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Constitutional Law: Ad Valorem Taxation Exemptions and Statutory Enactments

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CASE COMMENTS

CONSTITUTIONAL LAW: AD VALOREM TAXATION EXEMPTIONS AND STATUTORY ENACTMENTS

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Petitioner, Canaveral Port Authority (CPA),[1] challenged the Department of Revenue's assessment of an ad valorem tax, pursuant to sections 196.199(2) and (4) of the Florida Statutes,[2] on property owned by CPA but leased to a private entity engaged in nongovernmental activities.[3] CPA argued that because it was a political subdivision of the state, it was immune from taxation, or alternatively, that it was exempt from taxation pursuant to section 315.11[4] of the Florida Statutes.[5] The trial court found that CPA was immune from taxation because it was a political subdivision of the state.[6] The district court on appeal, however, found that CPA was not immune and more importantly, not exempt from taxation because its property was not

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* *Editor's Note:* This case comment received the *Huber C. Hurst Award* for the outstanding case comment for Spring 1997.

** This comment is dedicated to Robert and Annamaria Buxman.

1. Canaveral Port Auth. v. Department of Revenue, 690 So. 2d 1226 (Fla. 1996).

2. FLA. STAT. § 196.199 (2), (4) (1995). Section 196.199(2) states, in relevant part:

> Property owned by the following government units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:
>
> (a) Leasehold interests . . . shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6).

Id. § 196.199(2).

Section 196.012(6) states, in relevant part: "Governmental, municipal, or public purpose or function shall be deemed to be served or performed when [any] . . . authority . . . is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit . . . ." *Id.* § 196.012(6).

Section 196.199(4) states, in relevant part: "Property owned by any municipality, agency, authority, or other public body corporate of the state . . . shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes." *Id.* § 196.199(4).

3. *Canaveral*, 690 So. 2d at 1227.

4. FLA. STAT. § 315.11 (1995). Section 315.11 states, in relevant part: "[A]s such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal, or other taxes or assessments thereon . . . ." *Id.*

5. *Canaveral*, 690 So. 2d at 1227.

6. *Id.*

being directly used for port business.[7] The Florida Supreme Court upheld the lower court's decision and HELD, CPA's fee interest in property was not immune from ad valorem taxation, nor was it exempt pursuant to section 315.11 because the property was not being used for purposes specifically expressed in sections 196.199(2) and (4).[8]

Traditionally, leasehold interests were treated as personal property instead of real property and therefore, were not subject to ad valorem taxation.[9] In applying ad valorem tax exemptions, courts originally found such exemptions grounded not in statutory or constitutional provisions, but instead, in broad fundamentals of government.[10] This focus, however, greatly changed as case law developed.[11] The change also caused the legislatures to modify this common law rule by taxing leasehold interests.[12]

An early case that exemplifies the standard of assessing ad valorem taxation on government-owned property is *Daytona Beach Racing & Recreational Facilities District v. Paul*.[13] In *Paul*, Daytona Beach Raceway and Recreational Facilities District leased property from the city and subleased the property to the Daytona International Speedway Corporation.[14] The property was used as part of the facilities of the Daytona Beach International Speedway. The District Court of Appeal found that the Speedway was, in essence, a private venture and not undertaken for a public purpose, and that the leased land was being used for private profit.[15] This decision was in conflict with prior cases that had construed "public purpose"

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7. Florida Dep't of Revenue v. Canaveral Port Auth., 642 So. 2d 1097, 1103 (Fla. 5th DCA 1994). The court explained that an entity's status as a political subdivision is determined by its role as a branch in the general administration of the state's policy. *Id.* at 1101. Though the court reasoned that Florida did have political subdivisions that are immune from taxation other than counties, it ultimately decided that CPA was not acting as an agent of the state, but instead was created by a special act intended for a limited purpose. *Id.* The court therefore held that CPA was not a political subdivision of the state and thus, was not immune. *Id.* at 1103.

8. *Canaveral*, 690 So. 2d at 1229-30.

9. Bonnie Roberts, *Ad Valorem Taxation of Leasehold Interests in Governmentally Owned Property*, 6 FLA. ST. U. L. REV. 1085, 1088 (1978) (covering the historical changes regarding ad valorem taxation of government-owned leasehold interests).

10. State v. Alford, 107 So. 2d 27, 29 (Fla. 1958). The court explained that " 'there is no legal authority for imposing [county taxes] *on lands held for the State in the name of the Commission.*' " *Id.* (quoting State *ex rel.* Charlotte County v. Webb, 49 So. 2d 93, 93 (1950)) (alteration in original). The court further noted that ad valorem taxation exemptions did not arise from the statutory provisions granting them, but instead, were inherent in the underpinnings of the governmental system. *Id.*

11. *See* Roberts, *supra* note 9, at 1088-98.

12. *Id.*

13. 179 So. 2d 349 (Fla. 1965).

14. *Id.* at 351.

15. *Id.*

broadly and granted a tax exemption.[16] The Florida Supreme Court explained that the land, though providing an incidental private gain, was being used predominantly for the benefit of the public.[17] In its analysis, the court examined the statutory language of the enabling act, which expressly stated that the land was to be used for a public purpose.[18] The court deferred to the enabling act, decided that the district's land fell within the meaning of the act, and upheld the tax exemption because the land was being used for a public purpose.[19]

In 1971, the legislature repealed, via Chapter 71-133, all tax exemptions granted by local or special acts and amended Chapter 196 of the Florida Statutes.[20] With these changes, courts were forced to alter their reasoning and methods of analyses in determining tax exemptions.[21] A leading case, which focused on issues beyond the broad fundamentals of government and helped develop a new standard, was *Volusia County v. Daytona Beach Racing & Recreational Facilities District.*[22] Revisiting the same facts as in *Paul*, the *Volusia* court narrowly construed the phrase "public purpose"[23] in interpreting the new statutory language of section 196.199.[24] In contrast to *Paul*, the court ignored the enabling act and placed the burden of proof on the party claiming the tax exemption.[25] The court reasoned that because the corporation used the property primarily to make profits, no governmental purpose was served.[26] Finding that the claimant failed to meet the burden of proving that the interest was used for a public purpose, the court denied the tax exemption.

Seventeen years later, the court continued to grapple with the legislative changes made in 1971.[27] In *Sebring Airport Authority v. McIntyre*, a special act created the Airport Authority, which eventually leased its property to Sebring International Raceway, a for-profit organization.[28] The Raceway claimed that the property furthered a public purpose and therefore deserved

16. *Id.* at 352-53.
17. *Id.*
18. *Id.* at 353.
19. *Id.* at 355.
20. 1971 Fla. Laws ch. 133.
21. *See* Volusia County v. Daytona Beach Racing & Recreational Facilities Dist., 341 So. 2d 498 (Fla. 1977).
22. *Id.*
23. *See Volusia,* 179 So. 2d at 502. The corporation involved in this case was a raceway, the sole purpose of which was to provide entertainment for profit. *Id.*
24. FLA. STAT. § 196.199 (1995).
25. *Volusia*, 179 So. 2d at 502.
26. *Id.*
27. Sebring Airport Auth. v. McIntyre, 642 So. 2d 1072 (1991).
28. *Id.* at 1072-73.

a tax exemption.[29] The court avoided the enabling act and upheld the narrow interpretation of the phrase "public purpose"[30] in section 196.199.[31] Ultimately, the court rejected the exemption and stated that even if the Raceway were serving the public, the property was not being used for a governmental or public purpose as defined under section 196.199.[32] Once again, by strictly construing the presumption of a tax exemption against the claimant, the court denied the request. Thus, the court held that the property was not exempt from ad valorem taxes.[33] From *Volusia* and *McIntyre*, it was clear that the enabling statutes needed to be harmonized with the language in section 196.199.[34]

In the instant case, the Supreme Court of Florida addressed the issue of whether Brevard County had the authority to impose an ad valorem tax, pursuant to section 196.199 of the Florida Statutes,[35] on the fee interest of real property owned by CPA.[36] CPA leased the property in question to private individuals for nongovernmental activities.[37] CPA argued that this property was exempt from taxation[38] under section 315.11 of the Florida Statutes.[39] The Department of Revenue, however, argued that sections 196.001[40] and 196.199 of the Florida Statutes superseded section 315.11.[41] This would subject CPA property to taxation unless the property were leased to a nongovernmental entity for a nongovernmental purpose.[42] Petitioner argued that section 315.11 provides a blanket exemption for CPA, regardless

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29. *Id.* at 1073.
30. *Id.* at 1073-74.
31. FLA. STAT. § 196.199 (1995).
32. *McIntyre*, 642 So. 2d at 1074.
33. *Id.*
34. FLA. STAT. § 196.199; *id.* § 315.11.
35. *Id.*
36. Canaveral Port Auth. v. Department of Revenue, 690 So. 2d 1226, 1229 (Fla. 1996).
37. *Id.* The lessees used the property for warehouses, gas stations, deli restaurants, fish markets, charter boat sites, and docks. *Id.* at 1227.
38. *Id.*
39. FLA. STAT. § 315.11.
40. *Id.* § 196.001. Section 196.001 states, in relevant part:

> Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
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> (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
>
> (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Id.

41. *Canaveral*, 690 So. 2d at 1229.
42. *Id.*

of section 196.199.[43] The court rejected petitioner's argument and held that the property was subject to taxation.[44] In reaching this decision, the instant court attempted to reconcile several competing authorities regarding the legislative intent underlying the exemptions.[45]

In 1971, the legislature repealed statutes similar to section 315.11 that granted ad valorem tax exemptions.[46] From this repeal, the instant court inferred that the legislature intended to limit the availability of exemptions for fee interests in port authorities. However, the court erred in inferring this because the legislature did not repeal section 315.11.[47] The instant court concluded that, when read together, sections 196.001, 196.199(2), and 196.199(4) require that a property interest owned by an authority and leased to a nongovernmental entity be taxed unless the property is used for a governmental, municipal, or public purpose.[48] In holding against CPA and its exemption request, the instant court explained that section 315.11 must be applied consistently with the requirements set forth in section 199.196(2) or section 196.199(4).[49] The instant court seemed uncertain as to the scope of the exemption provided for in section 315.11 since it failed to address the actual wording of the exemption.[50] Instead, the instant court based its holding only on an inference drawn from the legislature's Chapter 71-133 repeal of acts similar to section 315.11.[51]

Although this was the court's first attempt to reconcile these statutory authorities, the court did so in a manner that contradicts express statutory language, legislative intent, and the reasoning of earlier case law. Historically, courts have decided exemptions solely on the statutory language of the enabling act.[52] For instance, in *State v. Pensacola*, the court addressed whether the city needed to pay taxes on the sale of natural gas by a city-

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43. *Id.* Section 196.001 states that all property is subject to taxation unless expressly exempt, FLA. STAT. § 196.001, and section 196.199 provides the exemption requirements for property owned by CPA and leased to nongovernmental entities, FLA. STAT. § 196.199.

44. *Canaveral,* 690 So. 2d at 1229.

45. *Id.*

46. *See* 1971 Fla. Laws ch. 133. Chapter 71-133 repealed "[a]ll exemptions granted by special or local acts or general acts of local application." *Id.*

47. *Canaveral*, 690 So. 2d at 1229 (stating, "[W]e conclude that the legislature intended to provide only a limited exemption for fee interests in port authority property.").

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* The lower court admitted that it was unable to find a case that had interpreted the scope of the exemption provided by section 315.11 in light of the enactment of section 196.199. Florida Dep't of Revenue v. Canaveral Port Auth., 642 So. 2d 1097, 1102 (Fla. 5th DCA 1994).

52. *See* Daytona Beach Racing & Recreational Facilities Dist. v. Paul, 179 So. 2d 349 (Fla. 1965); State *ex rel.* Green v. City of Pensacola, 126 So. 2d 566, 569 (Fla. 1961).

operated natural gas distribution system.[53] In that case, Chapter 31166, Special Acts of the Legislature, 1955, allowed Pensacola a tax exemption in its operation of a natural gas distribution system.[54] Because the *Pensacola* court was dealing with an express statutory exemption,[55] it held that there would be a strong presumption in favor of the exemption's validity.[56] Based on this presumption, the court validated the exemption.[57] In addition, in *Paul*, the court deferred to a legislative determination that Daytona Beach Racing & Recreational Facilities District served a public purpose,[58] and held that the property leased by the District to a private entity was tax-exempt.[59] The court stated that the exemption would stand unless legislatively repealed.[60]

In the instant case, the court construed the following language in section 315.11: "As adequate port facilities are essential for the welfare of the inhabitants and . . . as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal, or other taxes . . . ."[61] This language does not condition the authority's tax exempt status on the use of the property. Rather, it explains why the port authority is deserving of an exemption.[62]

This construction parallels previous judicial interpretations of similar statutes that expressly provided exemptions.[63] Under this interpretation, which is supported by precedent, section 315.11 expressly designates CPA as a public entity that uses its property for a public purpose.[64] Based on the reasoning of *Paul* and *Pensacola*, the statutory language is decisive and therefore, the instant court should have upheld the exemption by deferring to the legislature.[65]

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53. *Pensacola*, 126 So. 2d at 567-68.

54. *Id.* at 568 (citing 1955 Fla. Laws ch. 31166).

55. *Id.* The exemption states, in relevant part: "[T]he City of Pensacola, in its operation of a natural gas distributing system to the inhabitants of the City of Pensacola . . . is hereby exempted from taxation . . . ." *Id.* at 568 n.2.

56. *Id.* at 569 (stating that "[i]nasmuch as Chapter 31166, in plain and unambiguous language, grants the City of Pensacola an exemption from the tax in question, the rule of strict construction is not needed and will not be applied.")

57. *Id.* The court further explained that the exemption statute stands on equal footing with all other legislative enactments and that it possesses the same presumption of constitutionality. *Id.*

58. 179 So. 2d at 351.

59. *Id.* at 355.

60. *Id.*

61. FLA. STAT. § 315.11 (1995).

62. *See id.*

63. *See Pensacola*, 126 So. 2d at 568.

64. *See* FLA. STAT. § 315.11.

65. *See Paul*, 179 So. 2d at 351; *Pensacola*, 126 So. 2d at 568 n.2.

However, the 1971 repeal[66] of similar express exemption statutes and the enactment of sections 196.001[67] and 196.199[68] created confusion on this issue.[69] While the legislature repealed all statutory provisions providing leasehold exemptions, replacing them with statutory provisions providing exemptions only when a property is being used for "governmental, municipal, or public purposes,"[70] section 315.11 was not among them.[71] One could therefore argue that the legislature, by not repealing section 315.11, intended the section to remain in effect and the port authority to continue to receive an exemption despite section 196.199.[72] Otherwise, the legislature would have determined that section 315.11 was subsumed within section 196.199 and would have repealed it.[73]

In interpreting this statutory revision, subsequent courts never attempted to reconcile the new statutes of Chapter 196 with existing enabling statutes that expressly provided exemptions.[74] Instead, they simply set aside the enabling statutes and the concept of legislative deference, and interpreted cases solely on an evolving common law definition of "public purpose" as contained in section 196.199.[75]

For instance, in *Volusia*,[76] the court interpreted the phrase "public

66. 1971 Fla. Laws ch. 133. The chapter was an act repealing all exemptions granted by special or local acts or general acts of local application. *Id.*

67. FLA. STAT. § 196.001.

68. *Id.* § 196.199.

69. *See* Roberts, *supra* note 9, at 1092-95. In *Dade County v. Pan American World Airways, Inc.*, 275 So. 2d 505, 512 (Fla. 1973), the court granted an exemption to a leasehold interest with a predominantly profit-oriented use. Roberts, *supra* note 9, at 1098. However, in *Volusia County v. Daytona Beach Raceway & Recreational Facilities District*, 341 So. 2d 498, 502 (Fla. 1976), the court held that a profit-oriented use would render the leasehold interest ineligible for an exemption. Roberts, *supra* note 9, at 1098.

70. Canaveral Port Auth. v. Department of Revenue, 690 So. 2d 1226, 1229 (Fla. 1996).

71. 1971 Fla. Laws ch. 133.

72. *See Canaveral*, 690 So. 2d at 1229.

73. *See id.*

74. *See* Florida Dep't of Revenue v. Canaveral Port Auth., 642 So. 2d 1097, 1102 (Fla. 5th DCA 1994) (stating that "[n]o case was found that interprets the scope of the exemption afforded by section 315.11 or the effect of enactment of section 196.199 on section 315.11").

75. *See* Roberts, *supra* note 9, at 1092-95. In the courts' eyes, "public purpose" meant that the property was being used "primarily and predominantly for the public benefit even though there may be some incidental private purpose, too." *Id.* at 1095 (quoting *Dade County*, 275 So. 2d at 512); *see also* Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448, 452-53 (Fla. 1993) (holding that the legislature could not exempt from real estate taxation municipally owned property under a lease, which is not being used for municipal or public purpose); Orlando Utils. Comm'n v. Milligan, 229 So. 2d 262, 265 (Fla. 4th DCA 1970) (holding that land used for the recreational benefit of the families of employees did not serve a predominantly public purpose).

76. *Volusia*, 341 So. 2d at 498.

purpose" based only on a narrow reading of section 196.199.[77] The court reached this result without comparing the weight of the enabling statute, which had expressly granted an exemption several years earlier,[78] with the language in section 196.199.[79] In deciding the case solely on its own interpretation of "public purpose," the court rejected case law that considered the express language of enabling statutes.[80] In failing to explain the relationship between the enabling statute and section 196.199, the *Volusia* court effectively rendered statutes that expressly grant an exemption, such as section 315.11, meaningless when a broader statute grants an exemption only if a property is being used for a public purpose.[81] This is problematic because the legislature did not expressly repeal statutes such as section 315.11 when they enacted general exemption statutes.[82] A valid interpretation of this failure is that the legislature intended statutes like section 315.11 to retain a meaning separate and distinct from that of section 196.199.

The instant case is the first case that both considers the legislature's intent and attempts to reconcile or harmonize two conflicting, yet similar, statutes.[83] The lower court, the Fifth District Court of Appeal, attempted to interpret the language of the enabling statute by examining the legislative

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77. *Id.* at 502. The court, despite having granted an exemption in 1965 in *Paul*, 179 So. 2d 349, 355 (Fla. 1965), refused to grant the same authority an exemption because it held that the Speedway existed only to make profits for its shareholders and therefore, did not serve a governmental purpose. *Id.* The *Volusia* court held that it was the use of the property which was leased from a governmental source that determined its constitutional taxability. 341 So. 2d at 502.

78. *See Paul*, 179 So. 2d at 355.

79. *See Volusia*, 341 So. 2d at 502.

80. *Id.* The result of this narrow interpretation of prior case law was that any leasehold interest used for private profit would be deemed proprietary and thus ineligible for an exemption. *See id.* This case seemed to hold that any property expressly exempted by statute would not be exempt unless it was being used for an exclusively governmental purpose. *Id.*

81. *See id.* The court held that the corporation existed only to make profits for its shareholders; therefore, it did not perform a governmental function and was ineligible for a tax exemption. *Id.*

82. *See* FLA. STAT. § 315.11 (1995); *see also* Sebring Airport Auth. v. McIntyre, 642 So. 2d 1072 (Fla. 1994). *McIntyre* further exemplifies the Supreme Court of Florida's failure to reconcile the enabling act with section 196.199. *Id.* at 1073-74. In *McIntyre*, the court, by invalidating an exemption to the Raceway, held that although the agency may serve the public, it does not operate under a public purpose as required by the court's narrow interpretation. *Id.* The court neither mentioned the enabling statute nor explained the statute's relation to that court's narrow interpretation of the general exemption statutes. *Id.* Instead, the court ignored the express language of the enabling statute and subsumed it within the court's discussion of "public purpose." *Id.* The court, by invalidating an exemption to the Raceway, held that although the agency may serve the public, it does not operate under a public purpose as required by the court's narrow interpretation. *Id.* The court stated, "We have no doubt that Raceway's operation of the racetrack serves the public, but such service does not fit within the definition of public purpose defined by section 196.012(6)." *Id.* at 1074.

83. *See* Canaveral Port Auth. v. Department of Revenue, 690 So. 2d 1226 (Fla. 1996).

definition of "port facility."[84] It stated: "The legislature has defined the term 'port facilities'[85] broadly, but not, we think, so broadly as to embrace property on which commercial activity is being carried on by private lessees at their port facility."[86] The instant court seemed to take a different approach by not distinguishing the language of the two statutes or addressing any differences in their requirements, but by simply inferring that section 315.11 is subsumed within section 196.199.[87] Indeed, the court fails to explain how section 315.11, which was not repealed by the legislature, is limited by the enactment of section 196.199, or why it is not distinct from section 196.199. This view would support the CPA's argument that section 315.11 provides a blanket exemption for port authority districts.[88]

By ignoring case law that deferred to express statutory language, the instant court, provides little guidance to future courts and confuses the issue of ad valorem taxation.[89] Prior to 1971, the courts looked to express statutory language and afforded great legislative discretion.[90] The instant court should have applied this interpretation to statutes that survived the 1971 repeal, such as section 315.11. However, the court based its decision on inferred legislative intent and failed to dispel an equally plausible counter-interpretation of the legislature's actions.[91] By not repealing section 315.11, the legislature could have intended that the statute retain its distinct and separate express language.[92] Until a court directly addresses this issue, confusion will continue to arise. This case may prompt the legislature to further clarify its laws by distinguishing section 315.11, or by repealing all statutes expressly providing exemptions. The latter option would then force a future court to address only section 196.199.

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84. Florida Dep't of Revenue v. Canaveral Port Auth., 642 So. 2d 1097, 1103 (Fla. 5th DCA 1994).

85. *See* FLA. STAT. § 315.02(6). Port facilities, as described in section 315.11, are defined to include: "harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels . . . docks, markets, parks, recreational facilities, structures, [and] buildings." *Id.*

86. Florida Dep't of Revenue v. Canaveral Port Auth., 642 So. 2d 1097, 1103 (Fla. 5th DCA 1994).

87. *See Canaveral*, 690 So. 2d at 1229.

88. *See id.* at 1228.

89. *See supra* notes 49-54 and accompanying text.

90. *See Canaveral*, 690 So. 2d at 1229.

91. *See id.*

92. *See supra* notes 65-73 and accompanying text.