IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 72,992

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

Petitioner,

vs.

ROBERT N. WEBSTER,

Respondent.

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RESPONDENT'S REPLY BRIEF TO PETITIONER'S BRIEF ON JURISDICTION AS TO DISCRETIONARY REVIEW OF FIFTH DISTRICT COURT OF APPEAL

JOHNIE A. McLEOD, ESQ.
OF McLEOD, McLEOD & McLEOD, P. A.
48 East Main Street
P. O. Drawer 950
Apopka, FL 32704
Telephone: 407/886-3300
Attorney for Respondent

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INTRODUCTION

This Brief is being filed by the Appellee/Respondent, ROBERT N. WEBSTER, pursuant to Rule 9.120(d).

PRELIMINARY STATEMENT

Respondent, ROBERT A. WEBSTER, Plaintiff in the Circuit Court, agrees with the opinion of the Fifth District Court of Appeals dated April 28, 1988.

STATEMENT OF THE CASE AND FACTS

Respondent herein agrees basically with the Statement of the Case and Facts of the Petitioner except:

1. He does not agree that the special election to approve the Charter was published according to Florida Statutes, §100.342 (1987).

2. The proposed ordinance was filed with the Clerk pursuant to F.S. Chapter 125.66 on September 3, 1986, and amended with six (6) amendments by the County Attorney and delivered to County Commissioners on September 12, 1986, as amended, without refiling the amended proposed order with the Clerk. The Amended Ordinance was approved by the County on September 22, 1986, with amendments added on the same day (object to word technical) and was typed and mailed to Department of State on September 23, 1986, and acknowledged pursuant to F.S. Chapter 125.66 on October 2, 1986. The only advertisement pursuant to requirement of F. S. Chapter 125.64 and 100.342 after the effective date of the ordinance was on October 12, 1986.

SUMMARY OF ARGUMENT

The Fifth District's decision explicitly holds that the effect and validity of curative legislation enacted pending an appeal cannot, as shown in Summary of Argument of Petitioner, be considered by the appellate court but rather must be raised in a "new and separate proceeding" because the appeal "should be disposed of solely on the issues originally framed by the pleadings, considered by the trial court and reviewed in our original opinion."

The passage of H.B. 1662 did not cure the problem as to the lack of proper notice to the electors.

Section 2 of H.B. 1662 raises a question of fact that should not be determined by a Court of Appeals.

ARGUMENT

Supreme Court does not have discretionary jurisdiction to review the decision of the District Court as same does not expressly and directly conflict with a decision of the Supreme Court or of another district court on the same question of law.

A

As shall be pointed out herein the cases cited by Plaintiffs/Petitioners do not support the contention that the District Court's decision expressly and directly conflicts with a decision of the Supreme Court or of another district court on the same question of law.

Plaintiffs/Petitioners contend that this Court should accept jurisdiction and determine the validity of a decision rendered by the District Court. The Court has rejected this contention. In James Reaves v. State of Florida, 485 So. 2d 829 (Fla. 1986), the Court, in denying discretionary jurisdiction stated:

> Petitioner is asking that we find conflict with Nowlin. In order to do so, it would be necessary for us either to accept the dissenter's view of the evidence and his conclusion that the statements were involuntary, or to review the record itself in order to resolve the disagreement in favor of the dissenter. Neither course of action is available under the jurisdiction granted by Article V, Section 3(b)(3) of the Florida Constitution. Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

B.

1. Special Act: H.B. 1662 passed by the House and Senate and ultimately signed by Governor Martinez, is a Special Act

passed in the guise of a General Act and was not enacted by the proper procedure as required by Article III, Section 10, Florida Constitution, and Chapters 11.02, 11.021 and 11.03, Florida Statutes. 10 Fla. Jur. 2d Sec. 330, page 500, Constitutional Law. Anderson v. Board of Public Instruction for Hillsborough County, Sup. Ct. 1931, 62 Fla. 695, 136 So. 334.

This was a special act for the sole purpose of overturning this Court's decision entered the 28th day of April, 1988, reversing the trial court's granting of Summary Judgment for Appellee. Ellsworth v. Insurance Co. of North America, (1st DCA 1987) 508 So. 2d 395.

2. Legislation is Too Broad: H.B. 1662 is too broad as it is attempting in Section 2 to ratify any charter government approved since the adoption of Part IV of Chapter 125, Florida Statutes in 1974. Certain Lots et al. v. Town of Monticello, (Sup. Ct. 1947), 31 So. 2d 905. Even though other counties within the State of Florida have opted to form a charter form of government by referendum pursuant to Chapter 125, Florida Statutes and irrespective of whether they complied with the notices as required in Part II of Chapter 125.64 and 125.66, Florida Statutes, the H.B. 1662 would ratify all charter governments, upon becoming law if publication was done pursuant to F. S. 101.161(1) and 100.342 although the Fifth District Court of Appeal has ruled that Chapter 125.64 is applicable as to time of publication as required by Chapter 125.82.

3. The Act did not consider Chapter 125.66; The problem of Appellant's argument begins with reviewing the sequence that

Orange County's Ordinance No. 86-22 was enacted by Appellant. Ordinance 86-22 could not have been advertised to be presented to county commissioners, pursuant to Chapter 125.66 for a referendum until after the 23rd day of September, 1986, which is the date the final ordinance was typed and executed with amendments and could not be filed with the Clerk of Court until September 23, 1986, to be available for viewing by the public. Due to the dates, neither advertisement published by Appellant complied with Chapter 125.64, 125.66, 101.161(1), 100.342, Florida Statutes as to the time requirements. Appellant has agreed that the advertisement was two days short of the minimum 45 days required by Chapter 125.64 and 125.82, Florida Statutes. Appellant in a desperate attempt to save face, appealed to the State Legislature for help.

The result of H.B. 1662 has failed to address the issues of the applicability of Chapters 101.161(1) and 100.342, 125.64 and 125.66, Florida Statutes, to the instant case, as they are being directly affected as to whether it is retrospective in its application.

H. B. 1662 raised a question of fact as to whether it complied with F. S. Chp. 100.342 and 101.161(1).

The Appellant has not shown that this Court should take discretionary jurisdiction pursuant to Florida Civil Rule 9.030 or Article V, Sec. 3(b)(3) of the Florida Constitution.

CONCLUSION

H.B. 1662 is local in nature passed improperly without appropriate publication or a provision for a referendum. The H.B. 1662 is truly a perfect example of a local bill passed under the guise of general legislation which denies Appellee and all others their constitutional rights.

The Appellant has failed to show the jurisdiction should be accepted by this Court pursuant to Florida Civil Rule 9.030 or Article V, Sec. 3(b)(3) of the Florida Constitution.

JOHNIE A. McLEOD, ESQ.
Of McLEOD, McLEOD & McLEOD
48 East Main Street
P. O. Drawer 950
Apopka, Florida 32704
Telephone: 407/886-3300
Attorney for Webster,
Appellee/Respondent
FLORIDA BAR NO. 053427

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U. S. Mail, postage prepaid this 28th day of September, 1988, to Carlton, Field, Ward, Emmanuel, Smith & Cutler, P. A., Alan C. Sundberg, Sylvia H. Walbolt, P. O. Drawer 190, Tallahassee, Florida 32302 and Harry A. Stewart, County Attorney, Joseph L. Passiatore, Assistant County Attorney, Orange County Legal Department, Orange County Administration Center, P. O. box 1393, Orlando, Florida 32802-1393, Attorneys for Petitioner Orange County.

JOHNIE A. McLEOD, ESQ.
Of McLEOD, McLEOD & McLEOD
48 East Main Street
P. O. Drawer 950
Apopka, Florida 32704
Telephone: 407/886-3300
Attorney for Webster,
Appellee/Respondent