

047

~~FILED~~

SID J. WHITE

~~MAR 31 1992~~

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE
SUPREME COURT
OF FLORIDA

NO. 79-164

METRO-DADE FIRE RESCUE
SERVICE DISTRICT,

Petitioner,

v.

METROPOLITAN DADE COUNTY,

Respondent.

original

PETITIONER'S
REPLY BRIEF

✓
Bruce Rogow
Florida Bar No. 067999
Bruce S. Rogow, P.A.
2441 S.W. 28th Avenue
Ft. Lauderdale, FL 33312
(305) 524-2465

and
✓
Beverly Pohl
Florida Bar No. 907250
350 S.E. 2nd St., Ste. 200
Ft. Lauderdale, FL 33301
(305) 767-8909

counsel for Petitioner

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS	.	.	.	.	.	.	ii
THE REASON FOR A REPLY	.	.	.	.	.	.	1
THE SOUNDS OF SILENCE AND MISSTATEMENT	.	.	.	.	.	.	2
THE COUNTY'S CASES ARE ALL DISTINGUISHABLE	.	.	.	.	.	.	4
GREAT PUBLIC IMPORTANCE	.	.	.	.	.	.	6
CONCLUSION	.	.	.	.	.	.	6
CERTIFICATE OF SERVICE	.	.	.	.	.	.	7

TABLE OF CITATIONS

	<u>PAGE</u>
<u>Floridians Against Casino Takeover v. Let's Help Florida</u> 363 So.2d 337 (Fla. 1978)	2
<u>Forbes Pioneer Boat Line v. Board of Comm'rs of Everslades Drainage Dist.</u> , 77 Fla. 742, 82 So. 346 (1919)	4
<u>Metropolitan Dade Co. v. Metro Dade Fire Rescue Serv. Dist.</u> , 589 So. 2d 920 (Fla. 3d DCA 1991)	5
<u>Miami Dade Water and Sewer Authority v. Metropolitan Dade County</u> , 503 So. 2d 1314 (Fla. 3d DCA 1987)	5

OTHERS

Dade County Ordinance 18-33	1
1986 Charter Amendment	2, 3, 4
Dade County Charter § 1.01	3

THE REASON FOR
A REPLY

The County's Answer Brief admits that the Dade County Charter is its constitution, and concedes that "if the issue in this case were the one posed by the Petitioner, the parties would have no dispute at all." Dade County Answer Brief, p.3. The issue posed by the Petitioner is

WHEN A COUNTY CHARTER EXPRESSLY
DECREES THAT THE COUNTY COMMISSION
SHALL NOT BE THE GOVERNING BODY OF A
COMMISSION-CREATED SPECIALDISTRICT,
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?

Petitioner's Initial Brief, p.1. The County's concession is unambiguous: "[O]f course the County Commission cannot preclude the Fire Board from acting as the District's governing body." Dade County Answer Brief, p.8.

Since the only issue really raised by the initial complaint and on the appeal **was** whether County Ordinance 18-33 precluded Fire Board governance, and since that Ordinance was unambiguous ("No actions or recommendations of this board shall be binding upon... the district until approved or adopted by the county commission"), the County's concession should mandate reversal of the decision below.

The County seeks to avoid, or attempts to finesse that result by restating the question, framing it this way:

Does the County Commission's legis-
lative authority over its fire dis-
trict include the authority to
determine what specific powers the

District's governing body may exercise?

Dade County Answer Brief, p.9. The County answers its own question by heralding its "legislative power" as superior, summing up its argument with "**the** simple proposition that the determination of what powers may be exercised by a governing body is not up to the governing body itself, but to the legislative body that created it." Id. at 20.

The County's question and answer are flawed both by its selective and **inaccurate** reading of the Dade County Charter and its failure to recognize the distinctions between the cases it offers and this case. This Reply addresses those deficiencies.

THE SOUNDS OF SILENCE
AND MISSTATEMENT

The County's Brief never mentions the 1986 Charter Amendment language: "...the Board of County Commissioners shall not be the governing body of the Metro-Dade Fire **and Rescue** Service District" (emphasis supplied).

The County's Brief never addresses the import of Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337,341-42 (Fla. 1978), which mandates that a newly-adopted constitutional provision overrides and supersedes preexisting provisions, if there is conflict.

The County's Brief never disputes that the accepted definitions of "**governing**" mean to **direct**, control, rule or regulate. The County's Brief does not offer any different definition.

The County's Brief does not acknowledge that the 1986 Charter Amendment wrested governance from the County. Instead the County repeatedly misstates the Amendment:

[T]he Charter Amendment itself did not confer any express power on the Fire Board... .

* * *

Instead, the amendment merely provided that the District be governed by five elected officials separate and distinct from the County Commission.

Dade County Answer Brief, pp.15,26.

Of course the Amendment did confer an express power on the Fire Board: the power to govern ("said Fire and Rescue Service District shall be governed by five members elected....") And the Amendment did not merely do that, it booted the County Commission out of Fire Board governance. ("...the Board of County Commissioners shall not be the governing body...." Dade County Charter Section 1.01 (A)(11) (as amended, September 1986)) .

Dade County's disingenuousness leaps from the page when it writes that the "Commission decided to confer upon the Fire District only those powers enumerated in the implementing ordinances.@@ Dade County Answer Brief, p.19. Ordinance 18-33's penultimate paragraph makes clear that the Fire Board shall have "no power or authority" to do anything remotely related to governance. It can only "make recommendations," or "study." Then the County goes on to say: "While the Fire Board complains that those powers are not sufficient for it to accomplish all of the things it desires, it is not for the Fire Board itself to decide what powers of governance are sufficient," it is for the County Commission to do so. Id.

This **may** be the most revealing statement, for it posits a **supposed** conflict between the Fire Board's "**desires**" and the Commission's commands. But the Fire Board desires nothing; it is the people, who desired, nay demanded, that the Fire Board govern and that the Commission **not** govern. Thus the County's declaration that only it has the power to decide the governing power because it "**created**" the "governing body", id. at 20, is both false and a **usurpation of the will** of the people. The people, via the Charter Amendment, not the Commission, created the governing body. The people, via the Charter Amendment stripped the Commission of its governing power. The County Commission created the District, but the people specifically took away the Commission's power to govern its creation.

The County's argument sounds like that of a parent frustrated by an adult child's **freedom** to govern his or her life. "I created you, therefore I can always control your life." Adulthood sets the child free; the people set the Fire Board free. Neither life, law, nor the cases cited by the County, support its attempt to **preclude** the District's self-governance.

THE COUNTY'S CASES ARE
ALL DISTINGUISHABLE

Not one of the County's cases involve comparable constitutional or charter commands of who shall govern the political entity in question. The dissent below rightly distinguished Forbes Pioneer Boat Line v Board of Comm'rs of Everglades Drainage District, 77 Fla. 742, 82 So. 346 (1919), as standing

for the unexceptional proposition
that special districts and their

governing bodies possess no powers other than those expressly granted by law. That case did not involve the question whether the enabling legislation contravened the Florida Constitution. It thus sheds no light on the present case, which involves the question whether the ordinance contravenes the charter.

Metrosolitan Dade County v. Metro Dade Fire Rescue Serv. Dist., 589 So. 2d 920, 927 n.4 (Fla. 3d DCA 1991) (Cope, J., dissenting). The County's other cases are equally unilluminating.

None of the dozen cases cited by the County at pages 16-19 in its Brief addresses a legislative attempt to limit the governing power of an entity which, by charter or constitution, has been given the power to govern. None of those cases addresses a legislative attempt to limit the governing power of an entity despite a charter or constitutional provision preventing the legislative body from governing the entity. Miami Dade Water and Sewer Authority v. Metrosolitan Dade County, 503 So. 2d 1314 (Fla. 3d Dca 1987) confirms our point. The Water and Sewer Authority had no charter mandate of **self** governance, nor a charter preclusion of Commission governance. So the Commission's power to limit its duties and functions was not constrained by **the** constitution of Dade County--its charter.

The voters left the County Commission with the power to abolish the Fire District. But they mandated that as long as it lives the Commission shall not govern it. The Commission's attempt to trump the will of **the** people with its "we still have the legislative power" card cheats the Charter's plain language. This Court should reject that attempt, and reverse the decision below.

GREAT PUBLIC
IMPORTANCE

Despite their acceptance of the County's argument, the six-person en banc majority viewed the questions presented as ones of great public importance. 589 So. 2d at 924 n.6. Adding the four dissenters, all ten judges concurred. That is not surprising. Tension between a legislative body and a charter or constitution presents issues at the heart of our system of government. A constitution, or a charter, defines and often restrains governmental power. The fact that the question presented in this case arises in Dade County is irrelevant. Every cases arises from an isolated circumstance. The public importance focus is on the issue, not its geographical genesis. The Court has jurisdiction, and its exercise and resolution of this case is important to all Floridians.

CONCLUBION

For the reasons advanced in Petitioner's Initial Brief, and here, the decision below should be reversed and remanded with directions to affirm the trial court.

Respectfully submitted,



BRUCE ROGOW
Florida Bar No. 067999
BRUCE S. ROGOW, P.A.
2441 S.W. 28th Avenue
Ft. Lauderdale, FL 33312
(305) 524-2465

and
BEVERLY POHL
Florida Bar No. 907250
350 S.E. 2nd Street
Ft. Lauderdale, FL 33301
(305) 767-8909

counsel for Petitioner

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the foregoing "Petitioner's Reply Brief" has been furnished to ROBERT A. GINSBURG and MURRAY A. GREENBERG, Attorneys for Respondent, Metro Dade Center, Suite 2810, 111 N.W. First Street, Miami, FL 33128, by mail this 30th, day of March, 1992.



BRUCE ROGOW

lm-U12\f