IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,254

TOWN OF PALM BEACH, a municipal corporation; CITY OF WEST PALM BEACH, a municipal corporation; CITY OF BOCA RATON, a municipal corporation and THE VILLAGE OF NORTH PALM BEACH, a municipal corporation, Petitioners, vs. PALM BEACH COUNTY, JOE TOM BOYNTON and ROBERT D. APELGREN, Respondents.	On Petition from the District Court of Appeal Fourth District No. 81-1553

PETITIONERS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES (Cont'd)

PETITIONERS' REPLY BRIEF

The County's answer brief* emphasizes the uniqueness of the constitutional provision dealing with double taxation (RAB at 7). Yet, inexplicably, the County would have this Court, in construing this novel constitutional provision, ignore the clear intent of the framers of the 1968 Constitution, and the people who approved it:

> "An examination of the minutes of both bodies leads us to conclude that the purpose . . . [of] this provision . . . is to prevent double taxation of municipally-situated property for a single benefit." City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So.2d 817, 822 (Fla.1970)

and approve the District Court's departure from the flexible balancing test enunciated in Briley, Wild in favor of a mechanical test which "compels" the finding of no double taxation where there is a showing of any "direct benefit," no matter how minute, coupled with any "indirect" or "unquantifiable" benefit. (See PIB at 31-32.) While such a test has as its virtues ease of application and predictability of result, it misinterprets the "real and substantial benefit" test established in Briley, Wild and entirely defeats the purpose of this constitutional provision, which was

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* While designated as a "Reply Brief," respondent's initial brief on the merits will be referred to herein as the "answer brief" or "RAB __," and Petitioners' Initial Brief as "PIB __." The opinion of the District Court is now reported: Palm Beach County v. Town of Palm Beach, 426 So.2d 1063 (Fla.4th DCA 1983).

> "designed to assure a fair tax structure for the taxpayers residing in each local government's jurisdiction and to prevent one local government from being unjustly benefited at the expense of another." City of Sarasota v. Mikos, 374 So.2d 458, 461 (Fla.1979).

In an attempt to uphold the District Court's opinion, which reweighs the evidence and substitutes that court's findings for those of the trial court, the County flatly states that "[t]he evidence and testimony before the trial court was not disputed or contradicted by the parties at trial" (RAB at 1). Some examples of fact issues resolved by the trial judge make clear that the evidence was in dispute, and that the trial judge based his findings on the resolution of those disputes:

1) The Sheriff's "backup" or "standby" capacity: The Chiefs of Police of two of the four cities testified that they have never used Sheriff's deputies in a backup capacity and that if they required aid that they would call upon other municipal departments for assistance (T 283-84, 314). The Sheriff's Chief Deputy testified, on the other hand, that the standby capacity was a benefit to the municipalities (T 443-45). Upon the basis of this conflicting testimony, the trial court concluded: "There is no evidence that this standby capacity was used, or has ever been called upon. Its benefit is ephemeral." (App. 18.) Upon the basis of the same testimony, the District Court, citing dicta from its opinion in Alsdorf II, concluded that such services did provide a real and substantial benefit:

> "Another factor that arises in the present case and one that we considered in Alsdorf . . . . [is the] more remote but potential benefits in the form of the backup capability of the sheriff's department available in time of emergency or particular need . . . ." (426 So.2d at 1069.)

2) The deterrent effect of routine police patrolling: Former Boston Police Commissioner di Grazia testified that, based on his experience and the studies he had performed, the random, routine patrolling by police officers has no deterrent effect on crime (T 241-60). Chief Deputy McCutcheon of the Sheriff's Department, however, testified that in his opinion visible patrols did have a deterrent effect on crime (T 454), although he admitted he had not permitted off-duty officers to utilize their cars for such purpose while he was police chief of Boca Raton because he had been unable to establish that the cost was justified by the benefit rendered (T 454-55, 461-62). The trial court acknowledged the conflict in testimony (App. 18), and concluded that the evidence failed to show that routine patrolling was beneficial either generally or with respect to these municipalities, since no deputy was shown to reside in these four cities (App. 18). Nevertheless, on the basis of the same evidence, the District Court concluded that "the visibility of marked sheriff's patrol vehicles in and around the municipalities" resulted in a "crime deterrent factor" and was a "potential benefit" which the trial court had neglected to consider (426 So.2d at 1069).

3) Whether the response summaries were reliable: There can be no question that the testimony as to this critical issue was "fiercely conflicting" and presented matters properly resolved by the trier of fact, who had the opportunity "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses . . ." Shaw v. Shaw, 334 So.2d 13, 16 (Fla.1976).

Kelton's review of the Sheriff's Departmental Assist Summary reflected that for 1979-80 there were 155 assists recorded by deputies to these four cities and their residents (see PX 16 and PIB at 10). Kelton later reviewed a computer run for that year of all responses by the Sheriff's Department according to grid codes. Each report showing an incident responded to within one of these four municipalities was pulled by hand and individually reviewed. There were a total of 240 responses by the road patrol and detective division within these four municipalities (see PIB at 11). Taken together, the 240 responses reflected by grid code analysis (which were all within the municipal boundaries), and the 155 assists recorded by deputies for 1979-80 (which are within and without municipal boundaries), represented a total of 395 responses by the Sheriff's Department to these municipalities and their residents (assuming no duplication), of a total of 88,817 responses by the Sheriff's Department for the year (PIB at 10). Thus, less than one-half of one percent [0.44%] of the responses by the road patrol and detective division were to these four

cities and their residents.*

As further indication of the fact that the evidence was "fiercely conflicting," the County offered rebuttal evidence that the road patrol benefits city residents by, for instance, recovering property stolen from a city resident and taken by the thief to the unincorporated area; or by locating a runaway juvenile whose parents are city residents (RAB 22, n.14). Indeed, the County spent 25 pages of the trial transcript (T 484-509) having Director O'Brien testify concerning some 31 reports allegedly representing such activity (see T 484-85). These reports were alleged to be compelling evidence of benefit to municipal residents, and the County referred to them as such in its brief (RAB 26). What the County does not refer to is its concession, during Director O'Brien's cross-examination, that each and every one of those 31 reports was included in Mr. Kelton's analysis and counted by him as a benefit to city residents or property (T 516, 518). As a matter of fact, during the entire course of the trial, the County offered not an iota of hard evidence -- not so much as one report -- which demonstrated a benefit to city residents and property not in-included in Kelton's analysis. If the County, during the more

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* Respondent erroneously asserts that petitioners' "major complaint [is] . . . that the Sheriff's patrol division does not perform routine patrol within the municipalities" (RAB at 20 n.11). Petitioners' "major complaint" is that their residents are being taxed for patrol and detective services rendered exclusively for the benefit of residents in the unincorporated areas (App. 1-2).

than two years it had between the filing of the initial complaint and the trial of this action, with unlimited access to the Sheriff's records and personnel, could come up with not one such report, surely the trier of fact is justified to conclude that Kelton's figures were an accurate reflection of the benefit provided by the Sheriff's office to city residents and property.

Contrary to respondent's contention (RAB at 22), Kelton's data does give consideration to benefits rendered in the first 3 of the 5 categories enumerated in the County's brief (RAB at 22-23). While Kelton's data does not attempt to quantify the benefits rendered by the last two categories (spillover effect of enforcement in the unincorporated area, and standby capacity), the trial judge heard extensive testimony on both in reaching his decision. While the County vigorously attacks the reliability of Kelton's findings, he testified at length as to the sampling technique he utilized (T 169-72), and was subjected to extensive voir dire (T 85-147) and cross-examination (T 183-221). The credibility of his analysis was, we submit, a matter for the trier of fact, who specifically commented on this issue in his final order (App. 15).

* * *

In an attempt to suggest our initial brief "in error," respondent has blatantly misstated the findings of the Fair Tax Council, asserting:

> "Petitioners' statement on page 6 [sic, p. 5] of their Initial Brief that the Final Report of the Fair Tax Council concluded that the law enforcement services provided by the Sheriff's road patrol were of no substantial benefit to municipal residents is in error. The Fair Tax Council concluded that 40% of the law enforcement services provided by the Sheriff's road patrol provided substantial benefit county-wide and 60% was of substantial benefit to the 'urban unincorporated area' only. (Plaintiffs' Ex. 30, pp 16-17)." (RAB at 2, 34.)

Contrary to the County's representation, the 60/40 split referred to was between the urban unincorporated area and the rural unincorporated area; the Council's conclusion was that the road patrol services were of no benefit to the municipalities. The facts show:

> 1) For calendar year 1979 the Sheriff's Department reported that of a total of 76,442 calls for service received, 75,000 calls were from the "unincorporated area" [in excess of 98%] and only 1,442 [less than 2%] were from all of the municipalities in Palm Beach County (PX 30 at 16, emphasis added).
>
> 2) Taking a "closer look at just the unincorporated area since it receives the bulk of the Sheriff's service," the Council sought to determine the "split between what could be termed the urban unincorporated area and the rural unincorporated area." (PX 30 at 16, emphasis added.)
>
> 3) The Council determined that 42 percent of the 75,000 calls received were from the rural unincorporated area and 58 percent from the urban unincorporated area (PX 30 at 16).
>
> 4) Upon this basis, the Council stated:
>
> "After examining all the issues before it, the Council concluded that only certain services provided by . . . the Sheriff (item 1 on page 9 [Road Patrol]) were of no substantial benefit to municipal residents . . . and thus should be funded by excusing the tax burden of municipal

residents . . . ." (PX 30 at 13, emphasis added.)

The County's brief chastises petitioners for stating "without qualification" that in 1977 Sheriff Wille estimated that 90% of his deputies' time was spent in the unincorporated area of the County and 10% in all of the 37 municipalities in Palm Beach County, and for "conveniently omit[ting]" that this was simply a "guesstimate" (RAB at 3-4). This dispute presents a classic instance of the fact finder's duty to evaluate and weigh the evidence. The following occurred at trial:

1) Offered as a witness for the County, Sheriff Wille was asked on cross-examination whether, at the request of the County Commissioners in the preparation of its 1978 budget, he had attempted to estimate the amount of time his deputies spent in the unincorporated area of Palm Beach County (T 408).

2) Faced with two memoranda over his signature addressed to the County Budget Officer (PX 37, 38), Sheriff Wille was forced to admit that in July 1977 he had estimated that 95% of the time of his road patrol's time was spent in the unincorporated area of the County (T 414), and that in August that figure was revised to 90% (T 409). He further admitted that the 10% which he estimated was spent in the municipalities included substantial time spent on behalf of the several municipalities within the County (not including the petitioners here), who have no police department and for which the Sheriff's office provides one hundred percent of the services (T 410).

3) Obviously embarrassed by this damaging admission to the County's case, the Sheriff attempted to minimize the findings:

> "That was the best estimate that I had at that time with very little knowledge of what went on in the Sheriff's Department." (T 409.)
>
> ". . . After seven months in office at that particular time, that was a very rough estimate, as I kept telling them at that time it was an estimate . . . ." (T 414.)

4) On redirect examination, he further attempted to qualify his findings and to minimize its importance:

> "Q [Mr. Nabors] What difficulties, if any, did you have in coming up with a percentage figure?
>
> "A [Sheriff Wille] Well, we could not come up with an exact, and that is why I continually refer to the fact that it is a best guesstimate and to today I still say it is a best guesstimate . . . ." (T 432.)

The trial judge was, of course, in a position to hear this and the other testimony relating to this fact issue, as well as to review the reports themselves, and to make a determination on the basis of demeanor, bearing and all of the other factors triers of fact use as a basis for resolving factual conflicts. The trial judge obviously gave credence to the the Sheriff's estimate, for he referred to it in his Final Order:

> "The Sheriff has made statements previously which indicated that 90% of the road patrol's time was spent in unincorporated areas and that 10% of the time was spent in all the municipalities of Palm Beach County. There was no breakdown as to the percentage he estimated as to the four plaintiff/municipalities." (App 17.)

The County would have this Court disregard this evidence and the findings of the trial judge because the Sheriff (at the County's urging) dismissed the report as a "guesstimate." It is precisely because the District Court has disregarded such findings of the trial court, which were supported by competent, substantial evidence, that a reversal of its opinion is required.

Respondent vigorously attacks the testimony of petitioner's expert Kelton upon the ground that his opinion testimony was based upon an erroneous concept of law (RAB 14, 20, 24, 31, 36, 37, 39, 44). It is somewhat difficult to reconcile the County's contention that Kelton's "credibility" was damaged by his alleged misunderstanding of the case (RAB at 37) with its earlier statement that this "is not a case in which . . . credibility was a factor . . ." (RAB at 19). Nevertheless, a close reading of the testimony makes it clear that respondent's contention is wholly without merit. Kelton testified that he had reviewed Article VIII of the Florida Constitution and Section 125.01, Florida Statutes (T 72-73), and was familiar with the term "real and substantial benefit," stating that

> "[b]asically it refers to the fact that a service in order to provide a benefit must be significant, must be a substantial benefit to fall under that definition. It should not be inconsequential, imaginary, it must be a real benefit, a substantial benefit, significant benefit." (T 73.)

Respondent cites isolated statements in Kelton's testimony to support its assertion that Kelton "did not have any understanding of the constitutional test at issue . . ." (RAB at 44). Those cites, however, are inaccurate and misleading. Respondent claims that Kelton "had never read the language from the landmark Briley, Wild case in which this Court developed the constitutional test" (RAB at 24), and that "Mr. Kelton . . . was not familiar with the facts of the Briley, Wild case" (RAB

at 44). Kelton's testimony was, however, that "I am familiar with the Briley, Wild case." (T 91, emphasis added.) Although Kelton testified that "I am not familiar with all the facts of that case; no sir," (T 91, emphasis added), and that he had "never read that entire language" (T 211-12, emphasis added), his testimony demonstrated that he was very knowledgeable about the facts and issues involved in Briley, Wild (T 91-92, 105-06). Similarly, respondent states that Kelton "had not read the opinion of this Court [Burke v. Charlotte County, 286 So.2d 199 (Fla.1973)]" (RAB at 36). Although Kelton did state that he had not read a particular portion of the Burke decision (T 192-93), he nevertheless testified that he was familiar with the case "in general terms" (T 110). Again, by his testimony he demonstrated a thorough knowledge and understanding of the facts and decision in Burke (T 110). With respect to this Court's decision in Alsdorf II, the County represents that Kelton "did not include it in his '. . . calculation of services' to the cities in this cause" (RAB at 30-31). Kelton's testimony concerning Alsdorf II was limited to the subject of the Broward County Road Patrol. He testified that he was aware of the Alsdorf II decision, particularly the caveat that the decision was "based on the facts as they existed in Broward County and should not be applied to any other county situation which might be different" (T 122-23). Thus, Kelton testified that his conclusions regarding the Palm Beach County Road Patrol were based upon considerations of the similarities

and differences in the geography of Palm Beach and Broward counties (T 122-23).

Contrary to the false impression in respondent's brief, Kelton's testimony demonstrated both a familiarity with and an understanding of the constitutional and statutory provisions at issue and the prior decisions involving the dual tax question and their applications, if any, to the situation found to exist in Palm Beach County. Respondent has failed to demonstrate that the trial court abused its discretion in finding Kelton qualified to testify. Moreover, respondent's vigorous attack on Kelton's qualifications sidesteps the issue of whether it is appropriate for a trial judge in any double taxation case to consider expert testimony on the ultimate issue.* (See PIB, Point III.) Respondent's brief simply fails to meet this issue.

Respondent chooses to ignore the analysis made in our initial brief which demonstrates that the local roads at issue were classified by the Florida Department of Transportation, not by Kelton, and that wholly apart from his testimony, there was competent, unobjected to testimony of the former County Engineer to support the trial court's finding on this issue (see PIB 17-21, 37-38). Rather, respondent has again chosen to vigorously attack Kelton (RAB at 35-39), and to rely heavily

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* Unlike respondent's brief, the District Court's opinion appears to concede Kelton's "expertise" and "familiarity with legal concepts relating to his specific field of expertise . . . ." (426 So.2d at 1070.)

upon Burke. First, as previously shown, Kelton's understanding of the facts in Burke was not erroneous. Moreover, that holding has no application here. In Burke, this Court rejected a blanket challenge by a citizen to a county tax assessment for construction or repair of all roads in the unincorporated areas of the county. The plaintiff there even admitted to the receipt of some benefit from the roads under attack (286 So.2d at 200). In this case, it is undisputed that the arterial and connector roads identified by petitioners do benefit citizens of the incorporated areas and are not here challenged. Also in contrast to Burke, there was no evidence in the present case to show any actual or potential benefit to municipal residents from the County expenditures for the maintenance of local or subdivision streets in the unincorporated areas. The opinion in Burke is, therefore, not controlling.

Respondent attempts to discount the testimony of former County Engineer Frost, by suggesting he was unfamiliar with the terms "classified" and "nonclassified" road system (RAB at 37 n.30). To the contrary, Frost, who built many of these roads, clearly understood the terms and described their origin (T 268-70). He also described (in testimony omitted from respondent's appendix) the nature of the local roads under challenge and gave his opinion as to their value to residents of the Town of Palm Beach:

> "The local road system or nonclassified road system is . . . those roads which service

property. They are the lowest class of roadways in terms of average daily volume of traffic. They are the lowest road in terms of the quality of construction. They are the roads that actually are the final end service point for a piece of property. They are subdivision streets. They are shell rock roads out in the suburban area. They are city streets in the Town of Palm Beach. They are just, you know, they are the roads that provide access to a man's house for himself, access to his house for servicemen, personnel like TV repairmen, and that sort of thing. They are typically two-lane paved anywhere from 20 to 24 feet wide . . . a neighborhood road, they are not collectors and they are not arterials. They will not take you to Belle Glade, but they will take you to Southern Boulevard, perhaps to your house at the end of a dead end road." (T 269-70.)

"Q To your knowledge, are those local nonclassified roads which are in existence in the unincorporated areas of Palm Beach County of any benefit to the residents or property of the Town of Palm Beach?

"A In my opinion, they are not." (T 272.)

Finally, as to the issue of neighborhood parks (challenged only by the Town of Palm Beach and West Palm Beach), respondent contends that the "paucity of evidence . . . to support the finding of the trial court . . . is stunning" (RAB at 41). Respondent's attack again centers on Kelton (RAB at 41-42), and ignores that the parks were classified by the County Parks Director, using standards promulgated by the National Recreational and Park Association (PX 27 at 7). Respondent also neglects to point out, that the evidence showed that no county neighborhood park was located in either of the municipalities making the challenge or within walking distance thereof (PX 27 at 13-14), and that officials of both cities testified without

objection that the the parks were of no benefit to the residents of their cities, who pay for the maintenance of their own neighborhood parks (T 274, 306). What is "stunning" is the District Court's reversal on this point as to which there was (as acknowledged by Judge Downey in dissent, 426 So.2d at 1072), clearly "substantial competent evidence." The reversal as to this issue points out, perhaps more clearly than anything else, the District Court's total disregard for the trial court's function in evaluating and determining issues of fact.

Respondent laments that "[t]he result of the Final Order is that the residents or property within the four petitioner municipalities [which pay the total cost of their own full-service police departments] pay none of the costs of the road patrol and detective divisions of the Sheriff" (RAB at 34). That is, we submit, precisely why Article VIII, § 1(h), was added to the Florida Constitution:

> "[T]he purpose of . . . this provision . . . is to prevent double taxation of municipally-situated property for a single benefit. . . . [T]he people in adopting it, intended to prevent future taxation by counties of city-located property for services from which the owners of said property received no real or substantial benefit" (Briley, Wild, 239 So.2d at 822)

and why findings of the trial court should be reinstated.

ANSWER TO CROSS-APPEAL

(Respondent's Point IV)

This Court in Manatee County v. Town of Longboat Key, 365 So.2d 143, 147 (Fla.1978), held that while money judgments may not be entered against counties for double tax violations for past tax years, the court may order the "evil addressed by the people in their constitution" remedied for future tax years. "Where the Legislature has created such a clear remedy for a specifically identified evil, a court of equity will enforce that remedy." Pursuant to that opinion, the final judgment appealed from directed Palm Beach County "to develop or adopt within thirty (30) days from the date of this Order an appropriate mechanism to alleviate, correct, and make right those unconstitutional acts described herein for the ensuing fiscal years [commencing with fiscal year 1981-82 on October 1, 1981]," by electing one of the three methods set out in Section 125.01(6), Fla.Stat. (1981), to finance the cost of those identified services which provided no real or substantial benefit to the four cities (App. 22).

When it became apparent that the County intended to rely on the automatic stay provision of Rule 9.310(b)(2), Fla.R. App.P., and not comply with the mandatory provisions of the final judgment, the trial court ordered the County to set aside sufficient funds so that equity would not be frustrated. All that the escrow fund does is to ensure that one of the three

methods enumerated in Section 125.01(6) -- the rebate method -- will be available to the cities for the 1981-82 budget year in the event the judgment below is ultimately upheld. This is consistent with the most important principle of equity jurisprudence: that equity will not suffer a wrong to be without a remedy. First State Bank of Clermont v. Fitch, 105 Fla.435, 141 So.299 (Fla.1932); Connell v. Mittendorf, 147 So.2d 169 (Fla.2d DCA 1962). The trial judge recognized that the status quo could only be preserved if the tax monies collected from the residents of these four municipalities to pay for the services found to be of no benefit to them were set aside during the pendency of the appeal. In the event the County ultimately prevails, it will suffer no "substantial prejudice," for it will receive the tax monies in escrow, together with interest (R 1169). On the other hand, in the event the final judgment is reinstated, municipal residents would be reimbursed the taxes paid by them to fund these services during the pendance of the appeal [Section 166.215, Fla.Stat. (1981)].

In City of Lauderdale Lakes v. Corn, 415 So.2d 1270 (Fla.1982), the developer of a proposed condominium project attacked a municipal zoning ordinance which blocked the construction of his project. The Circuit Court issued a final judgment declaring the ordinance invalid, and the City appealed. The developer sought an order requiring the City, as a condition of stay pending appeal, to post a bond to secure the

developer against "delay damages." The District Court affirmed the order requiring the City to post the bond and certified the following as a question of great public interest:

> "May a city be required to post a bond for damages for delay in order to secure a stay of a final judgment that requires the public body to permit the construction of a development project?" City of Lauderdale Lakes v. Corn, 371 So.2d 1111, 1112 (Fla.4th DCA 1979).

This Court answered that question in the negative, holding that the City's action in zoning the plaintiff land developer's property in a particular way was in the "performance of a legislative 'planning-level' function" under Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla.1979),* and reasoned that because "damages for delay" would not be recoverable in tort against the City, conditioning a stay upon the posting of a bond for such damages would violate the holding in Commercial Carrier, and be contrary to public policy, stating: "Requiring a bond in this situation would clearly chill the right of a governmental body to appeal an adverse trial court decision declaring invalid a legislative act" (415 So.2d at 1272).

Because the reserve in the instant case does not constitute "damages for delay," the "operation-planning" distinction

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* Construing Section 768.28, Fla.Stat (1981), this Court in Commercial Carrier held that the State had waived its immunity for certain "operational" activities, but had retained immunity for "broad policy or planning decisions" (371 So.2d at 1022).

for tort immunity adopted in Commercial Carrier and applied in Lauderdale Lakes never comes into play and, therefore, those decisions have no application to the reserve in this case.

Quite clearly, this Court was concerned that a governmental body not be required to put additional tax dollars at risk as a condition of taking an appeal. "We can conceive no justification for this Court to require the government to pay for judicial review of legislative actions" (415 So.2d at 1272). Permitting damages for delay caused by an appeal would do precisely that: If the City of Lauderdale Lakes simply accepted the trial court judgment, the only result would be the construction of the condominium project; if, however, the City took an appeal and posted the bond required for the stay and the judgment was affirmed, the result would be that the project would be built and the City would have to pay the developer $1.14 million in damages. This was a risk which the Supreme Court felt governmental bodies should not have to take. There is no similar risk in the instant case.

The order here, unlike the one under review in Lauderdale Lakes, does not subject the governmental body to delay damages; does not impose a liability from which the County would have otherwise been immune; and in no way "chills" the appellant's right to seek review on appeal. The only effect of the escrow fund is to ensure that the relief ordered by the trial court -- the application of the constitutional prohibition against dual

taxation to the Palm Beach County 1981-82 budget -- will be available to petitioners if the final judgment is reinstated. The escrow fund does not add any additional penalty by way of damages against the County. By taking the appeal, the County does not put one additional dollar of tax money at risk. The order setting conditions here simply ensures that a governmental body cannot with impunity avoid the effect of an existing final judgment by the mere filing of a notice of appeal. As found by the trial judge, the effect of denying a reserve would be "to forever forestall the remedial effect of these constitutional violations" (R 1145) for each fiscal year during which the case is on appeal. Clearly, this is contrary to the public policy embodied in Article VIII, § 1(h), of the Florida Constitution.

Respectfully submitted,

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