority to appoint a board of commissioners for the Lauderdale Lakes Redevelopment Agency and having appointed the city commission to serve as the board of that agency, the city has no authority to change the composition of the board of commissioners.

May the City of Lauderdale Lakes, by ordinance, provide for a seven-member Commission for the Lauderdale Lakes Redevelopment Agency, pursuant to Section 163.357(1)(c), Florida Statutes, by appointing one or two additional members to the CRA Commission, in circumstances in which the original seven-member governing body appointed itself as the CFA Commission, but a recent city charter revision reduced the number of the governing body to six members?

Section 163.357(1)(c), Florida Statutes, provides that a governing body which consists of five members may appoint two additional persons to act as members of the community redevelopment agency. The statute does not authorize a governing body of six to appoint any additional persons to the community redevelopment agency.