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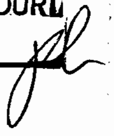

IN THE SUPREME COURT OF FLORIDA

CITY OF DAYTONA BEACH SHORES,
a Florida municipal corporation,

Case No. 65,912

Appellant,

-vs-

THE STATE OF FLORIDA, ex rel
STEPHEN L. BOYLES,

Appellee.
_______________________________/

BRIEF OF CITY OF NEW SMYRNA BEACH AS AMICUS CURIAE

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STATEMENT OF THE CASE

This is an appeal from the opinion and decision of the Fifth District Court of Appeal, reported at 454 So.2d 651, affirming a permanent injunction against the enforcement of an ordinance of the City of Daytona Beach Shores which imposed a toll upon automobiles using its public beach. The injunction had been sought by the State Attorney for the Seventh Circuit, the Honorable Stephen Boyles. He was joined by the Department of Natural Resources as amicus curiae below.

Jurisdiction of this Court was invoked because of conflict between the decision below and Nichols v. City of Jacksonville, 262 So.2d 236 (Fla. 1st D. C. A. 1972). The City of New Smyrna Beach applied for and was granted leave to appear here as amicus curiae, since it has had a beach toll in effect since 1968. In this brief, the appellee will be referred to as the State Attorney or State, the appellant City will be referred to as Daytona Beach Shores, and the City of New Smyrna Beach as amicus will be referred to as New Smyrna Beach.

STATEMENT OF THE FACTS

Daytona Beach Shores, like New Smyrna Beach, is a small coastal municipality in Volusia County. It is located entirely on the barrier island south of the limits of Daytona Beach. Particularly during the spring and summer bathing season, there is a large influx of people from the interior of the State who come to the beaches by automobile. The beaches in both Daytona Beach Shores and New Smyrna Beach consist of a soft sand area east of the dune or bulkhead line, a hard sand area above the mean high water mark which is capable of supporting automobile traffic, and the foreshore between the mean high water mark and the mean low water mark.

In years past, the access to the beach has been by virtue of paved ramps which are extensions of upland streets eastward to the beach itself. In the case of Daytona Beach Shores, the ramp at Dunlawton Avenue and the beach itself were described by old statutes as state highways. During the restructuring of the state road system, these "highways" were reclassified as local streets, and responsibility was transferred to the City for their maintenance and regulation.

In New Smyrna Beach, by contrast, state highways never extended to the beach itself. Access to the beach was gained by local ramps constructed at intervals by the City.

Both cities, as well as other jurisdictions in the Seventh Circuit, have enacted

ordinances establishing a toll or user charge for automobile access to the beach during periods of peak congestion. Both cities restrict the use of funds so collected to beach-related expenditures. Neither city imposes a charge for access by pedestrians, bicycles or beachfront property owners or tenants.

In the trial court, much was made of the issue of whether the ramps and beaches there in dispute were free public highways upon which no toll could be imposed by a municipality. Also raised was the question of whether the barricades could be placed in the foreshore or "wet sand" area. In Daytona Beach Shores, such barricades were erected where the southerly limits of Daytona Beach met the northerly limits of Daytona Beach Shores. No such barricades exist at the city limit of New Smyrna Beach; instead, Volusia County has enacted its own ramp toll ordinance for the single ramp located outside municipal limits, and has contracted with New Smyrna Beach for that City to collect the tolls and expend them for services on the County beach. The District Court discounted those arguments, and properly recognized that the Atlantic Ocean Beach is a beach, not a road. It further recognized that the regulation of the beach was within the general police power of the City. Nevertheless the District Court found that the Daytona Beach Shores ordinance was deficient in two principal respects:

> 1. The ordinance went beyond legitimate police power considerations, and only remotely implicated the regulation of traffic by the imposition of a toll;
>
> 2. The ordinance was invalid as a user charge because its proceeds were expended for general municipal services and not limited to beach-related municipal services, and because the ordinance imposed the entire cost of beach related services upon automobile traffic,

when automobile passengers are only part of the general beachgoing population.[1]

The first of the issues above is a question of law common to both Daytona Beach Shores and the City of New Smyrna Beach. The second issue turns upon the facts presented in each affected City; provisions of ordinances may vary in the extent to which the entire financial burden is placed upon automobile traffic, and the scope of municipal services sought to be funded from beach toll receipts. The first issue will accordingly be addressed by this amicus in support of the appellant.

As to the second issue, the interests of these two cities may not be identical. In the appendix to this Brief, New Smyrna Beach has included its own report from its finance director, showing specifically which expenditures are thought proper from beach tolls, and what proportion of the expenditures are made necessary by beachgoers arriving by automobile. In New Smyrna Beach, for example, approximately 93% of the people on the beach during a survey in August 1984 arrived there by automobile. As the report points out, the two largest single items in the beach budget are traffic regulation and sanitary facilities. Neither of these services are particularly useful to, or made necessary by, the owner or tenant of beachfront or nearby property who arrives on foot. Accordingly, substantially <u>more</u> than 93% of the budget in New Smyrna Beach consists of services to the people arriving by automobile. These facts may vary from one city to the next, and need not be addressed here if the basic legal concept of a beach toll is approved. What is important is that the Court recognize that a different record may be produced in a

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1. There is a logical inconsistency in the holding that all beach-related expenditures are borne by automobiles, and the holding that the ordinance did not fund beach-related expenditures.

different case. It will be most useful to all affected governments if the proper guidelines for a lawful beach toll are declared.

ISSUES URGED BY AMICUS CURIAE ON APPEAL

POINT I

WHETHER IT IS A PERMISSIBLE EXERCISE OF MUNICIPAL POWER TO IMPOSE A USER CHARGE FOR ACCESS TO THE OCEAN BEACH TO DEFRAY THE EXPENSE OF PROVIDING BEACH-RELATED GOVERNMENTAL SERVICES

POINT II

WHAT ARE THE PROPER STANDARDS FOR THE COLLECTION AND EXPENDITURE OF BEACH USER CHARGES:

A. WHETHER IT IS PERMISSIBLE TO LIMIT THE CHARGE TO BEACH USERS ARRIVING BY AUTOMOBILE

B. WHETHER IT IS PERMISSIBLE TO EXPEND USER CHARGES UPON OPERATING EXPENSES RELATED DIRECTLY OR INDIRECTLY TO BEACH USAGE

C. WHETHER IT IS PERMISSIBLE TO ACCUMULATE A SURPLUS OF REVENUES FROM BEACH USER CHARGES FOR EXPENDITURE ON PARKING LOTS, WALKOVERS AND OTHER FACILITIES TO PROVIDE ALTERNATIVES TO AUTOMOBILE TRAFFIC ON THE BEACHES.

ARGUMENT

POINT I

IT IS A PERMISSIBLE EXERCISE OF MUNICIPAL POWER TO IMPOSE A USER CHARGE FOR ACCESS TO THE OCEAN BEACH TO DEFRAY THE EXPENSE OF PROVIDING BEACH-RELATED GOVERNMENTAL SERVICES

The State in its various incarnations, the Department of Natural Resources or the State Attorney and the Attorney General, has taken the position throughout these proceedings that the state's sovereignty over the beaches is paramount to any municipal ordinance. Whether the argument is made concerning the intersection of state roads with the beaches, or whether a more direct invocation of the public trust doctrine is made, the adversaries of this ordinance claim that either there is no governmental authority over the beaches, or that the authority lies with a government other than the city.

These arguments miss the point. They assume that the lands in question are sovereign lands. This may be so. But it does not follow that the regulation of sovereign lands is vested solely in one incarnation of the state. Cities also possess sovereign power.

Article VIII, §2 of the Constitution of Florida gives to every municipality all governmental, corporate and proprietary power for municipal purposes, except as otherwise

provided by law.

The Legislature has given fuller expression to the Constitutional promise of home rule, in Fla. Stat. §166.021. There, the term "municipal purpose" is defined as:

> Any activity or power which may be exercised by the state or its political subdivisions.

This Court has recognized that the legislature's adoption of that statute was not a mere delegation of the police power but an implementation of the constitutional division of the sovereign power [2].

Even under previous constitutions, the Court has recognized that the sovereign power is not necessarily lodged solely with the Legislature or its creatures, but may be placed by the people in other constitutionally-ordained agencies. In Sylvester v. Tindall, [3] this Court was faced with a challenge to the authority of the Game and Fresh Water Fish Commission, lately created by constitutional amendment. One of the grounds of attack was that the Commission's powers represented an improper delegation of legislative authority. The Court responded:

> "The contention that this act is an unconstitutional delegation of legislative power is not tenable. It is true that the constitutional amendment and the statute, considered together, authorize the Game and Fresh Water Fish Commission to make rules and regulations which may override, and, in effect, repeal statutes in conflict therewith, but that is the stated purpose and intent of both the constitutional amendment and the implementing statute . . . If the power thus conferred upon the Commission

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2. City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764 (Fla. 1975) [Special concurring opinion of Justice Dekle, in which the Court unanimously joined on this issue]

3. 18 So. 2d 892 (Fla. 1944)

is legislative in nature, it is nevertheless one that is constitutionally conferred."

Even before the advent of municipal home rule under the 1968 Constitution, the Court recognized that the sovereign trust over property of the State could be delegated. In State v. Black River Phosphate Co.,[4] this Court stated [at 646] :

> In the administration of government, the use of such power may for a limited period be delegated to a municipality or other body, but there always remains in the state the right to revoke these powers and exercise them in a more direct manner and one more conformable to its wishes.

The Department of Natural Resources has urged in these proceedings below, and presumably will hold its position here, that it has sole jurisdiction over sovereign state lands. It includes within its claim the "wet sand" area below the mean low water and the mean high water, and invokes as well the claim that the extension of Dunlawton Avenue, as well as the beach itself, are state highways with whose use the City may not interfere. The District Court opinion recognized that the beach is a beach, not a road. But this does not settle the question "whose beach?".

The Department urges that because it is the agency entrusted with the management and disposition of sovereignty lands, it also has exclusive police powers over those lands. This is not true. The Attorney General joins in that argument, stating that the City has no authority to place a condition on use of lands it does not own.

These arguments miss the point. The beach municipalities do not profess to "own" the beach, or to assert any title in derogation of the sovereign title. But they do have the

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4. 13 So. 640 (Fla. 1893)

inherent power to regulate the beaches, unless that power is expressly prohibited by some legislation. No such prohibition has been cited in these proceedings at any level.

In Palm Beach County v. Town of Palm Beach,[5] the County proposed to make a public beach and recreation facility on lands owned by it within the limits of the town. The District Court there held that the County was required to submit itself to the zoning jurisdiction of the town and apply for a special exception permit to operate the facility. The court held that the former legal inquiry into whether the county's use was governmental or proprietary was no longer an appropriate test, and announced a new test of balancing of the competing interests of the affected governments.

The cavalier assertion that the city is without authority to place conditions on land which it does not own, is both wrong and immaterial. For the sake of argument, it may be conceded that the State through its Department of Natural Resources is the title-holder of the public trust consisting of the beach lands. Yet in the management, administration and disposition of the state lands, the statutes which create the Department do not prohibit local control. For example, if it is in the public interest, the Department may authorize the dredging of the fill material from submerged lands of the state to construct or extend privately-owned uplands. But before any such permit can be issued, the application must be submitted to the affected local government.[6] If the local government disapproves, the application must be denied. This provision is hardly

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5. 310 So. 2d 384 (Fla 4th D.C.A. 1975)

6. Fla. Stat. §253.1245.

consistent with a grant of exclusive regulatory authority to the Department.

If it were otherwise, then the coastal cities would be powerless to regulate their beaches. Yet this Court has upheld the municipal power to prohibit automobile traffic on the beaches.[7]

It is thus apparent that the cities have the power to regulate beaches not "owned" by the municipality. And it should not matter whether the "owner" is the state (in the case of the wet sand) or a combination of private riparian ownership and public easements in the "soft sand" area.[8]

The next question is whether the cities may finance their regulation by assessing user fees against those regulated. Such regulation or permit fees are common throughout all levels of government. Generally, the cities have inherent power to assess "user fees" by ordinance for such amounts of money which are necessary for the conduct of municipal government.[9] Here, one aspect of municipal government is the provision of services to the public beaches. Those services may vary from city to city, but may include traffic regulation, trash pickup, the establishment and operation of bathhouses and public restrooms, the construction of "walkovers" and prohibition of other foot traffic across sensitive dunes, the provision of lifeguards and other beach patrols to maintain order and enforce beach regulations, and a host of other public services.

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7. Town of Atlantic Beach v. Oosterhoudt, 172 So. 687 (Fla. 1937).

8. City of Daytona Beach v. Tona-Rama, 294 So. 2d 73 (Fla. 1974).

9. Fla. Stat. §166.201.

The provision of such public services, at a price charged to the user, is no different from the provision of water and sewer services, [10], parks and playgrounds, [11] or streets and roads. [12]

In other jurisdictions where the so-called "public trust" doctrine has been invoked to preserve or secure free access by the public to the ocean shore, that access has not necessarily been "free" in a financial sense. For example, in Borough of Neptune City v. Borough of Avon-by-the-Sea, [13] the New Jersey court held that an ocean-front municipality could not bar inland residents from the beach by limiting the sale of season passes to its own residents and limiting the number of daily passes to be sold. Yet the court recognized the same history that besets the beachfront communities in Florida:

> Years ago Avon's beach, like the rest of the New Jersey shore, was free to all comers. As the trial court pointed out, 'with the advent of automobile traffic and the ever-increasing number of vacationers, the beaches and bathing facilities became overcrowded and the beachfront municipalities began to take steps to limit the congestion by regulating the use of the beach facilities and by charging fees.' It also seems obvious that local financial considerations entered into the picture. Maintenance of beach fronts is expensive and adds substantially to the municipal tax levy if paid for out of property taxes. Not only are there the costs of lifeguards, policing, cleaning and the like, but also involved are capital expenses to prevent or repair erosion and storm damage through the construction of jetties, groins, bulkheads and similar devices. . . . In addition, the seasonal

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10. Contractors and Builders Association v. City of Dunedin, 329 So. 2d 314 (Fla. 1976)

11. Hollywood, Inc., v. Broward County, 431 So. 2d 606 (Fla. 4th D.C.A. 1984) cert. den. 446 So. 2d 352 (Fla. 1983).

12. Homebuilders v. Board of Palm Beach County Commissioners, 446 So. 2d 140 (Fla. 4th D.C.A. 1983), cert. den. 451 So. 2d 848 (Fla. 1984).

13. 294 A. 2d 47 (N.J. 1972),

population increase requires the expansion of municipal services and personnel in the fields of public safety, health and order. On the other hand, the values of real estate in the community, both commercial and residential, are undoubtedly greater than those of similar properties in inland municipalities by reason of the proximity of the ocean and the accessibility of the beach. And commercial enterprises located in the town are more valuable because of the patronage of large numbers of summer visitors (Avon does not have, in contrast with many other shore communities, extensive boardwalk stores and amusements.)

The court recognized that municipalities in New Jersey were expressly authorized to charge beach fees, and held simply that it was improper to structure those fees in a way that discriminated against nonresidents. The ruling was prospective only.

Ten years later, the same court decided Matthews v. Bay Head Improvement Association.[14] There, it was not a city at all but an association which held fee simple or leasehold interests in most of the beachfront in Bay Head. Membership in the Association was generally limited to residents of Bay Head, although hotels could purchase passes for distribution to their guests. Otherwise the beaches were private. The issue was whether the public trust doctrine could be invoked to compel the Association to open its membership. The Court found that it could. In describing the evolution of the same public trust doctrine which is urged by the State here, the court noted:

> We perceive no need to attempt to apply notions of prescription [citing City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73 (Fla. 1973) and other authorities], as an alternative to application of the public trust doctrine. Archaic judicial responses are not an answer to a modern social problem. Rather, we perceive the public trust doctrine not to be fixed or static, but one to be molded and extended to meet changing conditions and needs of the public it was created to benefit.

The court thereupon ordered that the Association must open its membership to the

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14. 471 A. 2d 355 (1983).

public at large, so that they might have access to the common beach property. It directed that a reasonable number of season passes should be afforded to nonresidents, taking into account all relevant matters such as the public demand and the number of swimmers that might safely be accommodated on the Association's property.

Significantly, the court held:

> The association may continue to charge reasonable fees to cover its cost of lifeguards, beach cleaners, patrols, equipment, insurance, and administrative expenses. The fees fixed may not discriminate in any respect between residents and nonresidents. The Association may continue to enforce its regulations regarding cleanliness, safety and other reasonable measures concerning the public use of the beach.

The legal question of the public's inalienable right to the beaches has been a subject of much comment and litigation in recent years, and the instant case is but one example. In resolving this case, the court is urged to adopt a view consistent with the rights of the cities to impose reasonable regulations and to charge reasonable, nondiscriminatory user fees for the users of the beach. Any other decision will cast a serious cloud upon these cities. For example, New Smyrna Beach prohibits glass containers on the beach, and prohibits alcohol during times of peak congestion. If the "title" to the wet sand area rests with the State, can such ordinances be enforced on state lands? For that matter, if "title" is determinative, can such ordinances be enforced on the dry sand either, for the "title" rests with the upland riparian owner, subject to an "easement" in favor of the public for bathing, fishing and access. Can a property owner drink beer from a bottle while standing on the dry sand beach? The "property rights" approach urged by the State would suggest such a result, freeing such lands from any municipal control.

The State will no doubt respond that it does not seek to free the beaches from

municipal regulation, but merely from municipal "tolls." But how else is the regulation to be financed? New Smyrna Beach and the other coastal municipalities are host to millions of transient guests from the interior of the State or from other states and nations. If it does not provide safety from automobile traffic, it is legally liable. If it does not pick up bottles and trash from the beaches and a strolling bather is injured, it is legally liable. If no restrooms or bathhouses are provided, the public's alternative is either trespass on private upland property or pollution of the beaches.

The State offers precious little in the way of suggestions to the cities for the financial management of this burden. It does not offer to share the cost. Interestingly, many state parks operated by the Department of Natural Resources are financially supported by admission charges or "user fees". If the State really owns the beaches, then it must be financially responsible for their maintenance. If it is unable or unwilling to finance the operation of the beaches, then it must either allow the cities to do so, or it must limit the number of people who use the beaches so that the natural (unserviced) capacity of the beaches is not exceeded. The latter approach is totally inconsistent with the public trust doctrine as interpreted by the State.

The State's position in the instant case is irresponsible. The tides will carry away a certain amount of the marks of man upon the seashore, but when the congestion becomes too great, human effort must be added. The beaches will transport a reasonable number of automobiles in safety without interfering with bathers, but when there are not enough places to park, conflict arises. If the analogy of a "public easement" is to be used in reference to the beaches, we must recall that one of the ways to terminate an easement is by forfeiture when it is put to a use different or more intense than originally

intended.

There is room within the public trust doctrine for some creativity. The Court has an opportunity to set the limits of the public's rights, and the limits of the cities' rights. There should be some balancing of those rights, and any user fees charged must be nondiscriminatory. Such fees should be "revenue-neutral", producing neither a windfall nor a hardship to the beachfront municipalities. The Court's attention should next be turned to a delineation of the proper limits for the exaction of beach user fees.

POINT II

WHAT ARE THE PROPER STANDARDS FOR THE COLLECTION AND EXPENDITURE OF BEACH USER CHARGES:

A. WHETHER IT IS PERMISSIBLE TO LIMIT THE CHARGE TO BEACH USERS ARRIVING BY AUTOMOBILE

In the Appendix to this brief, the City of New Smyrna Beach has included an analysis by its Finance Director of the basis of its own ordinance. One element of that analysis is a survey conducted in August 1984 which showed that approximately 93% of the

bathers on the beach at that time arrived by automobile.

The analysis further shows that the most substantial beach-related expenses incurred by the City were the collection of the tolls, traffic regulation, sanitary facilities (portable restrooms) and trash pickup. Obviously the first two of these items are related exclusively to automobile traffic entering the beach. The other items are a little more indirect, but it should be apparent that people who walk to the beach are less likely to resort to the portable restrooms, or utilize beachfront garbage cans, than auto passengers who have no access to nearby alternatives. Thus it is possible to conclude that substantially more than 93% of the beach expenses in New Smyrna Beach are caused directly or indirectly by those arriving in automobiles.

It should be noted that the fee is based on a "per car" basis, and not "per capita." If pedestrians were to be assessed, it would not be feasible to do so on anything other than a "per capita" basis, and the expense of collection might well be increased beyond the increase in revenue.

The facts in other cities, including Daytona Beach Shores, may vary. It is not the intent of this amicus to introduce facts in this forum, but merely to demonstrate that it is possible for a city to conclude that it is both equitable and efficient to limit the user fee to those arriving by automobile. "In this matter, too, 'perfection is not the standard of municipal duty.'"[15]

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15. Contractors and Builders Association v. City of Dunedin, 329 So. 2d 314, at 320 n.10, citing Rutherford v. City of Omaha, 160 N. W. 2d 223 (Neb. 1968).

B. WHETHER IT IS PERMISSIBLE TO EXPEND USER CHARGES UPON OPERATING EXPENSES RELATED DIRECTLY OR INDIRECTLY TO BEACH USAGE

The principles for imposing a lawful impact fee are set forth in Dunedin, supra. First, there must be a clear earmarking of the funds so that what is collected as a "user fee" does not become an unauthorized "tax" or general revenue measure. Here, the ordinance of Daytona Beach Shores appears to meet that test, and the observation of the District Court that funds could be spent elsewhere in the City is apparently unsupported in the record. In any event, the City should be free to impose trust fund restrictions if necessary in order to keep its ordinance in effect.

Second, the amount of fees collected must bear a reasonable relationship to the cost of providing the service. Again this will vary from one city to another. In New Smyrna Beach, for example, the Appendix shows a surplus of $79,647 on revenues of $537,480 for the 1984 season. Not every year has been so prosperous; the ordinance has existed since 1968, and the accumulated surplus is $256,057.

The cases on "impact fees" or user charges in Florida have thus far been limited largely to exactions for capital expenditures. Yet it has been unquestioned that in the case of water and sewer service, the user expects to pay a monthly rate to cover operating expenses. A visitor to a state park expects to pay an admission charge to cover the cost of services, if not the cost of acquiring the park. Throughout all levels of government, people who are regulated differently or more intensely than the public generally are expected to pay permit, license or application fees. Though the

Constitution guarantees free access to the courts[16] and justice is administered "without sale", litigants expect to pay filing fees and attorneys expect to pay dues to the Florida Bar. Thus it should make no difference conceptually whether the "user fee" is imposed to make capital expenditures, or merely to cover ordinary operating expenses. The use of any surplus is dealt with next.

C. WHETHER IT IS PERMISSIBLE TO ACCUMULATE A SURPLUS OF REVENUES FROM BEACH USER CHARGES FOR EXPENDITURE ON PARKING LOTS, WALKOVERS AND OTHER FACILITIES TO PROVIDE ALTERNATIVES TO AUTOMOBILE TRAFFIC ON THE BEACHES.

As the Finance Director of New Smyrna Beach pointed out in the Appendix, there is a limit to the number of cars which can be parked on a given mile of beach. Yet the population continues to increase. It takes no special foresight to appreciate that even if automobile traffic on the beaches is to be maintained, alternative facilities must be provided. One cannot "four-lane" a beach, even if it has been designated a public highway. As the state's population increases, satellite parking lots or shuttle services must be established if reasonable public access is to be maintained. Who will pay for such facilities? It is respectfully submitted that any surplus of beach receipts over operating expenditures may, indeed must be allocated to such purposes.

In Dunedin, the Court noted that when expansion of public facilities is reasonably required, it is permissible to impose reasonable user fees which do not exceed a pro rata share of the reasonably anticipated costs of expansion. But it is unjust to impose upon

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16. Article I, §21.

the "newcomer" the entire burden of capital, including the replacement of existing facilities or the increase in the quality of the facilities.

Applying those same principles here, the cities may reasonably accumulate "earmarked" capital for the expansion of facilities to serve the beachgoing public, including parking lots, beach walkovers and other facilities.

It may even be necessary or desirable in a proper case to restrict or eliminate automobile traffic on the beaches altogether.[17] But if "free" access to the beach is a "right", then how can metered upland parking lots ever attract patrons?

If automobile traffic can be totally prohibited on beaches, then it should be permissible for the cities to set the fees on automobile beach traffic so that such traffic is discouraged in comparison with pedestrian access. But if discrimination against out-of-town bathers is to be avoided, then alternate facilities for the convenient parking of automobiles and access to the beach must be provided. Here, a logical and desirable cause for the disbursement of beach receipts is the construction of such alternate facilities. The creation and disbursement of such capital reserves meets every test laid down in the precedents of this Court.

In sum, the application of the "public trust" doctrine, or the invocation of prescriptive easement or custom in opposition to reasonable user fee ordinances is a too-rigid reading of those principles. The cities acknowledge that they, no less than the state and perhaps more so, are stewards of their shores. They are not the owners. But they are, however

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17. Town of Atlantic Beach v. Oosterhoudt, supra.

willingly or unwillingly, the hosts to millions of transient visitors. Responsible stewardship over the beaches means that services and facilities must be provided to serve the ever-increasing crowds. Those facilities must be financed, and the State has not done so. Let it not complain because the cities accepted the responsibility when it has not.

Where increasing crowds threaten to degrade the quality of the beach experience, the real trustees of the public trust are those who seek to maintain that quality. As the New Jersey court observed, the public trust doctrine should not be fixed and rigid; it should recognize the evolving needs of its beneficiaries.

SUMMARY AND CONCLUSION

The District Court erred in holding that the imposition of a beach toll was an impermissible exercise of municipal power. Where the demand for use of lands held in public trust becomes so overwhelming that additional services must be provided to handle the congestion, the cost of such services may legitimately be made the subject of a user charge by the provider of the services.

The user charge must be reasonably related to the cost of providing the service, and must be restricted to use for that purpose and no other. However, included within the scope of permissible uses is the accumulation of surpluses, so long as those surpluses are reasonably necessary to, and earmarked for, beach related improvements, including those which may lessen or remove automobile traffic.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was duly furnished by U.S. Mail this 19 day of February, 1985 to STEPHEN L. BOYLES, ESQUIRE, State Attorney, 440 South Beach Street, Daytona Beach, Florida, 32014; BRUCE BARKETT, ESQUIRE, Assistant Attorney General, Department of Legal Affairs, Office of the Attorney General, The Capitol, Tallahassee, Florida, 32301; PETER B. HEEBNER,

ESQUIRE, 523 North Halifax Avenue, Daytona Beach, Florida 32018; and to LEE R. ROHE, ESQUIRE, Assistant General Counsel, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303.

Respectfully submitted

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Attorney for City of
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Amicus Curiae