O/A 1-8-85

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IN THE SUPREME COURT OF FLORIDA

LAKE WORTH UTILITIES AUTHORITY, et al.,

Appellants,

vs.

CITY OF LAKE WORTH,

Appellee.

CASE NO. 66,102

APPEAL FROM THE FIFTEENTH CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
AS CERTIFIED TO THE SUPREME COURT BY
THE FOURTH DISTRICT COURT OF APPEAL.

REPLY BRIEF OF APPELLANTS

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POINT I

THE EXERCISE OF GOVERNMENTAL, CORPORATE AND PROPRIETARY POWERS GRANTED TO MUNICIPALITIES IN ARTICLE VIII, SECTION 2 (b), FLA. CONST., IS SUBJECT TO THE CONTROL OF THE STATE LEGISLATURE

The contention of the Appellee is that since the adoption of the 1968 Constitution, municipalities enjoy sovereign rule within their political arena. The Appellee would argue that as such municipalities are free from supervision by the State of Florida. The brief of the Appellant clearly shows that it was not the intent of the framers of the 1968 Constitution to grant absolute, uncontrolled and unsupervised power to municipalities. An interpretation of this type would create utter havoc within the State of Florida with uniform enforcement of State laws being abolished.

The Appellant agrees that Ch 69-1215 was constitutional under the 1885 Constitution, and further, the Appellant agrees that a change in the language in relevant sections of the 1885 Constitution and the 1968 Constitution indicates that the drafters of the 1968 Constitution intended to modify, amend or expand upon the respective purposes contained within those sections. However, the Appellee's contention that it was the intent of 1968 Constitution to eliminate legislative action pertaining to municipalities is a radical interpretation unfounded by any logic or precedent. Nothing contained within the 1968 Constitution expressly creates autonomy within municipal government. To the contrary, Art. III, S. 11 (a)(1), and Art. VIII, S. 2 (a) and Art. VIII, S. (2)(c) expressly recognize that the Legislature through general or special law retains the necessary check and balances of power over the the municipalities.

Although dealing with the powers of counties, Art. VIII S. 1 (f) and (g) display an intent of the 1968 Constitution not to give autonomy to either charter or non-charter government of counties. As stated in Art. VIII, S. 1;

> (f) NON-CHARTER GOVERNMENT. Counties not operating under county charter shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> (g) CHARTER GOVERNMENT. Counties operating under county charter shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

The above language clearly indicates that general laws and special laws of the State of Florida are controlling in the order of priorities over local government.

The argument of Appellee relating to grant of powers fails to point out to this Court that Ch. 69-1215 and the operation of the utility system includes the exercise of proprietary activities both within and without the municipal boundaries of the City of Lake Worth. As stated in Art. VIII, S. 2, (c);

> "exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

The Constitution of 1968 has expressly retained in the Legislature the ability to regulate extra-territorial exercise of municipal power. Specifically, Ch. 69-1215 was designed, requested by the City, passed by the Legislature and approved by the voters as a vehicle to unify the operation of the water, wastewater and electrical power systems then being operated by the City of Lake Worth both inside the City and outside of its municipal boundaries.

The Appellees analysis of the "Fourth Grant" of power is incomplete. Reading the provision of Art. VIII, S. 2 (b) as a separate grant,

> "may exercise any power for municipal purposes except as otherwise provided by law."

one recognizes that the 1968 Constitution contains the limitation that any power exercised for municipal purposes must be consistent with general or special law. The Appellee must concede that the first of Appellee's three "Grants of Power" are for "municipal purposes" and as such are controlled by the "Fourth Grant" which states that exercises of such power shall be "except as otherwise provided by law." The "Fourth Grant" encompasses the prior grants to provide for a limitation of power. See State of Florida v. Orange County, 281 So.2d 310 (1973).

The reference by Appellee to Ohio law clearly shows the distinguishing features of the parties' argument. Both in the Ohio Home Rule article and Fitzgerald v. City of Cleveland, 103 N.E. 512 (Ohio 1913) the terms "local" and "within their limits" are contained. This application to the Lake Worth utility system is inapporpriate as the case at bar involves extra-territorial powers.

The Appellant respectfully suggests that any extra-territorial exercise of power by the City of Lake Worth is subject to special law, and that any power exercised by the City of Lake Worth may be so exercised except as otherwise provided by law.

It should again be noted that in 1969 it was the Appellee who requested the introduction and passage of Ch. 69-1215. This law was not a spontaneous act of the Legislature attempting to control local government. This law, Ch. 69-1215, was conceived by the City government of Lake Worth and subsequently submitted to the voters for approval. Appellee would have one believe that the participation by the City was either not present or unwilling. Neither is true, the City of Lake Worth and its voters requested this Special Law be enacted. As stated in Dade County Class. Teach. Ass'n, Inc., v. Legislature. 269 So. 2d 684 (Fla. 1972) where the people have voted themselves a benefit (Ch. 69-1215) they themselves have a right to such benefit. If the Authority was created by act of the Legislature and by referendum then the death of the Authority should be by both of those hands.

The Appellee argues that Ch. 69-1215 is improper in that it is a "transfer" of powers not authorized by the Legislature. Art. III, S. 11 (a)(1) provides for special laws relating to election, jurisdictions, or duties of officers of municipalities, chartered counties, special districts or local governmental agencies. The Constitution of 1968 itself contemplated and authorized the creation of local governmental agencies. The City of Lake Worth requested the creation of this agency and the Legislature and voters of Lake Worth concurred. The Appellee incorrectly asserts that Art. III, S. 4 controls the creation of the Authority. When Ch. 69-1215 created the Authority, the City retained the governmental and proprietary capacity of utility ownership. The operational

functions and administrative functions were delegated to the new municipal agency. No "transfer of municipal power" occured.

In conclusion of POINT I the Appellee poses the question to be resolved as : Do municipalities in Florida have Home Rule or are they still merely creatures of the State.

The Appellant respectfully suggests that the question to be answered is : Are municipalities' powers subject to the law of the State of Florida.

POINT II

CHAPTER 69-1215 WAS NOT AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER TO A NON-ELECTED BODY.

The Appellant herewith replies to the Appellee Brief and to the argument of Amicus Curiae, the Florida League of Cities, Inc.

The sole issue for determination is whether Ch. 69-1215 is a delegation of legislative powers. The response should be negative. The Appellant's Brief cites Cooksey v. Utilities Commission, 261 So. 2d. 129 (Fla. 1972). Although the Utilities Commission of New Smyrna Beach was created in 1967, Ch. 67-1754, this Court considered it constitutional under the 1968 Constitution and concluded that the creation of the utility commission and its duties was not a delegation of legislative powers. This Court concluded that proper statutory authority existed which provided standards to municipalities in the operation of utilities and as such no "legislative" power was delegated. This is precisely on "all fours" with Ch. 69-1215. A review of both Ch. 67-1754 and Ch. 69-1215 indicates more restrictions contained in Ch. 69-1215. (See Sec. 8 and 11 of Ch. 69-1215). The City Commission controls all net revenues produced by the utility system.

The argument of Amicus does not disagree. (p 4). Amicus merely states that legislative power must be vested in an elected board. Appellants do not disagree.

However, Ch. 69-1215 makes no such delegation. Amicus is in error by stating the Utilities Authority is the owner of the municipal utility system. Ch. 69-1215, Sec. 8 (3) indicates that all property acquired is City property.

The Amicus argument that City control is insignificant is not supported by Ch. 69-1215. The act provides for City

Commission control over approval and appointment of all Authority members; provides for removal of any member by the City Commission; requires a City Commission approval for any franchise purchase; requires City Commission approval for acquisition of real property; requires City Commission approval for joint financing, construction, and operation of plants, transmission lines and other facilities; requires a method of fixing rates; requires City Commission review of all financial statements; establishes a use of revenues; and sets forth payment schedules to the general fund of the City. These limitations imposed within Ch. 69-1215 and collateral guidelines and standards of Florida statutes clearly show that no legislative or discretionary power vests with the Utilities Authority.

The aforementioned restriction clearly shows that the Utilities Authority has no rate making powers. The revenues required are specified within Ch. 69-1215 and the use of those revenues is likewise established within the Act. A review of Ch. 69-1215 reveals that the Authority under Sec. 8 (6) shall fix rates sufficient to pay all operating and maintenance expenses of each respective utility operation, capital outlay, all bond interest and redemption costs, and payments authorized by the Act. The only payments "authorized" are payments to the City general fund. There is no discretion vested in the Authority. The Authority must fix a rate sufficient to cover costs of service and payments to the City. The City Commission has the discretion to determine whether surplus under Section 11, or profit, is to be retained. That is the only discretionary act in the fixing of the rate.

Both Amicus and Appellee suggest legislative power in the Authority exists in the area of construction, eminent domain, and revenue bond issues. Acquisition of property requires City Commission approval Sec. 8 (3). Joint financing

and joint construction projects also require City Commission approval.

The citation of Crowe v. City of Jacksonville, 167 So. 2d 753 (Fla. 1st DCA 1964) shows not the proposition offered by Amicus but rather indicates a further statutory standard and control over the Utilities Authority - the bond validation proceedings. The acquisition of property is a regulated act of the Authority; expansion into a new franchise area is a regulated act; construction of jointly owned facilities is a regulated act. The ability to issue revenue bonds is not a legislative power when the use of the proceeds of such issue is controlled by the City. Further, the bond validation proceedings offer any aggrieved party the ability to challenge the power of the Utilities Authority to issue such revenue bonds for a specific purpose.

Appellant respectfully suggests there has been no improper delegation of powers under Ch. 69-1215.

POINT III

THE TRIAL COURT ERRED IN UPHOLDING THE CITY'S ORDINANCES AS VALID UNDER THE MUNICIPAL HOME RULE POWERS ACT F.S. 166.011.

Chapter 166 of Florida Statutes recognizes the limitations of Home Rule powers granted to municipalities. F.S. 166.021 (1) reads:

> As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Note the insertion of the punctuation after the words "municipal purposes". The comma inserted after these words would require the phrase, "except when expressly prohibited by law" to be applicable to all language preceeding the phrase. Therefore, if a law prohibits municipal action in a certain area, said law will prevail.

Further, F.S. 166.021 (3)(a) prohibits the municipality from enacting legislation in the area of the exercise of extraterritorial power. As the content of Ch. 69-1215 specifies power both inside and outside of the City limits, the City is without authority to alter or abolish Ch. 69-1215 under Chapter 166.

Finally, F.S. 166.021 (4) expressly limits the Home Rule powers to purposes not expressly prohibited by special law, and expressly prohibits changes in a special law which affect the exercise of extra-territoral powers.

The above statutory reference together with the argument of Appellant's Main Brief clearly show the application of F.S. 166 to Ch. 69-1215 to be improper.

POINT IV

THE AUTHORITY AND FORBES ARE ENTITLED TO ATTORNEY'S FEES AND COSTS.

The Appellant has no further authority to present to this Court other than the importance of the issues in the preceding Points on Appeal.

Both parties agree that the issue before this Court has state-wide significance, and in the end the well-being of the public will be protected. No private interest are involved in this litigation, and no one person's financial gain is to be realized.

This litigation involves questions critical to governmental organization both present and future. The unique status of this litigation insures that the people of Lake Worth and outside the City utility consumers are benefiting by the resolution of this problem.

Based upon the foregoing and the limited citations presented in Appellant's Brief the Appellant respectfully requests attorney's fees to be awarded based upon the actions of Appellant's counsel being for the betterment of the public.

CONCLUSION

The Appellant respectfully request that this Court reverse the decision of the Trial Court, declare all of the ordinances of the City of Lake Worth unconstitutional and/or illegal, order the entry of a permanent injunction against the actions of City of Lake Worth and award attorney's fees and costs to the Appellant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served by hand delivery to the following: Bernard Conko, Esquire, 303 First Street, Post Office Box 1629, West Palm Beach, Florida 33401; Frank A. Stockton, Assistant State Attorney, 300 North Dixie Highway, Palm Beach County Courthouse, West Palm Beach, Florida 33401; Michael E. Jackson, Esquire, 2925 Tenth Avenue North, Lake Worth, Florida 33461, on this 13 day of December, 1984.

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