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Spooner v. Askew, 345 So. 2d 1055 (Fla. 1976)

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Ad Valorem Taxation—RATIFICATION OF FLORIDA'S AD VALOREM TAX STRUCTURE: REJECTION OF AN EQUAL PROTECTION CHALLENGE—*Spooner v. Askew*, 345 So. 2d 1055 (Fla. 1976).

In February of 1973, the Gadsden County Tax Assessor received a letter from the Florida Department of Revenue informing him that Gadsden County's 1973 tax roll would not be approved unless the level of assessment was increased.¹ As a direct consequence of this prodding by the Department, the assessed valuation of nonexempt real property in Gadsden County was increased by eighty-five percent over the previous year.² The county tax assessor³ submitted the tax roll to the Department of Revenue, and it was duly certified.⁴ On October 30, 1973, the Gadsden County Board of Tax Adjustment reviewed approximately 100 assessments.⁵ The Board, noting that property in neighboring counties appeared to be assessed at a significantly lower rate than in Gadsden County, adopted resolutions which effectively reduced the total assessed valuation of the county thirty percent.⁶ The Department of Revenue refused to approve the reduced valuations because the Board had failed to investigate individually each affected piece of property.⁷ Property owners then brought this case, a class action suit to have the modified assessments certified.⁸

The trial court granted partial relief to the property owners on

1. In addition, the tax assessor was summoned to Tallahassee for a conference with department officials, who reiterated the warning that they would not approve the tax roll if there was not an increase in the assessed value of property within the county. Brief for Appellee Owenby at 3, *Spooner v. Askew*, 345 So. 2d 1055 (Fla. 1976).

2. 345 So. 2d at 1057.

3. FLA. CONST. art. VIII, § 1(d) was amended in the 1974 general election, changing the name of the office of "tax assessor" to "property appraiser." Similar changes in the Florida Statutes were recently made by the Florida Legislature. See ch. 77-102, 1977 Fla. Laws 204. To preserve continuity, the term "tax assessor" will be used throughout this comment.

4. 345 So. 2d at 1057. This procedure is set forth in FLA. STAT. § 193.114 (1977).

5. The name of the County Board of Tax Adjustment was changed in 1976 to Property Appraisal Adjustment Board to conform to the 1974 constitutional change in the title of the tax assessor to "property appraiser." See ch. 76-133, 1976 Fla. Laws 231, and note 3 *supra*.

6. The board compared selected assessments in the nearby counties of Washington, Holmes, Jackson, Wakulla, Madison, and Taylor. Within the same geographical distance from Gadsden County, but not considered by the board, were Calhoun, Leon, Liberty, Bay, Gulf, Franklin, and Jefferson Counties. 345 So. 2d at 1057 n.2.

7. *Id.* at 1057 & n.3. FLA. STAT. § 194.032 (1977) requires the Board of Tax Adjustment to investigate each challenge to a tax assessor's valuation. FLA. STAT. § 193.114(6) (1977) provides that the executive director of the Department of Revenue must disapprove any part of a tax roll not in substantial compliance with the law.

8. The Governor, the Board of Tax Adjustment, and the County Tax Assessor were joined. See FLA. STAT. § 194.181 (1977).

equal protection grounds.⁹ It found that the tax rolls of other counties were certified by the Department even though the property in those counties was not assessed at the constitutionally mandated "just valuation."¹⁰ On direct appeal the Florida Supreme Court reversed.¹¹ In an opinion by Justice England, the court found the evidence insufficient to substantiate a denial of equal protection and held that the Gadsden County Board of Tax Adjustment was without authority to consider the levels of assessment in other counties.¹² Seemingly having resolved the controversy, the court went on to comment that a taxpayer whose property is properly assessed has never had standing to complain of lower assessment levels in another taxing unit and, in any event, the statutory requirement of statewide uniformity is more a goal than a compellable right.¹³

In a concurring opinion, Justice Boyd pointed out that the law is quite clear that all real property in the State of Florida must be assessed at its actual value. Given that the average assessment of property in the state for 1973 was eighty-two percent of full value, he argued that the proper action to be taken by the court would be to retain jurisdiction over the suit and direct the Department of Revenue to ensure that all other counties were brought up to full value.¹⁴ A brief dissent by Justice Roberts, joined by Justice Adkins, asserted that the case presented mixed questions of law and fact that were correctly decided by the trial court.¹⁵

As long ago as 1885 the Florida Constitution provided that for the purpose of taxation, real property should be assessed at its just valuation.¹⁶ Yet only in relatively recent times has just valuation been interpreted to mean the full cash value of the property.¹⁷ It was

9. *Spoooner v. Askew*, No. 73-1738 (Fla. Cir. Ct., Leon County, Feb. 18, 1975). Suits challenging the constitutionality of the assessment of ad valorem taxes may be brought either in the county where the property is located or in Leon County. FLA. STAT. § 194.181 (1977).

10. FLA. CONST. art. VII, § 4 provides: "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation"

11. FLA. CONST. art. V, § 3(b)(1) gives the Florida Supreme Court original appellate jurisdiction if the decision of the trial court directly passes on the constitutional validity of a state statute.

12. 345 So. 2d at 1058-59. The court found that while the Board of Tax Adjustment had authority to investigate challenged assessments on an individual basis, the board was without authority to adjust assessments "across-the-board." *Id.* at 1058.

13. *Id.* at 1059.

14. *Id.* at 1060.

15. *Id.* at 1060-61.

16. FLA. CONST. art. IX, § 1 (1885). The current constitution has essentially the same provision. See FLA. CONST. art. VII, § 4. Earlier Florida constitutions merely referred to "an equal and uniform mode of taxation to be general throughout the state." See, e.g., FLA. CONST. art. VIII, § 1 (1838).

17. See *Schleman v. Connecticut Gen. Life Ins. Co.*, 9 So. 2d 197 (Fla. 1942). Although

not until the population pressures and concomitant legal challenges of the early 1960's¹⁸ that the courts issued clear statements that all property within a taxing unit must be assessed at one hundred percent of actual cash value and provided a standard by which this value could be determined.¹⁹

Concurrent with judicial efforts to define just valuation, the legislature provided guidelines to the county tax assessors to enable them properly to assess the value of the property within their counties. One of the most significant early acts was to authorize state tax forms in 1943.²⁰ The standards promulgated under the statute were eventually codified²¹ and were later incorporated into a detailed manual published annually by the Department of Revenue.²² The manual is distributed to the various county assessors to promote statewide uniformity in assessment techniques.

But despite these judicial, legislative, and administrative efforts, counties persisted in assessing real property at a fraction of true value.²³ As late as 1969 at least some assessors paid little or no attention to the manual.²⁴ The Department of Revenue, without the necessary administrative structure to implement its general supervisory powers over property assessment, could do little to remedy this situation.

The 1973 legislature took the matter firmly in hand and substan-

case law was slow to equate "just value" with "full cash value," Florida had a statute antedating the 1885 Constitution stating precisely that rule. See ch. 3219, § 18, 1881 Fla. Laws 21. This statute was repealed in 1963 when the legislature set forth specific criteria to be used by tax assessors in determining just valuation. See ch. 63-250, 1963 Fla. Laws 600. The first criterion is "[t]he present cash value of the property." *Id.* § 1.

18. For an analysis of some of the earlier legislative efforts in the area of ad valorem taxation, see Wershaw, *Recent Developments in Ad Valorem Taxation*, 20 U. FLA. L. REV. 1 (1967), and Wershaw, *Ad Valorem Assessments in Florida-Whither Now?*, 18 U. FLA. L. REV. 9 (1965).

19. After a lengthy discussion in which "just valuation" was equated with the term "X," the Florida Supreme Court in *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965), concluded:

The more we ponder the problem the more difficult the solution appears. But settle it we must and we have concluded after earnest study that the sensible way to do so is to adopt the chancellor's idea that "fair market value" and "just valuation" should be declared "legally synonymous" and that such is the best way to arrive at the definition of "X". The former term is a familiar one and it, in turn, may be established by the classic formula that it is the amount a "purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell."

Id. at 85-86 (citation omitted). See *Burns v. Butscher*, 187 So. 2d 594 (Fla. 1966); *McNayr v. State ex rel. Dupont Plaza Center, Inc.*, 166 So. 2d 142 (Fla. 1964).

20. Ch. 22079, § 46, 1943 Fla. Laws 865.

21. Ch. 63-250, § 1, 1963 Fla. Laws 600.

22. FLA. DEP'T OF REVENUE, STATE MANUAL OF PROCEDURES FOR AD VALOREM TAX ASSESSMENT (1976).

23. See *Dickinson v. Geraci*, 190 So. 2d 368 (Fla. 2d Dist. Ct. App. 1966).

24. See *Dep't of Revenue v. Bell*, 227 So. 2d 684 (Fla. 1st Dist. Ct. App. 1969).

tially rewrote the provisions governing ad valorem taxation.²⁵ The statute provides that the detailed rules and regulations promulgated by the Department of Revenue, including the manual, are mandatory rather than advisory and calls for periodic audits of county assessments to check compliance with these rules.²⁶ Where an audit discloses underassessment, the department has authority to issue an administrative order to the tax assessor to correct the assessment level and to monitor closely the steps taken to comply with the order.²⁷ As a last resort, the department on its own authority may withhold state funds from a county which has improperly assessed property within its boundaries.²⁸ In sum, a detailed administrative structure over ad valorem taxation was constructed, and the department was granted the necessary authority to make it work.²⁹

In 1973 the legislature also made substantial changes in educational finance, an area closely allied with ad valorem taxation.³⁰ While it is beyond the scope of this comment to discuss in detail the Florida Educational Finance Program (FEFP), its workings are crucial to an understanding of *Spooner*. Under FEFP a "base student cost" is determined each year by the legislature, to be funded from general revenues and ad valorem taxes.³¹ At the time this allocation is made, the legislature has access to the certified county tax rolls as well as revenue projections for the various state taxes. Based upon the assessed valuation for the entire state as shown by the certified ad valorem tax rolls, the Department of Education then prescribes a minimum millage for local participation in FEFP.³² Each county is expected to raise and spend at the local level an amount equal to ninety-five percent of the assessed valuation times

25. Ch. 73-172, § 2, 1973 Fla. Laws 331.

26. FLA. STAT. §§ 195.027(1), .096 (1977).

27. *Id.* § 195.097.

28. *Id.* § 195.101.

29. The comprehensive nature of this legislation can best be appreciated by a few examples. It established standards of value, FLA. STAT. 195.032 (1977), standardized the classification of property, FLA. STAT. § 195.073 (1977), required information sharing, FLA. STAT. § 195.084 (1977), gave the department control over the computer systems which enable local assessors to provide information promptly, FLA. STAT. § 195.095 (1977), established a loan fund to allow local counties to purchase such equipment, FLA. STAT. § 195.094 (1977), and last, but hardly least, gave the department veto power over the budget of the local tax assessors, FLA. STAT. § 195.087 (1977).

30. See ch. 73-345, 1973 Fla. Laws 1235. For further discussion of the current state of educational finance, see generally, Clune, *Wealth Discrimination in School Finance*, 68 NW. U.L. REV. 651 (1973); Coons, *Introduction: "Fiscal Neutrality" after Rodriguez*, 38 LAW AND CONTEMP. PROB. 299 (1974); Grubb & Michelson, *Public School Finance in a Post-Serrano World*, 8 HARV. C.R.-C.L. L. REV. 550 (1973).

31. FLA. STAT. § 236.081(1)(b) (1977).

32. *Id.* § 236.081(4).

the minimum millage rate.³³ The purpose of this scheme is to ensure approximate parity of educational funding for public school pupils in all parts of the state.³⁴

This carefully developed and thoroughly integrated system of educational finance and ad valorem taxation combines so that each county should ideally contribute to educational funding at the same rate, with the state providing the necessary differential to maintain statewide equality.³⁵ Yet if a county underassesses its property and decreases the total assessed value for the state, serious problems arise. The Department of Education's minimum millage rate will increase, and taxpayers in properly assessed counties will be doubly penalized: first by paying the higher ad valorem taxes, and again when these counties receive less than their fair share of state education funds.³⁶ It was relief from this double penalty which was sought by the Gadsden County taxpayers.³⁷

On the surface this situation appears to present a compelling argument to either reduce the Gadsden County assessments or raise the assessment levels of the other counties.³⁸ Indeed, each approach was endorsed by a minority of the *Spooner* court, the former in the dissenting opinion of Justices Roberts and Adkins³⁹ and the latter

33. *Id.*

34. FLA. STAT. § 236.012(1) (1977) provides:

The intent of the Legislature is:

(1) To guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.

35. Perhaps one impetus for this legislation was the California decision of *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), which struck down that state's system of financing public education on the grounds that the substantially disparate tax bases between school districts constituted a form of invidious discrimination. The carefully planned Florida system, which makes every effort to ensure statewide uniformity, appears impervious to a challenge of this nature. See generally *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1 (1973); *Askev v. Hargrave*, 401 U.S. 476 (1971).

36. Municipalities would be similarly affected because of the manner in which they qualify for state revenues sharing funds. Under Florida Statutes, § 218.23 (1977), a local government must levy at least three mills or the equivalent to qualify for revenue sharing funds. Thus, if the level of assessment is higher in one county than in other counties, greater local effort will be required.

37. Brief for Appellee Owenby at 15.

38. When a parcel within a taxing unit is assessed at a higher level than other property, the relief generally granted is to require that the assessment level of the other property be increased. See, e.g., *McNayr v. State ex. rel. DuPont Plaza Center, Inc.*, 166 So. 2d 142 (Fla. 1964). But if it is impossible or ineffective to raise the assessed value of other property, the disputed assessment must be brought in line with the prevailing rate. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Dade County v. Salter*, 194 So. 2d 587 (Fla. 1966).

39. 345 So. 2d at 1060-61.

in the concurring opinion of Justice Boyd.⁴⁰

Had Justice Boyd's view prevailed, the various counties would have been treated as if they were parcels of land within a single county. By maintaining jurisdiction, the court could have required all counties to attain equivalent assessment, thus ensuring that appropriate efforts were made to achieve statewide uniformity at this higher level.⁴¹ The majority opinion rejected the need for this solution and the concomitant involvement of the judiciary in overseeing the complex operations of this state agency. Such judicial prodding was unnecessary, as this task was already well under way.⁴²

Under the approach of the dissenting justices, the lower court's finding of a denial of equal protection would have been upheld. The tax roll of Gadsden County would have been reduced to "balance the equities."⁴³ While this remedy would have provided immediate relief to Gadsden County taxpayers, it would also have disrupted substantially the operation of the comprehensive administrative framework designed to bring about eventual uniformity. Furthermore, the dissent's approach would provide an invitation to litigate this issue every year.⁴⁴

The majority sensibly avoided the possibility of yearly litigation by removing the very grounds upon which the equal protection challenge was based. It denied at the outset that the various counties could be analogized to individual pieces of property within a specific county. Instead, the court determined that counties were independent entities for the purpose of ad valorem taxation and that neither taxpayers nor local officials could look to assessment practices in

40. *Id.* at 1060.

41. *Id.*

42. *Id.* at 1058 n.10.

43. It is clear that the court's reasoning was influenced by the fact that the Gadsden County dispute arose during the initial phases of implementing the statutory effort toward uniformity. Illustrative is the court's statement that "undoubtedly the zeal of the Department in 1973 exacerbated these conditions. It is in the context of [its] new statutory duties that the trial court below found Gadsden County taxpayers as a class had been denied equal protection of the laws." *Id.* at 1058.

44. *Id.* at 1060-61. When the Florida Supreme Court rendered the *Spooner* decision in 1976, three years had intervened since the controversy arose. It would be unreasonable to assume that the success of the 1973 statutory scheme went unnoticed by the court. In 1973 the average assessed valuation increase for all Florida counties was 24%. This rose to 33% in 1974. In 1975 and 1976 the increases began to level off, rising 12% and 5.5% each year respectively.

In the case of Gadsden County, equality eventually prevailed. During a highly inflationary period, the assessed valuation of Gadsden County property increased by only 1% in 1974, 5% in 1975, and 3% in 1976. See FLA. DEP'T OF REVENUE, FLA. AD VALOREM VALUATIONS AND TAX DATA (1976).

other counties to evaluate their own level of assessment.⁴⁵ This holding ratifies the administrative structure set up by the 1973 legislature to move ad valorem assessment levels toward statewide uniformity.⁴⁶ In particular, it left to the Department of Revenue the administrative duty and power to move individual counties toward just valuation.

Addressing the equal protection issue, the court denied relief, finding the evidence insufficient.⁴⁷ But in so doing the court somewhat cryptically stated that "in any event [the data was] formulated after the Department's and the Board's actions in this case."⁴⁸ The implication is that in an equal protection challenge the crucial evidence is not the levels of valuation in the various counties but rather in the information upon which the Department of Revenue based its enforcement efforts. In context, the court appeared to be alluding to what perhaps should have been discussed specifically: the extent of discretion available to the Department of Revenue in carrying out its statutory oversight.

Florida courts traditionally afford great latitude to tax assessors so long as there is a good-faith attempt to comply with the law.⁴⁹ But under the general rubric of abuse of discretion, actions by administrators in the tax collection process have been overturned.⁵⁰ In *Department of Revenue v. Bell*,⁵¹ for example, owners of pasture and grazing land within a multi-county flood control district alleged that property used for the same purpose and having the same income value was assessed much higher in one county than in another. The Florida Supreme Court granted relief, holding that the department had failed to perform its statutory duty to exercise general supervision over assessments to assure that valuations of all property were uniform.⁵²

45. 345 So. 2d at 1059.

46. The significance of the approach of the majority is emphasized because it was not even necessary to raise the issue of the various officials' powers. The majority indicated that the regional evidence presented at trial was legally insufficient to demonstrate a violation of equal protection and that this evidentiary insufficiency alone was enough to resolve the case. 345 So. 2d at 1059.

47. *Id.*

48. *Id.*

49. See, e.g., *District School Bd. of Lee County v. Askew*, 278 So. 2d 272 (Fla. 1973); *Exchange Realty Corp. v. Hillsborough County*, 272 So. 2d 534 (Fla. 1973); *Powell v. Kelly*, 223 So. 2d 305 (Fla. 1969); *Schleman v. Connecticut Gen. Life Ins. Co.*, 9 So. 2d 197 (Fla. 1942); *Keith Investments, Inc. v. James*, 220 So. 2d 695 (Fla. 4th Dist. Ct. App. 1969); *Harband, Inc. v. Anderson*, 134 So. 2d 816 (Fla. 2d Dist. Ct. App. 1961).

50. See *Southern Bell Tel. & Tel. Co. v. County of Dade*, 275 So. 2d 4 (Fla. 1973); *Dade County v. Salter*, 194 So. 2d 587 (Fla. 1966).

51. 227 So. 2d 684 (Fla. 1st Dist. Ct. App. 1969).

52. *Id.* at 685; see FLA. STAT. § 195.022 (1977).

This abuse of discretion analysis is implicit in the *Spooner* court's reasoning, exemplified by its observation that statewide uniformity of assessment valuation was more a goal than a compellable right and by its comments about the practical difficulties in administering the property tax.⁵³ Had this test explicitly been applied in *Spooner*, it seems clear that no abuse of discretion would have been found. Faced with implementing legislation which attempts to unify vastly disparate procedures, the court realized it was too much to expect that the department would be instantly and completely successful. It was sufficient that significant progress had been made in reducing the previously existing differences.⁵⁴

Unresolved is the latitude the court might grant to the Department of Revenue in future cases reviewing inter-county discrepancies. Conceivably the *Spooner* court's toleration of rather substantial disparities grants the Department of Revenue a level of discretion which will be inappropriate in the future, when greater overall uniformity will justify a more stringent standard.⁵⁵ The recent decision in *GAC Properties, Inc. v. Lanier*⁵⁶ is illustrative. GAC owned a large housing unit which consisted of 50,000 platted, undeveloped, and virtually indistinguishable lots, of which approximately one half were located in Polk County and the other half in Osceola County. For 1975 ad valorem tax purposes, the lots in Polk County were valued at \$300 per lot and those in Osceola County were valued at \$560 per lot. Suit was brought by GAC alleging that the Department of Revenue had failed to supervise the tax assessor of Osceola County properly, as the true value of the property was shown by the lower Polk County assessment. Although the trial court dismissed this count, the Fourth District Court of Appeal reinstated it as stating a cause of action.⁵⁷

The result in *GAC* is significant in light of the Florida Supreme Court's statement in *Spooner* that a taxpayer who is taxed at or under 100% of fair market value has never had standing to complain of an allegedly lower assessment level applied in another taxing unit.⁵⁸ By alleging that a disputed assessment exceeds 100% of the

53. 345 So. 2d at 1058, 1059-60.

54. *Id.* at 1058, 1060-61.

55. Justice Boyd's concurring opinion accepts as fact that Gadsden County was assessed at 99% of full value, that the state average was near 82% of full value, and that many counties with property assessed at values far below the 82% average had their tax rolls certified by the Department of Revenue. *Id.* at 1060.

56. 345 So. 2d 812 (Fla. 4th Dist. Ct. App. 1977), *petition for cert. filed*, No. 51,714 (Fla. May 23, 1977).

57. *Id.* at 813.

58. 345 So. 2d at 1059.

fair market value as shown by lower assessments in an adjoining county, which *GAC* demonstrates in a singularly dramatic fashion, a future litigant can draw in the Department of Revenue as a defendant. This, in turn, will permit the litigant to present some of the same kinds of evidentiary information refused under the equal protection challenge in *Spooner* in the context of an attack on the supervisory oversight of the Department of Revenue.⁵⁹

The *Spooner* decision provides a judicial ratification of the Department of Revenue's duty to supervise local constitutional officers charged with ad valorem tax assessments. The court recognized that while this system will always be short of perfection, it nevertheless provides a functional administrative framework through which much of the existing disparity among counties can be eliminated. Implied in the decision was that in carrying out this task the Department of Revenue will be granted substantial judicial latitude. The outer limits of this latitude will presumably be more specifically delineated by the disposition of the *GAC* dispute and similar litigation.

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59. The extent to which the Department of Revenue will be involved in these suits may be limited by case law and by recent legislative changes. The case law provides that the discretion granted to local assessors is such that a showing that two assessments are different does not necessarily prove that one of them is invalid, especially if the two tax rolls were prepared by different assessors. See, e.g., *Keith Investments, Inc. v. James*, 220 So. 2d 695 (Fla. 4th Dist. Ct. App. 1969). The 1976 legislature attempted to increase the authority of the local assessors in their relationship with the Department of Revenue. See ch. 76-234, 1976 Fla. Laws 534. The amendment provides that the standard measures of value promulgated by the department shall be deemed "prima facie correct, but shall not be deemed to establish the just value of any property." *Id.* § 9. This amendment substantially changed the prior language of the statute, which had provided that these standard measures of value "shall be deemed and held prima facie to be the standard measures of just valuation contemplated by the constitution of this state in matters of taxation." Ch. 70-243, § 38, 1970 Fla. Laws 709.

