

**FILED** 9

SID J. WHITE

APR 12 1994

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, et al.,

Appellants,

vs.

CASE NO. 83,103

THE CITY OF PORT ORANGE,  
FLORIDA,

Appellee.

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On Appeal from a Final Order of the  
Seventh Judicial Circuit Court,  
In and For Volusia County, Florida

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**AMICUS BRIEF OF  
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS  
ON BEHALF OF THE CITY OF PORT ORANGE**

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STATEMENT OF THE FACTS AND THE CASE

The Department adopts by reference the Statement of the Facts and the Case in the Brief of the City of Port Orange.

SUMMARY OF ARGUMENT

I. THE CITY OF PORT ORANGE HAS THE AUTHORITY UNDER FLORIDA LAW TO ADOPT A TRAFFIC USER FEE ORDINANCE

The City of Port Orange has authority under law to adopt a traffic fee user ordinance that adjusts the amounts paid according to legislative determinations about the impact on the transportation system. Such a fee accomplishes many important state policies concerning governmental efficiency, growth patterns, and the equitable distribution of costs and services.

II. THE TRAFFIC USER FEE ORDINANCE ADOPTED BY THE CITY OF PORT ORANGE IS A LEGITIMATE USER FEE AND IS NOT AN UN-AUTHORIZED TAX

The specific user fee ordinance adopted by the City of Port Orange must be presumed to be lawful unless it is arbitrary or capricious. Since it is not, and since it satisfies applicable standards on the legitimacy of such fees, the lower court judgment should be affirmed.

## ARGUMENT

### I. THE CITY OF PORT ORANGE HAS THE AUTHORITY UNDER FLORIDA LAW TO ADOPT A TRAFFIC USER FEE ORDINANCE

Local governments in Florida used to operate under "Dillon's rule," which meant that they could not exercise a power unless it was specifically delegated to them by the state in a general or special law. See City of Boca Raton v. State, 595 So.2d 25, 27 (Fla. 1992) (the rule was named after John F. Dillon, a noted 19th century commentator on municipal powers). Dillon's rule was effectively abolished, however, when the voters ratified the Home Rule Powers provision of the Florida Constitution in 1968. Id. Now, local governments have constitutional authority to exercise any power not inconsistent with state law, including the power to fund governmental operations through legitimate user fee systems, like the one at issue here. The reporter for the 1968 Constitutional Revision Commission described the difference between the new and old systems of local government rule:

The apparent difference is that under the new language, all municipalities have governmental, corporate and proprietary powers unless otherwise provided by law, whereas under the 1885 Constitution, municipalities had only those powers expressly granted by law.

Commentary by Talbot "Sandy" D'Alemberte, 26A West's Florida Statutes Annotated 292. As the Supreme Court said in State v. City of Sunrise, 354 So.2d 1206, 1209 (Fla. 1978):

Municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitation of authority.

The Port Orange measure at issue is not only not inconsistent with state law on municipal powers, it appears to be the type of user charge clearly contemplated by the language of Section 166.201, Florida Statutes (emphasis added), which says:

**166.201 Taxes and charges.**--A municipality may raise, by taxation and licenses authorized by the constitution or general law, or by user charges or fees authorized by ordinance, amounts of money which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.

Science, engineering and finances have now evolved to the point that it is possible to erect and to enforce an equitable and legitimate system of user fees for those who impact local government traffic systems. To hold otherwise would be to preempt progress in equitably distributing costs among those in society who impact society's systems. This would be inconsistent with many long range state policies, such as policies to promote effective coordination among various modes of transportation in urban areas to assist urban development and redevelopment, Section 187.201(20)(b)15., Florida Statutes, to allocate the costs of new public facilities on the basis of benefits received by existing and future residents, Section 187.201(18)(b)3., Florida Statutes, and to promote programs to ensure that growth is accommodated in an environmentally and fiscally responsible manner. Section 187.201(18)(b)3., Florida Statutes.

II. THE TRAFFIC USER FEE ORDINANCE ADOPTED BY THE CITY OF PORT ORANGE IS A LEGITIMATE USER FEE AND IS NOT AN UN-AUTHORIZED TAX

The means chosen by Port Orange to generate and apply its user fee for those who do or may impact the transportation system is a legislative determination that must be sustained unless it is arbitrary, oppressive, discriminatory or without basis in reason. See South Trail Fire Control District v. State, 273 So.2d 380 (Fla. 1973).

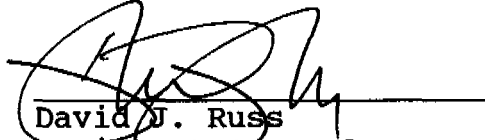
The user fee system involves providing an essential service, is based on the impact of the user on that service and the facilities involved in rendering the service, and accrues to the beneficiaries of the transportation system. It is therefore a legitimate system of charges and should be upheld. See Charlotte County v. Fiske, 350 So.2d 578, 578-581 (Fla. 2d DCA 1977). The fact that it could have been drawn with a finer pen, or that different people might chose a different system of revenues or charges is irrelevant. It is not arbitrary or capricious, and it meets the dual nexus test; therefore, it is lawful.

CONCLUSION

For the reasons stated in this brief the final judgment of the lower court should be affirmed. Our local governments are our laboratories of democracy and innovation. This innovative, equitable, and responsible approach to assessing the costs of maintaining a transportation system for its beneficiaries should be approved by this Court.



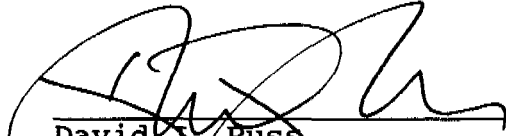
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy hereof was served by U.S. Mail on the parties listed below this 8<sup>th</sup> day of April, 1994.



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