

O/a 5-7-85

FILED
SID J. WHITE

IN THE SUPREME COURT OF FLORIDA APR 8 1985

CLERK, SUPREME COURT

CASE NO. 66,700

By _____
Chief Deputy Clerk

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

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

Plaintiff,

vs.

CITY OF ST. AUGUSTINE BEACH,
A FLORIDA MUNICIPAL CORPORATION

Defendant.

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.

COUNTY OF ST. JOHNS,
A FLORIDA COUNTY GOVERNMENT.

Defendant.

APPELLANTS' SUPPLEMENTAL BRIEF

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

David C. Conn, Esquire
P.O. Drawer G-1
St. Augustine, Fl. 32084
904-829-5635

Attorney for Appellant
City of St. Augustine Beach

James G. Sisco, Esquire
P.O. Box 1533
St. Augustine, Fl. 32084
904-824-6121

Attorney for Appellant
St. Johns County

TABLE OF CONTENTS

	Page
CITATION OF AUTHORITIES.....	ii
POINT ON APPEAL.....	1
STATEMENT OF THE CASE AND THE FACTS.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
POINT VI	
WHETHER ST. JOHNS COUNTY AND THE CITY OF ST. AUGUSTINE BEACH HAVE THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH SERVICE CHARGES AS A PART OF THE TAXING AUTHORITY GRANTED THEM BY FLORIDA STATUTE §125.01(1)(q), 125.01(1)(r) and 125.01(5).	3
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10
APPENDIX.....	A-1

CITATION OF AUTHORITIES

Page

Charlotte County v Fiske
350 So 2d 578 (Fla. 2nd DCA 1977).....7

City of Daytona Beach Shores v State
454 So 2d 651 (Fla. 5th. DCA 1984).....8

Fire District No. 1 of Polk County v Jenkins
221 So 2d 740 (Fla. 1969).....7

Gallant v Stephens
358 So 2d 536 (Fla. 1978).....7

Neptune City v Avon-By-The-Sea
294 A 2d 47 (New Jersey 1972).....8

Tucker v Underdown
356 So 2d 251 (Fla. 1978).....7

Other Authorities

Florida Statutes

§125.01(1)(q).....3

POINT ON APPEAL

POINT VI

WHETHER ST. JOHNS COUNTY AND THE CITY OF ST. AUGUSTINE BEACH HAVE THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH SERVICE CHARGES AS A PART OF THE TAXING AUTHORITY GRANTED THEM BY FLORIDA STATUTE §125.01(1)(q), 125.01(1)(r) and 125.01(5).

STATEMENT OF THE CASE AND FACTS

For the purposes of this Supplemental Brief, the following abbreviations will be utilized:

- "A" for Appendix to this Supplemental Brief
- "AIB" for Appendix to Appellants Initial Brief
- "R" for Record on appeal
- "T" for Transcript of hearing on motions concerning the automatic stay attached hereto at the back of the Appendix. The original transcript has been forwarded to the Court as part of the record on appeal of the final judgment.

Appellants add the following to the Statements of The Case and of The Facts contained in their Initial Appellate Brief:

On February 22, 1985 the trial court entered its final judgment (AIB-45) declaring that County ordinance 80-17 as amended and City ordinances #79 and 110 were illegal. These were the ordinances under which the County and City charged motor vehicle beach user fees pursuant to the **police** and **regulatory powers** conferred upon them by **Special Acts** of the State of Florida. (Please see Point I of Appellants Initial Brief previously filed in the captioned cause.)

On April 2, 1985, the Circuit Court entered its post judgment order

(A-1) reviewing the Rule 9.310(b)(2) Fla. R. App. P. automatic stay of the final judgment that is now before this Court. As part of the order denying the plaintiffs' motion to vacate the stay, the Circuit Court ruled that County ordinance 85-29, if enforced, would violate that final judgment.

The ordinances at issue under this Supplemental Brief - County ordinance 85-29 (A-5)(R-1172) which was passed and adopted after proper public notice on March 29, 1985 and City ordinance #121 (A-13) which was passed and adopted after proper public notice on April 1, 1985 - were passed and adopted pursuant to and under the **taxing authority** granted to the County and City by Florida Statute sections 125.01(1)(q), 125.01(1)(r) and 125.01(5). (See section 1 of ordinance 85-29.) (A-5)(R-1172)

SUMMARY OF ARGUMENT

POINT VI

WHETHER ST. JOHNS COUNTY AND THE CITY OF ST. AUGUSTINE BEACH HAVE THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH SERVICE CHARGES AS A PART OF THE TAXING AUTHORITY GRANTED THEM BY FLORIDA STATUTE §125.01(1)(q), 125.01(1)(r) and 125.01(5).

This point cites Florida Statute §125.01(1)(q) and Florida case law as authority for the County to create a municipal service taxing and benefit unit consisting of the ocean beaches within the unincorporated area of the County and to charge motor vehicle beach service charges to all persons taking a motor vehicle into the unit. It shows the correlation between the motor vehicles and the services funded by the service charges. It shows that Florida Statute §125.01(1)(q) specifically authorizes the imposition of service charges to fund the exact services provided by the benefit unit. It then shows that Florida Statute §125.01(5) authorizes the County and the City to jointly charge such service charges through a duly created special district.

ARGUMENT

POINT VI

WHETHER ST. JOHNS COUNTY AND THE CITY OF ST. AUGUSTINE BEACH HAVE THE AUTHORITY TO CHARGE MOTOR VEHICLE BEACH SERVICE CHARGES AS A PART OF THE TAXING AUTHORITY GRANTED THEM BY FLORIDA STATUTE §125.01(1)(q), 125.01(1)(r) and 125.01(5).

County ordinance 85-29 was passed and adopted on March 26, 1985 after entry of the trial courts' final judgment of February 22, 1985. Section 1 of ordinance 85-29 (A-5) specifically recites that it was enacted pursuant to and under the authority of Florida Statutes §125.01(1)(q), 125.01(1)(r) and 125.01(5) in conjunction with Florida Special Acts 21543 and 65-2178.

Florida Statute 125.01(1)(q) provides St. Johns County with the power to:

" (q) **Establish**, and subsequently merge or abolish those created hereunder, municipal service taxing or **benefit units** for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation and other essential facilities and municipal services from funds derived from **service charges**, special assessments, or taxes within such unit only. It is hereby declared to be the intent of the Legislature that this paragraph is the authorization for all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution."

Section 3 of ordinance 85-29 made the following findings of fact:

(A-6)

- a) There is an **acute shortage** of **off beach parking** facilities within St. Johns County, and **unless** people are permitted to **drive and park on County beaches**, a substantial and significantly large number of people will be **unable to reach** the ocean **beaches** for bathing and recreation; and
- b) Approximately **96%** of the people who use the County beaches during the summer beach season **enter** upon such beaches **by** means of **motor vehicles** driven and parked on the County beaches; and

c) Such motor vehicles enable such persons to bring a disproportionately larger amount of **trash**, alcohol, glass bottles and other non desirable items onto the County beaches than do persons who enter upon the County beaches by foot thereby creating a disproportionate increase in the need for regulation concerning such items; and

d) Motor vehicular use on the County beaches enables a significantly larger number of people to enjoy the County beaches for bathing and recreational uses and thus increases the need for **life guard** protection and trash and County beach clean up and maintenance; and

e) Private motor vehicular use of the dry sand portion of the County beaches near the access ramps are the primary cause of the expenditure of County ad valorem tax dollars for County beach access maintenance; and

f) the imposition of a motor vehicle beach **user fee** under County ordinance 80-17 as amended had significantly **reduced** the amount of through motor vehicle traffic that merely "cruised" the beach for non bathing purposes, thus reducing the number of motor vehicles that mixed with bathers and other recreational beach users; and it also significantly reduced the number of motor vehicle drivers that used the County beaches for motor vehicular sports such as speeding, "doing wheelies", "doing donuts" and otherwise endangering the County beach recreational users; and

g) The **primary need** for the use of **law enforcement personnel** and law enforcement vehicles on County beaches during the summer beach 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 County 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 County beaches by motor vehicle; and

i) Approximately **78%** of the motor vehicles that enter County beaches during the summer beach season have license tags from counties other than St. Johns County. The vast majority of the owners and occupants of such motor vehicles do not pay ad valorem taxes within the County and if such persons are not required to pay a service charge to take their motor vehicle onto the beach the ad valorem tax payers of the County (many of whom do not use the beach) would have to pay the entire costs of County beach regulation and services caused by motor vehicle beach use. This would be **neither fair nor equitable**; and

j) The **service charges** set by sections 6 and 13 of this ordinance require those persons who take motor vehicles onto County beaches during the summer beach season to pay a reasonable service charge to defray the costs of regulation and services attributable to the use of the motor vehicles on the County beach; and

k) The **service charges** set by sections 6 and 13 of this ordinance are appropriate and necessary to control traffic and parking and to defray some of the costs of providing necessary services and maintenance to the County beaches necessitated by reason of the motor vehicles and to protect persons driving on the County beaches and to protect the County beach environment from the effects of motor vehicles; and

l) The **service charges** set by sections 6 and 13 of this ordinance are not collected for the purpose of raising general revenue but are for the purpose of providing County beach maintenance, traffic and parking control, safety, County beach preservation, the protection of the County beach environment and other motor vehicle related County beach purposes; and

m) 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, it is unnecessary and would be **excessively expensive** and **impracticable** to attempt to collect **pedestrian service charges** from each person who may decide to enter the beach on foot along the many miles of County beach. To attempt to collect beach service charges 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 service charge.

n) The above findings are consistent with and would apply in like manner if used in reference to **City** beaches and/or if used in reference to City and County beaches combined.

Section 4 of the ordinance created a municipal service taxing and benefit unit (hereinafter referred to as the St. Johns County Beach Benefit Unit) (A- 8) and Section 10 of the ordinance created a special district (hereinafter referred to as the Ocean Beaches Special District) (A- 9).

Sections 6 and 13 of the ordinance then levied motor vehicle beach user service charges for each motor vehicle taken onto the beach within the respective unit or district. (A- 8, 9)

Sections 8 and 15 then mandated that the service charge revenues be **expended only** for the following purposes: (A- 8,10)

". . .to pay the costs of collecting the service charges; to defray the costs of maintaining the dry sand area within the special district near the access ramps 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 . . . 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 for the . . . beaches not to exceed **96%** of the total of such costs during the summer beach season; to pay the costs of **sanitary facilities** in the . . . beaches 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, including the payment of principal, interest, and premium, if any, on bonds whose proceeds are used for any of the above described purposes. Future service charge revenues may be pledged for payment of such bonds.

The ordinance also contained a severability clause. (A-11).

Appellants emphasize that the **service charges** imposed by section 6 and 13 of ordinance 85-29 are **imposed only** on ". . .each **motor vehicle** taken onto the . . .beach within the . . .(unit)(district) during the summer beach season: (A- 8 , 9) It is important to recognize that **no land** or **real property** is taxed. The section 2 definition of "Motor Vehicles" **excludes governmental owned vehicles** when being used for governmental ocean beach purposes. **No person** is charged if they wish to leave their motor vehicle outside the district and enter the beach by foot. Thus the **State** is **not taxed**. Also, privately owned lands within the district - the lands between the mean high water mark and the extreme high water mark- are not taxed.

In addition the **percentage** spending limitations contained in sections 8 and 15 of ordinance 85-29 (A- 8 ,10) insure that the motor vehicle beach service charge **revenues** are **spent only** for **services** provided to persons who enter the district by **motor vehicle**. The revenues are not used to defray the costs of services provided to persons who enter the district by foot.

Florida Statute §125.01(1)(q) specifically provides that service charges may be levied within a benefit unit for **fire protection, law enforcement, garbage collection, sewage disposal, transportation, and other essential services.** Thus, unless the statute itself is unconstitutional or illegal, there is no reason to discuss or debate **under the taxing aspect** of ordinance 85-29, whether or not there is a duty to provide fire protection or law enforcement. As a practical matter all public law enforcement and fire protection are paid by one or another form of taxation. This Court in fact recognized in Fire District No. 1 of Polk County v Jenkins 221 So 2d 740 (Fla. 1969) that special assessments could be levied to provide public fire protection. See also Gallant v Stephens 358 So 2d 536 (Fla. 1978) wherein this Court held that Florida Statute §125.01(1)(q) was constitutional and that the establishment of a municipal service taxing unit within the unincorporated area of the county without voter approval for the purpose of providing road repair, fire protection, **law enforcement, recreation, garbage collection** and **sewage collection** was a valid exercise of County authority.

In Tucker v Underdown 356 So 2d 251 (Fla. 1978) the Court confirmed that a County could create municipal service taxing and benefit units in geographic areas embracing less than the entire unincorporated area of the County. As part of its opinion the Court also determined that governing constitutional provisions and statutes require no consideration of direct "benefit" as a basis for taxation and that **no benefit - tax nexus** is otherwise **required.**

In Charlotte County v Fiske 350 So 2d 578 (Fla. 2nd. DCA 1977) the Court held that an ordinance imposing special assessments for garbage disposal upon residential units but not upon commercial units in a sanitation district

was not clearly shown to be arbitrary, oppressive or discriminatory or without basis in reason; and that the ordinance was not invalid on the theory that the amount of assessment did not equal or approximate that benefit.

Thus, ordinances 85-29 and 121 are valid and legal ordinances enforceable in accordance with their terms and the Court's order of April 2, 1985 stating that enforcement of such ordinances would violate the trial courts final judgment enjoining collection of motor vehicle beach user fees is a clear departure from essential requirements of law.

One other matter bears discussion in this Point VI. The Courts' April 2, 1985 order stated that ". . .If the County could enforce such a user fee under Section 125.01, there would be no reason why it could not collect tolls for the use of the State roads in the County or a toll from people entering the benefit district (beach) on foot."

In the first place, the ordinances **do not** impose a toll for the use of State roads throughout the County or impose a toll upon people entering the beach on foot so those issues are not before the court. Additionally, the Fifth District Court of Appeal in City of Daytona Beach Shores v State 454 So 2d 651 (Fla. 5th. DCA 1984) held that ". . .The Atlantic Ocean beach is precisely what it is described to be - a beach. A beach is not a road." Neptune City v Avon-By-The-Sea 294 A 2d 47 (New Jersey 1972) clearly and succinctly held that all beachgoers could - consistent with the English common law public trust doctrine - be charged a reasonable fee for access to the Atlantic Ocean beach. Neither the Fifth District Court of Appeal nor the Seventh Judicial Circuit Court have cited any case law or statutory law prohibiting charging pedestrians a reasonable user fee for access to the beach.

Stating the obvious: the beach is **not** a roadway used for commerce; it is **not** a roadway used for travel - to get from "here" to "there"; it is a **destination recreational area**. The width of the driving and parking area of the beach varies greatly from hour to hour depending on the tides and the winds - roadway widths do not. Pedestrians expect to use the beach for games, sports and a place to "spread their towels", lie down, and sunbathe. Pedestrians do not expect to use streets for such purposes. Beach users request that the County provide life guards and port-o-lets for the length of the beach. They request no such services for streets.

In short - confirming that motor vehicle **beach** service charges may be levied by duly created **beach** municipal service taxing and benefit units or special districts pursuant to Florida Statute §125.01 will not, ipso facto, determine that counties are permitted to establish toll booths at every street corner throughout the state.

In addition, the State routinely charges tolls for passage over portions of its road system. The City of Jacksonville charges tolls for passage across certain of its bridges. There is nothing inconsistent in allowing a county to recoup a portion of its tremendous costs incurred in providing municipal services to one of the most widely and over used special facilities within the State. Please see once again the photographs included within the appendix to the Appellants Initial Brief. (AIB-1,2,3)

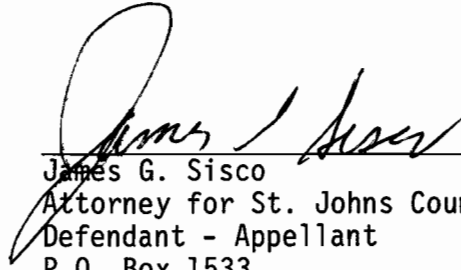
CONCLUSION

Motor vehicle beach service charge ordinances 85-29 and 121 are valid and legal ordinances of the County and City enforceable in accordance with their terms. The trial courts' order of April 2, 1985 declaring that enforcement

of ordinance 85-29 would be a violation of the courts' final judgment should therefore be reversed.



David G. Conn
Attorney for St. Augustine Beach
Defendant - Appellant
P.O. Drawer G-1
St. Augustine, Fl. 32084
904-829-5635



James G. Sisco
Attorney for St. Johns County
Defendant - Appellant
P.O. Box 1533
St. Augustine, Fl. 32084
904-824-6121

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered to Stephen L. Boyles, State Attorney, to Clyde E. Shoemaker, 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 5th. day of April, 1985.

488.
715.



James G. Sisco