O/a 5-07-85

IN THE SUPREME COURT
OF FLORIDA

CASE NO: 66,700

On Appeal from Circuit Court,
Seventh Judicial Circuit, in
and for St. Johns County, Florida

Certified to the Supreme Court
of Florida by the Fifth District
Court of Appeal

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

Plaintiff,

vs.

CITY OF ST. AUGUSTINE BEACH,
A FLORIDA MUNICIPAL CORPORATION

Defendant.

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

Plaintiff,

vs.

COUNTY OF ST. JOHNS
A FLORIDA COUNTY GOVERNMENT,

Defendant.

FILED
SID J. WHITE
APR 1 1985
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

APPELLANTS' INITIAL BRIEF

(St. Johns County and
City of St. Augustine Beach)

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STATEMENT OF THE CASE

For the purpose of this Brief, the following abbreviations shall be utilized:

"R" for "Record on Appeal";

"A" for "Appendix to Brief";

"TTI" for Transcript of Temporary Injunction Hearing (July 28, 1984)

"TT" for Trial Transcript (January 23, 1985)

To avoid duplication, the City of St. Augustine Beach has joined in this Brief and is referred to separately only in those incidences where its legislative authority for regulation of motor vehicles on the beaches differs from St. Johns County.

This case was tried without jury on the amended complaint filed by the plaintiff-appellee Board of Trustees of The Internal Improvement Trust Fund against defendant-appellant St. Johns County (A-4) and the second amended complaint of said plaintiff-appellee against defendant-appellant City of St. Augustine Beach (A-8).

The cases were consolidated by court order. (A-19).

The amended complaints requested a declaratory judgment holding that County ordinance 80-17 as amended and City ordinances 79 and 110 as amended were invalid and enjoining the City and County from charging regulatory motor vehicle beach user fees to motorists driving on the Atlantic Ocean beaches within the City and County. Stephen L. Boyles, State Attorney of the Seventh Judicial Circuit of Florida filed a Notice of Appearance (A-20). The St. Johns County circuit Court, Seventh Judicial Circuit, on February 22, 1985 rendered a final judgment (A-45) declaring the ordinances invalid and enjoining the City and County from charging beach

user fees for vehicular traffic on the beaches located within St. Johns County, Florida. The final judgment found that the County and City ordinances were purely revenue raising measures for the purpose of underwriting various activities and that there was no evidence showing any relationship between vehicular use on the beach and a number of the services being paid from the beach fees. Notice of Appeal to the Fifth District Court of Appeal (A-49) was filed February 22, 1985. The Fifth District Court of Appeal certified the appeal to the Florida Supreme Court which accepted jursidiction.

STATEMENT OF FACTS

St. Johns County ordinance 80-17 as amended was introduced into evidence (TTI-5)(A-26)(A-58) and contained the following **legislative findings** by the Board of County of Commissioners of St. Johns County:

> "Section 19 (A-63)
>
> b) Approximatley **96%** of the people who use the County beaches during the days and hours that motor vehicle beach passes are required (the **summer beach season**), enter upon such beaches by means of motor vehicles driven and parked on the County beaches.
>
> c) Such motor vehicles enable such persons to bring a disproportionatley larger amount of trash, alcohol, glass bottles and other non desirable items onto the beaches than do persons who enter upon the beaches by foot, thereby creating a disproportionate increase in the need for regulation concerning such items.
>
> d) Motor vehicular use on the County beaches enables a significantly larger number of people to enjoy the beaches for bathing and recreational uses and thus increases the need for **life guard** protection and trash and beach clean up and maintenance.
>
> e) Private motor vehicular use of County ramps and the dry sand beaches between the ramps and the County beaches are the primary cause of the expenditure of County ad valorem tax dollars for beach and ramp maintenance. . .
>
> f) The imposition of the motor vehicle beach user fee has significantly reduced the amount of through motor vehicle traffic that

merely "cruises" the beach for non bathing purposes, thus reducing the number of motor vehicles that are mixing with bathers and other recreational beach users; and has also significantly reduced the number of motor vehicle drivers that use the beaches for motor vehicular sports such as speeding, "doing wheelies" and otherwise endangering the beach recreational users.

g) The primary need for the use of law enforcement personnel and law enforcement vehicles on County beaches during the summer bathing season is to regulate the speed and direction of motor vehicular traffic and segregate such traffic from bathing and recreational areas; to control the parking of motor vehicles on the beaches; to prevent reckless and careless driving within the recreation areas; and to regulate the possession, consumption and effects of alcohol on persons who arrive on the beaches by motor vehicle.

Section 9B Ordinance 80-17 as amended is enacted in conjunction with and as a necessary adjunct to the other County beach ordinances, such as, but not limited to, the County ordinances regulating traffic direction, alcohol possession, peddling, the dumping of trash, animal control, camping and other activities as they pertain to the regulation of such activities on County beaches." A-69)

The ordinance then restricted the expenditure of the motor vehicle beach user fee revenues so that they could only be used to pay the percentage of beach costs attributable to the motor vehicles during the times and hours that the user fees were charged - the summer beach season. (The ad valorem tax payers of St. Johns County would continue to pay for pedestrian costs)

Section 6 of the ordinance provided: (A-64)

"Section 6 The funds collected from the levy of the fee shall be expended **only** for the following purposes; to pay the costs of collecting the fees; to help defray the costs of maintaining the access ramps and the dry sand area between the access ramps and the County beaches during the **summer beach season**; to pay the costs of beach motor vehicle traffic and parking control not to exceed **87%** of the costs of law enforcement personnel and law enforcement vehicles while on duty or in use on the beaches during the **summer beach season**; to pay the costs of collecting and removing garbage and trash from County beaches not to exceed **85%** of the total cost of such garbage and trash removal during the **summer beach season**; to pay the costs of life guard personnel and equipment for services performed on the County beaches not to exceed **96%** of the total of such costs during the **summer beach season**; to help pay the costs of sanitary facilities in the County beach area not to exceed **87%** of such costs during the **summer beach season**; to purchase, acquire and construct parking lots near the beaches to be used solely for the parking of cars while the cars occupants are using the beaches; and for any other lawful purposes related to this ordinance." (A-64)

Section 19(b) of the ordinance **defined "summer beach season"** as the days and hours during which passes are required.

Section 6A of the ordinance provided: (A-70)

> "Section 6A. The funds collected from the levy of the fees shall be expended only for the purposes described in Section 6. In the event the funds collected during any two consecutive years exceed the costs described in Section 6 the fees shall be appropriately reduced the following year."

An affidavit was introduced into evidence (TTI-8)(A-26)(A-51) avering that **78%** of the motor vehicles entering the County beaches during the first portion of the 1984 user fee collection season had license tags that were <u>not</u> from St. Johns County.

Certain facts were stipulated by the parties to be true. Among those facts were the following:

> "1. Beach fee collections amounted to $233,818 for 1984. (A-42)
> 2. The expense of collecting the fee amounted to $64,478. (A-42)
> 3. The salary expense for the lifesaving corps amounted to $96,119. (A-42)
> 4. The salary expense for the sheriff's beach unit amounted to $79,479. (A-42)
> 16. The defendant expended approximately $53,225 in 1984 for beach operating expenses not included in items #2, 3, and 4 above;the record for this expenditure are not precise and no time records were kept; a portion of this sum may have been spent for non beach related expenses. (A-43)

Photographs were introduced into evidence showing the motor vehicles and pedestrians on the beach during the summer beach season. (A-1)(A-2)(A-3) The photographs showed approximately 1.25 persons per motor vehicle. (A-93,94,95) The parties stipulated that the beach toll collectors estimate that on an average approximately 2 to 3 people are in each motor vehicle that enters the beach during the beach fee collection season (A-44) thus indicating that <u>all</u> the people in the photographs arrived by motor vehicle.

Other facts were stipulated by the parties to be true: (A-23)

> "c) St. Johns County has enacted certain ordinances pertaining to the Atlantic Ocean beaches in St. Johns County, Florida, including

its ordinance 80-17 as amended charging motor vehicle beach user fees.

d) The City of St. Augustine Beach has enacted certain ordinances pertaining to the Atlantic Ocean beaches in St. Johns County, Florida including its ordinance #79 as amended pertaining to motor vehicle beach user fees

e) The County and the City of St. Augustine Beach have been enforcing their respective beach ordinances since the dates they became effective (such dates being no later than 10 days after their passage) and they intend to continue to enforce them.

h) Plaintiff (the State) does not "regulate" vehicular traffic on the Atlantic Ocean beaches within the State of Florida as such term "regulate" is used in its police power sense and it does not seek to exercise police power within the confines of St. Johns County. It does not regulate traffic or other matters that are subject to local police power.

hh) St. Johns County and the City of St. Augustine Beach have the power and authority to regulate the use of the ocean beaches for the protection of health, welfare and safety of the public.

i) Plaintiff exercises its authority over the Atlantic Ocean beaches within the State of Florida pursuant to Florida Statute sections 253.03(1), 253.001 and Article 10 Section 11 Florida Constitution in a "proprietary" and not "regulatory" capacity.

j) The plaintiff's state wide policy is that no motor vehicles belonging to members of the general public are, or will be, allowed to drive on the Atlantic Ocean beaches east of the high water mark.

k) During the month of August 1984, Dr. Elton J. Gissendanner, the Executive Director of the Department of Natural Resources, and the Board of Trustees of the Internal Improvement Trust Fund publicly announced that automobiles will not be allowed to drive on the approximately 5 miles of Atlantic Ocean beaches located in St. Johns County in the area known as the Guano Tract.

l) The plaintiff's state wide policy is that no motor vehicles belonging to members of the general public are, or will be, allowed to drive on the beaches of the Gulf of Mexico below the high water mark of the Gulf.

n) The plaintiff charges application processing fees pursuant to Florida Administrative Code Chapter 16 Q 21 to process applications by members of the general public for permission to lease sovereign state lands or to obtain easements over sovereign state lands.

o) The Florida Department of Natural Resources charges user fees to members of the general public for their use of most State Park facilities.

p) The Division of Recreation and Parks of the Department of Natural Resources charges a fee to persons who may use many of the State Parks and the Department contends its authority for charging

such fees is derived from §258.014 Florida Statute (1983) and Chapter 16 D-2.02 of the Florida Administrative Code.

r) The lands under navigable waters are sovereign state lands. The plaintiff charges the general public on a cubic yard basis for dredge material severed from the lands under navigable waters by members of the general public.

t) St. Johns County as the governing body of the Anastasia Sanitary District has been required by the plaintiff to pay permit application fees to process permit applications to construct sewer outfall lines across state owned marshland areas and it will continue to charge such fees to defendant county unless enjoined by the Court.

The parties further stipulated that: (A-26)

"A. All exhibits and proofs entered into evidence by either party at the hearing of July 28, 1984 including Court File papers nos. 35 through 50, and Plaintiffs' exhibits 1 through 4, shall be deemed entered into evidence at the trial subject only to the same objections announced by the opposing party.

B. The court reported transcript of the hearing of July 28, 1984 shall be deemed entered into evidence subject to the objections contained therein.

C. Copies of County and City ordinances may be introduced into evidence without formal predicate."

Other items were introduced into evidence by defendant appellants:

Final judgment in Louise Buckles v The City of New Smyrna Beach, case no. 73-2618-01 Circuit Court, in and for Volusia County; City of New Smyrna Beach Ordinance 769. (A-79) City of Jacksonville Beach Ordinance 6674; Final Judgment in Donald G. Nichols v City of Jacksonville and City of Jacksonville Beach, case no. 71-2502 Circuit Court in and for Duval County (A-85)

The City of St. Augustine Beach introduced into evidence its ordinances regulating motor vehicle traffic within the municipal boundaries of the City. (TTI-12, 13) These ordinances are numbered 79 and 110.

SUMMARY OF ARGUMENT

POINT I

WHETHER ST. JOHNS COUNTY HAS THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH USER FEES AS A PART OF ITS REGULATORY OR POLICE POWER.

Pursuant to Special Acts, St. Johns County and the City of St. Augustine Beach have been granted the authority to supervise and regulate the operation of motor vehicles upon "any beach adjacent to the Atlantic Ocean between high and low water marks." In order for this grant of regulatory authority to be of practical effect, both the "wet" and "dry" sand areas of the beach below the high water mark were encompassed by the State Legislature within the acts parameters. Since the legislature has expressly granted beach regulatory authority to the County and City, the only remaining issue is whether such regulatory authority includes the charging of a motor vehicle beach user fee.

The charging of user fees has long been recognized as a legitimate form of regulation according to, inter alia, the following authorities: the United States Supreme Court in Baldwin v Montana Fish and Game Commission, infra at 17; the Florida Supreme Court in Harkow v McCarthy, infra at 30, the Fifth District Court of Appeal in City of Daytona Beach Shores v State, infra at 17; the Fourth District Court of Appeal in Hollywood Inc. v Broward County, infra at 18; and the First District Court of Appeal in Nichols v City of Jacksonville, infra at 18;

A motor vehicle beach user fee has previously been held to be a reasonable form of regulation under a special law. Nichols v City of Jacksonville, infra at 18. In Nichols, the beach user fee was noted as serving a deterrent effect which was a valid aspect of regulation, and the

funds raised by the beach user fee were limited to those expenses associated with the use of the beach. The parameters of this case are the same as those in Nichols.

Similarly, in Louise Buckles v the City of New Smyrna Beach, infra at 19, the Circuit Court for Volusia County held valid as an incident to the police power the levy of a beach user charge on motor vehicles operated on the beach. Again, it was emphasized that the user charges were utilized to defray expenses of providing services for the users of the beach. Also, the following Attorney General Opinions support the validity of beach user fees: 75 AGO-084; 62 AGO-142.

Point I then cites additional authorities showing that the revenues raised in connection with ordinances imposing user fees, impact fees, and license fees inacted as an aspect of a government's police regulatory power may be used to defray the costs of regulating specific activities, to pay the costs of preserving finite resources, to pay the cost of capital improvements, to pay the costs of providing services, and to pay the costs of operating and maintaining public facilities. These authorities and cases are cited to show that Florida law allows local governments to charge persons and activities that create a need for extraordinary regulatory services the reasonable cost of the services that such persons and activities cause, require and demand.

POINT II

WHETHER THERE WAS UNREBUTTED EVIDENCE BEFORE THE COURT SHOWING THE RELATION SHIP BETWEEN MOTOR VEHICLE USE ON THE BEACH AND THE SERVICES BEING PROVIDED BY MOTOR VEHICLE BEACH USER FEE REVENUES.

The Trial Court stated that there was no evidence as to the relationship between vehicular use on the beach and the services being paid from the

beach fees. The County challenges the validity of this finding for three reasons. First, the ordinance under consideration contained specific findings of fact as to the need for specified beach services attributable to motor vehicle beach use. The ordinance was placed in evidence, and consequently the findings contained therein were presumptively valid. No evidence to the contrary was introduced by the state. Accordingly, the unrebutted presumption that the findings and recitals contained in the ordinance were correct should have been respected by the Court, and adhered to. Secondly, the pleadings filed by the state raised an issue solely as to the authority to charge user fees and did not question how the fees were applied. In the absence of proper pleadings, the Court should not have inquired into the application of the fees. Thirdly, the County's legislative finding as to the percentage of the total costs of beach services that are attributable to and generated by motor vehicle use on the beach should not be disturbed without any contravening proof.

POINT III

WHETHER ST. JOHNS COUNTY MOTOR VEHICLE BEACH USER FEE ORDINANCES ARE DESIGNED OR USED TO UNDERWRITE COUNTY-WIDE SERVICES.

This point emphasizes the section 6 and 6A ordinance requirements that the motor vehicle beach user fee revenues be expended only for beach services generated by motor vehicle beach use during the days and times that such fees are charged.

POINT IV

WHETHER IT IS CONSTITUTIONALLY PERMISSIBLE FOR ST. JOHNS COUNTY TO CHARGE MOTOR VEHICLE BEACH USER FEES AND NOT ATTEMPT TO CHARGE PEDESTRIAN BEACH USER FEES.

This point emphasizes the fact that the County ordinance section 6 percentage spending limitations specifically limit the expenditure of the fee proceeds to only the beach costs and services created and used by the persons using the motor vehicles during the summer beach season. The motor vehicle users do not pay for beach services provided to the pedestrian beach entrants. Point IV also cites case law showing that it is not constitutionally impermissible to require the **96%** of beach users who arrive by motor vehicle to pay the entire cost of beach regulation during the summer beach season.

POINT V

WHETHER ST. JOHNS **COUNTY** AD VALOREM TAX PAYERS HAVE THE **DUTY** TO PROVIDE **FREE EXTRAORDINARY** POLICE AND SAFETY PROTECTION AND FREE MAINTENANCE FOR ALL OTHER PERSONS THROUGHOUT THE WORLD WHO WISH TO ENJOY **STATE** OWNED BEACHES LOCATED WITHIN THE COUNTY.

This point addresses the statement contained in City of Daytona Beach Shores v State, infra at 42, that the City of Daytona Beach Shores had the authority and the duty to regulate vehicular traffic on the beach. Point Five stresses that the legislatively granted **authority** to regulate the beach does not necessarily impose a duty on the County to provide such **extraordinary** regulatory efforts free of charge.

ARGUMENT

POINT I

WHETHER ST. JOHNS COUNTY HAS THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH USER FEES AS A PART OF ITS REGULATORY OR POLICE POWER.

At the outset, appellant would like to make it clear that St. Johns County does not claim any right to charge motor vehicle beach user fees based on a County proprietary or ownership power. The County would also point out that generally, user fees are based on a combined "proprietary" and "regulatory" power that makes any discussion separating the two moot. Such, however, is not the case here.

By Special Acts 65-2178 and 21543 the Florida Legislature specifically and unequivocally granted Appellants St.Johns County and the City of St. Augustine Beach the:

> " . . .authority to supervise, regulate, prohibit and permit the operation of any motor vehicle . . .upon, over or across that portion of any beach adjacent to the Atlantic ocean between high and low water marks. . ." (A-97)

> " . . .power. . .to cause obstructions to be removed from said beach (of the Atlantic Ocean between high and low water mark) and to restrain and regulate the use (for bathing and recreation) and occupation of the same for the protection of the public and of life and property. (A-99)

See Adams v Elliott 128 Fla. 79, 174 So 731 (Fla. 1937) approving a similar special act pertaining to Duval County.

In addition, the Florida County Home Rule Statute-chapter 125 Florida Statutes (1983)-specifically provides that Counties shall have the power to:

> "§125.01(1)(f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

§125.01(1)(m) Provide and regulate arterial, toll and other roads, bridges, tunnels, and related facilities; eliminate grade crossings; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking.

§125.01(1)(w) Perform any other acts not inconsistent with law which are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."

§7.58 Florida Statute (1983) defines the boundary of St. Johns County to include the waters of the Atlantic Ocean within the jurisdiction of the State of Florida.

The Home Rule Statute also provides that:

"§125.01(3)(a) No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such enumerated powers, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.

§125.01(3)(b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."

Similarly, Florida Statute §166.011 provides the City of St. Augustine Beach with home rule power.

Thus, it is clear that by Special Acts the Florida legilature separated the regulatory or police power authority over the ocean beaches located within St. Johns County from the State's proprietary or ownership powers over such beachs and delegated to St. Johns County the authority to regulate the ocean beaches within the County's boundaries. See State v Black River Phosphate Company 32 Fla. 82, 13 So 640 (Fla. 1893) wherein the Florida Supreme Court recognized that the States' power to regulate public lands may be delegated by the State to municipalities and other governmental bodies. See also Town of Atlantic Beach v Osterhoudt 127 Fla. 159, 172 So 687 (Fla. 1937) and see Adams v Elliott 128 Fla. 79, 174 So 731 (Fla.

1937) wherein the Court approved the validity of other Special Acts very similar to Special Act 21543 pertaining to St. Johns County.

Florida Constitution Article VIII §(1)(f) provides that non chartered counties such as St. Johns County may enact county ordinances not inconsistent with general or special law. City of Daytona Beach Shores v State 454 So 2d 651 (Fla. 5th. DCA 1984); Nichols v City of Jacksonville 262 So 2d 236 (Fla. 1st DCA 1972); Louise Buckles v New Smyrna Beach Circuit Court/Volusia County Court Case #73-2618-01; Neptune City v Avon-By-The-Sea 294 A 2d 47 (New Jersey 1972); Baldwin v Montana Fish and Game Commission 436 U.S. 371 1978; and Chase v City of Sandford 54 So 2d 370 (Fla. 1951) all recognize that the power to regulate includes the power to charge reasonable user fees to pay the cost of regulating. St. Johns County has chosen pursuant to the Florida Constitution, the above legislative acts, and the cited cases to exercise its authority to enact ordinances regulating motor vehicles on the ocean beaches within its boundaries and to impose a reasonable motor vehicle beach user fee. If the State Legislature had chosen to retain and to exercise its sole authority to regulate the beaches as it does its State parks, then it could charge a regulatory user fee in addition to - (probably as part of a single fee) - its "proprietary" cost recapture user fee. Instead, pursuant to Special Acts 65-2178 and 21543 the state legislature chose to separate a portion of its regulatory rights from its proprietary or ownership rights and delegated to St. Johns County the ". . .authority to supervise, regulate, prohibit and permit the operation of any motor vehicle . . .upon (the Atlantic Ocean Beach) . . ." and to ". . .restrain and regulate the use and occupation of (the Atlantic Ocean Beach) for the protection of the public and of life and property. . ." The Bottom Line then, is that under

existing law the State may charge a beach user fee to cover its costs incurred in exercising its "proprietary" functions over the beaches located within St. Johns County - which in this case are $0; and the County may charge a user fee to cover its costs incurred in exercising its regulatory functions over such beachs - which in this case are $240,076 + $53,225 = $293,301 for the 1984 beach season. If the state legislature does not approve of the way the County exercises the regulatory authority that the legislature delegated to the County, the legislature can revoke that authority by revoking the Special Acts (see State v Black River Phosphate Company 32 Fla. 82, 13 So 640 (Fla. 1893)) and the state can then take up the responsibility and the cost of regulating the Atlantic Ocean beaches within the County. It is respectfully suggested that 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 of regulation are obtained. That should be, and is, the function of the State legislature and the State legislature has for the time being delegated that authority to St. Johns County. The mere fact that St. Johns County does not claim ownership of the ocean beaches is thus irrelevant to the case at bar. In addition, Florida courts have long recognized that there is no requirement that a government must first own property in order to regulate the use of such property. See City of Daytona Beach v Toma-Rama, Inc. 294 So 2d 73 (Fla. 1974) wherein the Court recognized the private ownership of the sandy beach above the mean high water mark but nevertheless held that the public had acquired a customary right of use over such land and that such public right of use" . . . is subject to appropriate governmental regulation

. . ." (page 78). See also the two Special Acts, 65-2178 and 21543 whereby the Florida Legislature specifically authorized St. Johns County and the City of St. Augustine Beach to regulate the Atlantic Ocean beaches between the low water mark and the **high** water mark without limiting such power to the sovereign beach lands below (East of) the mean high water mark. The Special Acts thus also granted the City and County the power to regulate the non sovereign - sandy beach lands between the mean high water mark and the high water mark. See also Adams v Elliott 128 Fla. 79, 174 So 731 (Fla. 1937) wherein the Florida Supreme Court approved the validity of a Special Act for Duval County very similar to Special Act 21543 granting to the County the power to regulate the Atlantic Ocean beaches within its boundaries. And it has long been recognized that local governments may enact zoning ordinances to regulate the use of lands within their boundaries and that special regulations governing the operation of privately owned bars and restaurants are a valid exercise of a governmental police power.

Likewise, it has long been recognized that the public use of sovereign lands is not a free and unhinderable right of use, but is a usage that is subject to reasonable governmental regulation.

See Broward v Mabry 58 Fla. 398 50 So 826 (Fla. 1909), wherein the Florida Supreme Court stated the following:

> ". . . . . .The rights of the people of the States in the navigable waters and the lands thereunder, including the shore or space between ordinary high and low water marks, relate to navigation, commerce, fishing, bathing, and other easements allowed by law. These rights are designed to promote the general welfare and are subject to lawful regulation by the States. . . . . ."(page 407)

The Court then also stated that the land under navigable water is of a public character and:

> ". . the title to the land thereunder, including the shore or space between ordinary high and low water marks, when not included in the

valid terms of a grant or conveyance to private ownership, is held by the State in its sovereign capacity in trust for the lawful uses of all the people of the State in the water and the land, subject to lawful governmental regulation of such uses, ..." (page 409)

See also Merrill-Steven Co v Durke 62 Fla. 549, 57 So 428 (Fla. 1912) and Sarasota County Anglers Club Inc. v Burns 193 So 2d 691 (Fla. 1 DCA 1967).

Thus, it should be clear that pursuant to Home Rule and the two Special Acts, the ocean beaches within St. Johns County are subject to governmental regulation by the County.

The question then is narrowed to whether the County's power to regulate motor vehicle traffic on the beach includes the power to charge motor vehicle beach user fees.

The Florida Attorney General has long recognized that charging user fees is a form of regulation. See for example 75 AGO 84 wherein the attorney general stated:

> "As to your specific question, a municipality may make all regulations with regard to the control and management of its public parks as are necessary to preserve the public peace and safety, the protection of the property from injury, and to secure to the public the common enjoyment thereof. . .As an aspect of this authority to establish reasonable regulations for the control and management of public parks, including bathing beaches, it is generally recognized that a municipality, in case of expense in maintaining services in a public park, may demand a fee for individual use. . ."

The Attorney General then concluded that:

> "Finally, it should be emphasized that the foregoing discussion applies only to public admission to and use of municipally owned beaches. Wet-sand beaches (beaches between the mean high and mean low water lines) are, of course, owned by the state and held in trust for all the people. See Art. X, s.11 State Const.; White v Hughes, 190 So 446 (Fla. 1939), City of Daytona Beach v Tona-Rama, Inc. 294 So 2d 73 (Fla. 1974). Accord; Attorney General Opinion 074-279. As such, public admission thereto and use thereof, in the absence of legislative direction to the contrary, is not subject to municipal regulation and control."

St. Johns County respectfully asserts that by enacting the County HOME

RULE statute and the two SPECIAL ACTS, the Florida Legislature directed that St. Johns County have the power to regulate the beaches. Established case law makes it clear that the power to regulate includes the power to charge reasonable user fees. The Florida Legislature has thus delegated to St. Johns County the power to charge, collect and spend motor vehicle beach user fees in the manner set forth by its ordinance.

See also 62 AGO 142 wherein the Florida Attorney General recognized that a fee may be charged to individuals for use of public beaches to cover the operating costs of the beaches:

> ". . .the authorities do indicate that a fee may be charged for the use of parks, playgrounds, beaches and recreation areas so long as there is a reasonable relationship between the fees charged and the expenses involved in operating the facility."

See also City of Daytona Beach Shores v State 454 So 2d 651 (5th. DCA 1984) wherein this Court stated that:

> ". . .the city is vested with both police and regulatory powers which includes the power to impose a user fee for certain municipal services."

The United States Supreme Court has also recognized that charging user fees is a legitimate form of regulation. In Baldwin v Montana Fish and Game Commission 436 U.S. 371 (1978) the United States Supreme Court held that states have ". . .complete ownership over wildlife within their boundaries, and as well, the power to preserve the (wildlife) bounty. . ." The court examined the licensing scheme and costs for hunting elk within the state and concluded that ". . .the legislative choice was an economic means not unreasonably related to the preservation of a finite resource and a substantial regulatory interest of the State. . ." Surely, St. Johns County, through the power to regulate the traffic and recreation on the beaches explicitly granted to it by the State of Florida, may charge

a beach user fee as an economic means not unreasonably related to the preservation of a finite resource used daily by thousands of motor vehicles mixing with bathers and as a substantial regulatory interest of the County.

Florida Courts have also recognized the right of governments to require persons who create the need for governmental capital expenditures, such as "off beach parking" for beach users, to pay the costs thereof. See Home Builders v Palm Beach County, 446 So 2d 140 (Fla. 4th DCA 1983) holding that developers of new subdivisions may be required to pay for road improvements outside of the developments.

See also Hollywood Inc. v Broward County 431 So 2d 606 (Fla. 4th. DCA, 1983), wherein the court held that an ordinance requiring a developer/subdivider to pay an impact fee to be used to expand the County's park system was valid as a regulatory measure because the ordinance provides that the money collected would be spent to alleviate the adverse effects caused by the new development.

Thus, appellant St. Johns County respectfully asserts that the law is clear that the County and the City of St. Augustine Beach have been delegated the authority to regulate the ocean beaches within their boundaries and to provide "municipal" services for the benefit of the beach going public. The law is also clear that activities that are regulated and persons who utilize municipal services may be required to pay the reasonable costs thereof.

In addition, the law makes no distinction between "sovereign" lands and other public lands when affirming the right of government to charge regulatory user fees.

In Donald G. Nichols v City of Jacksonville Circuit Court/Duval County, Civil Case No. 71-2502; **affirmed** Nichols v City of Jacksonville, 262 So

2d 236 (Fla. 1st DCA, 1972) the Circuit Court final judgment stated: (A-86)

> ". . .Although Ordinance Number 6674 (the city ordinance exacting a charge of $1.00 from the operator of every motor vehicle before such motor vehicle is granted ingress to the public ocean beach)(A-90) is designed to raise funds for limited purposes associated with the use and enjoyment of the beach, yet it is regulatory in nature, and the exaction for the ingress of a motor vehicle to the beach has not been shown to be so unreasonable as to require the Court to strike it down. In this connection, if the exaction of $1.00 was for parking a vehicle on the beach while the occupants enjoyed the sun, sand and surf, or fished, it probably would not be more than required for parking on a private lot. And for those who merely wish to ride on the beach in motor vehicles, the charge of $1.00 for ingress to the beach will serve as a deterrent, and the consequent decrease in the movement of vehicles should aid those who do desire to sun, surf and fish to do so with greater enjoyment and less danger from traffic.
>
> The Ordinance in no wise limits the right of an individual to go onto and use the ocean beach. It is not a revenue measure for general purposes as funds raised from the exaction for the ingress of motor vehicles to the beach are required to be used for purposes that should make the beach a safer and more pleasant and enjoyable place for recreation.
>
> The plaintiffs have failed to demonstrate that the defendant CITY OF JACKSONVILLE BEACH has exceeded its authority in enacting Ordinance # 6674.
>
> It is, therefore, ADJUDGED that the CITY OF JACKSONVILLE BEACH has the authority under its Charter to reasonably regulate and control moving traffic and the parking of vehicles on the public ocean beach within its limits, and that by Ordinance Number 6674 it has not exceeded such authority."

In Louise Buckles v The City of New Smyrna Beach Circuit Court/Volusia County, Civil Case No. 73-2618-01, the final judgment of Judge Warren H. Cobb stated: (A-79)

> ". . .the City of New Smyrna Beach did have the authority as an incident to its police power, to impose a user charge on all vehicles using the city ramps to gain ingress onto the public bathing beach."
>
> ". . .by virtue of the authorization contained in and implied from . . . the City Charter and under. . .the authorization granted in and implied from section 167.73 F.S. (1971) the City did have the authority to pass Ordinance 769 (beach ramp user charge) as a valid police power measure."

"The court finds and concludes that the exaction imposed under Ordinance No. 769 and its amendment was a user charge and not a tax and was imposed as a regulatory measure to defray expenses of providing police protection, sanitation facilities and other costs of public safety and convenience necessary to maintain the ocean beaches and to provide police protection and sanitary facilities for the users thereof."

Neptune City v Avon-By-The-Sea 294 A 2d 47 (New Jersey 1972) is an excellent case that traces the English common law that **sovereign lands** are held in trust for the people. The case concludes that reasonable sovereign beach user fees collected to defray the cost of beach regulation are entirely within the common law **public trust doctrine** pertaining to sovereign lands. In its opinion, the Neptune Court specifically stated the following:

"We believe that the answer to (the question of beach user fees) should turn on the application of what has become known as the public trust doctrine". (Page 49)

". . . there is no dispute that the sand area (of the ocean beach) . . .is used for access by bathers to the water, as well as for sunning, lounging and other usual beach activities. The tide-flowed land lying between the mean high and low water marks, as well as the ocean covered land seaward thereof to the state's boundary, is owned by the state in fee simple. . ." (page 49)

"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." 114 N.J. Super. at 117, 274 A 2d at 861. 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. . ." (page 49)

"We prefer. . .to approach (this case) from the . . .fundamental viewpoint of the modern meaning and application of the public trust doctrine". (page 51)

"There is not the slightest doubt that New Jersey has always recognized the trust doctrine." (page 52)

"That it (the public trust doctrine) represents a deeply inherent right of the citizenry can not be disputed." (page 53)

The court then held that consistent with the public trust doctrine the city could validly charge reasonable fees for the use of the ocean beaches.

This Court is also respectfully requested to take cognizance of:

§372.57 Florida Statute (1983) - Fishing licenses charged by the State.

Florida Administrative Code 16 Q 21 - fees charged by the State to process applications concerning private use of sovereign lands.

Florida Administrative Code 16 D-2.02 - user fees charged by the State for the use of state park facilities.

Florida Administrative Code 17-4.29 - fees charged by the State to process applications for dredge and fill permits concerning navigable waters.

The Florida Legislature thus also obviously believes that it is legal to charge regulatory user fees to help defray the costs of regulating public sovereign lands.

The public in general also expects to pay reasonable user fees for services received. It is 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. 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 Florida Constitution guarantees access to the courts and justice is administered "without sale", Article 1 §21, litigants expect to pay filing fees and attorneys expect to pay dues to the Florida Bar.

The public trust doctrine demands only that the public use of sovereign lands not be materially impaired. State ex rel. Ellis v Gerling 56 Fla.

603, 47 So 353 (Fla. 1908). This should not be construed to prohibit the charging of a reasonable, non-intrusive, motor vehicle beach user fee to help defray the costs created when beach users wish to take motor vehicles onto the beach to mingle and drive among persons using the beach for recreation purposes. Appellant St. Johns County is the host to thousands upon thousands of transient visitors who wish to drive on the beach. Reasonable stewardship over the beaches means that services and facilities must be provided to serve the ever-increasing crowds such as those shown in the appendix photographs. (A-1)(A-2)(A-3) Those services and facilities must be financed - and the State has not done so. Let the State not complain because the County accepted the responsibility when the State did 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.

In summary, the Florida Supreme Court in Broward v Mabry, supra, recognized the power of government to regulate the beaches between the mean high and low water marks. Toma-Rama, supra, affirmed the right of government to regulate the dry sand beaches. The Florida Legislature has granted St. Johns County, a political subdivision of the State, the power to regulate the beaches and the motor vehicles thereon. The Cases are legion that hold reasonable user fees are a valid part of government regulatory and police powers and that user fees may also be used to require persons receiving municipal services to help pay the costs of providing such services.

The First District Court of Appeal, Nichols supra, held that beach user fees were valid. Judge Warren H. Cobb, then of the Seventh Judicial Circuit, held that beach user fees are valid (Buckles v The City of New Smyrna Beach, supra) and the Attorney General of the State of Florida, has also recognized that beach user fees are valid.

Since the Florida Constitution (Article X section 11) specifically permits the sale of sovereign lands and the private use of portions of sovereign lands, surely the above cited authorities are correct when they affirm the much less intrusive right of a local government to charge a reasonable motor vehicle user fee to help defray the costs of maintaining and regulating such beach lands for the use of the public. This is especially true when it is realized that the plaintiff's policy is to completely ban motor vehicles (A-24) from the beaches in those areas where local government has chosen not to assume the heavy burden of motor vehicle beach regulation.

In Wolf v Dade County 370 So 2d 839 (Fla. 3rd DCA 1979), the court recognized that:

> ". . . the Supreme Court of Florida has repeatedly emphasized that any legislative enactment carries a strong presumption of constitutionality and that if there is a rational basis for the exercise of the State's police power by the legislative authority, such an enactment should not be reversed by the appellate court. See State v Bales, 343 So 2d 9 (Fla. 1977); Askew v Schuster, 331 So 2d 297 (Fla. 1976), and City of Miami v Kayfetz, 92 So 2d 798 (Fla. 1957)" (page 841)

St. Johns County ordinance 80-17 as amended and City of St. Augustine Beach ordinances #79 and 110, as amended, are valid and rational local legislative enactments promulgated pursuant to Special Acts and General Law and therefore should not be reversed by the courts of Florida, Wolf, supra.

POINT II

WHETHER THERE WAS UNREBUTTED EVIDENCE BEFORE THE COURT SHOWING THE RELATIONSHIP BETWEEN MOTOR VEHICLE USE ON THE BEACH AND THE SERVICES BEING PROVIDED BY MOTOR VEHICLE BEACH USER FEE REVENUES.

The final judgment in this case stated that there was no evidence showing any relationship between vehicular use on the beach and a number of the services being paid from the beach fees. The amended complaint filed by the State demanded only to know by what authority St. Johns County charged motor vehicle beach user fees.

St. Johns County ordinance 84-46 (A-62), amending the initial County motor vehicle beach user fee, was introduced into evidence by the County (TTI-5). The ordinance contained the following legislative findings in sections 19 and 19B:

> Section 19:
>
> b) Approximatley **96%** of the people who use the County beaches during the days and hours that motor vehicle beach passes are required (the **summer beach season**), enter upon such beaches by means of motor vehicles driven and parked on the County beaches.
>
> c) Such motor vehicles enable such persons to bring a disproportionatley larger amount of trash, alcohol, glass bottles and other non desirable items onto the beaches than do persons who enter upon the beaches by foot, thereby creating a disproportionate increase in the need for regulation concerning such items.
>
> d) Motor vehicular use on the County beaches enables a significantly larger number of people to enjoy the beaches for bathing and recreational uses and thus increases the need for **life guard** protection and trash and beach clean up and maintenance.
>
> e) Private motor vehicular use of County ramps and the dry sand beaches between the ramps and the County beaches are the primary cause of the expenditure of County ad valorem tax dollars for beach and ramp maintenance. . .
>
> f) The imposition of the motor vehicle beach user fee has significantly reduced the amount of through motor vehicle traffic that merely "cruises" the beach for non bathing purposes, thus reducing the number of motor vehicles that are mixing with bathers and other recreational beach users; and has also significantly reduced the number of motor vehicle drivers that use the beaches for motor

vehicular sports such as speeding, "doing wheelies" and otherwise endangering the beach recreational users.

g) The primary need for the use of law enforcement personnel and law enforcement vehicles on County beaches during the summer bathing season is to regulate the speed and direction of motor vehicular traffic and segregate such traffic from bathing and recreational areas; to control the parking of motor vehicles on the beaches; to prevent reckless and careless driving within the recreation areas; and to regulate the possession, consumption and effects of alcohol on persons who arrive on the beaches by motor vehicle.

Section 9B Ordinance 80-17 as amended is enacted in conjunction with and as a necessary adjunct to the other County beach ordinances, such as, but not limited to, the County ordinances regulating traffic direction, alcohol possession, peddling, the dumping of trash, animal control, camping and other activities as they pertain to the regulation of such activities on County beaches." A-69)

Thus, there was competent unrebutted evidence before the Court showing the relationship between motor vehicle use on the beach and the services provided by the motor vehicle beach user fee revenue. See also the photographs, (A-1)(A-2)(A-3) that were introduced into evidence showing the motor vehicles and pedestrians on the beach during the summer beach season. The photographs showed approximately 1.25 persons per motor vehicle (A-93). The parties stipulated that the beach toll collectors estimate that on an average approximately 2 to 3 people are in each motor vehicle that enters the beach during the beach fee collection season, (A-44) thus indicating that all the people in the photographs arrived by motor vehicle.

The SOLE ISSUE raised by the trial PLEADINGS WAS WHETHER the County and the CITY of St. Augustine Beach had legal AUTHORITY to CHARGE motor vehicle beach user fees. There were NO ALLEGATIONS OF FACTS concerning whether or not the ordinance findings were arbitrary or concerning the use of the fees collected. Those matters were **not put in issue** by the pleadings and were **not before the trial court.**

St. Johns County Ordinance 80-17 as amended, makes explicit findings

as to the effect that motor vehicles have on the beaches. There is a presumption that Legislative recitals and findings in an act are correct. See Smithers v North St. Lucie River Drainage District 73 So 2d 235 (Fla. 1954) wherein the Florida Supreme Court held:

> "We find no constitutional objection to the act, the appellants have revealed none, neither have they overcome the presumption that the legislative recitals and findings in the act are presumptively correct."

All presumptions are in favor of an ordinance's validity and all ordinances will be construed, if possible, to give a result which renders them constitutionally valid. High Ridge Management Corp. v State of Florida, 354 So 2d 377 (Fla. 1977). If reasonable argument exists on the question of whether an ordinance is arbitrary or unreasonable, the legislative will must prevail. City of Miami Beach v Cayfetz, 92 So 2d 798 (Fla. 1957).

Thus, if the plaintiff wished to do more than merely question whether the County had the authority to charge beach user fees, the **burden** was upon the plaintiff to **plead** and **prove** that the County legislative findings were totally irrational. **The Plaintiff did neither.** See also Hart v Hart, 458 So 2d 815 (4th DCA Fla. 1984), wherein the court stated that the general rule is that a court cannot determine matters not noticed for hearing and not the subject of appropriate pleadings. See also 12 Florida Jur 2d Counties §196 wherein it is stated:

> ". . .Hence, where an ordinance is not void on its face, but its invalidity is dependent on facts, it is incumbent on the party relying on the invalidity to allege and prove the facts that make it so."

See also State v Ocean Highway and Port Authority 217 So 2d 103 (Fla. 1968) wherein the Florida Supreme Court held:

> "Appropriate respect for the authority of a coordinate branch of the government impels us to accord presumed validity to an act of the Legislature. To disturb it on constitutional grounds, invalidity must be demonstrated beyond a reasonable doubt. A

legislative decision regarding the public need and welfare of a particular area should not be disturbed unless it can be demonstrated that the conclusion is clearly unwarranted or is prohibited by some express constitutional limitation. . ." (page 105)

And see Estate of Leo Greenberg 390 So 2d 40 (Fla. 1980) and Markham v Fogg 458 So 2d 1122 (Fla. 1984) wherein the Florida Supreme Court stated:

"The rational basis or minimum scrutiny test generally employed in equal protection analysis requires only that a statute bear some reasonable relationship to a legitimate state purpose."

See also Lewis v Chas. C. Mathis Jr. 345 So 2d 1066 (Fla. 1977) wherein the Florida Supreme Court stated:

"If any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. Anderson v Board of Public Instruction for Hillsborough County, 102 Fla. 695, 136 So 334 (1931)."

See also Harkow v McCarthy 126 Fla. 433, 171 So 314 (Fla. 1936) wherein the court determined that:

". . .If the ordinance is not inherently unfair, unreasonable or oppressive, the person attacking it must assume the burden of affirmatively showing that as applied to him it is unreasonable, unfair and oppressive ...." (page 438)

and then at page 441 the court stated:

"In the case of Frost v R.R. Commission of California, 271 U.S. 583, 70 L. Ed. 1101, Mr. Justice McReynolds observed that: "The States are now struggling with new and enormously difficult problems incident to the growth of autmobile traffic, and courts should carefully refrain from interference unless and until there is some real, direct and material infraction of rights guaranteed by the Federal Consititution."

This observation is equally applicable to the cities of Florida today."

The observation is also equally applicable to the ocean beaches within St. Johns County.

12 Florida Jur 2d. Counties §197 provides that:

> "The power of a court to declare an ordinance void, because it is unreasonable, is one that must be carefully and cautiously exercised. The legislative body of a county or municipality is conceded a full measure of proper legislative discretion in the enactment of ordinances for the regulation, government, and management of the county or municipal corporation and the well-being of its inhabitants. In such matters, the county or municipal authorities are usually better judges than the courts, and their attempted exercise of discretion can be controlled only after abuse. The local authorities are presumed to have knowledge of local conditions; therefore their exercise of discretion with reference to the needs of the local community should be respected. . ."

Aerial photographs of portions of the 40 miles of County beach taken during the motor vehicle beach user fee season and introduced into evidence by appellant (TT-10) show - "wall to wall" - motor vehicles parked or driving on the beach. The photographs show 331 vehicles and 413 people (A-93) or about 1.245 persons in the photo per vehicle. Stipulation #18 (A-44) shows that the beach (fee) collectors estimate that on an average, approximately 2 or 3 people are in each motor vehicle that enters the beach during the beach fee collection season which would indicate that 100% of the people in the photographs plus whatever people are swimming outside the photos in deep water or are sitting in the motor vehicles entered the beach by motor vehicle. The trial court thus had before it credible evidence to support the St. Johns County ordinance section 19 legislative findings. There was no evidence or pleading allegations that would indicate that such findings were not correct.

The County also respectfully submits that there is no requirement at law that there must be a mathematically precise direct dollar for dollar relationship between each motor vehicle and each beach service funded by the motor vehicle beach user fee. See for example Pinellas Apartment v City of St. Petersburg 294 So 2d 676 (Fla. 2nd DCA 1974) wherein the Court stated:

> "The setting of utility rates is often a complicated process and mathematical exactitude cannot be required. There does not have to be an exact corelation between the rates charged for various aspects of the service provided by the city. There is nothing inherently wrong with the city making a modest return on its utility operation or certain portions thereof, providing the rate is not unreasonable in light of the service provided."

In Chase v City of Sandford 54 So 2d 370 (Fla. 1951) the court stated the following at page 372:

> "The mere fact, however, that some revenue might result to the city from the operation of the parking meters does not, ipso facto, classify the charge as a tax; and many decisions may be found in which ordinances authorizing a city to apply the revenue from parking meters not only to the narrow and restricted purpose of the mere installation, operation and maintenanace of the meters, but also to the broad purposes of general traffic control, have been upheld as a valid use of revenues derived from the exercise of the city's police power."

There appears to be no dispute that the people who enter the beach by motor vehicles enter for the purpose of enjoying a clean, safe, recreation area. The use of the motor vehicle beach user fee to provide the services and conditions the vehicle occupants seek is ". . . a valid use of revenues derived from the exercise of the (County's) police power."

See also the following language from Donald G. Nichols v City of Jacksonville, Circuit Court/Duval County, Civil Case No. 71-2502, introduced into evidence by the County (TTI-6):

> "The Ordinance in no wise limits the right of an individual to go onto and use the ocean beach. It is not a revenue measure for general purposes as funds raised from the exaction for the ingress of motor vehicles to the beach are required to be used for purposes that should make the beach a safer and more pleasant and enjoyable place for recreation.
>
> The plaintiffs have failed to demonstrate that the defendant CITY OF JACKSONVILLE BEACH has exceeded its authority in enacting Ordinance Number 6674."(A-87)

And see Nichols v City of Jacksonville 262 So 2d 236 (Fla. 1st DCA 1972) wherein the appellate court approved the above cited language by stating:

". . .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 the trial."

See also 75 AGO 84 wherein the Florida Attorney General stated:

"As to your specific question, a municipality may make all regulations with regard to the control and management of its public parks as are necessary to preserve the public peace and safety, the protection of the property from injury, and to secure to the public the common enjoyment thereof. . .As an aspect of this authority to establish reasonable regulations for the control and management of public parks, including bathing beaches, it is generally recognized that a municipality, in case of expense in maintaining services in a public park, may demand a fee for individual use."

And see 62 AGO 142:

". . .the authorities do indicate that a fee may be charged for the use of parks, playgrounds, beaches and recreation areas so long as there is a reasonable relationship between the fees charged and the expenses involved in operating the facility."

In Harkow v McCarthy, 171, So 314 (Fla. 1936), the Florida Supreme Court stated:

"Undoubtedly, a City may not 'make gain under an illegal exercise of the police power, but it is well settled that a license fee may be of a sufficient amount to include the expense of issuing the license and the cost of necessary inspection or police surveillance connected with the business or calling licensed, and all the incidental expenses that are likely to be imposed upon the public in consequence of the business licensed. The Courts will not seek to avoid an ordinance by nice calculations of the expense of enforcing police regulations, but will promptly arrest any clear abuse of the power." p. 317

See also Town of Palm Beach v Palm Beach County 460 So 2d 879 (Fla. 1984) wherein the Florida Supreme Court discussed the Dual Taxation prohibition imposed on Counties by the Florida Constitution concerning ad valorem taxes. The case is cited here because the test used in such ad valorem dual taxation questions is much more stringent than the Harkow ". . .incidental expenses. . .in consequence of the (activity) licensed" test applicable to the beaches - and yet - the County meets that test also. The

dual taxation ad valorem taxation test "

> ". . .requires that the municipality and its residents receive a benefit which must achieve a magnitude described as "real and substantial." Briley, Wild, 239 So 2d 823. As we have stated in the past, substantial is not necessarily a quantifiable term and a benefit may achieve substantiality without being direct or primary. All that is required is a minimum level of benefit which is not illusory, ephemeral or inconsequential. (cites omitted) To meet this test, it is incumbent upon the petitioners to prove a negative - a service provided by the county and funded by county-wide revenues does not provide a real and substantial benefit to the particular municipality. Briley, Wild, 239 So 2d at 823. In any given case this will be a heavy burden, but it is by no means impossible to prove or "automatic" in the sense that the consitutional test can never be met." (Town of Palm Beach, supra at page 881)

The Court then stated that:

> "The constitutional question is whether the municipal residents substantially benefit from the challenged programs, and not whether the county provides proportionally significant services." (page 883)

The Court then held that the sheriffs road patrol provided not only a minimal level of direct benefit, but also a substantial degree of indirect benefit:

> ". . .we find that the sheriff's road patrol and detective divisions provide not only a minimal level of direct benefit, but also a substantial degree of indirect benefit. That benefit, as a matter of law, given the geographic makeup of Palm Beach County, is sufficient to withstand the petitioners' heavy burden of proving a lack of substantial benefit. It is evident from the trial court's written decision that the trial judge did not discuss and consider many of the above benefits and failed to accord proper weight to the evidence of unquantifiable indirect and potential benefits. Whereas the constitutional test does not rest solely on quantitative benefits, the district court has correctly applied the holding of Briley, Wild to the instant case and we approve its decision on this point." (page 883)

The trial court in the case at bar apparently chose to ignore the section 19 findings contained in St. Johns Countys' motor vehicle beach user fee ordinance. The County respectfully asserts that such departure from the essential requirements of law was wrong and requests that this Court accord such unrebutted legislative findings the respect and the weight to which they are entitled.

The life guard, traffic control, sanitation and maintenance benefits received by the 96% of the people using the beaches (the percentage who arrive by motor vehicles) is thus a real and substantial benefit. The Court is respectfully reminded of the Harkow, supra, admonition that ". . . the courts will not seek to avoid an ordinance by nice calculations of the expenses(s) . . .but will promptly arrest any clear abuse of the (police) power." The Town of Palm Beach, supra, decision also recognized that it is not necessary to purchase expensive user studies to calculate to the nth degree the benefits that a particular fee provides.

> "Because we do not wish to impose a mechanical test under which municipalities may never prevail, we refrain from requiring future municipal contestants to institute expensive road-by-road examinations and user studies." (page 884)

If reasonable argument exists on a question of whether an Ordinance is arbitrary or unreasonable, the legislative body must prevail City of Miami Beach v Cayfetz, 92 So 2d 798 (Fla. 1957).

In State v Ocean Highway and Port Authority, 217 So 2d 103 (Fla. 1968), the Supreme Court again stated:

> "Appropriate respect for the authority of a coordinate branch of the government impels us to accord presumed validity to an act of the Legislature. To disturb it on constitutional grounds, invalidity must be demonstrated beyond a reasonable doubt. A legislative decision regarding the public need and welfare of a particular area should not be disturbed unless it can be demonstrated that the conclusion is clearly unwarranted or is prohibited by some express constitutional limitation." (page 105)

In Summary, Ordinance 80-17 as amended is clothed with the presumption of validity and the unrebutted legislative findings concerning the need for the motor vehicle beach user fees and the relationship between such fees and the services provided meet and exceed all requirements of law. In addition, the accuracy of those findings and uses was never placed before the trial court by pleadings or proof.

POINT III

WHETHER ST. JOHNS COUNTY MOTOR VEHICLE BEACH USER FEE ORDINANCES ARE DESIGNED OR USED TO UNDERWRITE COUNTY-WIDE SERVICES.

Section 6A of the St. Johns County motor vehicle beach user fee ordinance limits the amount of motor vehicle beach user fees that may be charged. The percentages contained in section 6 of the ordinance then limit the expenditure of the user fee revenue solely to motor vehicle beach costs incurred during the days and times the fees are charged. The motor vehicle user fees thus do not pay costs created by persons who enter the beach on foot.

Sections 6 and 6A were enacted in a conscious effort to meet the concerns expressed by this Court in City of Daytona Beach Shores, supra.

> "Section 6A The funds collected from the levy of the fees shall be expended only for the purposes described in Section 6. In the event the funds collected during any two consecutive years exceed the costs described in Section 6, the fees shall be appropriately reduced the following year. (A-70)

> "Section 6 The funds collected from the levy of the fee shall be expended **only** for the following purposes; to pay the costs of collecting the fees; to help defray the costs of maintaining the access ramps and the dry sand area between the access ramps and the County beaches during the **summer beach season**; to pay the costs of beach motor vehicle traffic and parking control not to exceed **87%** of the costs of law enforcement personnel and law enforcement vehicles while on duty or in use on the beaches during the **summer beach season**; to pay the costs of collecting and removing garbage and trash from County beaches not to exceed **85%** of the total cost of such garbage and trash removal during the **summer beach season**; to pay the costs of life guard personnel and equipment for services performed on the County beaches not to exceed **96%** of the total of such costs during the **summer beach season**; to help pay the costs of sanitary facilities in the County beach area not to exceed **87%** of such costs during the **summer beach season**; to purchase, acquire and construct parking lots near the beaches to be used solely for the parking of cars while the cars occupants are using the beaches; and for any other lawful purposes related to this ordinance." (A-64)

The Addendum To Joint Pre Trial Compliance (A-42) stipulated the following facts:

Undisputed 1984 beach expenses:

$64,478	fee collection expenses
$96,119	life guard salary expenses
$79,479	sheriff's beach unit salaries

$240,076	Total undisputed 1984 beach expenses
$ 53,225	Other beach related expenses that were not backed by precise records.

Undisputed 1984 beach fee collections

$233,818

The County thus did not use beach fee revenues to underwrite general countywide services as was criticized by this Court in the Daytona Beach Shores case. Sections 6 and 6A of St. Johns County Ordinance 80-17 as amended, specifically require that motor vehicle beach user fee revenues be expended soley to pay costs generated by motor vehicle beach use.

In addition, the plaintiff never pled facts nor presented evidence that brought into issue any contention that St. Johns County motor vehicle beach user fee revenues were expended for county wide services. Plaintiffs' post trial memorandum to the trial court (R-1150) questioned whether the County beach user fee proceeds were being used to underwrite beach related services but then candidly stated at page 30 that the answer was unknown to the plaintiff. 12 Florida Jur 2d Counties §197 provides that ". . .where an ordinance is not void on its face, but its invalidity is dependent on facts, it is uncumbent in the party relying on the invalidity to allege and prove the facts that make it so." The plaintiff offered no allegations nor proof toward invalidity and thus there was NO ISSUE before the trial court as to how the motor vehicle beach user fee revenues were spent.

In spite of the lack of a bona fide trial issue on the matter, the

express mandatory language of the ordinance and the stipulated financial data conclusively show that the St. Johns County motor vehicle beach user fee revenues were not used for county wide services but were used soley for proper beach purposes as described under Point II, above.

POINT IV

WHETHER IT IS CONSTITUTIONALLY PERMISSIBLE FOR ST. JOHNS COUNTY TO CHARGE MOTOR VEHICLE BEACH USER FEES AND NOT ATTEMPT TO CHARGE PEDESTRIAN BEACH USER FEES.

The fact that the County made a legislative decision not to attempt to collect a user fee from people who enter the beach by foot does not invalidate the ordinance. St. Johns County made a bona fide effort to meet the concern expressed by the Fifth District Court of Appeal in the Daytona Beach Shores case to the effect that one segment of the beach going population (those who drive onto the beach) not be required to shoulder the entire burden of beach-related expenses (including the costs generated by those 4% who walk onto the beach). St. Johns County ordinance 80-17 as amended (Sections 19, 9B, 6 and 6A) addressed that concern by limiting the amount of motor vehicle beach user fees that can be charged and by limiting (through the section 6 percentage limitations) the expenditure of the fee proceeds to only the beach costs and services created and used by the persons using the motor vehicles during the summer beach season. Thus, **motor vehicle** users in St. Johns County **do not pay** for beach services provided to the **pedestrians**. Those costs are still paid by the St. Johns County ad valorem tax payers.

Appellant, St. Johns County, would also respectfully suggest that it is not constitutionally impermissible to require the 96% of beach users who arrive by motor vehicle to pay the entire cost of beach regulation during the beach season. The County decision to collect fees only at heavily

trafficked points of entry (the beach ramps) rather than along the miles and miles of beach where pedestrians may enter is a rational legislative decision. In the recent case of Estate of Leo Greenberg, 390 So 2d 40 (Fla. 1980) the Florida Supremem Court stated:

> "Where utilizing the rationality test, the equal protection clause is not violated merely because a classification made by the laws is not perfect. Equal protection does not require a state to choose between attacking every aspect of the problem or not attacking it at all, and a statutory discrimination will not be set aside if any statement of facts reasonably may be conceived to justify it. Dandridge v Williams. To be constitutional, a statutory classification need not be all inclusive." (page 46)

The County legislative decision not to require St. Johns County ad valorem tax payers (many of whom do not use the ocean beaches at all) to be totally responsible for the payment of beach-related expenses created by the 78% (A-51) of motor vehicles that enter the beaches from other counties is also a rational legislative decision. St. Johns County simply requires that all motor vehicle beach users - 22% from St. Johns County and 78% from other Counties - help pay the costs of beach regulation. See Harkow v McCarthy 126 Fla. 433 (Fla. 1936) wherein the City of Miami adopted a parking meter ordinance pertaining to portions of the public streets. The court determined that prior to the parking meter ordinance the city relied upon its police force to enforce parking regulations ". . .with the general public paying all the cost of such enforcement". The court then determined that ". . .as a result of the use of parking meters . . . those who enjoy the privilege, (of parking) rather than the general public, pay the extra cost of providing and maintaining the means to the enjoyment of the privilege, and the extra cost of the supervison and policing of it." See also Neptune City, supra.

The appellant is not aware of any case law that prohibits a legislative

body from requiring one group of citizens to pay a higher percentage of costs for a service or capital improvement than it does to another group where such decision is based upon facts that may reasonably be perceived to justify such requirement. Certainly the federal income tax law is a "case in point." Florida utility rate cases routinely recognize that there may be differences in rates charged to bulk users than to individual small users. See Pinellas Apartment Associates, Inc. v City of St. Petersburg 294 So 2d 676 (Fla. 2nd DCA 1972), a garbage collection rate case, wherein the court held that:

> "The establishment of classifications in setting the charges for utility services is permissible so long as the classifications are not arbitrary, unreasonable or discriminatory and apply similarly to all under like conditions. Some inequality in result is not enough to vitiate a legislative classification grounded on reason."

St. Johns County treats all motor vehicle beach users alike. It charges all persons who wish to take a motor vehicle onto the ocean beaches during the crowded "summer beach season" a reasonable motor vehicle beach user fee. Other recent Florida court cases have also recognized that such classification distinctions are legally permissable. In Home Builders and Contractors Assoc. v Palm Beach County 446 So 2d 140 (Fla. 4th DCA 1983) the Court held that a road impact fee accessed only against new development for the purpose of constructing roads outside the development (said roads to be used by or available to the entire general public) made necessary by the increased traffic generated by such new development was a valid regulatory fee because the fee was reasonably related to the public costs created by the developers use of the land and required the developer to pay his "fair share" of the public costs created by such use. Persons living outside the development who used the same roads were not required to pay

a similar fee. In addition, the Court held that the fact that certain municipalities within the County could opt out of the ordinance and the fact that 33 of 37 municipalities did opt out did not deny equal protection to those subject to the ordinance. See also Lynn v City of Fort Lauderdale 81 So 2d 511 (Fla. 1955) wherein the Court held that charges exacted by a city for use of on-street and off-street parking facilities are a lawful exercise of police power so long as they are reasonably necessary to defray expenses of regulating parking in the interest of the welfare of the citizens as an entire group and do not have the raising of general revenue as their primary purpose. See also Smithers v North St. Lucie River Drainage District, supra, holding that statutory provisons relating to classification and grouping of marginal lands within a drainage district and the imposition of a maintenance tax thereon different from that imposed on other lands within the district was not in violation of constitutional provisions for a uniform and equal rate of taxation. And finally see Rowe v Pinellas Sports Authority 461 So 2d 72 (Fla 1984), wherein the Florida Supreme Court stated:

> "Appellants lastly contend that Florida's tourist development tax violates the equal protection clause of the Florida Constitution because it does not expressly include cooperatives in the statutory taxing scheme. This tax has been previously upheld against constitutional attack by this Court in Miami Dolphins. Appellants have not met their burden of showing that this classification is not reasonably related to some legitimate legislative purpose. Matthews v Lucas, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976)." (page 78)

A blanket judicially created prohibition totally forbidding a legislative decision to charge motor vehicle beach users (being 96% of the beach user population) while not seeking to charge the few people who enter the beach by foot along the miles and miles of ocean beach front, would thus, in effect, overturn years of United States and Florida court decisions. See also Estate of Leo Greenberg 390 So 2d 40 (Fla. 1980) and Markham v

Fogg 458 So 2d 1122 (Fla. 1984) wherein the Florida Supreme Court stated:

> "The rational basis or minimum scrutiny test generally employed in equal protection analysis requires only that a statute bear some reasonable relationship to a legitimate state purpose. That the statute may result incidentally in some inequality or that is **not drawn with mathematical precision** will not result in its invalidity. Rather, the statutory classification to be held unconstitutionally violative of the equal protection clause under this test must cause different treatments so disparate as relates to the difference in classification so as to be wholly arbitrary." (page 42)

> "Where utilizing the rationality test, the equal protection clause is not violated merely because a classification made by the laws is not perfect. Equal protection does not require a state to choose between attacking every aspect of the problem or not attacking it at all, and a statutory discrimination will not be set aside if any statement of facts reasonably may be conceived to justify it. To be constitutional, a statutory classification need not be all inclusive." (page 46)

See also Lewis v Chas. C. Mathis Jr. 345 So 2d 1066 (Fla. 1977) wherein the Florida Supreme Court stated:

> "The Legislature has wide discretion in choosing a classification, and therefore the presumption is in favor of the validity of the statute."

> "Those who complain of unjust discrimination by the State in violation of the State and Federal constitutions have the burden of showing that the alleged discrimination has no conceivable basis, in differences of conditions, sufficient to justify the statutory regulation under attack."

See also Hull v Board of Commissioners of Halifax Hospital Medical Center 453 So 2d 519 (Fla. App. 5th. Dist. 1984) wherein the Fifth District Court of Appeal stated that:

> "Under Florida's equal protection analysis, appellants have the burden of showing "that there is no conceivable factual predicate which would rationally support the classification under attack." (page 524)

Once again the plaintiff in the case at bar **neither pled** facts **nor** introduced **evidence** that would indicate that there was no conceivable factual predicate which would rationally support the St. Johns County legislative

decision to charge a motor vehicle beach user fee to those "pedestrians" who choose to bring a car on the beach and to forego attempting to charge and collect a beach user fee from pedestrians who do not choose to bring a car on the beach. This is especially true where the County does not prohibit or penalize people from walking onto the beach without a car and where the Florida Supreme Court has recognized that:

> ". . .the right of the public to use the beach for bathing and recreational purposes is superior to that of the motorists driving automobiles thereon" (Toma-Rama, 294 So 2d 73, 75)

See also Town of Atlantic Beach v Oosterhout 127 Fla. 159, 172 So 687 (Fla. 1937) wherein the Court stated that:

> "The power of both the Legislature and municipalities in the exercise of their police power to regulate traffic in the interest of the life, limbs, health, comfort, and quiet of the people has generally been recognized and upheld even when so drastic that it extended to the exclusion of traffic by automobile from certain streets and highways. (cites many cases) These cases all proceed on the theory that the automobile is a dangerous instrumentality and that its use may be regulated even to exclusion in the interest of the public."

Charging a nominal motor vehicle beach user fee to help defray the cost of regulating motor vehicles on the beaches and providing services necessitated by such motor vehicles is much less drastic than solving the beach motor vehicle problem by completely prohibiting their use on the beach. Such user fees imposed by St. Johns County would appear to be more in keeping with the spirit of the public trust doctrine than the State's announced policy (A-24) of completely banning the use of motor vehicles on State regulated beaches.

All presumptions are in favor of an ordinance's validity and all ordinances will be construed, if possible, to give a result which renders them constitutionally valid. High Ridge Management Corp. v State of Florida, 354 So 2d 377 (Fla. 1977). If reasonable argument exists on the question

of whether an ordinance is arbitrary or unreasonable, the legislative will must prevail. City of Miami Beach v Cayfetz, 92 So 2d 798 (Fla. 1957).

Because such a disproportionately large percentage of County beach regulatory and maintenance needs are caused by or related to motor vehicle use on the County beaches, (see sections 19(b),(c),(g), and 9B of ordinance 80-17 as amended) it is unnecessary and would be excessively expensive and impractical to attempt to collect pedestrian beach user fees from each person who may decide to enter the beach on foot along the many miles of County beach. In addition, to attempt to collect beach user fees on a per person basis at the heavily trafficked road points of entry would unduly delay the orderly flow of motor vehicular traffic entering the County beaches and would also encourage non driver motor vehicle occupants to exit the motor vehicles at points west of the collection stations and trespass over private property and fragile dunes in order to enter County beaches without paying the user fee. Thus, the County commission decision to charge and collect a user fee for the privilege of taking a motor vehicle onto the ocean beaches at heavily trafficked points of entry is both rational and reasonable and should be upheld by the Courts.

The defendant County recognized the concern expressed by the Fifth District Court of Appeal in City of Daytona Beach Shores, supra; it again studied the beach situation and limited the motor vehicle beach user fee revenue expenditures accordingly. Not only does the St. Johns County ordinance meet the constitutional equal protection requirements described in Lewis v Chas. C. Mathis Jr. 345 So 2d 1066 (Fla. 1977), Estate of Leo Greenberg 390 So 2d 40 (Fla. 1980) and Markham v Fogg 458 So 2d 1122 (Fla. 1984) it is also designed to meet the concerns expressed by the Fifth District Court of Appeals in the City of Daytona Beach Shores, supra, case

by limiting the expenditure of the motor vehicle beach user fee revenues to only the percentage of beach regulation and maintenance costs caused by beach motor vehicles during the days and times that the beach fees are collected. The balance of such costs continue to be paid by the St. Johns County ad valorem tax payers.

POINT V

WHETHER ST. JOHNS **COUNTY** AD VALOREM TAX PAYERS HAVE THE **DUTY** TO PROVIDE **FREE EXTRAORDINARY** POLICE AND SAFETY PROTECTION AND FREE MAINTENANCE FOR ALL OTHER PERSONS THROUGHOUT THE WORLD WHO WISH TO ENJOY **STATE** OWNED BEACHES LOCATED WITHIN THE COUNTY.

The Fifth District Court of Appeal, in City of Daytona Beach Shores v State, supra stated that:

> ". . .the city, as a valid exercise of its police power, has the authority and the duty to regulate vehicular traffic on the Atlantic Ocean Beach"

and in support of the statement the Court cited Ralph v City of Daytona Beach 412 So 2d 875 (Fla. 5th. DCA 1982), Supreme Court Case No. 62,094 (Fla. Feb. 17, 1983)(8 F.L.W. 79) rehearing pending and Town of Atlantic Beach v Oosterhout, 127 Fla. 159, 172 So 687 (Fla. 1937) Appellants respectfully and cautiously suggest that the cited cases uphold the authority of the city to regulate the beaches but do not necessarily impose an absolute duty on the City to provide and enforce such regulations. Language in this or any other Court's decison that can be interpreted as imposing a judicially created duty on a city or county to provide certain services causes the cities and counties within this state great concern and uncertainty - what is the extent of the duty - does it approach insuring against no harm whatsoever - does it require extraordinary police and safety measures - where does it lead? Until City of Daytona Beach Shores, supra, appellants understood that it was the function of the legislature to mandate

municipal and county duties. Appellants also understood (and do not now oppose) the proposition that once a government (or for that matter, a private citizen) elects to undertake a duty or course of action, the government should perform such duty in a non negligent and reasonable manner. The Fifth District Court of Appeal, in Ralph v City of Daytona Beach, supra, held that:

> ". . .the basic issue of whether traffic should or should not be restricted or regulated on this beach is one for governmental, not judicial, determination."

The subsequent Supreme Court opinion on the same case did not appear to quarrel with that statement. Appellants respectfully assert that the Supreme Court opinion merely held that where a City advertizes its beaches for use by bathers and by motor vehicles - it then has a duty (subject to the "readily apparent" doctrine) to warn the beach users of the danger of motor vehicle traffic not being constantly supervised. The County respectfully asserts that the Supreme Court opinion, thus, candidly recognized that the City could choose in its legislative discretion not to expend extraordinary effort to regulate the pedistrian and motor vehicle traffic on the beach.

Appellant, St. Johns County has in the past taken the position that the Special Acts and the County Home Rule Act (F.S. Chapter 125) were grants of authority to the County that enables it to perform certain acts - but were not legislative directives requiring that the County perform each of the activities described therein. For example, the County Home Rule Statute provides that Counties shall have the power to: (125.01(1))

d) provide fire protection

e) provide hospitals

f) provide museums

j) provide beach erosion control

k) provide bus terminals

m) provide and regulate traffic and parking

To appellants knowledge no one has seriously argued that the above powers require that each county provide museums, hospitals and bus terminals. Neither should these Acts be construed to require Counties to provide traffic and parking control on State owned beaches. (The local citizenary - through the electoral process- may in effect require local officials to provide such traffic control and other selected services authorized by the State- but making these local legislative decisions should not be the function of juries or of courts.) Florida and federal courts have both recognized that there is no constitutional right to adequate police protection. See for example Higdon v Metropolitan Dade County, 446 So 2d 203 (3rd DCA Fla. 1984) wherein the Court stated:

> ". . .plaintiff contends that police protection is an essential governmental service and that failure to provide such essential governmental service is a constitutional violation. This contention must be rejected.
>
> The Supreme Court of the United States has repeatedly pointed out that one must look to the Constituion itself in order to determine whether it explicitly or implicitly creates a constitutional right. . . .
>
> The Constitution does not explicitly or implicitly provide a right to adequate police protection. . .
>
> 471 F. Supp. at 1265. See also Shortina v Wheeler, 531 F 2d 938 (8th. Cir. 1976); Wooters v Jornlin, 477 F. Supp. 1140, 1141 (D. Del. 1979; aff'd. 622 F.2d. 580 (3d. Cir.), cert. denied, 449 U.S. 992, 101 S. Ct. 528, 66 L. Ed. 2d 289 (1980); Reedy v Mullins, 456 F. Supp. 955 (W.D.Va. 1978). We agree with the federal court that there is no constitutional right to adequate police protection."
> (page 206)

As can be seen by appellants photographic evidence exhibits (A-1)(A-2) and (A-3), the daily traffic, parking and pedestrian congestion on the ocean beaches reaches rock concert proportions. 78% of the motor vehicles

come from "out of county" (A-51). This huge amount of traffic when coupled with sunbathers and frisbee players all seeking to enjoy the same beach with the motor vehicles creates an extraordinary traffic and maintenance problem that is different in kind and quantity from every other area of the County and City. The fact that the tide constantly changes the width of the play and traffic area compounds the problem. Appellants have always believed that there was no absolute duty on their part to provide extraordinary (different in quantity and degree) traffic control and maintenance for State owned beaches. St. Johns County respectfully suggests that (but for the language of City of Daytona Beach Shores, supra) the County may choose to decline to exercise its authority to provide extraordinary traffic control on the State owned beaches and leave such traffic control decisions to the State legislature and to the Florida Highway Patrol.

It is thus respectfully suggested that there should be no judicially imposed duty placed upon the ad valorem taxpayers of a local government to provide free extraordinary regulatory services to each group of persons who voluntarily and periodically descend upon a community for purely recreational reasons and who congregate in a localized area demanding such services free of charge. See also Nichols and Neptune City, supra.

CONCLUSION

The County commission found and determined by ordinance 80-17 as amended, that 96% of the persons who use the ocean beaches during the days and hours that motor vehicle beach user fees are collected (the summer beach season) enter upon the beach by motor vehicle. It succinctly and definitively found and determined the direct and indirect relationships

between motor vehicle use on the beach and the regulatory activities and services financed by such fees. Through the section 6 percentages, the ordinance limited the expenditure of fee revenues to only those costs attribritable to and connected with beach motor vehicle use occuring during the summer beach season. The ordinance was introduced into evidence. No facts were pled nor evidence presented by the plaintiff to rebut the ordinance. Smithers, Ocean Highway, Lewis, and other Florida Supreme Court cases cited by appellants all require that legislative findings and classifications be upheld unless the opponent carries its heavy burden of showing beyond a reasonable doubt that the ordinance findings and classifications are clearly and patently unreasonable and that there is no conceivable factual predicate that can rationally support the classification under attack. See also Hull, supra. The Florida Special Acts delegated to appellants the authority to regulate motor vehicles on the ocean beaches within their boundaries. Florida Courts and legal scholars have consistently recognized and affirmed the right of local governments to charge user fees to help defray the costs of regulating and providing municipal services.

Appellants therefore request that the final judgment be reversed and that the City and County ordinances be declared valid and enforceable according to their terms.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered to Stephen L. Boyles, State Attorney, to Clyde E. Shoemake, Assistant State Attorney, attorneys for plaintiff, 440 South Beach Street, Daytona Beach, Florida 32014, by U.S. Mail and to Lee R. Rohe, Esquire, Assistant General Counsel, 3900 Commonwealth Blvd., Suite 1003, Tallahassee, Florida 32303 by Federal Express this 29 day of March, 1985.

James G. Sisco

James G. Sisco