

IN THE SUPREME COURT OF FLORIDA

THOMAS SOLOMOS AND LUCAS
PITTERS, ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY
SITUATED,

Petitioners,

vs.

CASE NO. SC01-510
Lower Tribunal No. 4D00-600

SHERIFF KEN JENNE,

Respondent.

_____ /

**ANSWER BRIEF OF RESPONDENT
KEN JENNE, SHERIFF OF BROWARD COUNTY, FLORIDA**

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL, FOURTH DISTRICT
STATE OF FLORIDA

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INTRODUCTION

Petitioners, Thomas Solomos and Lucas Pitters, on behalf of themselves and all others similarly situated, were the Plaintiffs and Appellants below. Respondent, Ken Jenne, Sheriff of Broward County, Florida, was the Defendant and Appellee below. Petitioners will be referred to as Petitioners, collectively, in this Answer Brief. Respondent, Sheriff Jenne, will be referred to as the Sheriff in this Answer Brief.

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STATEMENT OF THE CASE AND FACTS

A. Nature of the Case and Jurisdictional Statement:

This case is before the Court on the Notice of Invoking Discretionary Jurisdiction of the Supreme Court, which Notice was filed on March 7, 2001, and on this Court's Order Accepting Jurisdiction and Setting Oral Argument, which Order was entered October 25, 2001.

In their Notice of Invoking Discretionary Jurisdiction of the Supreme Court, the Petitioners cite to Fla.R.App.P. 9.030(a)(2)(A)(I)-(III) as the basis for invoking the jurisdiction of this Court. In the Jurisdictional Brief file by the Sheriff in this Court, Respondent disputes that there is any proper basis to invoke the jurisdiction of this Court under the cited Rules. Since this Court's Order Accepting Jurisdiction and Setting Oral Argument does not reference a specific Rule supporting its decision to accept jurisdiction, the Sheriff does not concur with the Petitioners conclusion in their Nature of the Case and Jurisdictional Statement that jurisdiction has been accepted because the "opinion of the Fourth District Court of Appeal expressly declaring Fla.Stat. §951.033 constitutionally valid and upholding the Sheriff's administrative program for collecting fees from inmates under the authority of Fla.Stat. §951.033". That conclusion is not

supported by the record, and the Sheriff

continues to suggest that the acceptance of jurisdiction of this matter is inappropriate.

B. Course of Proceedings and Disposition Below.

The Sheriff generally agrees with the Petitioners' recitation of lower court events in their Course of Proceedings and Disposition Below. However, Petitioners fail to mention that they had previously filed a Motion for Summary Judgment on February 4, 1997 (R:45). The trial court denied the Petitioners' first Motion for Summary Judgment on February 20, 1997. (R: 59) Subsequent to Petitioners' first attempt to obtain Summary Judgment, they conducted the deposition of Linda Kristofik, designated by the Sheriff as the person on behalf of his office with the most knowledge regarding procedures for implementation of Fla.Stat. §951.033. The Sheriff's Motion for Summary Judgment was supported by an Affidavit from Ms. Kristofik. (R: 166-169)

Petitioners' assertion that the Court of Appeal affirmed the Summary Final Judgment entered in favor of the Sheriff "holding, inter alia, that Florida Statute §951.033 was valid" is incorrect. It is the Sheriff's contention that a review of the decision of the Court of Appeal reveals that it did not

either hold or expressly declare Florida Statute §951.033 to be valid; it is conceded that the decision may imply validity, or that validity might be inherent in the decision, but Petitioners' recitation as to the holding is disputed.

C. Statement of the Facts

As the Sheriff did not concur with Petitioners' Statement of the Facts contained in the Brief filed in the District Court, he does not now concur with the Statement of the Facts contained in the Amended Initial Brief of Petitioners, filed in this Court. Petitioners' Statement of the Facts does not fairly describe the procedure implemented by the Respondent to recover incarceration costs pursuant to Florida Statute Section 951.033 as developed before the trial court and as referenced in the Record on Appeal. First, it should be noted that the description of Linda Kristofik, the witness who testified by way of deposition and Affidavit, that she was the "Sheriff's expert" is inaccurate. Linda Kristofik was a fact witness who, as Business Manager for the Sheriff, was designated by the Sheriff to testify on his behalf pursuant to Notice of Taking Deposition. (R: 225-261 [Exhibit 4, P. 3-4]) Although she has expertise, her testimony was limited to supplying information as to how the Sheriff actually operated

the program implementing Florida Statute §951.033.

During the involved period, the Broward County Sheriff had promulgated Standard Operating Procedure 1.2.12 which provided, in pertinent part, as follows:

"Policy:

The Department of Corrections and Rehabilitation (DCR) shall collect a one-time fee of \$10.00 from all inmates who arrive in the jail to defray the costs of providing inmate uniforms. In addition, a daily subsistence fee of \$2.00 shall be deducted from the inmate's individual escrow account.

All inmates shall receive the same daily meals, uniforms and linens regardless of their ability to pay. If the inmate has sufficient funds to cover the subsistence fee, it shall be deducted from their individual escrow account. If the inmate does not have the funds to cover this fee, the funds shall be deducted as money is placed into the inmate's individual escrow account.

* * *

DEFINITIONS:

Inmate Escrow Account: individual banking account held in trust for inmates incarcerated in DCR.

Indigent Inmate: An inmate with a zero balance in their escrow account.

PROCEDURE:

A. Notification to Inmates:

Inmates will be advised of the daily subsistence fee and one-time charge (per incarceration) for their inmate uniform. A copy of this policy will be posted in each housing unit and will be included in the Inmate Handbook."

B. Payment of Daily Subsistence Fee:

1. After magistrate court, when an inmate has been remanded to the custody of the Broward County Jail, an Inmate Escrow Account will be opened in the Inmate Banking/ Commissary computer system. Any monies that were in the possession of the inmate will be deposited into the escrow account. Additional funds sent to the inmate will also be deposited into the account.

2. A one-time per incarceration fee of \$10.00 will be deducted from the inmate escrow account in order to offset the cost of issuing inmate uniforms. This fee is deducted at the time the inmate's escrow account is opened, if funds are available.

3. Each day, \$2.00 will be deducted from the balance of the inmate's account.

4. If an inmate is indigent at the time the fees are to be deducted (\$10.00 one-time per incarceration and \$2.00 daily), the account will be debited for the amount due. The fees will be collected as money is deposited into the inmates escrow account.

5. If an inmate's escrow account does not contain sufficient funds to cover subsistence costs, a civil restitution lien may be placed against the inmate's escrow account or other personal property. The civil lien, if instituted, may continue for three (3) years, and applies to the escrow account of any inmate who is re-

incarcerated in Broward County.

6. Inmates who are held in jail as unsentenced and are acquitted or discharged on all charges shall be reimbursed for the daily charge of subsistence which they paid. A disposition from the Clerk of the Court will be required from the inmate prior to reimbursement of funds. This is not an automatic process, and will be addressed when a former inmate makes a request and produces the proper documentation as noted above, no later than (30) thirty days from his or her date of release.

That policy had been adopted by the Sheriff in order to implement the statutory scheme for collection of incarceration costs provided for in Florida Statute §951.033. Inmates are informed that they are responsible for payment of the daily subsistence cost in the amount of \$2.00 and a one-time uniform charge of \$10.00 by placing notices in the booking area of the jail and, additionally, throughout the jail. (R: 168) In addition to posting the policy, each inmate is issued an Inmate Handbook upon admission to the jail. (R: 168) That Handbook, in pertinent part, provides as follows:

"INTRODUCTION: ...please read this **Inmate Handbook** and follow the rules and regulations. By reading the Handbook you will understand what you can expect, and what is expected of you. All your rights and responsibilities are explained in the Handbook.

This Handbook **must remain** in your

possession during the time you are in jail. If you do not understand the information in this Handbook, ask our staff for help. Your safety depends on you following the rules and obeying the staff.

* * *

SUBSISTENCE FEES: Inmates booked into the Broward County jail system will be charged a \$10.00 fee to cover the cost of processing. Inmates will also be assessed a \$2.00 day subsistence fee. This fee will be automatically deducted each day from your commissary account.

* * *

COMMISSARY & MONEY: If you had money in your possession when you were booked, an account was started for your use. You were given a receipt for the funds deposited into your account. All other money to be deposited into your account must come through the mail as a **money order** addressed to you with your full name and arrest number.

* * *

GRIEVANCES: Should you have a complaint concerning a facility operations, procedure, or staff, you should follow this procedure for resolution:

1. Speak first with your Housing Deputy or Correctional Counselor. If they **cannot** resolve the complaint,
2. Verbally ask to talk with the Unit Sergeant, or the Officer-In-Charge (OIC).
3. If the Unit Sergeant, or OIC is unable to resolve your complaint, you may file an

Inmate Grievance Form, by requesting the Form.

4. Fill out the **Inmate Grievance Form**, tear off the top sheet (white copy) and keep it as your record. Place the rest of the Form in the special mail box provided.

5. The **Inmate Grievance Form** is forwarded to the Facility Administrator's Office where your complaint will be investigated. You will receive a response in writing within twenty (20) business days from the date the Facility Administrator's Office receives your complaint.

6. If you are not satisfied with the response, you may appeal to the Administrator by filling out the appropriate section of the Form, and placing it in the special mail box. You will receive a final response within twenty (20) business days. If the Administrator is unable to satisfactorily answer your grievance within the twenty (20) business days, a reason why will be given in writing to you within the twenty (20) business days. The Administrator will respond within thirty (30) business days from the Administrator's receipt of the grievance. Remember, no one always gets the answer that they want all the time. Problems cannot always be resolved immediately nor can staff respond instantly when an issue occurs.

7. The following matters are **not grievable** - classification status, disciplinary action and housing assignments. If you have concerns regarding these issues you must go through the appeals process by submitting an **Inmate Request Form [SEE DISCIPLINARY APPEAL PROCESS and CLASSIFICATION sections]**

8. When an inmate is released and has a grievance issue that is in progress, he/she can contact the Facility Administrator's Office of the respective facility for resolution." (R: 262, 263, and 265).

By providing each inmate a copy of the Inmate Handbook, inmates are informed that the subsistence charge will be paid out of their inmate account. Inmates are informed that they are to retain a copy of the Handbook and refer to it, as necessary, as questions or problems arise. The Handbook informs each inmate as to how complaints as they relate to facility operations, except as specifically noted in Paragraph 7 (which does not include complaints of subsistence costs), are to be made and resolved.

Additionally, all inmates on are constructive notice of their responsibility for payment of subsistence costs in the laws of the State of Florida and Florida Statutes.

The Sheriff does determine the financial status of a prisoner and has implemented safeguards to insure that any income exempt by state and federal laws is excluded from assessment. (R: 168) First, the only permitted deposit into the inmate account at the time of arrest is cash in the inmate's possession. After incarceration, cash will not be accepted for deposit; the only deposit after incarceration is a money order. (R: 263) If an inmate has funds in an inmate

account and the Sheriff is not advised that there is any competing reason not to make the deduction, then the Sheriff determines that the inmate has the ability to pay the subsistence cost. (R: 168.) Inmates are free to transfer any or all of any balance of funds in their inmate accounts to anyone they choose at any time prior to deduction of the subsistence fee. (R: 168.)

If the inmate's account has any funds to pay the subsistence costs, then the costs will be assessed and charged at that time. (R: 167.) If the inmate's account has a zero balance, no subsistence fees are assessed against the inmate's account. (R: 167.)

Inmates can object to the assessment of costs and can present reasons in opposition to the assessment through the grievance procedure which is described in the inmate handbook. (R: 167.) Specifically as to subsistence costs, grievances are reviewed by the inmate asset administrator. (R: 167) If the asset administrator finds that the inmate has other obligations which supersede payment of subsistence costs, such as child support, the objection may be sustained. (R: 167, 171) If the objection to the assessment cost is overruled, the inmate may appeal to the Director of Detention. (R: 167)

If an inmate is acquitted of all charges, or if a

conviction is reversed on appeal or otherwise discharged, then the Sheriff refunds all subsistence costs charged pursuant to Fla. Stat. §939.06 if the inmate presents a copy of the judgment within thirty (30) days. (R: 171.)

The record does not demonstrate that any monies were ever deducted from any inmate account opened on Petitioners' behalf, or that Petitioners did not actually know that subsistence costs would be deducted and that there was a procedure in place by which they could object if assessed subsistence costs were charged against them.

SUMMARY OF ARGUMENT

STATUTORY CLAIM

Recognizing the increasing burden on local taxpayers, the Florida Legislature in 1996 enacted Florida Statute §951.033 which allows a local jail operator to devise a program for collection of the costs which it incurs in incarcerating inmates. Although the statute does not provide a precise formula on how it is to be implemented, it does provide that a detention facility may recover "all or a fair portion" of the inmate's daily subsistence costs, and that such costs, when assessed, may be collected from any assets that the inmate may have, whether within or without the jail facility, not limited to the inmate's cash account on deposit.

The Broward County Sheriff implemented such a program. Inmates at the Broward County Jail are assessed a one-time \$10.00 "processing" or "uniform" fee, and are additionally charged at the rate of \$2.00 per day to cover a portion of their daily subsistence costs. Ability to pay, as the statute requires, is determined by whether the inmate has in his or her account funds sufficient from which to deduct the fee. Only cash, at the time of the arrest, or money orders, subsequent to incarceration, are permitted to be deposited into an inmate account. Exempt assets are not accepted for deposit into an inmate account and are therefore not drawn upon to satisfy the inmate's obligation to pay subsistence costs. The program which the Sheriff implemented is consistent with both the mandate and requirements imposed by Florida Statute §951.033.

CONSTITUTIONAL CLAIM

The requirements of procedural due process do not compel that some type of pre-deduction hearing or other proceeding be conducted before the deduction can be made. All inmates, at the time of admission into the Broward County Jail, are notified that they will be charged a subsistence cost, to be deducted from their inmate account.

If, either before or after a deduction has been made, an

inmate wishes to object to the deduction of subsistence costs from the inmate account, there is a real grievance procedure in place, which inmates have utilized, by which those objections are reviewed and administrative appeal exists. The program in place is adequate to satisfy procedural due process.

Last, Florida Statutes §951.033, is not impermissibly vague, constituting an unlawful delegation of its powers, in failing to delineate precise guidelines to local jail operators who will be collecting subsistence costs. Arguably, the Legislature did not have to provide any guidelines in authorizing jail operators to collect the costs which they incur in operating jails. That some guidelines are provided, does not invalidate the statute.

ARGUMENT

I.

THE SHERIFF'S PROGRAM FOR COLLECTING SUBSISTENCE FEES FROM INMATES DOES NOT VIOLATE FLORIDA STATUTE §951.033.

Petitioners argue that the Sheriff fails to consider the actual ability of an inmate to pay subsistence costs, which they contend is required by the statute. Petitioners additionally suggest that the Sheriff makes no effort to assure that money exempt by federal or state law, is not taken

to defray subsistence costs, as the statute requires. Last, Petitioners suggest that the Sheriff's one-time \$10.00 "processing" or "uniform" fee is ultra vires in that it cannot be said to be a subsistence cost. For all of these reasons, Petitioners suggest that the Sheriff's program for implementation of the statutory scheme for collection of subsistence costs is inconsistent with that scheme.

Petitioners complain that the Sheriff in implementing the subsistence costs collection program utilizes a non-individualized, formulaic approach. Petitioners contend that the charging of fees dependent solely on whether there is a positive balance in the inmate account violates the statute. Petitioners cite no authority in support of this contention.

That the Sheriff has chosen to employ a relatively simple method of determining from which inmates subsistence costs can be collected does not violate the statute. Reliance upon a system that determines ability to pay upon availability of funds in an inmate's account represents a practical and sensible effort to satisfy the legislative intent. Where an inmate has money in an inmate account he is deemed able to pay subsistence costs. If an inmate does not have any money in his inmate account, then the Sheriff does not charge fees against that account and no negative balance accrues.

Although the statute does provide that a negative balance may accrue where subsistence costs are charged, it does not compel the local jail operator to adopt that approach.

It should be remembered that the population in local jails is more transitory than in state prisons. Local jails are holding facilities for inmates who are criminally charged, awaiting trial or other legal proceedings, who, for whatever reason, have not or cannot make bail. As a consequence, the inmate population is fluid and changes on a day to day basis. The Sheriff's program provides an appropriate way to collect subsistence costs from a constantly changing jail population.

The suggestion by Petitioners that the Sheriff's program does not protect against deduction of exempt funds is inaccurate. The only way deposits are made into an inmate account is upon the arrest of the inmate, if that inmate possesses cash monies or, after incarceration, where a money order is deposited into the inmate account. No checks, whether personal or from a governmental agency, or from a corporate entity are accepted for deposit into an inmate account.

Petitioners cite no authority to this court that the Sheriff's limitation on the types of deposits which will be accepted is not adequate to provide the necessary protection

consistent with the statutory requirement that exempt income is not taken to be applied against the subsistence costs. If there are monies on deposit in the inmate account, it, by definition, is not exempt. Exempt income is not and cannot be deposited into the account, since once exempt proceeds are converted into cash, and are co-mingled, they lose their exempt status. Orange Brevard Plumbing & Heating Company v. La Croix, 137 So.2d 201 (Fla. 1962). By limiting the types of deposits which are accepted into an inmate account, and how those deposits are made, income exempt from collection is never a source from which subsistence costs can be collected under the Sheriff's program.

Petitioners contend that the Sheriff, under Florida Statute §951.033, is not permitted to collect a one-time \$10.00 "processing" fee or as a "uniform" fee, arguing that such a fee is something other than "their daily subsistence fees". Again, Petitioners do not support this argument by precedent. In neither of the lower court proceedings was there any evidence presented in the record to indicate that the \$10.00 fee is or was used for anything other than the issuance of a uniform. However, assuming arguendo, that the \$10.00 fee is used for "processing", it is still properly chargeable as a subsistence cost under Florida

Statute §951.033. The Legislature has made clear its intent that there is an expressed need for inmates to pay for those costs that a detention facility incurs as a result of that inmate's incarceration. Where those costs are the result of being lawfully arrested, and are associated with the booking or processing of inmates, or the feeding, clothing or housing of inmates, they are properly recoverable in accomplishing the legislative intent to alleviate the financial burden and expenses of incarcerated prisoners. The costs incurred in this process are properly chargeable to the inmate and by doing so, the statute is not violated.

Petitioners suggest that the Sheriff's program, in determining the inmate's ability to pay subsistence costs, does not properly factor in the liability or potential liability to a victim or victim's dependents.

Monies needed by the inmate for expenses other than those which he incurs while incarcerated are easily paid off by submitting a voucher, informing jail authorities that he or she is setting aside those proceeds for pick-up by a named person, such as a spouse. (R: 225-261 [Kristofik deposition, P. 15-16]) Additionally, if the local jail operators are advised that there are court ordered dispositions of monies in the inmate account, the subsistence fee is not collected even

if there is a positive balance. (R: 225-261 [Kristofik deposition, P. 13]) Other than for those purposes the account monies are utilized by the inmates to satisfy their personal needs. To deduct subsistence costs from inmate accounts does not require further segregation of funds for payment of as yet unliquidated and contingent liabilities to victims.

Petitioners suggest that the Sheriff's program violates Florida Statute §951.033, because the program does not go far enough in not pursuing "sources of income and assets outside of the facilities" in determining "the financial status of prisoners". Again, Petitioners provide no precedent supporting that contention, and the contention is without merit. The Legislature, notwithstanding its clear intent that the burden on taxpayers for the cost of incarceration is to be alleviated, does not compel that any specific approach be utilized. The approach which a local jail operator employs, determined by the specific needs and demands of its community as affected by inmate population, will vary from location to location. The Legislature did not need to specify the details as to how the collection cost program is to be implemented, leaving that decision, appropriately, to the local official. If the local jail operator determines that a search of an inmate's assets in addition to an inmate account is not to be

conducted, for whatever reason, that does not subject the program to a determination that it violates the statute. The local official retains the discretion to charge the inmate an amount not exceeding the "daily subsistence cost" and, except as limited by the statute, can collect those costs as he deems appropriate.

II.

A. PROCEDURAL DUE PROCESS DOES NOT REQUIRE A HEARING BEFORE DEDUCTION OF SUBSISTENCE COSTS FROM INMATE ACCOUNTS.

Petitioners primarily rely on Fuentes v. Shevin, 407 U.S. 67 (1972) in support of their assertion that all inmates are entitled to pre-deprivation hearing before subsistence costs are deducted from their inmate account. Fuentes, supra, does not require hearing before subsistence costs may be charged and deducted from the inmate account.

Due process is a flexible concept and not all situations calling for procedural safeguards call for the same sort of procedure. Morrisey v. Brewer, 408 U.S. 471, 481 (1972);

Respondent concedes that an inmate's interest in funds in his inmate account are protected. Quick v. Jones, 754 F.2d 1521 (9th Cir. 1984); Orloff v. Cleland, 708 F.2d 372 (9th Cir. 1983); Campbell v. Miller, 787 F.2d 217 (7th Cir. 1986). Understanding the property interest of the claimant, and

balancing that property interest with the government's interest in having the inmate satisfy his burden to pay the subsistence costs which the government has incurred helps to determine what procedural safeguards are due. Notwithstanding the protected interest, a pre-deduction hearing is not required as the Sheriff's program has been implemented.

Petitioners cite no decisional authorities supporting their claim that a pre-deduction hearing or proceeding is necessary before monies are deducted from an inmate account to defray subsistence costs.

As the record indicates, inmates are notified upon incarceration that a deduction will be made, and how that deduction is to be calculated, by the posting in each housing unit of the applicable policy, and in the Inmate Handbook, a copy of which is provided upon admission to the facility. The policy, as posted, advises as to the procedure for objecting to the deduction. Although Petitioners complain that the policy is not as clear as they believe it should be, they fail to provide any supporting precedent that the notice has to be any more complete, precise or clear. The information provided is sufficient from which an inmate can determine that he has an obligation to pay for his subsistence costs, and how that obligation will be satisfied. In the context of a detention

facility deducting subsistence costs, applying the principle that due process is to be flexible, other courts, in similar situations, have determined that the process which is due is minimal, and that the notice which the Sheriff is providing here would be adequate. Michigan v. Turner, 312 NW.2d 418 (Mich.Ct.of Appeals 1981); Gardner v. Wilson, 959 F.Supp.1224 (C.D. Cal. 1997).

Although the Petitioners do not specify exactly what process they believe is due, their vague suggestion that some kind of additional process is required appears to be asking this Court to restructure routine matters of jail operations into some type of more formalized proceeding, presumably warranting submission of evidence, examination of witnesses, etc. That conclusion is not compelled by the Constitution, and otherwise interferes with jail operations, the effect of which, at a minimum, would be to thwart the collection of the subsistence costs which inmates are obligated to pay. It is not practical or necessary to complicate the procedure any more than currently exists. Compelling a more formalized inquiry into an inmate's ability to pay incarceration costs at the inception of incarceration or as incarceration continues other than the procedure which this Sheriff has implemented, is not practical, and is not constitutionally compelled.

Petitioners continued reliance upon Fuentes, supra is inapposite. Specifically, in Fuentes, the Supreme Court stated:

Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the state has kept strict control over the monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. At 91

It is the cited exception which supports the Sheriff's contention that due process has been satisfied. The Legislature has determined that there is an important governmental interest in obligating inmates to reimburse local government for the incarceration costs which are incurred. There is a need for prompt action. If the deduction is not made at the time that the funds are available, the collection of the subsistence costs is, practically, nullified. It is government, in this case the Broward County Sheriff, that is responsible for determining when, and under what circumstances, the deduction is to be made, as provided for in the program which has been promulgated under his authority.

If an objection or grievance is to be submitted, there is a procedure for that grievance to be reviewed and appealed. Therefore, the general rule of Fuentes does not apply. The Supreme Court, in recognizing an exception, indicated that the notice requirements for due process can be limited under appropriate circumstances. The Sheriff's procedure falls within that exception.

**B. THE METHOD BY WHICH INMATES
MAY OBJECT, AFTER THE FACT, TO
THE COLLECTION OF SUBSISTENCE
COSTS UNDER THE SHERIFF'S PROGRAM
SATISFIES PROCEDURAL DUE PROCESS.**

In this component of their claim, Petitioners contend first that the Sheriff's procedure by which inmates can "grieve" the collection of subsistence costs from their inmate accounts is, illusory, and, second, does not satisfy the requirements of procedural due process under the Fourteenth Amendment of the United States Constitution.

Addressing first their claim that the procedure is illusory, reference to the record on appeal demonstrates that there is no factual basis for that assertion. There is no evidence of record that either Plaintiffs attempted or were prevented from seeking or obtaining review by the jail asset administrator of the propriety of any deduction from their accounts in subsistence fees.

The program, as defined, and as specifically implemented, provides a procedure by which an inmate, who believes that collection costs have been improperly deducted from his inmate account, to submit a grievance to the inmate asset administrator. That administrator reviews the grievance and if the grievance is not sustained, the inmate can then proceed up the chain of command to the Director of the Department of Detention. (R: 225-261 [Kristofik deposition, P. 18]) On the grievance form there is a place for the inmate's grievance, a place for the response, and a place for the appeal. (R: 225-261 [Kristofik deposition, P. 20]) Objections have been sustained and refunds of subsistence costs have occurred. (R: 167) The suggestion by Petitioners that the procedure by which inmates may object to a deduction having been made is not adequate and meaningful is not supported by the record.

III.

**FLORIDA STATUTE §951.033 IS NOT
IMPERMISSIBLY VAGUE AND DOES NOT
CONSTITUTE AN IMPROPER DELEGATION
OF LEGISLATIVE POWER TO THE
EXECUTIVE BRANCH IN VIOLATION OF
ARTICLE II, SECTION 3, OF THE
FLORIDA CONSTITUTION.**

Petitioners argue that Florida Statute §951.033, the statutory authority under which the Sheriff's policy for collection of subsistence costs was created, violates Article

II, Section 3, of the Florida Constitution. Specifically, the Petitioners suggest that the statute is impermissibly vague in failing to establish standards upon which the local jail operator can rely in implementation of the statute. In making that argument, Petitioners rely upon the general principle which has been long established from early precedent. As easy as the principle may be to enunciate, it is not so easy to apply, and the cited precedent provides little help in determining whether Florida Statute §951.033 violates separation of powers.

Answering the question which Petitioners raise requires analysis of the relevant statutory provision as well as the problem which it is attempting to address. The purpose behind the statute as recited is to "alleviate the increasing financial burdens of local subdivisions of the state caused by the expenses of incarcerated prisoners". The Legislature has determined that it is the obligation of inmates who are incarcerated to "pay for all or a fair portion of daily subsistence costs", and, in recognizing that obligation, provides a listing of potential sources which it acknowledges is not all inclusive. The statute is clear in its goal and legislative intent; to reduce the taxpayer burden incurred in operating local jails.

The Legislature has directed that the local jail operator (chief correctional officer) has a responsibility to collect as much of the actual cost as is incurred ("all or a fair portion") of daily subsistence costs. The local jail operator is obligated to determine whether and the extent to which an inmate can pay for those costs, providing further that that determination is to make provisions for excluding exempt income, under either state or federal law, and to give consideration to whether the inmate has any financial obligation to the victim, or victim's estate or dependents.

Notwithstanding the guidelines which are provided, Petitioners suggest that the Legislature should have been more clear as to when and under what circumstances subsistence costs are to be paid or collected.

It is axiomatic that where it is claimed that a statute is subject to varying interpretations, it is the obligation of a reviewing court to adopt the interpretation upholding the statute as constitutional. Miami Dolphins Ltd. v. Metropolitan Dade County, 394 So.2d 981, 988 (Fla. 1981).

As is apparent here, the statute does not provide a specific limit as to the amount of cost to be charged or

specifically limiting factors as to how it is to be determined that an inmate can or cannot pay for his subsistence while incarcerated, that does not compel that the statute is unconstitutional. No more precision is necessary to make the statute constitutional and functional. The Legislature has prioritized the inmates financial obligations by directing the jail operator not to seize income or assets that are exempt by federal or state law, or that may be used to satisfy any financial obligations to the inmate's victims or dependents. Other than that, any other income or assets may be recovered to satisfy subsistence costs. That is the legislative policy. The execution of that policy is left to those responsible for the jail operations. The statute specifically provides that the Sheriff may recover from an inmate all costs associated with the inmate's incarceration, not just a "fair portion".

That the Sheriff has discretion whether to enforce the statute by collecting all costs incurred for an inmate's subsistence, as opposed to something less than that, or, only \$2.00 per day, does not represent an improper delegation of legislative authority to the executive branch. Leaving the final determination as to the amount to be charged to the jail operator should not be construed as an unlawful delegation of the Legislature's policymaking function. The fundamental

policy decision that subsistence costs are to be collected remains with the Legislature. That the statute does not provide greater specificity allows the local jail operator enough leeway to establish a program that is unique to his or her jail operation.

Petitioners continue to suggest that the Legislature could (and, apparently should) have relied upon the same income and assets criteria as set forth in Florida Statutes §27.52 (determining the indigency of a criminal defendant) as being applicable in determining whether an inmate should be obligated to pay subsistence costs. The Respondent does not disagree that the Legislature could have done that, but it was not obligated to do that. However, by way of explanation as to difference, assuming such an explanation is necessary, it should be remembered that Florida Statute §27.52 delineates criteria for the court to use in determining whether a criminal defendant is "indigent" and therefore entitled to court appointed counsel in comparison to Florida Statute §951.033, which is designed to determine whether an inmate will be responsible for paying his own subsistence that, in the first instance, is being provided by the government regardless of his ability to pay at the time. By leaving the final determination of "ability to pay" to the local jail

operators, the Legislature chose to allow those local jail operators to implement the policy which it established, recognizing that the local jail operators are best able to determine what costs are incurred and how, if at all, its jail population can satisfy its statutory duty for reimbursement of those costs. That statutory scheme does not violate the separation of powers provision contained in Article II, Section 3, of the Florida Constitution. Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983); Tory v. State, 686 So.2d 689 (4th DCA 1996).

The Legislature by its statutory enactment has recognized that inmates have a duty to pay for their incarceration costs. Petitioners complaint that the statute is unconstitutional because it did not provide enough limitations on how the local jail operator is to "determine the financial status of prisoners for the purpose of paying from their income and assets all or a fair portion of their daily subsistence costs" is not valid. That direction accomplishes nothing other than to reference what any debtor, governmental or private, considers in determining whether any debt is collectible. That the Legislature chose to use general terms does not expand the local jail operators authority beyond the expressed intent and policy of the Legislature as provided in the

statute which it enacted.

CONCLUSION

As demonstrated by the foregoing authority and arguments presented in this Answer Brief, the Sheriff respectfully suggests that the Court first reconsideration whether it was appropriate to assume jurisdiction over this matter. Assuming that it is determined that jurisdiction was not improvidently granted, the Sheriff suggests that the decision of the Fourth District Court of Appeal, affirming Summary Judgment in the Sheriff's favor, be upheld, and, further, that it be determined that Florida Statute §951.033 be held to be constitutional and, that the Sheriff's program for collecting subsistence costs be approved.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: GARY KOLLIN, ESQ., 8211 West Broward Boulevard, Suite 420, Fort Lauderdale, Florida 33324 and STEVEN WISOTSKY, ESQ., 3050 Jefferson Street, Miami, Florida 33133, this ___ day of January, 2002.

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CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)

I HEREBY CERTIFY that the type styled utilized in this
Brief

is Courier New 12 point.

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