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.

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.

_____/

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

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TABLE OF CONTENTS

TABLE OF CITATIONS

PAGE

CASES

PAGE

FLORIDA STATUTES

FLORIDA CONSTITUTION

ORDINANCES AND RESOLUTIONS

MISCELLANEOUS

POINTS ON APPEAL

I. AS A CHARTER COUNTY, ORANGE COUNTY HAS CONSTITUTIONALLY VESTED MUNICIPAL POWERS TO LEVY WITHIN THE UNINCORPORATED AREAS, A PUBLIC SERVICE TAX AUTHORIZED BY GENERAL LAW FOR MUNICIPALITIES UNDER SECTION 166.231, FLORIDA STATUTES.

II. THE ENACTMENT OF THE PUBLIC SERVICE TAX ORDINANCE BY ORANGE COUNTY WAS AN EXERCISE OF ITS CONSTITUTIONAL POWER AS A CHARTER COUNTY, NOT A MUNICIPALITY, AND ORANGE COUNTY LAWFULLY FOLLOWED THE ORDINANCE ENACTMENT PROCEDURE MANDATED UNDER CHAPTER 125, FLORIDA STATUTES.

III. NO VIOLATION OF THE AMERICANS WITH DISABILITIES ACT NOR THE CIRCUIT COURT ADMINISTRATIVE ORDER OCCURRED WHEN THE CLERK PUBLISHED THE ORDER TO SHOW CAUSE.

STATEMENT OF THE FACTS AND THE CASE

This case is an appeal by an individual intervenor from the Final Judgment entered on June 8, 1993, validating pursuant to the provisions of chapter 75, Florida Statutes, the Orange County Florida Public Service Tax Revenue Bonds, Series 1993, in a principal amount not exceeding $30,000,000 (the "Bonds"). (App. 1). The State Attorney for the Ninth Judicial Circuit filed an Answer to Orange County's complaint for validation and participated in the validation hearing but did not appeal the Final Judgment.

Orange County (the "County") is a charter county created pursuant to the provisions of article VIII, section 1(g), Florida Constitution. The Orange County Charter was approved by the electors in November, 1986, and became effective on January 1, 1987. Section 104, Article I, of the Orange County Charter provides:

> Section 104. Special Powers of the County.
>
> The County, operating under this Charter, shall have all special powers and duties which are not inconsistent with this Charter heretofore granted by law to the Board of County Commissioners (hereinafter "Board"), and shall have such additional County and municipal powers, as may be required to fulfill the intent of this Charter....

(App. 4).

Section 166.231, Florida Statutes, grants to a municipality the power to levy a public service tax on certain purchases of

electricity, metered or bottled gas, water service and fuel oil (the "Public Service Tax").

In fulfillment of its constitutionally vested municipal powers as a charter county, the County enacted Ordinance No. 91-17 on August 6, 1991, imposing pursuant to section 166.231, a public service tax. The County levied this tax on purchases as described by section 166.231, which were made in the unincorporated areas of Orange County (the "Public Service Tax Ordinance"). The imposition of the tax and collection of the proceeds began on October 1, 1991, and during County fiscal year 1992/1993, commencing October 1, 1992, the County received Public Service Tax proceeds of $32,560,000.

On November 10, 1992, the County enacted Ordinance No. 92-35 authorizing the issuance of Bonds payable from the proceeds of the Public Service Tax (the "Bond Ordinance"). (App. 2-B). The Bond Ordinance provided that the proceeds of the Bonds were to be used to acquire and construct capital improvements, facilities, property or equipment as the County would identify by subsequent resolution. (§§ 1 and 3(d), Ordinance No. 92-35; App. 2-B).

The Bond Ordinance specifically provided that the Bonds were not deemed to be a general obligation debt of the County nor a pledge of the County's full faith and credit. (§ 2(c), Ordinance No. 92-35; App. 2-B). In addition, the Bond Ordinance provided that the Bonds were payable solely from the Public Service Tax and other designated revenues pledged pursuant to subsequently adopted resolutions. (§§ 1, 2(c), Ordinance No. 92-35; App. 2-B).

As contemplated in the Bond Ordinance, the County adopted an implementing resolution, Resolution No. 92-B-10, on November 10, 1992. (App. 2-C). Resolution No. 92-B-10 also provided that the Bonds were to be payable from the Public Service Tax proceeds and other such funds as designated for payment of a series of bonds by supplemental resolution. Further, no person would have the right to compel the County to exercise any ad valorem taxing power to pay any bonds nor would any person be entitled to payment of such bonds except from Public Service Tax proceeds and other such funds as designated by supplemental resolution. (§ 1.04, Resolution No. 92-B-10; App. 2-C). Finally, Resolution No. 92-B-10, provided that the term "Project" would be defined by reference to a supplemental resolution authorizing the County to issue a specific series of bonds. (§ 1.01, Resolution No. 92-B-10; App. 2-C).

Resolution No. 92-B-11 was this supplemental resolution and authorized the County to issue the Bonds not exceeding $30,000,000 in principal amount to finance the Initial Project defined as the acquisition of various parcels of environmentally-sensitive land located both within unincorporated areas and municipal boundaries of the County. (§§ 2, 4, Resolution No. 92-B-11; App. 2-D). The definition of Initial Project also provided that the identified parcels were specifically described in plans on file or to be on file with the County.

The County filed a Complaint for Validation of the Bonds with the Circuit Court for the Ninth Judicial Circuit on February 26, 1993. (App. 2). The Court duly issued an Order to Show Cause

which was then published pursuant to section 75.06, Florida Statutes. The State Attorney for the Ninth Judicial Circuit filed an Answer in response to the County's Complaint. (App. 3). A validation hearing for the Bonds was held on June 4, 1993; both the State Attorney and the Intervenor attended and participated in the validation hearing. (App. 11). Final Judgment was entered on June 8, 1993, and validated the Bonds as authorized by the County. (App. 1). Appellant/Intervenor timely filed a Motion for Rehearing or New Trial. This Motion was denied, and Appellant appeals both the Final Judgment for Validation and the denial of his Motion for a Rehearing or New Trial. No appeal of the Final Judgment was filed by the State Attorney.

SUMMARY OF THE ARGUMENT

At issue in this appeal is the authority of Orange County (the "County") as a charter county to levy a public service tax authorized for municipalities under section 166.231, Florida Statutes. This public service tax was pledged by the County for payment of the Bonds validated in the Final Judgment which is now appealed by the Intervenor.

By clear judicial precedent, a charter county is constitutionally vested with municipal powers under section 1(g), article VIII, Florida Constitution. Among these municipal powers is the authority of a charter county to levy any tax that a municipality is authorized to levy. State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972). This particular case is significant to this appeal because both the municipal tax levied and the county charter provisions in Volusia County v. Dickinson are strikingly similar to those at issue here. The settled constitutional construction of section 1(g), article VIII, was explained by this Court in Volusia County v. Dickinson as follows:

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

269 So.2d at 1.

Orange County's levy of the municipal service tax authorized by section 166.231, Florida Statutes, is an exercise of municipal powers incorporated into the County charter. Dade County, created under section 11, article VIII, Florida Constitution (1885), and

four other charter counties created under section 1(g), article VIII, Florida Constitution (1968), have likewise levied the section 166.231 public service tax under their constitutionally vested municipal powers. Any retreat by this Court from this established constitutional principle will cause financial chaos to those charter counties that have relied upon clear judicial precedents proclaiming their constitutional power to tax.

Under the constitutional mandate of section 1(i) of article VIII and the statutory mandate of section 125.66, Florida Statutes, a charter county is required to exercise its constitutional municipal powers by adopting a county ordinance. The exercise of constitutionally vested municipal powers, like the levying of a public service tax, does not alter the status of Orange County as a county. Orange County is not a municipality and thus not governed by the municipal ordinance enactment provisions of section 166.041, Florida Statutes.

The failure of the Order to Show Cause published pursuant to section 75.06, Florida Statutes, to include the individuals to be contacted to secure reasonable accommodations for disabled persons is not a violation of the Circuit Court Administrative Order requiring such notice under the Americans with Disabilities Act (the "ADA"). Chapter 75, Florida Statutes, provides the notice provisions for a bond validation proceeding. Any failure to comply with the Circuit Court Administrative Order in the Order to Show Cause published pursuant to section 75.06 is at most a technical or procedural error and the County substantially complied with the

statutory requirements of chapter 75. In any event, the omission of such notice constitutes harmless error. Intervenor is in no position to complain as to the adequacy of the Order to Show Cause since he attended and participated in the validation hearing and has personal knowledge of the availability of judicial facilities within Orange County.

ARGUMENT

I. AS A CHARTER COUNTY, ORANGE COUNTY HAS CONSTITUTIONALLY VESTED MUNICIPAL POWERS TO LEVY WITHIN THE UNINCORPORATED AREAS, A PUBLIC SERVICE TAX AUTHORIZED BY GENERAL LAW FOR MUNICIPALITIES UNDER SECTION 166.231, FLORIDA STATUTES.

Under the 1885 Florida Constitution, any exercise of county governmental power required express legislative authorization. See Art. VIII, § 1, Fla. Const. (1885); and Amos v. Matthews, 126 So. 308 (Fla. 1930). The customary legislative vehicle was a special act. This archaic relationship between counties and the State is significant only to the extent that it enhances an understanding of the fundamental change crafted in the 1968 constitutional revision.

Article VIII of the 1968 constitutional revision unleased a revolution in granting counties the home rule power to legislate. As to charter counties, the constitutional power of self-government is embodied in article VIII, section 1(g), Florida Constitution:

> (g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

This power of self-government to regulate, to provide essential services, and to legislate by ordinance flows directly from the

Constitution to a county through the provisions of the county's charter. No legislative authorization is needed or required. Consequently, upon the approval of a charter by the county's citizens, the county's power of self-government as embodied in its charter is a direct constitutional grant.[1]

Under the novel and revolutionary concept of home rule embodied in the 1968 constitutional revision, the search for the power of a charter county to legislate by ordinance is not for specific legislative authorization. Rather, the search is for a general law, a special act approved by the voters, or a charter provision that is inconsistent with the subject matter of the proposed ordinance. Absent an inconsistent law or charter provision, a charter county has complete power of self-government to legislate by ordinance on any subject matter which constitutes a public purpose.

One of the essential distinctions between a charter county and a non-charter county is the constitutional vesting of municipal powers in charter counties by the 1968 constitutional revision.[2]

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[1] By contrast, the home rule authority of non-charter counties needed implementing legislation: "Counties not operating under county charters shall have such power of self-government as is provided by general or special law...." Art. VIII, § 1(f), Fla. Const. The general law implementation of home rule power for non-charter counties is section 125.01, Florida Statutes. General law provisions also supplement the constitutional home rule power for charter counties.

[2] Other distinctions between charter counties and those not operating under a charter, in addition to their sources of power, are that ordinances of non-charter counties cannot be inconsistent with special law as well as general law and are not effective within a municipality in the event of a conflict. In contrast, the power of self-government of a charter county is limited by an

These constitutional municipal powers provide a charter county with the authority to levy any tax within the unincorporated areas that municipalities can levy by general law.[3] The genesis of a charter county's municipal taxing power is judicial in nature, not statutory.

The constitutional and statutory basis for Orange County's Public Service Tax is expressly recognized by the Final Judgment validating the Bonds in this case:

> SECOND: The County is authorized by Section 166.231, Florida Statutes, and the Orange County Charter to levy a Public Service Tax and to expend the revenues derived from such tax on any valid public purpose in any part of Orange County.

(App. 1).[4] The Intervenor simply fails to recognize or acknowledge

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inconsistent special act only if the special act has been approved by vote of the electors and the charter provides which ordinance prevails in the event of a conflict with a municipal ordinance.

[3] An exception to this constitutional principle would arise if the general law authorizing a tax for a municipality expressly provided that the tax was not available to charter counties since their power of self-government cannot be inconsistent with general law. Section 166.231, Florida Statutes, the Public Service Tax, has no express exceptions and, as argued in detail subsequently, constitutes general law taxing authority to a charter county in fulfillment of its constitutionally vested municipal powers.

[4] The Public Service Tax Ordinance has no geographic limitations on the expenditure of the tax proceeds within Orange County. The Initial Project described in Section 2 of Resolution No. 92-B-11 consists of the acquisition of various parcels of environmentally-sensitive land located throughout the County, including both within the unincorporated areas and within municipal boundaries. (App. 2-D). Although not an issue in this appeal, the Final Judgment held that the Bond proceeds could pay for projects within Orange County "without limitation as to the location." (App. 1). There is no requirement in Florida that a tax provide a "benefit" solely to the geographic area in which it is derived. Questions of benefits and of unlawful burdens do not arise when a tax is uniform, for a public purpose, and within the legislative

settled decisions of this Court construing the constitutional municipal power of charter counties under the 1968 constitutional revision.

The foundation of Appellant's argument, that all taxes are preempted to the State and require general law authorization and that Orange County is not a municipality, misses the point. The constitutional vesting of municipal powers in charter counties under the 1968 constitutional revision is beyond debate or doubt. Section 166.231, Florida Statutes, is a general law authorization for a municipal optional public service tax.[5] The County's levy of the Public Service Tax, which is pledged as payment for the validated Bonds, is pursuant to the municipal powers constitutionally vested in it as a charter county. Once a tax option is granted to a municipality by general law, a charter county has the authorization to levy the same tax in unincorporated

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power of government to levy. Hunter v. Owens, 86 So. 839 (Fla. 1920); Jinkins v. Entzminger, 135 So. 785 (Fla. 1931); Dressel v. Dade County, 226 So.2d 402 (Fla. 1969); and Tucker v. Underdown, 356 So.2d 251 (Fla. 1978). Orange County argued alternatively at the validation hearing that if there exists a benefit nexus requirement, the standard to apply is that public service tax expenditures are required to provide a real and substantial benefit to the unincorporated areas of the County not a direct benefit. City of St. Petersburg v. Briley Wild & Associates, Inc., 239 So.2d 817 (Fla. 1970); and Town of Palm Beach v. Palm Beach County, 460 So.2d 879 (Fla. 1984).

[5] Under the 1968 constitutional revision, all forms of taxation other than the ad valorem tax are "preempted" to the State except as provided by "general law." Art. VII, §§ 2 and 9(a), Fla. Const. Section 166.231, Florida Statutes, is a general law provision of the power to tax by a municipality and is available to a charter county in fulfillment of the constitutional municipal power vested in a charter county.

areas because the Florida Constitution so guaranteed such authorization in the 1968 revision.

The initial case explaining the municipal power of charter counties is State v. Dade County, 127 So.2d 881 (Fla. 1961), which constructed the constitutional home rule charter of Dade County as authorized under the 1885 Florida Constitution. In State v. Dade County, the Court held that general laws granting municipalities the authority to issue revenue bonds applied to Dade County since its charter authorized the County to exercise all powers and privileges granted to municipalities. Id. at 882. Subsequently, in State ex rel. Dade County v. Brautigam, 224 So.2d 688 (Fla. 1969), the Court followed this ruling and approved Dade County's imposition of an excise tax on cigarette sales in the unincorporated areas pursuant to a cigarette tax option granted to municipalities in section 210.03, Florida Statutes (1968). In Dade County v. Brautigam, the Court construed the municipal powers of Dade County under its charter pursuant to the 1968 constitutional revision rather than the provision of the 1885 Florida Constitution. Consistently, in Bearden v. Metropolitan Dade County, 258 So.2d 344 (Fla. 3d DCA 1972), cert. denied, 263 So.2d 234 (Fla. 1972), the Court approved the levy by Dade County of the public service tax pursuant to section 167.431, Florida Statutes (1971). Section 167.431 was the statutory predecessor to section 166.231 which is the municipal taxing option exercised by Orange County in its adoption of the Public Service Tax Ordinance. The Court in Bearden v. Metropolitan Dade County, upheld Dade County's

levy of the public service tax by recognizing that, pursuant to its charter, Dade County had the same power to levy and collect taxes as the municipalities. 258 So.2d at 346.

Faced with these clear precedents concerning the municipal powers of Dade County under its constitutional charter, this Court decided State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972). Volusia County, like Orange County, adopted its charter under the authority of article VIII, section 1(g), Florida Constitution.

In Volusia County v. Dickinson, Volusia County levied, by ordinance a cigarette sales tax in the unincorporated areas under the statutory taxing authority granted to a municipality by section 210.03, Florida Statutes (1971). (App. 9).[6] The Court noted that the issue in Volusia County v. Dickinson was "quite analogous in principle" to the one considered by the Court in the Dade County v. Brautigam cases. 269 So.2d at 11. In upholding the authority of Volusia County to impose a tax option granted to a municipality by general law, the Court held the following:

> When Section 1(g), Article VIII and Section 9(a), Article VII are read together, it will be noted that charter counties and municipalities are placed in the same category for all practical purposes. That upon a county becoming a charter county it automatically becomes a metropolitan entity for self-government purposes. This is so because Section 1(g) of Article VIII provides a charter county "shall have all powers of local self-government not inconsistent with general law.... The governing body of a county

[6] The municipal tax on the sale of cigarettes was repealed as a local option and imposed statewide. Ch. 72-360, Laws of Florida.

> operating under a charter may enact county ordinances not inconsistent with general law." 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.
>
> Read together, Sections 9(a), Article VII and 1(g), Article VIII, clearly connote the principle that unless precluded by general or special law, a charter county may without more under authority of existing general law impose by ordinance any tax in the area of its tax jurisdiction a municipality may impose.

269 So.2d at 11. (emphasis in original).

The municipal power provisions in the Volusia County Charter are identical to those in the Orange County Charter. Section 202, Article II of the Volusia County Charter provides as follows:

> The County, operating under this charter, shall have all special powers and duties which are not inconsistent with this charter, heretofore granted by law to the board of county commissioners and shall have such additional county or municipal powers as may be required to fulfill the intent of this charter.

(App. 5). In comparison, Section 104, Article I, of the Orange County Charter provides:

> Section 104. Special Powers of the County.
>
> The County, operating under this Charter, shall have all special powers and duties which are not inconsistent with this Charter heretofore granted by law to the Board of County Commissioners (hereinafter "Board"), and shall have such additional County and municipal powers, as may be required to fulfill the intent of this Charter, including but not limited to, the creation and abolition of special municipal taxing units with independent budgets.

(App. 4). (emphasis supplied).

Furthermore, the taxing option on cigarette sales that was granted to municipalities in section 210.03, Florida Statutes (1971) and construed in Volusia County v. Dickinson, is substantially similar to the municipal taxing option provided in section 166.231, Florida Statutes, authorizing a municipal public service tax. Section 210.03(1), Florida Statutes (1971), construed in Volusia County v. Dickinson, provided:

> 210.03 Municipal tax authorized; prohibition against other taxes.--
>
> (1) Any municipality in this state may, in the discretion of its governing body, impose an excise or privilege tax upon the sale ... of cigarettes sold or to be sold at retail within the territorial limits of such municipality....

(App. 9). Section 166.231(1)(a), Florida Statutes (1991), the municipal taxing option exercised in the Public Service Tax Ordinance, provides as follows:

> 166.231 Municipalities; public service tax.--
>
> (1)(a) A municipality may levy a tax on the purchase of ... The tax shall be levied only upon purchases within the municipality ....

(App. 9).

The case of State v. Broward County, 468 So.2d 965 (Fla. 1985), rev'd on other grounds, 515 So.2d 1273 (Fla. 1987), is instructional because this Court construed the holding of Volusia County v. Dickinson as follows:

> This Court held that a charter county created under section 1(g) of article VIII was automatically vested with inherent powers of self-government, including those

> constitutionally granted to municipalities. Accordingly, the charter county could impose those taxes which a municipality could levy under general law.
>
> The broad powers of charter counties set forth in article VIII, section 1, are not merely limited to the taxing power but also include those powers granted municipalities under section 166.111. In the present case, Broward County's charter provides that the County shall have all the powers granted charter counties under the Florida Constitution.

Broward County, 468 So.2d at 969.

A clearer pronouncement of a constitutional principle by this Court is difficult to imagine. The idea that a charter county maintains the power to levy a tax permitted a municipality is not open to debate. Consequently, the authority of the County to levy the Public Service Tax under section 166.231, within the unincorporated areas of Orange County, is beyond question.

In addition to the core argument that a county is not specifically mentioned in section 166.231, Florida Statutes, Intervenor argues that the failure of the Legislature to include counties in the many amendments to section 166.231 since the Volusia County v. Dickinson decision, is evidence of legislative intent not to grant counties this municipal taxing option.[7] In the words of the Intervenor: "Legislative intent is the polestar of

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[7] The citation and discussion by Appellant of Dade County v. Dickinson, 230 So.2d 130 (Fla. 1969), is puzzling. The Court in Dade County v. Dickinson, was faced with the application of the millage framework of article VII under the 1968 Constitution in Dade County. The court concluded that the millage limitations applicable to both Dade County and the municipalities within the County was 20 mills, not 30 mills as Dade County had argued. This decision is totally inapplicable to any issue in this appeal.

construction." (Initial Brief, p. 21). Orange County can turn this legislative history against the Intervenor and argue more persuasively that the failure of the Legislature to remove counties from section 166.231, after the Volusia County v. Dickinson decision, reflects an obvious and apparent acceptance of the Court's construction of the constitutional vesting of municipal powers in charter counties. However, such an argument is not required since the legislative record is clear that the municipal power of a charter county to levy the public service tax option granted under section 166.231 is recognized and assumed by the Legislature. For example, during the 1993 Legislative Session, an exception to section 166.231, Florida Statutes, was under consideration. The Bill Analysis and Economic Impact Statement prepared by the House of Representatives Committee on Community Affairs which accompanied the proposed bill, HB 105, stated:

> I. SUMMARY:
>
> This bill allows municipalities and charter counties that levy the Municipal Public Service Tax to exempt the purchase of natural gas or fuel oil used for agricultural purposes.
>
> * * *
>
> II. SUBSTANTIVE ANALYSIS:
>
> A. PRESENT SITUATION:
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> * * *
>
> The Florida Supreme Court has ruled that charter counties, unless specifically precluded by general or special law, may impose by ordinance any tax in the area of its tax jurisdiction as a municipality may impose. State of Florida ex rel.

Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972). Thus, both charter counties and municipalities may impose the public service tax.

* * *

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

* * *

B. FISCAL IMPACTS ON LOCAL GOVERNMENTS AS A WHOLE:

* * *

2. Recurring Effects:

Indeterminate.

Based on a FY 1990-91 survey of Municipal Public Service Tax Revenues conducted by the Advisory Council on Intergovernmental Relations (ACIR), using fiscal data from the Florida Local Government Information System also compiled by ACIR, municipalities and charter counties received $540.7 million in public service tax revenue.

* * *

(App. 6) (emphasis supplied). Also, the Senate Staff Analysis and Economic Impact Statement prepared to accompany SB 84, the Florida Senate companion to HB 105, contains substantially identical language acknowledging that charter counties are authorized to levy a tax option granted to municipalities. (App. 7).

These staff analyses are accorded deference by the Florida courts. In Department of Environmental Regulation v. SCM Glidco Organics Corp., 606 So.2d 722 (Fla. 1st DCA 1992), the Court construed a statute and noted, "Staff analyses of legislation should be accorded significant respect in determining legislative

intent." Id. at 725. A court's reliance on staff analysis is reasonable since the Legislature "is presumed to be cognizant of the judicial construction of a statute when contemplating making changes in the statute." Quigley v. Quigley, 463 So.2d 224, 226 (Fla. 1985).

The constitutional vesting of municipal powers in a charter county is ingrained in the common understanding of all charter counties, their county attorneys, and the Legislature. Such understanding is firmly grounded in the clear precedent of the Volusia County v. Dickinson decision and its predecessors. Any retreat from such unambiguous precedent would be a fatal blow to the predictability of all local government power and would undermine the confidence of local government officials in relying on settled case law to determine the extent of their governmental power. The ripple of such a dramatic departure from precedent would create a financial crisis in Orange County and other charter counties throughout Florida.

At issue in this appeal is the validation of the Bonds whose payment is secured by the Public Service Tax. However, the Public Service Tax was initially levied by the County in 1991. Since October 1, 1991, the Public Service Tax proceeds have been levied on taxable transactions occurring within the unincorporated areas of Orange County and budgeted and expended for essential county services.

Other Florida charter counties have also levied the section 166.231 public service tax and budgeted and expended the tax

revenues for essential county services. Alachua County levied its public service tax by the enactment of a county ordinance on July 28, 1992. (Alachua County Ordinance No. 92-16; App. 8-E) Palm Beach County levied its public service tax by the enactment of a county ordinance on July 18, 1989. (Palm Beach County Ordinance No. 89-13; App. 8-F). Seminole County levied its public service tax by the enactment of a county ordinance on September 9, 1991. (Seminole County Ordinance No. 91-12; App. 8-G). Volusia County levied its public service tax on September 6, 1985, by enactment of a county ordinance. (Volusia County Ordinance No. 85-17; App. 8-H).

An abrupt retreat by the Court from settled precedent on the constitutional municipal power of charter counties will bring a fiscal crisis to each of these counties. The Final Judgment is squarely within the four corners of the Volusia County v. Dickinson decision and those cases that preceded and followed it in establishing the constitutional scope of the municipal powers of charter counties.

II. THE ENACTMENT OF THE PUBLIC SERVICE TAX ORDINANCE BY ORANGE COUNTY WAS AN EXERCISE OF ITS CONSTITUTIONAL POWER AS A CHARTER COUNTY, NOT A MUNICIPALITY, AND ORANGE COUNTY LAWFULLY FOLLOWED THE ORDINANCE ENACTMENT PROCEDURE MANDATED UNDER CHAPTER 125, FLORIDA STATUTES.

Orange County, and each charter county that has levied the section 166.231 public service tax has done so by the enactment of a county ordinance under the procedures required in section 125.66, Florida Statutes. This consistent procedural selection by all of the charter counties is not a coincidence but a matter of constitutional and statutory mandates.

Section 1(i), article VIII, Florida Constitution provides:

> Each county ordinance shall be filed with the secretary of state and shall become effective at such time thereafter as is provided by general law.

This constitutional requirement applies to each county, whether charter or non-charter. No similar constitutional filing mandate exists for municipal ordinances.

Section 125.66, Florida Statutes, establishes the enactment procedure for county ordinances, whether charter or non-charter:

> (1) In exercising the ordinance-making powers conferred by s. 1, Art. VIII of the State Constitution, counties shall adhere to the procedures prescribed herein.

§ 125.66(1), Fla. Stat. (emphasis supplied). By its express language, all counties are required to use this section 125.66 procedure for ordinance enactment.

The most fundamental principle of county home rule is that a charter county has no authority to legislate in a manner

inconsistent with general law. "Counties operating under a county charter shall have all powers of local self-government not inconsistent with general law...." § 1(g), Art. VIII, Fla. Const. Having established the exclusive procedural method for the enactment of county ordinances by the general law provision of section 125.66, a county cannot legislate by ordinance in a different manner and pursuant to a different statutory procedure.[8]

The procedural enactment process established in section 125.66, Florida Statutes, provides the exclusive mechanism for county ordinance enactment similar to the millage setting provisions established by general law that were considered in Board of County Commissioners of Dade County v. Wilson, 386 So.2d 556 (Fla. 1980). In this decision, the Court invalidated a proposed county ordinance purporting to establish a four mill limitation on ad valorem taxation levied by Dade County on the grounds of conflict with general law provisions establishing ad valorem millage limitations. See also Board of County Commissioners of Marion County v. McKeever, 436 So.2d 299 (Fla. 5th DCA 1983).

Intervenor argues that somehow the County becomes a municipality when it exercises its constitutional municipal powers or performs municipal functions. This argument demonstrates a fundamental misunderstanding of charter county government and confuses the concept of charter county powers with the statutory

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[8] Section 166.041(6), Florida Statutes, clearly expresses that its procedural requirement applies only to ordinance enactment by a municipality: "The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances ..." (emphasis supplied).

procedural mandates on its exercise. The exercise of its constitutionally vested municipal powers does not alter the status of Orange County as a county. Orange County is a not a municipality. However, as a charter county, Orange County has constitutionally vested municipal powers. One of these powers is the ability to levy any municipal tax provided by general law. In exercising this power, legislatively, by the enactment of an ordinance, Orange County remains a county. As such, the County "shall adhere" to the procedural requirements for county ordinance enactment in section 125.66.

A county ordinance levying a section 166.231 public service tax is constitutionally required under section 1, article VIII, Florida Constitution, to be filed with the Florida Secretary of State in the same manner as all other county ordinances. To require a charter county levying a section 166.231 public service tax to adopt an ordinance under the procedures established for the adoption of an ordinance by a municipality would be inconsistent with the general law provisions of section 125.66 and a distortion of the common understanding of the manner by which governmental powers are exercised by charter counties.

III. NO VIOLATION OF THE AMERICANS WITH DISABILITIES ACT NOR THE CIRCUIT COURT ADMINISTRATIVE ORDER OCCURRED WHEN THE CLERK PUBLISHED THE ORDER TO SHOW CAUSE.

On April 15, 1993, the Chief Judge for the Ninth Judicial Circuit issued Administrative Order 07-92-26 (the "Circuit Court Administrative Order") which stated that communications noticing court proceedings provide certain information so that persons with disabilities needing special accommodations could contact the individual or agency sending the notice to ensure that reasonable accommodations were available. (App. 10).

A copy of the Order to Show Cause entered March 24, 1993, was published pursuant to the notice requirements of section 75.06, Florida Statutes. The Intervenor appeared and participated in the validation hearing noticed in the Order to Show Cause. (App. 11). In addition, Intervenor is a practicing attorney who resides in Orange County and is familiar with the available court facilities. Intervenor also knows the officials of Orange County and the individuals to contact in the event a special accommodation was needed for him at the validation hearing. Finally, Intervenor, in this cause and other matters, has been an active participant in judicial proceedings involving Orange County and has filed numerous pleadings in the case on appeal.

Intervenor argues in the Initial Brief that the Final Judgment should be "quashed" because of the absence, in the published Order to Show Cause, of the notice described in the Circuit Court Administrative Order and because of a failure to

comply with, "federal law as enumerated in the Americans with Disabilities Act." (Initial Brief, p. 33).

The procedural requirements for noticing a bond validation proceeding are contained in chapter 75, Florida Statutes, and are the following:

> The Court shall issue an order directed against the state and the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by the issuance of bonds ... requiring all persons in general terms ... to appear at a designated time and place within the circuit where the complaint is filed and show why the complaint should not be granted and the proceedings and bonds ... validated. A copy of the complaint and order shall be served on the state attorney of the circuit in which such proceedings are pending ...

§ 75.05, Fla. Stat. Chapter 75 further requires that "[b]efore the date set for hearing, the clerk shall publish a copy of the order in the county where the complaint is filed ... at least once each week for 2 consecutive weeks." § 75.06, Fla. Stat. So long as the circuit court substantially complies with these requirements and no prejudice results to a party from any irregularities in the procedure, the court has acted properly. See Stewart v. City of DeLand, 75 So.2d 584 (Fla. 1954) ("Chapter 75 ... defines the procedure for validating bonds ..."); and State v. City of Sarasota, 17 So.2d 109, 111 (Fla. 1944) ("The [bond] proceedings must in substance be in compliance with the statutory requirements").

In Stewart v. City of DeLand, the Supreme Court of Florida rejected a challenge to the order to show cause where the order was

issued pursuant to chapter 75, Florida Statutes, except that the order misidentified the court to which any objecting parties were to appear and except that the clerk failed to furnish a copy of the order to the state attorney. 75 So.2d at 585.

These errors on the part of the circuit court in Stewart v. City of DeLand at most were technical and procedural in nature just as the complaint by the Intervenor that the published Order to Show Cause did not include the notice language of the Circuit Court Administrative Order is technical and procedural. Furthermore, the Intervenor in Stewart v. City of DeLand, like here, appeared at the proper time and at the proper place to voice his objections to the bond validation. 75 So.2d at 585. The Court in Stewart v. City of DeLand upheld the bond validation despite the procedural problems and noted the following:

> Chapter 75 does not require the order to show cause to set the hearing at the courthouse but it may be held at any place designated in the circuit. The record shows that the order to show cause was published in the manner provided by law, that it gave the required notice of hearing and that it was duly filed and recorded in the office of the Clerk of the Circuit Court. After all is said, appellant was present at the hearing, took part in it but offered no evidence to support his contention. He is not in a position to complain.

Id.

Likewise, in this case, even if the Circuit Court Administrative Order required that the published Order to Show Cause to identify the individuals to be contacted for special accommodations, the failure to include such information in the

published order was not a violation of chapter 75, Florida Statutes. First, Intervenor knew of the hearing, attended, and made his objections known. Second, Intervenor does not allege that he or any other individual was prejudiced by the absence of the language contained in the Circuit Court Administrative Order. Third, failure to include the notice was at most a technical or procedural error within the meaning of the Stewart v. City of DeLand decision. Last, in all respects, the Circuit Court and its Clerk adhered to the requirements of chapter 75, Florida Statutes. Section 75.06 requires the clerk to publish the precise order entered by the Circuit Court and the Clerk in this case published that Order. Any failure to include the notice in the Order was harmless error.

In Florida, harmless error is error that "does not injuriously affect the substantial rights of the complaining party." Anthony v. Douglas, 201 So.2d 917, 919 (Fla. 4th DCA 1967). Conversely, an appellate court reverses an error

> only when considering all the facts peculiar to the particular case under scrutiny, it is reasonably probable that a result more favorable to the appellant would have been reached if the error had not been committed.

Damico v. Lundberg, 379 So.2d 964, 965 (Fla. 2d DCA 1979). For example, in Parrish v. Dougherty, 505 So.2d 646 (Fla. 1st DCA 1987), the court rejected an argument that the trial court failed to follow the procedure for setting a case for trial under the Florida Rules of Civil Procedure. Id. at 648. Rule 1.440, Florida Rules of Civil Procedure, requires the court to enter an order

establishing a trial date once the case is ready for trial. Id. However in Parrish v. Dougherty, the Plaintiff's attorney scheduled the final hearing on the judge's calendar and served notice of such on opposing counsel, but the trial court never issued an order. Id. On appeal, the court ruled that no reversible error existed because the defendants suffered no prejudice:

> [Defendants'] attorney was prepared to go to trial, appeared at the trial, and raised no objection to the method by which the case was set for trial. By this conduct [defendants] waived the requirements of [the] rule.

Id.

Similarly, in this case, Intervenor has not alleged any prejudice to him resulting from the Circuit Court's failure to include the language of the Circuit Court Administrative Order in its Order to Show Cause.

Intervenor further argues that the failure to include the Circuit Court Administrative Order's language violated the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (Supp. 1993) (the "ADA"). This argument is entirely misplaced because it is collateral to and beyond the scope of these bond validation proceedings.

> The scope of judicial inquiry in bond validation proceedings is limited. Specifically, courts should: 1) determine if a public body has the authority to issue the subject bonds; 2) determine if the purpose of the obligation is legal; and 3) ensure that the authorization of the obligations complies with the requirements of law.

Taylor v. Lee County, 498 So.2d 424, 425 (Fla. 1986). See also Speer v. Olson, 367 So.2d 207 (Fla. 1979). An allegation against

the Circuit Court that it violated the ADA in its bond validation proceedings simply does not fall within the scope of judicial validation review.

Finally, the ADA prohibits the following:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132 (Supp. 1993). Although Intervenor on one occasion alleged he was statutorily disabled under the ADA, he suffered no discrimination as a consequence of the validation proceedings on appeal. As previously indicated, Intervenor knew of the hearing, prepared for it, attended the proceeding and participated in it. (App. 11).

CONCLUSION

The Final Judgment validating the Bonds is required to be affirmed because of the settled precedent of this Court recognizing the vesting of municipal powers in charter counties under section 1(g), article VIII, Florida Constitution.

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee/Plaintiff 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.

Robert L. Nabors