IN THE SUPREME COURT OF FLORIDA
CASE NO. 88,218

LAKE COUNTY, FLORIDA, et al.,

Appellants,

v.

WATER OAK MANAGEMENT CORPORATION, et al.,

Appellees.

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL
CASE NO. 93-3445

AMICI BRIEF OF FLORIDA ASSOCIATION OF COUNTIES; FLORIDA ASSOCIATION OF COUNTY ATTORNEYS; AND FLORIDA LEAGUE OF CITIES, INC.

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STATEMENT OF THE CASE AND FACTS

Amici Curiae adopts the Statement of the Facts and Case provided in the Initial Brief of Appellant, Lake County.

SUMMARY OF THE ARGUMENT

The counties and municipalities of the State of Florida, unlike most other states, govern their communities with expansive home rule powers authorized by the Florida Constitution and, in some cases, implemented by the Florida Legislature. In its most basic form, the power of local self government is the home rule power to solve local problems locally. Most significant to these local solutions is the ability of counties and municipalities to create home rule funding sources without the intrusion of the state legislative process. However, the implementation of this home rule authority depends on the fundamental ability of counties and municipalities to assess risk, plan budgets, and fund services in accordance with clear case precedent.

ARGUMENT

I. THE HOME RULE POWER OF COUNTIES AND MUNICIPALITIES INCLUDES THE AUTHORITY TO IMPOSE SPECIAL ASSESSMENTS BY ORDINANCE.

A. The 1885 Florida Constitution Granted Virtually No Powers to Counties and Municipalities.

counties

Article VIII, section I, Florida Constitution (1885), merely provided that "The State shall be divided into political divisions to be called counties." This brief mention of counties in Article VIII, section 1, Florida Constitution (1885), and the posture of implementing general legislation placed counties, prior to the 1968 Florida Constitution, in an area of strict and limited power. All county power had to be found in an express grant from the Legislature and no implied power could be inferred that would result in the exercise of any power not expressly conferred by the State. See Amos v. Mathews, 126 So. 308 (Fla. 1930); and Molwin Inv. co. v. Turner, 167 So. 33 (Fla. 1936). The primary source of county power was a special act.[1]

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[1] Examples of the time demand on the Legislature to focus on issues of local authority are: (1) the number of local bills introduced in the 1965 Legislative Session was 2,107 and (2) the number of population acts enacted had grown to 2,100 by 1970 with over 1,300 having been enacted since the effective date of the 1960 census. Sparkman, The Historv and Status of Local Government Powers in Florida, 25 U. Fla. L. Rev. 271, 286 (1973).

municipalities

Under the 1885 Florida Constitution, all municipal powers were dependent on a specific delegation of authority by the Legislature in a general law or special act.

> The Legislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time.

Art. VIII, § 8, Fla. Const. (1885). This requirement of an express legislative grant was a reflection of the prevailing 19th century local government theory known as "Dillon's Rule."[2] Under this approach to municipal power, "[t]he authority of local governments in all matters, including those previously local, was limited to that expressly granted by the Legislature, or that which could be necessarily implied from an express grant." Sparkman, The History and Status of Local Government Powers in Florida, 25 U. Fla. L. Rev. 271, 282 (1973). To find a municipal power to legislate, the search was for an express delegation of authority from the Legislature in a general law or special act. The quantum and source of power was essentially the same for both municipal and county governments.

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[2] The term "Dillon's Rule" is named after a treatise on municipal corporations by J. Dillon. See Malone v. City of Quincy, 62 So. 922 (Fla. 1913) (a typical application of Dillon's Rule by this Court).

B. The 1968 Florida Constitution Unleashed A Self-Government Revolution For Both Counties and Municipalities.

counties

While a charter county derives its authority from its charter and the Florida Constitution, a non-charter county has "such power of self-government **as** is provided by general or special law." Art. VIII, § l(f), Fla. Cont. The power of self-government provided to non-charter counties in section 125.01, Florida Statutes, is extremely broad. Section 125.01(1) provides:

> (1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to. . . .

Following this provision is an enumeration of specific powers.

Section 125.01(3), Florida Statutes, reiterates that the grant of power provided is not restricted to those enumerated powers and that the Legislature intended section 125.01 to implement all the powers of self-government authorized by the Florida Constitution. Section 125.01(3) specifically provides:

> (3)(a) The enumeration of powers herein shall not be deemed exclusive or restrictive, but shall be deemed to incorporate **all** implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.

> (b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.

A county's authority to proceed under its home rule powers is well established. The Supreme Court of Florida has explored the scope of county home rule authority in three leading opinions: State v. Orange County, 281 So. 2d 310 (Fla. 1973), Speer v. Olsen, 367 So. 2d 207 (Fla. 1979), and Taylor v. Lee County, 498 So. 2d 424 (Fla. 1986). In all three opinions, the Supreme Court recognized the expansive home rule powers conferred by Article VIII, section 1(f), Florida Constitution, and section 125.01, Florida Statutes, and concluded that counties need no specific statutory authority to enact ordinances. Counties have the home rule authority to enact ordinances for any public purpose, this Court has held, as long as the ordinances are not inconsistent with general or special law.

As the three cases illustrate, the amount of home rule power possessed by counties is expansive and complete within the implemented parameters of the 1968 Florida Constitution. The powers enumerated in section 125.01, Florida Statutes, are not exhaustive. In determining the home rule power of a county to act for a public purpose, the search is no longer for specific legislative authorization. The search is for a general or special law that is inconsistent with the subject matter of the proposed

Ordinance. Absent an inconsistent **law,** a county has the complete power to legislate by ordinance for any public purpose.[3]

Except for the potential preemption of municipal authority in its county charter, the amount of home rule power of a charter and a non-charter county is essentially the same.[4] This constitutional consequence was clearly contemplated by the framers and is supported by the following from the Commentary to Florida Statutes Annotated, Article VIII, section l(g), Florida Constitution:

> Counties operating under a charter are presumptively considered to have the broad power of self-government (with the exception of precedence over municipal ordinances which must be provided in the charter) unless provided otherwise by general law or by the special law adopting the charter. Thus, charter counties and non-charter counties apparently start from different poles in their relationships with legislative enactments. Both could, conceivably, be the same depending on the legislation adopted,

T. D'Alemberte, Commentary, Art. VIII, § l(g), 26A Fla. Stat. Ann. 271 (West 1970). The First District Court of Appeal in Santa Rosa County v. Gulf Power Company, 635 So. 2d 96 (Fla. 1st DCA 1994), rev. den'd, 645 So. 2d 452 (Fla. 1994), explained the fundamental changes to county home rule powers which were accomplished by the 1968 revision to the Florida Constitution in the following manner:

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[3] For a charter county, the search also includes any limitations in its charter.

[4] In fact, a charter county may have less home rule power than a non-charter county if the charter has restrictions not inconsistent with general law or special law approved by the electors. For example, in State v. Sarasota County, 549 So. 2d 659 (Fla. 1989), a charter provision required elector approval of bonds not required in non-charter counties.

> Thus, the specific powers enumerated under section 125.01 are not all-inclusive, and **a** non-charter county's authority comprises that which is reasonably implied or incidental to carrying out its enumerated powers. The only limitation on **a** county's implied power to act occurs if there is a general or **special** law clearly inconsistent with the powers delegated.

635 So. 2d at 99-100 (emphasis in **original).**

The self-government concept envisioned in Article VIII of the 1968 Florida Constitution and unleashed to counties by the implementing provisions of section 125.01, Florida Statutes, is a fundamental change which abolishes the precedential value of prior county power cases. Absent **an** inconsistent general law or special act, **a** board of county commissioners can legislate by ordinance on any issue that serves a public purpose.

municipalities

The 1968 revision to the Florida Constitution abolished Dillon's Rule and fostered **a** Florida revolution in municipal home rule power as well.

> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except **as** otherwise provided by law. . . .

Art. VIII, § 2(b), Fla. Const. (emphasis added). The constitutional revision signaled a dramatic reversal of the source of municipal legislative power from Tallahassee to the city hall.

Section 166.021, Florida Statutes, the Municipal Home Rule Powers Act, completed the constitutional design of the novel municipal home rule concept. As recognized by this Court, section 166.021 was:

> a broad grant of power to municipalities in recognition and implementation of the provisions of Art. VIII, § 2(b), Fla. Const. It should be so construed as to effectuate that purpose where possible. It provides, in new F.S. § 166.021(1), that municipalities shall have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services; it further enables them to exercise any power for municipal services, except when expressly prohibited by law.[5]

City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764, 766 (Fla. 1974) (Dekle, J., concurring) (footnote omitted).[6]

To affirm and emphasize the broad constitutional deferral of municipal legislative power, section 166.021(4), Florida Statutes, further provides:

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[5] Under section 166.021(3), Florida Statutes, this broad grant of home rule power to legislate by ordinance on any subject matter upon which the state Legislature may act is denied to: (1) subjects of annexation, merger, and exercise of extraterritorial power of municipalities which require general or special law pursuant to Article VIII, section 2(c), Florida Constitution, (2) any subject expressly prohibited by the Florida Constitution, (3) any subject expressly preempted to state or county government by the Florida Constitution or by general law, and (4) any subject preempted to a county pursuant to a county charter.

[6] In Forte Towers, the Court apparently agreed that the Municipal Home Rule Powers Act empowered a city to enact a rent control ordinance, although it split on whether the ordinance was properly imposed.

> The provisions of this section **shall** be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.[7]

(emphasis added). As Justice Dekle recognized, the empowering provision which allowed municipalities to legislate by ordinance **was**

> the provision of new F.S. § 166.021(1) which expressly empowers municipalities to "exercise any power for municipal purposes, except when expressly prohibited by law." . . . [T]he intent of this chapter was largely to eliminate the "local bill evil" by implementing the provisions of Art. VIII, § 2, Fla. Const.

Forte Towers, Inc., 305 so. 2d at 766. This liberal construction of municipal home rule has been consistently followed by this Court:

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[7] Section 166.021, Florida Statutes, was enacted by Chapter 73-129, Laws of Florida, in response to the narrow municipal home rule interpretation in Citv of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972). The Court in Forte Towers, Inc. had to consider whether Chapter 73-129 necessitated a change in the Fleetwood Hotel decision and stated, "I believe that it does, and that municipalities now are empowered to enact such ordinances by virtue of new Ch. 73-129." 305 so. 2d at 766, Dekle, J., concurring.

> Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal **services.** The only limitation on that power is that it must be exercised for **a** valid "municipal purpose." It would follow that municipalities axe not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

State v. City of Sunrise, 354 so. 2d 1206, 1209 (Fla. 1978). A comparison of municipal power under the 1885 and 1968 Florida Constitutions was made by this Court in Lake Worth Utilities v. City of Lake Worth, 468 So. 2d 215 (Fla. 1985), in which it stated:

> Thus, [under the 1885 Florida Constitution] the municipalities were inherently powerless, absent **a** specific grant of power from the legislature. The noblest municipal ordinance, enacted to serve the most compelling municipal purpose, was void, absent authorization found in some general or special law,
>
> The clear purpose of the 1968 revision embodied in article VIII, section 2 was to give the municipalities inherent power to meet municipal needs.

Id. at 217.

To determine the home rule power of a municipality to legislate by ordinance, the search today is not for specific legislative authorization. The search is for a general or special law which is inconsistent with the subject matter of the proposed ordinance. Absent an inconsistent law, a municipality has the complete power to legislate by ordinance for any municipal purpose.

C. Counties and Municipalities Have Limited Authority To Levy Taxes.

To place the taxing power of counties and municipalities in proper perspective, one must focus on the difference in the taxation provisions of the 1885 and the 1968 Florida Constitutions. Article IX, section 3, Florida Constitution (1885), provided, "No tax shall be levied except in pursuance of law," and Article IX, section 5, provided:

> Section 5. The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation.

In contrast, Article VII, section l(a), Florida Constitution (1968), provides:

> **No** tax shall be levied except in pursuance of law. No state ad valorem **taxes** shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

Article VII, section 9(a), Florida Constitution (1968), provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes. . . .

Under the 1885 Florida Constitution, if a special act did not change the method of assessment or collection, a county or a municipality could be authorized by special act to levy a tax. In contrast, under the 1968 Florida Constitution, all taxes, other than ad valorem taxes, are preempted to the State. The 1968

Florida Constitution expressly authorized counties and municipalities to levy ad valorem taxes but preserved state-wide legislative discretion as to the levy of all other taxes by constitutionally requiring a general law authorization.

Article VII of the 1968 Florida Constitution is not a source of taxing power. Other than the mandatory authorization to levy ad valorem taxes within the stated millage limits, Article VII grants no taxing power to local governments. Rather, it is a limitation on the power to tax, whether imposed by ordinance or special act. All taxes other than ad valorem taxes are preempted to the state except as authorized by general law.

D. Not All Revenue Sources Are Taxes.

Fortunately, not all local government revenue sources are taxes requiring general law authorization under Article VII, section 1, Florida Constitution. Thus, the constitutional inquiries which arise when a charge is imposed by county or municipal ordinance, in the absence of general law authorization, are the following: (1) is the imposition of the charge inconsistent with any general law? and (2) does the charge meet the Florida case law requirements for that charge? If no inconsistent general law preempts the imposition of the charge and if the charge meets the Florida case law requirements, the legislative actions and determinations embodied in the ordinance are within the county and municipal powers of self-government. If the charge cannot meet the case law requirements, then the charge is a tax and general law

authorization is required under Article VII, section 1, Florida Constitution.

For example, this Court recognized in City of Boca Raton v. State, 595 so. 2d 25 (Fla. 1992), the home rule power of a municipality to impose special assessments in the absence of state statutory authority. The Court concisely held "that the City of Boca Raton had the authority to impose a special assessment under its home rule power." Id. at 30.

Furthermore, the First District Court of Appeal has recently, in two cases, recognized the ability of counties to impose special assessments under their home rule powers. See Madison County v. Foxx, 636 So. 2d 39 (Fla. 1st DCA 1994), appeal after remand, 672 so. 2d 840 (Fla. 1st DCA 1996), rev. pending, Supreme Court Case No. 87,594; and Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995). In Harris v. Wilson, the court plainly stated, "We are unaware of any constitutional prohibition which would preclude a special assessment based on a county or municipality's home rule power from being assessed throughout an entire taxing unit." Id. at 515. Clearly, then, so long as a county's special assessment program meets the case law requirements for a valid special assessment -- special benefit and fair apportionment -- then the county does not need specific statutory authority.

Because the home rule power of counties and municipalities to respond to local needs no longer depends on the Florida Legislature, the ability to rely on past case precedent is crucial. For example, many counties throughout the State have relied upon

the clear precedent of this Court and other Florida courts and have created comprehensive solid waste disposal systems funded with special assessment revenue. These solid waste assessments assist in addressing and funding the solid waste management programs crafted by county and municipal governments in compliance with the Solid Waste Management Act of 1988. See Ch. 403, Part IV, Fla. Stat). The successful performance by each municipality and county of their solid waste management responsibilities mandated by the Legislature is to a large degree, dependent on the performance of their other solid waste management responsibilities.

Likewise, both counties and municipalities have relied upon clear precedent of this Court and other Florida courts in the structure and implementation of fire and rescue assessments. South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973)(Court upheld fire and rescue special assessment); and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969) (court upheld fire special assessment). For example, Broward County and ten municipalities located in Broward County are in the process of funding a portion of the costs required to provide fire and rescue services to be incurred next fiscal year on benefitting property in reliance upon such precedent.

Each decision of this Court on the legal requirements for a valid special assessment is closely scrutinized by all counties and municipalities for guidance in the structure and implementation of valid special assessment programs. In addition to 20 years of precedent upholding special assessment programs for both solid

waste and fire rescue services, this Court, in its recent Sarasota County v. **Sarasota** Church of Christ, 667 So. 2d 180 (Fla. 1995), decision, provided instructions on the structure of a valid special assessment. This guidance is provided by the articulation of this Court of the following special assessment principles: a community-wide imposition of a special assessment program is not a factor to be considered in determining its validity; the method of funding a service in prior years is not a factor to be considered in determining the validity of a special assessment; unless found to be arbitrary, legislative determinations of both special benefit and fair apportionment are entitled to judicial deference; and the special benefit concept includes the elimination of a burden caused by property use. Unexplainably, the decision of the Fifth District Court of Appeal in Water Oak Management Corp. v. Lake Countv, 673 so. 2d 135 (Fla. 5th DCA 1996), misconstrues or misapplies these clear principles. It is essential for predictability in financial matters that this Court reverse such Fifth District court's decision in recognition of the clear direction and instructions provided by this Court on the requirements for a valid special assessment and on the essential principles guiding the structure of assessment programs.

CONCLUSION

This Court should vacate the opinion of the Fifth District Court of Appeal and affirm the decision of the circuit court on the basis of the principles established in Sarasota County v. Sarasota Church of Christ, 667 So, 2d 180 (Fla. 1995); City of Boca Raton v. State, 595 so. 2d 25 (Fla. 1992); South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973); and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to DANIEL C. BROWN, ESQUIRE, Katz, Kutter, Haigler, Alderman, Davis, Marks, Bryant & Yon, P.A., Highpoint Center, Suite 1200, 106 East College Avenue, Tallahassee, Florida 32301; LARRY E. LEVY, ESQUIRE, Post Office Box 10583, Tallahassee, Florida 32302; and GAYLORD WOOD, ESQUIRE, wood & Stuart, 304 S.W. 12th Street, Fort Lauderdale, Florida 33315-1549, this 22 day of July, 1996.

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