

01A 5-7-85

SUPREME COURT OF FLORIDA

CASE NO.: 65,912

CITY OF DAYTONA BEACH SHORES,
a Florida municipal corporation,

Petitioner,

vs.

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

Respondent.

FILED

SID J. WHITE

FEB 21 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

INITIAL BRIEF
OF
AMICUS CURIAE, TOWN OF PONCE INLET

Discretionary Review of the
Decision of the Fifth District
Court of Appeal
Appeal Docket #83-263

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TABLE OF CONTENTS

	<u>PAGE</u>
CITATION OF AUTHORITIES	i i
STATEMENT OF CASE AND FACTS	1
ARGUMENT	3
POINT I	
WHETHER THE STATE OF FLORIDA CAN IMPOSE USER FEES FOR THE USE OF LANDS TO WHICH THE PUBLIC TRUST DOCTRINE APPLIES	5
POINT II	
WHETHER THE POWER TO IMPOSE USER FEES HAS BEEN TRANSFERRED TO A MUNICIPALITY SUCH AS THE CITY OF DAYTONA BEACH SHORES	7
POINT III	
WHETHER A MUNICIPALITY'S IMPOSITION OF A USER FEE FOR VEHICULAR TRAFFIC ON ATLANTIC OCEAN BEACHES VIOLATES THE PUBLIC TRUST DOCTRINE	8
CONCLUSION	12
APPENDIX	13
A-1: Order:Case Number V83-5623-PI	
A-3: Ponce Inlet Public Beach Access Ordinance	
A-9: Ponce Inlet Beach Access User Fee Ordinance	
CERTIFICATE OF SERVICE	14

CITATION OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Adams v. Elliott</u> , 128 Fla. 79 174 So. 731 (1937)	5
<u>The City of Daytona Beach Shores v. State</u> , 454 So.2d 651 (Fla. 5th DCA 1984)	3, 7
<u>City of Coral Gables v. Hepkins</u> , 107 Fla. 778, 144 So. 385 (1932)	6
<u>Neptune City v. Avon-By-The-Sea</u> , 61 N.J. 296, 294 A.2d. 47 (1972)	5
<u>Ralph v. City of Daytona Beach</u> , No. 62,094 (Fla. Feb. 17, 1983)	9, 11
<u>Sallas v. State</u> , 98 Fla. 464, 124 So. 27 (Fla. 1929)	8, 10
<u>White v. Hughes</u> , 139 Fla. 54, 190 So. 446 (1939)	5, 8
<u>CONSTITUTION</u>	
Art. VIII, §2(b), <u>Fla.Const.</u>	7
<u>STATUTES</u>	
§166.021(4), Fla.Stats. (1983)	1, 7
<u>OTHER</u>	
"Public Beach Access:A Guaranteed Place to Spread Your Blanket", 29 U.Fla.L.Rev. 859 (1977)	1

STATEMENT OF CASE AND FACTS

Amicus Curiae, the Town of Ponce Inlet, a municipality operating under the grant of authority created by the Municipal Home Rule Powers Act, §166.011 et seq. Fla. Stats. (1983) agrees with and adopts the "Statement of the Case" and the "Statement of the Facts" contained in the initial brief of Petitioner, CITY OF DAYTONA BEACH SHORES. Amicus, however, would add the following for the court's benefit.

In 1983, the Town of Ponce Inlet had enacted and was enforcing a user fee which imposed a fifty cent (\$.50) charge on week days and a one dollar (\$1.00) charge on weekend days and holidays for entry upon the Atlantic Ocean beaches within its municipal limits. A season pass could also be purchased for the sum of five dollars (\$5.00). During the time when the user fee was in effect, Mildred Armstrong, in an apparent act of civil disobedience, entered upon the Atlantic Ocean beach within the Town of Ponce Inlet without paying the toll in violation of the ordinance. She was arrested and prosecuted but found not guilty in county court by The Honorable Gayle Graziano, County Court Judge, who ruled that the Ponce Inlet user fee ordinance was unconstitutional (A1-2). Recently, Armstrong's Federal Court claim against Ponce Inlet for violations of civil rights and malicious prosecution was summarily and finally dismissed.

In the Spring of 1984, the Town of Ponce Inlet again sought to enact a user fee ordinance but at this time also enacted its version of the model public beach access ordinance proposed in "Public Beach Access: A Guaranteed Place to Spread Your Blanket", 29 U.Fla.L.Rev.

859 (1977). Final implementation of the user fee contemplated by these two ordinances, each of which is contained in the Appendix to this brief, depended upon resolution action of the Ponce Inlet Town Council. That action has been delayed pending resolution of the instant case.

ARGUMENT

It is the position of Ponce Inlet that determination of the validity of the user fee in the instant case or the validity of any user fee imposed by municipalities for the use of lands held in trust for the benefit of the public according to the public trust doctrine involves a three-fold analysis:

1. Whether the State of Florida can impose user fees for the use of lands to which the public trust doctrine applies.
2. If so, whether that power has been transferred to a municipality such as the City of Daytona Beach Shores or the Town of Ponce Inlet.
3. If so, whether a municipality's imposition of a user fee on vehicular traffic seeking to drive on Atlantic Ocean beaches held in trust for the benefit of the public under the public trust doctrine violates this doctrine.

Each of these issues will be considered separately. Analysis on this basis contemplates partial agreement with the opinion of the Fifth District Court of Appeal in the instant case reported as The City of Daytona Beach Shores v. State, 454 So.2d 651 (Fla. 5th DCA 1984). As stated in that opinion, "a beach is not a road". Daytona Beach Shores at 654. The position and analysis of Ponce Inlet does

not turn upon whether title to a public highway has been passed to The City of Daytona Beach Shores. Ponce Inlet's position does not turn upon whether a beach constitutes a "special facility" permitting the imposition of a toll or user fee. Rather, the issues are, quite simply, can the state do it? If so, can a municipality do it and if so, does a user fee imposed upon vehicular traffic violate the public trust doctrine?

WHETHER THE STATE OF FLORIDA CAN IMPOSE USER
FEES FOR THE USE OF LANDS TO WHICH THE PUBLIC
TRUST DOCTRINE APPLIES.

As applied in the instant case, the public trust doctrine holds that public lands, such as the foreshore between the high and low water mark, are held in trust for the benefit of the public. Although the interest of the public in the use of the foreshore area for long established customary uses such as recreation, bathing, navigation and fishing is paramount, those rights are subject to appropriate and lawful government regulation. Adams v. Elliott, 128 Fla. 79, 174 So. 731 (1937); Neptune City v. Avon-By-The-Sea, 61 N.J. 296, 294 A.2d. 47 (1972).

In White v. Hughes, 139 Fla. 54, 190 So. 446 (1939), it was stated that the public's primary uses of bathing, recreation, fishing and navigation are subject to lawful regulation by the state in the interest of the public. In Neptune City, supra., at page 53, the specific right of the State of New Jersey to impose tolls, rents and similar user fees to finance improvements and maintenance for the benefit of the public was clearly recognized. Finally, the state's imposition of user fees in public trust lands, including the foreshore area, is widespread and unchallenged. No prohibition exists to prevent the state from imposing reasonable user fees on members of the public seeking to use public trust lands.

The public trust doctrine does not apply solely to the foreshore

area of the Atlantic Ocean beaches. Lands acquired by the state, counties and municipalities and used for public purposes, such as airports, stadiums, playgrounds, golf courses, auditoriums, museums and libraries are held for the use and benefit of the public. City of Coral Gables v. Hepkins, 107 Fla. 778, 144 So. 385 (1932). The governmental entity owning such properties holds title as trustee for the people. Hepkins at 387.

The authority of the owning and maintaining body to charge user fees to defray the costs of maintaining such lands and facilities is unquestioned. Certainly, the upkeep of a municipally owned facility such as a golf course should be paid by its users, rather than the general taxpaying public. This is consistent with logic and common sense as is charging a user fee for motor vehicles which are responsible for the greatest portion of beach maintenance costs.

WHETHER THE POWER TO IMPOSE USER FEES HAS BEEN
TRANSFERRED TO A MUNICIPALITY SUCH AS THE CITY
OF DAYTONA BEACH SHORES.

Pursuant to constitutional and statutory authority, municipalities have the inherent power to perform all functions reserved to state government except to the extent that those functions are expressly prohibited by law. Art. VIII, §2(b), Fla.Const., vests municipalities with governmental, corporate and proprietary powers enabling them to conduct municipal government, perform municipal functions and render municipal services and they are expressly authorized to exercise any power for these municipal purposes except when expressly prohibited by law. §166.021(4), Fla.Stats. (1983), specifically removes any judicially imposed limitations seeking to limit the exercise of proprietary powers by a municipality. City of Daytona Beach Shores v. State, supra. "Therefore, the City is vested with both police and regulatory powers which include the power to impose a user fee for certain municipal services." Daytona Beach Shores at 654. Therefore, the authority of the State of Florida to impose user fees, including for the use of public trust lands, has been passed along to municipalities under the Florida Constitution and the Municipal Home Rule Powers Act, unless such power has been specifically prohibited by law. No such specific prohibition exists unless the public trust doctrine prevents the exaction of a user fee for vehicular access to Atlantic Ocean beaches.

III

WHETHER A MUNICIPALITY'S IMPOSITION OF A USER FEE FOR VEHICULAR TRAFFIC ON ATLANTIC OCEAN BEACHES VIOLATES THE PUBLIC TRUST DOCTRINE.

Under the public trust doctrine, the public's rights to use of the foreshore for the purposes of navigation, fishing, recreation and bathing is guaranteed. White at 449. These primary uses are subject to lawful regulation by the state in the public interest and are subject to the state's right to authorize that portions of the foreshore area be used as public highways. White at 450. Despite the state's authority to authorize that portions of the foreshore area be used as public highways, the public's right to use the beach for its traditional purposes under the public trust doctrine is superior to that of motorists driving automobiles thereon. White at 450. In Sallas v. State, 98 Fla. 464, 124 So. 27, 28 (Fla. 1929) this court held that "the fact that Atlantic and Jacksonville beaches have been made public highways by legislative enactment in no way modifies or restricts any right of the pedestrian public in the use of them for lawful purposes and we think that right equal to, if not superior to, that of the motorist. Bathing and recreation constitute the primary use of most of our beaches".

The public's right to the traditional uses under the public trust doctrine supersedes the rights of motorists driving automobiles on the Atlantic Ocean beaches and reasonable regulations in the form of user fees imposed upon automobiles for the benefit of the traditional uses associated with the public trust doctrine do not

violate that doctrine. Certainly no prescriptive or customary right exists to drive motor vehicles on the beach; use of the hard sand area in this fashion only dates back to the turn of the century (and the soft-sand area since the advent of four-wheel drive). Certainly no such right to use the foreshore areas in this fashion has existed from time immemorial and in fact, the public trust doctrine was fashioned before the invention of the automobile.

Certainly there can be no dispute but that the advent and ever increasing use of the hard-sand area by automobiles has created and continues to create ever increasing demands upon the resources of municipalities. These demands can be described and measured in both direct and indirect costs to municipalities:

1. Increased police protection necessitated by the mixing of cars and pedestrians on an area traditionally associated with public use for purposes other than automobile driving.
2. Increased traffic regulation and control mandated by this court's decision in Ralph v. City of Daytona Beach, No. 62,094 (Fla. Feb. 17, 1983), rehearing pending.
3. The cost of creating and maintaining vehicular access points.
4. The increased demand for oceanfront property resulting from a mobile and affluent society visiting beachside communities within the State of Florida to vacation and reside.
5. The inevitable loss of unspoiled beachfront property and public beach access caused by the demands and results of this affluent, mobile society.

The Town of Ponce Inlet, seeking to meet these problems, has enacted its own Public Beach Access Ordinance to insure and guarantee public beach access in the future. That ordinance establishes methods for obtaining beach access from oceanfront developers, financing beach access acquisition, beach parking and facility acquisition and construction and establishes traffic free zones for the general protection of the public. To accomplish these and other purposes as stated in the applicable ordinances, a user fee is imposed upon vehicular traffic. This user fee enhances the traditional uses of the public trust doctrine and imposing a user fee on a nontraditional use of the foreshore area which surfaced only after the creation of the doctrine does not violate that doctrine.

Nowhere is it etched in stone, or more appropriately, the coral reefs, cocina outcroppings or even the sandy foreshore for long, that the public trust doctrine exists for the protection of motorists seeking to drive cars on the beach. Vehicular beach traffic may be but another mutation of progress in a technologically advanced and affluent society as the beaches are best used by children of all ages for their traditional purposes of recreation, bathing, fishing and navigation. The rights of the public to enjoy those amenities indigenous to the beach are superior to the relatively recent invasion of the beach by the automobile. Sallas, supra. Attempted use of the public trust doctrine to spearhead this invasion by the automobile to the detriment of the very rights of the public the doctrine was created to protect is an adulteration of that doctrine.

Automobile use of the foreshore is inherently contrary to the

public trust doctrine. It poses dangers to traditional pedestrian use of the beaches for sunning, reclining and swimming as recognized in Ralph, supra. It hinders the traditional uses of fishing, bathing and other recreational uses. It further creates the need for vehicular access points which cross through and necessarily destroy environmentally sensitive and essential dune areas. The public trust doctrine establishes that public lands are held in trust for the benefit of people -- not for the benefit of automobiles.

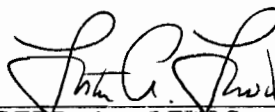
Changes in the law, such as Ralph, supra, changes in public uses of the foreshore and ever increasing demands for the use of the ocean, the foreshore and oceanfront properties are dictating changes in the public uses of these areas and concomitant changes in governmental reactions to these uses. The City of Daytona Beach Shores, in apparent reaction to Ralph, supra, and these other changes, has restricted vehicular traffic to its beaches by banning nighttime driving. Even more significant restrictions are on the horizon in view of Ralph, the foreseeable difficulties in regulating vehicular traffic and protecting public safety on Atlantic Ocean beaches traditionally reserved for normal use by pedestrians.

The public's right to use the beaches for bathing and recreational purposes is superior to that of motorists driving cars. These superior rights, for the public trust doctrine to retain its viability, must be protected. Rather than violating the interests of the public under the public trust doctrine, user fees imposed on vehicular traffic is in the public interest and furthers the goals of the public trust doctrine.

CONCLUSION

The State possesses the authority to impose user fees for public trust lands. This authority has been constitutionally and statutorily passed to municipalities. Municipalities have the authority to exercise that authority by imposing a user fee for motor vehicle access to Atlantic Ocean beaches within their municipal limits. Such a user fee does not violate or offend the public trust doctrine. Instead, a user fee enhances the traditional uses of the beaches associated with the public trust doctrine, uses now being severely tested and restricted by motor vehicle use.

Respectfully submitted,



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