

65,912.

IN THE SUPREME COURT OF THE STATE OF FLORIDA

**FILED**  
SID J. WHITE  
OCT 1 1984

CITY OF DAYTONA BEACH SHORES,  
a Florida municipal corporation,  
  
Petitioner,  
  
vs.  
  
THE STATE OF FLORIDA, ex rel  
STEPHEN L. BOYLES,  
  
Respondent.

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

CASE NO. \_\_\_\_\_  
(Fifth District Court  
of Appeal Case No.  
83-263)

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE

On the 28th day of January, 1983, Circuit Judge John Upchurch rendered his Opinion in the above-styled cause by issuing his Final Injunction and declaring that Ordinance 82-14 to be invalid. Ordinance 82-14 of the City of Daytona Beach Shores provided for a user fee for vehicles on the Atlantic Ocean Beach within the municipal boundaries of the City of Daytona Beach Shores.

On the 19th day of July, 1984, the Fifth District Court of Appeal affirmed the trial court's decision with an Opinion that modified the trial court's rulings of law. (A-1-6)

The Petitioner filed a Motion for Re-Hearing, Clarification and Requesting a Certificate of Great Public Interest. (A-7-11) However, that Motion was denied without opinion on the 28th day of August, 1984. It is from these rulings that the Petitioner requests this Court invoke its Certiorari jurisdiction.

The Petitioner seeks the Supreme Court's discretionary jurisdiction pursuant to Fla.R.App.P. 9.030, for the following reasons:

- I. The Opinion of the Fifth District Court of Appeal expressly and directly conflicts with a Decision of another District Court of Appeal to wit: the Decision of the First District Court of Appeal in Nichols v. City of Jacksonville, 262 So.2d 236 (Fla. 1st DCA, 1972) (A-12)

II. The Opinion of the Fifth District Court of Appeal passes upon questions though not certified, which are in fact of great public importance and will have a great affect on the proper administration of justice.

In this brief, the Petitioner, the CITY OF DAYTONA BEACH SHORES will be referred to as "City". The Respondent, THE STATE OF FLORIDA, will be referred to as "State". References to the Appendix will be made as ("A-").

### STATEMENT OF THE FACTS

On June 9, 1982, the CITY OF DAYTONA BEACH SHORES, a Florida municipal corporation, enacted an Ordinance 82-14 providing inter alia for a fee for vehicles entering the Atlantic Ocean Beach by existing beach ramps or through the northerly boundary of the City (R-135-139). At that time there existed an operating beach ramp toll in the City of New Smyrna Beach in Volusia County, Florida, that had been previously validated by the Circuit Court in Buckles v. City of New Smyrna Beach, Case No. 73-2618 (May 6, 1975; J. Cobb). (A-13-15)

At trial, the City made an elaborate record showing the use of the revenues from the beach ramp toll. The testimony showed that the beach ramp fund was kept in a separate account, in a separate bank, and was used to pay for nothing but direct beach-related expenses at all times. These beach ramp expenses included public works, garbage pickup, cleaning and grading of beach approaches, regular police patrol, and fire and rescue.

The testimony at trial showed clearly that the funds generated by the user fee were used to make beach improvements necessary so that vehicles could have access to the beach as well as to provide improvements which would increase the public's use and enjoyment of that facility.

ARGUMENT ON JURISDICTION

POINT I

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT COURT OF APPEAL IN NICHOLS v. CITY OF JACKSONVILLE, 262 So.2d 231 (Fla. 1st DCA, 1972).

On Page 5 of the Fifth District Court of Appeal Opinion, the Court itself acknowledges that its Opinion is contrary to the Opinion in Nichols v. City of Jacksonville. In Nichols, the First District Court of Appeal was reviewing a written Final Judgment by the Circuit Court in and for Duval County (A-16-18). The Order by the Circuit Court found that the funds raised from the exaction of tolls on vehicles entering the beach were for purposes that would make the beach safer, and a more pleasant and enjoyable place for recreation. The Court further found that the uses of the funds collected under the Nichols Ordinance were for lifeguard service, removal of refuse and debris from the beach and adjacent areas, providing traffic control on the beach, construction and operation of sanitary facilities for beach users, and recreational facilities including walkways adjacent to the beach. The uses provided in that Ordinance were similar if not broader than that authorized in Ordinance 82-14 by the CITY OF DAYTONA BEACH SHORES.

Ordinance 82-14 says:

(a) After deducting direct costs, the funds will be used to reduce general fund budget expenses for existing beach-related services, for law enforcement, for fire and rescue and public works.

(b) Any funds that are remaining will be used for future beach improvements as follows:

- (1) permanent comfort stations.
- (2) improved pedestrian access to the beach (walkovers).
- (3) acquisition of eventual off-beach public parking.
- (4) landscaping.

The uses provided for the funds in Ordinance 82-14 are if not similar, more restrictive in their use than the Ordinance approved in Nichols.

In Nichols, the First District Court of Appeal reviewed the Order issued by the Circuit Judge and determined that the Ordinance in question constituted a reasonable exercise of police power by the City. In City of Daytona Beach Shores, the Fifth District Court of Appeal declared a nearly identical Ordinance to be an unreasonable exercise of the City's police power.

This is an express and direct conflict between District Courts of Appeal as defined in Jenkins v. State, 385 So.2d 1356 (Fla. 1980) and Ford Motor Company v. Kikis, 401 So.2d 1341 (Fla. 1981).

The record at trial in THE CITY OF DAYTONA BEACH SHORES clearly showed that all funds were used directly for beach-related expenses to increase the public's enjoyment of that facility. No funds could be used or were used for anything other than law enforcement regulating traffic, public works necessary to keep the beach clear for vehicle access, fire and rescue for



persons injured on the beach, comfort stations for persons using the beach and for direct beach-related expenses.

Wherefore, this Court should accept jurisdiction of this cause to resolve the express and direct conflict between the First District Court of Appeal in Nichols vs. City of Jacksonville, 262 So.2d 236 (Fla. 1st DCA, 1972) and the Opinion of the Fifth District Court of Appeal in City of Daytona Beach Shores vs. State of Florida, Case No. 83-263, July 19, 1984.

## POINT II

THE QUESTIONS RAISED IN THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL, THOUGH NOT CERTIFIED, ARE OF GREAT PUBLIC IMPORTANCE AND WILL HAVE A GREAT EFFECT UPON THE PROPER ADMINISTRATION OF JUSTICE.

There are currently operating other beach ramp tolls in the City of New Smyrna Beach, the City of St. Augustine and by the County of St. Johns. There may be others in force or contemplated in other parts of our state. Based on the conflicting opinions as described above and the conflicting nature of the statements contained in the Fifth District Court of Appeal Opinion, no municipal, county or state agency can impose a user fee for vehicles entering a public beach with assurance of their legal authority to do so. This action will affect each county, municipal and state component of government who has a public beach within its legislative boundaries.

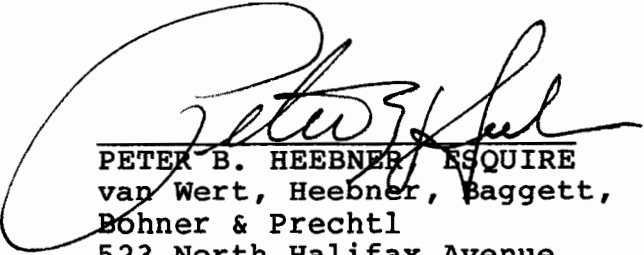
In the Opinion of the Fifth District Court of Appeal, the Court stated the conditions by which an Ordinance might withstand attack. (P.5) However, in the next paragraph, the Opinion indicates that a municipality may not impose a user fee only for vehicles because that would unjustly discriminate against those persons who decide to drive to the beach rather than walk there.

These contradictory statements place all levels of government in question as to their legal authority to impose user fees on public beaches in the State of Florida and under what terms and conditions, if any there be, that the user fees may be imposed.

Wherefore, it is respectfully submitted that the issues raised in the Opinion of the Fifth District Court of Appeal are of great public importance, will have a great affect upon the proper administration of justice, and must be clarified on a statewide basis.

SUMMARY

The Petitioner respectfully requests this Court to assert its discretionary jurisdiction to examine the merits of this Appeal.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished 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; and to Lee R. Rohe, Esquire, Assistant General Counsel, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303; by U. S. Mail; this 28th day of September, 1984.

  
PETER B. HEEBNER, ESQUIRE