IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA, and the Taxpayers, Property owners and Citizens of Sarasota County, including nonresidents owning property or subject to taxation therein, et al.,

Defendant/Appellant

v.

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

Plaintiff/Appellee.

Appeal Case #73,912

Appeal from
Case No. 88-5873

ON APPEAL FROM THE
CIRCUIT COURT
OF SARASOTA COUNTY

ANSWER BRIEF OF APPELLEE

JOHN L. MCWILLIAMS, ESQ.
FREEMAN MCWILLIAMS & DAME, P.A.
2100 Florida Natl. Bank Tower
Jacksonville, Fl. 32202
904-353-1264
Attorneys for Appellee

RICHARD E. NELSON, ESQ.
NELSON HESSE CYRIL SMITH
WIDMAN HERB CAUSEY & DOOLEY
2070 Ringling Boulevard
Sarasota, Florida 34237
813-366-7550
Attorneys for Appellee

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i-ii
TABLE OF ABBREVIATIONS	iii
TABLE OF CITATIONS	iv-vi
STATEMENT OF THE CASE	1-2
STATEMENT OF THE FACTS	3-6
SUMMARY OF ARGUMENT	7-8
ARGUMENT	
I. POINT ON APPEAL	9-18
THE LOWER COURT WAS CORRECT IN ENTERING AN ORDER VALIDATING $37,000,000.00 GAS TAX REVENUE BONDS BECAUSE THE SARASOTA COUNTY CHARTER DOES NOT REQUIRE REFERENDUM APPROVAL FOR ALL BONDS IN EXCESS OF $10,000,000.00 UNLESS THEY ARE GENERAL OBLIGATION BONDS PAYABLE FROM THE TAX REVENUES OF THE COUNTY.	
A. THE LOWER COURT WAS CORRECT IN ADMITTING PAROL TESTIMONY TO EXPLAIN AND HELP INTERPRET THE LANGUAGE OF SEC. 4.3.E. OF THE SARASOTA COUNTY CHARTER	19
B. THE LOWER COURT WAS CORRECT IN HOLDING THAT THE GAS TAX REVENUE BONDS WERE NOT PAYABLE FROM TAX REVENUES OF THE COUNTY	20-23
C. THE LOWER COURT WAS CORRECT IN HOLDING THAT SEC. 4.3.E OF THE SARASOTA COUNTY CHARTER WAS INTENDED TO APPLY ONLY TO GENERAL OBLIGATION BONDS WHICH PLEDGE FUTURE AD VALOREM TAXES	20-23
D. THE TRIAL COURT WAS CORRECT IN FINDING THAT IF CHARTER AMENDMENT SEC. 4.3.E REQUIRES A REFERENDUM, IT IS UNCONSTITUTIONAL	24-26

CONCLUSION 27

CERTIFICATE OF SERVICE 28

APPENDIX 29

TABLE OF ABBREVIATIONS

CO. APP.	County (Appellee) Appendix
ST. APP.	State (Appellant) Appendix
CO.APP.TR.	County Appendix Transcript of Hearing

TABLE OF CITATIONS

CASES	PAGE
Blount v. State 102 Fla. 1100, 138 So.2d 2, 80 ALR 830 (1931)	13
Board of County Commissioners of Dade County v. Wilson 386 So.2d 556 (Fla. S.Ct. 1980)	24,25
Board of County Commissioners of Marion County v. McKeever 436 So.2d 299 (Fla. 5th DCA 1983)	25,26
Board of Trustees of City of Dunedin Municipal Firefighters Retirement System v. Dulje 453 So.2d 177 (Fla. 2d DCA 1984)	25
City of Opa Locka v. State 257 So.2d 100 (1972 Fla. 3d DCA)	12
City of Miami Beach v. Rocio Corp. 404 So.2d 1066 (Fla. 3d DCA 1981)	24,25
Daniel v. Florida State Turnpike Authority 213 So.2d 585	11
Enslewood Water Dist. v. Tate 334 So.2d 626 (Fla. 3d DCA 1976)	13
Gallant v. Stephans 358 so.2d 536 (Fla. 1978)	14
Jacksonville v. Ledwith 26 Fla. 163, 7 so. 885 (1890)	12
Miller v. Brewer Co. of Florida 122 So.2d 565 (Fla. 1960)	11
Rinker Materials Corp. v. City of North Miami 286 So.2d 552 (Fla. 1973), conformed to 288 So.2d 536 (Fla. 3d DCA)	12,17
Rinzler v. Carson 262 So.2d 661 (Fla. S.Ct. 1972)	25
Scarborough v. Newsome 150 Fla. 220, 7 So.2d 321 (1942)	17
SRG Corp. v. Department of Revenue 365 So.2d 607 (Fla. 1978)	13

State v. Atlantic C.L.R. Co.
56 Fla. 627, 47 So. 969 (1908) 13

State v. Barr
79 Fla. 290, 84 So. 61 (1920) 18

State v. Dalby
361 So.2d 215 (Fla. 1978) 13

State v. Sarasota County
372 So.2d 1115 (Fla. 1979) 15

Van Pelt v. Hilliard
75 Fla. 792, 78 So. 693 (1918) 13

Vocelle v. Knight Brothers Paper Co.
118 So.2d 664 (Fla. 3d DCA 1960) 13

OTHER

Sarasota County Charter, Art. IV 13

Sarasota County Charter, Sec. 3.7 17,18

" " " , Sec. 4.1 13,14

" " " , Sec. 4.2 14

" " " , Sec. 4.2.C 14

" " " , Sec. 4.2.F 14,16

" " " , Sec. 4.3.A-4.3.D 15

" " " , Sec. 4.3.E & F. 3I4,5,14, 15,16,17 18,20

Sec. 125.01, Fla. Stat. 23,24

Chapter 206, Fla. Stat. 6,20

Sec. 206.60, Fla. Stat. 22

Sec. 206.60 (b) (1) & (4), Fla. Stat. 24

Sec. 206.61, Fla. Stat. 8,20,22

Chap. 336, Fla. Stat. 20

Sec. 336.021, Fla. Stat.	6,23
Sec. 336.021(2), Fla. Stat.	23
Sec. 336.025, Fla. Stat.	6,23,24
Sec. 336.025(e), Fla. Stat.	24
Art. VIII, Sec. 1(g), Fla. Const.	24
Art. VII, Sec. 1 (a), Fla. Const.	20,22
Art. 11, Sec. 9(a), Fla. Const.	20

STATEMENT OF THE CASE

The Appellant's Statement of the Case is accurate, however, it should include the following information in order to fully set forth the pled issues.

The Appellant, in his answer to Paragraph 2 of the Complaint, admits that "authority is conferred upon" the County by general law "to issue said bonds". However, Appellant then goes on to allege that a County Charter amendment adopted in 1984 should now be construed as prohibiting the issuance of the bonds without referendum approval. (St. App. 1 & 2)

The County, in its Complaint, alleges that no referendum is required since the Charter only requires a referendum where the concerned bonds are to be paid out of "tax revenues of the County" and the term "tax revenues of the County has always been interpreted and construed by the County and the courts of this circuit as applying only to ad valorem tax revenues of the County". (St.App. 1)

The Complaint, together with the exhibits thereto all of which were received in evidence without dispute, show that: (St. App. 1)

1. The concerned gas tax bonds are specifically authorized by general law.

2. The bonds are payable solely out of revenues derived

from the gas tax.

3. The bonds do not pledge County general tax revenues.

4. The bonds are not indebtedness of the County within the meaning of the County Charter or the State Constitution or general laws.

5. The bonds do not pledge future ad valorem tax revenues.

6. No holder of the bonds may ever compel the exercise of the ad valorem taxing power or require payment from any other funds.

7. The Twelfth Judicial Circuit has consistently construed the concerned County Charter amendment as not requiring approval at referendum election where bonds do not pledge ad valorem tax revenues. (Co. App.1, Co. App. 2 Tr. p. 13, 21, 44)

STATEMENT OF THE FACTS

We disagree with the Appellant's Statement of the Facts, more specifically, our objection is that same is incomplete and fails to mention or place any emphasis on certain important evidentiary facts. Accordingly, we submit the following brief Statement of the Facts:

In 1984, the Sarasota County Charter Review Board proposed and passed a Charter amendment requiring referendum election approval for general obligation bonds in excess of $10,000,000. The 1984 amendment in effect placed a ten million dollar cap on bonds and a 10% cap on all increases in ad valorem taxes. (St.App. 2)

The first draft of the Charter Review Board's proposed amendment, which added Charter Sections 4.3.E. and F., required a referendum election approval for every bond issue in the amount of $10,000,000 or more which

> "obligated the County to pay off said indebtedness out of the revenues of the County". (Co. App. 2 Tr. p. 20)

The Board of County Commissioners objected to this language on the grounds that it might be interpreted to include revenue bonds which would be paid out of non ad valorem revenues of the County.

The Charter Review Board, in order to meet the County's objections, changed the language to the following:

> "obligating the County to pay off said indebtedness out of tax revenues of the

County" (Co. App. 2 Tr. p. 20)

The Charter Review Board added the word **tax** and instructed its attorney, Mr. Joy, to appear before the Board of county Commissioners and explain the intended interpretation of the proposed Charter amendment. The following is an excerpt from a transcription of Mr. Joy's comments on September 18, 1984 to the Board of County Commissioners interpreting the proposed amendment:

> "so the word "tax" was placed before the word "revenue" to show that there was no question that we're, Charter Review Board is talking of just tax revenue"
> (Co. App. 3 p. 1)
>
> "But the way the section is drafted if all county taxpayers are being obligated in the future to stand for the bonds, then the way this amendment reads, then they would have the opportunity to approve it. If they are not being required to put their future tax obligations on the line, that is, through user fees they may be more sectional, then the provision of - this provision of the charter would not apply." (Co. App. 3 p. 2)
>
> "If again this is a substantive question but if all county taxpayers are being asked to stand for the bonds, then on what basis should only a portion of the county who is going to benefit thereby, be allowed to vote on it, and to disenfranchise those other taxpayers who are going to be obligated in the future to pay the bonds. But that only relates to tax revenues but not to user fees that would be contemplated as a result of the operation of the utility." (Co. App. 3 p. 3)
>
> "It says "tax revenues of the county". If a one million dollar bond issue is limited to being paid off out of user fees, like General MOtors bonds are restricted to being paid off out of revenues of General Motors, then this particular amendment to the charter would not

> apply. It is only when the general tax revenues of the county are being obligated, under the terms of the bond, paid off, would this particular provision apply. So, frankly, I think it satisfies all of the concerns about which all of the commissioners that I heard two weeks ago, speak. And certainly, there was a good faith effort made to satisfy those requirements." (Co. App. **3 p. 4)**

The Board of County Commissioners, after receiving this explanation, withdrew its objection to the proposed charter amendment and the same was passed at a referendum held in November of **1984.**

The County Clerk and Finance Director of fifteen years, the County Commissioners and the County Administrator all have continually interpreted the 1984 Charter Amendment to Sections **4.3.E** and F to apply to ad valorem taxes. It was their understanding and interpretation that a bond referendum only need be held where the County created a general obligation debt which would be payable out of future ad valorem taxes. (Co. App. **3** p. **l,2,3,4;** Co. App. **2** Tr. p. **15,** 16, **20, 21, 23, 24, 34, 44)**

The County Clerk and Finance Director and the County Commissioners all testified that the gas tax is a state tax and not considered as tax revenues of the County since the gas tax is authorized by general state law, is collected by the state, is distributed by the state directly to counties and other local governments, is spent in accordance with procedures established by the state and is for the sole purposes of road improvement as designated by the state. The gas tax revenue is not placed in the general revenue of the County but is limited specifically to

transportation expenditures. (Co. App. 2 Tr. p. 15, 16, 19, 22, 23, 24, 32, 34, 45, 49) Chapt. 206, Sec. 336.021 and 336.025, Fla. Stat.

Since the concerned Charter amendment was passed in 1984, the County has validated five separate bond issues, each of which was over $10,000,000 and which pledged various non ad valorem revenues of the County including sales tax and gas tax. (Co. App. 1 & 4)

In none of those validations prior to this one, did the Charter Review Board or any of its members, contend that a referendum election was necessary nor did the court hold that a referendum election was necessary under the provisions of the Charter Amendment.

At trial of this case, the former Charter Review Board Chairman admitted that it was his intent to require referendum only if the concerned bonds were to be paid out of "general tax revenues". (Co. App.2 Tr. p.53) Mrs. Holm, another Charter Board member, admitted that the gasoline tax is a state tax authorized by general law and that it is paid only by the people who purchase gasoline and that the gasoline tax is not an obligation of the general taxpayers of Sarasota County. (Co. App. 2 Tr. p. 58)

SUMMARY OF ARGUMENT

1. The Time Honored Construction of the Charter by the County and the Courts is Correct.

The concerned Charter amendment has been properly construed by the Clerk and Fiscal Officer, the members of its Board of County Commissioners, its County Administrator and for five years, the Charter Review Board as applying only to general obligation bonds which pledge ad valorem taxes. The Charter amendment, when read in context with the entirety of Sec. 4, can only properly be construed as pertaining to bonds payable out of County ad valorem tax revenues. The state attorney has never before determined that the question warranted appellate review. The construction continuously placed upon the 1984 Charter amendment by the County is correct as has been previously determined by the Judges of the Twelfth Judicial Circuit in five separate bond validation cases.

2. Charter Board Attorneys Explanation Conceded That an Interpretation was Needed.

The language in the concerned Charter amendment is ambiguous as drafted by the Charter Review Board thus requiring administrative interpretation. Prior to the amendment's passage, the Charter Review Board attorney assured the Board of County Commissioners that, only if all County taxpayers are being obligated in the future to pay the bond would a referendum be required. He further stated that, only if all the County

taxpayers are required to put their future tax obligations on the line, then a referendum election would be required under the proper interpretation of the amendment. However, the Charter Review Board, five years and four bond issues later, changed its mind and has now taken the position that a referendum is required.

3. State Gas Tax is Not "Tax Revenue of the County"

The gas tax is not a "County tax revenue" but is a state tax authorized by the Constitution and general laws. The County does not and cannot impose a gasoline tax. Thus, gasoline tax is neither levied, assessed, collected nor distributed by the County. General law limits and controls its use, levy and distribution. The levy of a gas tax is preempted to state government. The gas tax is no more a "County tax revenue" than are federal revenue sharing funds. Sec. 206.61, Fla. Stat. specifically prohibits a County from levying or collecting any gas tax.

4. If County Charter Construed as Prohibiting Gas Tax Bond Issue Without a Referendum, The Charter is Unconstitutional.

The County Charter amendment may not constitutionally place a monetary cap upon nor require prior referendum approval of revenue bonds pledging gas tax when same is authorized by general law. A County Charter cannot prohibit the pledging of state gas tax which has been authorized by general law.

ARGUMENT

POINT ON APPEAL

I

THE LOWER COURT WAS CORRECT IN ENTERING AN ORDER VALIDATING $37,000,000.00 GAS TAX REVENUE BONDS BECAUSE THE SARASOTA COUNTY CHARTER DOES NOT REQUIRE REFERENDUM APPROVAL FOR ALL BONDS IN EXCESS OF $10,000,000.00 UNLESS THEY ARE GENERAL OBLIGATION BONDS PAYABLE FROM THE TAX REVENUES OF THE COUNTY.

The proposed 1984 amendment, as first drafted, in effect placed a $10,000,000 cap on all bonds and a 10% cap on all increases in ad valorem taxes. The first draft of the proposed amendment was objected to by the Board of County Commissioners and, as a result of that objection, the language regarding the bond limitation was changed so that it only applied to bonds which "obligated the County to pay off said indebtedness out of tax revenues of the County". The County Commission was not totally satisfied with this amendment although it did construe that language to apply only to ad valorem tax revenues of the County. The Charter Review Board attorney attended the Board of County Commission meeting of September 18, 1984 for the purpose of discussing the interpretation to be placed upon the proposed Charter amendment. At that meeting, Mr. Joy, the Charter Review Board's attorney, assured the Board that the amendment would only apply "if all county taxpayers are being obligated in the future

to stand for the bonds". (Co. App. 3 p. 2) Mr. Joy further stated that if all County taxpayers are being asked to stand for the bonds, then they should be allowed to vote on it. The County Commission accepted this explanation and withdrew its objection to the Charter amendment which was then passed in November of 1984. Following its passage, the County Commission has authorized and validated five bond issues in excess of $10,000,000 which pledge various sources of non ad valorem revenue but which do not create a general obligation of the County nor obligate the County to pay the bonds out of future ad valorem tax revenues of the County. Not until the last of these five bond issues has the Charter Review Board chosen to contend that a bond election is required. Likewise, the State Attorney has never previously felt that the County's interpretation was sufficiently erroneous to justify a bond appeal.

Commissioner Carlton initially and correctly pointed out that the amendment, if construed differently, would be unconstitutional and that, as presently interpreted, was moot since it only requires what is otherwise required by the Florida Constitution. (Co. App. 2 Tr. p. 19, 20, 25) Thus, after five years and five court validations, the Charter Review Board now is of the view that the concerned Charter provision is clear and concise and that it requires a referendum even though its attorney had assured the County to the contrary before the amendment was passed.

The County Finance Director of fifteen years, the County

Commission and the County Administrator have been called upon to interpret the concerned Charter provision in connection with County fiscal matters and the structuring and issuance of County bonds. The interpretation that the County Commission, its Fiscal Director and Administrator have placed upon the Charter amendment, which interpretation was confirmed in five Circuit Court validation proceedings, is entitled to great weight and should not be departed from except for the most cogent of reasons. Daniel v. Florida State Turnpike Authority, 213 So.2d 585. The Supreme Court of Florida stated that it is well settled that the construction given by an administrative agency charged with the enforcement and interpretation of a legislative provision is entitled to great weight. The court further stated that the court generally will not depart from that interpretation except for the most cogent of reasons and unless clearly erroneous. Daniel Also see Miller v. Brewer Co. of Florida, 122 So.2d 565 (Fla. 1960).

In this case, the County Commission, its Fiscal Advisor and Administrator were called upon to interpret the concerned Charter provision in connection with county fiscal matters and, in that connection, even prior to the passage of the concerned charter amendment, they were advised by the Charter Review Board attorney who drafted the amendment that a referendum would only be required where all County taxpayers are being obligated in the future to pay the bonds. Thus, the County has continuously

interpreted the amendment as requiring a referendum only where general obligation bonds pledging ad valorem taxes are involved. This interpretation has gone unchallenged for five years and has been sustained in five bond validation proceedings in which the trial courts have held that no bond election is required under the Charter amendment.

Thus, the interpretation placed on the Charter amendment by the County and the lower courts is decisive of the issue. The mere fact that this interpretation only duplicates the requirement of the Florida Constitution as was pointed out by Commissioner Carlton before the Charter amendment was passed, only demonstrates the political posturing that was occurring at that time with regard to limiting government taxing powers by referendum. Note that the proposed Charter amendment included both a 10 million dollar limit on bonds and a 10% limit on ad valorem tax increases.

The same rules applied in the interpretation and construction of statutes are employed in the interpretation and construction of charters and ordinances of local governing bodies. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973), conformed to 288 So.2d 536 (Fla. 3d DCA); City of Opa Locka v. State, 257 So.2d 100 (1972 Fla. 3d DCA). The primary rule for interpretation and construction is that the intention of the legislative body is to be ascertained and given effect. Jacksonville v. Ledwith, 26 Fla. 163, 7 So. 885 (1890). The legislative intent, which is the primary factor of importance

in construing statutes, must be determined primarily from the language of the statute. State v. Atlantic C.L.R. Co., 56 Fla. 627, 47 So. 969 (1908); Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918); SRG Corp. v. Department of Revenue, 365 So.2d 607 (Fla. 1978); State v. Dalby, 361 So.2d 215 (Fla. 1978); Vocelle v. Knight Brothers Paper Co., 118 So.2d 664 (Fla. 3d DCA 1960). The court is obligated to give effect to the legislative intent if that intent is clear and unmistakable. Enslewood Water Dist. v. Tate, 334 So.2d 626 (Fla. 3d DCA 1976). A statute is to be taken, construed and applied in the form enacted. Blount v. State, 102 Fla. 1100, 138 So.2d 2, 80 ALR 830 (1931). In determining the legislative intent and meaning, is a rule of statutory construction that a statute must be read and interpreted in its entirety and as a whole to determine its meaning. Enslewood Water Dist. v. Tate, 334 So.2d 626 (Fla. 2d DCA 1976).

Article IV of the Charter of Sarasota County is entitled "Finance and Taxation". Read and interpreted in its entirety and taken as a whole, this article relates only to the ad valorem taxing power of the County. Each section of Article IV which applies to taxes and tax revenues plainly applies only to ad valorem taxes.

Section 4.1 of the Charter (which authorizes the Board of County Commissioners to accomplish municipal purposes within the unincorporated areas of the County through the creation of

special districts or municipal service taxing units) provides that property situated within the municipalities shall not be subject to taxation for services rendered by the County exclusively for the benefit of the property or residents in the unincorporated area, or which are of no real and substantial benefit to the property or residents of the unincorporated areas. Further, Section 4.1 provides that property situated in the unincorporated areas of the County shall not be subject to taxation for services provided by the County exclusively for the benefit of the property or residents of another section of the County, whether it be an incorporated or unincorporated area. The taxes referred to in this section 4.1 are clearly "property" or ad valorem taxes.

Section 4.2 of the Charter relates to the creation of special districts and municipal service taxing units and provides that all of the area embraced in a special district or municipal service taxing unit must be furnished substantially the same services or facilities and be taxed at a uniform rate. The time for the levy of taxes within a special district or municipal service taxing unit is set forth in Section 4.2.C, and in Section 4.2.F thereof it is provided that the government of a municipal service taxing unit shall receive and disburse for the uses for which the unit was created all taxes and other funds or revenues to which such unit may be entitled by law. The only taxes levied by special districts and municipal services taxing units are ad valorem taxes (see generally Gallant v. Stephans, 358 So.2d 536

(Fla. 1978); State v. Sarasota County, 372 So.2d 1115 (Fla. 1979); thus, this section also relates only to ad valorem taxes.

Sections 4.3.A through 4.3.D, inclusive, relate to budgets and finances and do not refer specifically to taxes of any type.

Section 4.3.E of the Charter, of course, is the bonding limitations provision of the Charter at issue in this case. It requires a referendum to approve bond issues in amounts in excess of Ten Million Dollars that are payable "out of the tax revenues of the County" and is discussed more fully below.

Section 4.3.F of the Charter is entitled "Millage Increase" and provides that no tax millage shall be levied by the Board of County Commissioners which will result in a ten percent or greater net increase in ad valorem tax revenue the preceding revenue year. It further provides that the Commission shall first determine the total of ad valorem revenue which would have been collected from the levy made in the year immediately preceding the year in which the taxes are being levied had all persons and entities obligated to pay said taxes remitted them in a timely fashion, plus the ad valorem revenue which would have been collected had new construction been included on that tax roll. Again, the taxes referred to in this section are clearly property ad valorem taxes.

Thus, in each Section of Article IV references to 'taxes' relate to County ad valorem taxes only. In the text of Sections 4.3.E and 4.3.F, which are referred to above, there does appear

to be some inconsistency in the terminology used. The proceeds of County ad valorem taxes are alternately referred to as "tax revenues"; "ad valorem tax revenue"; "ad valorem revenue", "taxes" and then "ad valorem revenue" again. While this inconsistency of terminology is unfortunate, it is clear from a careful reading of each section as a whole that in each case the meaning and reference are the same -- ad valorem or property taxes. Likewise, notwithstanding the somewhat inartful wording by the drafters, the term "tax revenue" as used in Section 4.3.E, when read in conjunction with the entirety of Article IV, plainly relates to ad valorem taxes.

If the drafters had intended Section 4.3.E to refer to more than ad valorem taxes, they would have used another term. In Section 4.2.F of the Charter, there is a reference to "taxes and other funds or revenues to which a Unit may be entitled by law." The reference to ad valorem taxes and other funds or revenues indicates that the drafters, in this section, distinguished taxes from other funds and revenues and intended in Section 4.2.F a broader meaning than property taxes. If there were legislative intent to give a similar broad meaning to Section 4.3.E, the drafters would have used similar language. Conversely, the absence of the additional phrase "and any other funds or revenues" from Section 4.3.E compels the conclusion that no such broad meanings were intended by the legislative body that authorized the provision.

The qualifying phrase used in Section 4.3.E is "out of tax revenues". Clearly, the Charter provisions could have been drafted without this qualification and it is equally clear that a more restrictive phrase could have been utilized, addressing other revenues, or, for example, excise taxes or proprietary system revenues. No such more restrictive phrase was used and that fact is a critical one. The Charter should be construed to be given its plain and obvious meaning. Rinker Materials Corp. v. North Miami, 286 So.2d 552, (Fla. 1973) conformed to 288 So.2d 536 (Fla. 3d DCA 1974). The legislative intent is the polestar by which courts must be guided. Scarboroush v. Newsome, 150 Fla. 220, 7 So.2d 321 (1942).

The central point of law at issue in this case is the meaning of Section 4.3.E and the extent of the limitations it places upon the power of the County to borrow money. The Charter itself provides explicit direction as to the manner in which the power granted to the County in the Charter should be construed. Section 3.7 of the Charter provides that the powers granted by the Charter shall be construed liberally in favor of the Charter government as follows:

> Section 3.7 Construction of Laws. The powers granted by this Charter shall be construed liberally in favor of the Charter government. The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific powers of the government as stated in this Article. It is the intent of this article to grant to the Charter government full power and authority to exercise all governmental powers necessary for

> the effective operation and conduct of the affairs of the Charter government.

Where a law provides that it is to be liberally construed that requirement should be observed in construing and applying the law. State V. Barr, 79 Fla. 290, 84 So. 61 (1920). The legislative mandate regarding construction of the Charter provisions must be considered by this court in determining whether the language of Section 4.3.E is to be construed restrictively to deny to the County the power to issue the instant bonds without a referendum. Appellee Sarasota County believes that the plain meaning of the pertinent language in Section 4.3.E and the liberal construction in favor of the County government mandated by Section 3.7 of the Charter preclude the Court from concluding that the limitation at issue refers to anything more than indebtedness payable from ad valorem taxes. The subject bonds are not payable from ad valorem taxes. Thus, the charter provision requiring a referendum is not applicable.

For the reasons stated above, the Court should uphold the ruling of the Circuit Court below that the bonds herein sought to be validated are not payable from County ad valorem taxes and are specifically limited to payment from sources other than ad valorem taxes and a referendum pursuant to Section 4.3.E of the Charter of Sarasota County is not required.

A.

THE LOWER COURT WAS CORRECT IN ADMITTING PAROL TESTIMONY TO EXPLAIN AND HELP INTERPRET THE LANGUAGE OF SEC. 4.3.E OF THE SARASOTA COUNTY CHARTER.

Appellee did not timely object to the testimony and, in any event, waived any objection to parol testimony.

Appellant presented extensive testimony from two members of the Charter Review Board and their attorney relative to the specific intent of the Charter Review Board in connection with their drafting of the concerned Charter amendment.

Further, the concerned Charter amendment was, from the very beginning of its existence, the subject of considerable debate as to its interpretation. The Board of County Commissioners was required to interpret and apply said Charter provision in connection with the issuance of County bonds. (Co. App. 2 Tr. p. 26) The Chairman of the Charter Review Board and its attorney presented lengthy testimony and explanations to the County Commission regarding the interpretation of the concerned Charter amendment prior to the time it was passed thus indicating that the amendment badly needed required administrative interpretation.

In any event, the concerned Charter provision is certainly neither totally clear nor unambiguous and therefore required judicial and administrative interpretation.

B

THE LOWER COURT WAS CORRECT IN HOLDING THAT THE GAS TAX REVENUE BONDS WERE NOT PAYABLE FROM TAX REVENUES OF THE COUNTY.

C

THE LOWER COURT WAS CORRECT IN HOLDING THAT SEC. 4.3.E OF THE SARASOTA COUNTY CHARTER WAS INTENDED TO APPLY ONLY TO GENERAL OBLIGATION BONDS WHICH PLEDGE FUTURE AD VALOREM TAXES.

The Circuit Court has consistently agreed with the County's position that Section 4.3.E of the County Charter applies only to general obligation County bonds which are to be paid out of future ad valorem tax revenues of the County. The "tax revenues of the County" referred to in Sec. 4.3.E of the Charter are the ad valorem tax receipts which are collected by the County Tax Collector. The ad valorem tax is the only tax which is constitutionally reserved specifically for local government and which the Legislature is prohibited from levying. All other forms of taxation, including gas tax which is the tax being pledged in this bond issue, are preempted to the state by the Florida Constitution and by general law. (Fla. Const. Art. VII, Sec. 1(a) and Sec. **206.61**, Fla. Stat.)

The Florida Constitution directs that local government be specifically authorized to levy and collect ad valorem tax revenues. Fla. Const., Art. 11, Sec. 9(a). The only tax

revenues which are solely within the County's prerogative and control are the ad valorem taxes which are levied and assessed by the Board of County Commissioners and collected by the County Tax Collector. The gasoline tax, on the other hand, can only be authorized by the Florida Legislature. "Tax revenues of the County" are solely the revenues derived from the ad valorem tax which is the only tax under the Florida Constitution which is reserved specifically to local government and which may not be preempted by the Legislature. All other forms of non ad valorem taxation are solely dependent upon general law and the Legislature and can be given and taken away by the Florida Legislature.

The County Tax Collector does not collect gasoline tax because it is not a County tax. It is a state tax which is collected and distributed by the State Department of Revenue.

The gas tax is a state tax levied, assessed and collected by the Department of Revenue and distributed to local government to be used only for those purposes determined by the state. The gas tax may not be used for general county purposes nor placed in the general revenue fund of the County. The gas tax is not "tax revenue of the County". Chapters 206 and 336, Fla. Stat. The gas tax, with which we are concerned in this case may not be used for general County purposes but must be used solely for road maintenance and improvement as mandated by the Legislature and general law.

Thus, it is clear that the "gas tax" is not "tax revenues of

the County" and that the pledge of the gas tax does not impose upon the taxpayers a general obligation to in the future pay the bonds. (Co. App.2 Tr. p. 22, 23, 45, 46; St. App. 1)

Sec. 206.61, Fla. Stat., makes it abundantly clear that the County cannot levy or collect a gas tax as this source of revenue has been specifically preempted to the use of the state by the Florida Constitution and Sec. 206.61, Fla. Stat.

The only sources for the payment of bonds in this bond issue is the state gas tax. The gas tax is not a "tax revenue of the County".

Indeed, counties are specifically prohibited from levying or collecting any gas tax. This tax source has been preempted to the state. Fla. Const., Art. VII, Sec. 1(a) and Sec. 206.61, Fla. Stat.

Florida Statutes, Sec. 206.61 specifically states:

> "No municipality or other political subdivision shall levy or collect any gas tax".

There are three gas tax sources which are made available to all Florida counties to pay bond issues for badly needed road and transportation improvements. They are:

1. The gas tax authorized by Sec. 206.60, Fla. Stat., which is distributed in accordance with the formula referenced in that Section directly to the counties of this state. This gas tax is sometimes referred to as the "County Gas Tax" because of the caption of the Section in the Florida Statutes, which states

"County tax on motor fuel". The counties of he state, however, have nothing to do with the levy, collection or distribution of this tax as it is not a county tax.

2. The gas tax authorized by Sec. 336.021, Fla. Stat., which Section is entitled: **"County transportation system; levy of voted gas tax on motor fuel and special fuel."** This tax is generally referred to as the Voted Gas Tax" because its levy and collection is subject to Board of County Commission approval and a referendum in the County. The provisions of Chapt. 206 also apply as to the administration of this tax. Fla. Stat., Sec. 336.021 (2).

3. The gas tax authorized by Sec. 336.025, Fla. Stat., which authorizes the Board of County Commissioners to approve a gas tax of up to 6 cents at their option. This gas tax is generally referred to as "The Optional Gas Tax".

General law specifically grants to all Florida counties the authority to pledge these three gas tax sources for the payment of bonds to finance road and transportation improvements. Chapt. 206, Fla. Stat.; Sec. 336.021 and 336.025. Also 125.01.

It should be pointed out that the referendum required to implement the "voted gas tax" was carried by a substantial majority following which the Board of County Commissioners authorized this transportation bond issue.

Thus, it is clear, that the gas tax is a state tax revenue which has been preempted and controlled by the state and that it certainly is not a tax revenue of the County.

D.

THE TRIAL COURT WAS CORRECT IN FINDING THAT IF CHARTER AMENDMENT SEC. 4.3.E REQUIRES A REFERENDUM, IT IS UNCONSTITUTIONAL.

Under this heading, we will argue that if the concerned Charter amendment requires a referendum, it is not only inconsistent with 336.025, Fla. Stat. but also with 206.60(b) (1) and (4) and 125.01, Fla. Stat.

If Sec. 4.3.E of the Sarasota County Charter were construed to require a referendum before the County Commission could issue road improvement bonds like all other counties payable out of the gas tax, then said Charter provision would be invalid and unconstitutional because it is inconsistent with general law.

A County Charter provision which is inconsistent with general law, is invalid. Fla. Const., Art. VIII, Sec. 1(g); Board of County Commissioners of Dade County v. Wilson, 386 So.2d 556 (Fla. S.Ct. 1980).

If there is any doubt it is to be resolved against the validity of the County Charter provision. City of Miami Beach v. Rocio Corp., 404 So.2d 1066, (Fla. 3d DCA 1981).

The pledging of gas tax by the county commission without referendum is authorized by general law. Fla. Stat., Secs. 336.025(e) and 206.60 (b)(1) and (4), 125.01

A Sarasota County Charter amendment cannot properly prohibit the pledging of the state gas tax which is authorized by general

law. Board of County Commissioners of Dade County v. Wilson, 386 So.2d 556 (Fla. S. Ct. 1980); City of Miami Beach v. Rocio Corp., 404 So.2d 1066, (Fla. 3d DCA 1981); Board of County Commissioners of Marion County v. McKeever, 436 So.2d 299 (Fla. 5th DCA 1983); Board of Trustees of City of Dunedin Municipal Firefighters Retirement System v. Dulje, 453 So.2d 177 (Fla. 2d DCA 1984); Rinzler v. Carson, 262 So.2d 661 (Fla. S. Ct. 1972).

In the case of Wilson, supra, the Florida Supreme Court held that general law supersedes a home rule charter. The Supreme Court further held that, a charter county ordinance which, if passed by referendum election, would set the ad valorem millage rate is unconstitutional because of conflict with the general law which provides the method by which millage shall be fixed. Thus, a charter county ordinance which provided that the ad valorem millage rate for the county would be set by referendum election is unconstitutional.

In the case of Rocio, supra, the court held that a local government ordinance, which imposed stricter controls over condominiums, was unconstitutional because it conflicted with general law by prohibiting conduct which general law permitted.

The Supreme Court in Rinzler, supra, held that a local government ordinance "cannot forbid what the legislature has expressly...authorized".

The Second District Court of Appeal, in its 1984 decision in the case of Dunedin, supra, held that a local ordinance which prohibited that which was authorized by general law was

unconstitutional.

In the case of McKeever, supra, the court held that a local ordinance placing a cap on ad valorem tax millage which was approved by referendum is unconstitutional because of conflict with the general law.

It is clear that the Sarasota County Charter provision cannot impose a dollar cap on the issuance of bonds which are authorized by general law. It is likewise clear that a County charter may not prohibit the issuance of bonds authorized by general law unless the bonds are approved at referendum.

CONCLUSION

The concerned Charter amendment was ambiguous requiring both an administrative interpretation by the County as well as by the courts. The interpretation placed on the Charter provision is consistent with the testimony and representations made by the Charter Review Board and its attorney, who stated that a referendum would be required only if all County taxpayers are being obligated in the future to stand for the bonds. The Circuit Court, in five previous cases, likewise interpreted the provision as not requiring a referendum where similar pledges of non ad valorem revenues occurred. To construe the provision as requiring a referendum approval for the issuing of revenue bonds backed solely by gasoline tax would result in allowing a Charter provision to prohibit that which is specifically authorized by state law. Such an interpretation would render the Charter amendment unconstitutional and would violate the rules for construction of legislation. Thus, the trial court's ruling is wise and correct and should be upheld.

Respectfully submitted,

JOHN L. MCWILLIAMS, ESQ.
FREEMAN MCWILLIAMS & DAME
2100 Fla. Natl. Bank Tower
Jacksonville, Fl.
904-353-1264

NELSON HESSE CYRIL SMITH WIDMAN
HERB CAUSEY & DOOLEY
2070 Ringling Boulevard
Sarasota, Florida 34237
813-366-7550
Attorneys for Appellee

By _____
Richard E. Nelson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by ~~U.S. Mail~~/hand to Henry E. Lee, Esq., State Attorney's Office, P.O. Box 880, Sarasota, Fl. **34236** this 1st day of ~~April~~ May, **1989**.

NELSON HESSE CYRIL SMITH WIDMAN
HERB DOOLEY & CAUSEY
2070 Ringling Boulevard
Sarasota, Florida **34237**
813-366-7550
Attorneys for Appellee

By Richard B. Nelson
Richard E. Nelson
Fla. Bar #0058270