IN THE SUPREME COURT OF FLORIDA

ESCAMBIA COUNTY, FLORIDA,

Petitioner,

v. CASE NO. 65,347

CITY OF PENSACOLA, a municipal corporation,

Respondent.
_____/

SUBSTITUTE INITIAL BRIEF OF PETITIONER ESCAMBIA COUNTY

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ESCAMBIA COUNTY

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EXPLANATION OF ABBREVIATIONS AND SYMBOLS

Petitioner Escambia County shall be referred to as Escambia County and the County.

Respondent City of Pensacola shall be referred to as City of Pensacola and the City.

The following abbreviations shall be used to reference the Record on Appeal and the Appendix of Petitioner:

1. "App I" shall refer to Appendix I to the Initial Brief of Petitioner Escambia County: Selected Pleadings, Evidence and Cases.
2. "App II" shall refer to Appendix II to the Initial Brief of Petitioner Escambia County: Excerpts from Trial Transcript.
3. "R" shall refer to the Record on Appeal.
4. "Ex" shall refer to Exhibits in Evidence.
5. "p" or "pp" shall refer to the page numbers of either the Appendices to the Initial Brief of Petitioner or to the Record on Appeal.
6. "T" shall refer to Transcript of Testimony. Reference "T 450/12-20" shall refer to Page 450, Line 12 through Line 20.

POINTS ON APPEAL

POINT I

WHETHER THE "REAL AND SUBSTANTIAL BENEFITS TEST ESTABLISHED BY CITY OF ST. PETERSBURG V. BRILEY, WILD & ASSOCIATES, INC., 239 So.2d 817 (FLA. 1970), FLORIDA CONSTITUTION AND SECTION 125.01(7), FLORIDA STATUTES, WAS INCORRECTLY INTERPRETED AND APPLIED BY THE DISTRICT COURT AND THE TRIAL COURT IN THE CASE.

POINT II

WHETHER THERE WAS SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THE FINDING OF FACT BY THE TRIAL COURT THAT THE SERVICES PROVIDED BY THE ESCAMBIA COUNTY SHERIFF AND IDENTIFIED AS THE PATROL DIVISION WERE RENDERED IN VIOLATION OF ARTICLE VIII, SECTION 1(h), FLORIDA CONSTITUTION, AND SECTION 125.01(7), FLORIDA STATUTES, AND WHETHER THE TRIAL COURT ERRED IN THE APPLICATION OF LAW TO THE FINDINGS OF FACT AS TO SUCH IDENTIFIED SERVICES.

POINT III

WHETHER THERE WAS SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THE FINDING OF FACT BY THE TRIAL COURT THAT THE SERVICES PROVIDED BY ESCAMBIA COUNTY AND IDENTIFIED AS ALL SERVICES FOR THE CONSTRUCTION AND MAINTENANCE OF ROADS AND BRIDGES CLASSIFIED AS LOCAL ROADS BY THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION WERE RENDERED IN VIOLATION OF ARTICLE VIII, SECTION 1(h), FLORIDA CONSTITUTION, AND SECTION 125.01(7), FLORIDA STATUTES, AND WHETHER THE TRIAL COURT ERRED IN THE APPLICATION OF LAW TO THE FINDINGS OF FACT AS TO SUCH IDENTIFIED SERVICES.

STATEMENT OF THE CASE AND FACTS

The facts will be discussed in detail in the argument rather than in an initial summary statement.

The City challenged various County services and programs as not providing the requisite benefit under Article VIII, Section 1(h), Florida Constitution, and Section 125.01(7), Florida Statutes. The legal issue in such "dual taxation" cases is whether the challenged county services and programs provide real and substantial benefits to municipal areas and residents. City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So.2d 817 (Fla. 1970). The trial court found that services provided by the Escambia County Sheriff's "patrol division" and expenditures by the County on roads classified as "local roads" by the Florida Department of Transportation failed to provide real and substantial benefits to municipal areas. The trial court found that the services provided by the investigation division of the Sheriff provided the requisite benefit which finding was not appealed by the City. (App I pp 6-9). The First District Court of Appeal affirmed the trial court on the grounds that ". . . it does not appear (contrary to the County's assertion) that the trial court applied an incorrect legal standard . . . ." (App I p 2). This Court has accepted jurisdiction and dispensed with oral argument.

INTRODUCTION

The essence of this appeal is whether the trial judgment

and the opinion of the First District Court of Appeal in this case can stand in face of the decision by this Court in Town of Palm Beach v. Palm Beach County, Case No. 63,254 (Fla., October 18, 1984) (App I pp 13-25). The timing of the decisions in the two cases is ironic.

The original decision of the Fourth District Court in the Palm Beach County case was filed one day after the Final Judgment was entered in this case, 426 So.2d 1063 (Fla. 4th DCA 1983). (App I pp 26-35). Prior to and during trial and at the time the Final Judgment was drafted, the reversed trial order in the Palm Beach County case was touted on the latest precedent. (App I pp 4-12). That the trial court in this case was influenced by the reversed final order in Palm Beach County is clear. At the hearing on the County's Motion for Rehearing based upon the decision of the Fourth District Court in Palm Beach County, the trial judge in this case recognized the conflict between his opinion and that of the Fourth District Court as follows:

> "I think what we have is three judges at the appellate level and two at the trial level who have looked at, if what you say is correct, essentially the same facts, and have reached a three-two decision, is what it amounts to, which is simply to say that if it goes to the First District, or to the Supreme Court it could go either way. And I'm prepared to deny your motion at this time." (App II p 53).

ARGUMENT

POINT I

WHETHER THE "REAL AND SUBSTANTIAL BENEFITS" TEST ESTABLISHED BY CITY OF ST. PETERSBURG V. BRILEY, WILD & ASSOCIATES, INC., 239 So.2d 817 (FLA. 1970), FLORIDA CONSTITUTION, AND SECTION 125.01(7), FLORIDA STATUTES, WAS INCORRECTLY INTERPRETED AND APPLIED BY THE DISTRICT COURT AND THE TRIAL COURT IN THE CASE.

The Constitutional and Statutory Limitation of Article VIII, Section 1(h), Florida Constitution and Section 125.01(7), Florida Statutes

Generally, there does not exist under the state constitution or law a requirement that a particular parcel of property receive a benefit from an authorized tax for the common good. The fact that the benefit of an authorized tax to a particular taxpayer is remote or doubtful, or his tax burden heavy, is immaterial against an authorized tax for a public purpose. Hunter v. Owens, 86 So. 839 (Fla. 1920); Dressel v. Dade County, 219 So.2d 716 (Fla. 3rd DCA 1969). No concept of taxation requires a taxpayer or group of taxpayers to receive a dollar's worth of benefit for a dollar's worth of taxes.

The only provision in which benefit is a requirement for taxation is Article VIII, Section 1(h), Florida Constitution, which provides as follows:

> Property situate within municipalities shall not be subject to taxation for services rendered

by the county exclusively for the benefit of the property or residents in unincorporated areas.[1]

The first Florida Supreme Court decision construing this novel constitutional provision was City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So.2d 817 (Fla. 1970). In the Briley, Wild case, the county had levied taxes countywide to obtain funds to construct and expand sanitary sewerage facilities in the unincorporated areas. None of the owners of city-located property could physically use the expanded treatment plant even though they bore the burden of the ad valorem tax.

This Court in the Briley, Wild case rejected the broad interpretation that the word "exclusively" in Article VIII, Section 1(h), Florida Constitution, required that the benefit to municipal property and residents be direct and primary in order for it to be authorized and held on page 823:

> "It is true that the benefits may not be direct in the sense that the owners of city-located property will physically use the expanded treatment plant, lines and lift stations. But we reject the argument of appellants that in order to avoid

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[1]The Florida Supreme Court in Manatee County v. Town of Longboat Key, 365 So.2d 143 (Fla. 1979) held that the proscription of Article VIII, Section 1(h), applied only to property taxation and not to revenues of a county not derived from property taxation. The Florida Supreme Court in the Manatee County case also held that the statutory tests under Section 125.01(6), Florida Statutes, and Article VIII, Section 1(h) were the same. Section 125.01(7), Florida Statutes, was adopted in response to the decision in the Manatee County case and applied the constitutional test to all county revenues except those derived from or on behalf of the unincorporated area of a county.

> the proscription of Article VIII, Section 1(h) it is necessary that any benefit to municipalities be direct and primary. We hold that the proper interpretation of the language of this section of the Constitution does not require a direct and primary use benefit from a particular service to city-located property in order to remove the same from the proscription of the constitutional provision. It is sufficient to authorize county taxation of such property if the benefits accruing to the municipal areas are found to be real and substantial and not merely illusory, ephemeral and inconsequential. That it was not the intent of the framers of this provision of the Constitution to require a direct benefit to city-located property in order to avoid the proscription is evidenced by the fact that attempts to amend the provision to substitute the words '<u>directly</u>' and '<u>primarily</u>' for the word '<u>exclusively</u>' were defeated before the proposition was submitted to the people for approval." (Emphasis added)

Having forged these rules of construction, this Court held that the resulting elimination of pollution in the waters of the county due to the improved sewerage facilities was a real and substantial benefit to city-situate property even though physical use of the facilities was totally unavailable to such city residents and property.

The second case construing the provisions of Article VIII, Section 1(h), Florida Constitution, is <u>Burke v. Charlotte County</u>, 286 So.2d 199 Fla. 1973), in which this Court held that the levy of taxes countywide to provide funds for the construction and surfacing of roads not within the boundaries of any municipality was authorized since such roads provided the requisite benefit to municipal areas.

In <u>Alsdorf v. Broward County,</u> 373 So.2d 695 (Fla. 4th DCA 1979), the court affirmed the findings of the trial

court that the challenged services on appeal of the sheriff's road patrol and library services did provide real and substantial benefit to municipal residents and reaffirmed the constitutional test on page 698 as follows:

> "The benefit to the city need not be direct and primary. It is only necessary that the benefit not be illusory or inconsequential."[2]

This Alsdorf decision is the first case to set forth the factors of benefit to be considered in applying the constitutional test to services provided by a sheriff. As to the challenged library services, the court in the second Alsdorf case made the following comment on page 699:

> "The fact that appellants might prefer a different system as a matter of policy does not mean that the municipal residents themselves do not receive real and substantial benefits."

This quote by the court from the second Alsdorf case emphasizes the distinction between political and policy questions and the constitutional test. The question of the equitable allocation of revenues and the comparative benefit between classes of residents and various areas of a county are political and legislative questions and not legal ones if the benefit provided by the county service to municipal residents and property is real and substantial

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[2] This Court in Alsdorf v. Broward County, 333 So.2d 457 (Fla. 1976) had remanded the issues to the trial court and held that the provisions of Article VIII, Section 1(h) were self-executing with or without legislative guidelines.

and not merely illusory, ephemeral and inconsequential.

This distinction was also recognized by the Second District Court of Appeal in Manatee County v. Town of Longboat Key, 352 So.2d 869 (Fla. 2nd DCA 1977) at page 872:

> "The framers of our Constitution must have recognized that there are many county services which provide an indirect yet real benefit to city dwellers. There is no need to be concerned with how much more benefit from this type of service county property owners may receive when compared to city property owners because these are not services which are rendered exclusively for the benefit of the counties. The only services which must be considered are those rendered by the county which result "in no real or substantial benefits to the municipal property owners."

The term "double taxation" is a misnomer. The issue is not that, since a municipality provides a service, its residents and property cannot be taxed doubly for a similar service provided by the county. The fact that residents and property in the unincorporated areas benefit from the duplicated service provided by the municipalities is immaterial in the constitutional analysis. There is always a disparity of benefit received between residents, property and areas, both unincorporated and municipal. As recognized in City of Ormond Beach v. County of Volusia, 383 So.2d 671 (Fla. 5th DCA 1980) at page 674:

> "There are numerous instances where there is a disparity of services between one area of a county and another. Municipalities have their own police but city residents are also taxed for the services of the Sheriff. Cities maintain their own road system, but properties within the city can also be taxed for maintenance and installation of county roads outside of the city. Many residents may never use the services of

> the Sheriff or travel the county roads, but they are available for use by the city resident as well as those who live outside the city."[3]

The Decision in Town of Palm Beach v. Palm Beach County, Case No. 63,254 (Florida Supreme Court, October 18, 1984).

The trial court in this case focused on the degree of direct benefit received by municipal areas and residents in the same manner as the reversed trial court in the Palm Beach County case. Substantially identical theories of direct and quantifiable benefits were utilized by the plaintiff municipalities and their experts in both cases. The evidence presented and theories of benefit asserted in both cases are virtually identical. In Palm Beach County, the Fourth District Court summarized the evidence presented as to the challenged law enforcement as follows:

> "The record supports the conclusion that the primary purpose of the sheriff's road patrol division is to operate as a police force for the unincorporated areas of Palm Beach County. The division does not regularly patrol any of the four plaintiff municipalities. The road patrol is a response-to-call service; however, a person calling from one of the plaintiff municipalities is ordinarily referred to the appropriate municipal police department." (App I p 43).

Similarly, the trial court in this case summarized the almost identical evidence presented as to the sheriff's road patrol as follows:

> "The patrol areas of the Sheriff's road patrol

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[3] In the City of Ormond Beach case, the court held that the challenged library services did provide requisite benefit to residents and property within the municipal areas.

> adjacent to the City do not include portions of the City. The Sheriff's road patrol does not routinely patrol any area of the City. Complaints received by the Sheriff's Department from areas within the City are referred to the City of Pensacola Police Department for responses unless the Sheriff's Department is specifically requested to respond. Evidence submitted at trial indicated a minute number of responses by the Sheriff's road patrol within the City." (App I p 6).

The salient evidence relied on by the plaintiff municipalities and the trial court in the Palm Beach County case and this cause was a statistical analysis by expert witnesses of minimal incidents of direct benefit to municipal areas and residents. In the Palm Beach County case, the statistical analysis concluded that the percentage of incidents where a deputy sheriff responded directly within the boundaries of a municipality or provided assistance directly to a municipality constituted 0.17% of the total activities of the sheriff for a year. In this case, this statistical analysis concluded that the number of cases where the law enforcement activity occurred within the boundaries of the City or where a city resident was the victim was 3.7% and 3.5% of the total cases of the sheriff for the two study periods. Such statistical analysis embraces solely factors of direct benefit involving physical presence within the boundaries of a municipality or direct contact with a municipal resident or their property.[4]

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[4]If a similar direct benefit statistical analysis had been performed by an expert witness in the Briley, Wild case, the conclusion would yield 0% of direct benefits to municipal areas from the challenged sewer system.

In explaining the quantified direct benefit nature of this evidence relied on by the plaintiff municipalities, their expert and the trial court, the Fourth District Court in the Palm Beach County case held:

> "Another factor that arises in the present case and one that we considered in Alsdorf, is the undeniable benefit to the municipalities of activity of the sheriff's road patrol and detective division resulting in reducing the crime rate in the unincorporated areas and particularly in the eastern urban corridor adjacent to these municipalities, lessening the potential spill-over of that criminal activity. There are, in addition, 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 and the crime deterrent factor resulting from the visibility of marked sheriff's patrol vehicles in and around the municipalities. As the latter examples demonstrate, not every benefit that the municipalities derive from the road patrol and detective division are quantifiable, as that term has been used by the parties throughout this appeal. The direct and demonstrable benefits when coupled with these unquantifiable benefits compel the conclusion that, in total, the municipalities enjoy a real and substantial benefit from the sheriff's road patrol and detective division. We therefore concluded that the trial court's holding to the contrary is not supported by substantial competent evidence." (Emphasis added) (App I pp 47-48)

The Fourth District Court in the Palm Beach County case after quoting the language of this Court in the Briley, Wild case that established the constitutional test held as follows:

> ". . . we suggest that one factor which distinguishes our holding from that of the trial court is in differing perceptions of the quantum and quality of benefit that is entailed in the concept of 'real and substantial'.
>
> ***

> In Briley, Wild the City of St. Petersburg was not to be connected into the sewer system, thus there was no direct benefit. In the present case both direct and indirect benefits are involved. Applying the foregoing standard we have therefore concluded that there was not substantial competent evidence to support findings that the services and programs referenced by the complaints filed in this cause did not provide real and substantial benefits to the respective municipalities." (Emphasis Court's) (App I p 52).

This interpretation and application of the Briley, Wild real and substantial benefits test by the Fourth District Court in the Palm Beach County case was approved by this Court in its opinion dated October 18, 1984:

> "The constitutional proscription against 'double taxation', Article VIII, section 1(h), Florida Constitution, and indeed, the statutory prohibition, section 125.08, Florida Statutes (1981), are not framed in terms of proportionality. Each merely requires that the municipality and its residents receive a benefit which must achieve a magnitude described as "real and substantial". Briley, Wild, 239 So.2d at 823. As we have stated in the past, substantial is not necessarily a quantifiable term and a benefit may achieve substantiality without being direct or primary. All that is required is a minimum level of benefit which is not illusory, ephemeral or inconsequential. (App I p 14).

While not discussing the facts, the First District Court attempted to distinguish the decision of the Fourth District Court in the Palm Beach County case by asserting that the trial court in Palm Beach County had not considered "unquantifiable" or indirect benefits while the trial court in this case did. Such assertion is simply in error. The misinterpretation of the real and substantial benefits test by the trial court in this case is highlighted by

the following findings of fact in the Final Judgment.

> "The County argues that there are indirect benefits to the City. The Court finds that there are revenues provided by the County for which the citizenry of the City of Pensacola derive no real and substantial benefits and for which there are no indirect benefits as a matter of law. (Emphasis added) (App I p 10).

Rejecting as a matter of law all indirect benefits that cannot be quantified is the identical incorrect direct benefit standard utilized by the trial court in the Palm Beach County case.

The fact that the theory of the City and the findings of the trial court in this case on the issue of local roads was based upon the reversed trial order in the Palm Beach County case is unquestioned. The challenge in both cases was that all roads classified by the Florida Department of Transportation as local roads failed to provide the requisite benefit to municipal areas and residents. The permeation of this direct benefit analysis in the Final Judgment is illustrated by the following finding:

> "Local roads primarily serve abutting property owners. All of the County's local roads are contained in the unincorporated areas of the County. Primary benefits of local roads are to the people who live on them." (Emphasis added) (App I p 8).

POINT II

THE FINDING OF FACT BY THE TRIAL COURT THAT THE SERVICES PROVIDED BY THE PALM BEACH COUNTY SHERIFF AND IDENTIFIED AS THE PATROL DIVISION WERE RENDERED IN VIOLATION OF ARTICLE VIII, SECTION 1(h), FLORIDA CONSTITUTION, AND SECTION 125.01(7), FLORIDA STATUTES, WAS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND THE TRIAL COURT ERRED IN THE APPLICATION OF LAW TO THE FINDINGS OF FACT AS TO SUCH IDENTIFIED SERVICES.

Evidence and Testimony of the City Relied on by the Trial Court

The evidence presented by the City to meet their burden of proof consisted of a statistical study of recorded complaints and traffic tickets, the Sheriff's patrol district map[5] and the opinion testimony of Mr. Robert Chambers as a "double taxation expert."[6] The opinion testimony of Mr. Chambers that the Sheriff's patrol division and investigation division did not provide real and substantial benefit was based upon the two statistical studies and ". . . the fact that the Pensacola Police Department is a full-service police department." (App II pp 61-67).

The City introduced the Sheriff's patrol district map into evidence through the testimony of Captain Norman Silcox, Captain of the Sheriff's Patrol Division. As depicted

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[5]Plaintiff's Ex 32.

[6]The only other evidence conceivably bearing on the issue of benefit received by municipal residents and property from the Sheriff's patrol division was the testimony of City Police Chief Goss contending that the City Police Department is a full-service police department with similar law enforcement departments as the Sheriff.

on the map, the Sheriff's patrol district includes only unincorporated areas. The inference urged by the City and adopted by Mr. Chambers in his expert testimony was that the map demonstrated a split of jurisdiction and activities between the Sheriff and the City police and an absence of presence of Sheriff patrol personnel in the City. Such inference was endorsed only by Mr. Chambers and refuted by all law enforcement witnesses questioned on this issue.

Sheriff Vince Seely explained the failure of the patrol district map to include city areas as follows:

> "Well, when I was elected Sheriff I felt like I was elected by all the people of Escambia County. And I had every intention of incorporating in the districts surrounding the city limits as part of my regular districts. But because of working with the City Police Department and not to try to give the image that maybe we were trying to take over, this type of thing, it was just understood that we have jurisdiction within the city and the officers on their routine patrol would participate in the city area. (App II p 145).

Sheriff Seely testified that his officers answer calls in the City, that he personally is frequently called to respond to calls in the City and that he has never issued any order or instructions for his officers not to participate or enforce the law within the boundaries of the City. (App II pp 146-147).

Captain Silcox testified that uniformed sheriff patrol personnel are ". . . in and out of the city at all times of the day and night. . . ." (App II p 10). He testified that some uniformed personnel live in the City and take

their marked cars home, eleven officers must drive through the City daily to get to their assignment in Pensacola Beach and the uniformed deputy sheriffs that are assigned to the patrol districts adjacent to the boundaries of the City are within the City on the routine patrol of their districts despite the boundaries reflected on the patrol district map. (App II p 10).

When questioned whether the uniformed deputy sheriffs provide backup to City police officers, Captain Silcox testified:

> "Yes, sir, it's common. Any time that we know that they're on a stressful call or where there's a danger factor involved, we would go to back them up without being told, but usually there is communications back and forth indicating that they have a serious problem, a gun or something, and our men go to back them up. (App II p 11).

Captain Silcox also testified that, because of the jagged corporate boundaries of the City, a uniformed deputy sheriff doesn't always know when he is within the boundaries of the City. (App II p 9).

Deputy Sheriff Gregory Scherer, who had spent the majority of his time in the patrol districts adjacent to the City, testified that he often cannot tell whether he is within the boundaries of the City and that whether he is or not does not matter. (App II p 167). Deputy Scherer estimated that over a period of three years he had given a couple hundred traffic tickets within the boundaries of the City. (App II p 168). Deputy Sheriff Scherer also

testified that when he worked patrol districts 9 and 10 adjacent to the City boundaries he would assist a City police officer potentially in trouble on the average of once a night or "maybe once every other night." (App II p 169).

The Sheriff maintains three primary file systems: the Complaint Number File System; the Investigation Case File System; and the Pending Arrest File System. (App II p 132).

The Complaint Number File System contains primarily two documents: a Complaint Card[7] and a Deputy Field Report.[8] The Complaint File System primarily documents the activities of the uniformed patrol division of the Sheriff. (App II p 140).[9]

The Investigative File System consists of the closed files of the Sheriff's investigation division. A complaint number reflecting the earliest action in the investigation

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[7]Defendant's Ex 27; (App I p 76).

[8]Plaintiff's Ex 34.

[9]A Complaint Card is filled out either by the communications section of the Sheriff when a uniformed deputy sheriff is dispatched or when an officer of the Sheriff calls communications and requests a card to be filled out. (App II p 123). A separate number is assigned to each Complaint Card and is called a complaint number. (App II p 139).

is selected for purposes of establishing a file number.[10] (App II p 136). During an investigation, an investigator may incorporate numerous Deputy Field Reports into his case file in the Investigative File System. (App II p 136).

The Pending Arrest File System consists of arrest cards filed by name of person arrested. (App II p 124; 132). After court disposition, the arrest cards are filed in a separate closed arrest records file. (App II p 132). Except for juveniles, an arrest card is never filed in the Complaint File System. (App II p 124).

In the Complaint File System, the deputy sheriff makes the decision whether to fill out a Deputy Field Report. If no Deputy Field Report is filled out, the officer checks a box on the Complaint Card designated "MIR" and the card is then referred to as an "MIR card" or miscellaneous incident report. (App II p 24; p 130). In such event, the only document in the Complaint File System relating to the "incident" is the Complaint Card.

Ms. Sheila Vaughn, Supervisor of the Records Department of the Sheriff testified that she examined the Complaint Number File System for the month of August 1981 and that

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[10] As a comparison of size of the two file systems for the period of September 1981 to March 1982, 77,000 complaint numbers were assigned to the Complaint File System while for a period of September 1, 1981 to March 31, 1982, the Investigative File System contained 634 case files.

there were 6,870 Complaint Cards filled out that month. Of those, 3,650 were MIR Cards only with no further documentation in the file system other than the Complaint Card itself designated as a miscellaneous incident report. (App II p 125).

The only address appearing on the Compliant Card is where the "offense" occurred and the address of the complainant. (App I p 76). In contrast, the Deputy Field Report contains detailed information including the name and address of the person arrested (suspect), the owner of stolen or received property, the victim and the witness. It also includes a written narrative of the details of the incident which constitutes the written report. See Plaintiff's Trial Exhibit 34.

The heart of the City's case and the primary basis of Mr. Chambers' expert opinion that the Sheriff's patrol division failed to provide real and substantial benefit to City residents and property is the statistical studies performed by Dr. David Sherry at the direction of Mr. Chambers.[11]

The only file system examined by Dr. Sherry was the Complaint Number File System. (App II p 52; p 126; p 131).

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[11]The first statistical study was for a six-month period from September 1981 to March 1982 and the total complaint numbers in the Complaint File System for such period was 37,000. The second statistical study was for a twelve-month period from September 1980 to September 1981 and the total complaint numbers in the Complaint File System for such period was 77,000. This second study will be referred to hereafter as the "Sherry 12-Month Study."

The instructions given by Mr. Chambers to Dr. Sherry were to select a sample from the Complaint File System and count a "case" as one that ". . . benefited citizens or property of the City of Pensacola" if a city address appeared reflecting that the incident occurred within the City, the property was owned by a City resident or the victim was a City resident.[12] (App II p 54). The sample was reviewed to count a city address only in one of three benefit categories selected by Mr. Chambers.

In the Sherry 12-Month Sample, the sample size was 1043 "cases," of which 588 were miscellaneous incident reports (MIR's) with the only information being a Complaint Card. (App I p 77). Thus, in these 588 "cases" out of the sample size of 1,043, the only address available is where the incident occurred. For these 588 "cases", there was no information to count if the victim or owner of property had a city address.

The count in Sherry's 12-Month Sample concluded that 3.7% of the "cases" handled by the Sheriff during this period ". . . benefited citizens or property of the City of Pensacola." The percentage count during the six-month

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[12] In the samples taken from the Complaint Number File System, Dr. Sherry did not count a "case" as a benefit if a suspect arrested or a witness was a city resident even though such information was available in that portion of his samples that contained a Deputy Field Report since Mr. Chambers had not instructed him to include such factors in his count. (App II p 54).

study was 3.5%.

Dr. Sherry admitted that his percentages give no weight for time. The most insignificant activity was given the same numerical weight as an arrest for a serious crime. (App II p 55). Such percentages gave no numerical value to assists by the patrol officers of the Sheriff directly to the City police. No numerical value was given if the victim or suspect or the owner of property was a non-resident of Escambia County.

In arriving at his percentage, Dr. Sherry did not examine the Investigative File System.[13] Ignoring this file system insured that the percentage of benefit by Dr. Sherry was the most minimal possible. Many connections to City residents and property appear in a review of the Investigative File System that are never to be found by a City address count limited to only the Complaint Number File System.

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[13] These two statistical studies of the Complaint Number File System were the basis of an opinion by Mr. Chambers that the investigative division of the Sheriff did not provide real and substantial benefit to City residents and property. The Investigative File System was not reviewed by Mr. Chambers even though such system documents the activities of the investigative division of the Sheriff.

(App II pp 133; 136-137; 140-142).[14]

Dr. Robert Kelling, the City's law enforcement expert, testified on cross-examination that there are studies that indicate that less than 20% of a police officers time is spent in crime related situations and that law enforcement activities that are not crime related were "very beneficial to a community." (App II p 41). Dr. Kelling also testified that it is difficult to evaluate such non-criminal activities since records are kept primarily on the criminal activities of law enforcement officers. (App II p 42). Deputy Gregory Scherer testified that, when he was assigned to patrol districts 9 and 10, approximately 25% of his time was not involved in responding to calls; and while assigned to patrol districts 1 and 2, 50% of his time was free time. (App II p 163). The vast majority of the non-criminal activities of the uniformed deputy sheriffs and none of the "free time" would be reflected in the narrowly drawn direct benefit count utilized by Dr. Sherry and relied

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[14]For example, Sheila Vaughn testified that, if a uniformed deputy sheriff investigates a burglary in the unincorporated area and eventually the burglar is arrested and a room full of stolen property is recovered, the City address of the owner would appear only in the Investigative File System. (App II pp 135-137). Another example testified to by Ms. Vaughn was, if a complainant in the unincorporated area calls a uniformed deputy sheriff to report stolen property and a suspect is eventually arrested who is a city resident who may have stolen thousands of dollars of property in the City, you would see the city address only in the Investigative File System. (App II pp 140-141). In neither of these examples would the city address appear in the Complaint Number File System.

on by Mr. Chambers.

The other statistical study performed by Dr. Sherry and relied upon by Mr. Chambers in his expert opinion testimony was a sample of 459 traffic tickets out of a total of 6,230 issued by the patrol division of the Sheriff for a 12-month period. (App II pp 65-66). The percentage count conclusion of such study was that 2.8% of the tickets were confirmed to have been issued in the City.[15] (App II p 66). Incredibly, Mr. Chambers did not consider the issuance of a traffic ticket by the Sheriff's patrol division on state roads and the county minor arterial and collector road system in the unincorporated areas a benefit even though the City admitted that the cost incurred by the County to construct and maintain such roads provided a real and substantial benefit to City residents and property. (App II pp 89-96). The inconsistency of such analysis is apparent. How can the construction and maintenance of a road provide real and substantial benefit and the enforcement of traffic on such road not provide the same benefit to its users?

There could not be a more conservative analysis of minimum incidents of direct benefit to City residents and property than the statistical studies done by Dr. Sherry and relied on by Mr. Chambers as the basis of his expert

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[15]Mr. Chambers testified that 2% were issued in a "gray area" and in 3.3% Dr. Sherry was unable to determine the location where the ticket was issued.

testimony and opinion on the ultimate issue in this case. The factors of direct benefit are narrowly drawn and applied only when a city address appears reflecting an activity that occurred directly within the boundaries of the City or directly involving a City resident.

The only data and evidence on which Mr. Chambers relies and the evidence and testimony on which the position of the City is based is quantified data of direct benefit. Any indirect benefit that cannot be quantified is ignored. Compounding the weakness of the proof presented by the City on the Sheriff's patrol division is the narrow standard of direct benefit utilized to achieve the most minimum percentage of direct quantified benefit possible.

The fact that the trial court relied on the direct benefit evidence presented by the City is clear from the following additional finding:

> "The County argues that there are indirect benefits to the City. The court finds that there are services provided by the County for which the citizenry of the City of Pensacola derive no real and substantial benefit and for which there are no indirect benefits as a matter of law." (App I p 10).

Not all benefits received by residents and property from governmental services can be quantified. Services by government involve a complex web of human activities and resulting benefits based on the individual needs of people and property which ignores artificial jurisdictional boundaries. The trial court focused solely on direct and

primary benefit as a method of analysis. Such analysis and focus to virtually identical facts were rejected by this Court in the Palm Beach County case in confirmation of the real and substantial benefits test established in the Briley, Wild case.

Evidence and Testimony Establishing Real and Substantial Benefit Under the Constitutional Standard and Appellate Court Decisions

The impact of the Final Judgment is that no taxes or revenues derived from or allocated to residents or property within the City pay any of the cost of the patrol division of the Sheriff. All of the costs for such law enforcement services are paid by taxes or revenues derived from residents of property in the unincorporated areas only.

The Court in Alsdorf v. Broward County, 373 So.2d 695 (Fla. 4th DCA) set forth the following factors of benefit in affirming the finding that the services provided by a sheriff's road patrol provided the requisite benefit as follows:

> "Among other things, it was shown that the Sheriff's road patrol generally enforce the law in the entire county. The Sheriff served as the chief officer of both the county and circuit courts. In doing so, the road patrol assisted civil deputies in service of process and was involved in service of and enforcement of any court order, whether it related to a municipal resident or a resident living in an unincorporated area. In addition, all of the Sheriff's vehicles were intentionally driven and maintained in such a fashion so as to increase the visibility of the police presence in the municipalities. It was shown and is uncontested on appeal that the Sheriff's road patrol assisted the city police forces when called upon to do

> so. Further, by limiting crime in the unincorporated areas adjoining the municipalities the road patrol was of substantial assistance to the municipal police and residents in the contiguous cities." (at page 700).

The reliance by the trial court solely on quantified evidence of direct benefit and the rejection of any evidence or testimony of indirect benefit is contrary to the obvious thrust of the facts in the second Alsdorf case and all cases preceding it that gave form and substance to the constitutional language at issue.

The trial court in the Palm Beach County case had relied on similar quantified statistical evidence of direct benefit in concluding that the patrol division of the sheriff failed to provide the requisite benefit. (App I pp 33-34). The percentage benefit count in the Palm Beach County case was substantially lower than those in this case.[16] Similarly, the trial court in the Palm Beach County case discounted evidence and testimony of indirect benefit.

In reversing the finding of the trial court, the Fourth District Court in the Palm Beach County case recognized the following indirect benefits:

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[16]The Plaintiff municipalities in the trial court in the Palm Beach County case presented statistical data from the computer records of the sheriff as to the number of incidents during a year in which both the patrol and investigative division responded to calls directly within the boundaries of one of the plaintiff municipalities or assisted a plaintiff municipal police officer. The percentages for both assists to municipal police departments and incidents within the plaintiff municipalities were 0.17%.

> "Another factor that arises in the present case and one that we considered in Alsdorf, is the undeniable benefit to the municipalities of activity of the sheriff's road patrol and detective division resulting in reducing the crime rate in the unincorporated areas and particularly in the eastern urban corridor adjacent to these municipalities, lessening the potential spill-over of that criminal activity. There are, in addition, 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 and the crime deterrent factor resulting from the visibility of marked sheriff's patrol vehicles in and around the municipalities." (App I p 32).

Identical evidence of indirect benefits provided by the patrol division of the Sheriff in this cause was ignored by the City, Mr. Chambers and the trial court.

Quantified Benefit Provided by Patrol Division

As recognized by this Court in the Palm Beach County case, the County does not have the burden of proof in this cause.

> "Even though it is the petitioners' burden to demonstrate the absence of real and substantial benefit, and not the respondents' burden to prove the presence of any requisite benefit, the respondents presented numerous former and present police officers who testified to benefits which are extant but non-quantifiable." (App I p 17).

Since at the time of the trial of this cause, the reversed trial order in the Palm Beach County case was hailed as controlling precedent, the County proceeded at trial to present evidence and testimony of both "quantified" as well as "non-quantified" benefit factors to municipal areas and residents. This defense in this cause by the County was a dramatic expansion of both evidence and testimony

from that presented in defense by the County in the Palm Beach County case. As indicated in the above quote, the defense by the County in the Palm Beach County case had been limited to evidence and testimony of factors of "non-quantified" benefit.

Mr. Randall L. Young, the County's expert witness in the analysis of cost benefits and services, performed several analyses and studies to quantify benefit received by residents and property of the City from the Sheriff's patrol division. Mr. Young defined quantified benefit as follows:

> "Quantified benefit is the measurable benefit that can be determined from records, and which can be determined from analysis of function and purpose of the Sheriff's Department patrol division, from quantifiable, measurable, if you will, statistical sources.
>
> It is not, of course, the sum of all benefits, because it would by definition exclude those benefits which are unmeasurable."

Chart A is an analysis of the Sherry 12-Month Sample. (App I p 77). Mr. Young focused his examination on these 455 cases since the remaining portion of the samples had a Complaint Card only and thus yielded incomplete information. (App II p 215).[17]

Applying the benefit criteria of suspect and witness in addition to the benefit criteria of Mr. Chambers and

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[17]Of the 39 cases Dr. Sherry counted as providing direct benefit, 24 of the City addresses were found in the 455 "cases" in the sample that had Deputy Field Reports.

counting as a quantified benefit if the address was that of a transient[18] as well as City resident resulted in 16.7% of the "cases" providing quantified benefit to City residents and property rather than 3.7% utilizing the narrowly drawn Chambers criteria.[19]

Mr. Young testified that the benefit criteria of a suspect being a City resident was utilized since the apprehension of a suspect provides a direct benefit to the City in that such individual is taken from the community and the "ill effects of his or her presence is removed." (App II p 216). Mr. Young testified that the benefit criteria of a witness being a City resident was utilized because of the personal benefit to a witness to see justice done in the violation of law that he or she has observed. (App II p 26).

Mr. Young testified that the benefit criteria was applied to transients because tourism is a major industry within the City, the Pensacola Naval Air Station being the largest employer in the area increases the transient level and there is no logical rationale why the cost of

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[18]A transient was defined as an individual which the Deputy Field Report indicated had a residence outside of Escambia County.

[19]Utilizing the same direct benefit criteria in analyzing all the cases in the Investigative File System for the same time period as Sherry's 12-month study results in a direct benefit percentage count for the investigative division of the Sheriff of 34.07%.

law enforcement incidents involving transients should be the sole burden of unincorporated area taxpayers. (App II pp 217-218; 249).

Mr. Young also did a complete count of traffic citations used by the patrol division of the Sheriff over a 4-month period. During this 4-month period 11.8% of the traffic citations were issued to City residents and 18.9% to transients or visitors for a total in excess of 30%. (App II p 220).

Mr. Young's examination of the stolen recovery log maintained by the records unit of the support services division of the Sheriff for a seven-month period revealed that 19.8% of all stolen automobiles recovered by the patrol division of the Sheriff was for City residents or transients. (App II p 222).

Chart D is an analysis of the Pending Arrest File System, another Sheriff file system ignored by Mr. Chambers. (App I p 79). Examination of the arrest cards for individuals with last names beginning with letters "A" or "C" revealed that 21.83% of the individuals arrested were either a City resident or a transient. (App II p 224).

Mr. Young also analyzed the escort service provided by the sheriff's patrol division. The patrol division of the Sheriff was routinely involved in funeral escorts where the cemetery was in the unincorporated area and the mortuary or service was in the City. Such review detemined that 68.8% of the escorts provided by the patrol division

of the Sheriff involved meeting the escort at the City boundaries or escorts within the boundaries of the City. (App II pp 226-227).

When asked what percentage of quantified direct benefit to City residents and property is required for benefit to be characterized as real and substantial Mr. Chambers candidly responded:

> "In this particular instance, or any other instance that I have reviewed this activity, I have not seen a statistic that reaches a limit at which I've had to make that judgment."
> (App II p 96).

Mr. Chambers was asked that if he used as a sole test, the MIR's or Complaint Cards, wouldn't he agree that if such review concluded that 25% of the activities provided quantified direct benefit, the benefit provided would be considered real and substantial? He responded:

> "No, sir, I wouldn't agree to that, without doing a much more detailed analysis of the mix and the entirety that we just completed on the 3.7. So, no, I would not agree that that number that you have chosen to use would meet that test, without looking at it in detail." (App II p 97).

Such response is a thunderous revelation of Mr. Chamber's misunderstanding of the constitutional real and substantial benefit standard. Approximately 24% of the population of Escambia County lives in the City. Property in the City bears approximately 24% of the property tax burden of the County. Nowhere in Florida law is there a requirement that a taxpayer or group of taxpayers receive a dollars

worth of benefit for a dollars worth of taxes paid. The benefit umbrella of Article VIII, Section 1(h), Florida Constitution, and Section 125.01(7), Florida Statutes, cannot be twisted to such a conclusion. In the landmark Briley case, the City residents and property received 0% direct quantified benefit since none of the sewer lines and facilities were located within the City.

Indirect Benefit Provided by Patrol Division

Captain Silcox, Captain of the Sheriff's Patrol Division, testified as to the activities of the deputy sheriffs within the patrol districts adjacent to the City in the Pensacola urbanized area for a period from August, 1981 to July, 1982.[20] (App I pp 80-86); (App II pp 20-22). For this time period the uniformed patrol officers in the Pensacola urbanized area made 1,932 felony, 3,336 misdemeanor, and 731 juvenile arrests; transported 3,737 prisoners; made 253 DUI and 3,931 traffic arrests; served 183 civil processes, 2,186 subpoenas and 1,827 warrants; recovered property valued at $650,000.25 and automobiles valued at $1,342,802; and traveled 1,218,203 miles.

Captain Silcox testified that assistance to the investigator is one of the most important functions of the patrol officer and characterized the providing of information by the patrol

[20]Defendant's Exhibit 36A. (App I p 120-126). Defendant's Exhibit 36B is the annual composite for the period of September, 1980 through September, 1981.

officer to the investigator as a "... daily, almost hourly, occurrence". (App II p 17). Sergeant Tyree testified that when he was head of the burglary task force the uniformed patrol officers made the initial report in the majority of the cases investigated by the task force. (App II p 160). Lieutenant Shelby, head of the Crimes Against Persons Division of the Sheriff, testified as to a specific representative case in which he was assisted in an investigation by a uniformed patrol officer. (App II p 159).

Mr. Kelling, the City's law enforcement expert, testified that studies confirm that information gathering at the scene is a high payoff strategy in law enforcement and that the information gathered by the patrol officers on the scene is the most productive. (App II pp 35; 37). Sheriff Seely testified that many times a uniformed patrol officer will stay over his duty time to go with an investigator and give him personal information he found while on duty. (App II p 154).

Mr. Lou Reiter, the County's law enforcement expert, echoed the testimony of other law enforcement witnesses that the average person is more likely to be killed or seriously injured by a drunk driver than in a violent crime. (App II p 188). Again, incredibly, Mr. Chambers did not consider law enforcement as a benefit to City residents on the same county roads that the cost of construction and maintenance was admitted to provide the requisite benefit

(App II p 80).

When questioned on this omission and when asked whether his analysis was limited to direct and primary benefit involving victims or property in the City only, Mr. Chambers responded:

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> "And I believe that the truth of the matter is that we have a municipal type police service being provided by the Sheriff's Department in the unincorporated area of the county, exactly like we have the municipal type service being provided by the Pensacola Police Department. So the larger picture of looking at a twelve million dollar Sheriff's budget and the six million dollar and something of the Sheriff's road patrol as taken in the entirety of those individual types of instances are of no real and substantial benefit." (App II p 94).

The truth of the matter is that Mr. Chambers' method of analysis is unrecognized under the real and substantial benefits standard. As stated previously, the issue is not that since a municipality provides a service, its residents cannot be taxed doubly for a similar service provided by the county. The issue is whether the service provided to city residents and property is real and substantial and not merely illusory, ephemeral and inconsequential.

The fact that Mr. Chambers relied solely on direct benefit is unquestioned. When asked why he did not consider arrest of a visitor to the City as a benefit to City residents and property, Mr. Chambers responded:

> "No, I'm saying that the services provided by the Sheriff's Department has key ingredients in my opinion, as to the areas that you should

> look at. Where is the crime occurring. The location of the crime. That should give you a statistical representation of the service area that the Sheriff is concentrating on.***" (App II p 94).

Again, when questioned concerning the inadequacy of the information on the Complaint Card, Mr. Chambers responded:

> "***But the location is the question, as to whether or not the crime incurred (sic) in the incorporated area of the county or the unincorporated area of the county as for a starting point." (App II p 77).

The location of the crime is neither the starting or the ending point under the constitutional real and substantial benefits standard. In the Briley case no sewerage facilities were located within the City and there was no direct benefit to City residents and property.

Sheriff Seely testified that he had never refused to give assistance to the City when requested. (App II p 149). Sheriff Seely testified to several recent examples where the uniformed patrol officers assisted the City residents and the City police in a law enforcement emergency or natural disaster.[21] During Hurricane Frederick all officers of the Sheriff, including reserve units, were on duty to assist the public and prevent looting. (App II p 151). Sheriff

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[21] He and Captain Silcox testified to a serious riot at Pensacola High School in which the uniformed patrol officer assisted the City police in restoring law and order. (App II pp 12; 149-150). Sheriff Seely also testified that his officers went to the scene and were on standby during the Brownsville incident when a City police officer shot and killed a suspect and there was concern about a riot. (App II p 150).

Seely also testified that the patrol division provides security to visiting dignitaries and traffic control in the City during the Fiesta of Five Flags parade and other community events. (App II pp 150-153).

Deputy Scherer testified concerning his efforts when an airliner crashed in Escambia Bay. (App II p 170). He also testified to an incident during the winter when he directed traffic on a bridge in the City that was iced. (App II p 170). That same day Deputy Scherer responded to a request by a City police officer and directed traffic at an accident site within the City. (App II p 170).

Mr. Kelling, the City's expert witness, testified as to studies that conclude that concentration on "career" criminals is a better law enforcement strategy than preventive patrol. He testified that by removing a career criminal you incapacitate the individual and eliminate his ability to commit multiple crimes. (App II p 38). Mr. Kelling testified that such career criminals do not confine themselves to specific geographic areas but have a wide range and move about in a sophisticated way. (App II p 39). When asked if an arrest by a uniformed patrol officer of a career criminal in the unincorporated area adjacent to the City could be of benefit to the residents of the City of Pensacola, Mr. Kelling stated: "I believe it would, yes." When asked if that benefit would be inconsequential, he stated: "No, I would not consider it inconsequential".

Police Chief Goss reluctantly admitted that citizens of the City of Pensacola receive benefits from effective law enforcement in the unincorporated areas and stated:

> "***If we have a reputation in Northwest Florida for being efficient and good, I think that keeps some of your so called career criminals out of the area." (App II p 28).

When asked if criminals that commit crimes in unincorporated areas also commit crimes in the City, Sheriff Seely responded:

> "Oh, yea, absolutely. Records will show that. In fact, I will refer to yesterday, I believe this fellow that they picked upon armed robbery, we're going to clear some city cases, if I'm not mistaken." (App II p 156).

When asked on cross-examination if he could provide adequate police protection for the entire county under his current manpower if the City would abandon its police department Sheriff Seely responded:

> "If something should happen to the city, for some reason they couldn't function as a law enforcement agency, I could take it over and run it probably, have to place some priorities, but, yes, sir, I could handle it.***Yes, sir. We may have to prioritize some calls and take a little longer to get to maybe a cat in a tree or something like that. But as far as the major problems, yes, sir, we could handle it. We're talking about twenty-four square miles added proportionately to district. It wouldn't be that much of a burden." (App II p 158).

Mr. Lou Reiter, the County's law enforcement expert also emphatically gave the opinion that criminal activities are not confined to specific geographic boundaries. (App II p 191).

Deputy Willis testified that eighty-five percent of

the time of the uniformed patrol officers in the Century District were spent on either the state roads or the county classified roads which are admitted by the City and Mr. Chambers to provide real and substantial benefit to City residents and property.[22] (App II p 172). Mr. Willis testified that the rural area in the northern part of the County is an extremely sparsely populated area consisting primarily of these major roads with the distance between telephone booths as much as twenty miles. (App II p 173). He indicated that the uniformed patrol officers find people stranded several times a week on the desolate areas of these major roads with automobile trouble. (App II p 174). He testified that the uniformed deputy sheriffs carry two gallon cans of gasoline to assist motorists to get to the nearest filling station. (App II p 174).

Deputy Willis also testified that uniformed patrol officers within the Century District receive calls from citizens in the southern part of the county to check on elderly relatives and friends.[23] He also testified that during the hunting season much of the time is spent by the uniformed patrol officers in checking on hunters and

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[22]Deputy Durwood Willis spent five years in a patrol division in the Century District located in the rural portion of the County. (App II p 172). See area above red line on the Base Map: Escambia County. (Defendant's Exhibit No. 1).

[23]Such requests for information are particularly prevalent in times of hurricanes or other adverse weather conditions. (App II pp 176-177).

other people who have not returned or are feared lost. (App II p 180).

Deputy Willis testified that the functions of the uniformed patrol officers in the Century district differ from the other districts in that the officers in Century handle most of their own investigations and seldom does an investigator come to the north end of the county. (App II p 178). He also testified that the uniformed patrol serves all civil process in the north end of the county with the exception of some replevins. (App II p 179). Deputy Willis testified that the traffic assistance activities performed by the uniformed patrol officers in the Century district are not normally assigned a Complaint Number.[24]

Mr. Lou Reiter, the County's law enforcement expert witness, made a study of the Sheriff's department and records to detemine its method of operation. Based on this investigation, he testified at length of 18 factors of benefit provided by the Sheriff to City residents and property. (App II pp 192-205). Such factors of benefit were incorporated into Chart E: Factors of Benefit to City Residents and Property by Patrol Division and Investigation Division of the Sheriff. (App I p 103). Mr. Reiter gave his expert

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[24]The Silcox annual composite of monthly activity reorts for the Century district for August, 1981 to July, 1982 reveals that the uniformed officers made: 151 felonies, 179 misdemeanors and 7 juvenile arrests; issued 120 traffic and 9 DUI arrests; served 410 civil process, 496 subpoenas and 248 warrants; and traveled 193,967 miles.

opinion that each factor provided a law enforcement benefit to City residents and property. (App II p 205).

The disparity of services received by residents and property resulting from the unilateral political decision by the City to provide a higher level of law enforcement services than provided by the County does not constitute a violation of Article VIII, Section 1(h), Florida Constitution, or of Section 125.01(7), Florida Statutes. Failure of the trial court and Mr. Chambers to recognize this distinction and the ensuing misunderstanding and misapplication of the real and substantial benefit test resulted in the consideration solely of quantified evidence constituting a direct and primary benefit Such misunderstanding and misapplication is a fatal flaw in the position of the City and in the findings by the trial court and constitutes error in this cause.

POINT III

THE FINDING OF FACT BY THE TRIAL COURT THAT THE SERVICES PROVIDED BY ESCAMBIA COUNTY AND IDENTIFIED AS ALL ROADS AND BRIDGES CLASSIFIED AS LOCAL ROADS BY THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION WERE RENDERED IN VIOLATION OF ARTICLE VIII, SECTION 1(h), FLORIDA CONSTITUTION AND SECTION 125.01(7), FLORIDA STATUTES IS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND THE TRIAL COURT ERRED IN APPLICATION OF LAW IN FINDINGS OF FACT AS TO SUCH IDENTIFIED SERVICES.

The City conceded, and Mr. Chambers at trial gave the expert opinion, that roads classified by the Florida Department of Transportation as "minor arterials" and "collector"

county roads and state roads did provide a real and substantial benefit to City residents and property. The challenge of the City is limited to "local" roads which are those roads not classified by the Florida Department of Transportation and located in the unincorporated areas. (App II p 70).

The trial court in the Final Judgment focused on the statutory definition of local roads under Section 334.03(17), Florida Statutes, and held that such local roads did not provide real and substantial benefit since such roads "mainly" serve as subdivision roads and are used "primarily" by persons going to and from places of residence. The trial court further found that City residents will not "customarily utilize" such local roads ". . .but are likely to use arterial and collector roads". (App I pp 7-8). Significantly, the trial court in the Final Judgment found as follows:

> "Local roads primarily serve abutting property owners. All of the County's local roads are contained in the unincorporated areas of the county. Primary benefits of local roads are to the people who live on them." (Emphasis added) (App I p 8).

In Burke v. Charlotte County, 286 So.2d 199 (Fla. 1973), the Court held as follows:

> "The ordinance under attack authorized the levy of a tax against municipal property to 'provide for the construction, reconstruction, repair, paving, repaving, hard surfacing and re-hard surfacing of roads... in any area in said County which is not within the limits of any municipality...' As noted by the trial judge, one of the plaintiffs' admitted in his deposition that good roads in the County would in some manner be of some benefit to himself and other residents of the City of Punta Gorda.' In view of this and other evidence

> in the record, we are of the opinion that the benefits, actual and potential, to be derived by the municipal residents in the instant case are at least as great as those derived by the municipal residents in Briley."

The plaintiff municipalities, their expert witness and the trial court in the Palm Beach County case had relied on the identical statutory classification system by the Florida Department of Transportation to conclude that local roads did not provide the requisite benefit. The Fourth District Court in the Palm Beach County case reversed the findings by the trial court that roads defined by the Florida Department of Transportation as local roads failed to provide the requisite benefit under Article VIII, Section 1(h), Florida Constitution, and Section 125.01(7), Florida Statutes as follows:

> "The first difficulty we observe might be characterized as one of classification. There are surely dirt roads and subdivision streets in the county which are of absolutely no benefit to any municipality. The record supports that conclusion if common sense is not deemed a sufficient predicate. The problem is that the proofs are not sufficient to show that all roads in the unclassified system fall in that category. In fact, the evidence tends to support the conclusion that some unclassified county roads provide a real and substantial benefit. The municipalities have the burden of identifying the service and proving lack of benefit. They placed all their eggs in one basket when they chose to contest taxation on the basis of the classification system rather than on the basis of a number of specified roads and as a result the municipalities cannot prevail on this record.
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> Secondly this issue raises problems in the mannner of proof. Regardless of the expertise of the witness, generally, and his familiarity with legal concepts relating to his specific field of expertise, it is not the function of the expert

> witness to draw legal conclusions. That determination is reserved to the trial court. It was appropriate for the expert to testify regarding the existence of a benefit but it was for the court to determine whether that benefit was real and substantial under the statute and case law. It appears that the trial court may have been unduly persuaded by the expert testimony in this regard. (We do not overlook Section 90.703, Florida Statutes (1981), in reaching this conclusion.) For these reasons we hold that the findings of the trial court on this issue are not supported by substantial competent evidence." (App I p 33).

This Court affirmed the reversal of the trial court in the Palm Beach County case and held:

> "The respondents are not required to prove that the existing benefits are substantial. The petitioners must prove the nonexistence or nonsubstantiality of benefits.
>
> From the foregoing, it is clear in this uncontested factual record that the petitioner presented a paucity of evidence and failed to carry the burden of proving that local nonclassified roads do not provide a real and substantial benefit to municipal residents." (App I pp 19-20).

Mr. Chambers indicated that he did not have an opinion without further review whether or not the Blue Angel Parkway Project provides real and substantial benefit as he did not know how it was going to be classified when completed. (App II p 74-75). He did agree that if it was classified as a minor arterial road that he would change his opinion. (App II p 76).

Mr. Royace Pitts, District Manager for the Third District of the Florida Department of Transportation, which district includes the County, testified that the Blue Angel Parkway was going to be classified as a minor arterial. (App II

p 47). Mr. Pitts testified that the purpose of the functional classification system was for the Florida Department of Transportation to decide whether or not the State of Florida, the County or the City was responsible for the operation and maintenance of a road and the primary purpose of the classification was to designate funding responsiblity. (App II p 45). He also testified that there is a state statutory ceiling on the number of miles that the state can classify as minor arterial under the state classification system. (App II p 45).

Mr. Victor Poteat testified as to the use of the road system in the Pensacola urbanized area as designated on the Escambia County Base Map. (Defendant's Exhibit 1). Mr. Poteat is an employee of a firm of independent consulting engineers employed by the Florida Department of Transportation to study the highway and road system in the Pensacola urbanized area. During the twelve months prior to his testimony, he devoted 50% of his time working on this project, which when completed will comprise approximately 400 pages. The purpose of the study is to provide a tool for planning future road systems and to anticipate the funding of those future road systems within the County in a systematic fashion. He had written the entire report as of the date of his

testimony.[25]

Mr. Poteat testified in performing his study relating to the Pensacola urbanized area he had examined existing traffic volumes throughout the system, major traffic generator attractors, utilization of existing transportation systems as well as the opportunities and constraints for transportation system improvements. (App II p 671). Mr. Poteat indicated that he had posted on the Base Map: Pensacola urbanized area, the location of Pensacola Area hospitals,[26] major employers,[27] Escambia County middle schools, high schools and universities,[28] and shopping centers.[29] He testified that such facilities constituted major traffic generator attractors in the unincorporated areas within the Pensacola urbanized area. As an example, Mr. Poteat testified that the traffic generator attractor of University Mall typically generates approximately 26,000 trips per day. (App II p 107; Defendant's Exhibit 7).

The places of residence of City employees residing in the unincorporated areas of the county were posted on

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[25]For the purpose of analyzing the county road system both Mr. Poteat and Mr. Young defined the Pensacola urbanized area as that area below the red line reflected on the Base Map: Escambia County (Defendant's Exhibit No. 1).

[26]Defendant's Exhibit No. 4 (App I p 88).

[27]Defendant's Exhibit No. 5 (App I p 89).

[28]Defendant's Exhibit No. 6 (App I p 90).

[29]Defendant's Exhibit No. 7 (App I p 91).

a transparent overlay to the Base Map: Pensacola urbanized area. (Defendant's Exhibit No. 15) Reference to such overlay reveals the substantial number of City employees that live in the unincorporated areas and is a compelling picture of the interdependence between the unincorporated areas and the City areas within the Pensacola urbanized area.

As a traffic engineer, Mr. Poteat testified that the types of vehicles that used the local road system in the unincorporated areas were privately operated vehicles such as automobiles, commercial vehicles, taxi cabs and school buses. Mr. Poteat gave the opinion that the local road system was used by City residents and transients as well as County residents. One of the basis of this opinion was a traffic accident analysis he performed at an intersection of local roads in the unincorporated area which roads would appear on a map as a residential area. The investigation revealed that for the year 1981 there were five accidents at such intersection, two of which involved City residents. The trip purpose of the users that were involved in such accidents varied from a work trip to a social trip and included a school bus. (App II pp 113-114).

Mr. Poteat testified that City residents would use the local road system in the unincorporated area for work trips, social and recreation trips and school trips. He also testified that the local roads in the unincorporated

areas are used by other than those who reside on such local roads for trips from work to shopping and recreational areas. (App II pp 115-116).

Mr. Young testified to the interdependence of the unincorporated local road system and the road system within the City in the densely populated Pensacola urbanized area and emphasized the dependence of City businesses that provide residential services in the unincorporated areas on local roads. (App II p 235).

In determining that the benefit received from City residents and property from the local roads in the Pensacola urbanized area differ from that received in the agricultural non-urbanized portion of the County, Mr. Young testified that he considered such factors as population density, dwelling unit density, transportation studies and the comprehensive land-use plan of both the County and City. (App II p 219). He testified that he found as a compelling factor that the City had adopted a comprehensive plan which included a traffic element which incorporated an urbanization line almost identical to that utilized by Mr. Poteat in his study. (App II p 219). Mr. Young concluded that the local roads outside the Pensacola urbanized area did not provide a benefit to City residents and property.

Another benefit to City residents and property testified to by Mr. Young was the use of the local roads in the unincorporated Pensacola urbanized area to operate and maintain the City

underground gas distribution system.[30] Such boundary line is similar to the corporate boundaries of the City in that it is the outer limits of the City franchise area for its gas system. Mr. Young testified that use of the local roads is essential to the operation and maintenance of the City gas utility in the construction of transmission lines, the service of accounts and customers and the maintenace and repair of existing lines.[31]

Mr. Paul Hazucha, County Engineer, testified to several projects on the local road system in the unincorporated area within the Pensacola urbanized area which had a significant environmental improvement in the reduction of siltation in the waters of Escambia County, as well as transportation benefits. (App II pp 118-121). When asked about environmental benefits, Mr. Chambers responded:

> "The extent to which that one might show <u>direct</u> benefits resulting from environmental situations, certainly should be considered We did not have access to any information that showed any costs associated with providing environmental services.***" (App II 99).

Again, the expert opinion of Mr. Chambers is infected by his obsession with direct benefit relating to physical

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[30]The green line located on the Base Map: Pensacola urbanized area, Defendant's Exhibit No. 1, locates the outer boundaries within the unincorporated area of such underground gas distributin system. (App II p 231).

[31]Defendant's Exhibit 3 is a map of the precise location of the existing transmission lines within the unincorporated area within the boundaries of the green line which reflects the outer limits of the franchise area.

locations within the City or directly involving City residents. The basis for his opinion testimony on roads is blind obedience to the classification system adopted by the Florida Department of Transportation which basis was rejected in the Palm Beach County case. The conclusion by the trial court that the City sustained its burden of proving that roads classified by the Florida Department of Transportation as local roads do not provide real and substantial benefit is not supported by competent substantial evidence and results from an erroneous application of the constitutional standard.

CONCLUSION

If the decision in this case stands, then the predictability of prior precedent is destroyed. The trial court in this case utilized the same incorrect direct benefit analysis as the reversed trial court in the Palm Beach County case. Because of the limited number of "dual taxation" cases, the facts of each case are known whether reported in the appellate decision or not. To let the opinion of the Second District Court stand in this case creates chaos in an area of complex intergovernmental relations where stability resulting from consistent case law was emerging.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Substitute Initial Brief of Petitioner Escambia County has been furnished by U.S. Mail delivery to the attorneys on the attached Service List this 14th day of November 1984.

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