

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

SARASOTA HERALD-TRIBUNE CO., INC.
a Florida corporation, and
JOHN GIBEAUT

Plaintiffs

Case No CA 87-2949

vs.

FRANK SCHAUB, as State Attorney
for the Twelfth Judicial Circuit

Defendant.

FILED FOR RECORD
R.D. SHORE
CLERK CIRCUIT COURT
MANATEE CO. FLORIDA

JUL 21 12 38 PM '88

ORDER ON THE SARASOTA HERALD TRIBUNE,
JOHN GIBEAUT AND STEVEN RIESENMY'S MOTION TO DISMISS


This matter came before the Court on the Sarasota Herald-Tribune Co., Inc., John Gibeaut, and Steven K. Riesenmy's Motion to Dismiss State Attorney Frank Schaub's Complaint for Declaratory Judgment for failure to state a cause of action. Fla. R. Civ. P. 1.140(b)(6). The Court previously consolidated State Attorney Schaub's Complaint into the above styled pending action, but the Complaint retained its independent status within the consolidated action.

After hearing the argument of counsel, the Court finds that State Attorney Frank Schaub's Complaint for Declaratory Judgment is a request for guidance from this Court as how to construe and comply with the Public Records Act. Under the applicable case law, State Attorney Schaub cannot litigate a declaratory judgment action to obtain judicial advice on how to perform his Public Records Act duties. See Department of Revenue of State v. Markham, 396 So.2d 1120, 1121 (Fla. 1981)(special rules exist concerning the standing of governmental officials to bring a declaratory judgment action; disagreement with a statutory duty

does not create a justifiable controversy); Askew v. City of Ocala, 348 So.2d 308, 310 (Fla. 1977)(trial court properly dismissed amended complaint for declaratory relief for failure to state a cause of action where public officials disagreed with Attorney General's advisory opinion and sought different judicial advice); Graham v. Swift, 480 So.2d 124, 125 (Fla. 3d DCA 1985)(public official does not have standing to litigate declaratory judgment action as to nature of duties for purposes of determining that law is not valid).

Because State Attorney Schaub is precluded from seeking declaratory relief, the Court hereby grants the Motion and dismisses with prejudice State Attorney Schaub's Complaint for Declaratory Judgment because it fails to state a cause of action. The Sarasota Herald Tribune and John Gibeaut's Complaint for Injunction and Complaint for Declaratory Judgment remain pending within this action.

DONE AND ORDERED in Chambers, in Bradenton, Manatee County, Florida this 20th day of July, 1988.



Honorable Andrew D. Owens
Circuit Court Judge

Copies to:
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