

IN THE SUPREME COURT
STATE OF FLORIDA

FRANCIS W. CLARK, SR., as Trustee,
WALLACE SALLEY, CHARLIE C. JONES,
CHARLIE BYRD, WILLIAM BROWN,
THEODIS WRIGHT, CALVIN HICKS, JR.,
as Successor Trustees of MASONIC
LODGE NO. 109, JESSIE V. WHITE,
FRANK HALEY and O. SANFORD JASPER,

Petitioners,

vs.

CITY OF ST. PETERSBURG, a
municipal corporation,

Respondent.

CASE NO. 69,306

APPLICATION FOR DISCRETIONARY REVIEW OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF
FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

LAW OFFICES OF H. REX OWEN
H. REX OWEN and
BRUCE CRAWFORD
157 Central Avenue
St. Petersburg, FL 33701
813/822-4381

-and-

RICHARD A. ZACUR
5200 Central Avenue
St. Petersburg, FL 33707
813/321-3226

ATTORNEYS FOR PETITIONERS

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PREFACE

For the purposes of this Brief the Petitioners, WALLACE SALLEY, CHARLIE C. JONES, CHARLIE BYRD, WILLIAM BROWN, THEODIS WRIGHT and CALVIN HICKS, JR., as Successor Trustees of MASONIC LODGE NO. 109, shall be referred to herein as "Petitioners", and Respondent, CITY OF ST. PETERSBURG, shall be referred to herein as "City". The following symbols shall be utilized herein:

"A" shall refer to the Appendix to this Brief.

STATEMENT OF THE CASE AND FACTS

Through Resolution 83-117 adopted February 3, 1983, the City established a policy for calculating full and fair compensation for several church properties located within a proposed site for future redevelopment, which area included the property owned by Petitioner. (A-1-3). The City created said valuation procedure based upon the City Council's findings that (1) the churches were special purpose buildings, (2) there was no market for replacement structures, (3) relocation sites were limited, (4) the City's traditional reimbursement policies would not provide the churches with sufficient funds to relocate, and (5) the City must not unduly interfere with the free exercise of religion. (A-1-3).

The method of valuation espoused in the City's Resolution provided for compensation above and beyond the "full compensation" mandated by the Florida and United States Constitutions in that the City elected to value structural improvements based upon the cost of replacement without consideration for depreciation or obsolescence. (A-1-3). Additionally, said valuation methodology considered the cost of acquiring replacement sites in other areas of the community without regard to the actual fair market value of the land being acquired. (A-1-3).

Petitioners are the owners of certain property in the vicinity of the aforementioned churches. Petitioners have constructed on their property a Masonic Lodge and have used the

same as the meeting place and center for community services provided by the Masonic Temple, a non-profit fraternal organization designed to promote brotherhood within the community.

The City instituted the subject eminent domain action to acquire fee simple title to Petitioners' property but refused to apply to Petitioners' property the method of calculating full and fair compensation which it has established for the adjacent church properties. The trial court determined (1) that the City's application of its Resolution violated the constitutional proscription against assisting the establishment of religion and (2) that it denied Petitioners equal protection of the law. (A-4-5). In order to give said enactment any constitutional effect, the trial court construed the same to require equal application of the method of valuation to all special use properties owned by non-profit, educational, religious, charitable or eleemosynary organizations within the subject area. (A-4-5).

The City filed a Petition for Certiorari to the Second District Court of Appeal which was denied December 7, 1984 without opinion. Subsequently, the City stipulated to the amount of compensation that Petitioners would receive in accordance with the methodology set forth in the City's Resolution and a Final Judgment incorporating said amount was entered. (A-6-7).

The City timely appealed said Judgment and the Second District Court of Appeal reversed. (A-8-10). Based upon its conclusion that the Resolution was adopted with reference "only

to the churches' property", the District Court held that the trial court erred in converting the same into a commitment to value Petitioners' special use properties in accordance with the valuation methodology contained in the Resolution. (A-9). Additionally, the District Court denied Petitioners' Motion for Attorneys Fees. (A-11). Petitioners subsequently filed their Motions for Rehearing as to the reversal of the Final Judgment and the denial of Petitioners' Motion for Attorneys Fees, which Motions were denied. (A-12). Petitioners timely filed their notice seeking to invoke this Court's discretionary jurisdiction pursuant to Rule 9.030(a)(2)(iv) and 9.120, Florida Rules of Appellate Procedure.

SUMMARY OF ARGUMENT

The Decision involved herein ratifies the payment of special compensation to property owners on the basis that the owners thereof are religious organizations. Said ruling directly conflicts with prior Florida cases which preclude preferential treatment predicated upon religion. The District Court's denial of Petitioners' Motion for Attorneys Fees also directly conflicts with Florida cases which award appellate fees to condemnees for all appeals instituted by a condemnor regardless of the outcome.

ARGUMENT

POINT I

THE DECISION IN THE INSTANT CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH THOSE CASES HOLDING THAT NO LAW RESPECTING THE ESTABLISHMENT OF RELIGION MAY LAWFULLY BE ENACTED AND THAT NO REVENUE SHALL BE TAKEN FROM THE PUBLIC TREASURY DIRECTLY OR INDIRECTLY IN AID OF SECTARIAN INSTITUTIONS.

By Resolution 83-117, the City created a methodology for establishing full and fair compensation for special use properties owned by several churches located within a proposed site for future redevelopment. (A-1-3). Said method of valuation provided compensation in excess of that amount to which the property owner was entitled as a matter of strict constitutional right. When Petitioners' special use property was condemned, the City attempted to restrict application of said method of valuation solely to the church properties. The trial court determined that the only construction of the City's Resolution that would comport with the Florida Constitution required application of the valuation methodology to the special use properties of all non-profit, educational, religious, charitable and eleemosynary organizations within the area affected.

The Second District Court's reversal of the subject Final Judgment thus inherently approves of a Resolution which provides payment of special pecuniary benefits from the public treasury to property owners on the sole basis of religion. The District Court acknowledges that such additional compensation was available only to religious organizations when it stated:

"We conclude that the resolution very clearly was adopted with reference only to the church properties." (A-9).

The District Court held that the trial court's construction of the Resolution so as to require equal application of the valuation methodology to special use properties owned by all non-profit, educational, religious, charitable or eleemosynary organizations within the area affected was an erroneous judicial conversion.

The District Court's decision herein expressly and directly conflicts with those decisions which hold that no law respecting the establishment of religion may lawfully be enacted and that no revenue shall be taken from the public treasury directly or indirectly in aid of sectarian institutions. Petitioners maintain that if the only reason for applying the valuation method adopted in Resolution 83-117 to church properties within the redevelopment area is that the owners thereof are religious organizations, then such policy constitutes a patent violation of the constitutional proscription against assisting the establishment of religion. Art. I, Section 3, Florida Constitution, United States Const. Amend. 1. The District Court's approval of the payment of such additional monies solely to religious affiliated property owners directly conflicts with the constitutional provisions of Article I, Section 3 of the Florida Constitution:

"There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices consistent with public morals, peace or safety. No revenue of the state or any

political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." (Emphasis supplied.)

The same point of law was involved in Johnson v. Presbyterian Homes of Synod of Fla., Inc., 239 So.2d 256 (Fla. 1970). In Johnson, the appellee questioned the assessment of real property taxes levied by the appellant and asserted that the same were unlawful on the grounds that the property involved was exempt from taxation. The appellant contended that the exemption was unconstitutional in that it attempts to grant tax exemptions to homes for the aged owned by religious organizations which were operated primarily for religious purposes, in violation of the Florida Constitution, (1885), Declaration of Rights, Section 6, and Florida Constitution, (1968), Art. I, Section 3. This Court stated at page 261:

"A state cannot pass a law to aid one religion or all religions, x x x. If the primary purpose of the state action is to promote religion, that action is in violation of the First Amendment, but if a statute furthers both secular and religious ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion. x x x "

This Court then held that the tax exemptions were constitutional, since they were not limited to homes for the aged maintained by religious groups but applied equally to any home which was owned and operated in compliance with the terms of the statute by Florida corporations not for profit.

This Court reiterated the foregoing principles of law in Nohrr v. Brevard County Educational Facilities Authority, 247

So.2d 304 (Fla. 1971). In Nohrr, an appeal was instituted from a judgment validating certain revenue bonds authorized under the Higher Educational Facilities Authority to finance the construction of a dormitory and cafeteria for the Florida Institute of Technology, a private higher educational institution in Brevard County. The defendant asserted that the Educational Facilities Law violated the First and Fourteenth Amendments to the United States Constitution and Florida Constitution, Article I, Section 3, since it permitted the Authority to issue revenue bonds in order to aid religious schools. This Court ruled that said statute contained no constitutional infirmities since the statute permitted the Authority to issue revenue bonds in order to aid secular schools as well as religious schools, and no public monies were to be utilized in any manner whatsoever in connection with the development projects commenced. Since the benefits of the Educational Facilities Law were equally available to religious as well as non-religious entities, it was held that the statute did not run afoul of the constitutional proscription of assisting religions.

In direct contrast to the statutes in Johnson and Nohrr, the Resolution in the case at bar as approved by the Second District Court of Appeal, provides for the expenditure of public funds from the municipal treasury in direct aid and assistance solely to property owners who are religious organizations. Said payment constitutes a direct monetary subsidy which is repugnant to the precepts quoted heretofore. Rather than granting additional

compensation to all special use properties within the redevelopment area, the District Court has sanctioned the sponsorship of the churches located in the affected area. Such preferential treatment on the basis of religion has consistently been held by the Courts to be forbidden under even the most strict interpretation of the First Amendment of the United States Constitution. Everson v. Board of Education, 330 U.S. 1, 15, 67 S.Ct. 504, 91 L.Ed 711. It has long been held that the mere fact that the government has singled out along religious lines a class of its citizens for special economic benefit is sufficient to defeat an otherwise proper disbursement of funds. Rhode Island Federation of Teachers AFLCIO v. Norbert, 479 F.Supp 1564, (1979) affirmed 630 F.2d 855. (1980) Even when genuinely motivated by undeniably secular purposes, a government must not act so as to support a narrow group of religiously segregated beneficiaries. Roemer v. Board of Public Works of Maryland, 96 S.Ct. 2337, 426 U.S. 736, 49 L.Ed 2d 179. (1976).

POINT II

THE DECISION DENYING ATTORNEYS FEES DIRECTLY AND EXPRESSLY CONFLICTS WITH THOSE CASES HOLDING THAT CONDEMNNEES ARE ENTITLED TO ATTORNEYS FEES FOR SERVICES RENDERED IN THE APPELLATE COURTS ON APPEALS INSTITUTED BY THE CONDEMNOR EVEN THOUGH THE CONDEMNOR PREVAILED.

The City appealed the entry of the Final Judgment in the subject eminent domain action. City of St. Petersburg v. Francis W. Clark, Sr., et al, Second District Court of Appeal, Case No. 85-2264. Petitioners filed their Motion for

Attorneys Fees pursuant to Section 73.131, Florida Statutes, which provides:

"The Petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorneys fee to be assessed by that court except upon appeal taken by a defendant in which the judgment of the trial court shall be affirmed."


Notwithstanding the foregoing statutory provision, the Second District Court of Appeal denied Petitioners' Motion for Attorneys Fees and Petitioners' Motion for Rehearing. (A-11-12). Said ruling expressly and directly conflicts with this Court's decision in Denmark v. State of Fla. Dept. of Transportation, 389 So.2d 201 (Fla. 1980). In Denmark, the Supreme Court granted certiorari to review an order of the Fourth District Court denying appellate attorneys fees to petitioners/condemnees. The Supreme Court quashed said order and held that said condemnees were entitled to appellate attorneys fees even though the condemnor had prevailed upon the appeal which the condemnor had instituted. Also in accord are State Road Dept. v. Levato, 199 So.2d 714 (Fla. 1967) and State Road Dept. of Fla. v. Hancock, 250 So.2d 307 (Fla. 2d DCA 1971). Since the subject action is identical in all respects to the facts before the Court in Denmark, it is apparent that the denial by the Second District Court of Appeal of Petitioners' Motion for Attorneys Fees in the case at bar conflicts directly and expressly with the aforecited decisions on the same point of law.

CONCLUSION

The decision of the Second District Court of Appeal that the Petitioners seek to have reversed is in direct and express conflict with the principles of law set forth in Johnson, supra, Nohrr, supra, and the unequivocal provisions of Article I, Section 3 of the Florida Constitution. Because of the reasons and authorities set forth in this Brief, it is submitted that the decision in the present case is erroneous. Additionally, the District Court's denial of Petitioner's Motion for Attorneys Fees must be reversed in that the same controverts the express holding of Denmark, supra, Levato, supra, Hancock, supra, and the provisions of Section 73.121(2), Florida Statutes.

The Petitioners therefore request this Court to extend its discretionary jurisdiction to this cause to review the entire record, Opinion and Judgment, and to enter its Order quashing the Decision and the Order denying attorneys fees and granting such other and further relief as deemed appropriate.

Respectfully submitted,



LAW OFFICES OF H. REX OWEN
H. REX OWEN and
BRUCE CRAWFORD
P. O. Drawer 0
157 Central Avenue
St. Petersburg, FL 33701
813/822-4381

-and-

RICHARD A. ZACUR
5200 Central Avenue
St. Petersburg, FL 33707
813/321-3226

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Petitioner on Jurisdiction has been furnished by mail to MICHAEL S. DAVIS, ESQ., City Attorney, and KIM STREETER, ESQ., Assistant City Attorney, P. O. Box 2842, St. Petersburg, FL 33731 this 12 day of September, 1986.


LAW OFFICES OF H. REX OWEN
H. REX OWEN
P. O. Drawer 0
157 Central Avenue
St. Petersburg, FL 33731