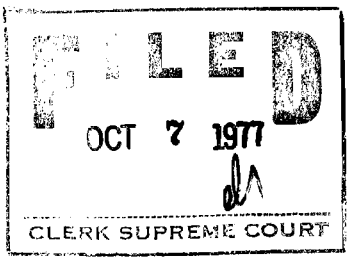
IN THE

SUPREME COURT OF FLORIDA

SARASOTA COUNTY, FLORIDA and MARY J. ORR, as Supervisor of Elections,	)	
Appellants,	)	
vs.	)	CASE NO. 52,214
TOWN OF LONGBOAT KEY, FLORIDA, CITY OF SARASOTA, FLORIDA, CITY OF VENICE, FLORIDA, AND CITY OF NORTH PORT, FLORIDA,	)	
Appellees.	)	



APPEAL FROM THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR SARASOTA COUNTY, FLORIDA

AMICUS CURIAE BRIEF ON BEHALF OF FLORIDA LEAGUE OF CITIES, INC.

RALPH A. MARSICANO
General Counsel for Florida
League of Cities, Inc.
Amicus Curiae
Central Bank Building
Post Office Box 4115
Tampa, Florida 33677

BURTON M. MICHAELS
Staff Attorney for Florida
League of Cities, Inc.
Amicus Curiae
225 West Jefferson Street
Post Office Box 1757
Tallahassee, Florida 32302

CITATION OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES AND JOINT RESOLUTIONS

FLORIDA APPELLATE RULES

TOPICAL INDEX

IN THE

SUPREME COURT OF FLORIDA

SARASOTA COUNTY, FLORIDA, and MARY J. ORR, as Supervisor of Elections,	)	
Appellants,	)	
vs.	)	CASE NO. 52,214
TOWN OF LONGBOAT KEY, FLORIDA, CITY OF SARASOTA, FLORIDA, CITY OF VENICE, FLORIDA, AND CITY OF NORTH PORT, FLORIDA,	)	
Appellees.	)	

APPEAL FROM THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR SARASOTA COUNTY, FLORIDA

AMICUS CURIAE BRIEF ON BEHALF OF FLORIDA LEAGUE OF CITIES, INC.

INTRODUCTION

This Amicus Curiae, Florida League of Cities, Inc., does not disagree with any of the statements set forth in the Introduction of the Brief of Appellants. And this Amicus Curiae does not disagree with the Introduction contained in the Brief of the Appellees.

All references herein to the Record-on-Appeal are designated as "(R.)" together with the page number therein.

STATEMENT OF THE CASE AND THE FACTS

This Amicus Curiae does not disagree with any of the matters contained in the Statement Of The Case And The Facts set forth in the Brief of Appellants. And this Amicus Curiae does not disagree with the Statement of the Case and Statement of the Facts contained in the Brief of the Appellees.

POINTS INVOLVED

On page 8 of their Brief the Appellants set forth their "Questions Presented." This Amicus Curiae, in accordance with Florida Appellate Rule 3.7, has treated these four "Questions Presented" as the Appellants' "Points Involved." Within the Argument of Appellants' Brief, the "Questions Presented" have been rephrased to conform to the positions of the Appellants. This Amicus Curiae has followed the format of the Appellants' Brief and has restated each "Point Involved" as phrased on page 8 of Appellants' Brief, and as rephrased in their Argument.

I. WHETHER THE FLORIDA CONSTITUTION PERMITS RESOLUTION OF "DUAL TAXATION" DISPUTES BY COUNTY CHARTER AMENDMENTS APPROVED AT A REFERENDUM OF THE ELECTORATE.

II. WHETHER THE CHARTER AMENDMENTS INVOLVE A "CONSOLIDATION" AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3, FLORIDA CONSTITUTION.

III. WHETHER A HOME RULE COUNTY ORDINANCE SETTING A REFERENDUM ON CHARTER AMENDMENTS HAS THE FORCE OF "SPECIAL LAW" AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3.

IV. WHETHER THE COURT CAN STRIKE THE PROPOSED CHARTER AMENDMENTS ON GROUNDS OF VAGUENESS.

ARGUMENT

I.

WHETHER THE FLORIDA CONSTITUTION PERMITS RESOLUTION OF "DUAL TAXATION" DISPUTES BY COUNTY CHARTER AMENDMENTS APPROVED AT A REFERENDUM OF THE ELECTORATE.

[Rephrased on page 9 of Appellants' Brief to read: "THE CONSTITUTION PERMITS THE RESOLUTION OF 'DUAL TAXATION' DISPUTES IN HOME RULE COUNTIES BY CHARTER AMENDMENTS APPROVED AT A REFERENDUM OF THE ELECTORATE."

(Raised by Assignments of Error 1, 2, 4, 5, 7, and 8 through 12.)]

This Amicus Curiae respectfully submits that the fundamental, underlying "Point Involved" in the appeal at bar really is:

WHETHER A COUNTY COMMISSION IN A CHARTER COUNTY HAS THE POWER TO UNILATERALLY PROPOSE BY ORDINANCE AN AMENDMENT TO THE COUNTY CHARTER WHICH WOULD, IF APPROVED AT A REFERENDUM ELECTION, DIVEST THE MUNICIPALITIES IN THE COUNTY OF A GOVERNMENTAL, CORPORATE OR PROPRIETARY POWER.

This Amicus Curiae respectfully submits that absent such authorization under a "law" passed by the Florida Legislature, such county commission is powerless to propose such amendment to the county charter. The following authorities of law support such conclusion.

The Appellants argue new concepts of "home rule" powers in charter counties without benefit of any authorities of law. The courts of Florida have clearly delineated those powers in case decisions harmonious with provisions of Article VIII of the 1968 Constitution of Florida.

In Weaver v. Heidtman, 245 So.2d 295 (Fla. 1st DCA 1971), the First District Court of Appeal of Florida observed at page 296 of 245 So.2d:

> ". . . The respective counties of this State do not possess any indicia of sovereignty; they are creatures of the legislature, created under Art. VIII, Sec. 1, of the State Constitution, F.S.A., and accordingly are subject to the legislative prerogatives in the conduct of their affairs."

The Supreme Court of Florida has expressly held that if there is any doubt as to the existence of the power of a county commission, it cannot be assumed. Gessner v. Del-Air Corp., 154 Fla. 829, 17 So.2d 522 (1944); and White v. Crandon, 116 Fla. 162, 156 So. 303 (1934).

Under the 1968 Constitution of Florida, charter counties do possess greater powers than their non-charter brethren. In State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972), the Supreme Court of Florida held that a charter county had all the powers of a municipality within its unincorporated area. This holding should satisfy the argument of the Appellants on page 17 of their Brief as to the meaning of "all powers of local self-government" contained in Article VIII, Section 1(g), of the Constitution of Florida. The discussion and reasoning in the Volusia County case point out that the

exercise of such powers must be consistent with general law. The Appellants would have one believe that the establishment of a charter county imbues the electorate of that county, pursuant to an ordinance of the county commission, with the power to disregard the Constitution of Florida and the general laws of this State. Common sense, the Constitution of Florida, and appellate case decisions in Florida say otherwise. The lower court held otherwise and its decision was eminently correct upon other grounds not stated in the Final Judgment (R.801-802).

The trial court expressly held Sarasota County Ordinance No. 77-31 to be (R.801-802):

> ". . . in violation of Article VIII, Section 3 of the Florida Constitution, being a plan to consolidate the government of a county with that of several municipalities therein which may only be accomplished by special law of the Florida Legislature . . . ."

It is fundamental that there is a presumption on this appeal that the ruling of the lower court was correct, and the burden is upon the Appellants to clearly demonstrate error below. State v. Town of Sweetwater, 112 So.2d 852 (Fla. 1959); Zulfer v. Zulfer's Estate, 310 So.2d 56 (Fla. 1st DCA 1975); Young v. Turner, 318 So.2d 467 (Fla. 1st DCA 1975); and Althouse v. State Farm Fire & Cas. Co., 183 So.2d 859 (Fla. 2d DCA 1966).

Article VIII, Section 3, of the Constitution of Florida provides that any consolidation plan of local governments "may be proposed only by special law". In Davis v. Gronemeyer,

251 So.2d 1 (Fla. 1971), the Supreme Court of Florida clearly held at page 4 of 251 So.2d that the term "special law" as used in Article VIII of the Constitution of Florida means "a special act of the Legislature."

In addition thereto, this Amicus Curiae respectfully submits that additional grounds supporting the correctness of the ruling below may be argued and considered on this appeal even though they were not stated in the ruling of the lower court. MacNeil v. O'Neal, 238 So.2d 614 (Fla. 1970); Cerniglia v. C & D Farms, Inc., 203 So.2d 1 (Fla. 1967); Hall v. Florida Board of Pharmacy, 177 So.2d 833 (Fla. 1965); and Jaffe v. Endure-A-Life Time Awning Sales, 98 So.2d 77 (Fla. 1957).

Article VIII, Section 4, Florida Constitution, provides various means by which a function or power may be transferred from a municipality to a county. Under the provisions of Article VIII, Section 4, in the absence of resolutions of the governing bodies affected, only the Florida Legislature has the power to transfer such a municipal function or power, or to submit it to separate votes of the electors of the transferor and transferee. The term "law" appearing in Section 4 means a bill passed by the Legislature of Florida under Article III, Section 7, Florida Constitution, which becomes "law" under Article III, Section 8. In Advisory Opinion to Governor, 22 So.2d 398 (Fla. 1945), the Supreme Court of Florida held at page 400 of 22 So.2d:

> "Section 4 of Article IX [Florida Constitution] reads: 'No money shall be drawn from the Treasury except in pursuance of appropriations made by law.' The word law means a statute adopted by both Houses of the Legislature. See In re Advisory opinion, 43 Fla. 305, 31 So. 348, and Lainhart v. Catts, 73 Fla. 735, 75 So. 47."

Furthermore, Article VIII, Section 6(b), Florida Constitution, provides in part:

> "(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; . . . the method of selection of county officers; the performance of municipal functions by county officers; . . . and the municipalities and special districts of the state, their powers, jurisdiction and government."
> [Emphasis supplied].

Section 6(b) makes sense only by construing the term "law" to mean an act of the Florida Legislature. This construction of the term is wholly consistent with the holding of the Supreme Court in the Volusia County case, supra, that charter counties have all powers of local self-government within their unincorporated areas under Article VIII, Section 1(g), and with the provision in that section that county ordinances may not be inconsistent with general law. The Appellants have cited no special or general law enacted by the Florida Legislature authorizing the attempted divestiture of powers from the municipalities in Sarasota County proposed in the ordinance ruled invalid below. And, even

further authority exists clearly demonstrating that the framers of the 1968 Constitution of Florida expressly rejected what the proposed charter amendments attempted to do below.

Article VIII, Florida Constitution (1968), was proposed by Senate Joint Resolution 5-2X (1968). But, in construing a provision of Article VIII, the Supreme Court of Florida scrutinized proceedings of the Florida Legislature and the Florida Constitutional Revision Commission antedating and preceding SJR 5-2X (1968). In Davis v. Gronemeyer, 251 So.2d 1 (Fla. 1971), the Supreme Court stated at page 4 of 251 So.2d:

> "On this point, we have searched the transcript of the proceedings of the Convention of the Florida Constitutional Revision Commission, the Minutes of the Constitutional Revision Session of the Committee of the Whole House (July 31 and August 21, 1967), and constitutional revision material available in the Supreme Court library without success. Section 6(d) appears to have been inserted in Article VIII virtually without debate and without substantial revision following adoption of the proposed first draft."

This Amicus Curiae found in the Minutes of the Constitutional Revision Session of the Committee of the Whole House conclusive evidence that it never was intended in Section 4, relating to the transfer of powers, to provide that a county charter could transfer, or make provision for the transfer of, any function or power from a municipality to the charter county. On page 36 of the August 17, 1967, Minutes of the Committee of the Whole House, proposed Amendment No. 473 to

House Joint Resolution 3-3X (1967) -- to allow such a provision in a county charter -- was rejected and failed of adoption! The proposed amendment to the developing language of Section 4 (Transfer of powers) sought to add at the end of that section the words:

"unless otherwise provided by charter."

The rejection of this amendment clearly demonstrates clear intent that a county charter could not make provision for the transfer of any functions or powers from a municipality to the charter county which would be contrary to the provisions of Section 4.

This Amicus Curiae recognizes that for completeness of understanding of the provisions of Article VIII, Section 1(g), Florida Constitution, one other provision should be construed in the light of the common understandings of men in Florida in 1968. Article VIII, Section 1(g), provides in part:

> ". . . The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

In 1942, Justice Whitfield spoke for a unanimous Supreme Court of Florida when he pronounced the following in City of Miami v. Rosen, 151 Fla. 677, 10 So.2d 307 (1942), at page 309 of 10 So.2d:

> ". . . municipalities may by ordinances duly adopted provide municipal governmental regulations, define municipal offenses and prescribe penalties by fine and imprisonment for violations of city ordinances and regulations . . . ."

Mr. Justice Whitfield described clearly the common, garden variety type of municipal regulatory or penal ordinance which governed the conduct of persons within the jurisdiction of the municipality. The framers of the 1968 Constitution of Florida had exactly the same concept in mind when they provided in Article VIII, Section 1(j):

> "(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law."

The conflict to be resolved in a county charter between county and municipal ordinances relates solely to police power measures governing the conduct of persons for the violation of which a penalty may be imposed. Nowhere in Article VIII does any provision empower any county to adopt any ordinance, or charter provision, unilaterally relating to the powers or functions of any municipal government. In fact, the contrary appears.

In Article VIII, Section 6(d), provision is made for local laws relating only to the unincorporated areas of a county, which were in effect when Article VIII became effective, to be amended or repealed by county ordinance. This type of county ordinance relates only to the unincorporated areas of a county. It would not be the same type of county ordinance provided for in Article VIII, Section 1, Subsections (f) and (g), which may possibly be effective within a municipality, and for which Subsection (j) of that same Section 1 provides for penalties for the violation

thereof. Such county ordinances under Article VIII, Section 1 -- for which penalties are to be prescribed -- follow the same concepts of municipal penal or regulatory ordinances described in City of Miami v. Rosen, supra.

The Florida Legislature further fortified this concept of county ordinances being penal or regulatory in nature when it provided in Section 125.01(1)(t), Florida Statutes, that a county commission has the power to:

> "(t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law."

The above authorities of law establish that a charter county in Florida has municipal powers within its unincorporated areas. If the charter should provide that county ordinances shall prevail in the event of conflict with municipal ordinances, such charter provision relates only to penal or regulatory ordinances regulating the conduct of persons within the jurisdiction -- it has nothing whatsoever to do with the structures of other local governments within the county, for which provisions are fully made in Article VIII, Sections 2, 3, and 4, Florida Constitution. In fact, the Sarasota County Charter expressly provides (R.660):

> "Section 4.1 Conflict between County and City Ordinances. A municipal ordinance shall prevail within the limits of the municipality."

The discussion on pages 13 through 17 of Appellants' Brief relating to the apparently critical "dual taxation"

problem in Sarasota County is quite irrelevant to the issues on this appeal.

The motivation of the Sarasota County commission for passing the ordinances in question to amend the county charter may be interesting, but such motives are of no legal efficacy. The appellate courts in Florida have recognized the rule that the motives for any particular legislation are irrelevant and may not be the subject of judicial inquiry. Mailman Development Corp. v. City of Hollywood, 286 So.2d 614 (Fla. 4th DCA 1974); City of Miami Beach v. Schauer, 104 So.2d 129 (Fla. 3d DCA 1958), cert. disch., 112 So.2d 838 (Fla. 1959); and Housing Auth. of City of Melbourne v. Richardson, 196 So.2d 489 (Fla. 4th DCA 1967).

Upon the above authorities of law, it is respectfully submitted that the lower court was eminently correct in its decision, and inasmuch as the Appellants have failed to demonstrate any error below, the lower court should be affirmed.

II.

WHETHER THE CHARTER AMENDMENTS INVOLVE A "CONSOLIDATION" AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3, FLORIDA CONSTITUTION.

[Rephrased on page 18 of Appellants' Brief to read: "THE PROPOSED CHARTER AMENDMENTS DO NOT INVOLVE A 'CONSOLIDATION' AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3." (Raised by Assignments of Error 1, 2 and 4 through 12.)]

The Appellants argue strenuously on pages 18 through 22 of their Brief that the proposed charter amendments do not involve a "consolidation" as that term is used in Article VIII, Section 3, Florida Constitution, even though the term "consolidation" is employed in each proposed charter amendment (R.412-413). The services and functions which the proposed charter amendments seek to "consolidate" countywide are: air and water pollution control, park and recreation, road and bridge, planning and zoning, and public safety (R.413). In each instance the proposed charter amendment provides (R.413):

> ". . . The Board of County Commissioners shall have power to carry out and enforce this section by appropriate ordinances which, notwithstanding any other provision of this Charter, shall prevail over any municipal ordinance in conflict therewith."

Thus, the municipalities of Sarasota County would become "paper cities" if the above enumerated governmental, corporate and proprietary powers were prohibited to them by way of amendments to the county charter. Though a de jure

consolidation may not result, certainly a de facto consolidation would be the end-product. Had the proposed charter amendments candidly proposed to "consolidate" within the county government, all the powers of the municipalities in Sarasota County enumerated in Article VIII, Section 2(b), Florida Constitution, the arguments of the Petitioners would clearly evaporate. And, if for the sake of argument, the above enumerated services and functions sought to be consolidated do not constitute the totality of services and functions being provided by the municipalities of Sarasota County, according to the argument of the Appellants, future county charter amendments could consolidate any remaining municipal services and functions. Thus, the theory of the Appellants would render Article VIII, Section 3, Florida Constitution, to be meaningless in a charter county. Article VIII, Section 3, clearly provides that only the Florida Legislature may propose a consolidation by "special law", which means "a special act of the Legislature." Davis v. Gronemeyer, 251 So.2d 1, 4 (Fla. 1971). If -- as Appellants argue -- a charter county has the power to propose by ordinance, charter amendments consolidating any power, function or service of the municipalities on a piecemeal basis, then ultimately all municipal powers, functions and services could be eventually consolidated into the county government without any "special law" of the Florida Legislature. Article VIII, Section 3, would thus become meaningless in a charter county in Florida. And, in Burnsed v. Seaboard Coastline R.R. Co., 290 So.2d 13

(Fla. 1974), the Supreme Court of Florida clearly held at page 16 of 290 So.2d:

> ". . . It is a fundamental rule of construction of our constitution that a construction of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts."

Furthermore, on page 18 of Appellants' Brief appears the assertion:

> ". . . With respect to local government, consolidation refers to the extinction of existing county and city governments in favor of a new governing body. . . ."

The Consolidated Government of the City of Jacksonville would not meet this "consolidation" definition proferred by the Appellants. In Albury v. City of Jacksonville Beach, 295 So.2d 297 (Fla. 1974), the Supreme Court of Florida commented on the legal status of the "Beaches and Baldwin" (Jacksonville Beach, Atlantic Beach, Neptune Beach, and Baldwin) under the charter of the Consolidated Government of the City of Jacksonville at page 299 of 295 So.2d, and recognized that they were municipal entities operating within the consolidated government. That decision affirmed the First District Court of Appeal in City of Jacksonville Beach v. Albury, 291 So.2d 82 (Fla. 1st DCA 1973), wherein the District Court held at page 91 of 291 So.2d that the "Beaches and Baldwin" were:

> ". . . quasi corporations empowered with authority to perform all municipal functions which they were permitted to perform under their original municipal charters and the general laws of the state immediately prior to consolidation. . . ."

The lower court in the appeal at bar expressly held that the proposed charter amendments were (R.801-802):

> ". . . a plan to consolidate the government of a county with that of several municipalities therein . . . ."

In Althouse v. State Farm Fire & Cas. Co., 183 So.2d 859 (Fla. 2d DCA 1966), the Second District Court of Appeal stated at page 860 of 183 So.2d:

> "It is elementary that an order or decree appealed from comes to this Court clothed with the presumption of correctness, and that the burden is always upon the appellant to successfully demonstrate to the appellate Court that the decisive action of the lower Court was prejudicially wrong . . . ."

See also: State v. Town of Sweetwater, 112 So.2d 852 (Fla. 1959); Zulfer v. Zulfer's Estate, 310 So.2d 56 (Fla. 1st DCA 1975); Young v. Turner, 318 So.2d 467 (Fla. 1st DCA 1975); and DeLoache v. Deloache, 291 So.2d 63 (Fla. 4th DCA 1974).

It is respectfully submitted that the Appellants have failed to demonstrate any error in the lower court's ruling that the proposed charter amendments would be a "consolidation" under Article VIII, Section 3, Florida Constitution, which requires a "special law" of the Florida Legislature, and it should, therefore, be affirmed.

III.

WHETHER A HOME RULE COUNTY ORDINANCE SETTING A REFERENDUM ON CHARTER AMENDMENTS HAS THE FORCE OF "SPECIAL LAW" AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3.

[Rephrased on page 23 of Appellants' Brief to read: "A HOME RULE COUNTY ORDINANCE CALLING FOR CHARTER AMENDMENT BY VOTE OF THE ELECTORS HAS THE FORCE OF 'SPECIAL LAW' AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3." (Raised by Assignments of Error 5 and 10.)]

Upon the authority of Davis v. Gronemeyer, 251 So.2d 1 (Fla. 1971) the term "special law" as used in Article VIII, Florida Constitution, means "a special act of the Legislature" [251 So.2d 4]. Davis v. Gronemeyer, supra, is controlling authority for the question posed by the Appellants, and clearly answers it in the negative.

Furthermore, Article III, Section 1, Florida Constitution, expressly provides that:

> "The legislative power of the state shall be vested in a legislature of the State of Florida . . . ."

Under the provisions of Article III, Florida Constitution, only the Legislature of the State of Florida may pass a bill which will become a "law" if not vetoed by the Governor under Article III, Section 8. The term "law" is used throughout the Constitution of Florida to mean a bill passed by the Legislature of Florida under Article III, Section 7, which becomes a "law" under Article III, Section 8.

Article III, Section 6, expressly mandates:

> ". . . The enacting clause of every law shall read: 'Be It Enacted by the Legislature of the State of Florida:'."

And the argument of the Petitioners to equate a county ordinance proposing to amend a county charter with the term "law", completely evaporates in the light of the Florida Supreme Court decisions in Advisory Opinion To Governor, 22 So.2d 398 (Fla. 1945) and In re Advisory Opinion, 43 Fla. 305, 31 So. 348 (1901).

The Appellants theorize that the county ordinance proposing to amend the county charter is of the same rank and dignity as a special act of the Florida Legislature. This very contention was squarely rejected by the Supreme Court of Florida in Delano v. Dade County, 287 So.2d 288 (Fla. 1973). In Delano the Supreme Court held that even though Article VIII, Section 6(e), Florida Constitution, prohibits the Florida Legislature from enacting any special laws relating to Dade County, a Dade County ordinance does not enjoy the dignity of a special act of the Florida Legislature under the provisions of Article V, Section 3(b)(1), Florida Constitution, relating to the appellate jurisdiction of the Supreme Court. At page 289 of 287 So.2d the Florida Supreme Court declared:

> ". . . If the citizens of this State had wanted to include Home Rule Ordinances for consideration by this Court on the same basis as state statutes, they could have said so. They did not."

In reality, a county ordinance is a county ordinance. The term "county ordinance" is used as a separate and distinct term throughout Article VIII, Florida Constitution. In Article VIII, Section 6(d), a local law relating only to unincorporated areas of a county, which was in effect when Article VIII became effective, "may be amended or repealed by county ordinance." If a county ordinance were a "law" or "special law" as contended by the Petitioners, this provision of the Constitution would be unnecessary. And, the courts of Florida will not construe a constitutional provision to be surplusage. Burnsed v. Seaboard Coastline R.R. Co., 290 So.2d 13 (Fla. 1974).

Upon the above authorities of law, it is respectfully submitted that a home rule county ordinance calling for charter amendment by vote of the electors does not have the force of "special law" as that term is used in Article VIII, Section 3, Florida Constitution. Upon authority of Davis v. Gronemeyer, 251 So.2d 1, 4 (Fla. 1971), the term "special law" as that term is used in Article VIII, Florida Constitution, means only "a special act of the Legislature."

IV.

WHETHER THE COURT CAN STRIKE THE PROPOSED CHARTER AMENDMENTS ON GROUNDS OF VAGUENESS.

[Rephrased on page 28 of Appellants' Brief to read: "THE TRIAL COURT ERRED IN ENJOINING THE ELECTION BASED UPON ITS FINDING THAT THE PROPOSED CHARTER AMENDMENTS WERE UNCONSTITUTIONALLY VAGUE." (Raised by Assignment of Errors 1 and 3).]

The lower court stated in its Final Judgment below (R.801):

> ". . . it appearing to the Court that the proposed referendum if affirmatively approved in all respects would endeavor to effect an abolition of the four municipalities, which are plaintiffs herein, without any guidelines not only as to how the five municipal functions would be taken over by the county government but also without any guidance as to the disposition of the few remaining municipal functions, the municipalities' assets and their respective bonded indebtednesses . . . ."

In Adams v. Gunter, 238 So.2d 824 (Fla. 1970), the Supreme Court of Florida made similar findings in invalidating an initiative petition proposing an amendment to the Constitution of Florida. At page 832 of 238 So.2d the Supreme Court stated:

> "We conclude with the observation that if such proposed amendment were adopted by the people at the General Election and if the Legislature at its next session should fail to submit further amendments to revise and clarify the numerous inconsistencies and conflicts which would result, or if after submission of appropriate amendments the people should refuse to adopt them, simple chaos would prevail in the government of this State . . . ."

In Weber v. Smathers, 338 So.2d 819 (Fla. 1976), the Supreme Court of Florida stated at page 821 of 338 So.2d:

> ". . . Previous decisions of this Court have removed amendments from the ballot, but we have historically declined to interfere with the right of the people to vote upon a proposed constitutional amendment absent a showing in the record that the proposal is 'clearly and conclusively defective.' Goldner v. Adams, 167 So.2d 575 (Fla. 1964) . . . ."

The Final Judgment of the lower court (R.801-802), in effect, held that the proposed charter amendments were "clearly and conclusively defective" so as to meet the "Weber v. Smathers" test. The Appellants have not cited any authority of law clearly demonstrating such holding to be error. Not only have the Appellants failed to meet their heavy burden of showing error below, but the record clearly shows the eminent correctness of the lower court in its Final Judgment (R.801-802).

The scenario outlined in Adams v. Gunter, supra, of "chaos" in government looms over the proposed charter amendments at bar. One massive conflict they portend would be as to which local government -- Sarasota County or the respective cities -- would exercise which municipal governmental, corporate and proprietary powers within the municipalities. Section 4.1 of the Sarasota County charter clearly provides that in the event of a conflict between a county and municipal ordinance, the municipal ordinance shall prevail within the municipality (R.660). However, the

proposed charter amendments (R.412-413) purport to divest the municipal governments in Sarasota County of certain constitutional municipal home rule powers: (1) granted by Article VIII, Section 2(b), Florida Constitution, (2) recognized by the Florida Legislature in Section 166.021, Florida Statutes, and (3) upheld by the Supreme Court of Florida in City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1975). Adams v. Gunter, supra, clearly applies, and the lower court was correct to avert such chaos.

The decision in Smathers v. Smith, 338 So.2d 825 (Fla. 1976), which dealt with a then proposed amendment to the Florida Constitution, recognized that any such amendment had to be "within the confines of the Federal Constitution." [quoting at pages 826-827 of 338 So.2d from Gray v. Golden, 89 So.2d 785, 790 (Fla. 1956)]. So too, the proposed amendments to the Sarasota County charter must be consistent with the Florida Constitution. The lower court held that they were not (R.801-802).

The "harmonizing" concept pronounced in Smathers v. Smith, supra, at page 831 of 338 So.2d, may be suitable for constitutional or charter provisions located on the periphery of governmental functions and activities. But in the very heart, or "nerve centers", of governmental machinery involving essential governmental services and functions, the courts cannot afford the luxury of considering the niceties of the

law in objective detachment while chaos would reign in vital governmental affairs. The Supreme Court of Florida recognized this in Adams v. Gunter, supra, and the trial court below clearly grasped what would be in store for the people of Sarasota County if the proposed amendments went to a vote and were approved.

The burden is upon the Appellants to clearly demonstrate error below, and they have failed to do so. The lower court should, therefore, be affirmed.

CONCLUSION

The issues at bar on this appeal are of vital concern to the municipalities in Florida -- particularly those in charter counties -- inasmuch as they involve an attempt by the county commission of a charter county to divest the municipalities of that county of municipal powers and functions granted by the Constitution and laws of Florida. It is respectfully submitted that the lower court was eminently correct in striking down the actions of the county commission, and it should, therefore, be affirmed.

RESPECTFULLY SUBMITTED.

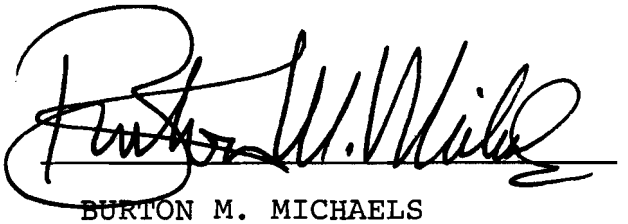
RALPH A. MARSICANO
General Counsel for Florida
League of Cities, Inc.
Amicus Curiae
Central Bank Building
Post Office Box 4115
Tampa, Florida 33677

BURTON M. MICHAELS
Staff Attorney for Florida
League of Cities, Inc.
Amicus Curiae
225 West Jefferson Street
Post Office Box 1757
Tallahassee, Florida 32302

By: 
BURTON M. MICHAELS

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that copies hereof, of this Amicus Curiae Brief on Behalf of Florida League of Cities, Inc., have been furnished to NELSON HESSE CYRIL WEBER & SPARROW, 2070 Ringling Boulevard, Sarasota, Florida 33577, Attorneys for Appellants; to STEEL HECTOR & DAVIS, 1400 Southeast First National Bank Building, Miami, Florida 33131, Attorneys for Appellants; to STRODE, HEREFORD & TAYLOR, P.A., 46 North Washington Boulevard, Sarasota, Florida 33577, Attorneys for City of Sarasota, Appellee; to KORP & WHEELER, P.A., 609 South Tamiami Trail, P. O. Box 1744, Venice, Florida 33595, Attorneys for City of Venice, Appellee; to ALLEN J LEVIN, ESQ., 135 South Tamiami Drive, N.W., Port Charlotte, Florida 33952, Attorney for City of North Port, Appellee; and to WOOD, WHITESELL & KARP, P.A., 2187 Siesta Drive, P. O. Box 15425, Sarasota, Florida 33579, Attorneys for Town of Longboat Key, Appellee; by mail this 7th day of October, 1977.



BURTON M. MICHAELS
Staff Attorney for Florida
League of Cities, Inc.
Amicus Curiae