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FILED

IN THE SUPREME COURT  
OF FLORIDA

SID J. WHITE  
FEB 24 1992

CLERK, SUPREME COURT

CASE NO. 79-164 By Chief Deputy Clerk

METRO-DADE FIRE RESCUE  
SERVICE DISTRICT,

Petitioner,

VS.

METROPOLITAN DADE COUNTY,

Respondent.

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RESPONDENT'S ANSWER BRIEF

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On Appeal From The District Court Of Appeal  
Of Florida, Third District  
Case No. 89-2253

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## STATEMENT OF THE CASE AND FACTS

This petition arises from a dispute over the Metropolitan Dade County Commission's ability to control the special districts it creates. The County Commission maintains, and the Third District Court of Appeals has held, that the Dade County Home Rule Charter gives the Commission the legislative authority to define the powers of the governing body of the Metro-Dade Fire and Rescue Service District (hereinafter "Fire Board"). Stated another way, the Third District has held that it is the Dade County Commission as the Fire District's legislative body, and not the Fire Board itself, that determines what powers of governance the Fire Board is entitled to exercise. The Fire Board has conceded that the County Commission is the legislative body for the Fire District, **but** nevertheless insists the Commission has no authority to pass any ordinance that delineates the Board's powers of governance.

To understand the parties' dispute, a review of some of the salient points of the history of both Metropolitan Dade County and the Fire and Rescue Service District is essential. The Dade County Home Rule Amendment to the Florida constitution states that Dade County, by Charter, "**may** provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time, and provide for their

government and prescribe their jurisdiction and powers," Article VIII, § 11(e), Fla. Const. (1885), transferred to Art. VIII, Sec. 6(e), Fla. Const. (1968). The Dade County Charter as adopted states that "the Board of County Commissioners shall be the legislative and the governing body of the County and shall have the power to carry on a central metropolitan government." Dade County Charter §1.01 (A) (1980). The authority granted by the Charter includes the power to "by ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection, ... and other essential facilities and services." Charter § 1.01(A) (11) (1980). As originally written, the Charter designated the Board of County Commissioners as "the governing body of all such districts and when acting as such governing body, shall have the same jurisdiction and powers as when acting as the Board."

In 1980, the County Commission passed an ordinance creating the Metro-Dade Fire and Rescue Service District,<sup>1</sup> subject to becoming effective upon the approval of the County electorate. Metropolitan Dade County Code §§18-24 through 18-32.<sup>2</sup> That ordinance gave the Commission the authority, inter alia, to set the District's budget and gave the

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<sup>1</sup>The District is comprised of unincorporated Dade County plus all the municipalities in the County except Miami, Miami Beach, Coral Gables and Hialeah.

<sup>2</sup>Original enacted as Ordinance #SO-86.



District the authority to levy an ad valorem tax of up to three mills. The electorate approved the ordinance by a majority vote. In accordance with the above referenced provisions of the Charter as it existed at that time, the Board of County Commissioners served as the governing body of the District.

In 1986, Section 1.01(A) (11) of the County Charter **was** amended to provide that the County Commission would no longer be the governing body of the Fire District and that instead, the District "shall be governed by five members elected for initial terms of two years by the registered voters of the Metro-Dade Fire and Rescue Service District," Dade County Charter §1.01(A) (11) (1986).

In June 1987, the Board of County Commissioners, in accordance with its legislative prerogative under the Dade County Charter, (which prerogative **was** untouched and unaffected by the 1986 Charter amendment) adopted an ordinance implementing that 1986 revision. The ordinance includes provisions concerning the compensation and replacement of the members of the District's governing body and delineates the specific powers that the governing body is entitled to exercise, including the power to formulate plans and programs for the coordination of the District's activities with the activities of other governmental units, to study financing methods for the District and to make recommendations concerning all matters relating to the

provision of fire and rescue services. Metropolitan Dade County Code §§18-27, 18-33. The 1987 ordinance retained the provisions of the original Fire District ordinance which gave the Commission the authority to adopt the District's annual budget and the District the authority to levy an ad valorem tax. Metropolitan Dade County Code §18-28. After the ordinance was passed, five persons were elected to the District's governing body.

Approximately one year later, the Fire District's five member governing body filed this lawsuit, arguing that the 1986 Charter amendment prevented the County Commission from enacting any legislation with regard to the Fire District. The Fire **Board** asked the court to determine its "power and authority under the Dade County Charter" and to declare invalid those portions of the 1987 ordinance that defined its powers, that gave the Commission the authority to **set** the District's budget, and that provided for the compensation and replacement of Board members. On cross-motions for summary judgment, the trial court granted the requested relief.

The Third District Court of Appeal, sitting en banc. reversed. Metropolitan Dade County v. Metro Dade Fire Rescue Service District, 589 So.2d 920 (Fla. 3d DCA 1991). The court held that the 1986 Charter amendment did not alter the County Commission's legislative authority over the Fire District it created. The court explained:

The Fire Board enjoys only those powers conferred upon it by the County Commission. The Commission chose to limit the Fire Board's powers of governance to those enumerated in the 1987 ordinance. Such a limitation of power poses no conflict with the Charter's mandate that the five member Fire Board shall govern the Fire and Rescue District; it merely delineates the scope of the governing body's powers. Simply put, the determination of what powers may be exercised by the governing body of the Fire District is not up to the governing body itself, but to the legislative body that created the District. The County Commission's legislative authority over the governing body of the Fire District allows the Commission to determine the scope of that governing body's powers.

\* \* \*

The 1986 Charter amendment merely established that "said Fire and Rescue Service District shall be governed by five members . . .," and made the Fire District's governing body an entity distinct from the County Commission. The amendment did not set forth the powers to be enjoyed by that governing body; the determination of those powers remain within the County Commission's province. The Charter nowhere curtails the County Commission's authority over the very governing body that it created. To the contrary, the Charter itself compels the conclusion that the County Commission has the legislative authority to determine what areas of governance the Fire Board possessed, and which areas remain in the province of the County Manager.

Id. at 922-23, 924 (emphasis in original).

In a dissenting opinion, four members of the Third District concluded that the portions of the 1987 ordinance concerning the compensation and replacement of Fire Board members were valid, but that some portions of the ordinance

defining the Board's powers of governance were invalid. Even the dissenting judges agreed, however, that the County Commission retained the authority to pass legislation defining the District's powers. The dissent suggested that the matter should be remanded with instructions for the County Commission to adopt another ordinance to define the Fire Board's governing powers.

The en banc court denied the Petitioner's motion for rehearing. The court also denied the Petitioner's request for certification of a specific question, but did certify that the questions raised by this action are of great public importance. The court, however, did not specify exactly which issues it considered to be of such importance.

INTRODUCTION - THE ISSUE PRESENTED

[T]he difficulties and disagreements, of which history is full, are mainly due to a very simple cause: mainly to the attempt to answer questions, without first discovering precisely what questions it is which you desire to answer.

G.E. Moore, Principia Ethica (1903) (emphasis in original).

"What is the answer? ...In that case, what is the question?"

Last words of Gertrude Stein, as related in D. Sutherland, Gertrude Stein, A Biography Of Her Work (1951) (emphasis in original).

Sometimes it is easier to answer a question than it is to find the right question to ask. Such has been the case throughout this litigation. The parties have essentially stipulated to the facts and even agree on many of the applicable legal principles. The parties' principal disagreement has been over deciding exactly what it is that is in dispute. Thus, before addressing the merits of this case, or even this Court's jurisdiction to consider the merits, the issue actually raised by this litigation must be identified.

The Petitioner characterizes the question presented as whether a county charter provision that states that a county commission is not the governing body of a special district precludes the commission from enacting ordinances which

preclude governance by the district's governing body.<sup>3</sup> The Third District Court of Appeal did not so characterize the issue, and it does not fairly represent the parties' actual dispute. In fact, if the issue in this case were the one posed by the Petitioner, the parties would have no dispute at all. Of course the elected officials of the Fire Board constitute the governing body of **the** Fire District, and of course the County Commission cannot preclude the Fire Board from acting as the District's governing body. The 1986 Charter amendment says precisely that.

What is really in dispute is not whether the County commission can preclude the Fire Board from governing the Fire District, but whether the Fire Board's status as the District's governing body entitles it to exercise any powers other than those the County Commission in its legislative capacity confers upon it. For example, can the Fire Board levy taxes, acquire property by eminent domain, or issue bonds to cover long term debts? These, and similar questions, can only be answered by determining who has the

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<sup>3</sup>The Petitioner's characterization of the issue is a classic example of a misleading question. The Petitioner assumes that Dade County has passed ordinances which preclude the Fire Board from governing the Fire District, but the appropriate question is not whether the County can pass such ordinances but whether it did pass such ordinances. The Petitioner's characterization of the issue is reminiscent of the question "when did you stop beating your wife." The appropriate question is not "when did you **stop**," but "did you ever beat your wife."

authority to grant such powers. As the Third District concluded, in Dade County the Home Rule Charter unambiguously gives such authority to the County Commission. Dade County Charter §1.01 (A) (11).

The County has agreed from the outset of this case that pursuant to the 1986 amendment to the Dade County Charter, the five elected officials of the Fire Board now comprise the Fire District's governing body. The Fire Board has conceded that, under the same section of the Charter, the County Commission is the Fire District's legislative body. See Metropolitan Dade County v. Metro Dade Fire Rescue District. 589 So.2d 920, 923 (Fla. 3d DCA 1991). The question presented therefore is:

Does the County Commission's legislative authority over its Fire District include the authority to determine what specific **powers** the District's governing body may exercise?

**As** the Third District's opinion recognizes, once the issue is identified, resolution of the parties' dispute is straightforward: The County Commission, as the Fire District's legislative body, does have the authority to determine the scope of the Fire Board's powers.

### JURISDICTION

Only after the issue actually in dispute is identified can this Court determine whether it should accept jurisdiction. This Court in its order of January 8, 1992, postponed resolution of the jurisdictional question until after the submission of briefs. The Petitioner's brief does not in any way address the jurisdictional question and nothing in its brief presents any reason whatever why this Court should accept this case. The parties' dispute does not raise any issue of statewide concern, but rather an issue unique to Dade County and its Fire District and one unique provision of Dade County's Home Rule Charter. This is not an appropriate case for the Court to exercise its discretion to consider issues of great public importance.

The lower court's opinion does not conflict with any opinion of this Court or any other court in the state, does not construe any provision of state or federal law and does not directly affect any constitutional or state officer. Instead, the request to exercise jurisdiction is premised solely upon the assertion that the questions raised are of "great public importance." Although the Third District has certified the questions resolved in this case to be of such importance, it has not followed the usual procedure of identifying precisely what those questions are. One fact is clear, however, the questions resolved by the lower court are



unique to Dade County and are not likely to arise again elsewhere in the state. See, Dade County v. Saffan. 173 So.2d 138, 140 (Fla. 1965) (The metropolitan government of Dade County is unlike that of any municipality or other county in the state).

Contrary to the Petitioner's suggestion, the parties have no legal dispute over whether a county, in violation of its own charter, can pass an ordinance that precludes governance of a special district. The actual dispute in this case is over the political question of what powers of governance should be granted to the Fire District. That dispute is a local one between the County Commission and the Fire Board and has no bearing on any entity elsewhere in the state.

SUMMARY OF THE ARGUMENT

Contrary to the Fire Board's suggestion, the question in this case is not whether the County Commission has the authority to pass ordinances which violate its own Charter, but whether the County Commission has the authority to determine what powers of governance the Fire Board should exercise. There is a significant difference between asserting that the Fire Board cannot govern at all, and merely stating that the Board's authority to govern is limited to certain governmental powers.

Once the issue this case raises is accurately identified, resolution of the parties' dispute is straightforward. The Third District Court of Appeals has already concluded that, as between the Fire Board as the Fire District's governing body and the Dade County Commission as the Fire District's legislative body, it is the Commission that has the authority to determine what powers of governance the Fire Board may exercise. As the appellate court explained, "the determination of what powers may be exercised by the governing body of the Fire District is not **up** to the governing body itself, but to the legislative body that created the **District.**" 589 So.2d at 923. The Dade County Charter preserves the County Commission's legislative authority over the Fire District to define the Fire Board's powers of governance.

Governing authority and legislative power are two distinct legal concepts. Legislative authority is the right to define and delineate the governing body's jurisdiction and sphere of control. Governance is the exercise of those legislatively delegated powers. The 1986 Charter amendment removed the County Commission as the Fire District's governing body, but left unaffected the Commission's legislative authority over the District. Accordingly, the Commission's legislative authority continues to include the authority to define by ordinance the powers of the District's governing body.

The Petitioner erroneously assumes that as the governing body of the Fire District, it is entitled to define for itself which powers of government it wishes to exercise. The law, however, is directly to the contrary. Special districts possess no powers other than those expressly granted by the legislative body that creates them.

As the Fire District's legislature, the County Commission has **decided** to grant the Fire Board only those powers listed in the ordinances the Commission has enacted. In rejecting the Fire Board's attempt to garner greater powers, the Third District did nothing more than apply the well-established principle that a governing body of a special district can exercise no powers other than those granted to it by **the** legislative body that created it.

ARGUMENT

A" The Third District Court of Appeals Properly Held that the Dade County Commission has the Legislative Authority to Define the Powers of the Dade County Fire and Rescue District's Governing Body.

Prior to the 1986 referendum, the Dade County Charter provided:

The Board of County Commissioners shall be the legislative and the governing body of the County and shall have the power to carry on a central metropolitan government. This power shall include but shall not be restricted to the power to:

\* \* \*

11. By ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection, .... The Board of County Commissioners shall be the governing body of all such districts and when acting as such governing body shall have the same jurisdiction and powers when acting as the board.

Charter §1.01(A) (11) (emphasis added).

From its inception, the Charter has drawn a distinction between the County Commission's legislative and governing powers.<sup>4</sup> This distinction is fundamental to an understanding

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<sup>4</sup>The Charter is Dade County's constitution. Dade County v. Youngs Democratic Club of Dade County, 104 So.2d 636 (Fla. 1958); Chase v. Cowart, 102 So.2d 147 (Fla. 1958). The law presumes every word in a constitution has independent meaning. State v. Board of Co. Com'rs. of Orange County, 3 So.2d 360, 362 (Fla. 1941); Taylor v. Dorsey, 19 So.2d 876, 882 (Fla. 1944).

of this case, for the only change brought about by the 1986 Charter Amendment **was** to substitute the Fire Board as the governing body of the Fire District without altering the County Commission's legislative authority as the District's legislative body. The amendment also did not alter the Commission's authority to create or abolish special purpose districts, including the Fire District. The amendment did nothing more than state that so long as the fire protection district created by Ordinance No. 80-86 continues to exist, the governing body of the District shall be five elected officials.

Although the amendment could have altered the Commission's authority to act as the District's legislative body, it simply did not do so. Because the Charter amendment itself did not confer any express power on the Fire Board, the Board must look elsewhere for the source of the powers it seeks to exercise. Because the Fire District was created by an ordinance enacted by the County Commission, it is to that body that the Fire Board must look to obtain such powers of governance. As this Court explained in State v. Dade County.

**142 So.2d 79 (Fla. 1962):**

Under the constitution of this state, plenary power exists in the legislature over all municipalities of this state. This power, formerly residing in the legislature insofar as municipal corporations of Dade County are concerned, as limited by the Home Rule Charter, is now vested in the Board of County Commissioners and may be exercised by said Board to the extent that it does not

conflict with the provisions of the Constitution and general laws effecting all municipalities, except in such instances as may be expressly authorized by the constitutional amendment granting home rule to the County.

Id. at 86 (emphasis supplied).

Although State v. Dade County dealt with the County Commission's legislative authority over local municipalities, its reasoning applies with equal force to local special districts. Like municipalities, the powers of special districts are limited to those granted by legislative enactment. The Home Rule Charter gives the County Commission even greater authority over locally created special districts than it does over local municipalities. Compare Charter §1.01(A)(11) (giving the Commission the unfettered discretion to "establish, merge and abolish special districts) to Charter Article 5 (preserving certain rights to municipalities).

The Fire Board has conceded that since the County created the Fire District, it therefore has the right to abolish the District. The Board argues, however, that the County cannot legislatively exercise the lesser power of limiting the duties or functions of the governing board. But as the Third District Court of Appeals recognized, the County Commission's power to create and abolish the Fire District "surely" carries with it "the lesser power of limiting the duties and functions of the Fire Board." Accord Miami-Dade Water and Sewer Authority v. Metropolitan Dade County, 503

So.2d 1314 (Fla. 3d DCA 1987) ("When a legislative body has the power to create by ordinance, it has by implication, the power to amend, modify or repeal by ordinance.").<sup>5</sup>

The Fire Board makes much of the fact that its status as the District's governing body is mandated by the Dade County Charter, but the Charter states merely that the District shall be governed by the Fire Board, it does not say what

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<sup>5</sup>See, also, City of Miami v. Rodriguez-Quesada, 388 So.2d 258, 259 (Fla. 3d 1980) ("It is the general rule that the power to create an office generally includes the power to modify or abolish it even though the office is occupied by a duly elected incumbent."); State v. Crooks, 15 So.2d 675, 676 (Fla. 1943) ("It is academic that municipal and other corporations over which the legislature has plenary authority may be abolished, modified, and changed within the discretion of the legislature."); Gallas v. Sanchez, 405 P.2d 772, 775 (Haw. 1965) ("It is well established that the legislature having created the office or public position, may alter its terms or abolish it entirely."); Collins v. Russell, 33 S.E. 444, 445 (Ga. 1899) ("The legislature may abolish [an] office before [the] term expires, may modify its duties, may shorten or lengthen the term and increase or diminish the salary, or chancre the mode of compensation."); Smylie v. Williams, 341 P.2d 451, 453 (S.Ct. Idaho 1959) ("Where an office is of legislative creation, the legislature can modify, control or abolish it...."); Dupont v. Kember, 501 F.Supp. 1081, 1085 (M.D. La. 1980) ("A state legislature may at its pleasure create or abolish state offices, may modify their duties and may also shorten or lengthen the term of service."); Barrows v. Garvey, 193 P.2d 913, 14 (S.Ct. Az. 1948) ("There is no doubt of the power of the legislature which creates an office to abolish it or to chancre it."); In Re Bulser, 45 Cal. 553, 557 (Cal. 1873) ("The legislature created the office, and it had full power to abolish or chancre it, or extend or abridge the terms of incumbents at its pleasure."). McQuillen, Municipal Corporations, 54.05 (3d Ed.) (1988) ("[T]he legislature may wholly or partially withdraw or resume powers conferred on municipal corporations, and the legislature may ... return such powers to itself.... Unless restricted by the constitution, the legislature may strip a municipality of every power leaving it a corporation in name only."). (All emphasis added).

powers of governance the Board can exercise. Whether a special district obtains its governing powers directly from a constitution or charter provision, or merely from a statute or ordinance, the district is still subject to the legislative authority of the body that created it. In Bronson v. Board of Public Instructors of Osceola County, 145 So. 833 (Fla. 1933), for example, this court held that a provision of the state constitution mandating that school districts be supervised by elected boards of trustees, did not preclude the legislature from later restructuring such districts.<sup>6</sup>

The Fire Board's suggestion that the County Commission has somehow interfered with its right to govern the Fire District by enacting the implementing ordinances confuses the right to govern, now granted by the Charter to the Board, with the right to exercise the legislative power to determine what powers of governance the Board possesses. The County Commission's legislative powers were untouched by the 1986 Charter amendment. Merely granting a special district the

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<sup>6</sup>Similarly, in Cowell v. Avers, 220 S.W. 764 (Tex. 1920), the court held that inclusion of an office in a constitutional provision did not restrict the legislature's authority to abolish or restructure the office. The court explained that constitutional boards are still creatures of the legislature and the legislature's power over such boards "ought not to be restrained further than the people have plainly ordained," Id. at 766. Accord. Michaelis v. City of Long Beach, 360 N.Y.S.2d 473 (S.Ct.App.N.Y. 1974); Walker v. Massie, 121 S.E. 2d 448 (S.Ct.App.Va. 1961).



right to govern carries with it no inherent power other than the right to sue and be sued. Prout v. Inhabitants of Fire District of Town of Pittsfield, 28 N.E. 679 (Mass. 1891). To exercise any greater power, the legislative body that created the district must enact legislation conferring the asserted **power** upon the district.

The County Commission decided to confer upon the Fire District only those powers enumerated in the implementing ordinances. While the Fire Board complains that those powers are not sufficient for **it** to accomplish all of the things **it desires**,<sup>7</sup> it is not for the Fire Board itself to decide what powers of governance are sufficient. If the legislative body (i.e., the County Commission) wishes to give the governing body the power to levy taxes, enact a budget or issue bonds, it certainly may do so. Conversely, the legislative body also has the authority to deny the governing body such powers and to limit the governing body's role as stringently as the legislative body deems appropriate. what this all amounts to is the simple proposition that the determination of what

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<sup>7</sup>For example, the Fire Board continues to insist that Ordinance 18-27(e) is invalid because it prevents the members of the **Board** from setting their own compensation. Petitioner's Initial Brief at 9, fn.2. Nothing **in** the Charter, however, mandates that the members of the governing body of the Fire Board set their own salary. Indeed, even the four dissenters agreed that "the County Commission may, consistently with the Charter, set the compensation of the Board members. That portion of subsection (e) does not reduce the power of the Board to act as governing body of the District." 589 So.2d at 929.

powers may be exercised by a governing body is not up to the governing body itself, but to the legislative body that created it.

Before the 1986 Charter amendment, no one disputed the County Commission's legislative authority to **define** and **limit** the powers of the Fire District's governing body. The **Fire** Board argues, however, that since the passage of the amendment, the Commission has somehow been stripped of any legislative authority to control the Fire Board's powers. But the Board's argument cannot be reconciled with the provisions of the Dade County **Charter**, which give the County Commission plenary authority over special purpose districts, or with the language of the amendment itself, which places no limitations on any previously held power of the Commission, other than to state that the District will now have a new governing body. The Dade County Charter continues to vest the County Commission with legislative authority, including the authority to create and abolish the Fire District. Nothing in the 1986 amendment affects that authority.

By creating a new governing body, the 1986 Charter Amendment did nothing more than make the Fire District's governing body an entity distinct from the County Commission. The Amendment could have completely altered the authority of the County Commission by denying it the right to thereafter modify or abolish the District, but it simply **did** not do **so**. Both before and after the 1986 amendment, the Commission

retained its legislative authority to control all of the special districts within the County. The Charter continues to recognize the distinction between the County as a governing body and the County as a legislative body. The County's legislative authority to define and delineate its subordinate governing body's jurisdiction and powers still exists. The Fire Board simply refuses to acknowledge any distinction between what it means to be a governing body, on one hand and a legislative body, on the other. Legislative authority is the right to define and delineate the governing body's jurisdiction and sphere of control. Governance is the exercise of those legislatively delegated powers. The "plain meaning" of the Charter Amendment makes the Fire Board the District's governing body, but leaves the County Commission as the District's legislative body.

The question in this case is not, as the Fire Board suggests, whether the County can violate its own Charter by passing ordinances which prevent the Fire Board from governing the Fire District, but whether the County Commission's conceded legislative authority over the governing body of the District includes the authority to determine what powers the District's governing body may exercise. While the Fire Board acknowledges the Commission's legislative authority to abolish the Fire District, it refuses to address the question of whether the County may do anything less, i.e., define the spheres of governance of the

governing body. As the Third District has already concluded, the County Charter compels the conclusion that the County Commission has plenary authority to define the spheres of governance of the Fire District.

B. The Governing Body of a Special District has no Authority to Exercise any Powers other than those Conferred upon it by Law.

The Fire Board's argument that the County violated its own Charter by unduly restricting the Board's powers to those listed in the implementing ordinances is based on the erroneous assumption that the County took something away from the Fire Board. The law is clear, however, that a governing body of a special district possess no powers other than those delegated by law. The ordinances passed by the County Commission to define the Fire Board's powers granted the Board more powers than it previously had, not less. Without that grant of power, the Board would have no authority to act at all.

This court addressed this question more than seventy years ago in Forbes Pioneer Boatline v. Board of Commissioners of Everglades Drainage District, 77 Fla. 742, 82 So. 346 (Fla. 1919). In Forbes, the court considered a claim that the "governing board" of a drainage district, consisting of the governor and three cabinet members, exceeded its authority by attempting to levy and collect a toll for use of a public canal. The drainage district's governing board was created by statute and was given "all the powers of a body corporate including the power to **sue** and be sued by ... name ... to make contracts, to hold, buy and convey such personal or real property as may be necessary to carry out the purposes of the act, to appoint such agents and

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employees as the business of the board may require, and to borrow money and to initiate bonds therefor..., " Id. at 347. The court found that even this **broad** grant of authority was insufficient to confer upon the governing board the power to levy and collect tolls because the officials to whom the State entrusted the management and control of the district could exercise only those powers that were conferred upon them by statute. Even 70 years ago, the State Supreme Court found that it was "well-settled doctrine ... that a corporation created by statute is a mere creature of the law, and can exercise no powers except those which the law confers upon it." Id. at 352, quoting from Perrine v. Chesapeake & Delaware Canal Co., 9 How. 172, 183, 184 (13 L.Ed. 92).<sup>a</sup>

Fire Districts, no less than any other municipal corporation, are governed by these same principles. In Glenview Rural Fire Protection District v. Raymond. 311 N.E.

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<sup>8</sup>Because the Florida courts have consistently held that special districts possess no inherent powers, whenever the state legislature has created such a district, it has been careful to spell out the district's powers explicitly. See, e.g., Fla. Stat. 5125.901 (authorizing the creation of juvenile welfare service districts and delineating the powers to be exercised by the governing bodies of such districts); Fla. Stat, Ch. 190 (community development districts). The legislature has also been careful to define which districts are independent for purposes of determining millage. Fla. stat. §200.001. See generally D.M. Hudson, Special Taxing Districts in Florida, 10 F.S.U. L.Rev. 49, 68 (1982). Unlike the various districts created by the state legislature, the Fire District can point to no ordinance, statute or Charter provision which grants it the wide variety of powers it now seeks.

2d 302 (Ill.App. 1974), for example, the court held that despite statutory language granting a fire district the broad power to "prescribe necessary regulations for prevention and control of fire," the district did not have the authority to enact an ordinance requiring the installation of automatic sprinkler systems in common areas of buildings. In reaching this conclusion, the court explained:

Fire protection districts, like all municipal corporations, derive their existence and their powers from the legislature. They possess no inherent power and they must be able to point to the statute which authorizes their acts.

Id., at 304. Accord Wilkes v. Deerfield-Bannockburn Fire Protection District. 399 N.E. 2d 617, 622 (Ill.App. 1980) (Statute creating fire protection district did not authorize district to establish an ambulance service because "a fire protection district has only those powers expressly granted to it by the legislature and possesses no inherent powers.")<sup>9</sup>

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'Accord, Southern Bell Telephone & Telegraph Co. v. Town of Surfside, 186 So.2d 777 (Fla. 1966) (Even a charter provision which states that its enumeration of particular powers is "not to be deemed exclusive" does not extend the powers of the municipality beyond those granted.); Asbell v. Green, 159 Fla. 702, 32 So.2d 593 (Fla. 1947). The Florida courts have also cautioned that if any "reasonable doubt" exists as to a particular power, the power should not be assumed. Ex Parte Davidson, 76 Fla. 272, 79 So.2d 727 (Fla. 1918); Hopkins v. Special Road and Bridge District, 74 So. 310, 311 (Fla. 1917).

(Footnote Continued)

**The Metro-Dade Fire District is a creature of ordinance.**

The 1986 Charter amendment - which was enacted by the electorate, not the Commission - could have required the Commission to pass an ordinance granting the governing body the powers it seeks by this action. In fact, the Charter amendment could have been self executing, thereby directly granting those powers to the governing body. By its plain language, however, the amendment effectuated neither of the above alternatives. Instead, the amendment merely provided that the District be governed by five elected officials separate and distinct from the County Commission. Nothing in the 1986 Charter amendment required that the governing body

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(Footnote Continued)

The doctrine of limited powers followed by Florida courts is consistent with decisions by state courts throughout the country. E.g., City of Scottsdale v. Superior Court, 439 P.2d 290, 291 (Ariz. 1968) ("The cities and towns of this state are municipal corporations created by the state and possessory of no greater powers than those delegated to them by the constitution and the general laws of the state."); Division 26 of the Amalgamated Association v. City of Detroit, 47 N.W.2d 70, 78 (Mich. 1951) ("The board of street railway commissioners, being a creature of the Detroit city charter, has no power except as is provided in the charter."); Vander Toorn v. City of Grand Rapids, 348 N.W. 2d 697, 700 (Mich.App. 1984) ("The powers of a local government board or commission are limited to those provided by the city charter or local ordinance."); Williams v. Wylie, 60 S.E.2d 586, 588 (S.C. 1950) (The governing board of a municipal corporation has only those powers that are "conferred by constitution or statutory provisions and any reasonable doubt as to the existence of a particular power must be resolved against the board."); Garver v. City of Humboldt, 231 N.W. 699, 700 (Neb. 1930) ("Municipal corporations are purely entities of legislative creation.... All the powers which they can possess are derived from the creator.") See generally, McQuillin, Municipal Corporations (3d Ed.) (1988).



of the District be granted any specific powers whatever or even that the District continue to exist.

In concluding that the ordinances implementing the 1886 Charter Amendment did not violate the Charter, the Third District Court of Appeals did nothing more than follow the well-established principle that a governing board has no power other than the powers expressly granted to **it**.<sup>10</sup> The court properly concluded that as the legislative body for special districts within the County, it is to the County Commission that the District had to look for the legislative determination as to what powers its governing body could exercise. The County Commission properly exercised its legislative authority by passing ordinances defining the governing body's powers. As a creature of the Commission's

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<sup>10</sup>The four dissenters reached an opposite **result** premised upon the view that:

When the voters went to the polls in **1986**, the term 'governing body' had a known meaning exemplified by the County Commission's actual practice as 'governing body' of the District from 1980 onward.

**589** So.2d at **928**. The record, however, is silent as to what the County's practice was between 1980 and 1986, and what the voters may have had in mind when they cast their ballots. The Petitioner did not introduce any evidence as to the voters' intent and charged only that the ordinance facially violated the **1986** Charter Amendment. The terms 'governing body' have a distinct legal definition, independent of any subjective intent of the voters. As discussed above, the terms carry with them no inherent powers other than the power to **sue** or be sued.

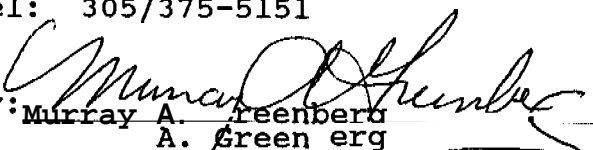
8 legislative authority, the Fire Board is bound by those  
ordinances.

CONCLUSION

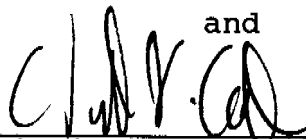
This case does not involve any issue of statewide importance, but only a political dispute between two local governmental entities. The Dade County Fire Board refuses to accept the legislative authority of the Dade County Commission which created it. As the Third District Court of Appeals properly found, however, the District possesses no governing powers other than those granted by the County Commission and is bound by the ordinances the Commission has passed to define its powers. Accordingly, there is no necessity for this Court to accept jurisdiction. If, however, it does, the en banc decision of the District Court of Appeal, Third District, should be affirmed.

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CWTFIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief was mailed this 21<sup>st</sup> day of February, 1992 to: Bruce Rogow, Esq., 2441 S.W. 28 Avenue, Ft. Lauderdale, Florida 33312; and Beverly Pohl, Esq., 350 S.E. 2nd Street, Ft. Lauderdale, Florida 33301.

  
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