O/A 5-7-85

IN THE SUPREME COURT
STATE OF FLORIDA

CITY OF DAYTONA BEACH SHORES,

Appellant,

v. CASE NO. 65,912

STATE,

Appellee.
_____/

COUNTY OF ST. JOHNS, et al.,

Appellant,

v. CASE NO. 66,700

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND, STATE OF FLORIDA,

Appellee.
_____/

APPELLEE'S ANSWER BRIEF

(County of St. Johns, et al.

v.

Board of Trustees of the Internal
Improvement Trust Fund)

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TABLE OF CONTENTS

TABLE OF CITATIONS

PRELIMINARY STATEMENT

The following abbreviations will be used:

"City"	refers to the City of St. Augustine Beach, defendant in the trial court.
"County"	refers to St. Johns County or the St. Johns County Board of County Commissioners, defedant in the trial court.
"Trustees"	refers to Board of Trustees of the Internal Improvement Trust Fund, State of Florida, plaintiff in the trial court
"Appellant"	refers to either the City or County or both
"Appellee"	refers to the Board of Trustees

The Appellee will use the same symbols for citations to the record and appendix as used in Appellant's Initial Brief as set forth at the top of page one of that brief.

STATEMENT OF THE CASE

The Trustees accept Appellant's Statement of the case insofar as it goes, but the Court should know that shortly after suit was brought, the Fifth District Court of Appeal issued its opinion in another beach toll case cited as City of Daytona Beach Shores v. State, 454 So.2d 651 (Fla. 5th DCA 1984).

The Daytona Beach Shores case was decided on July 19, 1984. The Appellant in the case sub judice then declared an emergency, dispensed with public notice, convened and enacted St. Johns County Ordinance No. 84-46 on July 24, 1984.

Passed only four days before the temporary injunction hearing of July 28, 1984, Ordinance No. 84-46 was yet another amendment to St. Johns Ordinance No. 80-17, the original toll ordinance.

Ordinance No. 84-46 was an attempt by the County to cure defects (as the County saw them) in its original ordinance in light of the Daytona Beach Shores, supra, decision. Despite the Shores decision, the County and City continued to collect tolls through Labor Day weekend.

The Final Judgment of February 22, 1985 also declared that the ordinances involved "are not a valid exercise" of the Appellants' police or proprietary powers.

Following the Final Judgment and appeal by Appellants to the Fifth District Court of Appeal and this Court, the County met to enact Ordinance No. 85-29 on March 26. Ordinance 85-29 declares the Atlantic Ocean beaches a special tax district and

imposes a toll of two dollars (under Section Six) upon those going to the beach via automobile [R-1175]. The toll was to begin April 15 of this year. [R-1173]

As a result, the Trustees argued a "Motion to Vacate Stay or Impose Condition" before the trial court on March 28. [R-1163] Although the Trustees sought to remove the stay of injunction concerning Ordinance No. 80-17, as amended, the Trustees believed that since 85-29 as so similar to 80-17, as amended, particularly 84-46, a motion for contempt could be made against the County if the stay was lifted and the County attempted to violate the Final Judgment by collecting beach tolls during the pendency of this appeal.

It should be noted that the County, at the Motion to Vacate Stay hearing of March 28, asked the Court for a ruling on whether 85-29 violates the Final Judgement. [R-1209 & 1210 & 1211]

On April 2nd the trial Court ruled against the Motion to Vacate Stay or Impose Conditions. [R-1218] But the judge also ruled that if enforced, the County's new ordinance 85-29, would violate the Final Judgment [R-1219].

On April 5th counsel for the Trustees received a letter from the County's attorney advising that the County would probably reimpose a toll under those ordinances declared invalid by the Final Judgment. [A-1] As predicted by the letter, the County met on April 9th and decided to begin selling "season passes" only on the weekend of April 13th and 14th. The regular toll will go into effect on the following weekend, April 20th.

Thus, because of the County's reliance upon a technicality, members of the public will continue to pay tolls during pendency of the appeal (spring & summer) without any relief in sight.

Justice delayed is justice denied.

STATEMENT OF THE FACTS

The Trustees submit that the facts of the case,as conveyed by Appellant, are incomplete and one-sided.

At the temporary injunction hearing of July 28, 1984, Appellee-Plaintiff introduced into evidence Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6 which consist of three beach site surveys, a coastal map and three sets of photographs of the beach sites surveyed. [R-1158-1161 and R-520-522]

The surveys of Crescent Beach and Vilano Beach within the County and the "A" Street Beach within the City, depict the mean high water line in relation to: (1) the mean low water line, (2) the dune or vegetation line, (3) the County's toll booth and (4) the sand ramp leading from the paved access road down to the beach. The mean high water line is also shown in relation to an observed high and low water line.

The coastal map of St. Johns County shows that portion of the beach within the county which is "tolled"; a twenty-mile stretch running from Vilano Beach Southward to the St. Johns County-Flagler County boundary.

The parties stipulated that the area between the mean high and mean low water lines is the wet sand area or sovereign foreshore. The area lying between the mean high water line and the dune or vegetation line was stipulated to as the soft sand or dry sand area (recreational adjunct) impressed with public rights of custom and usage as defined in City of Daytona Beach v. Tona-Rama, Inc., 294 So.2d 73 (Fla. 1974). [R-425]

It was also agreed that, for the most part, the soft sand area was privately owned. [R-425]

Because of the location of the County's toll booths, anyone seeking access to the beach by vehicle from Highway AlA would be confronted by a toll booth and signs ordering the driver to stop and pay a toll. Although the County's definition of beach encompassed only the sovereign foreshore, it made no difference whether the driver wished to use only the soft sand area as opposed to the wet sand area, every beachgoer was required to stop and pay the County two dollars. [R-1048, testimony of Glenn Norris]

Arthur DeLeon Powers, a lifelong resident of St. Johns County, age 77, testified that no one had ever tried to charge him for access to the beach before 1980. [R-1035]. Over a period of 60 or more years, Powers engaged in camping, fishing, sunbathing, swimming and picnics on the beach. [R-1038] Witness Harry Franklin, age 73, testified to similar facts. [R-1023-1027]

The deposition of Sheriff's Deputy Lt. Mike Cochran was admitted into evidence at the final hearing of January 23, 1985, as Plaintiff's Exhibit No. 3. [R-854]

Cochran testified that he had been asked, by the County, to do an informal poll of how beachgoers arrived on the beach: by foot or car. Cochran admitted that such a poll, actually undertaken, would be an "impossible task." [R-860] Lt. Cochran acknowledged that his figure of 92 to 95 percent (for those arriving by auto) was mere "guesstimation." [R-861] Yet it was

Cochran who was consulted by the county commissioners with respect to determining the percentage figures set forth in County Ordinance No. 84-46. [R-869-870]

Plaintiff's Exhibit 1, introduced at the final hearing of January 23rd, is a transcript of the County's meeting when commissioners decided upon various percentage figures for inclusion within Ordinance No. 84-46. [R-869]

The transcript itself reveals that the ordinance's percentage figures were arrived at through speculation and personal prejudice. Not one figure is the result of a formal study or poll. Indeed, the County stipulated to the lack of a formal survey or poll. [R-927]

Another witness before the commission on July 24, 1984, told the commissioners that he had seen approximately 100 pedestrians on the beach but they all seemed to have left the beach before the morning toll started. [R-875] He had <u>not</u> conducted any type of formal survey of pedestrians versus motorists who recreate on the beach. Yet witness Allen Rubin still had a precise figure to offer the commissioners as to what percentage of beachgoers arrived by automobile. [R-877]

Another witness, Bubba Williams, told the commissioners:

> "I can give you a percentage of what I feel. We lean more to more than 98, 99 percent of the people." [R-877]

After listening to each witness, the commissioners themselves had their own opinions on the matter. Every percentage figure discussed was based on pure speculation.

Defendant's Exhibit 8, introduced at the hearing of 28 July 1984 represents a tally of the number of vehicles from out of county versus vehicles from St. Johns County entering the beach during the period from April 21 through May 28, 1984. The summary sheet reveals that the count was done only on weekends.

Defendants introduced photos (Defendant's Exhibit No. 3 at January hearing, R-907) which show the number of people and vehicles in each photo. (See also Appendices 93, 94 & 95, Appellant's Initial Brief.) Appellant's photos were taken Saturday during the 1984 July Fourth Weekend. [R-895, Affidavit of Whitley] In the background of each photo are condominiums and other residences lying just landward of the dunes. The maps attached to this brief as Appendices 2 and 3, show the locations and names of many of those condominiums appearing in the background of Appellant's photos. [R-911] Thus, thousands of people live within walking distance of the beach.

At page four of the Initial Brief, Appellant sets forth only Paragraphs 1, 2, 3, 4 & 16 of the Addendum to Joint Pre-Trial Compliance (Stipulation of Facts). The rest of the stipulation appears in the Appendix to Appellant's Brief at A-42, A-43 and A-44. The court is urged to read those paragraphs omitted from page four of the Initial Brief.

Facts also admitted by the parties appear in the Initial Brief as A-23 through A-26.

Tolls are collected at eight locations over a twenty-mile stretch of beach. The toll sites are listed in Paragraph (f) of A-24, Initial Brief. Under County Ordinance No. 84-26,

Sections 17 & 18, violators of the ordinance are subject to misdemeanor prosecution and upon conviction may be fined or imprisoned or both. (See A-70 and A-71, Initial Brief of Appellant.)

ARGUMENT

POINT I

THE COUNTY HAS NO LEGAL AUTHORITY TO IMPOSE A TOLL UPON VEHICLES OF PERSONS USING THE SOVEREIGN BEACH AND ITS RECREATIONAL ADJUNCT

Appellants argue that two special acts, police power and home rule authority somehow give them the power to stop citizens along roads leading to the beach for the purpose of exacting a toll. Over the last four years, Appellants have raised substantial sums of money through this pretext of beach "regulation."

Although the County bases its toll authority upon police power, the toll is referrred to as a "motor vehicle beach user fee." A user fee implies that the public is using something owned, controlled or in the possession of the one charging the user fee. But what is being used by the public? The sun. The surf. Water. Air. Sand.

The County's and City's "motor vehicle beach user fee" ought to be described as a "prohibition of use fee" for it has the effect of creating an economic barrier. In only four years, the "fee" has doubled. Since a "season pass" is ten dollars, a family must plan on visiting the beach at least five times during the summer in order to justify purchasing a "pass." But if the difference between the daily toll and the season pass is widened to four dollars and forty dollars, respectively, for example, a family visiting the beach nine times could not justify buying the

pass but would still have spent thirty-six dollars![1] Raising the toll and increasing the difference between the toll and pass would "regulate" many middle-class people right out of a summer at the beach.

The very beach impounded by Appellants' toll booths and economic barricades is not owned by the County or City. Lands below the mean high water line are state-owned sovereign lands held in trust for the public. Art. X, § 11, Fla. Const.

The Appellee holds legal title to the sovereign foreshore and submerged lands. Section 253.001 and 253.03(1)(b), Fla. Stat.[2] Under the trust doctrine, it follows that the people hold equitable title to the corpus of the trust -- sovereign land.

As stipulated by the parties, the lands above the mean high water line but below the dune line are impressed with public rights of custom and usage as defined in City of Daytona Beach v. Tona-Rama, Inc., 294 So.2d 73 (Fla. 1974).

Like the trust doctrine, the right of custom and usage to the shore is so ancient it was recognized by Roman law. The sea and the shore were considered res communes - for the common use by all citizens.[3]

1/ Nassau County's Ordinance No. 83-11 requires a beachgoer to pay fifteen dollars regardless of whether he visits the beach once or more than once. See Appendix 4.

2/ See also Section 177.28, Florida Statutes.

3/ The Public Trust In Tidal Areas. 79 Yale L.J. 762, 775 (1970).

Since 1970, public rights to sovereign lands under the trust doctrine have assumed constitutional proportions. Weller v. Askew, 363 So.2d 1091, 1094 (Fla. 1978).

As a consequence, restricting or conditioning access to the shore is tantamount to interfering with ancient common law rights now of a constitutional magnitude. No local action under any pretext or guise of "regulation" can justify itself in the face of such fundamental jurisprudence.

Appellant's special acts do not give it any express authority to charge a toll. Nor does Chapter 125, the County Home Rule Statute, supply the authority claimed by Appellants.

Section 125.01(1)(m) speaks of a county providing and regulating a toll road, bridge or tunnel. Whether or not special acts declare the beach a public highway has nothing to do with charging people a toll for access to the sea and shore. The beach is neither factually nor legally analogous to a bridge or tunnel.

Appellant cites Section 125.01(1)(w) as authority for its proposition that home rule power is so broad and all-encompassing that the abrogation of common law and constitutional trust rights may be excused. Appellant has turned the world upside down to explain its toll. Special acts and general acts cannot be so tortiously construed as to lead to such an untenable conclusion. Even Section 125.01(1) states that:

> "The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power shall include, but shall not be restricted to, the power to:" etc.
> [Emphasis added]

To begin with, the County is not carrying on "county government" when it intrudes so abruptly into the realm of the sovereign, trampling upon basic rights all the way. Control of sovereign land remains with the State and the Appellee. Section 253.03, Fla. Stat. The Appellee exercises a proprietary control over sovereign land. Watson v. Caldwell, 27 So.2d 524, 526 (Fla. 1946).

Barricading land or obstructing entry to it is an act of control, not regulation. Sovereign land cannot be alienated from the public by the acts of Appellant. Ellis v. Gerbing, 47 So. 353 (Fla. 1908). Appropriate subjects for police power regulation do not include the disposition of sovereign lands but instead include matters like public health, welfare and financial or economic safety. 10 Fla. Jur. 2d, Constitutional Law, §224-228. For when local "regulation" does more than merely direct the flow and speed of traffic, enforce local and State laws, impose order on crowds but instead seeks to control entry to sovereign land, then the line between police power regulation and proprietary control over sovereign lands has been crossed.

In private real property law, payment of a fee for entry upon land or property is the purchase of a license in real property. Only a titleholder, lessee or someone having a superior possessory interest in land can limit another's entry to that land. See Easement and Licenses In Real Property, 20 Fla. Jur.2d §2; Boyer, Vol. 2 Florida Real Estate Transactions, 1984 Ed., §35.03(3).

On the other hand, regulation modifies behavior or conduct for public safety, health or welfare. The power to regulate does not include the power to prohibit unless the activity is in and of itself a nuisance. Carter v. Town of Palm Beach, 237 So.2d 130 (Fla. 1970).

Another limitation upon county home rule power is that a county cannot act in a manner inconsistent with general or special law. Thus, Chapter 125 is self-limiting but Appellant sees only carte blanche in home rule. Appellant, through its local, idiosyncratic beach toll ordinances, behaves as if it is the lawgiver for the people of Florida when the County attempts to apply exclusionary policies to a State resource.

On page 13 of Appellant's brief, it is argued that "the power to regulate includes the power to charge reasonable user fees to pay the cost of regulating." Appellant cites six cases in support of its contention.

But where is the regulation in the case sub judice? Barricading constitutionally protected property and stopping traffic along a busy highway to exact money from motorists has nothing to do with regulation. Indeed, it probably is contrary to the safety of the public when a traffic hazard is created by backing up traffic from a toll booth. And how does payment of two dollars ensure one's health or safety? A beachgoer who has paid his two dollars to enter land already held in trust for him is just as likely to be bitten by a stray dog, stung by a jellyfish, burned by the rays of the sun, injured by broken glass

left on the beach, or become the victim of any crime that might occur anywhere else within St. Johns County. Moreover, if the beachgoer is a County and City ad valorem taxpayer, he has paid three times for the same government service: once as a city taxpayer, once as a county taxpayer and once as a toll-paying beachgoer.[4]

And what are those government services or costs of regulation? They are the same services provided elsewhere in the County and City without payment of a toll. They include such basic governmental duties as police protection, disposal of litter and human waste, lifeguards (instead of fire department rescue) and the grading of sand road ramps. Such services are necessary if local government is going to fulfill its duty in protecting the health, welfare, and safety of citizens within the County. Claiming that the discharge of its normal, routine duty is something more, like "beach-related services," is illusory.

Why is it that routine County and City duties performed off the beach suddenly are elevated (when delivered on the beach) to the status of "beach-related services" or "motor vehicle beach user services" with the implied connotation that the discharge of those "services" on the beach constitutes some lofty, altruistic enterprise? The Appellants would have the public believe that

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4/ For the local pedestrian beachgoer who doesn't pay local ad valorem taxes, a beachgoing motorist theoretically pays for the pedestrian's health, welfare and safety.

because the Appellants cannot collect quite enough money to show a "profit," that the furnishing of such "beach-related services" arises not from the Appellants' governmental duty but from some generous sense of noblesse' oblige.[5]

Insofar as the cases cited by Appellant on page 13 of its brief are concerned, all can be easily distinguished.

In City of Daytona Beach Shores v. State, 454 So.2d 651 (Fla. 5th DCA 1984),[6] the Fifth DCA disapproved of user charges for vehicles using the beach ramps. Id. at 655.

The case of Nichols v. City of Jacksonville, 262 So.2d 236 (Fla. 1st DCA 1972) has no value since the First DCA merely stated:

> ". . . We are not convinced that the trial court applied erroneous principles of law in arriving at its ultimate conclusion that the ordinance in question constituted a reasonable exercise of police power by appellee city in light of the evidence adduced at trial. [Emphasis added.] Id. at 236.

To be sure, a trial court affirmance by the DCA of two paragraphs can hardly be cited as definitive authority. Obviously, the plaintiff in Nichols, supra, did not assert the same arguments and legal doctrines as posited now in the case sub judice. (The First DCA could only consider the record before it.)

5/ A large "beach-related cost" is that of collecting the toll money itself. The 1984 expense of merely collecting the toll amounted to $64,478 or 28% of revenues collected.

6/ Consolidated with the case sub judice by the Court's order of April 10, 1985.

The City of Jacksonville Beach was given express authority to "tax and regulate traffic . . . upon the ocean beach."

Here, the Appellant cannot point to any color of express enabling authority (no matter how suspect) for its ordinance. Nevertheless, sovereign lands held by the Appellee are exempt from taxes or special assessments of any kind. Section 253.03(5), Fla. Stat. Tax on the public use of state property would be an impermissible indirect tax on state property. Even government property leased to an organization for literary, scientific, religious, or charitable purposes enjoys a tax-exempt status with regard to the leasehold. Section 196.199, Florida Statutes.

Buckles v. New Smyrna Beach, Seventh Judicial Circuit Court Case No. 73-2618-01, concerned itself with whether a private citizen could test a beach toll under various limitations upon a municipality's taxing authority. To the extent it conflicts with the Daytona Beach Shores decision, supra, it has been impliedly overruled.

Neptune City v. Avon-by-the-Sea, 294 A.2d 47 (N.J. 1972) concerned a beach access fee authorized by a state statute. The fee could be charged only where a municipality owned a portion of the beach and operated facilities upon it in a proprietary capacity.

At page 54 of Neptune City, supra, the New Jersey Supreme Court reasoned that:

> "We mention this alienation aspect to indicate that, at least where the upland sand area is owned by a municipality - a political subdivision and creature of the state - and dedicated to public beach purposes, a modern court must take the view that the public trust doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible." [Emphasis added.]

Baldwin v. Montana Fish and Game Commission, 436 U.S. 371 (1978), involved a license fee for non-residents for the privilege of hunting elk. The public's rights to use and enjoy sovereign land should not be confused with a privilege.

Chase v. City of Sanford, 54 So.2d 370 (Fla. 1951), cited by Appellant, had to do with a bond validation and whether parking meter revenues could be applied to the servicing of port terminal bonds.

In the case sub judice, the Appellant will sometimes claim its toll is a parking fee. But only those who park on the beach -- either sovereign land or private uplands -- are charged a toll. Appellant, therefore, is using lands of another to park cars and then charge for it.[7]

As stated above, the County and City have no claim to the ownership of the property tolled. Clearly, not even the Appellee as titleholder to the beach can pursue any policy or rule which is contrary to the Florida Constitutional Trust Doctrine.

7/ See Section 17 of Ordinance No. 84-26 [A-70, Appellant's Initial Brief]. See also Section 3 of Ordinance 80-17 [A-59, Appellant's Initial Brief].

Prior to the 1970 adoption of Art. X, §11, the public trust doctrine was recognized and reaffirmed again and again in this court's many decisions. Black River Phosphate Co., 13 So. 640 (Fla. 1893); Merrill-Stevens Co. v. Durkee, 57 So. 428 (Fla. 1912); Martin v. Busch, 112 So. 274 (Fla. 1927); Deering v. Martin, 116 So. 54 (Fla. 1928); Perky Properties, Inc. v. Felton, 151 So. 892 (Fla. 1934); Hayes v. Bowman, 91 So.2d 795 (Fla. 1957); Bryant v. Lovett, 201 So.2d 720 (Fla. 1967).

Appellant, during the trial court proceedings and on page 13 of its brief, makes much ado about the fact that visitors to state parks are charged an admission fee of fifty cents per person. State parks do not charge for the use of sovereign land. The non-sovereign land which makes up a state park had to be purchased from private owners often at the cost of millions of dollars. After purchase, the Florida Legislature grants an appropriation of money for the park's development, i.e. construction of residences, roads, parking lots, visitor center, restrooms, campgrounds, utilities, walkways, etc. Each park is staffed by professional managers who do nothing but manage the park.[8] The entry fee is authorized under Section 258.014, Fla. Stat.

At page 14, Appellant asserts that if the legislature revoked the special acts, then the state can take up the responsibility and cost of regulating the Atlantic Ocean beaches within

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8/ Florida's state park system has a nationwide reputation for professional management. Unlike the Appellant, state park personnel are trained in how to regulate parks in an efficient but discreet and unobtrusive manner.

St. Johns County. Counsel then writes:

> ". . . Neither the Courts nor the Governor have the duty nor the responsibility to make the decision as to who (the State or the County) should regulate the beaches and the manner (regulatory user fee, ad valorem taxation, state grants) in which the revenue to pay the costs are obtained."

To begin with, the Appellee does not possess police power authority over the local and general public health, welfare and safety. What police power the Trustees once had pertained to only navigable waters. In 1975, the Florida Legislature transferred the Appellee's navigable waters police power to the newly-created Department of Environmental Regulation. Chapter 75-22, Laws of Florida. In the 1984 session, this legislative trend was continued with the repeal of Sections 253.123, 253.124, 253.1245 and 253.76. See §15, Chapter 84-79, Laws of Florida.

It is so absurd to suggest, as does Appellant, that if a County can't charge a toll, it is going to pick up its regulatory marbles and march home. But how does county government abdicate local governmental duties within county boundaries? Does Appellant truly believe it has a choice (contingent upon beach tolls) in performing various regulatory functions? The Appellant's very raison d'etre is for the promotion of local health, welfare and safety through financial resources already lawfully available.

The County, behaving like the mouse that roared, wants to take on the Courts and the Governor. Counsel for the County should not have invoked the appellate process if he really believed his own seemingly spiteful declaration.

Courts are indeed the final "judges" as to what are proper subjects of the police power. State ex rel Fulton v. Ives, 167 So. 394 (Fla. 1936).

Courts have the power and the duty to determine whether the exercise of police power is within constitutional limits. Liquor Store, Inc. v. Continental Distilling Corp., 40 So.2d 371 (Fla. 1949).

Typically, user fees or impact fees imposed by local government are only permissible where a facility or utility is owned by that government. Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

In the Dunedin case, supra, the city charged impact or user fees for connection to the water or sewer system. Designed to offset the future cost of capital expansion of the plant or distribution system, a user fee must go towards helping a local government recover, in advance, expected future capital outlay costs.

St. Johns County and St. Augustine Beach neither own nor "operate" the Atlantic Ocean beach.

Governor Graham, as chairman of the Board of Trustees, does have a duty and responsibility to guard sovereign lands from just the very type of transgression committed upon constitutionally protected land as conducted by Appellants. That is the crux of this case: the protection of a trust by a public trustee against the would-be exploitation of the trust corpus by a meddlesome third party interloper.

ARGUMENT

POINT II

THERE IS NO RELATIONSHIP BETWEEN VEHICULAR USE OF THE BEACH AND THE DELIVERY OF CERTAIN SERVICES TO THE PUBLIC

Governmental services are caused by or required by people, not the use of vehicles per se. As succinctly put by the Appellant's former chairman, "Vehicles don't make any trash, people do." [R-883]

Common sense dictates that the use of cars, per se, does not cause a need for lifeguards, Port-O-Lets, disposal of litter and police protection. Many beaches throughout Florida do not even have the meager "services" provided by Appellant in St. Johns County and yet the public is able to effortlessly enjoy those beaches.

At page 25 of its brief, Appellant insists that the mere introduction of an ordinance is proof of what the ordinance says. Appellant would have the Court take the ordinance at face value or believe it in the same faith a literal-minded religious purist believes his own interpretation of the holy scriptures.

At the trial court level, Appellee went beyond the four corners of the ordinance and showed that its percentage figures were based upon sheer speculation. Through the introduction of Lt. Cochran's deposition and excerpts from it [R-875 and 876] as well as the county commission transcript [R-869, Plaintiff's Exhibit I filed February 22, 1985] and the Addendum To Joint Pre-Trial Compliance [R-925], it is clear that Appellee impeached

the so-called "legislative findings" of Ordinance 84-46. (See also the selected excerpts of the commission meeting transcript as set forth in Plaintiff's Post-Final Hearing Memorandum of Law at R-473 through 476).

Paragraph 18 of the "Addendum" states:

> "No poll was taken in arriving at the percentages contained in Sections 19 and 6 of County Ordinance 80-17 as amended. The Sheriff's deputies, lifeguards, and beach user fee supervisor and fee both collectors relied on their beach experiences at arriving at the percentages presented to the County Commissioners." [R-927]

Although "beach experiences" may be a source of other kinds of knowledge or insight, they could hardly be relied upon as a source of accurate knowledge for Appellant's official purposes. But Appellant's percentage figures in Ordinance No. 84-46 do not cure the fundamental problem. For such figures amount to nothing more than smoke and mirrors utilized to obfuscate the fact that cars do not cause services. It matters not whether Appellant could actually determine how many people arrive on the beach by auto where automobiles have nothing to do with lifeguards, sanitation or litter. The percentage of motorists to the total number of beachgoers is irrelevant and probative of nothing.

At page 28 of the Initial Brief, Appellant again touts its photographs as if they are justification alone for a toll and which, incidentally, are just illegible enough to obscure the rows of condominiums lining the landward side of the dunes. Apparently, Appellant would have us believe that all those people

(in the photos) on July Fourth weekend who are strolling on the beach came from cars and not beachfront residences. Of course, beachfront residents as pedestrians pay no toll.

Appellant stipulated that it had no knowledge of how many people walk onto the beach. [R-927] Without knowing how many people walked to the beach, one cannot arrive at a percentage figure of how many people arrive at the beach via automobile. (Taking a fraction of an unknown whole is a contradiction in terms.)

Appellant argues that the Trustees should have pled and proved that the legislative findings of the ordinance were irrational. The Trustees did just that even though it is not dispositive of what causes government services.

Appellant enacted a new ordinance,[9] 84-46, after the complaint was served. The County placed its own ordinance into evidence and the Trustees showed that it contained highly unreliable findings. Under the Rules of Civil Procedure, pleadings conform to the evidence. Rule 1.190(b). Evidence was admitted which impeached the ordinance.

On the contrary, once impeached, Appellant failed to rebut the impeachment and "rehabilitate" its own ordinance.

The County and City cite two Attorney General opinions on page 30 of the Initial Brief.

9/ Designed to circumvent the Fifth DCA holding in the Daytona Beach Shores, surpa, decision of 19 July 1984.

In the 1962 opinion, the City of Delray Beach wanted to know whether the city could restrict the soft sand area of the beach to use by only residents of the city and their guests. The city also inquired about the legality of charging a fee for use of the beach.

Both queries were answered in the negative. In the second answer, Attorney General Ervin opined:

> "It is to be noted in passing that since most municipal beaches in Florida have been provided by nature and there is generally little or no upkeep required to maintain a beach, it would seem likely that in the majority of cases there would be little, of any, justification for charging a fee for the use of a public beach in this state." 1962 Op. Atty. Gen. Fla. 062-142 (October 24, 1962) at page 604.

The 1975 opinion cited by Appellant contains the following caveat:

> "Finally, it should be emphasized that the foregoing discussion applies only to public admission to and use of municipally owned beaches. Wet-sand beaches. . .are. . .owned by the state and held in trust for all the people. See Art. X, S. 11, State Const. . . . ."[10] [Emphasis added] 1975 Op. Atty. Gen. Fla. 075-84 (March 8, 1975) at page 143.

AGO 079-71 declares that regulatory power is subordinate to the state's power to control sovereign lands:

> "A further limitation upon a municipality's power to regulate activities upon, and use of, state-owned property. . .is that such regulation must not be in violation of constitutional protections afforded to the public for the use of, and access to, state sovereignty lands." [Emphasis added] 1979 Op. Atty. Gen. Fla. 079-71 (August 10, 1979) at page 176.

10/ It should be recalled that Appellants do not own the beach in St. Johns County. [R-928]

The case of State v. McCarthy, 171 So. 314 (Fla. 1936), cited by Appellant, has to do with a city's regulation of parking on downtown, city-owned streets. Parking was described as a "privilege" by counsel for the City of Miami and this Court did not take issue with that term. Id at 316. However, there is no similarity between motorists parking on city-owned streets and motorists parking either on state- or privately-owned land. Nor was the use of an automobile in McCarthy, supra, so inextricably entwined with the exercise of constitutionally protected rights to sovereign trust land as in the case sub judice.[11]

After quoting extensively from Town of Palm Beach v. Palm Beach County,[12] Apellant concludes at page 31 of its brief that the trial court in the case at bar "chose to ignore the Section 19 findings contained in St. Johns County's motor vehicle beach user fee ordinance."

To begin with, the lower court did not ignore the Appellants so-called "findings" in the ordinance but rather found that the "findings" were illusory and meaningless in light of the impeachment evidence submitted by the Trustees (as noted above).

11/ Section 17 of Ordinance 84-26 declares that the "County beaches" shall be used:

> ". . . solely for parking, recreation and bathing. Motor vehicles may enter upon such beaches solely for the purpose of parking."

12/ 460 So.2d 879 (fla. 1984).

Town of Palm Beach, supra, has no application to the case sub judice since Palm Beach regarded the issue of city residents and double taxation. Here, the County attempts to indirectly tax state-owned land or, rather, tax the public use of public land where that use is associated with a constitutional guarantee.

Like the continuous repetition of a meaningless syllable uttered from the lyrics of a broken record's song, the Appellant's monotonous references to 96 percent, 96 percent, become nonsensical.

POINT III

APPELLANT'S TOLL PROCEEDS ARE APPLIED ELSEWHERE THAN THE BEACH

Appellant, on page 33 of the Initial Brief, refers to the expenditure of "user fees" for only "motor vehicle beach costs incurred during the days and times the fees are charged." Then, the bold claim is made: "The motor vehicle user fees thus do not pay costs created by persons who enter the beach on foot."

In two sentences, two erroneous assumptions are made: (1) that there is a "cost" attributable only to autos and (2) tolls collected which pay for lifeguards, litter disposal, or sanitation are required only because of automobile use of the beach. Appellant assumes, incorrectly, that people in cars cause police and lifeguard protection. If there were no cars on the beach, according to Appellant's peculiar logic, there would be no need for lifeguards or police or sanitation.

People drive on the beach during the entire year and people also drive on the beach after the toll booths are daily towed away at the conclusion of another day's sales. Yet, even off-season or after toll hours, beachgoers and beachfront residents are in continuous need of the County's promotion of the local health, welfare and safety.

In order to figure the percent of any cost, one would first have to isolate the cost of picking up trash, for example, at the beach, as opposed to non-beach areas, by keeping records

of the time county employees spend only at the beach. Appellant did not keep any such records. [See Paragraphs 14, 15 and 16 of "Addendum," R-926]

Also, to take another example, the Appellant claims $79,479 in salary expense for police patrol. [See Paragraphs 4-8, "Addendum," R-926-26]

Yet Paragraph Eight of the Addendum or stipulation of facts reveals that:

> "St. Johns County does not keep records of the type of police calls it receives for the beach police patrol." [R-926]

Thus, in order to allocate salary expense of a deputy to the toll revenue fund, it is necessary to know how much of the deputy's time is spent on "beach-related" patrol or duty. And just what is a "beach-related" call?

Clearly, an assault and battery on A1A is no different than an assault and battery on the beach. Is a burglary investigation at a beachfront condo a "beach-related" service? Is the beach a place where unusual crimes occur, so unusual that any reasonable person would readily recognize them as "beach-related" crimes deserving of "beach-related" police service and beach toll money? Even a commissioner and the attorney for the County were confused about the term "beach-related" when applying it to specific instances. [R-879 and 881]

If a pothole on a road leading to the beach is repaired, does the repair amount to a "beach-related" service? By what

means or definition does Appellant manage to divide its duties into those "beach-related" and those nonbeach-related?

The answer is simply put: The Appellant has virtually unbridled discretion in classifying its duties into those beach- or nonbeach-related.

The Addendum (R-925-26) demonstrates that Appellant has applied toll revenue to facilities and jobs off the beach. The County's claim that it has segregated the beach from the rest of the county for bookkeeping purposes is not supported by either the evidence or logic.

Figures are displayed at page 34 of the County's brief. The County refers to them as "undisputed 1984 beach expenses." Except for lifeguard and toll collectors' salaries, the figures are "undisputed" because no one knows how to dispute them. Even a county auditor would not be able to affirm or deny them because no one knows how many hours of an employee's time was spent at the beach. Or, how long a piece of equipment was used at the beach versus somewhere else.

Nevertheless, an expenditure of $240,076 is a remarkably low investment in the beach when the return on that investment is considered. In an "official publication" of St. Johns County entitled "St. Augustine and Its Beaches," some interesting facts and figures are set forth. [Appendix 5] For example, we are told that:

> "History plus 43 miles of white sand beaches are bringing an estimated 1.2 million visitors a year to St. Augustine and St. Johns County where they are spending an estimated $106,928,320 annually."

Appellant points to the photos in its Appendix (A-93, 94 and 95) and complains about the crowds on July Fourth weekend. But its publication, the County reassures its reader:

> "The 39-plus million tourists visiting Florida yearly list beaches as their primary reason. In St. Johns County, with over 1/4 million feet of beach to stroll or frolic we can easily accomodate these prime requiements." [Appendix 5, Page 4]

As a result of the County's undisputed figures we can show the following:

Tourism dollars generated by beaches:
$106,978,320

Total undisputed 1984 beach expenses:
$240,076

Beach-related services costs to beach-related tourism income:
$240,076
$106,928,320

Thus, for an "investment" by the County of only $240,076 annually in the beaches, the County realizes a tourism income that is a staggering 445 times the amount of the investment!

Nature's greatest gift to St. Johns County is the Atlantic Ocean beach.

POINT IV

APPELLANT'S TOLL UNJUSTLY DISCRIMINATES AGAINST MOTORISTS WHERE PEDESTRIANS PAY NO TOLL

The County's and City's ordinances only charge motorists a toll for admission to the beach. People who can walk to the beach pay no toll.

The trial court took judicial notice of the lack of adequate off-beach parking along the beaches of St. Johns County. [R-1092] Thus, most beachgoers are forced to drive onto the beach if they wish to go at all.

In City of Daytona Beach Shores, supra, the Fifth DCA noted that the city's toll unjustly discriminated against those who drive to the beach. 454 So.2d at 655.

Using a percentage figure (although invalid) as a solution to curing discrimination does not work. There are only two means of getting to the beach: by car or by foot. Consequently, there are just two classes of beachgoers. One class of beachgoer does not pay while the other does. Requiring payment from one class is arbitrary where the paying class is no different, from a regulatory viewpoint, than the nonpaying class.

On page 36 of its brief, Appellant recognizes that there are "miles and miles of beach where pedestrians may enter." Despite this admission, Appellant seeks to justify its discriminatory ordinance on the excuse that it does not have to be mathematically precise under the law.

Perfection or mathematical precision in classification is not the issue when there is such a gaping hole in Appellant's regulatory net.

Citing cases having to do with parking meters, utility rates, the appointment of a personal representative in probate or the grouping of lands within a drainage district lend no authority to Appellant's argument where the facts of the case sub judice involve the public's rights under a constitutional trust. Citizens do not have rights to parking spaces or to a particular utility rate, etc.

One of the cases relied upon by Appellant, Neptune City, supra, holds that an oceanfront town in New Jersey could not discriminate against non-residents in charging a beach fee. The effect of the County's toll is to discriminate against non-residents or anyone who does not live within walking distance to the beach. Such discrimination works in favor of wealthy oceanfront residents or tourists staying at oceanside motels and resorts. That such a discriminatory intent is one of the hidden purposes of Appellant's ordinance can be detected in the County's preoccupation (obsession?) with the number of motorists from outside St. Johns County who visit the beach. See "Ratio of Out of County Vehicles" [R-572].

Florida courts have, of course, struck down ordinances which discriminate against non-residents of a particular city, especially in the area of recreational pursuits. City of Maitland v. Orlando Bassmasters, 431 So.2d 178 (Fla. 5th DCA 1983).

As has been demonstrated above, there is no rational basis for singling out one group of beachgoers (motorists) for imposition of a toll. Appellant has failed to sustain its burden of showing how those using their cars to get onto the beach are any different for regulatory purposes than those who walk.

In Ordinance 84-46, Section 19(c), the County declares that motor vehicles enable persons to bring:

> ". . . a disproportionately larger amount of trash, alcohol, glass bottles and other non desirable items onto the beaches than do persons who enter by foot thereby creating a disproportionate increase in the need for regulation concerning such items."

First, Appellant's lack of off-beach parking prevents beachgoers from leaving their car elsewhere than the beach. Secondly, it can be argued that a car provides a handy trash container and a means of transporting the trash <u>off</u> the beach. People will often use a car to haul chairs, playpens and other items to the beach which are not going to be left behind as trash. Thirdly, the County has placed trash barrels along the beach for everyone's use.

Thus, Appellant's ordinance <u>assumes</u> that people in cars are more likely to litter than those on foot. The reverse of this assumption might be the case according to two of Appellant's commissioners at the July 24, 1984 commission meeting when 84-46 was adopted:

> Waldron — What I've seen down there at, Jay can attest to this, down

there at Mickler's, (Unintelligible) sent some crews down there once in a while and spent a lot of time (unintelligible) that beach.

Sisco — Does this come on from driving on there or from walking?

Waldron — Walking.

Sisco — Walking? That would reduce the percentage then.

Waldron — I'd say it'd be more in line with the 87 percent.

Willis — I'd say the people walking, they have to carry everything to start with and they'd like to lighten the load going back, so they're more likely to leave it than the people down there with a car. (several persons speaking at once, unintelligible)

Benet — They ain't going to bring it back.

Waldron — No they aren't.

Sisco — They don't carry it down as a rule either.

Brubaker — Yeah that's right. General rule is they'll have it down there the majority of them they just take it out in that truck

Waldron — If they can't eat it or swallow it it's not coming back. [R-882 & 883]

Section 19(f) of 84-46 justifies the toll on the basis of reducing the number of cars that "merely cruise" the beach. Appellant has no way of knowing whether and how many people turn

away from the toll booths because they are motivated only by a desire to "cruise" the beach. Appellant also assumes that "cruising the beach" is somehow an activity worthy of regulation or prohibition.

The beach in St. Johns County, as in Daytona Beach, is clearly a public thoroughfare as found in City of Daytona Beach v. Tona-Rama, supra. Appellant's special acts declare it a "public highway." The beach in St. Johns County, like that in Daytona, can be characterized as more than just a place for swimming or fishing. It is also a place of scenic beauty and used for enjoyment as a public "paseo" or promenade for pedestrians and motorists alike. Obviously, people go to the beach for more than just bathing.

Appellant's ordinance is therefore irrational in the criteria it uses for classification and justification. If anything, it reflects nothing more than the idiopathic and subjective notions of its author and enactors. Clearly, it violates the Equal Protection Clause as being discriminatory because its classifications are not rationally related to legitimate regulatory aims; nor do such classifications even accomplish the ordinance's avowed purposes.

Moreover, the ordinance seeks to discriminate against those who are exercising fundamental rights of the most basic kind. The right of access, for all, to the sea and shore predates

the Magna Charta and Roman law.[13] Indeed, the people's right to the sea and shore might be thought of, down through ancient and modern history, as an unwritten covenant. The right to recreate upon and use sovereign lands is one basic to the structure of society. It is also, since 1970, a Florida Constitutional right.

Any regulatory scheme which impinges upon such a right or basic liberty must be stricken. Shapiro v. Thompson, 394 U.S. 618 (1969).

Shapiro, supra, concerned state laws used to deter the in-migration of indigents. But the Supreme Court saw the statutes as in violation of the right to travel. The right to travel is so fundamental that the U.S. Constitution makes no mention of it. Yet the Court, in quoting another case with approval, said of such a fundamental right that it is so "elementary" that it was conceived from the beginning to be a "necessary concomitant of the stronger Union the Constitution created." Id. at 631.

It is respectfully respectfully suggested that the right to the use of sea and shore is so long-standing and basic that it, too, constitutes a fundamental right.

In Skinner v. State of Oklahoma, 316 U.S. 1110 (1942), the Supreme Court invoked a "strict scrutiny" test for examining statutory classifications of matters touching upon fundamental rights. Id. at 1113.

13/ The Roman concept of res communes came from the Greeks. And under Roman law, no one was forbidden access to the seashore. The public was free to use the seashore for purposes of "retreat." The Public Trust In Tidal Areas, 79 Yale L.J. 762, 763-764 (1970).

Skinner concerned a state sterilization law for repeat offenders, but the case also discussed marriage and procreation as fundamental rights because they are fundamental to the "very existence and survival of the race." Id.

Other fundamental rights are: the right to vote,[14] right of personal privacy[15] and certain rights of criminal procedure.[16]

Appellee urges that the right of access to sovereign lands is a fundamental right where such a right is ancient and highly important to the well-being of a community or society.

The sovereign's authority over sovereign lands is paramount but interestingly enough, the public's use to its lands is an exercise in sovereignty itself where: (1) those lands are held in trust for the public as beneficiary and (2) sovereignty itself ultimately rests with the people as enunciated in Martin v. Waddell, 41 U.S. 367 (1842):

> "When the Revolution took place, the people of each state became themselves sovereign; and in that character held the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the Constitution to the general government."
> [Emphasis added]

14/ Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

15/ Eisenstadt v. Baird, 405 U.S. 438 (1972)

16/ Douglas v. California, 372 U.S. 353 (1963). See also re basic rights and classifications: State, Department of Health v. West, 378 So.2d 1220, 1222 and 23 (Fla. 1979).

To allow the Appellant to exercise control over access to sovereign land under any regulatory pretext whatsoever, for regulation does not lawfully operate through placing conditions upon entry to sovereign land, is to apprehend sovereignty itself and allow the sovereign to part from a portion of the public domain.

POINT V

ST. JOHNS COUNTY HAS A DUTY TO ENSURE THE PUBLIC'S HEALTH, WELFARE AND SAFETY AND CANNOT CHARGE FOR A DUTY ALREADY OWED.

The strident tone of Appellant's Point V, as captioned, belies the fact that the beaches within St. Johns County are a tremendous financial asset for the local economy.

Appellant first distinguishes betwen county taxpayers and "all other persons throughout the world." Next, Appellant refers to "free extraordinary police and safety protection and fee maintenance."

The sea and the shore require no "maintenance." Picking up litter and debris is a duty because it involves the health and well-being of the community. It is therefore incumbent upon Appellant to assure the collection and disposal of garbage. A1A Mobile Home Park v. Brevard County, 246 So.2d 126, 130 (Fla. 4th DCA 1971).

Insofar as grading the ramps, local government has a duty to keep its streets in a safe condition, both as to their lawful use and as to their surface requirements. City of Tampa v. Eason, 198 So. 753 (Fla. 1941).

Moreover, Appellant must perform its duties so as to do no injury to private rights. Maxwell v. City of Miami, 100 So. 147, 149 (Fla. 1924).

of beach patrol and litter disposal. Pages 5, 6, 71, 9 and 10 of Appendix 5 reveal that the Appellant and local developers capitalize upon the beach by displaying its pristine and scenic features in promotional advertisements.

Appellant claims that it is providing "free extraordinary" duties, but there is nothing in the record to support such a contention nor is there anything in the record which indicates the taxpayers are burdened. Appellee, indicidentally, does not claim that anyone has a constitutional right to police protection. It is merely claimed that Appellant cannot abdicate promotion of the general welfare by condition its duty upon the toll.[17]

Considering the fact that the beach attracts many tourists and new residents who contribute to the local economy, the return to the economy is much greater (because of the beach) than the so-called "maintenance" requires. If Appellant had taken any other comparable area (same square miles as the beach) and computed its financial needs and return, the beach would far outshine the other area.

In essence, Appellant is complaining about grooming the goose that lays the golden egg.

17/ Quoting with approval from a federal court, the Third DCA has said:

> "The fact that the United State Constitution does not provide a right to adequate police protection does not mean that whenever a state or municipality undertakes to provide such a service it mya do so in a manner which violates a constitutional right." Higdon v. Metro Dade County, 446 So.2d 203, 207 (Fla. 3rd DCA 1984).

St. Johns County has a tourist economy. It promotes its beaches as a way of luring some 1.2 million visitors per year. [Appendix 5, Page 3]. These tourists spend $106,928,320 annually.

Taxable sales in St. Johns County, in 1983, amounted to $332,500,000. St. Johns County's total taxable ad valorem property value for 1984 was $2,118,600,000. During the last five years, the taxable value, after deducting all exemptions, increased over $716 million. [Appendix 5, Page 8]

Surely, with the kind of healthy economy and tax base noted above, the Appellant has no cause to complain. The duties performed by Appellant, at the beach, are like its duties anywhere else within the County. Thus, the same revenue which pays for the duties performed off the beach should also pay for duties on the beach. Especially the beach, since the County's economic welfare depends upon it.

Collecting money at the beach is collecting twice for the same performed duty. Ad valorem and other lawful sources of revenue pay for those duties. When Appellant sets up a separate fund, composed of toll revenue, expenditures from <u>it</u> are <u>normally</u> expenditures which would be taken from the general revenue fund if a toll fund did not exist. Consequently, the toll fund <u>relieves</u> the general fund. And the general fund pays for county-wide services. Therefore, relief of the general fund is tantamount to indirectly raising general revenue.

SUMMARY OF ARGUMENT

Appellant can point to no express authority for its beach toll. Allowing Appellant's toll to succeed would wrest sovereign trusteeship away from Appellee and grant it to the County since the County is trying to exercise a right of control which belongs only to a proprietor of land. The constitutional trust doctrine bars the Appellant from using "regulation" as a means of "alienating" (blocking access) sovereign lands.

Rights of custom and usage adhere to the soft sand area. Appellant's toll likewise interfers with the public's exercise of rights over the "recreational adjunct" to the sovereign foreshore.

Appellant's reliance upon home rule authority is misplaced where local home rule is limited by general law.

Vehicular use of the beach does not cause the "services" provided by Appellant. Attributing the cost of such services to only motorists is irrational even when percentages are used. If Appellant knew what percentage of the beachgoing public arrived by auto, it would make no difference where one group does not pay.

The toll proceeds are applied indiscriminately to off-beach areas and jobs because the County cannot isolate the time employees spend only at the beach. Determining what is a "beach-related service" which qualifies for toll revenue is an impossible task.

Undoubtedly, the toll also violates the Equal Protection Clause because its classification scheme is irrational. Claiming that beachgoers arriving by car somehow require more attention from the regulator simply does not wash. Motorists are no different than pedestrians in each group's use of the beach. Indeed, county commissioners were in doubt as to which group left more litter behind. If it is judicially determined that fundamental rights are affected by Appellant's classification, then this Court should hold that toll ordinances are subject to a "strict scrutiny" test.

Use of sovereign lands is an exercise in sovereignty from an historical perspective. It is legally impossible for a subdivision of the sovereign to limit sovereignty. Here, the very public itself has paramount authority over the County. Thus, Appellant cannot even "classify" the public into regulatory classes when the use of sovereign lands (sovereignty) is involved.

Lastly, Appellant must ensure the public health, welfare and safety like it does anywhere else within its territorial extent. Police power duties cannot be made contingent upon beach tolls. Appellee does not assert this "duty argument" with regard to tort liability or civil rights actions concerning harm done someone by crime, but rather with regard to the public necessity of making police, sanitation and litter disposal unconditionally <u>available</u> to the beach.

Appellant has not demonstrated that there is anything "extraordinary" about the duties performed at the beach. However, the contribution the beach makes to the local economy is extraordinary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Answer Brief has been furnished by U.S. Mail to David G. Conn, Esquire, Post Office Drawer G-1, St. Augustine, Florida 32084 and C. Allen Watts, Esquire, 926 South Ridgewood Avenue, Daytona Beach, Florida 323014 and by Purolator to James G. Sisco, Esquire, Post Office Box 1533, St. Augustine, Florida 32084, this 15th day of April, 1985.

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