IN THE
SUPREME COURT OF FLORIDA

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

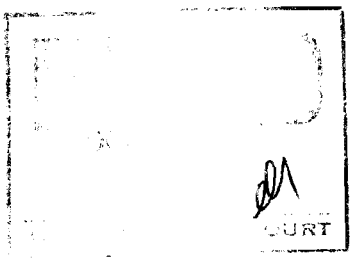
Appellants,

-vs-

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

Appellees.

CASE NO. 52,214



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

REPLY BRIEF ON BEHALF OF CITY OF SARASOTA, CITY OF VENICE, TOWN OF LONGBOAT KEY AND CITY OF NORTH PORT

William C. Strode and
William M. Hereford
STRODE, HEREFORD & TAYLOR, P.A.
46 North Washington Boulevard
Sarasota, Florida 33577
for City of Sarasota

Charles F. Wheeler
KORP & WHEELER, P.A.
609 South Tamiami Trail
P. O. Box 1744
Venice, Florida 33595
for City of Venice

ALLEN J. LEVIN
135 S. Tamiami Drive, N. W.
Port Charlotte, Fla. 33952
for City of North Port

John R. Wood and
I. W. Whitesell, Jr.
WOOD, WHITESELL & KARP, P.A.
P. O. Box 15425
2187 Siesta Drive
Sarasota, Florida 33579
for Town of Longboat Key

TOPICAL INDEX

CITATION OF AUTHORITIES

CASES

CITATION OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

FLORIDA STATUTES

FLORIDA STATUTES ANNOTATED (1970)

LAWS OF FLORIDA

CITATION OF AUTHORITIES

CONSTITUTIONAL PROVISIONS (continued)

INTRODUCTION

In this appeal the following will be used to identify the parties, namely:

(i) Longboat - Town of Longboat Key;

(ii) Sarasota - City of Sarasota;

(iii) Venice - City of Venice;

(iv) North Port - City of North Port.

When directing a point to all the cities, they collectively will be called "cities". Below the cities were the plaintiffs, here they are appellees. The County of Sarasota will be called "County" and Mary J. Orr, Supervisor of Elections, and Joanne E. Koester, her successor, will be called "Supervisor of Elections". Collectively they will be referred to as defendants and called appellants. All references to the constitution will be the Florida Constitution, 1968 revision. The record on appeal will be referred to as "R". The ordinance which is the basis for this appeal is Sarasota County Ordinance No. 77-31 and will be referred to as "Ordinance 77-31". The other Sarasota County Ordinance will be referred to as "Ordinance 76-76 and Ordinance 76-77". Appellants' brief will be referred to as "AB".

STATEMENT OF THE CASE

Appellees contend that this case reaches this Honorable Court under the authority of Article V, Section 3(b)(i) of the Constitution.

The trial judge heard the evidence, considered the arguments pro and con and called for written briefs, after which he (the trial judge) entered final judgment on August 4, 1977.

The final judgment found Ordinance 77-31 unconstitutional as violating Article VIII, Section 3, of the State Constitution and being in violation of fundamental requirement of law for vagueness. The end result of the final judgment was to enjoin the holding of a referendum election as called for in Ordinance 77-31.

It is that final judgment of August 4, 1977, which appellants (defendants below) appeal.

STATEMENT OF THE FACTS

Sarasota County is a charter county under Article VIII, Section 1 (c) of the Constitution. The Town of Longboat Key is a municipality lying within Sarasota and Manatee Counties (Manatee is not a charter county); the Cities of Sarasota, Venice and North Port are all situate within Sarasota County. Ordinance 76-76 had as its indicated purpose sweeping into the county government of five (seperate and distinct) governmental functions now being performed and rendered by the cities throughout their respective areas of jurisdiction, which in the case of Longboat includes Sarasota and Manatee County.

Because of the "takeover" purpose of the Ordiance 76-76 (R 405-4) the cities filed their complaint seeking to enjoin the referendum election then set for November 2, 1976. After hearing, the circuit judge did enjoin the election. (R-74-75) Subsequent thereto the county gave public notice (R-412) that Ordinance 76-77 (R-412-418) would be considered, which notice had as its stated purpose the ratification of emergency Ordinance 76-76. The county set the public hearing to ratify emergency Ordinance 76-76 seven days after the circuit judge entered his order enjoining the election called for in Ordinance 76-76. The cities had no concern with such a maneuver and did not attend the public hearing for such action. The new Ordinance 76-77 was adopted at the public

hearing, but not as advertised. The unadvertised version called for an election on the issue of consolidation for April 5, 1977 (R-412 - 417, especially 416 wherein the date is set for the election). Following all this, the county on April 5, 1977 adopted Ordinance 77-31 (R-418 - 419). The purpose and thrust of this Ordinance 77-31 was to modify Ordinance 76-77.

In sum, all of these ordinances are described thusly: Ordinance 76-76 was an emergency ordinance to sweep five separate municipal functions exclusively into the county domain; Ordinance 76-77 was to ratify Ordinance 76-76 but changed the election date to April 5, 1977 without any valid public notice of such act; Ordinance 77-31 was to ratify Ordinance 76-77 and changed the election date to November 8, 1977.

After trial, the circuit judge found that Ordinance 77-31 was an unconstitutional attempt to consolidate governmental functions and also that the ordinance was unconstitutionally vague". . . thereby violate fundamental requirements of law." (R-801-802) This appeal ensued.

POINTS ON APPEAL

Appellants have stated four questions (points) for this Court's consideration. Appellees take exception to question I as presented by appellants. Question I as stated by appellants reads:

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

We submit that this question has no relevancy to this case, was not considered by the circuit court below and is really alien to the issues in this cause. The remaining three questions (points) posed by appellants come close to stating the issues presented to this court for resolution and accordingly will be adopted by appellees.

Notwithstanding the cities' rejection of question I of appellants, we will frame a response to appellants' argument. As the brief progresses, the court will surely concur in appellees' position that dual taxation was not and is not the issue in this matter.

ARGUMENT

Question I as stated by Appellants reads as follows:

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

As stated earlier in this brief, the cities categorically reject question I, but respond in support of our conclusion that the issue was not before the lower court and accordingly can not be before this court. The final judgment (R-810-802) did enjoin the holding of the election as called for in Ordinance 77-31, (R-418-419) the purpose of which was to consolidate or transfer powers affecting the cities into the exclusive domain of the county. This Ordinance 77-31 was found by the Court below to be in violation of Article VIII, Section 3 of the Constitution, which reads as follows:

> "The government of a county and the government of one or more municipalities located therein may be consolidated into a single goverment 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."
>
> Article VIII, Section 3, Constitution.

This section of the Constitution says nothing and has nothing to do with dual taxation. The injection of this issue at the appellate level finds no support in the law. A fortiori, the law is to the contrary. See cases collected in 2 Fla. Jur. Appeals, Section 290, typically among which the following is illustrative of this basic point of law. Sarasota-Fruitville Drainage District v. Certain Lands Within Said District Which Drainage Taxes For The Year 1952 Have Not Been Paid, 80 So.2nd 335 (Fla. 1955) wherein Justice Drew said:

* * *

> " . . . It is a fundamental principle of appellate procedure that only actual controversies are reviewed by direct appeal. 4 C.J.S., Appeal and Error, §1354(a), page 1945. We have repeatedly held that this Court was not authorized to render advisory opinions except in instances required or authorized by the Constitution. . ."

* * *

80 So.2nd 335, 336.

Accepting the above principle of law as being as viable today as when written by Justice Drew back in February of 1955 (and we submit it is), let us examine appellants' question 1 above in light of the record on appeal in the case sub judice. The cities' supplemental amended complaint (R-156 - 174) contains no reference to dual taxation. The target of the cities' complaint was to enjoin a referendum election on an ordinance calling for complete consolidation or transfer of powers from the incorporated areas into the exclusive domain of the county of the following

governmental functions, namely (i) water and pollution control services and functions, (ii) parks and recreation services and functions, (iii) road and bridge services and functions; (iv) planning and zoning services and functions, and (v) police services and functions. The county responded to the complaint of the cities by filing a counterclaim (R-85 - 136) seeking a declaratory judgment on issues presented by the counterclaim. The counterclaim question, as stated by the county (R-88 - 89) and presented to the circuit judge for resolution contains no issue of dual taxation. Encapsulated, the questions as stated by the county, sought a resolution of the same question raised by the cities' complaint, namely, could the attempted consolidation or transfer of power from the cities to the county in those specified areas ((i) through (v) above) be accomplished by Ordinance 76-76 as proposed by the county. As can be seen, the question of "dual taxation" was not an issue before the lower court and accordingly cannot now be injected in this controversy at the appellate level. It is true that Ordinance 76-76 (subsequently traced in Ordinance 77-31) was adopted by the county as a <u>reaction</u> to the county losing a dual taxation law suit brought by these same city plaintiffs. That law suit is on appeal to the Second District Court of Appeal and was argued before that court on June 22, 1977. No opinion has been rendered as of this date. The dual taxation controversy only furnished the <u>motive</u> for adoption of the various ordinances involved in the case sub

judice. Beyond motive, there is no connection between this case involving consolidation and the case now lodged in the Second District Court of Appeal among the same parties hereto, as motive will not be the subject of judicial inquiry. Housing Authority of the City of Melbourne v. Richardson, 196 So.2nd 489 (Fla. 4th DCA 1967).

In sum, appellants' question I should not be considered by this Court in this case.

QUESTION II

Appellants' question II is:

THE PROPOSED CHARTER AMENDMENTS DO NOT INVOLVE A "CONSOLIDATION" AS THAT TERM IS USED IN ARTICLE VIII, SECTION 3.

This question is properly before this Court for resolution since the lower court specifically ruled that the proposed charter amendment did constitute " . . . a plan to consolidate the government of a county, with that of several municipalities. . ." (R-801 - 802) We do not dispute appellants' generalizations regarding the purposes of the Home Rule movement. However, appellants' application of those principles to Ordinance 77-31 is predicated on faulty reasoning. Appellant says " . . . there is no consolidation" (AB 19). To test the validity of this contention, we must examine the affirmative results of the referendum election. (We leave for briefing hereinafter the unique question posed by the bi-county boundaries of Longboat.)

<u>If Ordinance 77-31 was approved, what would happen</u>? We must start this argument with the observation that the ordinance is so vague that some of the following is conjecture but is the most likely result. (The Court should remember here that the circuit judge did in fact rule that the ordinance was so vague as to defy application.) Pollution control (including water and sewer), parks, recreation, roads and bridges, planning, zoning and police would no longer be a function of the cities. All these functions

would be in the exclusive domain of the county. These functions are those most basic for every day living, and those which have historically been furnished by the cities. (R-269) The cities would remain mere shells, impotent to render most services in performance of their historical role in the governmental scheme. The only remaining functions for each city would be to hold elections for its commission form of government and to preside over a "fire district" by setting the firemen's work hours, compensation and pension benefits. In short, the cities would cease to effectively function and should ultimately "pass away".

The county argues that their Ordinance 77-31 is not a consolidation as that term is used in Article VIII, Section 3 of the constitution, namely de jure consolidation. We could not agree more readily with that conclusion. We submit it is a ploy -- an attempt to consolidate by averting the mandate of Article VIII, Section 3, which requires a special law and approval by the affected cities as provided in the plan. Neither of these has been obtained by the county. They have ignored the clear language of the Article VIII, Section 3 and now argue that Ordinance 77-31 is the special law required in that constitutional section. This is misplaced reliance. A special law, as stated in Article VIII, Section 3 means an act of Florida Legislature, not an ordinance of a charter county. See Levinson, Florida Constitutional Law, 28 Univ. of Miami L.R. 551, 591 (1974). Delano v. Dade County, 287 So.2nd 288 (Fla. 1973).

The Cities believe that, even though a "de facto consolidation" will be the net result of the proposed Charter Amendments, Article VIII, Section 4 of the Constitution dealing with transfer of powers more aptly fits the efforts of the County Commission. This section states:

> "By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor, and approval by vote of the electors of the transferee, or as otherwise provided by law."
>
> Article VIII, Section 4, Constitution.

Appellants argue that County ordinances proposing "consolidation of powers" are sufficient in counties chartered under Article VIII, Section 1(g), Florida Constitution (1968). This is the pivotal point of this case. Cities contend that any general authority granted to chartered counties under Article VIII, Section 1(g), Florida Constitution (1968), is limited by requirements for action by the Legislature under Article VIII, Sections 3 and 4, Florida Constitution (1968).

The use of the word "law" in these and other parts of the Constitution means statutes adopted by both houses of the Legislature. Advisory Opinion to Governor, 156 Fla. 48; 22 So.2nd 398 (Fla. 1945). This proposition is demonstrated by the inclusion in the Constitution of the requirement that " . . .The enacting clause of every law shall read: 'Be it enacted by the legislature of the

State of Florida'" (emphasis supplied), Article III, Section 6, Florida Constitution (1968). The commentaries in Volumes 25A, 26 and 26A of Fla. Stat. Ann. (1970) universally refer to the use of the words "by law," "by general law," "as required by law," "special law," etc. as requiring acts of the Legislature. The commentary for Article VII, Section 9(a), Florida Constitution (1968), states in part:

> " . . . The language, mandatory in tone, does contemplate a legislative act for they 'shall be authorized by law' to levy ad valorum taxes."
>
> Commentary, 26A Fla. Stat. Ann. 143 (1970)

Thus, the attempt by County to propose a de facto consolidation by transfer of powers as proposed in the Charter Amendments is not in the manner required by Article VIII, Sections 3 or 4, Florida Constitution. Only the Legislature can propose such reorganization of local government without agreement by the Cities. Section 4 also requires separate referendum votes in each municipality as well as in the unincorporated parts of the County.

The Article VIII, Section 4 language, " . . . as otherwise provided by law . . " does not apply to a Sarasota County ordinance proposing a transfer of powers. This also requires legislative action. The Legislature has already enacted methods for transfer of power. Compare Chapter 163, Florida Statutes, which deals with intergovernmental programs and the methods of implementing them. These methods are for transferring powers from one government to another without utilizing the resolution and referendum procedure outlined by

Section 4. They fit that part of Section 4 that requires that transfers of power be proposed " . . . as otherwise provided by law."

Therefore, Cities have shown that the ordinances of Sarasota County in this case are unconstitutional; an attempt to invade the legislative prerogative by modifying the cities in this County without their agreement.

Do Sections 3 and 4 of Article VIII, Florida Constitution concern the same material as Section 1(g), Florida Constitution, and therefore prevail since they are more specific in nature? Bryan v. Landis, 142 So. 650 (Fla. 1932) determined the city manager's right to remove a police chief without a hearing and notice. The city charter gave the city manager the general power of removal; however, a different section of the city charter gave certain designated reasons under which the city manager could suspend the police chief. The Supreme Court held that the more specific provision should prevail.

At page 653, in construing the general provisions to suspend versus specific provisions concerning how and for what reasons to suspend, the court said:

> " . . .every part of an act should be given effect, and, when the same statute contains general and specific provisions on the same subject matter as in the case here, each must be given its legitimate field and scope of operation."
>
> Bryan v. Landis, 142 So. 653

The general provision with respect to charter government, Section 1(g) of Article VIII, Florida Constitution, is a broad

general power; however, Section 3, Consolidation, and Section 4, Transfer of Power, under the same Article, are narrow and specific as to how the consolidation or the transfer of powers should take place. Thus under Bryan v. Landis, supra, more specific provisions prevail if they concern the same matter and are conflicting in nature.

Appellants cite Chapter 69-54, Laws of Florida, in support of their argument. This is erroneous because Chapter 69-54 was not a consolidation of the tax services under Article VIII, Section 3 of the Constitution. That Act (69-54) was a "transfer of power" under Article VIII, Section 4 of the Constitution. The combining of these tax services by the Legislature was constitutionally correct under Section 4 which provides for transfer of powers . . . "by law . . ." and " . . . as otherwise provided by law." We, therefore, agree with appellants that Chapter 69-54 was not a consolidation under Article VIII, Section 3 of the Constitution. We disagree with appellants' misplaced reliance on this act as being depositive of this point in its favor. It is the Cities' position that purely administrative municipal functions (viz. assessing and collecting taxes, as distinguished from setting the millage and adopting a budget) still took an act of the Legislature to accomplish. One must conclude that the taking over of truly governmental functions needs more than a local ordinance to accomplish such a sweeping change in the municipal governmental structure.

The counties of this State do not possess any indicia of

sovereignty; they are creatures of the Legislature, created under Article VIII, Section 1 of the State Constitution, F.S.A., and accordingly are subject to legislative prerogatives in the conduct of their affairs. Weaver v. Heidtman, 245 So.2nd 295 (Fla. 1st DCA 1971). The cities are created, modified and can be abolished by the legislature. City of Long Beach v. Collins, 261 So. 2nd 498, (Fla. 1972). Thus when the legislature wanted to enact Chapter 69-54, Article VIII, Sections 1 and 4 contained the authority for such action. It required no action by either the counties or the cities.

Without consent of appellants and appellees, or action of the Legislature, no transfer of power is valid. In this instance we had neither. Therefore the County's action was invalid.

QUESTION III

Appellant's question is as follows:

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.

Article VIII, Section 3 says any consolidation " . . . plan may be proposed only by special law . . .". Here the term SPECIAL LAW is used. Our earlier argument under Question II supports the conclusion that special law means law of the Legislature. In examining other parts of Article VIII, we find no reference to the term special law in the constitutional grant of powers to charter counties, only the term ordinance is used. Compare Article VIII, Section 1(g) wherein it states "The . . . county operating under a charter may enact ordinances . . ."; Article VIII, Section 1(j) "Persons violating county ordinances shall be prosecuted . . ."

Now we will compare these with Article VIII wherein references are made to the term special law. Article VIII, Section 1(c) "Pursuant to general or special law a county government may be established by charter; "Article VIII, Section 1(d) "there shall be elected by the electorate . . .; except when provided by county charter or special law . . ., any county officials may be chosen in another manner . . . When not otherwise provided by county charter or special law . . . the clerk of the circuit court shall be ex officio clerk of the board of county commissioners . .";

Article VIII, Section 1(g) "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law . . ."

A careful reading of these sections brings to mind the sharp distinction between special law and county ordinance.

A further interesting comparison is seen in Article VIII, Section 4 of the Constitution. This Section 4 has to do with transfer of powers among the various municipalities and special districts within a county. The language gives strong support to the unique meaning of special law in Section 3 of Article VIII because here the transfer of powers says "by law", (meaning the Legislature) or " . . . by resolution of the governing bodies of each of the governments affected . . .", certain governmental functions may be combined. If the appellants' argument was accepted (that a charter county ordinance is a special law within Article VIII, Section 3) then there would be no need for Section 4 to be in the Constitution because here it requires the affirmance of both bodies (county/municipal) to perfect the transfer of powers to the one to the exclusion of the other. The phrase ". . . or . . . as otherwise provided by law." in Section 4 has been dealt with earlier in this brief and need not be repeated here. One section should not be construed to render another inoperative. Burnsed v. Seaboard Coastline Railroad Company, 290 So.2nd 13,(Fla. 1974).

The use of the word "law" in these and other parts of the Constitution means statutes adopted by both houses of the Legislature as already briefed above. The contrary contention of appellants is without merit.

Thus the attempt by the County to propose a de facto consolidation by transfer of powers as proposed in the Ordinances is not in the manner required by Article VIII, Sections 3 and 4, Florida Constitution (1968). Only the Legislature can propose such reorganization of local government. Counties' comparison of Dade County's Charter with Sarasota County's Charter is not justified since the latter specifically retains the separation of governmental powers. Article VIII, Section 4 language, " . . .as otherwise provided by law . . ." could not therefore apply to a Sarasota County ordinance preempting a municipal ordinance on the same subject.

QUESTION IV

Appellants' question IV reads as follows:

> THE TRIAL COURT ERRED IN ENJOINING THE ELECTION BASED UPON ITS FINDING THAT THE PROPOSED CHARTER AMENDMENTS WERE UNCONSTITUTIONALLY VAGUE.

If legislation is vague or indefinite, it is unconstitutional and inoperative. This general principle is set out in 30 Florida Jurisprudence, Statutes, Section 144, where it is said,

> "Where a statute is so incomplete or so irreconcilably conflicting, or so vague or indefinite that it cannot be executed, and the courts cannot, by the application of accepted rules of construction, determine what the legislature intended with any reasonable degree of certainty, it may be declared inoperative and void for uncertainty."
>
> 30 Fla. Jur, Statutes, §144

Authorities cited in the Section included Ordinances as well as acts of the Legislature. In Vassar v. Arnold, 154 Fla. 757 18 So.2nd 906(1944), the Florida Supreme Court held that an attempted amendment to a city charter was void and unconstitutional because the sections of the act when read in connection with other provisions of the City Charter were ambiguous and conflicting. In Little v. Rio Hill Fisheries, 322 So.2nd 557 (Fla. 1975), the trial judge declared that Section 370.151(2) of the Florida Statutes was so vague and indefinite as to be unenforceable and enjoined the Department of Natural Resources from enforcing the Statute. The Supreme Court affirmed this action.

In the case of Sarasota County v. Barg, 302 So.2nd 737 (Fla. 1974), Judge Dean found that Chapter 71-904,a Special Act creating the Manasota Key Conservation District, was unconstitutional. The Florida Supreme Court, recognizing the principle that legislative enactments are presumed valid and that every effort should be made to interpret statutes where possible so as to hold them constitutional, reversed in part. However, they did affirm that certain sections of the Act were unconstitutional, stating,

* * *

> ". . . However, since the Legislature has failed to specify what these more restrictive standards are, and has failed to provide any guidelines to aid the Board of Appeals in establishing such standards, the ambiguous provisions of Sections 6 and 7 of the Act do not comport with constitutional requirements. We hold therefore, that Section 7 of the Act and the second sentence of Section 6 are unconstitutional and cannot be reasonably interpreted so as to avoid that result . . ."

* * *

302 So.2nd 743

All of the proposals in Ordinance 77-31 are extremely general and vague. A typical one states, "Notwithstanding any other provision of this Charter, all municipal police services and functions and all County Sheriff's services and functions shall be consolidated and provided by the County government." (R-229) There is no indication how these services are to be paid for or by whom. There is no indication of what is to be done with the various existing municipal police departments, including their buildings, vehicles, equipment, personnel, pension plans, bonded indebtedness, existing contracts, etc. The other sections of the ordinance in question are equally ambiguous and vague. There are no guidelines or criteria

included in the language which would let the voters know how the County Commission is supposed to implement this unilateral consolidation or transfer of powers. Accordingly, even if this attempted power grab by the County were otherwise legal, the ordinance in question is fatally defective and unconstitutional because of its vague and ambiguous language.

In Town of Davie v. Hartline, 199 So. 2nd 280 (Fla. 1967), the court held:

> "Action against town seeking a declaratory decree that plaintiffs' properties were illegally annexed. The Circuit Court for Broward County, James F. Minnet, J., gave judgment for plaintiffs and appeal was taken. The Supreme Court, Thomas, J., held that curative statute, passed after portion of another statute dealing with court review of annexations of contiguous land inhabited by fewer than 10 registered electors was declared unconstitutional, was itself properly held to be unconstitutional because of, inter alia, its excessive generality, since by it the Legislature undertook to validate 'in all respects whatsoever' all annexations to any municipality made prior to July 1, 1964, and that statute which was applicable only to municipalities and counties having a population of not less than 64,000 and not more than 68,000 was properly declared unconstitutional as a special act in the guise of a general one." (emphasis supplied)
>
> 199 So. 2nd 280.

The ordinance in question would clearly come within the purview of Town of Davie v. Hartline, supra. The ordinance is excessively general in that it makes no provision for assets and personnel of the municipalities with respect to the five areas of services involved in the ordinance, nor is any provision whatever made with respect to the bonded indebtedness of the municipalities.

An example of the vagueness or ambiguity in the proposed amendment of Article I, Section 1.8 of the County Charter, can be seen by comparing the title and the body of the proposed Charter amendment concerning public safety services. The title refers to "public safety services and functions," while the body of the proposed amendment states that "all county and municipal police services and functions" are to be consolidated and provided by the County government of Sarasota County. In addition, the referendum question refers to "all county and municipal police services and functions." "Public safety services are normally considered to include fire and ambulance as well as traditional police functions and "police services" are not ordinarily thought of as including fire and ambulance service.

The appellants failed to address their brief to those parts of the Sarasota County Charter which conflict with the proposed Ordinance 77-31. Those parts of the Charter are Article I, Section 1.3, Article II, Section 2.5 and Article IV, Section 4.1.

Article I, Section 1.3 of the Sarasota County Charter (Charter) provides:

> The term 'this County Government' means the government of the County of Sarasota and all the special districts, except as limited by this Charter, located solely within Sarasota County but it does not include and this Charter does not affect any courts or the functions of the Clerk of the Circuit Court performed for any courts; public education; <u>any municipality</u>, created or enlarged before or after the adoption of this Charter; or <u>any governmental body which has jurisdiction extending beyond the boundaries of Sarasota County</u> and the relationship of this County Government to them shall be the same as it would have been if this Charter had not been adopted." (emphasis supplied)
>
> Article I, Charter, §1.3.

In other words, this provision provides that the County government does not affect any municipality or any governmental body which has jurisdiction extended beyond the borders of Sarasota County, such as the Town of Longboat Key.

Section 2.5 of Article II of the Sarasota County Charter provides:

> "Governmental districts in existence on the date this Charter becomes effective, shall continue to be governed as they were when this Charter became effective unless altered pursuant to Section 1.2, except that such districts not extending countywide shall not have the power of consent in Section 1.2."
>
> Sarasota County Charter, Article II, Section 2.5.

Should the proposed amendments pass, they would be inconsistent with this provision of the County Charter which provides that municipalities shall be governed as they were when the Charter became effective, because of the provision in Section 1.2 provides that the County has all powers "except as limited by this Charter," (to-wit: in Section 1.3 and 4.1 of the County Charter.)

Lastly, Section 4.1 of the Sarasota County Charter provides that a municipal ordinance shall prevail within the limits of the municipality.

The proposed amendments would directly conflict with this provision in that the County ordinances for the election to consolidate or transfer power in the five areas specified, would purport to prevail over municipal ordinances. Adams v. Gunter, 238 So.2nd, 824 (Fla. 1970) held that the proposed amendment to the

Florida Constitution was defective and unauthorized where the proposed amendment would amend, modify, change or otherwise affect several other provisions of the Constitution. Therefore, the Court should conclude that as a prerequisite to an election in accordance with Section 4, Article VIII,that these three provisions of the Sarasota County Charter must also be amended in order to eliminate the conflict that would otherwise exist.

We now recall that the Town of Longboat Key does indeed lie within two counties, Manatee and Sarasota. This unique situation was left unresolved by the circuit judge below, but it does point up the vagueness of the Ordinance 77-31 and the haste in which the ordinance was seemingly passed by the county. No scholarly attention was given to the possible result to Town of Longboat Key in the event Ordinance 77-31 was enacted into law. No scholarly attention was given to the question of bonded indebtedness of the various cities, the rights and remedies available to the bondholders and the general credit of the various cities should Ordinance 77-31 become law. The strong language in Article VIII, Section 3 which states, inter alia, "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." How was Ordinance 77-31 to deal

with this complex subject? Worse yet, how were those affected residents going to know how to intelligently exercise their vote on the ordinance?

This vagueness aspect of the ordinance caused it to be condemned by the learned circuit judge and that judgment warrants affirmance by this Honorable Court.

CONCLUSION

The issues involved in this appeal are of vital concern to the Appellees inasmuch as they involve attempts by the Apellant to divest the municipalities of substantially all of their powers and functions held under the Constitution and the general laws of the Great State of Florida, it is respectfully submitted that the lower court was correct in permanently enjoining the Appellant below and the final judgment should therefore be affirmed.

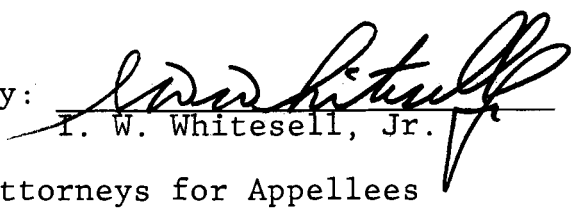
Respectfully submitted,

William C. Strode and
William M. Hereford
STRODE, HEREFORD & TAYLOR, P.A.
46 N. Washington Boulevard
Sarasota, Florida 33577
for City of Sarasota

Charles F. Wheeler
KORP & WHEELER, P.A.
609 South Tamiami Trail
P. O. Box 1744
Venice, Florida 33595
for City of Venice

ALLEN J. LEVIN
135 S. Tamiami Drive, N. W.
Port Charlotte, Florida 33952
for City of North Port

John R. Wood and
I. W. Whitesell, Jr.
WOOD, WHITESELL & KARP, P.A.
P. O. Box 15425
2187 Siesta Drive
Sarasota, Florida 33579
for Town of Longboat Key

By: 
I. W. Whitesell, Jr.

Attorneys for Appellees

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that copies hereof have been furnished NELSON, HESSE, CYRIL, WEBER & SPARROW, 2070 Ringling Boulevard, Sarasota, Florida 33577; STEEL, HECTOR & DAVIS, 1400 Southeast First National Bank Building, Miami, Florida 33131; RALPH A. MARSICANO, Esquire, General Counsel for Florida League of Cities, Inc., Central Bank Building, Post Office Box 4115, Tampa, Florida 33677; and BURTON M. MICHAELS, Esquire, Staff Attorney for Florida League of Cities, Inc., 225 West Jefferson Street, Post Office Box 1757, Tallahassee, Florida 32302, by mail, this 5th day of October, 1977.

I. W. WHITESELL, JR.