IN THE SUPREME COURT OF FLORIDA

CASE NO. 52,214

SARASOTA COUNTY, FLORIDA, and MARY J. ORR,
Supervisor of Elections,

Appellants,

vs.

TOWN OF LONGBOAT KEY, FLORIDA,
CITY OF SARASOTA, FLORIDA,
CITY OF VENICE, FLORIDA,
AND CITY OF NORTH PORT, FLORIDA,

Appellees.

---

On Appeal From the Circuit Court,
Twelfth Judicial Circuit of Florida

---

# BRIEF OF APPELLANTS

---


RICHARD E. NELSON
RICHARD L. SMITH
NELSON HESSE CYRIL & WEBER
2070 Ringling Boulevard
Sarasota, Florida 33577

TALBOT D'ALEMBERTE
STEEL HECTOR & DAVIS
1400 Southeast First National
Bank Building
Miami, Florida 33131

Attorneys for Appellants

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

TABLE OF AUTHORITIES
(Continued)

TABLE OF AUTHORITIES
(Continued)

IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

SARASOTA COUNTY, FLORIDA, and MARY J. ORR,
Supervisor of Elections,

Appellants,

vs.

TOWN OF LONGBOAT KEY, FLORIDA,
CITY OF SARASOTA, FLORIDA,
CITY OF VENICE, FLORIDA,
AND CITY OF NORTH PORT, FLORIDA,

Appellees.

---

On Appeal From the Circuit Court,
Twelfth Judicial Circuit of Florida

---

# BRIEF OF APPELLANTS

---

## INTRODUCTION

This is an appeal filed on behalf of Sarasota County and the Sarasota County Supervisor of Elections, seeking review of a Final Judgment entered by the Honorable Judge Frank Schaub, Circuit Judge, Twelfth Judicial Circuit. The Final Judgment entered by the court below enjoins an election on amendments to the Sarasota County Charter and expressly construes the terms of Article VIII, Section 3 of the Florida Constitution. It is reviewable under Article V,

Section 3(b)(1), Florida Constitution, which provides that the Supreme Court of Florida "shall hear appeals from orders of the trial courts....construing a provision of the state or federal constitution."

The appellee cities, plaintiffs below, sought and obtained an injunction to prohibit an election scheduled for November 8, 1977. The election, called by ordinances proposing charter amendments for the Sarasota County Charter, would have allowed the electors of Sarasota County to vote on five amendments to the Sarasota County Home Rule Charter and determine whether the county government would be responsible for administering services in five distinct areas: pollution control, road and bridge services, park and recreational services, planning and zoning services and police services. The amendments would allow for supremacy of county ordinances over city ordinances in each of these areas. The injunction was entered to prevent the election from being held.

When used in this brief, the term "cities" or "municipalities" shall mean all four municipalities in this case and the term "Florida Constitution" shall mean the 1968 revision unless otherwise indicated. References to "Article" and "Section" shall refer to Article VIII of the Constitution and designated sections thereof unless otherwise indicated. References to the Record will be identified by the letter "R".

## STATEMENT OF THE CASE AND THE FACTS

The dual taxation controversy has absorbed a great deal of judicial time in Florida. This controversy is an out-growth of dual taxation litigation in Sarasota County (R. 204). This case was originally filed as a supplemental pleading in Case No. 76-1503 which was a suit by the cities over alleged dual taxation (R. 711-718). The circuit judge before whom the dual taxation suit fell found some measure of dual taxation and entered a judgment for the cities. The judgment ordered the formation of special tax districts, one for the unincorporated areas and one for the incorporated and set the millage in each area (R. 704). That judgment is now before the Second District Court of Appeal where it was argued in June 1977.

Eleven days prior to entry of judgment, the Sarasota County Commission adopted Emergency Ordinance 76-76, placing five charter amendments on the November 2nd ballot. The proposed amendments were as follows:

> Section 1.4: Consolidation of Air and Water Pollution Control Services and Functions. Notwithstanding any other provision of this Charter, all municipal air and water pollution control services and functions and all county air and water pollution control services and functions shall be consolidated and provided by this county government. 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.

Section 1.5: Consolidation of Park and Recreation Services and Functions. Notwithstanding any other provision of this Charter, all municipal park and recreation services and functions and all county park and recreation services and functions shall be consolidated and provided by this county government. 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.

Section 1.6: Consolidation of Road and Bridge Services and Functions. Notwithstanding any other provision of this Charter, all municipal road and bridge services and functions and all county road and bridge services and functions shall be consolidated and provided by this county government. 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.

Section 1.7: Consolidation of Planning and Zoning Services and Functions. Notwithstanding any other provision of this charter, all municipal planning and zoning services and functions and all county planning and zoning services and functions shall be consolidated and provided by this county government. 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.

> Section 1.8: Consolidation of Public Safety Services and Functions.
> Notwithstanding any other provision of this Charter, all municipal police services and functions and all county sheriff services and functions shall be consolidated and provided by this county government. 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.

If adopted, the charter amendments proposed by the ordinance would allocate to the county authority to render services and exercise powers in each of these areas.

The present suit, commenced after the first suit was appealed, challenged this ordinance and sought injunctive relief to prevent the November 2, 1976 election. At Judge Parham's invitation, the present suit was filed directly before him (R. 1-12). Judge Parham held a hearing and entered a temporary injunction (R. 74-75) even before Sarasota County had been served (R. 83-84). The county filed a counterclaim for declaratory relief (R. 85-136) and withheld a petition for certiorari to this court until after the November 2, 1976 election so that the election would not be held under the shadow of the circuit court ruling and time would be provided for a definitive judicial decision on the Article VIII questions here presented.

Following the 1976 election, Sarasota County and the Supervisor of Elections sought review of the order granting a temporary injunction. A petition for certiorari was filed with this court on November 3, 1976 and, on February 25, 1977 the court denied the petition for a writ of certiorari (R. 150).

Prior to the June 14, 1977 final hearing in the trial court, the case was transferred to another Circuit Judge and the cities amended their complaint (R. 178, 180-200).

At the final hearing, city officials representing each municipality testified. All testified that they had certain physical equipment or real property related to the services which were the subject of the proposed charter amendments. All the municipalities, except North Port, had bonded indebtedness. However, none of the bonds were introduced into evidence.

After memorandum had been received, the court entered a final judgment permanently enjoining the election on the grounds that (1) the charter amendments were a consolidation in violation of Article VIII, Section 3 of the Florida Constitution and (2) the amendments were impermissibly vague.

During this litigation, Sarasota County has postponed the charter amendments election. On October 19, 1976,

Ordinance 76-77 was passed after a duly noticed public hearing (R. 412-417, 421). The only substantive change made to Ordinance 76-76 by Ordinance 76-77 was the date of the election, which was changed to April 5, 1977. After this court denied the petition for the writ of certiorari, Ordinance 76-77 was amended by Ordinance 77-31 and the date for the election is now set for November 8, 1977.

## QUESTIONS PRESENTED

The judgment from which appeal is taken is based on two grounds. First, that the charter amendments violate Article VIII, Section 3 of the Florida Constitution dealing with consolidation and, second, that the amendments are impermissibly vague. These two points are discussed in four questions, the first three dealing with the Article VIII, Section 3 "consolidation" point and the fourth point dealing with the alleged vagueness.

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.

### 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 case is another chapter in the movement toward "home rule," and arises in the context of a dispute over "dual taxation". To fully state the background requires an excursion through two themes of recent public law controversy. First, the movement toward "home rule" or "local self-government" and second, the efforts to resolve the controversy over alleged "dual taxation".

#### A. The Home Rule Movement.

Home rule or charter government for counties has had as its objective the freeing of local government from state legislative controls. The evil of legislative control through "special" or "local" laws is that it places control over purely local matters with lawmakers distant from the local problems.

The lack of accountability in such a procedure has caused the development of a "home rule" movement throughout

the nation. Florida has reason to be particularly proud of its accomplishments in bringing about home rule.

Even prior to the major steps taken in the constitutional revision of 1968, Florida had established nationally recognized systems of county home rule. Particular national attention was focused on "Metro" government in Dade County and the consolidation procedure through which the City of Jacksonville took over the functions of county government in Duval County. Home rule was accomplished in these areas by specific amendments to the Florida Constitution. See, Article IX, Sections 9 and 11, Florida Constitution, 1885, as amended in 1934, 1942 and 1956.[1/]

The 1968 Constitutional Revision abandoned the piecemeal or county-by-county approach to home rule in favor of a general and broad grant of power to form charter counties,

---

1/ Prior to constitutional revision, a lawyer, now a Circuit Judge (who was later to be one of the principal architects of modern local government in Florida), discussed "home rule" and noted:

> "The right of local electors to have more control and self-determination over purely local affairs is not an inherent right under our constitution. . . . Let us hope it will be included as a part of overall constitutional revision." Danahy, Local Government for Florida's Metropolitan Areas, 40 Fla. Bar J. 16, 24 (Jan. 1966).

Article VIII, Section 1(g), Florida Constitution.[2/]

This grant is embodied in Article VIII, Section 1(g) of the Florida Constitution, which states:

> Counties operating under county charters shall have all powers of local self-government not inconsistent with general law or with special law approved by vote of the electors. The governing body of a County operating under a charter may enact county ordinances not inconsistent with general law.

---

2/ This was a very bold and sweeping step for, as one author notes:

> "Once a county is chartered and the charter ratified by the people such county 'shall have all powers of local self-government not inconsistent with general law' and special or local laws are not effective to limit, curtail, restrict or amend such power unless approved by vote of the electors. It seems somewhat incongruous that counties in Florida, which have never had charter powers (except those given in the Constitution such as to Dade and Duval), be now given more autonomy than municipalities who have always exercised charter authority." Sparkman, The History and Status of Local Government Powers in Florida, 25 Univ. of Fla. L.R. 271, 293 (1973), quoting from address by Osee R. Fagan, City Attorney, Gainesville, Fla., Florida League of Municipalities Meeting, March 3, 1969 at 13-14.

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

As can be seen from Article VIII, Section 1 (g), where the charter provides that county ordinances prevail over municipal ordinances, the county can, by ordinance, provide that it would be responsible for all services of a particular type, say, pollution. If it did so, this would supersede all municipal ordinances in conflict.

In the session of the legislature following the adoption of the 1968 constitution revision, the Florida legislature passed Chapter 69-45, Laws of Florida, which now appears as Sections 125.60-.64, Florida Statutes. This law provides a method for the adoption of home rule charters. The significance of this legislation is heightened by the fact that the legislature passing Chapter 69-45 was composed of many of the people who had submitted the 1968 Constitution to the people of Florida to vote.

Section 125.64, Florida Statutes, provides for the adoption of a charter and states:

> Such charter, once adopted by the electors, may be amended only by the electors of the county. The charter shall provide a method for submitting future charter revisions and amendments to the electors of the county.

A charter was adopted by the vote of the electors of Sarasota County on November 2, 1971 pursuant to the provisions of Section 125.60-.64, Florida Statutes. The 1971 charter provided that municipal ordinances would prevail in the event of conflict and provided a method of amendment of the charter.

B. Conflicts Over Alleged Dual Taxation.

The present case also involves the application of another section of Article VIII--Section 1(h) which prohibits the taxation of property situated in a municipality for services rendered "exclusively" for the benefit of the unincorporated areas.

The constitutional prohibition against "dual taxation" originated with the 1968 constitutional revision. In contrast to the "home rule" concepts which were the subject of considerable prior thought and debate, this section of the constitution was not the subject of much scholarly attention.

The definition for exclusivity of services was not provided and the courts have been left with a series of cases which turn largely on factual questions. Alsdorf v. Broward County, 333 So. 2d 457 (Fla. 1976), Burke v. Charlotte County, 286 So. 2d 199 (Fla. 1973), City of St.

Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817 (Fla. 1970). Where county taxation for services not rendered in municipalities exists, the courts are empowered to address the issue since Article VIII, Section 1(h) has been held to be self-executing. Alsdorf v. Broward County, 333 So. 2d 457, 460 (Fla. 1976).

As described in the Statement of the Facts, the four cities in Sarasota County sought and obtained a judgment on the application of Article VIII, Section 1(h) and this judgment had the effect of creating, by judicial fiat, separate taxing districts (one for the unincorporated areas and one for the incorporated areas) and changing the taxes levied. Taxes for the unincorporated areas were increased and those in the incorporated areas decreased. That judgment, entered on October 2, 1976, is now being considered by to the Second District Court of Appeal and its merits will not be addressed in this brief.

On September 21, 1976, prior to the entry of judgment in the first (dual tax) case, the Sarasota County Commission responded to the pressures of the cities and the threat of judicial tax districts by adopting an ordinance proposing five charter amendments to the electors of Sarasota County. These amendments would allow the electors to decide whether the municipalities should duplicate county services and

would allocate power and responsibility in five separate areas of local governmental responsibility.

C. Charter Amendments Are Appropriate to Resolve the Dual Taxation Dispute.

The implications of the dual taxation controversy on the form and structure of local government are manifold. As the Supreme Court stated in a recent opinion, Alsdorf v. Broward County, 333 So. 2d 457, 460, n.13 (Fla. 1976):

> Appellee suggests that the likely result of holding as we do will be (1) consolidation of cities and counties, (2) abolition of cities, (3) proliferation of special tax districts or (4) expanded user fees. That assertion may be correct.

To this statement of options, the Sarasota County Commission attempted to add a logical and somewhat less drastic alternative: the allocation of powers and responsibilities in five specific areas. If adopted by the voters, these charter amendments would point the way out of the dual taxation controversy in a manner acceptable to local conditions. The amendments, if adopted by the electors, would centralize the administration of certain governmental services in the county and avoid the costs and conflicts arising from fragmented administration of these services by both the municipalities and the county.

Illustrative of the point is the first charter amendment relating to pollution control. The voters may well decide that they wish pollution control services to be centralized in the county government. Under the proposed amendment, pollution control would be treated as an area-wide problem and dealt with by county government. Also, county ordinances would prevail over city ordinances. The logic of this approach is supported by the opinion in a dual taxation case, City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817 (Fla. 1970). In that case, the Court noted that "water pollution and the attendant diseases and ills to human habitation that flow therefrom know no city or county lines," 239 So. 2d at 824. Similarly, in Sarasota County the voters could logically conclude that the problems of pollution control are not limited by municipal boundaries and should be dealt with countywide by the county government. The proposed charter amendment (Section 1.4) would accomplish this, and if the voters agree with that amendment, Sarasota County would render the services in the pollution control area with county ordinances taking precedence if this section were adopted.

The five proposed county charter amendments allow the electorate of Sarasota County to decide whether the problems

of recreational facilities, roads, land use and crime, as well as pollution control, "know no city or county lines."

The proposed charter amendments offer the voters of Sarasota County a choice as to which level of local government should render certain services and exercise certain powers. By voting for each of these proposed amendments, the voter will select the county government. By voting against any amendment the voter will express his desire to see powers and service functions covered by that amendment allocated as they are presently.

It is obvious that the consequences of this decision will have an impact on the dual taxation controversy which arises out of an alleged failure of county government to provide services countywide. If the grant of "all powers of local self-government" conveyed by Article VIII, Section 1(g) and by legislative implementation is to have any meaning, this Court must allow the Sarasota County voters to speak to the issues.

The court below erred in ruling that there was no power to offer charter amendments in these five areas and in enjoining the election.

II.

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.)

Consolidate means "to join together into one whole; unite."[3/] Cases have defined this word to mean unification of two or more corporate entities, resulting in the termination of the unifying bodies and the birth of a new corporation.[4/] With respect to local government, consolidation refers to the extinction of existing county and city governments in favor of a new governing body.[5/] The language of Article VIII, Section 3 corresponds with this historical use of the term. The section provides:

> SECTION 3. Consolidation. -- The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which

---

3/ Webster's Seventh New Collegiate Dictionary, 242 (1972).

4/ Mercantile Home Bank & Trust Co. v. United States, 96 F.2d 655, 660 (8th Cir. 1938); Pinellas Ice & Cold Storage Co. v. Commissioner of Internal Revenue, 57 F.2d 188, 190 (5th Cir. 1932); Akwell Corporation v. Eiger, 141 F. Supp. 19, 21 (S.D.N.Y. 1956).

5/ Beard v. City and County of San Francisco, 79 Cal. 2d 753, 180 P.2d 744, 745 (1947); Frazer v. Carr, 210 Tenn. 565, 360 S.W.2d 449, 454 (1962).

> shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from a facility or service for which the indebtedness was incurred. (Emphasis added.)

The proposed charter amendments do not abolish city government and there is no consolidation.[6/]

An interesting analogy is available in the area of tax assessment and collection. At one time, municipalities conducted separate assessments of property situate within the cities and separate collection of taxes. Even prior to adoption of the 1968 Revision to the Florida Constitution, some counties combined these functions at the county level.[7/]

---

6/ See, Swedish Iron and Steel Corporation v. Edwards, 1F. Supp. 335, 338 (S.D.N.Y. 1932); Jewett City Sav. Bank v. Board of Equalization of Connecticut, 116 Conn. 172, 164A. 643, 646 (1933); City of Stamford v. Town of Stamford, 107 Conn. 596, 141 A. 891, 893 (1928); city of Jacksonville Beach v. Albury, 291 So. 2d 82, 83 (Fla. 1st DCA 1973); Petition For Division Into Words of Scott Township, Allegheny County, 388 Pa. 539, 130 A.2d 695, 697 and n.5 (1957); School District No. 17 of Sherman County v. Powell, 203 Ore. 168, 279 P.2d 492, 497 (1955).

7/ See Article VIII, Sections 10A, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 Florida Constitution (1885), as amended in 1944, 1948, and 1954.

Following the adoption of the revised constitution in 1968, the 1969 legislature brought the city tax assessment and the collection functions together with the county functions of assessment and collection, Chapter 69-54, Laws of Florida. This is obviously not a "consolidation" under Article VIII, Section 3,[8/] yet the argument of the cities, in this case, adopted by the court below, would have this combining of services defined as a "consolidation." If this holding were to be affirmed, it would invalidate the legislative action in the area of tax administration since the combination of these services would become a "consolidation" under Article VIII, Section 3, Florida Constitution, and could be accomplished only by a special act.

---

8/ A distinction exists between consolidating services and consolidating governments, and it is this distinction which makes Article VIII, Section 3 inapplicable to Ordinance 76-76. In a pre-1968 article, in which he discussed possible reforms for the difficulties being encountered with local governments in Florida, Mr. Paul Danahy, Jr. describes functional consolidation as:

> MERGER AND REGROUPING OF SELECTED FUNCTION. A successful approach to the elimination of overlapping and duplication of effort results when selected governmental functions are merged and regrouped so that the best equipped unit is given exclusive responsibility for the particular function.

Danahy, Local Government for Florida's Metropolitan Areas, 40 Fla. Bar. J. 16, 22 (Jan. 1966). Governmental consolidation is treated as a separate and distinct consideration, and Duval County is cited as an instance where governmental consolidation has been provided for. Id. at 24.

Sarasota County offers charter amendments which are substantially similar to the legislative enactment of laws governing tax assessment and collection.[9/] In construing the constitutionality of Ordinances 76-77 and 77-31, common sense as well as legislative history supports the validity.[10/] Clearly, the intent of Article VIII, Section 3, when it speaks of consolidation, is a total integration of government bodies. The proposal of Ordinances 76-77 and 77-31, does not even approximate this result -- it deals solely with a designation of primary responsibility for rendering five separate services and the allocation of power with responsibility. There is no attempt to disturb the political systems of the municipalities.

Article VIII, Section 3 was intended to provide a simplified procedure for the Jacksonville-Duval County consolidation approach which required, under the prior constitution, a special constitutional amendment in addition to

---

9/ The tax assessment and collection services are analogous to the services proposed for consolidation in Ordinance 76-76, in that they are all of a type that can be more efficiently and expeditiously performed by a single unit. Central control of these services does not affect the integrity of the municipal governments.

10/ Sparkman, The History and Status of Local Government Powers in Florida, 25 U. of Fla. L.R. 271, 289, 298 (1973).

a vote of the electorate.[11/] It was the intent to do away with this tedious procedure requiring constitutional amendments that the legislature adopted Article VIII, Section 3.[12/] It was not designed to be a restriction on the electors to designate which unit of local government would exercise dominant powers in certain areas. Article VIII, Section 3 has no relevance to this case and was erroneously applied by the court below.

---

11/ Art. VIII, §9, Fla. Const. (1885). Levinson, Florida Constitutional Law, 28 Univ. of Miami L.R. 551, 591 (1974).

12/ Commentary, 26A Fla. Stat. Ann. 330 (1970); Levinson, Florida Constitutional Law, 28 Univ. of Miami L.R. 551, 591 (1974).

## III.

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.)

The arguments made heretofore are dispositive of this case. This additional point is intended only as an alternative argument and the Court will not be required to reach this point. Nonetheless, it is offered here because this point would form an independent basis for reversing the trial court's judgment if the proposed charter amendments are found to be a "consolidation" under Article VIII, Section 3.

### A. Analysis of Section 3.

Article VIII, Section 3 states as follows:

> SECTION 3. Consolidation. -- The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except

to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

The trial court held that the Ordinance proposing amendments to the Sarasota County Charter was unconstitutional because it proposed a "consolidation into a single government" under Article VIII, Section 3. The trial court held that a "consolidation" plan could only be proposed by special law. It is Appellants' position that even if the proposed charter amendments are a consolidation, an ordinance in a "home rule county" calling for charter amendment by vote of the electors has the force and dignity of special law and satisfied the requirements of Article VIII, Section 3.

Under the 1885 Constitution, all counties except Dade County derived their powers of self-government from legislative grants in the form of general law or local laws[13/] which pertained to a particular county. Upon passage of the 1968 Constitution, non-charter and charter or home rule counties were distinguished. As in the 1885 Constitution,, non-charter counties received their powers of self--government from the legislature through either general

---

13/ Local laws are now termed "special law" under Article X, Section 12(g) of the Florida Constitution.

or special law. Charter counties, on the other hand, derive their powers of self-government directly from Article VIII, Section 1(g) of the Constitution without the necessity of intervention by the legislature.

### B. The Essence of Local Self-government Is the Authority to Adopt Ordinances or Subjects Formerly Limited to Special Acts.

"Home rule" or "local self-government" means that the legislative power over local matters is transferred to the charter government. Charter county ordinances therefore assume the dignity of special acts of the legislature.

Florida case law construing the Dade County Charter supports this conclusion. Although these cases were decided under the Dade County Home Rule Amendment which is much more lengthy and detailed than the simple summary phrase now used in Section 1(g) of the Constitution, the concept of "home rule" is the same.

S & J Transportation, Inc. v. Gordon, 176 So. 2d 69 (Fla. 1965) is instructive. The case held that the legislature lost the power to adopt purely local legislation by special act after adoption of the Dade County Charter and Mr. Justice O'Connell explained the Court's reasoning:

> As we understand it Section 11 was intended to: (1) give the electors of Dade County home rule or autonomy in affairs pertaining solely to Dade County; (2) retain the supremacy of the constitution and valid general laws (applicable to Dade and one or more counties), except as specifically provided there; and (3) retain in the Legislature the full authority to enact laws which relate only to Dade County. This is true regardless of the subject matter, the manner of passage or whether according to previous decisions of this court they would be classified as valid general laws. If this section was construed otherwise the Legislature would still have the power to enact laws applicable only to Dade County on a population or other reasonable classification basis on a myriad of subjects and completely destroy the intended autonomy in local affairs.
>
> 176 So. 2d at 71.

Mr. Justice Thornal announced a similar holding in Dickinson v. Board of Public Instruction of Dade County, 217 So. 2d 553 (Fla. 1968) where the legislature enacted a law compensating a Dade Couty father for the death of his son. The funds for this compensation were to be drawn from the Dade County School Board. The Court found that this was a local law and thus invalid. The opinion relied on, S & J Transportation, supra, which Justice Thornal stated, "expresses the very essence of so-called 'home rule government'". 217 So. 2d at 555. Justice Thornal further states:

> Consistent with this view it appears to us in regards to matters of the nature under consideration, the people of Dade County have adequate authority through the referendum process to make provision in their Home Rule Charter for meeting moral obligations of this type. Actually, in so doing they would be following a course little different than if they were required to pursue a constitutional referendum on a local law.
>
> 217 So. 2d at 555

Thus, the "very essence" of home rule government is the authority to adopt measures which would formerly have been solely within the province of the legislature. Once these measures are adopted they have the same force and dignity as a special act. To hold otherwise would destroy the very essence of home rule.

## POINT IV

## 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).

In its final judgment, the trial court found that the proposed charter amendments were impermissably vague because they did not provide any guidelines as to how the five municipal functions would be taken over. In addition, the court held that because they were a consolidation or abolition of the four municipalities, the charter amendments were impermissably vague because they did not provide any "guidance as to the disposition of the few remaining municipal functions, the municipalities' assets and their respetive bonded indebtedness, . . . "

### A. The proposed charter amendments do not abolish municipalities or effect a consolidation.

In finding that the proposed charter amendments were impermissably vague, the trial court was operating from the premise that they would abolish the municipalities. Thus, he reasoned that provision must be made for the "disposition of the few remaining municipal functions, the municipalities' assets and their respective bonded indebtedness, . . . "

As has been demonstrated in Point II of this brief, the proposed charter amendments are not a consolidation and, even if all five were approved by the voters, they would not abolish the four municipal governments. If adopted, the amendments would transfer certain functions performed by the municipalities to the counties so that there will be no duplication of services. This being the case, there is no need for the charter to contain detailed descriptions of what will be done with municipal functions, assets and bonded indebtedness.

B. The proposed charter amendments are not void for failure to detail how the five municipal functions are to be taken over and no injunction can be granted.

In ruling that the proposed charter amendements were impermissably vague for failure to detail how the five municipal functions are to be taken over, the court ignored the language of the proposed amendments. The amendments clearly provide that the sections are to be implemented by appropriate county ordinances. For instance, Section 1.4 states:

> "Consolidation Of Air And Water Pollution Control Services And Functions. Notwithstanding any other provision of this charter, all municipal air and water pollution control services and functions shall be consolidated and provided by this county government. The Board of County Commissioners shall have the 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."

A charter amendment which is similar to a constitutional amendment is not required to spell out in detail how a particular grant of power is to be administered. To hold otherwise would make the many provisions of the constitution suspect as impermissably vague, including Article VIII, Section 2(b) which provides for certain powers to municipalities. Thus, the court's determination that the ordinances are impermissably vague, is in error.

C. The trial court acted prematurely and without proof that the amendments are clearly and conclusively defective.

The trial court would have benefited from a closer reading of recent Florida Supreme Court cases dealing with elections and the standards which apply to injunctive actions.

The court's position on proposed constitutional amendments is that such amendments should not be lightly taken from the ballot by judicial action. In Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976), Chief Justice Overton wrote:

> . . . [w]e have historically declined to interfere with the right of the people to vote on a proposed constitutional amendment absent a showing in the record that the proposal is "clearly and conclusively defective."

The same day this court decided Weber v. Smathers, it decided Smathers v. Smith, 338 So. 2d 825 (Fla. 1976) which challenged a proposed constitutional amendment on various grounds including an attack on the amendment which suggested that "its language is unclear, its meaning obscure and its purpose too vague . . . " 338 So. 2d at 826. The court analyzed the proposed amendment and reversed the trial court's ruling, stating that, "If the amendment should be adopted by the voters, it may then become our responsibility, in an appropriate case, to harmonize its reach and meaning with other provisions of the Constitution," and that "interpretation of the proposal as it relates to other constitutional provisions would be premature". 338 So. 2d at 831.

It is respectfully submitted that these important principles relating to proposed constitutional amendments should also govern proposed county home rule charter amendments which are also voted on by the electors to establish the principles of government at the local level.

The trial court erred in finding the amendments vague and, indeed, the trial court is premature in even entertaining such a question.

## CONCLUSION

The trial court erred in enjoining the election now scheduled for November 8, 1977. The proposed charter amendments will not, if adopted by the voters, effect a consolidation into a single government, and therefore Article VIII, Section 3 of the Florida Constitution does not control. The charter amendments are proper under the Florida Constitution and the statutes of Florida and there is no basis for judicial intervention.

The trial court also erred in taking up the question of whether the proposed amendments are vague since such judicial action is premature. Having taken up this question, the trial judge decided the question erroneously.

The judgment appealed should be reversed and judgment should be directed for the appellants.

NELSON HESSE CYRIL & WEBER
2070 Ringling Boulevard
Sarasota, Florida 35577

Telephone: (813) 366-7550

By: Richard E. Nelson
Richard E. Nelson for REN & TD'A

Richard L. Smith
Richard L. Smith by TDA

Leslie Telford
Leslie Telford by TDA

STEEL HECTOR & DAVIS
1400 Southeast First National Bank Building
Miami, Florida 33131
Telephone (305) 577-2816

By: Talbot D'Alemberte
Talbot D'Alemberte

Attorneys for Appellant

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief of Appellant has been served, by ~~mail~~ hand-delivery this 16th day of September, 1977, on the following:

FRANK A. BYRON, ESQUIRE
652 Aaron Street
Port Charlotte, Florida 33940
Attorney for City of North Port

WILLIAM C. STRODE, ESQUIRE
Strode, Hereford & Taylor
46 North Washington Boulevard
Sarasota, Florida 33577
Attorney for City of Sarasota

CHARLES F. WHEELER, ESQUIRE
Korp & Wheeler, P. A.
609 S. Tamiami Trail
P. O. Box 1744
Venice, Florida 33595
Attorney for City of Venice

I. W. WHITESELL, JR., ESQUIRE
Wood, Whitesell & Karp, P.A.
2187 Siesta Drive
P. O. Box 15425
Sarasota, Florida 33579
Attorney for Twon of Longboat Key

Talbot D'Alemberte

Talbot D'Alemberte