O&7 w/app. 4968

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
MAR 13 1991
CLERK, SUPREME COURT
By _____ Deputy Clerk

CITY OF BOCA RATON, FLORIDA,

Appellant,

vs.

STATE OF FLORIDA, and the TAXPAYERS, PROPERTY OWNERS and CITIZENS OF THE CITY OF BOCA RATON, FLORIDA, including NONRESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, and ALL OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE BY PLAINTIFF OF THE BONDS DESCRIBED HEREIN OR TO BE AFFECTED IN ANY WAY THEREBY,

Appellees.

CASE NO. 77,468

APPEAL FROM THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

Frank Bartolone
Florida Bar #236209
201 West Palmetto Park Road
Boca Raton, Florida, 33432
(407) 393-7700

Peter L. Dame
Florida Bar # 328162
SQUIRE, SANDERS & DEMPSEY
2100 Florida National Bank Tower
Jacksonville, Florida 32202
(904) 353-1264

Griffith L. Pitcher
Florida Bar # 138661
SQUIRE, SANDERS & DEMPSEY
201 South Biscayne Boulevard
3000 Miami Center
Miami, Florida 33131
(305) 577-8700

Attorneys for
Plaintiff/Appellant City of
Boca Raton, Florida

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JURISDICTIONAL STATEMENT

This is an appeal pursuant to Rule 9.030(a)(1)(B) of the Florida Rules of Appellate Procedure from a Final Judgment issued pursuant to Chapter 75, Florida Statutes refusing to validate special assessment bonds.

STATEMENT OF THE CASE

This is an appeal from a Final Judgment, dated January 22, 1991, of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, Florida, wherein the Circuit Court held that the issuance by the City of Boca Raton, Florida (herein called the "City"), of not exceeding $21,000,000 Special Assessment Improvement Bonds, Series 1990 (Visions 90 Project) (herein called the "Bonds"), is not authorized by law and that the Bonds are not validated.

The suit was initiated when the City, the Plaintiff/Appellant, filed a Complaint for bond validation pursuant to Chapter 75, Florida Statutes, seeking validation of not in excess of $21,000,000 of its special assessment improvement bonds. App. at 1. The State of Florida by and through the State Attorney for the fifteenth Judicial Circuit of Florida, filed his answer on October 24, 1990. App. at 73.

Intervenors/Appellees Herbert L. and Lenore E. Wachtel, Evert Gijsendorfer and David Chiodo, William H. Hessick et.al, William D. and Dorothy A. Eubank, Richard M. and Clara M. Wilson, Ramon A. Benson, Neil C. and Lorraine C. Adams and G.J. Christensen, Allan I. Schneiderman, Richard and Rhoda Kleiman, James P. Camene and Ulla Came, Dr. and Mrs. William D. Jackson, Lowell Boggy, Oryal E. Hadley, E.V. Gardner, Thomas M. Milo (collectively, "Wachtel") filed their Answer and Affirmative Defenses on November 16, 1990. App. at 90. Intervenors/Appellees James H. Batmasian and Marta Batmasian ("Batmasian") filed their

Answer and Affirmative Defenses in November 16, 1990. App. at 85. Intervenor/Appellee Astral Investment Company ("Astral") filed its Motion to Intervene and Response to Order to Show Cause and their Answer and Affirmative Defenses on November 15, 1990. App. at 78. The Complaint was heard before the Honorable Edward Fine, Circuit Judge of the Fifteenth Judicial Circuit of the State of Florida and for Palm Beach County, on November 22, 1990. On January 22, 1991, a Final Judgment was signed and entered refusing to validate the Bonds on the grounds that the City was not authorized, under its home rule powers, to levy the special assessments which were to be pledged as a source of payment of and as security for the Bonds. App. at 95. The City filed timely notices of appeal on February 22, 1991. App. at 115. On February 26, 1991, the State Attorney filed his Notice of Cross-Appeal. On March 1, 1991 J. Herman and Esther Danle, Select Properties of Boca Palm, Inc., Woodside Development, Inc. and Palm Plaza Investment, Inc., and Wachtel filed their Notice of Cross-Appeal. On March 5, 1991 such parties, other than J. Herman and Esther Danle, filed their Amended Notice of Cross-Appeal. On March 4, 1991, Batmasian filed a Notice of Cross-Appeal.

FACTS

1. The City is a municipality of the State of Florida located in Palm Beach County, Florida, and was created and is existing under and by virtue of the laws of the State of Florida.

2. On May 22, 1990, the City Council (the "Council") of the City, acting pursuant to the City's home rule powers granted by Article VIII, 2(b) of the Florida Constitution of 1968 (the "1968 Constitution") and Chapter 166, Florida Statutes (also herein called the "Municipal Home Rule Powers Act"), enacted Ordinance No. 3851 (the "Ordinance"). App. at 7. In the Ordinance the Council determined to provide for the issuance of the Bonds to finance the cost of improvements as defined in the Ordinance, determined that the Bonds would be payable from special assessments levied under and in the manner provided in the Ordinance against the property to be specially benefited (the "Assessed Parcels") by the acquisition and/or construction of the improvements and at the option of the City from other funds of the City derived from sources other than ad valorem taxation and legally available for such purpose.

3. Section 5 of the Ordinance provides that the special assessments shall be levied thereunder upon the Assessed Parcels by the improvements in proportion to the benefits to be derived therefrom and that such special benefits may be determined and prorated according to the method of apportionment based on the front footage of the Assessed Parcels, the square footage of the respective Assessed Parcels or by such other method as shall

apportion the assessments equitably and said Section 5 provides for the manner of levying such special assessments. App. at 9.

4. Section 6 of the Ordinance provides an alternate method of apportioning special assessments and procedures for levying variable special assessments. App. at 6.

5. Pursuant to Section 6 of the Ordinance, on May 22, 1990, the Council adopted Resolution No. 128-90 (the "Project Resolution"), in which the City determined to construct the improvements (the "Project"), determined the estimated cost of the Project and determined the identity of the Assessed Parcels which would be assessed to pay the cost of the Project, as designated by the assessment plat on file with the City Clerk. App. at 22. The Project Resolution provides that the Assessed Parcels shall constitute the "Downtown Special Assessment District". App. at 23.

6. On May 22, 1990, the Council passed and adopted Resolution No. 129-90 (the "Bond Resolution") whereby it authorized the issuance of not exceeding $21,000,000 of the Bonds for the purpose of financing the cost of the Project. App. at 35. The Bond Resolution provides that the Bonds shall be dated, shall bear interest at not exceeding the maximum rate authorized by applicable law, payable at such times, and shall mature on such dates and in such years and in such amounts; all as shall be fixed by subsequent resolution of the Council adopted at or prior to the sale of the Bonds. The Bond Resolution further provides that the Bonds and the interest thereon are payable from and

secured by a lien upon and pledge of proceeds derived from special assessments, all in the manner and with the priority of lien described in the Bond Resolution. App. at 50.

7. The Bond Resolution provides that no holder of the Bonds shall ever have the right to require or compel the exercise of the ad valorem taxing power of the City to pay the principal of and interest on the Bonds, and that the Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. App. at 50.

8. The City brought the proceedings below seeking validation of the Bonds. Validation was opposed by the State and intervenors, as described in the "Statement of the Case", above.

9. Following trial and submission of memoranda of law by the City and certain of the defendants, the Circuit Court, in its Final Judgment, denied validation of the Bonds and made the following findings of fact and law which the Circuit Court stated could be significant if the Circuit Court's ruling is overturned:

(a) the special assessment is not a tax;

(b) the assessments on the Assessed Parcels are directly proportional to the special benefits to be provided each Assessed Parcel and the benefits are in excess of the assessments;

(c) the improvements comprising the Project are properly treated as a single project; improvements need not necessarily be abutting, adjoining or even completely within the District;

(d) parcels excluded from the Downtown Special Assessment District would at most receive only insignificant special benefits; and

(e) all notice provisions required by law have been fulfilled. App. at 95.

10. The Circuit Court denied validation of the Bonds solely on the grounds that the assessments were not authorized, stating its reasons for that decision in paragraph 12 of the Final Judgment, as follows:

> 12. Boca Raton lacks the power to specially assess without a specific grant of authority from the legislature. Article VII, Section 1(a) has preempted all forms of taxation other than ad valorem taxes to the State. Article VIII, Section 2(b) of the Florida Constitution does not supersede Article VII, Section 1(a) of said Constitution. Chapter 166 of the Florida Statutes does not supersede Article VII, Section 1(a) of the Florida Constitution. Only the State holds the power to impose assessments. By passing Chapter 166 the State did not grant specific statutory authority to municipalities to levy special assessments. Municipalities have only been able to pass such assessments when the State which holds this power has specifically authorized municipalities to pass special assessments. No such authorization exists in today's case.
>
> Therefore the attempt by the City to finance the issuance of these bonds by special assessment is illegal . . . . App. at 100.

11. The Circuit Court's Final Judgment, finds that the assessment is <u>not</u> a tax, yet denies validation on the grounds that Article VII, Section 1(a), of the 1968 Constitution has preempted all forms of taxation, other than ad valorem taxes, to the State, and that the State has not specifically authorized the

City to levy the special assessments involved in this case. The determination that the assessments are invalid on account of preemption under Article VII, Section 1(a), of the 1968 Constitution is incompatible with the Circuit Court's finding that the assessment is not a tax.

SUMMARY OF ARGUMENT

Article VII, §2(b) of the 1968 Constitution of the State of Florida, and the implementing Chapter 166, Florida Statutes, grant broad home rule provisions to Florida municipalities, Municipalities may exercise any power for municipal purposes except when expressly prohibited by law. Prohibition or preemption must be express and will not be implied. There is no express prohibition in general law to the exercise of municipal home rule provisions to authorize special assessments. The preemption to the State of taxation contained in Article VII of the 1968 Constitution does not encompass special assessments which, under Florida law and as found by the Circuit Court on the facts here presented, are not taxes.

The legislative intent behind Chapter 166, as expressed in Section 166.042 clearly recognizes that municipalities are authorized to continue to exercise those powers, including imposition of special assessments, previously granted by statutes repealed by the Municipal Home Rule Power Act. Thus, the legislature clearly did not interpret or envision special assessments as a tax preempted or prescribed from municipalities. Florida law recognizes that the constitutional limitations on "taxation" do not apply to special assessments. The distinction between special assessment and general taxes is clear: the special assessment authorized by the City are not general revenue

raising measures but are changes imposed to defray the cost of providing a special benefit to the land.

Further, the City has authority to enact special assessments of the type under consideration pursuant to the City's police power regulatory authority. Just as impact fees are not taxes where the fees are appropriately sized, collected and earmarked, so the special assessments here levied correspond to the cost of and benefit of the Project, and bear a reasonable relationship to the needs of the assessed area. Thus, the City is authorized to impose the special assessments as an exercise of its power to conduct municipal government and to provide roads and other infrastructure in furtherance of the land use provisions of the development order governing development in the downtown area.

ARGUMENT

I. THE TRIAL COURT ERRED IN RULING THAT THE CITY WAS NOT AUTHORIZED UNDER ITS HOME RULE POWERS TO LEVY THE SPECIAL ASSESSMENTS.

(a) Municipal Powers -- Historical Background.

Under the Florida Constitution of 1885, municipalities were creatures of legislative grace. Article VIII, § 8 of the 1885 Constitution provided in pertinent part:

> The Legislature shall have the power to establish, and to abolish, municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time.

Under the foregoing provision of the 1885 Constitution, municipalities were inherently powerless, absent a grant of power by the Legislature. Powers not granted to a municipality by the Legislature were deemed to be reserved to the Legislature. This was known as the "Reservation of Authority Rule." "Dillon's Rule," as expressed in Dillon, Municipal Corporations § 55 (1st Ed. 1872), was used by the courts to determine what powers the Legislature had granted to a municipality. Under "Dillon's Rule," a municipality's powers were limited to the following powers:

> First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those presented to the accomplishment of the declared objects and purposes of the corporation - not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation. . . . Ibid.

Under the 1885 Constitution, the Florida courts followed the "Reservation of Authority Rule" and "Dillon's Rule." See, e.g., Amos v. Matthews, 126 So. 308 (Fla. 1930); Williams v. Dunnellon, 169 So. 631 (Fla. 1936); Heriot v. City of Pensacola, 146 So. 654 (Fla. 1933); Malone v. City of Quincy, 62 So. 922 (Fla. 1913). "The noblest municipal ordinance, enacted to serve the most compelling municipal purpose, was void, absent authorization found in some special or general law." Lake Worth Utilities Authority v. City of Lake Worth, 468 So.2d 215 (Fla. 1985) at 217. "Each time municipal authority, or change in municipal authority, was sought, it would be necessary to approach the legislative branch of government." Id. at 216-17.

Florida's population boom, which started in the 1950's, put great pressure on Florida's municipalities and counties to provide additional infrastructure and public services. They were severely hampered in their ability to meet local needs by the "Reservation of Authority Rule" and "Dillon's Rule." In the 1950's and 1960's, the Legislature was flooded with local bills, population bills and special bills (for the formation of special taxing districts) under which the Legislature would provide solutions to their local problems. For example, in 1965, 2,107 local bills were introduced in the Legislature; by 1970 the number of population acts reached 2,100 with over 1,300 having been enacted after the effective date of the 1960 census; and, by 1968 the number of special taxing districts (exclusive of school districts) which were created by the Legislature has been

estimated at 1,000. See Sparkman, The History and Status of Local Governmental Powers in Florida, 25 Fla. L. Rev. 271 (1973) at 286. It became obvious that, in order to meet local needs and to relieve the Legislature of the burden of solving local problems (by means of local acts, population acts and special acts), broad home rule powers needed to be granted to Florida's municipalities and counties. This need was met, in the case of municipalities, by the enactment of Article VIII, Section 2(b) of the 1968 Constitution and the Municipal Home Rule Powers Act, discussed below.

(b) Grant of Municipal Home Rule Powers.

Article VIII, § 2(b) of the 1968 Constitution granted broad home rule powers to Florida municipalities. That section provides in pertinent part:

> Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any powers for municipal purposes except as otherwise provided by law. (Emphasis added.)

The Honorable Paul W. Danahy, Jr., who was Chairman of the House Committee on Local Government, described the effect of this constitutional provision as follows:

> "a municipality need not seek legislation unless it is needed to remove a special prohibition against performing a function; the absence of a specific prohibition means that the municipality may proceed in the manner deemed appropriate at the local level." (Emphasis added.)

See, Memorandum from Representative Paul W. Danahy to members of the Florida House of Representatives, Feb. 18, 1969, Id. at 293. Talbot "Sandy" D'Alemberte, the reporter for the Constitutional Revision Commission (later the Dean of the Florida State University School of Law) described the difference between the above quoted provisions of the 1968 and 1885 Constitutions as follows:

> "The apparent difference is that under the new language, all municipalities have governmental, corporate and proprietary powers unless otherwise provided by law, whereas under the 1885 Constitution, municipalities had only those powers expressly granted by law."

Commentary by Talbot "Sandy" D'Alemberte, 26A West's Florida Statutes Annotated 292.

In the first litigated case involving the scope of municipal powers decided after the adoption of the 1968 Constitution, the Florida Supreme Court held that a statute was needed to define the scope of the term "municipal purpose," as used in Article VIII, § 2(b) of the 1968 Constitution. City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972). The Legislature responded in 1973 by enacting the Municipal Home Rule Powers Act (which is codified in Chapter 166, Florida Statutes). The Municipal Home Rule Powers Act was declared to be constitutional by the Florida Supreme Court in City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1974).

§ 166.021, Florida Statutes (a section of the Municipal Home Rule Powers Act), sets forth the scope of municipal home

rule powers. The pertinent provisions of that section are as follows:

> **166.021 Powers. --**
> (1) 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.
>
> (2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.
>
> (3) The Legislature recognizes that pursuant to the grant of power set forth in s.2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
>
> (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s.2(c), Art. VIII of the State Constitution;
>
> (b) Any subject expressly prohibited by the constitution;
>
> (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
>
> (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss.1 (g), 3, and 6(e), Art. VIII of the State Constitution.
>
> (4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations,

> judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. . . . (Emphasis added.)

Article VIII, Section 2(b) of the 1968 Constitution and the Municipal Home Rule Powers Act abrogated the "Reservation of Authority Rule" and "Dillon's Rule" and wrought a fundamental and sweeping change in the powers of municipalities. In State v City of Sunrise, 354 So.2d 1206 (Fla. 1978) the Florida Supreme Court acknowledged the vast breadth of municipal home rule powers. The Court stated the issue in that case as follows: "The question we must decide is whether or not a Florida municipal corporation is authorized by law to issue 'double advance refunding' [revenue] bonds?" (emphasis supplied). Ibid. The Court held that municipalities may issue such bonds under their constitutional home rule powers, stating that:

> Municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitation of authority. Id. at 1209.

Under the 1968 Constitution and the Municipal Home Rule Powers Act, a municipality is authorized by law to exercise any governmental, corporate, or proprietary power for a municipal purpose which may be exercised by the State Legislature except when expressly prohibited by law, and a municipality may legislate on any subject matter on which the Legislature may act except for subjects described in paragraphs (a), (b), (c) and (d) of § 166.021(3), Florida Statutes. Thus, unless the City's levy of the special assessments pursuant to its home rule Ordinance is

invalid on account of § 166.021(1), Florida Statutes (because of a violation of an express prohibition of superior law), or unless the same is invalid on account of Section 166.021(3), Florida Statutes (because the subject matter is subject to one of the preemptions described in paragraphs (a), (b), (c) or (d) of § 166.021(3), Florida Statutes), the special assessments must be found to be valid. The issues of prohibition and preemption are discussed under subheading (c) below.

(c) There is no express prohibition or preemption in this case.

(i) Express Prohibition

In order for a municipal ordinance or a provision thereof to be invalid and void on the grounds of prohibition by § 166.021(1), the prohibition must be an express; prohibition may not be implied.

There are two types of prohibition. The first, and more obvious, type of express prohibition is where a superior law provides that municipalities shall not have the power to do a specified act. The second, more subtle, type of prohibition is where there is an irreconcilable conflict between a municipal ordinance and the 1968 Constitution, general law, special law, or other law of superior authority (such a county ordinance of a Charter County).

Here, the first type of prohibition is not involved, because there is no provision of the 1968 Constitution or of any Act of the Legislature which expressly forbids the City from levying the special assessments which are involved in this case.

Subsection (1) of § 166.021, Florida Statutes provides "municipalities may exercise any power for municipal purposes, except when expressly prohibited by law." Subsection (2) defines "municipal purpose" to mean "any activity or power which may be exercised by the state or its political subdivisions." The issuance of bonds for public works within the City and the levy of special assessments to pay debt service thereon is a "municipal purpose," as so defined. As stated above, the exercise of these powers by the City are not "expressly prohibited by law." No superior law expressly states that a municipality shall not levy the special assessments involved in this case. Thus, in this case, there is no express prohibition of the first type.

There is also no prohibition of the second type. The Florida Supreme Court, in City of Miami Beach v. Rocio Corp., 404 So.2d 1066 (Fla. 1981) (hereinafter cited as Rocio Corp.), stated the following rules relating to "conflict" (citing the noted cases to support its conclusions):

- Although legislation dealing with the same subject matter may be enacted by both state and a local government (in areas not preempted by the State) the legislation enacted by the local government will be invalid if the two legislative enactments conflict. Rinzler v. Carson, 262 So.2d 661 (Fla. 1972).
- An ordinance which supplements a statute's restriction of rights may coexist with that statute. Elliott

Advertising Company v. Metropolitan Dade County, 425 F.2d 1141 (5th Cir. 1970).

- An ordinance which countermands rights provided by statute is invalid. Scanella v. Fernandez, 371 So.2d 535 (Fla. 3d DCA 1975). [Similarly, an ordinance which grants rights which have been expressly denied by state law will be invalid. For example, a municipal ordinance could not legalize gambling within the municipality where a state statute declares gambling to be illegal.]

The application of the foregoing rules is illustrated by in City of Miramar v. Bain, 429 So.2d 40, 42 (Fla. 4th DCA 1983). In Bain a homeowner wished to keep a pet puma in the front yard and desired to construct a fence complying with the regulations of the Florida Game and Fresh Water Fish Commission (the "Game Commission"), the height of which exceeded the maximum allowed by the City's zoning ordinance. The District Court of Appeals considered the question of whether a municipal zoning ordinance limiting the height of front yard fencing was invalid because of conflict with regulations of the Game Commission. If a conflict were found, the zoning ordinance would be void because regulations of the Game Commission would be the superior law for purposes of the conflict rule. The Game Commission's regulations did not grant to property owners an affirmative right to have a puma in the front yard; it placed restrictions on the property owners' rights. Therefore, the zoning ordinance (which prohibited fences of the height required by the regulations) did

not deprive the property owner of a right granted by state law. The ordinance supplemented a state restriction of rights rather than countermanding rights granted by the state. Thus, the Court of Appeals found that the requirements of the Game Commission's regulations and the City's zoning ordinance were not in conflict. The result was that the property owner was not permitted to build a fence of a height which would permit the keeping of a puma in the front yard. As this case illustrates, the courts will seek to harmonize an ordinance with a superior law, and find conflict (and hence prohibition) only where no other result is possible. If reasonably possible, all doubts must be resolved in favor of the validity of ordinances. See, e.g., State v. Cormier, 375 So.2d 852 (Fla. 1979); Hamilton v. State, 366 So.2d 8 (Fla. 1978); Rollins v. State, 354 So.2d 61 (Fla. 1978).

There is no conflict between the City's home rule Ordinance and any other law relating to municipal special assessments, i.e. Chapter 170, Florida Statutes. Section 170.19, Florida Statutes, states in pertinent part that:

> This chapter . . . shall be construed as an additional and alternative method for the financing of the improvements referred to herein.

Likewise, Section 170.21, Florida Statutes, states in pertinent part that:

> This chapter shall . . . shall be deemed to provide a supplemental, additional, and alternative method of procedure for the benefit of all cities, towns and municipal corporations of the state . . . .

In view of the foregoing provisions of Chapter 170, Florida Statutes, the City's home rule Ordinance is not in conflict with that Chapter. The City's home rule Ordinance is not expressly prohibited by and does not conflict with any other constitutional and statutory provisions. On the contrary, that Ordinance is compatible with, and may be read in harmony with, the 1968 Constitution the Municipal Home Rule Powers Act, Chapter 170, Florida Statutes and other general and special laws.

(ii) Certain Preemption Provisions are Inapplicable.

Subsection (3) of § 166.021, Florida Statutes, provides "the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the State Legislature may act unless an express limitation by way of preemption described in § 166.021(3)(a), (b), (c), or (d), Florida Statutes is applicable. Clearly the Legislature may expressly authorize municipalities to issue bonds and to levy special assessments (as it did in Chapter 170, Florida Statutes). Thus, the subject matter involved in this case is "subject matter upon which the State Legislature may act." Therefore, the City may enact an ordinance concerning that subject matter unless an express prohibition by way of a preemption described in § 166.021(3)(a), (b), (c), or (d), Florida Statutes, is applicable.

The express limitation set forth in § 166.021(3)(a), Florida Statutes provides that a municipal legislative body may not legislate on the subjects of annexation, merger and

extraterritorial power which require a general or special law pursuant to Article VIII, § 2(c) of the 1968 Constitution. That limitation (which is an express prohibition based on a constitutional preemption) is not applicable in this case, because (i) the Downtown Special Assessment District lies entirely within the City (and, therefore, no exercise by the City of extraterritorial power is involved) and (ii) the Ordinance does not provide for either a merger involving the City or the annexation of territory into the City.

The express limitation set forth in § 166.021(3)(b), Florida Statutes, provides that a municipal legislative body may not legislate on any subject which is expressly prohibited by the 1968 Constitution. That limitation is not applicable in this case, because there is nothing in the 1968 Constitution which expressly prohibits the City from issuing bonds and levying special assessments under its home rule powers.

The express limitation set forth in § 166.021(3)(d), Florida Statutes, provides that a municipal legislative body may not legislate on any subject preempted to the county pursuant to a county charter. That limitation is not applicable in this case, because an examination of the Palm Beach County Charter discloses no provision which expressly preempts to Palm Beach County the right to levy special assessments or the right to issue bonds payable from such assessments.

The express limitation set forth in § 166.021(3)(c), Florida Statutes, provides that a municipal legislative body may

not legislate on any subject matter expressly preempted to the state or county government by the 1968 Constitution or general law. Neither the 1968 Constitution nor general law expressly preempt the subject matter of special assessments to the county government.

The remaining question is whether the express limitation set forth in § 166.021(3)(c) prevents the City from levying special assessments because the subject matter of municipal special assessments has been preempted to the state government by the 1968 Constitution or by General Law. This question will be addressed under subheading (iii) below.

(iii) The Subject of Special Assessments has not been preempted to the State government by either general law or by the 1968 Constitution.

(A) There is no preemption to the State by general law.

There is no general law which expressly preempts to the state government the subject matter of municipal special assessments.

The Florida Supreme Court has made it clear that the mere fact of comprehensive state statutory coverage of a subject does not constitute preemption. In Rocio Corp., supra, the City of Miami Beach enacted a condominium conversion ordinance even though the state Condominium Act (a general law codified in Chapter 718, Florida Statutes) thoroughly addressed the procedures for the creation, sale, and operation of condominiums and required every condominium created and existing in the State

to be subject to the provisions of such Act. The Florida Supreme Court stated, "Nowhere, either in its statements of purpose or other provisions, does Chapter 718 expressly preempt the subject to the state." Rocio Corp., supra, at 1069, fn.5.

Likewise, in City of Venice v. Valente, 429 So.2d 241 (Fla. 3d DCA 1983) at 243-44, it was argued that, because a general law provided for attorney's fees in special assessment suits, the statute had preempted to the state the general subject of costs and attorney's fees. The District Court of Appeal found that the general law "did not expressly preempt or impliedly preclude municipalities from providing for costs and attorney's fees in other appropriate instances in litigation."

In State v. City of Pensacola, 397 So.2d 922 (Fla. 1981), a bond validation case, the City of Pensacola sought to validate an issue of single family mortgage revenue bonds to be issued by the City under its home rule powers. The State asserted that the subject matter had been preempted by the Florida Housing Finance Authority Law and the Community Redevelopment Act of 1969 which dealt, respectively, with the issuance of single family mortgage revenue bonds for housing and bonds for community redevelopment. The Florida Supreme Court held that the City's bonds were valid and that the subject matter had not been preempted by the aforesaid acts, stating:

> . . . neither of these acts expressly prohibits municipalities from issuing revenue bonds for the purpose of financing housing or redeveloping areas within their boundaries. Instead they merely authorize the creation of housing finance authorities and community

> redevelopment agencies whose powers to issue bonds are supplemental to those of the counties and municipalities. Id. at 924.

Thus, a preemption to the State Government of a particular subject matter requires that the 1968 Constitution or a general law state in plain and unequivocal language that the subject matter is reserved to the state or county government. Preemption will never be implied. In view of the provisions of Section 170.19 and 170.21, Florida Statutes, quoted above, Chapter 170 Florida Statutes clearly does not preempt the subject matter of special assessments to the state government.

(B) There is no preemption to the State under the 1968 Constitution.

The only remaining basis upon which preemption to the state could can be asserted is Art. VII, of the 1968 Constitution. Article VII, § 1(a), provides:

> "(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

Article VII, § 9(a), of the 1968 Constitution states in pertinent part:

> (a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution. (Emphasis supplied).

In the case at bar, the Circuit Court expressly found that the special assessment was not a tax, yet held the assessments invalid as the grounds that the exception in Article VII § 166.021(3)(c) applied because the subject matter was preempted to the state by Art. VII, § 1(a) of the 1968 Constitution. The Circuit Court's holding conflicts with its finding that the special assessment is not a tax. This conflict may well arise as a result of certain pre-home rule power cases and dicta in certain post-home rule power cases; these cases are discussed below.

Prior to the adoption of the 1968 Constitution and the Municipal Home Rule Powers Act, municipalities were subject to the "Reservation of Authority Rule" and "Dillon's Rule," discussed under subheading (a), above. As a result of those rules municipal charters (which were special acts of the Legislature) often contained express provisions authorizing the levy of municipal special assessments.

The application of the "Reservation of Authority Rule" and "Dillon's Rule" are clearly evident in pre-home rule power cases involving special assessments. For example in City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476 (1935), the Court stated at 160 So. 478:

> The general rule is that municipal corporations have no inherent power to levy special assessments, and that no such power existed in common law. In order that such assessments be valid and enforceable, they must be made pursuant to legislative authority and the method prescribed by the Legislature must be substantially followed. Page and Jones, Taxation by Assessment, § 775, b.1331;

Carr v. City of Kissimmee, 80 Fla. 759, 67 So. 699.

In Coral Gables, Inc., the Court examined the city's Charter (a special act of the Legislature) and determined that the city had been granted, by its Charter, the power to levy special assessments, but had failed to comply with the mandatory provisions of its Charter relating to the imposing of the assessments involved in the case. The Court, therefore, held that the assessments were infected with fundamental error and were invalid. The Court stated that its decision was without prejudice to the city to proceed under its Charter to make valid assessments.

In Snell Isle Homes, Inc., v. City of St. Petersburg, 199 So.2d 525 (Fla. 2d DCA 1967), the City of St. Petersburg levied special assessments for the installation of sanitary sewers, street paving and drainage upon certain lands. The assessments were levied pursuant to the city's Charter (a special act of the Legislature). The city's Charter, which authorized the levy of special assessments, contained a requirement that upon initiating the special assessment proceedings, the City Manager shall prepare and file in his office plans and specifications and a cost estimate for each improvement. The Court found that the filing requirement must be strictly complied with; any deviation from requirement was jurisdictional and therefore fatal to the validity of the special assessments. In its opinion at 199 So.2d 525, Florida Statutes, the Court stated:

> Municipalities have no inherent power to levy assessments. Before assessments may become

> valid, they must be made pursuant to the method prescribed by the Legislature. This principle was set forth clearly in City of Coral Gables v. Coral Gables, Inc., (1935), 119 Fla. 30, 160 So. 476. Any deviation from this rule must be resolved against the City's power to levy special assessments and a material departure from the express authority contained in the charter is fatal to the validity of the special assessments. 29 Fla. Jur. Special Assessments, § 3; City of Gainesville v. McCreary, (1913), 66 Fla. 507, 63 So. 914; 48 Am. Jur., Special or Local Assessments, § 4.

As discussed under subheading (b), above, the enactment of Art. VIII, § 2(b) of the 1968 Constitution and the Municipal Home Rule Powers Act made a fundamental and sweeping change in the scope of municipal powers. As a result, both the "Reservation of Authority Rule" and "Dillon's Rule", as applied to municipalities, were abrogated.

The Municipal Home Rule Powers Act repealed a number of statutes relating to municipal powers, including Chapter 167, Florida Statutes (1971), which authorized municipalities to levy special assessments for street, sewer and similar improvements. Chapter 167 was eliminated not to limit the power of municipalities to levy special assessments, but rather in express recognition that Chapter 167, Florida Statutes was no longer necessary because the power to levy special assessments had been conferred upon municipalities by the broad home rule powers which were granted to municipalities by the 1968 Constitution and the Municipal the Home Rule Powers Act. That legislative intent is codified in Section 166.042, Florida Statutes, which states as follows:

166.042 Legislative intent. -

(1) It is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184 of Florida Statutes shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional [home rule] powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe. (emphasis supplied)

Shortly following the enactment of the Municipal Home Rule Powers Act, the Attorney General of the State of Florida issued two published opinions which were in accord with the intentions of the Legislature, as expressed in Section 166.042, Florida Statutes.

In A.G.O. 074-24, dated January 31, 1974, the Attorney General ruled that the Municipal Home Rule Powers Act granted broad home rule powers to municipalities and provides that a municipality may enact legislation concerning any subject matter which the State Legislature has the power to enact, which subject matter is not expressly preempted to the state or county government, by the Constitution or by general law or not expressly prohibited by the Constitution, general law, county charter or special law. The Attorney General's Opinion then states:

> "Obviously, the state legislature has the power to enact a provision requiring payment by the school board for lawfully imposed assessments [of the city] for special benefits or improvements . . . . There is no express preemption of this subject area to state or county government nor is it expressly prohibited by the Constitution, general law, county charter or special law . . . . Therefore, it would appear that the aforesaid city charter provision [now an ordinance by force of s. 166.021(5)] takes precedence over s. 235.34 [which authorizes the school board to expend funds for special improvements agreed to by the board]." (Emphasis supplied)

In effect A.G.O. 074-24 treated the city charter as a home rule ordinance.

In A.G.O. 074-244, dated August 9, 1974, the Attorney General stated:

> "This office has previously held that the levying of assessments for special benefits is a proper function of a municipality pursuant to s. 166.021, F.S., so long as it has not been expressly preempted to the state or county government by the Constitution or general law, nor expressly prohibited by the Constitution, general law or county charter or by special law. Attorney General Opinion 074-24".

The ruling then held that the City of Coral Gables could not create and establish a special taxing district within its borders for the purpose of erecting municipal parking facilities and assessing the cost of the improvements directly against the affected property because, under the Dade County Charter, the power to create and abolish special purpose districts is preempted to Dade County and, therefore, the City of Coral Gables was not authorized to establish the special tax district because

the subject matter was preempted to the county by the county's home rule charter. In the post home rule powers cases discussed below, the Florida Supreme Court, by way of dictum gave lip service to the "Reservation of Powers Rule" and "Dillon's Rule", citing pre-home rule powers cases as authority, apparently forgetting that those rules had been abrogated by the Municipal Home Rule Powers Act.

In City of Miami v. Brinker, 342 So.2d 115 (Fla. 1977), the City of Miami had imposed a demolition lien on certain property. The Court held that the City's demolition lien was not a special assessment lien and, consequently, the City could not receive a portion of the proceeds of a sale of the property under a tax deed. In its opinion in Brinker, the Court stated, by way of dicta, that municipalities have no inherent power to levy special assessments and before special assessments may become valid, they must be made pursuant to the method prescribed by the Legislature. The Court cited City of Coral Gables v. Coral Gables, Inc., supra, and Snell Isle Homes, Inc., v. City of St. Petersburg, supra (both pre-home rule powers cases), as authority for the foregoing statement.

Rinker Material Corporation v. Town of Lake Park, 494 So. 2d 1123 (Fla. 1986) involved special assessments levied under Chapter 170, Florida Statutes. In its opinion, the Florida Supreme Court stated that "in order that such assessments be valid and enforceable they must be made pursuant to legislative authority and the method prescribed by the Legislature must be

substantially followed". The Court cited City of Coral Gables v. Coral Gables, Inc., supra, a pre-home rule powers case, as authority for the foregoing statement. In Rinker, the special assessments were being levied pursuant to Chapter 170, Florida Statutes, so the quoted statement is correct as to the need for substantial compliance with the procedural requirements of that chapter. However, the first part of the statement is dicta and is incorrect under the 1968 Constitution and the Municipal Home Rule Powers Act which abrogated the "Reservation of Authority Rule" and "Dillon's Rule." The Court then stated that the issue was not whether the town council deviated from the procedures outlined in Chapter 170, Florida Statutes, but whether the deviation was so substantial as to deny the appellant due process. The Court found that there had been substantial compliance with Chapter 170, Florida Statutes, and therefore, affirmed the Circuit Court's validation of the special assessment bonds.[1]

In neither of the foregoing cases did the Court hold that the subject of special assessments had been preempted to the state by Article VII, § 1(a), of the 1968 Constitution.

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1. The Brinker and Rinker cases are cited as authority in A.G.O. 080-87, dated November 10, 1980 and other Attorney General Opinions following A.G.O. 080-87 without reference to the earlier Attorney General Opinions cited above or recognition of the effect of the Municipal Home Rule Power Act.

It is clear that the Legislature did not consider special assessments to be a tax or a form of taxation within the meaning of Article VII, Sections 1(a) and 9(a), of the 1968 Constitution when it enacted the Municipal Home Rule Powers Act, because in Section 166.042, Florida Statutes, it stated that the repeal of Chapter 167, Florida Statutes, which had theretofore expressly authorized certain municipal special assessments was not intended to restrict the municipalities power to levy special assessments, but was a recognition of the constitutional home rule power of municipalities to levy special assessments.Authoritative treatises and decisional law clearly establish that special assessments are not subject to the Constitutional limitations found in Sections 1(a) and 9(a) of Article VII of the State Constitution. Judge Dillon, in Section 1433 of the seminal treatise *Dillon's Municipal Corporations* (5th Ed, 1911) states:

> . . . constitutional provisions which place a limit upon municipal "taxation" have no application to and do not affect the power of the municipality to make improvements by special assessment.

In Lainhart v. Catts, 73 Fla. 735, 75 So. 47 (Fla. 1917) the Court held, with respect to the similar provisions in the 1885 Constitution, that:

> Sections 2, 3, and 5 of article 9 of the [1885] Constitution apply only to general taxation for state, county and municipal purposes and have no reference to special assessments for local improvements.
> 75 So. at 54.

See also Witney v. Hillsborough County, 99 Fla. 628, 127 So. 486 (Fla. 1930). The 1972 case of Lake Howell Water and

Reclamation District v. State, 268 So. 2d 897 (Fla. 1972), confirmed that the 1968 Constitution did not change this rule. In that case the Court stated:

> We have carefully inspected pertinent provisions of the 1968 Florida Constitution and in particular Sections 9 and 12 of Article VII. We find nothing therein that places special assessments for local improvements under the restrictions pertaining to ad valorem taxes. We find no basis in the 1968 Florida Constitution for a different construction concerning special assessments for local improvements from that which obtained under the 1885 Florida Constitution. 268 So.2d at 899.
> (Emphasis supplied.)

Thus, under the 1968 Constitution, as under the 1885 Constitution, special assessments are not taxes and are not controlled by the constitutional provisions of Art. VII, §§ 1(a) and 9(a), relating to taxes. This is consistent with the view of the Legislature (as reflected in § 166.042, Florida Statutes), which clearly felt that municipalities were authorized to levy special assessments by Article VIII, § 2(a) of the 1968 Constitution and the Municipal Home Rule Powers Act.

There is a clear distinction between special assessments and general taxes. New Smyrna Inlet Dist. v. Escle, 103 Fla. 24, 137 So. 1, reh denied 103 Fla. 31, 138 So. 49 (1931). A tax is a burden imposed for the support of the government's general governmental functions, whereas a special assessment is a special change on land to defray the cost of providing a special benefit and which may not exceed the benefit conferred. Compare Ft. Lauderdale v. Canter, 71 So.2d 260 (Fla. 1954) (charge was a tax)

with Gleason v. Dade County, 174 So.2d 466 (Fla. App. D3 1965) (levy of assessment for garbage services was not a tax).

Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976), pet. for cert. denied, 444 U.S. 867 (1979) makes it clear that governmental impositions on land are not necessarily taxes. In that case, the Florida Supreme Court held that an impact fee which is imposed by a municipality under a properly drafted impact fee ordinance is not a tax, but is a user charge which is fairly allocable to the cost of capital improvements. Footnote 9 at 329 So.2d 320 rejects an Illinois case cited by the builders association because Illinois villages have no home rule power.

In Home Builders & Contractors Association of Palm Beach County, Inc. v. Board of County Commissions of Palm Beach County, 446 So.2d 140 (Fla. 1948), the Florida Supreme Court relied on the home rule powers granted to the county stating:

> "[W]e hold that Palm Beach County had the power and authority to enact the impact fee ordinance in question, assuming the ordinance involves a regulatory fee rather than a tax."

The Court found that the impact fee for road improvements was a regulatory fee imposed under the police power and not a tax imposed under the taxing power because: (i) the total impact fee did not exceed the costs of improvements; (ii) the impact fee bore a reasonable relationship to the needs of the subdivision; (iii) the improvements adequately benefit the development; (iv) the funds derived from the impact fee were to be expended in the zone from which the fees were collected; (v)

the funds from the impact fee were earmarked for use in acquiring capital facilities and (vi) the impact fee was not a general revenue raising measure, but was imposed under the county's home rule power to conduct county government and to provide roads and in furtherance of the regulatory provisions of the Local Government Comprehensive Planning Act. The Court found that characterization of the impact fee as a regulatory fee is particularly appropriate where the impact fee is used to compliment other land use measures and that where the impact fee is characterized as a regulatory measure, its validity should be determined under the "rationale nexi" police power standard. See also Hollywood, Inc., v. Broward County, 431 So.2d 606 (Fla. 1983) (upholding impact fee for parks). The Court was of the view that if the above described criteria were not met, the impact fee would be invalid as a tax which had not been authorized by general law.

The above criteria which distinguish impact fees from taxes also distinguish the special assessments in this case from taxes, to wit:

(i) the total assessments will not exceed the costs of the improvements;

(ii) the assessments bear a reasonable relationship to the needs of the assessment district;

(iii) the improvements adequately benefit the Assessed Parcel;

(iv) the funds are to be expended in the zone from which they are to be collected;

(v) the funds will be earmarked for use in providing capital facilities; and

(vi) the assessments are not a general revenue raising measure, but are to be imposed under the City's power to conduct municipal government and to provide roads and other infrastructure in furtherance of the City's land use plan and the development order governing development of the downtown area.

Under the criteria, the special assessments to be imposed under the City's Ordinance are clearly distinguishable from general taxes. Therefore, under the cases cited above, the special assessment in this case are not taxes within the meaning of Article VII, §1(a) and are not preempted to the State.

Further, the criteria noted above indicate the second source of authority for the City to impose the subject special assessments. The City has the authority under its police powers to conduct municipal government and to provided roads and other infrastructure improvements of the nature of the Project. Within the limitations described in the Dunedin, Palm Beach County and Hollywood, Inc. cases cited above, the City's police powers include authority to raise revenue through regulatory changed to defray

the cost of such improvements. The assessments in this case should be upheld as being levied pursuant to the City's police power and regulatory in nature.

In the case at bar, the Circuit Court, on the basis of the evidence presented at trial, expressly made findings which support the foregoing conclusion to wit: (1) the assessments are not a tax; (2) the assessments are directly proportional to the special benefits to be provided each parcel; (3) the benefits are in excess of the assessments; and (4) all notice provisions required by law have been fulfilled. The foregoing factual and legal findings of the Circuit Court in this case support the City's contention that the special assessments are a valid regulatory charge.

Thus, whether the special assessments are considered to be imposed pursuant to the taxing power or pursuant to the City's police powers, they are in any event not a tax within the meaning of Art. VII, § 1(a), of the 1968 Constitution and may be levied pursuant to the City's home rule powers. Accord, M. Daniel Gelfand, State and Local Government Debt Financing (Callaghan & Company, Deerfield, Illinois, 1989) at Chapter 9, page 21 ("a municipality usually must levy a special assessment pursuant to a state constitutional grant, specific statutory authority or its home rule authority" [emphasis supplied]). See also Reams v. City of Grand Junction, 676 P.2d 1189 (Cal. 1984) ("Grand Junction is a home rule city as defined by Article XX, Section 6, of the Colorado Constitution and the Grand Junction Code of

Ordinances expressly authorizes the city to make local improvements and assess the cost thereof. The ordinance here contested was duly promulgated pursuant to these statutes and code."); Moore Funeral Homes, Inc. v. City of Tulsa, 552 P.2d 702 (Okl. 1976) (holding that under Oklahoma law a municipal charter supersedes all state laws as to purely municipal affairs and that as to the procedure and apportionment of special assessments "the charter provisions control. Tulsa is a home rule city and the improvement is a municipal affair . . ."); and Cook v. City of Addison, 656 S.W.2d 650 (Tex. App. 5 Dist. 1983) (home rule powers of city authorize use of other available funds to pay costs of local improvements and collection of special assessment to cover a portion of that cost).

Acceptance of the rationale of the Circuit Court that special assessments are taxes within the meaning of Article VII, Section 1(a) would require the invalidation of all provisions contained in municipal charters authorizing special assessments. Under this rationale, special assessments could not even be levied under a municipal charter (which is a special act that may be amended by city ordinance with elector approval) because, if special assessments are taxes, they may only be authorized by general law. Similarly, all provisions authorizing special assessments which are contained in special acts creating special districts would likewise be invalid because under Article VII, § 9(a), of the Florida Constitution municipalities and special districts may be authorized only by general law to levy taxes

(other than ad valorem taxes). If special assessments are taxes, then municipal charters and other special acts such as those creating special districts, not being general laws, are not sufficient to authorize municipalities and special districts to levy special assessments. However, the Florida Supreme Court consistently has upheld assessments imposed pursuant to special acts provisions since the adoption of the 1968 Constitution.

For example, in Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971), the Florida Supreme Court considered the validity of special assessments made pursuant to the Section 284 of the city's Charter. The court held:

> We do not find that Section 284 is materially different from the general law, F.S. Chapter 170, F.S.A., providing a supplemental method of making local improvements, or that it was differently applied in apportioning the costs of the road project on the front foot basis. The constitutionality of Chapter 170 has been upheld, as well as its application for assessing costs on a front foot basis. Similarly, Section 284 should be upheld.

Similarly, in City of Naples v. Moon, 269 So.2d 355 (Fla. 1972), the Florida Supreme Court upheld (in a bond validation suit) the provisions of a special act authorizing special assessments for parking facilities. This case clearly establishes that, contrary to the rationale of the Circuit Court, special assessments may be authorized by special acts under the 1986 Constitution and are not subject to the "general law" requirement of Article VII, § 1(a) of the 1968 Constitution which is applicable to taxes.

In summary, the special assessments in this case are not taxes within the meaning of the 1968 Constitution and, therefore, the subject matter of special assessments has not been preempted to the state by Article VII, §§ 1(a) and 9(a) of the 1968 Constitution.

Thus, the provisions of the City's home rule Ordinance under which the special assessments are levied do not violate any of the express limitations specified in paragraphs (a), (b), (c) and (d) of § 166.021(3), Florida Statutes.

Therefore, as recognized by Section 166.042, Florida Statutes, the City has the home rule power under Article VIII, § 2(b), of the 1968 Constitution and Chapter 166, Florida Statutes, to authorize and impose the special assessments involved in the case.

CONCLUSION

For the reasons stated above, the Circuit Court erred in denying validation of the Bonds. The Appellant requests that this Court review the decision of the Circuit Court and direct the Circuit Court on remand to enter an Order validating the Bonds.

Respectfully submitted,

Peter L. Dame
Florida Bar No. 328162

SQUIRE, SANDERS & DEMPSEY
One Enterprise Center
Suite 2100
Jacksonville, Florida 32202
(904) 353-1264

Griffith F. Pitcher
Florida Bar No. 138661

SQUIRE, SANDERS & DEMPSEY
201 South Biscayne Boulevard
3000 Miami Center
Miami, Florida 33131
(305) 577-8700

Frank Bartolone
Florida Bar #236209

CITY OF BOCA RATON, FLORIDA
201 West Palmetto Park Road
Boca Raton, Florida, 33432
(407) 393-7700

Attorneys for
Plaintiff/Appellant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing, together with the Appendix required by Rule 9.220, Fla. R. App. P, was mailed this 12th day March 1991 to:

Leslie Ritch, Esq.,
Assistant State Attorney
P.O. Box 2905
West Palm Beach, Florida, 33402 C

Charles Schoech, Esq.
Caldwell & Pacetti
Third Floor, 324 Royal Palm Way
Palm Beach, Florida, 33480

Thomas Bolf, Esq.
P.O. Box 1900
Fort Lauderdale, Florida, 33302

Frank A. Kreidler, Esq.
12 S. Dixie Highway, Suite 204
Lake Worth, Florida, 33460-3737

Peter L. Dame
Squire, Sanders & Dempsey
One Enterprise Center
Suite 2100
Jacksonville, Florida 32202
(904) 353-1264
Fla. Bar #: 0328162

Counsel for Appellant