

IN THE SUPREME COURT OF FLORIDA
CASE NO. 82,443

JOHNIE A. McLEOD,

Appellant/Intervenor,

IN THE MATTER OF:

ORANGE COUNTY, FLORIDA a
political subdivision of the
State of Florida,

Appellee/Plaintiff,

vs.

ON APPEAL FROM THE CIRCUIT
COURT OF THE NINTH JUDICIAL
CIRCUIT, IN AND FOR ORANGE
COUNTY, FLORIDA; L.T. CASE
NO. CI 93-1371

THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and
Citizens of Orange County,
Florida, including non-residents
owning property or subject to
taxation therein, and all others
having or claiming any right,
title or interest in property to
be affected by the issuance of
the Bonds, herein described, or
to be affected thereby,

Defendants.

**BRIEF OF AMICI CURIAE, FLORIDA ASSOCIATION OF
COUNTIES, INC.; FLORIDA ASSOCIATION OF
COUNTY ATTORNEYS, INC.; ALACHUA COUNTY;
DADE COUNTY; PALM BEACH COUNTY;
SEMINOLE COUNTY; AND VOLUSIA COUNTY
IN SUPPORT OF DEFENDANT, ORANGE COUNTY**

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STATEMENT OF THE CASE AND FACTS

Amici adopt the Statement of the Case and the Facts contained in the Answer Brief filed by Orange County in this Appeal.

SUMMARY OF THE ARGUMENT

This Court in State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972), clearly established the constitutional principle that section 1(g), article VIII of the Florida Constitution vested sufficient municipal powers in a charter county to authorize the levy by a charter county of any tax provided to municipalities. This constitutional principle of charter county government is settled and was unquestioned until this appeal. Affirmance of the Final Judgment in recognition of the reliance by charter counties on the clear judicial precedent of these constitutional powers is mandated.

ARGUMENT

- I. THAT THE MUNICIPAL POWERS GRANTED UNDER THE 1968 CONSTITUTIONAL REVISION VESTS A CHARTER COUNTY WITH THE AUTHORITY TO LEVY ANY TAX PROVIDED TO A MUNICIPALITY IS SETTLED AND UNQUESTIONED.

This Court in State ex rel. Volusia County v. Dickinson, 269, So.2d 9 (Fla. 1972), provided the following construction of section 1(g), article VIII, Florida Constitution:

This all inclusive language unquestionably vests in a charter county the authority to levy any tax not inconsistent with general or special law as is permitted municipalities.

Id. at 11 (emphasis supplied). Although the Intervenor in this appeal questions this constitutional construction 21 years after the decision of Volusia County v. Dickinson, Amici, Alachua, Palm Beach, Seminole, and Volusia Counties have all relied upon their settled constitutional authority as charter counties to levy any tax permitted a municipality announced so emphatically by this Court in that landmark decision. Furthermore, Intervenor's argument raises doubt as to Dade County's home rule power pursuant to its constitutional charter under cases similar to Volusia County v. Dickinson.

The constitutional vesting of municipal power in a charter county is an established principle of local government law acknowledged and relied upon by all in the State of Florida-- county officials, the Legislature, members of the Bar and students of local government law. Volusia County v. Dickinson was the initial and definitive decision on the expansive power of local

self-government which was granted to charter counties by the people of this State who approved the dramatic new concepts of home rule embodied in the 1968 constitutional revision. This landmark decision set the home rule framework for future case law to refine the constitutional authority of charter counties and for citizens to rely upon in advocating and adopting county charters for their communities. See State v. Broward County, 468 So.2d 965 (Fla. 1985), rev'd on other grounds, 515 So.2d 1273 (Fla. 1987). A retreat by this Court from such a fundamental constitutional concept of charter government power, clearly stated in prior decisions, would be a shocking repudiation of settled precedent.

Likewise, this Court in several consistent decisions beginning with State v. Dade County, 127 So.2d 881 (Fla. 1961), has clearly acknowledged the municipal powers of Amicus Dade County under its constitutional home rule charter initially embodied in the 1885 Florida Constitution. State ex rel. Dade County v. Brautigam, 224 So.2d 688 (Fla. 1969). See also Bearden v. Metropolitan Dade County, 258 So.2d 344 (Fla. 3d DCA 1972), cert. denied, 263 So.2d 234 (Fla. 1972). Reversal of the Final Judgment in this case would also raise serious doubt as to the scope of municipal powers of Dade County under its constitutional charter 24 years after the State v. Dade County decision.

As demonstrated in the Answer Brief of Orange County, the municipal power provisions in the Orange County Charter are identical to those in the Volusia County Charter as construed by this Court in Volusia County v. Dickinson. Likewise, the municipal

tax option authorized in section 166.231, Florida Statutes (1991), now before this Court on appeal, is substantially similar to that provided in section 210.03(1), Florida Statutes (1971), then before this Court in Volusia County v. Dickinson. No difference in the wording exists between the two charter powers or municipal tax options that could remotely yield a different constitutional result in this case.

Like Orange County, each of the Amici Counties have relied upon the clear precedent of this Court and levied a public service tax within the unincorporated areas pursuant to the municipal taxing authority of section 166.231, Florida Statutes. Also, like Orange County, each of the Amici Counties enacted the municipal tax option provided by section 166.231 by the adoption of a county ordinance under the regular enactment provisions of section 125.66, Florida Statutes. Amici, the Florida Association of Counties, and the Florida Association of County Attorneys, Inc., at educational seminars and through other vehicles, have published to their members and the public, since the Volusia County v. Dickinson decision, the settled concept that an essential and unique attribute of charter county government is an "unquestioned" constitutional vesting of municipal power to levy any tax provided to a municipality.

Reliance by the Amici Counties on the constitutional construction of the municipal powers of a charter county in Volusia County v. Dickinson is clear. Amici, Alachua, Palm Beach, Seminole and Volusia Counties each noted in its enacting ordinance that the

county was relying on the provisions of section 1(g), article VIII, Florida Constitution (1968), and its charter as authority to impose a section 166.231 municipal public service tax. Palm Beach County went even further and cited specifically in its enacting ordinance reliance on the decisions of this Court in Volusia County v. Dickinson and State v. Broward County. (Palm Beach County Ordinance No. 89-13, App. B). Alachua, Orange, Seminole, and Volusia Counties each in ordinances enacting the section 166.231 municipal public service tax cited as authority the two constitutional provisions relied on by this Court in Volusia County v. Dickinson: article VIII, section 1(g), and article VII, section 9(a), Florida Constitution (1968). (Alachua County Ordinance No. 92-16, App. A; Palm Beach County Ordinance No. 89-13, App. B; Seminole County Ordinance No. 91-12, App. C; and Volusia County Ordinance No. 85-17, App. D).

Further evidence of the Amici Counties' reliance on this Court's rulings exists. For example, Alachua County has levied the section 166.231 public service tax since July 28, 1992. (App. A). The amount of public service tax proceeds budgeted by Alachua County in its fiscal year 1992/1993 budget was \$5,100,900, and the public service tax proceeds are estimated to generate \$5,282,300 in revenue for fiscal year 1993/1994. In reliance on the public service tax proceeds as a dependable revenue source, Alachua County has lowered its ad valorem taxing rate for both fiscal years.

Dade County has levied by ordinance a public service tax pursuant to section 167.431, Florida Statutes, which was the

statutory predecessor to section 166.231 since October 1, 1970. The amount of public service tax proceeds budgeted by Dade County in its fiscal year 1992/1993 budget was \$81,790,000, and the public service tax proceeds are estimated to generate \$83,455,000 in revenue for fiscal year 1993/1994.

Palm Beach County has levied the section 166.231 public service tax since October 1, 1989. (App. B). The amount of public service tax proceeds budgeted by Palm Beach County in its fiscal year 1992/1993 budget was \$26,650,000, and the public service tax proceeds are estimated to generate \$30,000,000 in fiscal year 1993/1994.

Seminole County has levied the section 166.231 public service tax since November 1, 1991. (App. C). The amount of public service tax proceeds budgeted by Seminole County in its fiscal year 1991/1992 budget was approximately \$2,900,000 and these tax proceeds are estimated to generate \$3,600,000 for fiscal year 1993/1994.

Volusia County has levied the section 166.231 public service tax since February 1, 1986. (App. D). The amount of public service tax proceeds budgeted by Volusia County, in the fiscal years between 1991-1994 average approximately \$8,250,000 per year. A portion of these public service tax proceeds have been pledged as additional security for the outstanding water and sewer bond issues of Volusia County.

Finally, the Amici Counties of Alachua, Dade, Palm Beach, Seminole, and Volusia each enacted their ordinance levying the


section 166.231 public service tax under the regular enactment provisions of section 125.66, Florida Statutes, just as Orange County did. Section 125.66, Florida Statutes, mandates its use by all counties in the exercise of their constitutional ordinance-making powers.

The Amici urge this Court to affirm the Final Judgment and again approve the long-standing and consistent interpretation of the constitutional municipal power vested in a charter county to impose any tax provided to municipalities. Any other judicial action will create financial chaos within those charter counties that relied upon clear and consistent judicial precedent interpreting their constitutional power to tax.

CONCLUSION

Affirmance of the Final Judgment of validation on appeal is mandated by the clear authority of State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972), and other consistent Florida cases construing the constitutional municipal powers vested in a charter county under the 1968 revision to the Florida Constitution.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Amici, Alachua County, Dade County, Palm Beach County, Seminole County and Volusia County has been provided by U.S. Mail to Johnie A. McLeod, Esquire and James S. Curry, Esquire, McLeod, McLeod & McLeod, P.A., 48 East Main Street, Post Office Drawer 950, Apopka, Florida 32704; and Paula Coffman, Esquire, Assistant State Attorney, State Attorney's Office, 250 North Orange Avenue, Fourteenth Floor, Orlando, Florida 32801, this 29th day of October, 1993.


WILLIAM J. ROBERTS