

IN THE FLORIDA SUPREME COURT

CASE NO. SC18-2088
L.T. CASE NO. 3D17-2649

BRUCE C. MATHESON,

Petitioner,

vs.

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

and

0101 MIAMI PROPERTIES, LLC,

Respondents.

PETITIONER'S BRIEF ON JURISDICTION

On Review From A Decision
Of The Third District Court Of Appeal

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STATEMENT OF THE CASE AND FACTS

The Florida Legislature enacted section 125.35(1) to protect the people of the state by requiring competitive bidding when a county sells its real property. This Court has explained the law prevents “collusive contracts,” “favoritism,” secures “fair competition,” and deters the “temptation” to seek private gain at the “taxpayers’ expense.” *Wester v. Belote*, 138 So. 721, 724 (Fla. 1931). The Legislature has authorized only a handful of specific, narrow exceptions to this requirement, and this Court has repeatedly held that, when statutory language is plain and unambiguous, it may not be amended, rewritten, or otherwise altered because to do so would constitute a usurpation of legislative prerogative. *E.g.*, *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

Petitioner, Bruce C. Matheson, seeks review of *Matheson v. Miami-Dade County, Florida*, Case No. 3D17-2649 (Fla. 3d DCA Oct. 10, 2018), (A.3-26), because the decision in creating a judicial exception to the competitive bidding statute for “economic development” projects, expressly and directly conflicts with these important principles, including numerous decisions of this Court holding that, when a statute is clear and unambiguous, a court should not resort to rules of construction, and the statute must be given its plain meaning, instead giving the statute its plain meaning.

Section 125.35(1), Florida Statutes (2017), in pertinent part, reads:

(1)(a) The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.

* * *

(c) No sale of any [e.s.] real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. In the case of a sale, the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted....

On or about June 6, 2017, Miami-Dade County approved a Resolution authorizing the sale of approximately 2.79 acres of County property to a private enterprise, David Beckham's 0101 Miami Properties, LLC, for use in connection with the construction and operation of a soccer stadium to house a Major League Soccer team (A.4-5). The Resolution authorized the sale of the property for \$9,015,000, well below its market value, and required Beckham to create just 50 jobs in 5 years, only 26 of which must pay \$27,069, the then-"living wage" (A.5).

The County did not submit the sale to a competitive bid as required by the plain language of section 125.35 (A.5). Its justification for ignoring this requirement was that the land was purportedly sold pursuant to section 125.045 (A.5) (titled "County economic development powers"), a general purpose statute declaring it is in the public interest to encourage economic development in Florida's counties and empowering counties to expend public funds to do so.

However, section 125.045 contains no language exempting the sale of county land from the State's competitive bidding requirements as a handful of other specific and narrow provisions of chapter 125 expressly do. *See, e.g.*, §§ 125.35(b)1, (b)2, (b)3, Fla. Stat. Thus, Matheson filed a petition for writ of mandamus (Count I) or declaratory and injunctive relief (Count II) requiring the County to comply with chapter 125's competitive bidding requirement in selling the property (A.5-6). The County moved to dismiss, asserting as one ground that the sale was authorized because section 125.045 exempts such sales from the chapter 125 competitive bidding requirement (A.6). The trial court agreed and dismissed the action (A.6).

Despite the unambiguous language of sections 125.35 and 125.045, the Third District affirmed the trial court's decision by resorting to statutory construction, and holding that section 125.045 allowed the County to sell the property for economic development purposes without complying with chapter 125's competitive bid requirements (A.6), reasoning (mistakenly) that reading section 125.35 as requiring competitive bidding for all sales of county land, subject only to certain express exemptions, would conflict with sections 125.045 and 125.38 (A.11-17) and render section 125.35(1)(a) superfluous (A.17-18). Thus, the Court read into sections 125.35 and 125.045 a non-existent exemption from competitive bidding protections in the name of economic development to permit

no-bid sales of county property to a private developer. The result is the effective evisceration of the competitive bidding statute because, given the facts of this case, virtually any sale of county land would qualify as economic development.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction because the decision below directly and expressly conflicts with decisions of this Court holding that a clear and unambiguous statute must be given its obvious meaning. The plain language of section 125.35 unambiguously requires public bidding for the sale of “any” county-owned land, and the language of section 125.045 does not exempt sales pursuant to it from this requirement. The Third District resorted to rules of statutory construction to hold otherwise, thereby extending, modifying, and limiting the express terms of sections 125.35 and 125.045, resulting in an abrogation of legislative power.

This Court should exercise its jurisdiction in this case because this issue is one of extraordinary public importance. The competitive bidding process is designed to prevent public corruption by requiring counties to sell their land in a fair and transparent manner. The Third District’s holding eviscerates this check, leaving it to the counties of this state to decide whether and when they will require competitive bidding. The decision thus has the potential to adversely affect residents of every county in Florida.

Indeed, the no-bid sale of County land here demonstrates precisely why the Legislature decided not to leave competitive bidding to counties' discretion—the County received no meaningful benefit in exchange for the well-below market sale of the property. If the County can avoid the competitive bid requirement by characterizing this sale as one for economic development, then any county will be able to do the same with virtually any sale of public land to a private developer.

ARGUMENT

I. THE OPINION BELOW CONFLICTS WITH THIS COURT'S DECISIONS MANDATING A CLEAR AND UNAMBIGUOUS STATUTE BE GIVEN ITS PLAIN AND OBVIOUS MEANING

The Third District's resort to rules of statutory construction and policy considerations was improper and in direct conflict with this Court's decisions that, when a statute is clear and unambiguous, it must be given its plain and obvious meaning. *E.g.*, *Kumar v. Patel*, 227 So. 3d 557, 559 (Fla. 2017) (“We first examine the statute's plain meaning, resorting to rules of statutory construction only if the statute's language is ambiguous.”); *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 301 (Fla. 2017) (“‘When the statute is clear and unambiguous,’ we use the plain language of the statute and avoid rules of statutory construction to determine the Legislature's intent.”); *Streeter v. Sullivan*, 509 So. 2d 268, 271 (Fla. 1987) (“The first rule of statutory interpretation is that ‘[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no

occasion for resorting to the rules of statutory interpretation...the statute must be given its plain and obvious meaning.””).

By its plain terms, section 125.35 authorizes counties to sell real property and mandates that it be sold through competitive bidding “to the highest and best bidder for the particular use the board deems to be the highest and best.”

Although the plain language of section 125.35 requires competitive bidding for the sale of “any” county property, the Third District held that Matheson has no right to mandamus because the property was sold pursuant to the County’s general economic development powers set forth in section 125.045—which the Court held creates an exception to the competitive bidding requirement (A.6).

However, section 125.045 says no such thing. It is merely a general purpose statute allowing counties to use public funds to attract and retain business enterprises as a means of economic development. It contains no language exempting the sale of county-owned property from competitive bidding. *Cf. Randall Indus., Inc. v. Lee Cty.*, 307 So. 2d 499, 501 (Fla. 2d DCA 1975) (that a statute authorizes a county to enter into long-term leases “does not give the county the right to ignore the competitive bidding requirements which would be otherwise applicable to the leasing of county property”).

The Third District applied the principle of *in pari materia* to hold that requiring competitive bidding for all county land sales absent an express statutory

exemption would conflict with sections 125.045 and 125.38 (A.11-17). However, that analysis disregards the plain terms of section 125.35 which, itself, contains several exemptions from the competitive bidding requirement; section 125.38, which, unlike section 125.045, includes an express exemption from the section 125.35 competitive bidding requirement; and section 125.045, which includes no such exemption for county property sold or conveyed for economic development. The correct *in pari materia* reading is that a county may sell its property for economic development projects pursuant to competitive bidding procedures.

Moreover, in contravention of the unambiguous language of 125.35, the Third District held that the competitive bidding provision applies only if a county decides it does—*i.e.*, if it wants to sell its property to the highest bidder (A.17-21).

This strained interpretation conflicts with this Court’s directive that the “first (and often only) step in statutory construction is to ask what the Legislature actually said in the statute,...based upon the common meaning of the words used.” *Schoeff*, 232 So. 3d at 313 (Lawson, J., concurring in part and dissenting in part). The pertinent language is perfectly clear—section 125.35(1)(a) authorizes a county to sell its land by competitive bid, and section 125.35(1)(c) provides the specific bid procedure for the sale of “any [such] real property.”

Indeed, the Third District’s interpretation of section 125.35 also conflicts with decisions of this Court and other district courts. *See, e.g., Irv Enters, Inc. v.*

Atl. Island Civic Ass'n, 90 So. 2d 607, 608 (Fla. 1956) (“[Section 125.35]...requires that real estate belonging to the county shall not be sold except at competitive [sic] sale after notice of the sale has been published once a week for two weeks.”); *Dedmond v. Escambia Cty.*, 244 So. 2d 758, 760–61 (Fla. 1st DCA 1971) (stating that §125.35 requires “that the award be made to the highest and best bidder complying with the terms and conditions of the call for bids”); *Broward Cty. Rubbish Contractors Ass’n v. Broward Cty.*, 112 So. 2d 898, 902 (Fla. 2d DCA 1959) (observing that section 125.35 “authorizes sale and conveyance of real property, belonging to the county, only after advertising for bids.”).

The Third District’s resort to rules of statutory construction impermissibly extended, modified, and limited these provisions’ express terms and reasonable and obvious implications, thereby conflicting with decisions of this Court and resulting in an abrogation of legislative power. *See Holly*, 450 So. 2d at 219; *see also Shepard v. State*, 2018 WL 5660550, at *2 (Fla. Nov. 1, 2018).

II. THIS COURT SHOULD EXERCISE ITS JURISDICTION BECAUSE THIS CASE IS OF EXCEPTIONAL PUBLIC IMPORTANCE

This Court should exercise its jurisdiction because competitive bidding requirements are “of great importance to the taxpayers and ought not to be frittered away by exceptions.” *Wester*, 138 So. at 724. Yet that is precisely what the Third District has done.

The purpose of the competitive bid requirement in section 125.35 is “to ensure that the public’s interest is protected when a county disposes of its property.” Fla. Att’y Gen. Op. 2011-11, 2011 WL 2547792, at *5 (June 24, 2011); *Pandya v. Israel*, 761 So. 2d 454, 458 (Fla. 4th DCA 2000) (“section 125.35 specifically addresses the procedural requirements for the sale of property by the County” and “is enacted for the protection of the public”).

Competitive bidding is supposed to do this by “protecting the public against collusive contracts,” “prevent[ing] favoritism toward contractors by public officials,” and “secur[ing] fair competition upon equal terms to all bidders,” by “remov[ing] temptation on the part of public officers to seek private gain at the taxpayers’ expense.” AGO, 2011-11, 2011 WL 2547792, at *5 (quoting *Wester*, 138 So. at 724).

For this reason, the section 125.35 competitive bid provision “should receive a construction always which will effectuate and advance [its] true intent and purpose and which will avoid the likelihood of [its] being circumvented, evaded, or defeated.” AGO 2011-11, 2011 WL 2547792, at *5 (quoting *Wester*, 138 So. at 724); *see also Marriott Corp. v. Metro. Dade Cty.*, 383 So. 2d 662, 665 (Fla. 3d DCA 1980) (“Competitive bidding statutes should be construed to advance their purpose and to avoid their being circumvented.”).

The Third District's opinion does just the opposite. Indeed, it is the only opinion to hold that the chapter 125 competitive bidding requirement does not apply to county land sold in the name of economic development. This is scarcely surprising since economic development projects are as susceptible to corrupting influences as other sales of county land. Its holding gives Florida counties *carte blanche* to evade the unambiguous requirements of section 125.35 whenever they want to sell public land to a favored constituent by simply characterizing the sale as involving economic development. Armed with the Third District's opinion, any county would be able to argue that any private development of public land will provide some economic benefits to the community—no matter how minimal—thereby effectively negating the protections afforded by requiring competitive bidding.

CONCLUSION

Because the Third District's decision conflicts with numerous decisions of this Court requiring that unambiguous statutes be applied as written, and will potentially adversely affect every Florida resident, this Court should accept jurisdiction.

Dated: December 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2018, a true and correct copy of the foregoing document was electronically filed through the Florida Courts E-Filing Portal, which electronically served all counsel of record including:

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I HEREBY CERTIFY that the foregoing document was prepared using Times New Roman 14-point font, and is in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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