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ORIGINAL

IN THE
SUPREME COURT
OF FLORIDA

NO. 79-164

FILED

SID J. WHITE

FEB 3 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

METRO-DADE FIRE RESCUE
SERVICE DISTRICT,

Petitioner,

v.

METROPOLITAN DADE COUNTY,

Respondent.

PETITIONER'S
INITIAL BRIEF

✓
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STATEMENT OF
THE CASE

A. The Case

The en banc Third District Court of Appeal has certified "that the questions resolved in this case are ones of great public importance." Metropolitan Dade County v. Metro-Dade Fire Rescue Service District, 589 So.2d 920,924 n.6 (Fla. 3rd DCA 1991) (en banc).

The questions presented arise from a conflict between a county charter provision mandating that an independent body, not the Dade County Commission, govern the Fire Rescue Service District, and the Commission's passage of ordinances precluding independent governance. The Fire Rescue Service District's Motion To Certify the question as one of great public importance framed the proposed question this way:

WHEN A COUNTY CHARTER EXPRESSLY
DECREES THAT THE COUNTY COMMISSION
SHALL NOT BE THE GOVERNING BODY OF A
COMMISSION-CREATEDSPECIALDISTRICT,
AND WHEN THE CHARTER EXPLICITLY
CREATES A NEWLY-ELECTED GOVERNING
BODY, MAY A COUNTY COMMISSION ENACT
ORDINANCES WHICH PRECLUDE GOVERNANCE
BY THE CHARTER-MANDATED GOVERNING
BODY?

The en banc court, by a six to four vote, concluded the Commission's actions were not invalid. That decision reversed a trial court's final summary judgment finding various Dade County Ordinances to be invalid because they contravened the Dade County Home Rule Charter.

B. The Facts

The facts are undisputed. In 1980 the Dade County Board of County Commissioners enacted an ordinance creating a special purpose district called the "Metro-Dade Fire and Rescue Service District." A companion ordinance (No. 18-27) provided that "The Board of County Commissioners shall be the governing body of the District." These ordinances were consistent with the Dade County Home Rule Charter which gave the Board of County Commissioners the power to establish special districts and provided at that time:

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 as when acting as the Board.

Dade County Charter, Section 1.01(A)(11).

In September, 1986, the voters of Dade County approved an amendment to Section 1.01(A)(11) of the Charter. The amendment removed the Board of County Commissioners as the governing body of the Metro-Dade Fire and Rescue Service District, and replaced them with five persons to be elected by the registered voters within the District:

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 as when acting as the Board; provided, however, the Board of County Commissioners shall not be the governing body of the Metro-Dad@ Fire and Rescue

^{1/} The Metro-Dade Fire Rescue Service District does not encompass those municipalities within Dade County which still maintain their own city fire and rescue departments. At the present, the District provides fire and rescue services to approximately 65% of the Dade County population. 589 So.2d at 925.

Service District established by Ordinance No. 80-86, but said Fire and Rescue Service 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.

Charter, Section 1.01(A)(11) (as amended, September, 1986) (amendment is underscored).

In response, in June, 1987, the Board of County Commissioners amended Section 18-27 of its Fire and Rescue Service District ordinances and enacted Section 18-33. Those ordinances are set forth below:

Sec. 18-33 Powers of the Governing Body
[of the Metro-Dade Fire and Rescue Service District].

The governing body shall have the following duties, functions and responsibilities:

(a) To make recommendations concerning all matters relating to the provision of fire and rescue services, and to make periodic reports and recommendations in respect to such matters.

(b) To make a continuing study of the existing fire and rescue services within the district and the future needs of the district.

(c) To formulate plans and programs for the coordination of the activities of the district with the fire and rescue services provided by other governmental units within the county and in neighboring counties.

(d) To make a continuing study and periodic reports and recommendations for a sound, feasible program for financing the costs of improving existing fire and rescue facilities and services and providing additional fire and rescue services and facilities.

(e) To perform and carry out such other duties and functions as may be assigned by the county commission.

(f) To sue and be sued.

The governing body shall have no power or authority to commit the county government to any policies or to incur any financial obligation or to create any liability on the part of the county or district. No actions or recommendations of this board shall be binding upon either the county or the district until approved or adopted by the county commission.

* * *

Sec. 18-27 Membership on Governing Body
(as amended June, 1987)

(a) The governing body of the district shall be comprised of five members elected on March 8, 1988, or at any earlier county-wide election, for initial terms of two years by the registered voters of the district.

(b) Each member shall be a qualified elector of Dade County residing within the district.

(c) In the event of a vacancy on the governing body, the members of the board of county commissioners shall, by majority vote, appoint a qualified individual to serve the remainder of the member's term for whom the replacement is appointed.

(d) The chairperson and vice chairperson of the governing body shall be selected by a majority of the members of the governing body.

(e) Members of the governing body shall serve without compensation, salary or remuneration of any nature, but the county commission may provide in the annual district budget sufficient funds for the reasonable and necessary expenses incurred by the members in the performance of their duties and functions.

In March, 1988, the registered voters of the Fire and Rescue Service District elected the five persons who, pursuant to the Amended Charter, were to be the "governing body" of the Fire and Rescue Service District. That body ("The Fire and Rescue Service Board") and its elected successors brought and maintained this action challenging the validity of Sections 18-27 and 18-33 insofar as those ordinances precluded the elected Fire and Rescue Service Board from governing the District.

The Fire and Rescue Service Board prevailed in the trial court. That judgment **was** reversed by the Third District. The en banc District Court of Appeal held:

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.

589 So.2d at 922. The four dissenters viewed it differently:

The final paragraph of section 18-33 is the crucial one, for it expressly decrees that the "governing body"--the new, elected board--has no power to take any action "until approved or adopted by the county commission." Id. This was a blatant arrogation of power. What the voters gave to the District in 1986 the County Commission took back in 1987. The Commission conferred on itself all final decision-making power on all matters.... **Where**, as here, the County Commission reserves to itself all decision-making power, it is abundantly clear that the County Commission has retained in **its own** hands the "governing body" functions that the electorate told it to relinquish.... The trial court ruled, I think entirely correctly, that the ordinance facially violates the 1986 charter amendment.

That conclusion was not only sound, but inescapable.

589 So.2d at 926-27 (Cope, J., dissenting).

The District Court of Appeal certified the presence of questions of great public importance. 589 So.2d at 924, n.6. The Metro-Dade Fire Rescue Service District seeks review and reversal of the decision below.

**SUMMARY OF
THE ARGUMENT**

Words must be given their usual and obvious meaning. City of Jacksonville v. Glidden Co., 169 So. 216,217 (Fla. 1936). The words of a home rule county charter are paramount within the county, and all ordinances must be consistent with the mandates of the charter. Hollywood, Inc. v. Broward County, 431 So.2d 606,609 (Fla. 4th DCA 1983), citing City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972).

The 1986 amendment to the Dade County Charter specifically precluded the Board of County Commissioners from governing the Fire and Rescue Service District. That amendment made a newly elected independent board the "governing body" of the District. The subsequently enacted Dade County Ordinances which prevented that Board from governing, placing governance back with the County Commission, are invalid because they conflict with the plain words of the Charter.

ARGUMENT

A COUNTY ORDINANCE CANNOT
OVERRIDE THE MANDATORY
PROVISIONS OF A COUNTY
CHARTER. DADE COUNTY ORDINANCE
§ 18-33 AND § 18-27(e) ARE INVALID
BECAUSE THEY CONFLICT WITH
THE DADE COUNTY CHARTER

Article VIII, Section 11 of the Florida Constitution provides that "The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida.... " Section 9 states "the intent of the legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs...."

That Charter may provide a method for "establishing...special taxing districts...and provide for their government and prescribe their jurisdiction and powers." Id., § 11(1)(e)f. The Charter is dominant in Dade County governance:

In the absence of preemptive federal or state statutory or constitutional law, the paramount law of a charter county is its charter. Cf. City of Miami Beach v Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972) (city charter). In essence, the charter acts as the county's constitution and, thus, ordinances must be in accordance with the charter.

Hollywood, Inc. v. Broward County, 431 So.2d 606,609 (Fla. 4th DCA 1983).

Pursuant to the Dade County Charter, in 1986 the voters amended § 1.01(A)(11) of the Charter to remove governance of the Metro-Dade Fire and Rescue Service from the Board of County

Commissioners. The will of the voters was firm, direct and unambiguous:

(T)he Board of County Commissioners shall not be the governing body of the Metro-Dade Fire and Rescue Service District... but said Fire and Rescue Service District shall be aoverned by five members elected for initial terms of two years by the registered voters of the Metro-Dade Fire and Rescue Service District. (emphasis supplied).

The County Commission responded to that Charter Amendment with the adoption of Ordinance § 18-33, setting forth the "Powers of the Governing Body" of the Metro-Dade Fire and Rescue Service District. The full text of § 18-33 is set forth at pp. 3-4, supra. The penultimate paragraph provides the crux of this case:

The governing body shall have no power or authority to commit the county government to any policies or to incur any financial obligation or to create any liability on the part of the county or district. No actions or recommendations of this board shall be bindina upon either the county or the district until approved or adopted by the county commission. (emphasis supplied).

Thus § 18-33(a)-(e), and its final sentence, reversed the Charter Amendment by removing the governing power given to the Fire Board by the **Charter**.² Instead, the County Commission gave to

^{2/} Section 18-33(f) gave the governing body the power "to sue and be sued." The County concedes that power, so (f) is not in issue. 589 So.2d at 923, n.5 (Cope, J., dissenting).

The only portion of Ordinance § 18-27 (supra, p.4) at issue is subsection (e), which states that the governing body "shall serve without compensation, salary or remuneration of any nature, but the county commission may provide in the annual district budget sufficient funds for the reasonable and necessary expenses incurred by the members in the performance of their duties and functions." By using the power of the purse, the County Commission thus sought to sap the strength of the governing body mandated by the Charter.

itself the very powers which the amended charter had prohibited:
"[T]he Board of County Commissioners shall not be the governing
body...." Charter, § 1.01(A)(11) (emphasis supplied).

There cannot be an honest quarrel about the meaning of
"governing body." The en banc majority did not focus on the
definition of governance, but the dissent wrote:

Under a standard definition, the
"[g]overning body of [an] institution,
organization or territory means that body
which has ultimate power to determine its
policies and control its activities."
Black's Law Dictionary 625 (5th ed.
1979). Similarly, "govern" means "to
direct and control, rule, or regulate, by
authority." Id.

* * *

Under any common, ordinary meaning, and
under the standard definitions outlined
above, the County Commission is [now] the
"governing body" under the 1987 ordinance
[and] the Fire and Rescue Service Board
is purely an advisory committee.... The
County Commission cannot, after the fact,
redefine "governing body" into oblivion,
nor can the Commission, after the fact,
make the 1986 [Charter Amendment] vote
disappear by sleight of hand.

589 So.2d at 928 (Cope, J., dissenting).

The majority en banc opinion allowing the Commission to emas-
culate the Fire and Rescue Service Board was premised upon this
view:

As the legislative body, the County
Commission which created the Fire Board
retains the power to abolish it. Surely,
then, the County Commission can exercise
the lesser power of limiting the duties
and functions of the Fire Board.

589 So.2d at 923. That political syllogism would be correct were
it not for the Charter amendment which explicitly said the County

Commission "shall not be the governing body," and explicitly placed governance in the hands of the "five members elected...by the registered voters of the District." Dade County Charter, § 1.01 (A)(11) (1986) (emphasis supplied). The power to abolish the District does not carry with it the power to contravene the Charter's command that as long as there is a District, the County Commission shall not govern it.

In addition, it is not entirely correct to say that the County Commission "created the **Fire Board**." The voters, via their Charter amendment which removed governance from the Commission is the genesis of the Fire Board. The Ordinance "creating" the Fire Board was required by the Charter amendment. The County Commission did create the Fire and Rescue Service District. It could abolish the District, but it has not done so. By allowing the Commission to abolish the Board's governing body authority **because** the Commission could have abolished the District itself, the court below allowed the County to have its cake (the District) and devour its governance. That contravened the Charter amendment which plainly said that as long as there was a District Fire and Rescue Service, the County could not govern it.

A second conclusion critical to the en banc majority was:

The amendment [to the Charter] did not set forth the powers to be enjoyed by that governing body. The determination of those powers remained within the County Commission's province. The Charter nowhere curtails the County Commission's authority over the governing body it created. (emphasis in original).

589 So.2d at 924. That construct is flawed because, while the Charter amendment did not set forth the powers of the governing

body, the Charter amendment unambiguously terminated the Commission's governing authority over the District.

As noted above, the Commission had to create the Fire and Rescue Service Board because the Charter mandated a new governing body. To say that the Charter "nowhere curtails the County Commission's authority over the governing body it created" ignores the fact that the creation was mandated by the electorate and that the electorate stripped the Commission of governing power over the District. It is a non-sequitur to say that because the citizens commanded the Commission to create a governing body, the Commission retained the power to destroy that creation's reason for being: governance.

The Commission's creation and evisceration of the Fire Board was cynical. The en banc majority conclusion that it was legal was based upon the notion that the County Commission created the Fire and Rescue Service Board. While that may be literally true, it is not legally determinative of the issue in this case. The 1986 Charter amendment actually created the Fire Board, and that Charter amendment must control.

The en banc majority also used a collision of authority concept to support its view:

The 1986 Charter amendment did not alter the overall scheme of County governance under which the County Manager serves as chief executive officer and head of the administrative branch of the County government and directs County operations pursuant to a grant of authority from the County Commission. See generally Dade County Charter § 3.04. The Fire Board's interpretation of its powers is at odds with the County's scheme of governance and would accord the Fire Board decision-making power reserved by the Charter and

the Dade County Code to the County Manager and the County Commission.

589 So.2d at 923. Assuming arguendo there are any unanswered questions about the interaction between County officials and the Fire Board, or conflict with other provisions of the Charter, all such questions must be resolved in favor of the plain and unambiguous subsequent language of the 1986 Charter amendment:

"[T]he Board of County Commissioners shall not be the governing body...."
[The District] shall be governed by five members elected by the registered voters of the...District.

Accepted rules of constitutional construction require that the 1986 Charter amendment override anything inconsistent with its clear mandate:

When a newly adopted amendment does conflict with preexisting constitutional provisions, the new amendment necessarily supersedes the previous provisions. Otherwise, an amendment could no longer alter existing constitutional provisions and the amendment process might, in every case, be frustrated by the judicial determination that a given proposal conflicts with other provisions.

Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337,341-342 (Fla. 1978). Thus, the law is clear that the Fire and Rescue Service Board must now be allowed to govern the district, no matter how one may interpret other sections of the Charter or the Dade County Code.

This case involves plain, unambiguous language in the document controlling Dade County governance. That language must be given its usual and obvious meaning. City of Jacksonville v. Glidden Co., 169 So. 216,217 (Fla. 1936). The voters of Dade County have told the County Commission that they (the Commission) shall not

govern the Fire and Rescue Service Board. The Commission has told the Fire and Rescue Service Board that the Charter means nothing-- that the Commission will govern despite the plain words of the Charter. The Commission, with the approval of the en banc majority, has negated the meaning of the words of the amended Charter. But.. .

"Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used... ."

King v. St. Vincent's Hospital, ____ U.S. ____, 112 S.Ct. 570,573 (1991) (citation omitted). Here, the setting is the Charter--the law of the land in Dade County. The meaning of the County "shall not govern," and the meaning of the "newly elected body shall govern," is beyond peradventure. In their aggregate they compel the conclusion that Dade County Ordinances § 18-33 and § 18-27(e) conflict with the Charter, and are therefore invalid.

CONCLUSION

For the foregoing reasons, the decision below should be reversed, and the case remanded with directions to affirm the trial court's summary judgment declaring § 18-33 and § 18-27(e) of the Dade County Code to be in conflict with Dade County Home Rule Charter § 1.01(A)(11) (1986).

Respectfully submitted,



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CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the foregoing "Petitioner's Initial Brief" has been furnished to MURRAY A. GREENBERG, Attorney for Respondent, Metro Dade Center, Suite 2810, 111 N.W. First Street, Miami, FL 33128, by mail this 3rd day of February, 1992.



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