

IN THE SUPREME COURT OF FLORIDA

JOHN W. TAYLOR, PAULETTE M.  
BURTON, HANNAH DAVIS, NORMA  
LEAS, as Taxpayers, Property  
Owners, and Citizens of Lee  
County, Florida,

Intervenors/Appellants,

APPEAL NO. 69,174

vs.

LEE COUNTY, FLORIDA, a  
political subdivision of  
the State of Florida,

Plaintiff/Appellee.

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ANSWER BRIEF OF APPELLEE LEE COUNTY, FLORIDA

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## EXPLANATION OF ABBREVIATIONS AND SYMBOLS

Appellants, JOHN W. TAYLOR, PAULETTE M. BURTON, HANNAH DAVIS and NORMA LEAS shall be collectively referred to as "Intervenors".

Appellee LEE COUNTY, FLORIDA shall be referred to as "County".

The Lee County, Florida Transportation Facilities Revenue Bonds, Series 1986 shall be referred to as "Series 1986 Bonds".

Ordinance 86-11, adopted by the County on April 16, 1986, shall be referred to as the "Ordinance".

Resolution 86-4-12, adopted by the County on April 16, 1986, authorizing the Series 1986 Bonds, shall be referred to as the "Bond Resolution".

The following abbreviations shall be used to reference the Appendix of Appellee:

1. "App" shall refer to the Appendix to the Answer Brief of Appellee.

2. "P" or "pp" shall refer to the page numbers of the Appendix to the Answer Brief of Appellee.

**ARGUMENT ON APPEAL**

**POINT I**

**THE COUNTY HAS THE AUTHORITY TO IMPOSE TOLLS  
UPON AN EXISTING BRIDGE FACILITY**

**(RESTATED BY APPELLEE)**

**POINT II**

**THE COUNTY HAS THE POWER TO ISSUE THE BONDS  
UNDER THE HOME RULE AUTHORITY PROVIDED BY  
SECTION 125.01, FLORIDA STATUTES**

**(RESTATED BY APPELLEE)**

## STATEMENT OF FACTS

The Statement of Facts in the Initial Brief of the Intervenors is incomplete and argumentative.

The Series 1986 Bonds were authorized by the County and described in the Bond Resolution. (App pp 15-18) In authorizing the issuance of the Series 1986 Bonds, the County specifically elected to proceed under the authority of Section 125.01, Florida Statutes, rather than Part I of Chapter 159. (App p 99) The public purpose and objective of the County in authorizing the Series 1986 Bonds were to acquire, construct or improve transportation facilities and necessary land or property connected thereto. (App p 10) The initial transportation facilities to be improved were the Cape Coral Bridge, which crosses the Caloosahatchee River, the Sanibel Bridge and causeway, which crosses San Carlos Bay. (App pp 9-10)

Jerry Maxwell, County Administrator of Lee County, testified as to the adoption of the Ordinance and the Bond Resolution. (App pp 107-109) He described the contemplated improvements to the Sanibel Bridge and causeway as including proposed approach road improvements, the expansion of toll facilities, the replacement of the bascule bridge with a high lift span and elevation of the spoil islands of the causeway. (App pp 109-110) The purpose of these improvements was to assist in the evacuation of Sanibel Island in the event of severe storms and to improve vehicular passage. (App p 110)



The improvements to the Cape Coral Bridge were described as including approach road intersection improvements, the construction of a two lane parallel span, as well as widening of the existing bridge. (App pp 110-111) The construction of the two lane parallel span will make the facility a four lane bridge and increase the level of service and relieve traffic congestion. (App p 111)

David Paul testified as an expert witness in public finance and served as financial advisor to the County in the development of the Bond Resolution authorizing the Series 1986 Bonds. (App pp 121-122) Mr. Paul testified that the Bond Resolution provided for the combination of toll revenues from the toll facilities from both bridges into an enterprise fund from which the operation and maintenance of the toll facilities and the payment of the debt service on the Series 1986 Bonds would be paid. (App p 123)

Mr. Paul further testified that by combining the revenues of the toll facilities it would increase the security and ultimately reduce the cost of capital and revenue requirements. (App p 125)

The construction and improvement of other transportation facilities could be authorized by supplemental resolution of the Board of County Commissioners. (App p 25)

## SUMMARY OF THE ARGUMENT

### POINT I

Having covenanted to fix such rates and charges as necessary to meet the covenants of the Bond Resolution, the authority of the County to impose a toll on existing bridge lanes is a collateral issue in a bond validation proceeding since the County has the clear power to fix and raise tolls on the contemplated bridge improvements to be constructed with bond proceeds. Consideration of this issue requires the court to speculate as to future decision-making of a legislative body and is not related to whether the County has the authority to issue the bonds and the validity of the proceedings. The County, as a non-charter county, possesses the home rule power to fix and revise bridge tolls under Section 1(f), Article VIII, Florida Constitution, as implemented by Section 125.01, Florida Statutes. Possessing such home rule authority, there exists no prohibitions on the utilization of toll revenues to construct bridge improvements that serve a common county purpose.

### POINT II

The County has the home rule power under Section 1(f), Article VIII, Florida Constitution, and Section 125.01, Florida Statutes, to pledge toll revenues and to authorize the issuance of bonds by ordinance to finance bridge improvements. Speer

v. Olson, 367 So.2d 207 (Fla. 1979). Part I of Chapter 159, Florida Statutes, by the express provision of Section 159.14, is an alternative method of financing available to counties and does not diminish or place restrictions on the home rule power of self-government of non-charter counties.

POINT I

THE COUNTY HAS THE AUTHORITY TO IMPOSE TOLLS  
UPON AN EXISTING BRIDGE FACILITY

(RESTATED BY APPELLEE)

Upon Appellate Review, the Final Judgment in  
a Validation Proceeding is Presumed Correct.

This Court in Wohl v. State of Florida, 480 So.2d 639  
(Fla. 1985), restated the limited scope of review in bond  
validation cases as follows:

The purpose of bond validation proceedings  
and the scope of judicial inquiry held  
pursuant to Chapter 75, Florida Statutes  
(1983), is to determine if a public body has  
the authority to issue such bonds under the  
Florida constitution and statutes, to decide  
whether the purpose of the obligation is  
legal, and to ensure that the authorization  
of the obligations complies with the  
requirements of law. \* \* \* The final  
judgment validating the Commission's revenue  
bonds comes to the Court with a presumption  
of correctness, and appellants must  
demonstrate from the record the failure of  
the evidence to support the Commission's and  
the trial court's conclusions. (at pages  
640-641)

See also International Brotherhood of Electrical  
Workers v. Jacksonville Port Authority, 424 So.2d 753  
(Fla. 1982), where this Court stated at page 756:

To prevail on appeal, appellant must show  
that the trial court's approval of the local  
agency's action is completely erroneous.

The trial court in the Final Judgment specifically found,  
among other things, that authority was conferred on the County  
under the laws of the State of Florida and the Ordinance to

finance the construction of improvements to the Sanibel Bridge and causeway and the Cape Coral Bridge by the issuance of the Series 1986 Bonds; that the Series 1986 Bonds will be payable from the net revenues received from the operation and ownership of such bridges and causeway; and that all requirements of law incident to the authorization of the Series 1986 Bonds have been duly and legally complied with. (See the Second, Fifth, Sixth, Seventh, Eighth and Nineteenth findings by the trial court in the Final Judgment) (App pp 2-5)

The Judicial Inquiry in a Bond Validation Proceeding is Limited to the Power to Issue the Bonds and the Validity of the Proceedings Authorizing the Bonds.

It is essential, in considering the objections of the Intervenor to validation of the Series 1986 Bonds, to focus upon the scope of judicial inquiry in a validation proceeding under Chapter 75, Florida Statutes. A final judgment in a validation proceeding only addresses the power to issue the bonds and the validity of the proceeding relating to their authorization. The finality of the findings and holdings in the Final Judgment is similarly limited. Collateral issues not directly relating to these limited issues are not resolved in such statutory proceedings.

The following language from page 188 of State v. City of Miami, 103 So.2d 185 (Fla. 1958), is the most cited judicial explanation of the scope of review in a Chapter 75 validation proceeding:

It was never intended that proceedings instituted under the authority of this chapter to validate governmental securities would be used for the purpose of deciding collateral issues or those issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.

The complaint filed in the validation proceedings in the City of Miami case alleged that the water system to be constructed was exempt from all taxation under Florida law. The State Attorney argued that the water system property of the City of Miami was not exempt from such taxation and raised the additional issue that the Dade County charter preempted the construction of a water system by the City of Miami. The Court held that both issues were collateral issues and not appropriate under a validation proceeding since they did not relate directly to the power of the City of Miami to issue the bonds or the validity of the proceedings leading up to their issuance.

In the City of Gainesville v. State, 366 So.2d 1164 (Fla. 1979), an intervenor challenged the validation of bonds being issued to refund prior bonds and to raise revenues for the expansion of the City's utilities system on the grounds that a surcharge imposed on customers outside the corporate limits of the City was illegal under the applicable rate statute. Such surcharge was a part of the gross revenues pledged to the payment of the bonds. As to such covenants, this Court held on page 1166 as follows:

The city has covenanted to set rates at levels that will produce revenues sufficient to meet the bond obligations. If any charge

or class of charges imposed by the City were declared by a court of competent jurisdiction to be illegal, the city would simply have to change its methods of raising the covenanted revenue, as, for example, by an across-the-board rate increase.

The Court held that such challenges to ratemaking and the use of revenues in the operation of the utility are collateral issues not appropriately raised in a validation proceeding and that such issues can be raised by proper parties in separate proceedings.

In McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980), the intervenors challenged the legality of lease agreements between the airlines and the City of Orlando acting as an aviation authority. Even though the bonds were to be repaid solely through funds derived from rental and lease income received under such lease agreements, the Court held at page 253:

We find that appellants' first point concerning the validity of the lease agreement is clearly a collateral issue and not properly the subject of a bond validation proceeding. The sole purpose of a validation proceeding is to determine whether the issuing body had the authority to act under the constitution and laws of the state and to ensure that it exercised that authority in accordance with the spirit and intent of the law.

In the case of Town of Medley v. State, 162 So.2d 257 (Fla. 1964), an attempt to raise the issue of financial feasibility in a bond validation proceeding was rejected by the Court at page 258 as follows:

We have consistently ruled that questions of business policy and judgment incident to the issuance of revenue issues are beyond the scope of judicial interference and are the responsibility and prerogative of the

governing body of the governmental unit in the absence of fraud or violation of legal duty.

As to the scope of review in a validation proceeding, the Court in the Town of Medley case held at page 259:

The responsibility of the courts in such proceedings is primarily that of determining whether the issuing body has the power to act and whether it exercised that power in accordance with law.

A contrary holding would make an oligarchy of the courts giving them the power in matters such as this to determine what in their opinion was good or bad for a city and its inhabitants thereby depriving the inhabitants of the right to make such decisions for themselves as is intended under our system of government.

In State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983), the State challenged the validation of bonds on the grounds that since the City did not offer proof establishing the amount of revenues available to pay the bonds, the trial court could not have factually or legally determined that no general obligation was created. This Court denied the challenge and held at page 983 as follows:

The scope of judicial inquiry is limited to whether the public body had authority to incur the obligation, whether the purpose of the obligation is legal, and whether the proceedings authorizing the obligation were proper.

The Intervenors challenge the authority of the County to impose tolls on the existing two lane Cape Coral Bridge to



construct the contemplated bridge and causeway improvements.<sup>1</sup> The basis of such challenge is that the existing Cape Coral Bridge is a "free bridge" and, as a result, the County has no "express statutory authority" to impose a toll on a free facility.<sup>2</sup>

The Series 1986 Bonds are payable from net revenues received from the operation and ownership of all bridges, the use of which are subject to a toll. (App p 10 and App pp 53-60) The County has covenanted to fix such rates and tolls as are necessary to meet the covenants in the Bond Resolution. Assuming for purposes of argument that Intervenor's are correct and the County is required to have specific legislative authority to impose a toll on the existing "free" two Cape Coral Bridge lanes and can impose and increase tolls only on the new two Cape Coral Bridge lanes and on the Sanibel Bridge and Causeway, the consequence is that the County would have to raise rates and tolls on those bridges constructed with bond proceeds. Such challenge to the ratemaking authority of the County is a collateral issue not appropriately raised in a validation proceeding. See the Gainesville v. State case described previously under this Point I.

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<sup>1</sup> In addition to the construction of two new lanes parallel to the existing Cape Coral Bridge, the initial project includes construction of an urban interchange to the Cape Coral Bridge and construction of improvements to the Sanibel Bridge and causeway. (App p 25; App pp 109-111)

<sup>2</sup> The argument of the Intervenor's under this Point I is summarized in the last paragraph of page 11 of their Initial Brief.

In DeSHA v. City of Waldo, 444 So.2d 16 (Fla. 1984), this Court stated at page 17:

The appellants' argument pertains to a matter to be resolved by future decision-making on the part of the City in operating and governing its expanded water and sewer system. As such it is a collateral matter beyond the scope of judicial scrutiny in bond validation proceedings.

The legality of a toll on a currently "free facility" is a collateral issue to a bond validation proceeding and requires this Court to speculate as to the future legislative decisions of the Board of County Commissioners of the County.

A Non-Charter County has the Home rule Authority to Impose Tolls upon an Existing Bridge Facility

The fundamental argument of the Intervenors is that without specific legislative authority the County has no power to impose a toll on an existing "free" bridge. Such argument ignores the sweeping county home rule changes embodied in Section 1(f), Article VIII, Florida Constitution, and the implementing provisions of Section 125.01, Florida Statutes.

Section 1(f), Article VIII, Florida Constitution, provides:

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters 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.

While a charter county derives its power from its charter and the Florida Constitution, a non-charter county has ". . . such power of self-government as is provided by general or special law." There could not be a broader grant of the power of self-government to non-charter counties than that granted in Section 125.01, Florida Statutes.

Section 125.01(3) provides:

(3)(a) The enumeration of powers herein shall not be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.

(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.

Such constitutional provisions and implementing general law unleashed a new era in Florida county government. The quantum of home rule power possessed by non-charter counties is expansive and complete within the parameters of the Florida Constitution. In determining the home rule power of a county to act for a county purpose, the search is no longer for specific legislative authorization. If there is no limitation resulting from an inconsistent general or special law, a non-charter county has the necessary home rule power of self-government. Case law on the power of Florida county government decided prior to the 1968

Florida Constitution is suspect. Pre-1968 thinking on the power of counties has to be jarred into the framework of these novel constitutional and statutory provisions.

The leading cases on the home rule power of self-government of non-charter counties are State v. Orange County, 281 So.2d 310 (Fla. 1973), and Speer v. Olson, 367 So.2d 207 (Fla. 1978).<sup>3</sup> Both cases are extensively discussed in the argument on Point II in this Answer Brief.

In addition to the broad grant of home rule power of self-government to non-charter counties contained in Section 125.01, Florida Statutes, subsection 125.01(1)(m) specifically provides counties with the power to:

(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.

Jerry Maxwell, the County Administrator, described the bridge improvements defined as the "Initial Project" in the Bond Resolution as follows:

Q Would you describe the existing Sanibel Causeway facilities, the proposed improvement, and the reason that you have recommended inclusion of these improvements in the county's capital improvement program?

A Yes. The Sanibel Causeway current facilities include approach roads from the Punta Rassa shore, a toll facility, a bascule span, which is a lift span, several spoil islands which connect the causeway, and two

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<sup>3</sup> Compare Amos v. Mathew, 99 Fla. 1, 126 So. 308 (1930), for a pre-1968 analysis of the power of county government.

lesser bridges leading to the approach from the Sanibel Island side. The proposed improvements to the Sanibel facilities include the approach facilities from the road improvements from the Punta Rassa shore to the toll facilities, expansion of the toll facilities, replacement of the bascule bridge with a high lift span, elevation of the spoil islands. The purpose of the improvements is to assist in evacuation of the island in the event of severe storms and to improve the condition of passage, since the elevation of the spoil islands as well as a section of the approach facilities at the toll booth on the Punta Rassa shore.

Q Would you please describe the existing Cape Coral Bridge facilities, the proposed improvements, and the reason why you have recommended inclusion of those improvements in the county capital improvement plan?

A Yes, sir. The Cape Coral Bridge is a two-lane, high lift span, from the extension of College Parkway at McGregor across the Caloosahatchee River to the Cape Coral shore through the intersection at Del Prado. The facility is four-laned from McGregor to approximately the entrance to the Landings and Caloosa Bayview on the Fort Myers side and becomes a two-lane facility at that point. It is again two-laned to approximately Waikiki on the Cape Coral side, where it becomes a four-lane facility.

The proposed improvements are improvement from Del Prado and including Del Prado with its intersection of Cape Coral Parkway, including a flyover facility for left-hand turns eastbound onto Cape Coral Parkway, a six-lane facility approaching the bridge itself, the addition of a parallel span, a two-lane facility to the bridge, as well as some widening improvements to the existing bridge, and then the continuation of that facility through improved tolls, an overpass at the entrance to Caloosa Bayview and the Landings, and an overpass at McGregor Boulevard. The improvements are designed to relieve the traffic congestion and the level of service through that length. The current service level is EF. It's in excess of the

design capacity during peak hour for the facility itself. It causes breakdowns and extensive and excessive delays that are beyond the standards of service established by the Board of County Commissioners. (App pp 109-111)

\* \* \*

Q Is the existing bridge actually going to be widened?

A That is in the proposed design scope and approved by the Board of County Commissioners at this time.

Q Has that been settled as an established fact or is it just proposed?

A It has been approved as the design for the project. (App p 119)

There is no organic prohibition against use of revenues from an existing bridge to finance the construction of another. In Flint v. Duval County, 126 Fla. 18, 170 So. 587 (Fla. 1936), the county operated an existing toll bridge, the Broad Street Bridge, across the St. Johns River, and desired to construct a second bridge, the Main Street Bridge, to supplement the Broad Street Bridge. The Broad Street Bridge was producing toll revenues in excess of its debt service and operation and maintenance expense and the county sought to validate bonds for construction of the Main Street Bridge payable from the surplus toll revenues of the Broad Street Bridge.

In approving the validation of the authorized bonds, the Court in Flint held at page 597:

The pledge of the net receipts from tolls on the Broad street bridge to the payment of the debentures issued for funds to construct the Main street bridge, after the Broad street

bridge bonds are fully paid or duly secured, is a proper application of such county funds as authorized.

\* \* \*

The old bridge is to be operated in co-ordination with the new bridge to serve a county purpose common to both bridges, the tolls from the present bridge to be used primarily to pay the bonds of that bridge.

The addition of two lanes parallel to the existing two lanes of the Cape Coral Bridge and the providing of improvements to the Sanibel Bridge and causeway clearly serve a common county purpose.<sup>4</sup>

Prior to the grant to counties of the home rule power of self-government, this Court in Masters v. Duval County, 114 Fla. 205, 154 So. 172 (Fla. 1934), held that toll revenues could be used for any county purpose if they were reasonable and nondiscriminatory:

There is no express or implied provision of organic law which forbids a statute to authorize a county to construct, maintain, and operate a tollbridge and to collect reasonable, nondiscriminatory tolls for passage over a bridge \* \* \* and to use the tolls collected for any duly authorized county purpose, even though tolls already collected be sufficient to pay for the construction of the bridge . . . . (at page 174)

Intervenors argue on page 11 of their Initial Brief that the subsequent enactment of Section 338.165, Florida Statutes,

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<sup>4</sup> See also Day v. City of St. Augustine, 140 Fla. 261, 139 So. 880 (Fla. 1932), and In re Tolls on St. Johns River Bridge, 108 Fla. 172, 146 So. 99 (Fla. 1933), which authorize the imposition of reasonable tolls for capital improvements.

undermines the home rule power of self-government of non-charter counties. Section 338.165(1), Florida Statutes, provides:

. . . a county or counties may continue to collect the toll on a revenue-producing project after the discharge of any bond indebtedness related to such project and may increase such toll. All tolls so collected shall first be used to pay the annual cost of the operation, maintenance, and improvement of the toll project.

Florida law is replete with general laws dealing with the authority and power of county government. Such laws are a limitation on the home rule power of self-government of a county only to the extent they are inconsistent with the actions to be taken by county ordinance.

In State ex rel. Dade County v. Brautigam, 224 So.2d 688, 692 (Fla. 1969), the word "inconsistent" as used in Section 1(f), Article VIII, Florida Constitution, was defined at page 692 as "contradictory in the sense of legislative provisions which cannot coexist."

The provisions of Section 338.165 are complementary and supplemental to the actions of the County under the Ordinance and the Bond Resolution, not inconsistent or contradictory.

The cases of Sanibel-Captiva Taxpayers' Ass'n v. County of Lee, 132 So.2d 334 (Fla. 1961); McGovern v. Lee County, 346 So.2d 58 (Fla. 1977); and Lee County v. State, 370 So.2d 7 (Fla. 1979), are not applicable to the issues in this cause since such cases construe the provisions of Part I of Chapter 159, Florida



Statutes, which law was not utilized by the County as the authority for the issuance of the Series 1986 Bonds.<sup>5</sup>

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<sup>5</sup> Section 159.14, Florida Statutes, expressly provides that Part I of Chapter 159 is an alternative method of financing available to counties. See argument in Point II of this Answer Brief.

## POINT II

THE COUNTY HAS THE POWER TO ISSUE THE BONDS  
UNDER THE HOME RULE AUTHORITY PROVIDED BY  
SECTION 125.01, FLORIDA STATUTES

(RESTATED BY APPELLEE)

The County has issued the Series 1986 Bonds under the home rule power authorized by Section 125.01, Florida Statutes. As a consequence, the County has specifically elected not to proceed under Part I of Chapter 159, Florida Statutes. Part I of Chapter 159, Florida Statutes, has never been intended as the sole method available for the issuance of bonds but merely an alternative tool which may be utilized by a local government. This has been expressly recognized by the Legislature.

159.14 Alternative Method.--This part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. This part, being necessary for the welfare of the inhabitants of the counties and municipalities of the state, shall be liberally construed to effect the purposes thereof. Section 159.14, Florida Statutes.

The authority of a non-charter county to proceed under its home rule power of self-government is well established. In State of Florida v. Orange County, 281 So.2d 310 (Fla. 1973), Orange County adopted an ordinance authorizing the issuance of revenue bonds pledging the county's receipts from State race track and jai-alai funds accruing annually to the counties pursuant to

general law. Proceeds from the bonds were to be applied toward the construction of certain county capital projects. There was no general or special law specifically permitting the pledge of such funds and prior to the enactment of Section 125.01, Florida Statutes, it had been common practice for counties to seek special act authorization for such borrowings.

The Court found that there was no general or special law prohibiting the pledge, and stated that:

There is little need for Section 125.01(r), if a county still has to go to the Legislature to get special enabling legislation each time it wishes to issue bonds. (at page 311)

In addressing whether Orange County had the authority to issue the bonds in question under Section 125.01, Florida Statutes, this Court stated:

Since F.S. Section 125.01(1)(r), F.S.A. delegated to Orange County the specific power to issue bonds and revenue certificates, it had the power to adopt its implementing ordinance in this instance. (at page 311)

\* \* \*

The unquestioned object of Section 1(f), Article VIII, is to authorize a 'board of county commissioners of a county not operating under a charter [to] enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law . . . ." (Emphasis supplied.) (at page 312)

In Speer v. Olson, 367 So.2d 207 (Fla. 1979), Pasco County enacted an ordinance creating a municipal service taxing unit and sought to issue general obligation bonds solely under the

authority of Section 125.01. In recognizing a non-charter's authority to proceed under Section 125.01, this Court stated at page 211:

The first sentence of Section 125.01(1), Florida Statutes (1975), grants to the governing body of a county the full power to carry on county government. Unless the Legislature has pre-empted a particular subject relating to county government by either general or special law, the county governing body, by reason of this sentence, has full authority to act through the exercise of home rule power. There is no statute, general or special, which either specifically authorizes or restricts Pasco County with respect to the issuance of general obligation bonds to acquire sewage and water systems and to pledge for their payment the net revenues to be derived from the operation of such facilities and ad valorem taxes levied within the area of the Unit. The first sentence of Section 125.01(1), Florida Statutes (1975), therefore, empowers the county board to proceed under its home rule power to accomplish this purpose.

The Court further held, at page 213 that although Chapter 153, Florida Statutes, was available as general law authority to which the financing could have been pursued, that:

Pasco County has elected to proceed solely under the provisions of Chapter 125, Florida Statutes (1975), as amended, and has rejected the use of any other statute. In so doing it has acted properly and within the scope of its authority as set forth by decisions of this Court.

Pasco County was authorized to reject Chapter 153, Florida Statutes, because, by its express provisions, Chapter 153 does not conflict with any county ordinance. This conclusion resulted from the language contained in Section 153.20(1), Florida

Statutes, which is almost identical to that contained in Section 159.14, Florida Statutes.<sup>6</sup>

Apart from the general grant of home rule authority the Legislature, under Section 125.01, Florida Statutes, has expressly empowered a county to:

(m) Provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities . . .

\* \* \*

(r) . . . borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law . . .

\* \* \*

(t) Adopt ordinances and resolutions necessary for the exercise of its powers . . .

\* \* \*

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

Such specific grants of authority being sufficient to authorize the issuance of the Series 1986 Bonds.

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<sup>6</sup> See also Doane v. Lee County, 376 So.2d 852 (Fla. 1979), in which bonds issued pursuant to Chapter 125, as implemented by its home rule ordinance, were upheld as the lawful exercise of authority.

In Orlando Utilities Commission v. State of Florida, 478 So.2d 341 (Fla. 1985), the issue was the power of a special district not possessing any home rule power to issue revenue bonds and refund outstanding bonds. In the Orlando Utilities Commission case, the enabling legislation creating the Orlando Utility Commission did not expressly grant the Commission the authority to issue long-term revenue bonds or to refund outstanding bonds. The enabling act did grant the Orlando Utility Commission the authority ". . . to do all things necessary or required to carry into effect the purposes of this act." This Court concluded that the statutory language authorized the Commission to refund outstanding debt even though the enabling act did not expressly grant either the power to refund outstanding indebtedness nor the power to issue long-term bonds.

To restrict a county possessing the broad constitutional and statutory home rule power of self-government while approving the issuance of bonds by a special district of limited power, would lead to an absurd inconsistency.

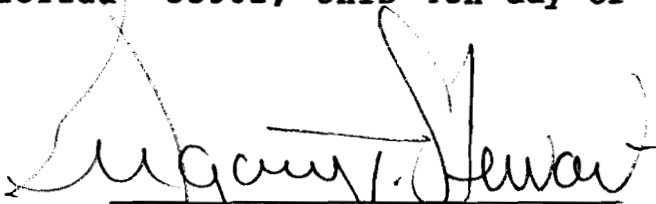
The County, possessing the home rule power of self-government, may exercise such authority to issue the Series 1986 Bonds. This home rule power constitutes one of the financing alternatives to Part I of Chapter 159, Florida Statutes, envisioned by the Legislature.

## CONCLUSION

This Court should affirm the Final Judgment of the trial court. The Series 1986 Bonds were authorized under the broad grant of the home rule power of self-government granted to counties in the Florida Constitution and implementing law. The validation proceedings pursuant to Chapter 75 were in conformity with law.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee Lee County, Florida, has been furnished by U.S. Mail to LARRY D. JUSTHAM, Assistant State Attorney, Post Office Box 399, Ft. Myers, Florida 33902; and STEVEN CARTA, ESQUIRE, Simpson, Henderson, Saragei & Carta, Post Office Box 1906, Ft. Myers, Florida 33902, this 4th day of September, 1986.

  
GREGORY T. STEWART