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IN THE SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, etc., et al.,

Petitioners

v.

DEPARTMENT OF COMMUNITY AFFAIRS, State of Florida,

Respondent

No. 80,158

BRIEF FOR THE RESPONDENT

On Petition from the District Court of Appeal for the First District

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STATEMENT OF THE FACTS AND THE CASE

While the Department of Community Affairs agrees with the recital of facts in the Brief for Petitioner, there are additional facts the Court should consider.[1]

Hernando County has established municipal service taxing units to supersede all but one of its districts. One of the new taxing units is the Hernando Fire Tax District Municipal Service Taxing Unit. Hernando Co. Ordinance No. 91-28 (A. 11). Its boundaries are identical to those of the Township 22 Fire District ("Township 22"). Chapter 67-1453, Laws of Fla., Section 1. Ordinance No. 91-28 empowers the new taxing unit to levy taxes at three mills. Hernando Co. Ordinance No. 91-28, Section 8 (A. 14). Township 22 has the same taxing power. Chapter 67-1453, supra, Section 5. The new taxing unit identifies fire protection as its primary function. Hernando Co. Ordinance No. 91-28, Sections 4, 5 (A. 12-13). The function of Township 22 is identical. Chapter 67-1453, supra, Section 4. Last, the new taxing unit has the authority "to contract with the Township 22 Fire District for the providing of fire protection services to [its] residents. . . ." Hernando Co. Ordinance No. 91-28, Section 7 (A. 13-14). In all practical respects, the new taxing unit and Township 22 are the same.

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[1] In this Brief the parties will be referred to by name unless the context dictates otherwise. As used in this Brief, the expressions "district" and "special district" should be considered interchangeable. All references to the Appendix to Brief for Respondent will be made by parenthetical abbreviations such as "(A. 1)." Unless the context indicates otherwise, undated citations to the Constitution should be deemed to refer to the Constitution of 1968, and undated citations to the Florida Statutes are those in effect as of the date of this Brief.

Hernando County has also passed a law which supersedes the Istachatta-Nobleton Recreation District ("Istachatta-Nobleton") with another municipal service taxing unit. Hernando Co. Ordinance No. 91-29 (A. 17). Once more, the new taxing unit covers the same territorial boundaries as the district. Id., Section 2 (A. 17-18). The millage levied by the new taxing unit is identical to that levied by Istachatta-Nobleton. Id., Section 7 (A. 19). Its functions are likewise identical. Id., Section 5 (A. 18-19). Nothing in the Record reflects the size of any of the three districts in relation to the County as a whole.[2] Id.

Contending that the Department should consider the three districts independent, the County filed a petition in accordance with Section 189.4035(6), Fla. Stat. (1992 Supp.), to have them reclassified.[3] In its Final Orders, the Department adhered to its earlier classification of the districts as dependent. Affirming the Department, the First District ruled that the classification scheme does not violate the Constitution. Hernando County v. Department of Community Affairs, 598 So.2d 182 (Fla. 1st D.C.A. 1992). This proceeding followed.

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[2] In its Brief, the County represents that the districts are "small" ones. Brief for Petitioner at 22. It does not cite the the Record as authority for this assertion or otherwise substantiate it. Id.

[3] Section 189.4035(6) directs a district which is dissatisfied with its classification to petition the entity which established it for the appropriate charter amendments. In the case of Township 22, this would be the Legislature. Section 189.4035(6)(b). For the other districts, the forming entity would be the County itself. Section 189.4035(6)(a). There is nothing in the Record to indicate that the County followed the recommendations of the Department.

SUMMARY OF ARGUMENT

Hernando County has no standing to challenge the constitutional validity of Sections 189.403(2) and 200.001(8)(d). First, the County has never used solutions available to it under Section 189.4035(6) which would obviate the constitutional question. Second, as a governmental entity the County is barred from attacking the validity of the statutes it administers. Third, the establishment of municipal service taxing units to supersede the taxing functions of all but one of the districts has relieved the financial pressures on the County, so it is no longer being harmed. Any one of these circumstances is sufficient standing alone to render this case nonjusticiable.[4]

Even if this case were justiciable, Sections 189.403(2) and 200.001(8)(d) are constitutional. First, there is no ambiguity in the wording of Article VII, Section 9 of the Constitution. Second, even if there were, the very evidence the County relies on proves that the framers intended to give the Legislature the same power it had over ad valorem taxation under the Constitution of 1885. Third, proposed amendments which would have bypassed the Legislature and given the counties and cities direct taxing

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[4] The failure of the First District to consider the issue of justiciability does not foreclose this Court from addressing the issue. To the extent that the issue of justiciability is jurisdictional, it may be raised here in the first instance. Florida Power & Light Co. v. Canal Authority, 423 So.2d 421, 422 (Fla. 5th D.C.A. 1982), rev. denied, 434 So.2d 887 (Fla. 1983) (dictum); Waters v. State, 354 So.2d 1277, 1278 (Fla. 2d D.C.A. 1978). In addition, this Court has ruled that it may consider any matter warranting affirmance, regardless of whether the Court of Appeal passed upon it. See Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150, 1152 (Fla. 1979).

authority failed of adoption. Fourth, the same Legislature which submitted the Constitution of 1968 to the voters for ratification also passed general laws which made all special district millage a component of county millage.[5] Fifth, much of this is explained in a decision this Court rendered the year after the Constitution was ratified, but which the County does not mention.

Nor does the classification of districts into dependent and independent categories by Section 189.403(2) violate Article III, Section 11(b) of the Constitution. First, the reasonableness of the classification cannot be assessed solely by its treatment of millage, but must be measured in the context of the scheme as a whole. Second, even if it were proper to measure the validity of the classification by its effect on millage, the correlation between the independent-dependent distinction and the funding of special districts more than justifies it.

Last, the aggregation of special district millage with county millage does not violate Article VIII, Section 4 of the Constitution. First, when the Constitution was ratified, all special district millage was a component of county millage, and this remained true while all three of the Hernando County districts were formed, so there has been no transfer of power which could trigger Article VIII, Section 4 in the first place. Second, any transfer of power was revocable, because the County can make the districts independent whenever it wishes.

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[5] Chapter 67-395, Laws of Fla., wrote this "aggregation" rule into Section 193.321(1), Fla. Stat. (1967). After ratification, Chapter 69-55, Laws of Fla., recodified it as Section 200.071(1), Fla. Stat. (1969), but did not alter it in substance.

ARGUMENT

Before this Court reaches the constitutional issues, it should consider whether this challenge should be entertained at all. The array of legal options available to the County concerning the districts and its duties as a governmental entity render the constitutional issues in this case nonjusticiable.

I. THE ISSUES ARE NONJUSTICIABLE.

Hernando County argues that Section 200.001(8)(d) is unconstitutional because the aggregation of dependent district millage with county millage depletes its remaining millage under Section 200.071(1), Fla. Stat. (1991). Hernando County is in this financial squeeze only because its three districts are dependent rather than independent under Section 189.403(2). Yet the County can extricate itself from the millage squeeze by converting the districts from dependent to independent status.[6]

Hernando County is a governmental entity. At least three times, this Court has ruled that agencies of the State are forbidden to initiate legal proceedings to invalidate a statute as unconstitutional, and the First District has so ruled once. Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982); De-

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[6] Indeed, this case started as a proceeding for the Department to advise the County what amendments were needed to the charter of each district to make it independent. Section 189.4035(6), Fla. Stat. (1992 Supp.). In response, the Department issued Final Orders which contained instructions for what each district had to do to become independent. In this connection, for the County to say that the aggregation rule places it in a "dilemma" rings hollow. Brief for Petitioner at 27; id. at 28. By definition a "dilemma" is a situation which defies any practicable solution. All the County has to do to extricate itself from the millage squeeze is raise the districts to independent status.

partment of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981); Barr v. Watts, 70 So.2d 347 (Fla. 1953); Miller v. Higgs, 468 So.2d 371 (Fla. 1st D.C.A.), rev. denied, 479 So.2d 117 (Fla. 1985). Both the First District in Miller and this Court in Lewis ruled that officials of government may not take the offensive to challenge the constitutional validity of the laws they administer.[7] "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." Department of Education v. Lewis, supra, 416 So. 2d at 458. In the Markham case, county property appraisers had sued to invalidate Section 195.027(1), Fla. Stat. (1977). There the Court framed the doctrine as a limitation on the judicial function itself:

> For important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring a declaratory judgment action questioning a law [which] those officials are duty-bound to apply . . . . Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion.

Department of Revenue v. Markham, supra, 396 So.2d at 1121 (citation omitted). Holding that Section 195.027(1) was binding on the appraisers, the court ruled that "they clearly lacked standing for declaratory relief in their governmental capacities."

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[7] In a recent decision, this Court disapproved Miller to the extent that it implies the availability of an exemption from ad valorem taxes under Section 196.199(4), Fla. Stat. (1991), for nongovernmental lessees of governmental property. Capital City Country Club, Inc. v. Tucker, ____ So.2d ____ (Fla. 1993). The Capital City case did not affect the Miller holding on justiciability.

Id. Hernando County forgets that "counties of this State do not possess any indicia of sovereignty; they are creatures of the legislature . . . ." Weaver v. Heidtman, 245 So.2d 295, 296 (Fla. 1st D.C.A. 1971). Hernando County has no standing to initiate this proceeding as a challenge to the constitutional validity of Sections 189.403(2) and 200.001(8)(d), and its arguments attacking the validity of these statutes should not be entertained in this Court.[8]

What is more, the County has no standing to challenge the constitutional validity of statutes whose remedies it has not even tried to invoke. It may relieve the financial pressures on it at any time by converting these dependent districts to independent ones.[9] When this case was before the Department its only cognizable purpose was to provide the County with binding guidance on how to make the districts independent. Section 189.4035(6), Fla. Stat. (1992 Supp.). The County was unwilling to follow this advice. Twice this Court has refused to consider

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[8] The Markham and Miller cases spoke to the competence of individual officials to sue, not to governmental bodies such as the Board of County Commissioners. If the standing doctrine precludes actions of this character by individual governmental officials, there is no reason it should not also be applied to collegial bodies composed of them.

[9] In addition, the County has extricated itself from the millage squeeze by the establishment of its new municipal service taxing units. Section 125.01(1)(q), Fla. Stat. (1992 Supp.), is the authority to create municipal service taxing units. Section 125.01(1)(q) empowers counties to levy ad valorem taxes up to ten mills for municipal purposes. Such millage is separate from the county millage. See Section 200.071(3), Fla. Stat. (1991). Municipal millage is separate from county millage, so it will not deplete the county millage, and may be levied in addition to it. Because the taxing units have come to the rescue, the districts no longer have to use their taxing powers in order to function.

questions of constitutional validity at the instance of claimants who failed to invoke remedies which would have made resolution of a constitutional question unnecessary.[10] Gallie v. Wainwright, 362 So.2d 936 (Fla. 1978); State ex rel. Utilities Operating Co. v. Mason, 172 So.2d 225 (Fla. 1964). In both cases, this Court condemned the premature and precipitate resolution of constitutional questions. In both, the Court refused to decide the constitutional issues posed. Utilities Operating Co. and Gallie expose the present challenge as nonjusticiable.[11]

Like the prisoner in Gallie, the County has ignored solutions which would obviate the constitutional issue. This case is not even ripe until the County has exhausted its legal and political remedies, so it does not raise justiciable issues.

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[10] Hernando County relies on cases in which this Court refused to tolerate even the partial impairment of constitutional rights. See Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1077 (Fla. 1978); Pinellas County v. Banks, 154 Fla. 582, 19 So.2d 1 (1944); cited, Brief for Petitioner at 10. Both Dewberry and Banks arose under the prohibition upon impairments of contract. See Art. I, Sec. 10, Fla. Const. (1968). Both are therefore inapposite here. Besides, counties are a governmental entities, and as such do not have "rights" in the same sense that private parties do.

[11] In the Gallie case, a prisoner who was being detained while he appealed attacked the constitutional validity of a rule permitting his detention, which was based on a former conviction. 362 So. 2d at 937-38. The prisoner could be released by a restoration of his rights from the earlier conviction. Id. at 938. Because the prisoner had not applied for restoration, this Court ruled that it did not have "a proper case in which to consider the constitutional question posed." Id. at 939 (footnote omitted). In Utilities Operating Co. a water and sewer utility in Broward County sued to invalidate Chapter 63-1805, Laws of Fla., which gave the County power to regulated private water and sewer utilities. 172 So.2d at 228. Because the County had not tried to use its new power under Chapter 63-1805, this Court ruled the constitutional challenge "premature." Id. at 229. It therefore declined to consider the constitutional question. Id.

II. THE STATUTES DO NOT VIOLATE ARTICLE VII, SECTION 9.

Even if the County had framed a justiciable issue here, the Court should reject its constitutional argument as historically and legally untenable. The proceedings which led to the adoption of the Constitution of 1968, the contemporary interpretations of that Constitution by the Legislature which sent it to the voters, and at least one decision by this Court within a year after it was ratified, all militate alike to one conclusion: that the Constitution gave the Legislature plenary power over local ad valorem taxes, and that not only is the aggregation of special district millage with county millage a legitimate exercise of that power today, but it was also in universal effect when the Constitution was ratified.

Hernando County makes the sweeping assertion that the Constitution altered the powers of the cities and counties in relation to the state "fundamentally" and "dramatically." Brief for Petitioner at 10. Whatever bearing this facile assertion may have on home rule, it has no relevance whatever to the separate issue of taxation.[12]

For a complete understanding of Article VII, Section 9, it is well to compare it with what it replaced. Article IX, Sec-

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[12] Starting with the premise that home rule for counties and cities under Article VIII, Section 1 was an innovation, the County concludes a priori that Article VII, Section 9 gave local governments total power over taxation. Brief for Petitioner at 11-12. Although it may be true that home rule was a departure from the subservient role played earlier by cities and counties, Article VIII, Section 1 has nothing to do with ad valorem taxation.

tion 5 of the Constitution of 1885 spoke to the taxing powers of local governments. It stated: "The Legislature shall authorize the several counties and incorporated cities . . . to assess and impose taxes for county and municipal purposes, . . . and all property shall be taxed upon the principles established for State taxation." Art. IX, Section 5, Fla. Const. (1885). Hernando County does not quote this language in its Brief, and its reluctance to do so is understandable.[13]

The evolution of Article VII, Section 9(a), both in the Constitutional Revision Commission and later in the Legislature, belies the notion that the Constitution of 1968 diminished the power of the Legislature over local ad valorem taxes under the Constitution of 1885 in any way. Some of the evidence which negates it is in the very passage the County quotes from the Minutes of the Commission. Brief for Petitioner at 15-16. It is apparent from this dialogue that the Commission intended to give the Legislature the same authority over local taxation it had exercised under the Constitution of 1885. In its Brief, the County omitted one vital comment uttered by Commissioner Marsicano during the course of that debate. Brief for Petitioner at 15. Here is the exchange as it actually occurred. The language

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[13] It is apparent from the very wording of Article IX, Section 5 of the Constitution of 1885 that the allocation of taxing power under the former Constitution between the Legislature and the cities and counties is no different from the distribution of that power under the Constitution of 1968, with its statement that "[c]ounties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes. . . ." Art. VII, Section 9(a), Fla. Const. (1968). There is no difference between the substance of this language and that of the corresponding passage in the Constitution of 1885. The resemblance in meaning is unmistakable.

the County failed to include has been underlined for clarity:

> MR. TURLINGTON: Mr. Marsicano, what does this actually do? Can you think of any legal rights that this gives the cities that the word "may" doesn't give them?
>
> MR. MARSICANO: I think it makes the Legislature more conscious of the fact that it's got to make provisions for the finances of our local governments.
>
> MR. TURLINGTON: You say that this is exactly like the present constitution?
>
> MR. MARSICANO: That is right. If you put the word "shall" in, it goes back to the present constitution.
>
> MR. SEBRING: Will the gentleman yield?

Minutes, Constitutional Revision Commission at 1094 (A. 24) (emphasis added). The omission is unfortunate, because it obscures the true intent of Amendment No. 73, which was to make the meaning of Article VII, Section 9(a) congruent with that of Article IX, Section 5 of the Constitution of 1885. The opening statement by Commissioner Marsicano makes this even plainer:

> MR. MARSICANO: . . . . [T]his is in a way another corrective amendment.
>
> If you look on Page 39 . . . it says: "Counties, municipalities and special districts may be authorized by law to levy taxes for their respective purposes," and the present constitution says that the Legislature shall be authorized to levy taxes for counties and cities. And we believe that the word "shall" should be substituted for the word "may" there, because it would certainly be futile for a Legislature to breathe life into the municipalities and into the counties and not be compelled to give them the authority to levy taxes.
>
> Now, that does not mean that a tax has to be levied, but the word "shall" there would be the same word that is in the present constitution, which says that the Legislature shall be authorized to levy taxes for counties and cities.

Minutes, supra, at 1093 (emphasis added) (A. 23). These deliber-

ations show that Amendment No. 73 was intended to ensure that the powers of the Legislature over local ad valorem taxes under the Constitution of 1885 remained intact. For instance, Commissioner Sebring favored its adoption because it would "carry with it the language of present Article IX, which . . . imposes on the Legislature the duty to authorize the several counties and incorporate its cities [sic] to assess and impose taxes for county and municipal purposes . . . ." Minutes, supra, at 1095 (A. 25). Amendment No. 73 went into the Constitution of 1968 as Article VII, Section 9(a) after further changes not material here.[14]

Nor do the proceedings in the Legislature the following summer support the argument that Article VII, Section 9(a) gave the counties and cities "direct constitutional authority" over ad valorem taxes. After the Commission had submitted its recommendations to the Legislature, many amendments to what became Article VII, Section 9(a) were offered. The number and diversity of the amendments considered make it unwise to infer the intent of the Legislature based on the fate of only a few. For instance, the County draws such an inference from the rejection of the measures offered by Rep. Yarborough and Rep. Mann. Brief for Petitioner at 17-18. Yet following the rejection of those amendments, the Committee also considered one offered by Rep. Brantley to Amendment No. 731, then under debate. Minutes, Committee of the Whole

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[14] Hernando County is therefore incorrect when it states that the Commission intended "to give local governments direct constitutional authority to levy ad valorem taxes." Brief for Petitioner at 16. If anything, the debate over Amendment No. 73 proves that it carried over the authority of the Legislature ad valorem taxes into the Constitution of 1968 intact.

(A. 48). Rep. Brantley wanted to strike all of Amendment No. 731 and substitute the following: "Counties, municipalities, special districts, and school districts shall have the power to levy ad valorem taxes in the aggregate of not more than twenty mills." Id. His proposal was voted down. Id. The same day, Rep. Graham offered another amendment to Amendment No. 731. Minutes, supra (A. 50). It contained the following language: "Counties, school districts, special districts and municipalities shall have the power to levy millage . . . for the following purposes and in the following amounts . . . ." Id. This change to Amendment No. 731 was also defeated. Id.[15]

The proliferation of amendments did not abate as the summer wore on. Rep. Gissendanner offered Amendment No. 486, which stated: "Counties, municipalities, special districts, and school districts shall have the power to levy ad valorem taxes in the aggregate of not more than thirty mills." Minutes, supra (A. 38). Amendment No. 486 was defeated. Minutes, supra (A. 39). Rep. Gissendanner then offered an identical measure as a substitute for Amendment No. 731, and it too was voted down. Minutes, supra (A. 52). The rejection of these amendments is further evidence that the Legislature intended to deny cities and counties direct constitutional authority over ad valorem taxes. It echoes the theme of the proceedings before the Commission earli-

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[15] The measure sponsored by Rep. Brantley would have granted direct constitutional taxing authority to the cities and counties, because the language in it leaves no role for the Legislature. By implication, the amendment offered by Rep. Graham would also have granted the counties and cities direct constitutional power over local ad valorem taxes, and would have stripped the Legislature of authority over them.

er: that the framers of the Constitution of 1968 did not dilute the powers of the Legislature over local ad valorem taxes, or alter the subordinate role played by the cities and counties in matters concerning them.[16]

Under the Constitution of 1885 the powers of the Legislature to regulate local ad valorem levies were formidable. Earlier cases in which this Court construed and applied Article IX, Section 5 of that Constitution illustrate this. See Jackson v. Neff, 64 Fla. 326, 60 So. 350 (1912), cert. dismissed, 238 U.S. 610, 35 S.Ct. 792, 59 L.Ed. 1488 (1915). In Jackson this Court stressed the extent of those powers:

> The power of the Legislature is unrestricted to impose ad valorem taxes by a duly enacted statute where the limitations imposed by the state Constitution as to uniform and equal rates and just valuations are observed, and the organic provisions as to due process and equal protection of the laws are not violated. Even double taxation may not violate constitutional limitations where uniformity of rates, just valuations, and due process are observed, and no unjust discriminations are imposed so as to preserve the organic right to equal protection of the laws.

Jackson v. Neff, supra, 60 So. at 352. Subsequent decisions by this Court echoed its statement in Jackson concerning the author-

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[16] Like the earlier measures which would have bypassed the Legislature and transfused direct constitutional authority to the cities and counties, Amendment No. 486 was defeated. Minutes, supra (A. 39). Ten days earlier, Rep. Hodes had offered Amendment No. 325 as a compromise solution. Amendment No. 325 stated: "Counties and municipalities shall, and special districts may, unless prohibited by law, levy taxes for their respective purposes . . . ." Minutes, supra (A. 46). Amendment No. 325 also failed of adoption. Id. The inference is that the Legislature did not alter the balance of power under the Constitution of 1885 as between itself and the cities and counties.

ity of the Legislature over local ad valorem taxes under the Constitution of 1885. "The state . . . possesses, as an attribute of sovereignty, the inherent power to impose all taxes not expressly or by clear implication inhibited by State or Federal Constitutions." Amos v. Mathews, 99 Fla. 115, 126 So. 308, 315 (1930); see Klemm v. Davenport, 100 Fla. 627, 129 So. 904, 908 (1930). So if the intent of the Commission was not to alter the role of the Legislature under Article VII, Section 9(a) of the Constitution of 1968, the authority over local ad valorem taxation by cities and counties which the Legislature carried with it was substantial indeed.

If any coherent theme emerges from the proceedings in the Legislature, it is that the Legislature was intent on withholding from the counties and cities direct constitutional authority over ad valorem taxes.[17] Be that as it may, Article VII, Section 9(a) cannot be viewed in isolation from the rest of the Constitution of 1968 any more than from the political and legal climate in which it was ratified. Article VII, Section 1(a) states: "No tax shall be levied except in pursuance of law." Art. VII, Sec. 1(a), Fla. Const. (1968). This language further

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[17] Many variables affect the acceptance or rejection of a proposal, so the picture which emerges from these deliberations is often clouded. There are many reasons why the amendments offered by Rep. Yarborough and Rep. Mann may have been defeated. For instance, the Legislature may not have wanted to deviate from the millage specified in Amendment No. 731 (A. 53), the measure then under debate. The rejection of these proposals, together with the rejection of those sponsored by Rep. Gissendanner, Rep. Graham, Rep. Brantley and others leaves us with a picture which is somewhat equivocal. If nothing else, it underscores the futility of generalizations concerning the intent of the Legislature based on its rejection of a small number of amendments.

negates the existence of any direct taxing authority under the Constitution of 1968. No taxes under the Constitution are self-executing.[18]

The same language in Article VII, Section 9(a) which mandates legislation to give taxing power to the cities and counties also contemplates it for school districts. Yet the Fifth District has ruled that school districts have no inherent taxing powers. Wilson v. School Board of Marion County, 424 So.2d 16, 19-20 (Fla. 5th D.C.A. 1982), rev. denied, 434 So.2d 888 (Fla. 1983). Article VII, Section 9(a) states that all local ad valorem taxes must "be authorized by law." Art. VII, Sec. 9(a), Fla. Const. (1968). To implement it, legislation is necessary.[19] Legislatures are not ministerial bodies, but exercise discretion over the subject of legislation. If the Legislature has discre-

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[18] There are a number of requirements in the Constitution of 1968 that are not self-executing. One is Article II, Section 8(d), which subjects officials to forfeiture of retirement benefits upon conviction for breaching the public trust. Williams v. Smith, 360 So.2d 417 (Fla. 1978). Like the language of Article II, Section 8(d) which this Court construed in Williams, the wording of Article VII, Section 9(a) "is plain and unambiguous, unmistakably evincing a need for implementing legislation." Williams v. Smith, supra, 360 So.2d at 420. Article VII, Section 9(a) states that ad valorem taxes shall "be authorized by law."

[19] The only cases the County cites as authority contra are one from the Second District which is pending in this Court, and one in which the First District ruled that Section 624.520(1), Fla. Stat. (1971), was not a pre-emption of county ad valorem taxes. Mallard v. Tele-Trip Co., 398 So.2d 969 (Fla. 1st D.C.A.), rev. denied, 411 So.2d 384 (Fla. 1981), quoted, Brief for Petitioner at 18; Department of Education v. Glasser, ____ So.2d ____ (Fla. 2d D.C.A. 1992), cited, Brief for Petitioner at 19. The passage the County quotes from Mallard is dictum. 398 So.2d at 973. What is more, the First District in Mallard did concede the possibility that the Legislature can limit county ad valorem taxes. Id. Glasser is before this Court awaiting decision.

tion over ad valorem taxes, inherent in that discretion is the power to limit them.

Hernando County argues that Article VII, Section 9(a) "standing alone" empowers counties and cities to levy ad valorem taxes. Brief for Petitioner at 17. Its argument would render the phrase "shall . . . be authorized by law" meaningless. Such a reading flies in the face of the cardinal rule of constitutional jurisprudence which prefers a reading of the Constitution "which gives effect to every clause and every part thereof . . . since every provision was inserted with a definite purpose." Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13, 16 (Fla. 1974); City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1, 5 (Fla. 1972). In Birdsong Motors this Court ruled that interpretations of the Constitution which render any portion of it purposeless are disfavored:

> An elementary rule of construction is that if possible, effect should be given to every part and every word of the Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous or meaningless or inoperative. Thus a construction of the Constitution which renders superfluous or meaningless any of the provisions of the Constitution should not be adopted by this Court.

City of Tampa v. Birdsong Motors, Inc., supra, 261 So.2d at 5. By urging on this Court an interpretation of Article VII, Section 9(a) which would make the clause "shall . . . be authorized by law" meaningless, the County ignores this rule.

One of the first cases to come before this Court under the Constitution of 1968 addressed the taxing powers of counties.

See State ex rel. Dade County v. Dickinson, 230 So.2d 130 (Fla. 1969). In that case, Dade County urged on this Court a sweeping interpretation of its ad valorem powers.[20] Although the County does not mention Dickinson, no complete understanding of Article VII, Section 9 is possible without this case for several reasons.[21] Yet of all the issues the Court addressed in Dickinson, the most compelling here is its interpretation of ad valorem taxation statutes passed by the same Legislature which submitted Article VII, Section 9(b) and the rest of the Constitution of 1968 to the voters for ratification.

In passing on the constitutional issues in Dickinson, the Court turned for guidance to Chapter 67-395, Laws of Fla., which governed county millage. 230 So.2d at 131. Its reliance on Chapter 67-395 as evidence of the meaning of Article VII, Section 9 rested on the premise that "[t]he proposed Constitution was under consideration when the legislature enacted [it]." Id. at 134. Holding that county and city purposes millage combined could not be stacked so that it exceeded twenty mills, the Court

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[20] Dade County contended in Dickinson for an interpretation which would have allowed levies of up to thirty mills: ten by the County for county purposes, ten more by the County for municipal services rendered by the County, and another ten for municipal services rendered by municipalities. 230 So.2d at 135.

[21] For one thing, Dickinson was decided the same year the Constitution of 1968 went into effect, while the debate over ratification was recent. For another, Dickinson bore a functional and analytical likeness to the present case: whether county-wide ad valorem millage levied by Dade County for "municipal purposes" could be stacked onto the separate municipal millage levied by the cities in Dade County. For yet another, Dickinson vindicates the power of the Legislature to regulate ad valorem taxes by cities and counties. See infra.

implied that Chapter 67-395 sustained its interpretation of Article VII, Section 9(b) as much as the language of the Constitution itself. "It is our view that both the legislature and the people intended to limit ad valorem taxation for county and municipal purposes . . . . [T]he people have spoken both through the legislature and through their direct approval of Article VII, Section 9(b) and their voice ought to be heard and heeded." Id. at 135-36. That was as far as the Court could go, because it needed further guidance concerning the distinction "between county purposes and services, municipal purposes and services, and municipal purposes and services susceptible to county-wide administration." Id. at 136. It ruled that Dade County could levy ad valorem taxes of up to twenty mills, but not thirty. Id. at 137. The Court ended its majority opinion by repeating its call for more direction from the Legislature. Id.[22]

The importance of Dickinson lies not only in its recognition that the Legislature plays a legitimate role in the resolution of constitutional issues. Chapter 67-395, which the Court looked to in Dickinson, embodied the "aggregation" rule. That is, Chapter 67-395 treated special district millage as a component of county millage within the ten mills of allowable county levies. That is the pivotal issue of this case: whether the Leg-

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[22] Both of the dissenters in Dickinson echoed the urgent necessity of guidance from the Legislature. 230 So.2d at 142 (Adkins, J.); id. at 143 (Ervin, C.J.). Whatever the differences between the members of this Court in Dickinson, all of them believed that the Legislature had authority under the Constitution of 1968 to lend further content to Article VII, Section 9(b) by legislation, and all of them called on the Legislature to exercise that power.

islature has the constitutional authority to "aggregate" the millage levied by a dependent district with that levied by the city or county on which it is dependent. Hernando County takes the extreme position that the Legislature may never aggregate dependent district millage with that of the parent city or county. Brief for Petitioner at 20. Its evidence, based once more on the deliberations which led to Article VII, Section 9(b), is equivocal at best. What is more, the County ignores the fact that the same Legislature that wrote Article VII, Section 9(b) into the Constitution of 1968 and proposed it to the voters for ratification also passed laws which embodied the very "aggregation" feature the County is now attacking as unconstitutional.

Hernando County relies on the fact that the phrase "including special taxing districts lying wholly within a county" from the "county purposes" millage clause was amended out of Article VII, Section 9(b) as evidence that the drafters intended to exclude all special district millage from county millage.[23] Brief for Petitioner at 21. All the deletion proves is the logical converse of the argument: that the framers of the Constitution did not intend to aggregate all special district millage with county millage, at least not as a constitutional requirement. At most, this amendment is no more than consistent with

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[23] In this case the Department has never maintained that all special district millage should be counted in with city or county millage. Its position is, and from the outset has been, that the Legislature has the constitutional authority to aggregate the millage in the case of a district which is no more than a puppet for its parent city or county, and that Sections 189.403(2) and 200.001(8)(d) represent a legitimate exercise of that power.

the interpretation of Article VII, Section 9(b) the County urges on this Court. It is likewise consistent with a less extreme interpretation: that the Legislature intended to leave to general law the question of whether it would aggregate special district millage with county millage.

Hernando County therefore misconceives the significance of this event in the development of Article VII, Section 9(b). The deletion of the phrase creates an ambiguity in the meaning of Article VII, Section 9(b). After ratification, the re-enactment of Chapter 67-395 in Chapter 69-55, Laws of Fla., lays that ambiguity to rest, because it demonstrates that the Legislature required counties to aggregate special district millage with county millage. This refutes the suggestion by the County that the laws passed by the Legislature at the time support its position.[24]

Chapter 67-395 was codified as Sections 193.321 through 193.327, Fla. Stat. (1967), and governed county ad valorem taxes. Section 193.321(1), Fla. Stat. (1967), forbade "aggregate ad valorem tax millage . . . by counties and districts as defined herein in excess of ten mills . . . ." Id. (emphases added). Counties whose millage exceeded ten mills had to apportion the

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[24] Section 200.071(1), Fla. Stat. (1969), was a recodification of Chapter 67-395, and it embodied the aggregation rule from the beginning. Section 200.071(1) therefore negates the assertion by the County that all the actions by the Legislature until the enactment of Chapter 83-204, Laws of Fla., were consistent with its position. Brief for Petitioner at 22. Indeed, almost the reverse is true. It was not until the passage of Chapter 82-154, Laws of Fla., that it was possible not to aggregate district millage with county millage. Until then, Section 200.071(1), Fla. Stat. (1981), limited "counties and districts" to a total of ten mills. Chapter 82-154 amended Section 200.071(1), Fla. Stat. (1982 Supp.), to delete "and districts" so that millage aggregation could be based on whether the district was independent.

millage among the different governmental entities competing for revenues. Section 193.321(2), Fla. Stat. (1967). So the same Legislature which wrote Article VII, Section 9(b) and submitted the Constitution of 1968 to the voters passed a law limiting county millage and district millage combined to ten mills. Acceptance of the interpretation urged by the County also requires the assumption that the Legislature passed Chapter 67-395 and codified it in the Florida Statutes knowing that it would violate the new Constitution.[25]

After the Constitution of 1968 had been ratified, the Legislature passed Chapter 69-55, Laws of Fla., which recodified much of Chapter 193, Fla. Stat. (1967), as Chapter 200, Fla. Stat. (1969). Incident to this recodification, Sections 193.321 and 193.322, Fla. Stat. (1967), were reclassified to Sections 200.071 and 200.091, Fla. Stat. (1969). Aside from being renumbered, the only internal change in either was the citation to the Constitution of 1885 in former Section 193.321(1), which was amended to refer to Article VII, Section 9(b) of the Constitution of 1968. So within one year after the Constitution of 1968 was ratified, the Legislature recodified its general laws on county ad valorem taxation, retaining in them not only the limit of ten

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[25] If the drafters of the Constitution of 1968 had intended to limit the use of the county millage to the counties themselves, as opposed to counties and districts, the Article VII, Section 9(b) reference to "county purposes" was a cumbersome way to say it. It would have been simpler to say that counties could levy ad valorem taxes of not more than ten mills. The phrase "county purposes" implies that the Legislature intended for entities other than the counties themselves to handle the levies within the "county purposes" total, which was capped at ten mills.

mills, but also the inclusion of district millage as a component of county millage. See Section 200.071(1), Fla. Stat. (1969). In addition, the Legislature retained the apportionment feature for use where "the proposed millage for said county and districts therein" total more than ten mills. Section 200.071(2), Fla. Stat. (1969). Not only did the Legislature enact a deliberate general law in which it declared that special district millage and county millage combined were capped at a limit of ten mills; in addition, it invoked Article VII, Section 9(b) as its constitutional authority to do so.

So when the Constitution of 1968 was ratified, the same Legislature which sent it to the voters believed that Article VII, Section 9(b) allowed it to aggregate special district millage with the ten mills permitted for county purposes. At that same time, this Court ruled in Dickinson that it would defer to the interpretation by the Legislature of its taxing powers under that Constitution.[26]

It is apparent from Sections 200.071(1) and 200.071(2), Fla. Stat. (1969), that at the time the Constitution of 1968 was ratified, all special district millage was considered a component of county millage. Article VII, Section 9(b) has not changed. Both it and Section 200.071(1), Fla. Stat. (1991), still limit

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[26] The position the County take in this case conjures up the same prospect of multiple taxation this Court condemned in its seminal holding in Dickinson. 230 So.2d at 135. In effect, the County takes the position that it may control the three districts in all political and financial matters, but at the same time may circumvent the ten-mill limit by using them as dummies in much the same way a parent corporation uses wholly-owned subsidiaries. This contravenes the Dickinson rationale.

counties to ten mills. Section 200.071(2) directs a rollback "in the event the sum of the proposed millage for the county and dependent districts therein is more than the maximum allowed hereunder. . . ." The only real change has been the rise of independent districts. The independent special district as we know it was nonexistent when the Constitution of 1968 was ratified. It was not until 1973 that the name "independent special district" made its initial appearance.[27] Chapter 73-349, Laws of Fla., which enacted Sections 218.30 to 218.36, Fla. Stat. (1973), employed definitions of "independent special district" and "dependent special district" bearing a close resemblance to those in use today. See Sections 218.31(6), 218.31(7), Fla. Stat. (1973). Chapter 73-349 merely imposed reporting requirements, and nothing in it altered the treatment of special district millage.[28]

In effect, the County is saying that for the Legislature to aggregate special district millage into county millage and

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[27] Expressed another way, all special districts at that time were treated with respect to millage the way dependent special districts are treated today. Even the "independent taxing agencies" and all the other classes of local governmental entities listed in Section 200.071(2), Fla. Stat. (1969), were subject to the county purposes limit of ten mills.

[28] Expanding on its historical argument, the County states that the Legislature did not base its aggregation of special district millage with county millage on whether the districts were dependent or independent until the enactment of Chapter 83-204, Laws of Fla. Brief for Petitioner at 26. This is incorrect. The differential millage treatment dates from Chapter 82-154, Laws of Fla. Pointing out that all three of its districts were in existence by this time, the County intimates that the age of the districts somehow protects their millage from aggregation with county millage. Id. at 26. The argument proves too much. In fact, all three districts were formed at a time when special district millage was always figured in with county purpose millage.

limit the total to ten mills is unconstitutional per se. If the County were correct, it would follow that Sections 200.071(1) and 200.071(2), Fla. Stat. (1969), transgressed the Constitution from the moment the Governor signed them into law.

Nothing in Article VII, Section 9(b) compels such a reading. Section 200.071(1) capped county and special district millage combined at ten mills, and Section 200.071(2) rolled the millage rates back if the combined levies "for county officers, departments, divisions, districts, commissions, authorities and independent taxing agencies" exceeded ten mills.[29] The enumeration of governmental entities in Section 200.071(2), Fla. Stat. (1969), shows that the same Legislature which submitted the Constitution of 1968 to the people drew no distinction between special districts and other departments and components of county government.[30] When the Constitution of 1968 was ratified, all special district millage was combined into county millage, with

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[29] Section 200.111, Fla. Stat. (1969), employed a definition of "district" or "special district" bearing a close resemblance to the definition in effect today. See Section 189.403(1), Fla. Stat. (1992 Supp.).

[30] Hernando County is incorrect more than once in discussing the evolution of the independent-dependent distinction and its effect on millage. One instance is its statement that before the enactment of Chapter 82-154 only "dependent special districts created prior to the [Constitution of 1968] whose millage was not voter approved . . . was aggregated with the county purpose millage." Brief for Petitioner at 24-25. Another is its portrayal of Chapter 83-204 as the advent of the "first arguably applicable statutory millage limitation." Brief for Petitioner at 26. Both statements are incorrect, because Section 200.071(1), Fla. Stat. (1969), remained in effect until the enactment of Chapter 82-154. The only "exception" to it was Chapter 70-368, Laws of Fla., which added Section 200.071(3), Fla. Stat. (1971). This law bypassed county millage, because it empowered the counties to tax within the separate "municipal purposes" millage by forming municipal service taxing units.

the total capped at ten mills.

By contending in effect that the ink was barely dry on the Constitution of 1968 before the Legislature started to violate it, the County defies another fundamental precept of constitutional jurisprudence: that the Legislature is competent to determine the scope of its own constitutional powers.[31] Gallant v. Stephens, 358 So.2d 536 (Fla. 1978). In Gallant, this Court ruled that the Legislature had authority under Article VII, Section 9(b) to enact Sections 125.01(1)(q) and 125.01(1)(r), Fla. Stat. (1975), which empowered counties to create municipal service taxing units. 358 So.2d at 540. Holding that Dickinson supported this decision, the Court in Gallant made the statement that "[i]n matters of constitutional interpretation, the Legislature's view of its authority is highly persuasive." Id.

Gallant is one of several cases from this Court upholding the constitutional validity of laws the Legislature has passed based on its powers under Article VII, Section 9(b). See Bailey v. Ponce de Leon Port Authority, 398 So.2d 812 (Fla. 1981);

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31 In its Brief, the County accuses the First District of trying to "dodge" the millage squeeze issue by saying that the County can decrease the special district millage. Brief for Petitioner at 28. For one thing, the First District did not say this. What the First District did say was that Sections 189.403(2) and 200.001(8)(d) may be construed as "a restriction on the millage of special districts" rather than a restriction on county millage. 598 So.2d at 184-85. For another, the First District would have been quite correct if it had made this statement. The reduction of special district millage is only one of at least three options open to the County. Another is the establishment of municipal service taxing units, which the County has in fact formed. See Section 125.01(1)(q), Fla. Stat. (1992 Supp.); Hernando Co. Ordinance No. 91-28 (A. 11); Hernando Co. Ordinance No. 91-29 (A. 17). Last, the County could make the districts independent if it wanted to.

Tucker v. Underdown, 356 So.2d 251 (Fla. 1978). In Bailey, this Court reaffirmed the authority of the Legislature under Article VII, Section 9 to alter the taxing powers of special districts. 398 So.2d at 814. All of the cases from Dickinson through Bailey acknowledge the Legislature as a competent arbiter of its constitutional authority in this rather technical sphere.

Hernando County has not carried its burden of showing that the Legislature exceeded its authority when it passed Sections 200.001(8)(d) and 189.403(2), so it has not overcome the presumption that Sections 200.001(8)(d) and 189.403(2) are constitutional.[32] In Burnsed this Court spoke to that presumption:

> It is a fundamental principle of this Court which has been reiterated on several occasions that this Court has the duty, if reasonably possible, and consistent with constitutional rights, to resolve all doubts as to the validity of a statute in favor of its constitutionality and thereby give it a reasonable interpretation. If possible a statute should be construed so as not to conflict with the Constitution. Every presumption should be indulged in favor of the validity of a statute, and a statute should be considered in the light of the principle that the state is primarily the judge of regulations in the interest of public safety and welfare.

Burnsed v. Seaboard Coastline Railroad Co., supra, 290 So.2d at 19 (footnote omitted). That presumption taxes Hernando County with the burden of showing that Sections 200.001(8)(d) and 189.403(2) are unconstitutional beyond any question. A.B.A.

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[32] Hernando County implies in its Brief that the only way counties could levy over twenty mills when the Constitution was ratified was by voter approval. Brief for Petitioner at 36 n. 31. This statement is misleading, because Section 200.071(1), Fla. Stat. (1969), always required the aggregation of district millage with county millage in any event, even with voter approval.

Industries, Inc. v. Pinellas County, 366 So.2d 761, 763 (Fla. 1979); Holley v. Adams, 238 So.2d 401, 404-05 (Fla. 1970); Knight & Wall Co. v. Bryant, 178 So.2d 5, 8 (Fla. 1965), cert. denied, 383 U.S. 958, 86 S.Ct. 1223, 16 L.Ed.2d 301 (1966); Department of Business Regulation v. Smith, 471 So.2d 138, 142-43 (Fla. 1st D.C.A. 1985). This burden is all the heavier where, as here, the same Legislature which proposed the Constitution to the voters also passed general laws which embraced the same feature the County is now calling unconstitutional.

From the beginning the Legislature has had ample authority under Article VII, Section 9 of the Constitution to impose limits on levies of ad valorem taxes by counties and cities. The requirement in Article VII, Section 9(a) that ad valorem levies "be authorized by law" gave the Legislature the same authority it had under Article IX, Section 5 of the Constitution of 1885, which it replaced. Of the three coordinate branches of government, the one with the broadest discretion is the Legislature.[33] If the Legislature has authority over ad valorem taxes under Article VII, Section 9(a), then the aggregation of depend-

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[33] The statement by the County that the First District ruled that the County could decrease the districts' millage is another incorrect statement concerning the opinion. Brief for Petitioner at 39 n. 33. The actual statement by the First District was that the Legislature may decrease district millage, which it can. See North Brevard County Hospital District v. Roberts, 585 So.2d 1110 (Fla. 5th D.C.A. 1991). In Roberts, the Fifth District addressed the powers of a district under special laws, and ruled that the Legislature had plenary authority to alter county taxing powers. 585 So.2d at 1112. Although the County relies on Roberts for the proposition that it is powerless to decrease district millage, Roberts does not say that. Id. Whether the Legislature has the separate authority to lower county millage to less than ten mills is a question this Court need not decide.

ent district millage with county millage is a fortiori within its discretion. The aggregation of special district millage with county millage is only one of a number of conditions it has the power to impose. This is what Section 200.071(1), Fla. Stat. (1969), did from the very beginning. Sections 200.001(8)(d) and 189.403(2) do no more than that today.

III. THE STATUTES DO NOT VIOLATE ARTICLE III, SECTION 11.

Hernando County argues also that the differentiation between dependent and independent special districts in Sections 189.403(2), Fla. Stat. (1992 Supp.), and 200.001(8)(d), Fla. Stat. (1991), creates an unreasonable classification which violates Article III, Section 11(b) of the Constitution of 1968. In this case the County takes the position that the effect of Sections 189.403(2) and 200.001(8)(d) is to decrease the millage which can be levied by special districts, and that this can be accomplished only by the enactment of a special law accompanied by publication of notice in accordance with Article III, Section 10. See Brief for Petitioner at 33. Implicit in this argument is the assumption that Sections 189.403(2) and 200.001(8)(d) in reality are local or special laws in disguise.[34] A law does not

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[34] More than once, the County implies that Sections 189.403(2) and 200.001(8)(d) are in substance forbidden special laws, subject to the publication requirement, and that the only permissible way to limit special district millage is by special or local law. Brief for Petitioner at 33; id. at 37. Yet this Court has implied that the Legislature may regulate special district millage by general enactment. Bailey v. Ponce de Leon Port Authority, supra, 398 So.2d at 814.

have to have the same effect in every county and city in order to be a general law. St. Johns River Water Management District v. Deseret Ranches of Florida, Inc., 421 So.2d 1067 (Fla. 1982). There the issue was whether Chapter 77-382, Laws of Fla., which established the Water Management District, was a special or local law subject to the publication requirements of Article III, Section 10. 421 So.2d at 1069-70. Holding that Chapter 77-382 was a general law, the Court dismissed the argument that its regional scope made it a special or local one: "We have repeatedly held that a law does not have to be universal in application to be a general law if it materially affects the people of the state." Id. at 1069. There is no question but that Sections 189.403(2) and 200.001(8)(d) have statewide applicability.[35]

In its Brief the County cites no authority for its argument that the classification in Section 189.403(2) is unreasonable, nor could it. The dependent-independent classification has many purposes. One relates to the different reporting and budgeting requirements for independent and dependent districts. See Sections 218.31(5), 218.31(6), Fla. Stat. (1992 Supp.); see Sections 218.34(2), 218.34(3), Fla. Stat. (1991). The reporting

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[35] Aside from historical interest, the extended argument the County directs at population laws has no discernible relevance to the issues before this Court. Brief for Petitioner at 32-33. There is nothing in either Section 189.403(2) or Section 200.001(8)(d) adverting to either population or any other parochial consideration. As laws which are general in fact as well as name, Sections 189.403(2) and 200.001(8)(d) do not implicate Article III, Section 11(b) at all, and the First District was correct in so holding. 598 So.2d at 185. Moreover, if the County is saying that Sections 189.403(2) and 200.001(8)(d) are hidden local or special laws, St. Johns Water Management District is squarely fatal to its position.

requirements are an integral component of the system which ensures the flow of information vital to local government financial reporting. See Section 11.45(3)(d), Fla. Stat. (1992 Supp.). For those districts with elected governing bodies, the dependent-independent distinction determines election procedures. Sections 189.405(1), 189.405(2), Fla. Stat. (1991). The classification also affects the manner in which districts may be established by special law. Section 189.404(3), Fla. Stat. (1991). The treatment of special district millage is only one of a number of reasons supporting the classification. By limiting its argument on that distinction to its effect on millage, the County closes its eyes to an intricate financial reporting system resting on shared themes of uniformity and accountability.[36]

Even if we concede arguendo that it is legitimate to measure the reasonableness of the independent-dependent distinction under Article III, Section 11(b) solely with reference to millage, the classification more than passes constitutional muster. A special district is "dependent" if its governing body is identical to that of a single city or county, or if the members of that body are appointed by the governing body of a single city or county, or are subject to removal from office by the governing

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[36] Once more, the County misrepresents the holding by the First District by saying that the Court of Appeal labored under "the mistaken assumption that by declaring the special district classification scheme unreasonable . . . it would necessarily invalidate the entire act." Brief at 37. After noting that the County was seeking to limit the reasonableness issue to the effects of the classification scheme on millage, the First District replied: "We decline to do so, and instead determine reasonableness as related to the entire subject matter of the legislation." 598 So.2d at 185. This is the proper analytical stance.

body of a single city or county, or if its budget is subject to approval or disapproval by the governing body of a single city or county. Section 189.403(2), Fla. Stat. (1992 Supp.). A governmental entity fitting one or more of these definitions is nothing more than a surrogate for city or county government. Such a district does the bidding of the city or county government. It is beholden to the parent local government in all respects, political as well as fiscal.[37]

Hernando County proposes to this Court what it calls a "more logical classification." Brief for Petitioner at 36. First, the proposal is illogical. What is more, the suggestion invites this Court to legislate, thus flouting yet another cardinal rule of constitutional adjudication: that "it is the function of the Court to interpret the law, not to legislate." Holley v. Adams, supra, 238 So.2d at 404. In Holley this Court added that "courts are not concerned with the mere wisdom of the

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[37] Hernando County cites the Report by the Advisory Council on Intergovernmental Relations to prove that the millage squeeze is real, pointing out that 38 of the 67 counties are taxing at more than 7.5 mills, and that fourteen of them have reached the limit. Brief for Petitioner at 28. It also notes that there are 117 dependent districts that are smaller than county-wide. Id. Yet according to the Report, the 117 dependent districts with taxing powers are concentrated in only 23 of the counties. See Appendix II to Brief for Petitioner, at M. Indeed, of the 117 dependent districts, 82 are located in only five counties: Sarasota County has 36, Lee County has 21, St. Lucie County has thirteen, Volusia County has eight, and Gulf County has four. Yet of these five counties, only Gulf County has ad valorem levies exceeding 7.5 mills. What is more, of the fourteen counties which have reached the ten-mill limit, Jackson County is the only one with a smaller than county-wide dependent special district. If anything, the Report the County relies on proves an inverse correlation between large tax burdens and the presence of smaller than county-wide dependent special districts.

policy of the legislation, so long as such legislation squares with the Constitution." Id. Regardless of whether it is viewed in its broader context or in the narrower scope of its effect on millage, the independent-dependent distinction is rational.

Because a dependent special district is no more than the passive instrument of its parent city or county, treating its millage the same as any other county or city millage more than passes the reasonableness test.[38] See Eastern Air Lines, Inc. v. Department of Revenue, 455 So.2d 311 (Fla. 1984), appeal dismissed, 474 U.S. 892, 106 S.Ct. 213, 84 L.Ed.2d 214 (1985). In Eastern Air Lines this Court ruled that the Legislature has wide discretion to differentiate between classes of subjects, especially in the sphere of taxation:

> When the state legislature, acting within the scope of its authority, undertakes to exert the taxing power, every presumption in favor of the validity of its action is indulged. Only clear and demonstrated usurpation of power will authorize judicial interference with legislative action . . . . In the field of taxation particularly, the legislature possesses great freedom in classification. The burden is on the one attacking the legislative enactment to negate every conceivable basis [for] it . . . . A statute that discriminates in favor of a certain class is not arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy.

Eastern Air Lines, Inc. v. Department of Revenue, supra, 455

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[38] To bolster its reasonableness argument, the County states that the addition of one city official to the governing body of the Orange County Library District to make it independent proves that the scheme is irrational in that the lone city official would be outnumbered by the county officials. Brief for Petitioner at 34-35. Yet when the vote on a controversial issue is close, the member holding the swing vote on that issue has substantial power.

So.2d at 314 (citations omitted). Once more, Hernando County has not met its burden.

IV. THE STATUTES DO NOT VIOLATE ARTICLE VIII, SECTION 4.

Last, the County takes the position that the aggregation of dependent district millage with county millage violates Article VIII, Section 4 of the Constitution by working a transfer of power from one governmental entity to another without the consent of the voters. See Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978). Once more, the decisions of this Court expose this position as untenable.

As applied to the three districts before the Court in this case, Section 189.403(2), Fla. Stat. (1992 Supp.) and Section 200.001(8)(d), Fla. Stat. (1991), have not accomplished a "transfer" of anything. When the Constitution of 1968 was ratified, all special district millage was figured in with county millage as a component of that millage.[39] Section 200.071(1), Fla. Stat. (1969). At the time Township 22 was formed this was true. Section 193.321(1), Fla. Stat. (1967). It was also the

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[39] To reiterate, at the time each of the three districts was formed, the millage levied by each one was subject to the limitation in Chapter 67-395, Laws of Fla., that "no aggregate ad valorem tax millage shall be levied . . . by counties and districts as herein defined in excess of ten mills. . . ." Id. (emphasis added). Chapter 67-395 was in effect at all times material to the formation of the districts, and governed the millage levied by them from inception. See Section 193.321(1), Fla. Stat. (1967); Section 200.071(1), Fla. Stat. (1973); Section 200.071(1), Fla. Stat. (1977). By virtue of Sections 189.403(2) and 200.001(8)(d), aggregation of dependent district millage with county millage is the law today.

case in 1973 when Spring Hill was formed. Section 200.071(1), Fla. Stat. (1973). It remained the law in 1976 when the County established Istachatta-Nobleton. Section 200.071(1), Fla. Stat. (1977). How can the County argue that there was a "transfer" of power when there was no change in the law? No transfer occurred which could trigger the prohibition of Article VIII, Section 4 in the first instance, so that prohibition did not come into play.[40]

Even if we concede for the sake of argument that Sections 189.403(2) and 200.001(8)(d) reflect the occurrence of a transfer which could otherwise implicate Article VIII, Section 4, any "transfer" which occurred is a revocable one. All it takes to reverse the ostensible "transfer" is for Hernando County to make the three districts independent.[41] Its intransigence is all that is keeping the districts dependent; the County could make

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[40] In its Brief the County relies on a decision in which the Fourth District ruled that the Legislature could not empower Palm Beach County to "create, establish and abolish" special districts. See Fire Control Tax District v. Palm Beach County, 423 So.2d 539 (Fla. 4th D.C.A. 1982), cited, Brief for Petitioner at 39-40. The reliance by the County on the Fire Control Tax District case is misplaced, because one cannot equate the aggregation of millage levied by districts with the power to "create, establish and abolish" them.

[41] In the case of Township 22, this may be accomplished by a special law amending Chapter 67-1453, Laws of Fla. Brief for Petitioner at 1; see Section 189.4035(6)(b), Fla. Stat. (1992 Supp.). With respect to Spring Hill and Istachatta-Nobleton, the County itself may achieve this by amendments to Ordinance No. 73-12 and Ordinance No. 76-12. Brief for Petitioner at 2; see Section 189.4035(6)(a), Fla. Stat. (1992 Supp.). Its arguments concerning Dade County are flawed in the same respect. See Brief for Petitioner at 35. Dade County has the authority to amend its charter. Art. VIII, Sec. 6(f), Fla. Const. (1968). It has always had that power. Art. VIII, Sec. 11, Fla. Const. (1885). In addition, Dade County has all the powers of noncharter counties. Art. VIII, Sec. 1(c), Fla. Const. (1968); Art. VIII, Sec. 1(g), Fla. Const. (1968). Dade County may amend its present charter if it wishes. Id.

them independent tomorrow if it wanted to.

What the County is really trying to do here is circumvent its millage limit by using the districts as its surrogates. Yet the County is also unwilling to surrender its political and fiscal dominance over them. Sections 189.403(2) and 200.001(8)(d) reflect a determination by the Legislature that when an entity controlled by a county to this extent levies taxes it does so for county purposes. That determination is rational.

Because the County itself has the power to make the districts independent, any transfer of power based on Sections 189.403(2) and 200.001(8)(d) may be revoked at its will. A revocable transfer of functions does not violate Article VIII, Section 4. Broward County v. City of Fort Lauderdale, 480 So.2d 631, 635 (Fla. 1985); Miami Dolphins, Ltd. v. Dade County, 394 So.2d 981, 985 (Fla. 1981); City of Palm Beach Gardens v. Barnes, 390 So.2d 1188, 1189 (Fla. 1980). Because the County can make the districts independent whenever it wishes to do so, it has retained ultimate authority over the matter. Its retention of that authority is fatal to its argument under Article VIII, Section 4 of the Constitution.[42]

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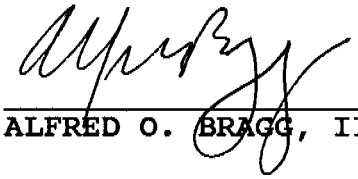
[42] For the first time in this case, the County urges an expanded alternate reading of the definition of "voted levies" in Section 200.001(8)(f), Fla. Stat. (1991), as encompassing millage levies by special districts consequent to voter approval. For one thing, the County did not raise this issue in the First District, so this Court should not consider it. For another, such an interpretation would contravene Section 200.001(8)(f), which excludes from the definition of "voted levies" all those which do not require voter approval under Article VII, Section 9(b) of the Constitution. Article VII, Section 9(a) states that the Legislature may give special districts taxing powers, so voter approval is no more than incidental to special district taxation.

CONCLUSION

For the foregoing reasons, the Court should approve the judgment of the Court of Appeal for the First District. Respectfully submitted,



ALFRED O. BRAGG, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served copies of the foregoing Brief for Respondent by sending the same by U.S. Mail to Robert L. Nabors, Esq., Sarah M. Bleakley, Esq. and Thomas H. Duffy, Esq., Nabors, Giblin & Nickerson, P.A., 315 South Calhoun Street, Tallahassee, Florida 32302; to Robert Bruce Snow, Esq., County Attorney, Hernando County, 112 North Orange Avenue, Brooksville, Florida 34601; to Joseph C. Mellichamp, III, Esq., Senior Assistant Attorney General, Tax Section, Department of Legal Affairs, Tallahassee, Florida 32399-1050; and to Kaye Collie, Esq., Assistant County Attorney, and Thomas J. Wilkes, Esq., County Attorney, Orange County, P.O. Box 1393, Orlando, Florida 32802-1393 this March 30, 1993.

ALFRED O. BRAGG, III