ORIGINAL

IN THE SUPREME COURT
OF FLORIDA

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ALACHUA COUNTY FLORIDA,
a political subdivision of the State
of Florida, and the CITY OF
GAINESVILLE, an incorporated
municipality within Alachua County,
Florida,

APPELLANTS,

CASE NO. 88, 844

vs.

DWIGHT ADAMS, individually
as a citizen and taxpayer
of Alachua County, Florida.

APPELLEE.

ANSWER BRIEF OF APPELLEE ADAMS

On Appeal from the District Court of Appeal,
First District of Florida
Case No. 96-00257

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STATEMENT OF CASE

Appellee Adams (hereinafter referred to as ADAMS) accepts the statement of case presented in Appellants' Initial Brief. (Appellants are hereinafter referred to as COUNTY).

SUMMARY OF ARGUMENT

Question presented: When a general law authorizes local governments to levy a non-ad valorem tax (specifically the Local Government Infrastructure Surtax, §212.055(2) Fla. Stat.) only for explicitly prescribed uses (i.e., capital infrastructure) and with an explicit prohibition against other uses (i.e., maintenance and operation of facilities), may a special law be enacted to permit one and only one county (i.e., Alachua County) to levy the tax and use the revenues for the explicit use (i.e., maintenance and operation of facilities) that the general law prohibits?

This is an appeal from the affirmance of a final judgment holding the special law in question (Ch. 94-487) to be unconstitutional under Article VII §1(a) and Article VII §9(a) Florida Constitution. ADAMS respectively submits that the decision appealed from in Alachua County, Florida et al. v. Adams, 677 So.2d 396 (Fla. 1st DCA 1996) must be affirmed.

Although the Legislature possesses very broad powers to enact statutes by either general or special law, the Florida Constitution imposes specific restraints on its power to enact tax statutes. Article VII §1(a) Florida Constitution imposes two important limitations. First, it prohibits the imposition of ad valorem taxes on real estate and tangible personal property for state uses.

These taxes are reserved for the exclusive use of local governments as particularized in Article VII §9(a) Florida Constitution. Second, Article VII §1(a) preempts "all other forms of taxation" to the state "except as provided by general law." (Underlining supplied.) Because Ch. 94-487 involved herein is a special law pertaining only to Alachua County and purports to amend §212.055(2) Fla. Stat. to enlarge the power to levy a non-ad valorem tax (i.e., a sales surtax) only in Alachua County and nowhere else, it necessarily follows that it is unconstitutional and void under Article VII §1(a) Florida Constitution.

Ch. 94-487 also violates Article VII §9(a) Florida Constitution, which permits the Legislature to authorize counties to levy ad valorem taxes or real estate and tangible personal property "by law," including special laws, but which restricts the Legislature's power to authorize counties to levy "other taxes" (i.e., non-ad valorem taxes) to the enactment of "general laws." In this regard, Article VII §1(a) and Article VII §9(a) are perfectly complementary; both restrict the Legislature's power to the enactment of general laws to authorize counties (and other entities) to levy non-ad valorem taxes, such as the Local Government Infrastructure surtax involved herein. Because Ch. 94-487 is a special law, it fails to comply with the constitutional standard and is void.

In it initial brief, COUNTY has made a series of specious arguments in an unsuccessful attempt to characterize Ch. 94-487 to be something other than what it plainly is. This brief refutes

each of these futile attempts in detail. The purpose and intended effect of Ch. 94-487 show on the face of the statute. They are to amend §212.055(2) Fla. Stat. to change the conditions under which the tax may be levied in Alachua County and nowhere else. Hence, as demonstrated above, because Ch. 94-487 is a special law, it is unconstitutional and void.

ARGUMENT

I. INTRODUCTION

This is an appeal from an affirmance of a Final Declaratory Judgment holding: "Chapter 94-487, Laws of Florida, is an unconstitutional special law that purports to authorize Alachua County to levy a sales surtax that has not been authorized by general laws." (The District Court's opinion is included as Tab 1 to the Appendix to COUNTY's initial brief.) COUNTY seeks to reverse the judgment of unconstitutionality based upon its argument that a detailed general law taxing statute (LOCAL GOVERNMENT INFRASTRUCTURE SURTAX, § 212.055(2) Fla. Stat.), may be amended or somehow augmented by a special law (Ch. 94-487). (Ch. 94-487 and §212.055(2) Fla. Stat. are attached as Tabs 4 and 5 to the Appendix to COUNTY's initial brief). More particularly, COUNTY asserts that a special law may authorize it to levy the Local Government Infrastructure Surtax (hereinafter referred as SURTAX) for purposes not authorized by and explicitly prohibited by the general law.

ADAMS respectfully submits that because Ch. 94-487 is a special law that purports to authorize COUNTY to levy a non-ad valorem tax not authorized in any other county and because Article

VII §1(a) and Article VII §9(a) Florida Constitution mandate that all county taxes (except ad valorem taxes) must be authorized by general law, Ch. 94-487 is unconstitutional and the judgment appealed from must be affirmed.

Although COUNTY's initial brief attempts to characterize this dispute as a conflict between a general law (§ 212.055(2) Fla. Stat.) and a special law (Ch. 94-487 Laws of Florida), this is a false characterization. The conflict here is between the Florida Constitution, specifically Article VII § 1(a) and Article VII § 9(a), and a special law (Ch. 94-487). When such a conflict arises, even the powers of the Legislature must yield to the supervening restrictions of the Constitution.

The constitutional provisions and laws that create the conflict are: Article VII §1(a) and Article VII §9(a) Florida Constitution; § 212.055(2) Fla. Stat.; and Ch. 94-487 Laws of Florida. These are set forth, in relevant part, as follows:

(A) Article VII §1(a) Florida Constitution

> (a) 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. (Underlining supplied.)

(B) Article VII §9(a) Florida Constitution

> (a) Counties...shall... be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes . . . . . (Underlining supplied.)

(C) § 212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.

> (2) Local Government Infrastructure Surtax -

(d)1. The proceeds of the surtax authorized by this subsection ... shall be expended ... to finance, plan, and construct infrastructure . . . . Neither the proceeds not any interest accrued thereto shall be used for operational expenses of any infrastructure . . . . .

2. For purposes of this paragraph, "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities which have a life expectancy of 5 years or more and any land acquisition, land improvement, design, and engineering costs related thereto. (Underlining supplied.)

(D). Chapter 94-487 Laws of Florida

An act relating to Alachua County; authorizing the board of county commissioners of Alachua County and each of the governing boards of the municipalities within the county to use the proceeds of the local government infrastructure surtax for the operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax; authorizing establishment of trust funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. In addition to the uses authorized by s. 212.055(2), Florida Statutes, the board of county commissioners of Alachua County and the municipalities of Alachua County may use local government infrastructure surtax revenues for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax.

Section 2. In addition to the uses authorized by s. 212.055(2), Florida Statutes, the board of county commissioners of Alachua County and the municipalities of Alachua County may establish one or more trust funds using local government infrastructure surtax revenues to provide a permanent endowment for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax in accordance with section 1.

(Underlining supplied.)

A comparison of (C) and (D) above shows that Chapter 94-487, which is a special act relating only to Alachua County, purports to amend § 212.055 Fla. Stat., a general taxing statute, to authorize Alachua County, and only Alachua County, to levy the SURTAX for uses that are not only not permitted to any other county but are also positively prohibited to all counties. Given the unambiguous restrictions imposed by Article VII §1(a) and Article VII §9(a) Florida Constitution upon the Legislature's power to authorize counties to impose taxes, Ch. 94-487 is facially unconstitutional.

Although ADAMS respectively submits that the foregoing completely sustains the decision below, he refutes COUNTY's detailed arguments in the remainder of this brief.

II. COUNTY's ATTEMPT TO RELY UPON THE PRESUMPTION OF CONSTITUTIONALITY DOES NOT SAVE CH. 94-487 FROM UNCONSTITUTIONALITY IN FACT.

In part I of its brief, COUNTY attempts to save Ch. 94-487 by relying on the "presumption of constitutionality" that courts apply to all statutes. This is a specious argument. Although statutes are presumed to be constitutional, this Court has consistently held, at least since the date Flint River Steam Boat Co. v. Roberts, 2 Fla. 102 (Fla. 1848) was decided, that statutes that are "contrary to the spirit of fundamental law" [i.e., the Constitution] are unconstitutional and void. As this Court stated in State v. Pearson, 14 So.2d 565, 567 (Fla. 1943):

> It is a familiarly accepted doctrine of constitutional law that the power of the Legislature is inherent, though it may be, and frequently is, limited by the Constitution. The legislative branch looks to the

> Constitution not for sources of power but for limitations upon power. But if such limitations are not found to exist, its discretion reasonably exercised may not be disturbed by the judicial branch of the government. And unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative acts invalid; as the Legislature may exercise any lawmaking power that is not forbidden by the fundamental law.

ADAMS readily concedes the validity of these propositions and the existence of the presumption of constitutionality. What COUNTY's argument ignores is the remainder of the message: i.e., <u>if a statute is in conflict with the constitution, the statute is void</u>. What COUNTY's argument also fails to acknowledge is that the courts below found that the presumption of constitutionality had been rebutted by the plain constitutional restrictions found in Article VII § 1(a) and Article VII § 9(a) Florida Constitution. Hence, Ch. 94-487 initially came into court with the presumption of constitutionality, but the presumption has been soundly rebutted.

COUNTY also fails to acknowledge that the decisions of the courts below come into this Court with a presumption of correctness. As this Court stated in <u>Videon</u> v. <u>Hodge</u>, 72 So.2d 396, 397 (Fla. 1954): "Every decree or order appealed to this Court comes here with the presumption of correctness and we have said on many occasions that the appellant has the burden of showing that error was committed."

In short, both the circuit court and the District Court tested the presumption of constitutionality and found it to be rebutted. Hence, four seasoned judges have now examined Ch. 94-487 critically and found it to be unconstitutional. Because the decree

of the District Court arrives in this Court with a presumption of correctness, the burden falls to COUNTY to demonstrate that error has been made. ADAMS respectfully submits that COUNTY has not and cannot make that showing. Accordingly, the decision appealed from must be affirmed.

III. CH. 94-487 IS FACIALLY UNCONSTITUTIONAL.

County's "plain meaning" argument (Initial Brief, Part II.A.1., pp. 11-16) is without merit. Two principles of constitutional construction and two provisions of the Florida Constitution control the decision in this case, condemn Ch. 94-487 Laws of Florida, and require the affirmance of the decision below.

First, the constitution of State of Florida constitutes a limitation on the powers of government, particularly of the Legislature, and is not a grant of power. See, e.g., State v. Dickinson, 188 So.2d 781 (Fla. 1966).

Second, a constitutional prescription of how a specific power may be exercised serves to prohibit the exercise of the power in any other manner. S&J Transportation, Inc. v. Gordon, 176 So.2d 69, 71 (Fla. 1965) ("Where one method or means of exercising a power is prescribed in a constitution it excludes its exercise in other ways.") This rule is rigorously applied to taxation statutes. See, e.g., Palethorpe v. Thompson, 171 So.2d 526, 529 (Fla. 1965) (Where the constitution prescribes that the Legislature may grant tax exemptions as to certain classes of property, the effect is to exclude the power to exempt any other classes; hence, a statute exempting other classes is unconstitutional), and Archer

v. Marshall 355 So.2d 781, 783 (Fla. 1978) (applying the same rule.)

These tenets of constitution must be applied to Ch. 94-487 in light of two power limiting provisions of the 1968 Florida Constitution that were adopted by the people of Florida for the direct purpose of restricting the means by which the Legislature might authorize entities of local government to impose taxes:

Article VII § 1(a):

> 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 § 9(a):

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

(Underlining supplied.)

Although the meaning of these constitutional provisions is evident from a "plain meaning" reading of them, the decisions of this Court can leave no doubt as to their effect on Legislative power. Article VII §1(a) and VII § 9(a) collectively deny the use of the ad valorem taxes on real estate and tangible personal property as a source of revenue to fund the operations of state government, and reserve that particular form of taxation (i.e., ad valorem taxes on real estate and tangible personal property) exclusively to fund the operations of local governments, as the Legislature authorizes by law including special law.

Article VII § 1(a) reserves all other forms of taxation -

meaning, other than ad valorem taxes on real estate and tangible personal property - to the state except as authorized by general law. City of Tampa v. Birdsong Motors, 261 So.2d 1 (Fla. 1972). The power to tax must be expressly authorized and all doubts as to the existence of the power must be resolved against its existence. State v. City of Port Orange, 650 So.2d 1, 3 (Fla. 1994). This means that any tax of any form whatsoever, if it is not an ad valorem tax on real estate or tangible personal property, must be authorized by general law.

Article VII § 9(a) permits the Legislature to authorize local governments to levy ad valorem taxes on real property and tangible personal property by law, which includes special law, but restricts the Legislature's power to authorize local governments to levy other taxes to enactments by general law. See, Florida Department of Education v. Glasser, 622 So.2d 944 (Fla. 1993). The general law "other taxes" limitation in Article VII § 9(a) Florida Constitution is not modified by any qualifier whatever.

Reading Articles VII § 1(a) and Article VII § 9(a) together in this way plainly discloses important policies premises that have been concretely embodied in the taxation article of the 1968 Florida Constitution:

1. No tax may be levied unless the Legislature has authorized it by law.
2. The Legislature has been deprived of the power to levy ad valorem taxes on real estate or tangible personal property to raise revenue to fund the operations of state

government.

3. The Constitution "reserves" ad valorem taxes on real estate and tangible personal property as a source of revenue to fund counties, school boards, municipalities and special districts.

4. The Legislature shall authorize counties, school districts and municipalities to levy ad valorem taxes on real estate and tangible personal property (up to the limits in Article VII §9(b)), and the Legislature may provide this ad valorem taxing authority by law, meaning by either special law or general law.

5. The Legislature may also authorize counties, school districts, and municipalities to levy other taxes (meaning, other than ad valorem taxes on real estate and tangible personal property), but may authorize these "other taxes" only by general law.

It is not disputed that the tax COUNTY seeks to impose is a sales surtax, and that a sales surtax is not an ad valorem tax on real property or tangible personal property. Hence, the attempted levy invokes the limitations on the Legislature's authorizing power contained in Article VII § 1(a) and Article VII § 9(a) Florida Constitution.

It is also not disputed that COUNTY wishes to levy the particular Local Government Infrastructure Surtax sales surtax authorized by § 212.055(2) Fla. Stat. Although § 212.055(2) Fla. Stat. was enacted by general law, the same general law also

explicitly limited the scope of the authority to tax in specific detail. Some of the specific limits on the general law authority to tax embodied in § 212.055(2) are:

1. The Local Government Infrastructure must be approved by a vote of the electors of the county. § 212.055(2)(a) 1 Fla. Stat.
2. The ballot must include a brief general description of the projects to be funded by the Local Government Infrastructure surtax. § 212.055(2)(a)(2) Fla. Stat.
3. The projects for which the Local Government Infrastructure surtax is authorized are: to finance, plan and construct infrastructure and to acquire land for public recreation [and similar purposes]. § 212.055(2)(d)1. Fla. Stat.
4. The infrastructure that the tax has been authorized to finance is limited to: any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and [land acquisition]. § 212.055(2)(d)2.a. Fla. Stat.
5. The Legislature has specifically and explicitly excluded any authority to levy the Local Government Infrastructure Surtax to raise revenues of which either the proceeds or the interest accrued thereto shall be used for operational expenses of any infrastructure. Id.

These (and other) provisions of § 212.055(2) Fla. Stat. define and

strictly limit the taxing authority that the Legislature has authorized by general law in enacting the statute. The enactment explicitly excludes the power to tax for projects stated in Ch. 94-487.

ADAMS does not dispute that COUNTY is authorized to levy the exact tax authorized by § 212.055(2) Fla. Stat., if all of its prescriptions are rigorously satisfied, including that the ballot identify the purposes explicitly authorized by §212.055(2) Fla. Stat., and no others; and, if all the revenues raised by the tax are to be used for purposes explicitly authorized by §255.022(2) Fla. Stat., and for no other purposes and particularly not for purposes that §255.022(2) Fla. Stat. explicitly forbids. As demonstrated below, both these conditions are violated by Ch. 94-487.

Ch. 94-487 states in part:

> Section 1. In addition to the uses authorized by s. 212.055(2), Florida Statutes, the Board of County Commissioners of Alachua County may use local government infrastructure surtax for operation and maintenance of parks and recreational programs and facilities established with the proceeds of the surtax. [Section 2. Purporting to authorize a trust fund is omitted.]

For Ch. 94-487 to have any functional importance, it must amend § 212.055(2) Fla. Stat. to authorize COUNTY to levy the Local Government Infrastructure surtax to fund the operation and maintenance of parks and recreation programs, which is a tax that § 212.055(2) explicitly denies to all other counties. Because 94-487 is a special law and because the sales surtax is not an ad valorem on real estate or tangible personal property, Article VII

§ 1(a) and Article VII § 9(a) Florida Constitution deprive the Legislature of the power to enact a special law to authorize COUNTY to levy the tax that Ch. 94-487 purports to authorize. Accordingly, the decision appealed from must be affirmed.

To avoid the foregoing conclusion, COUNTY would have this Court treat Ch. 94-487 as a mere enlargement of uses to which COUNTY may put the proceeds of the Local Government Infrastructure Surtax authorized by § 212.055(2) Fla. Stat. and not as an amendment to that statute. This argument is a specious and circuitous attempt to enlarge COUNTY's taxing authority by an indirect and unconstitutional means and was flatly repudiated by the District Court of Appeal. If the Legislature lacks authority to enlarge COUNTY'S taxing authority directly by special law, it cannot do it indirectly. This Court routinely invalidates all indirect attempts to circumvent direct restrictions on power imposed by the Constitution. Owens v. Fosdick, 13 So.2d 700, 703 (Fla. 1943), which was also a case involving a statutory attempt to circumvent a constitutional restriction on taxing powers, stated:

> The people of the State of Florida have declared that there shall be no tax on incomes levied by the State, or under its authority. Const. Fla. Art. IX, Sec. 11. this section is a definite positive proscription against such taxation by the Legislature. It operates as a limitation upon the power to tax all real and personal property owned by citizens and residents of the State, which otherwise is recognized under Section 1 of Article IX of the Constitution. If in its practical application, therefore, a tax falls upon that which is prohibited by this section of the Constitution of the State it can not be upheld, no matter in what terminology the taxing statute is couched, or what the Legislature has declared the tax to be. To be guided by any other view is to concede that what may not be done directly because of constitutional restrictions, may be done indirectly by

> legislative means accomplishing the same result, the Constitution notwithstanding. ... Constitutional prohibitions may not thus be so lightly evaded or circumvented. Their mandates are imperative, and they must be so construed as to give full force and effect t their manifest purpose ...

(Underlining supplied.)

Similarly, Frank v. Davis, 145 So.2d 228, 230 (Fla. 1962), invalidated a statute that sought to avoid the constitutional requirement of uniformity in tax rates by varying assessments, saying: "If rates cannot be varied directly ... neither can that result be achieved indirectly by manipulation of the assessment basis upon which levy is made."

Finally, Lewis v. Mosley, 204 So.2d 197, 201 (Fla 1967), laid out the stringent standard of review that must be applied to all taxing measures, saying:

> In deciding questions relating to procedure employed by a governmental taxing agency one must bear in mind at the outset that laws providing for taxation must be construed most strongly against the government and liberally in favor of the taxpayer... Likewise, where construction is in order, constitutional provisions, as well as statutory enactments are to be interpreted so as to accomplish rather than defeat their purpose ... Undoubtedly, Sec. 10, Art. XII, of the Florida Constitution has for its purpose the giving to the taxpayer of a voice in the amount of tax he shall pay for public school purposes. If such a purpose be eliminated or cast aside the constitutional provision in question becomes meaningless and calls for an idle gesture on the part of the voter.

By parity of reasoning, Ch. 94-487 cannot circumvent the restrictions Article VII § 1(a) and Article VII § 9(a) Florida Constitution impose on the taxing power of government. See also, Department of Environmental Protection v. Millender, 666 So.2d 882, 886 (Fla. 1996), which held that less latitude is permitted to

courts when construing constitutional provisions than is permitted when construing statutes, because courts may presume that constitutional provisions have been more carefully and deliberately framed than mere statutes. Certainly, this is true of the Article VII provisions applicable to this case.

But COUNTY's attempt is even weaker than that. As noted earlier, § 212.055(2) Fla. Stat. requires COUNTY to describe the projects to be funded in the ballot language. § 212.055(2)(a)(2) Fla. Stat. Moreover, § 212.055 (2)(a)(2) expressly excludes authority to levy the Local Government Infrastructure Surtax to raise revenues to defray operational expenses. Id. In addition, many decisions of this Court hold that ballot language may not be deceptive and misleading. See, e.g., Advisory Opinion to the Attorney General re Casino, 656 So.2d 466, 469 (Fla. 1995).

Hence the Constitution and statutes run COUNTY's argument into a "Catch 22" from which it cannot be extricated. COUNTY has no authority under § 212.055(2) Fla. Stat. to place language in the ballot stating that the intended use of the tax revenues is to provide for operation and maintenance of parks. The power to tax for this use is explicitly denied by § 212.055(2) Fla. Stat. Accordingly, Chapter 94-487, a special law, cannot make an amendment to §212.055(2) Fla. Stat., which is a taxing statute. Hence, COUNTY can raise no revenue under § 212.055(2) Fla. Stat. to which Ch. 97-487 could have any operational effect. Furthermore, COUNTY cannot deceive and mislead the voters by not informing them of the true purposes that it intends for the use of the §

212.055(2) tax revenues. To do so would render the ballot illegal. Accordingly, COUNTY has no power to impose the § 212.055(2) Fla. Stat. surtax for the purposes described in Ch. 94-487, and also cannot deceive the voters by failing to disclose that it intends to employ the tax proceeds for a use for which the surtax has not been authorized.

COUNTY's different "uses" argument may be repudiated in an additional manner, as follows. In this appeal, COUNTY denies that the conditions explicitly prescribed in subsection 212.055(2) Fla. Stat. define and limit COUNTY's power to impose the tax. In effect, COUNTY maintains that the particular conditions and limitations may be changed and tailored by special law for each county. COUNTY's contention is easily repudiated by answering a series of hypothetical questions.

Suppose COUNTY undertook to purpose an infrastructure surtax of 2 percent (instead of 1 percent as prescribed in the general law) without the benefit of a general law amendment to subsection 212.055(2)? Plainly, any attempt to impose the infrastructure surtax at the rate of 2 percent would be enjoined because the tax in question would not have been authorized by general law. Could the Legislative remedy this defect by enacting a special law purporting to authorize only COUNTY and no other county to impose SURTAX at the rate of 2 percent instead of 1 percent available to all other counties? The answer is "No." If permitted, the effect would be to permit a special law to authorize COUNTY to impose a tax that was unavailable to all other counties. Such a law would

be unconstitutional under Article VII § 1(a) and Article VII § 9(a) Florida Constitution.

Or, suppose COUNTY sought voter approval of the surtax without obtaining prior approval of the county commission, or without obtaining prior uniform resolutions of the municipal governing bodies? Again, such an effort would be enjoined because subsection 212.055(2) Fla. Stat. provides no authority to assess the tax outside those conditions. What would be the effect of a special law purporting to eliminate the conditions only in Alachua County? The purported effect of such a special law would be to enlarge COUNTY's power to tax beyond the power in all other counties as authorized by subsection 212.055(2) Fla. Stat. and would fail under Article VII § 1(a) and Article VII § 9(a) Florida Constitution.

Similarly, if COUNTY attempted to levy the tax without prior approval in a referendum, the attempt would be enjoined. There is no power to tax without voter approval. Could this be remedied by a special law purporting to authorize only Alachua County and no other county to levy SURTAX without the referendum? To do so would expand COUNTY's taxing power beyond that available to all other counties and would render such a special act unconstitutional under Article VII §1(a) and Article VII § 9(a) Florida Constitution.

Finally, any attempt by COUNTY to levy the tax without having identified the uses and projects as prescribed by subsection 212.055(2) Fla. Stat. would be enjoined. No county has the power to tax outside the precise and strict boundaries of the general law. Nor under Article VII §1(a) and Article VII § 9(a) Florida

Constitution can any special law redefine those boundaries.

In sum, subsection 212.055(2) Fla. Stat. is a general law that authorizes counties to levy an infrastructure surtax under precisely defined conditions. Those conditions include prescribed rates of taxes, prescribed uses for the revenues raised by the taxes, and prescribed procedures for approving the taxes. The conditions define the power to tax. In fact, the title to §212.055 Fla. Stat. states: "Discretionary surtaxes; legislative intent; authorization and use of proceeds." (Underlining supplied). Any change in any of the criteria, including prescribed uses, necessarily constitutes a change in that power to tax. To be effective, any such a change to §212.055(2) Fla. Stat. must be enacted by general law. Article VII §1(a) and Article VII § 9(a) Florida Constitution.

To the extent that Ch. 94-437 purports to enlarge COUNTY's power to tax to include raising tax money "for operation and maintenance of parks and recreation programs and facilities," it not only purports to expand COUNTY's taxing power to include uses beyond those prescribed by §212.055(2)(d)1 but also purports to authorize COUNTY power to tax for uses that are explicitly denied by that subsection; i.e., "Neither the proceeds nor any interest accrued thereto shall be used for operational expenses . . ." Subsection 212.055(2)(d) Fla. Stat. (Underlining Supplied.) This runs afoul of the constitutional doctrine that no special law can enlarge COUNTY's power to impose a sales surtax. Article VII § 1(a) and Article VII § 9(a) Florida Constitution. Accordingly, Ch.

94-487 is unconstitutional.

This case is of general importance because COUNTY seeks to undermine the integrity of taxing plan embodied in Article VII Florida Constitution. To permit Ch. 94-437 to stand would convert subsection 212.055(2) Fla. Stat. into a general grant of sales tax authority to counties subject only to enactment of special laws. If COUNTY can be authorized to levy the sales tax surcharge to fund operations and maintenance of facilities, then some other county could be authorized by special law to fund general governmental operations. This is the exact consequence that Article VII § 1(a) and Article VII § 9(a) Florida Constitution are intended to prevent. To the extent that some other special law purports to authorize some other county to expand its taxing authority under §212.055(2) Fla. Stat., as the amicus curiae brief contends, that special law is also unconstitutional.

In short, Ch. 94-487 is either unconstitutional or is wholly nugatory in effect. The most appropriate resolution is to treat Ch. 94-487 at face value as did both the circuit court and the District Court of Appeal. In short, because Ch. 94-487 plainly seeks to enlarge COUNTY's authority to levy a sales surtax and is a special law, it is unconstitutional and void.

IV. COUNTY'S "FORM OF TAXATION" ARGUMENT IS SPECIOUS

COUNTY argues, in effect, that Article VII §1(a) Florida Constitution restricts the Legislature's power to authorize "forms of taxation" to the enactment of general laws, but does not prohibit the enactment of a particular tax statute, such as Ch. 94-

487, by special law. This argument is specious for two independent reasons: (1) The "form of taxation" argument is repudiated by the plain language of Article VII §9(a) Florida Constitution and the plain intent of Article VII §1(a) Florida Constitution; and (2) even if the specious argument were otherwise sound, the Legislature has not authorized COUNTY to levy the "form of taxation" referred to in Ch. 94-487.

A. THE COUNTY's "FORM OF TAXATION" ARGUMENT IS REPUDIATED BY THE PLAIN LANGUAGE OF THE CONSTITUTION.

In its the "form of taxation" argument (Initial Brief, part II.A.2., pp. 16-21), COUNTY seizes upon a phrase in the last sentence of Article VII §1(a) Florida Constitution: i.e., "All other forms of taxation shall be preempted to the state except as provided by general law." (Underlining supplied.) In making this argument, COUNTY ignores the more particularized language in Article VII §9(a) Florida Constitution: "Counties ... may be authorized by general law ... to levy other taxes..." (Underlining supplied.) Without regard to Article VII §1(a), the more specific limitation in Article VII §9(a) that "other taxes" (i.e., other than the just previously designated ad valorem taxes) must be authorized by general law wholly obliterates COUNTY's "form of taxation" argument as far as county taxes go. Hence, because Ch. 94-487 is a special law purporting to authorize COUNTY to levy an "other" tax (i.e., a non-ad valorem tax), it is unconstitutional under Article VII §9(a).

In fact, COUNTY's "form of taxation" argument also

misconstrues and mischaracterizes Article VII §1(a) Florida Constitution. The overriding purpose of Article VII §1(a) is to make a constitutional division of tax revenues between those available for state uses and those reserved for local government uses (i.e., counties, school districts, municipalities and special districts). Unlike the 1885 Constitution, Article VII §1(a) 1968 Constitution reserves revenues from ad valorem taxes on real property and tangible person property for the exclusive use of local governments, as follows: "No state ad valorem taxes shall be levied on real estate or tangible personal property." (This reservation is particularized in Article VII §9, as noted above, which permits the Legislature "by law" to authorize local governments to levy ad valorem taxes for local government use.) The last sentence of Article VII §1(a) then states: "All other forms of taxation shall be preempted to the state except as authorized by general law."

When all of its subsections are read as a whole, Article VII §1(a) facially repudiates COUNTY's "form of taxation" theory. That provision initially denies the state the use of revenues from ad valorem taxes on real property and intangible personal property and then immediately prescribes that all other <u>forms</u> of taxation - that is, any tax other than the <u>just previously designated</u> ad valorem taxes on real property and intangible personal property - "shall be preempted to the <u>state</u> except as provided by <u>general law</u>." (Underlining supplied.) The plain purpose of this provision is to prevent the Legislature from undermining non ad valorem tax sources

needed to support state government by the pell mell enactment of special laws that authorize local governments to impose non-ad valorem taxes for local purposes - a practice that was commonplace under the 1885 constitution. The Constitution imposes this restriction by mandating that all taxing statutes, without exception beyond those specifically authorized in Article VII §9 (i.e., local ad valorem taxes), must be enacted by general law. Consequently, viewed in its proper context, the "all other forms of taxation" phrase in Article VII §1(a) applies comprehensively to each and every taxing enactment of whatever form, except for ad valorem taxes on real estate and tangible personal property.

COUNTY'S submission is contrary to the plain purpose of Article VII §1 and Article VII §9(a), which is to require all non-ad valorem taxes of whatever form or description to be authorized by general law, is unsupported by any authority, and is firmly repudiated by this Court's decisions. The cases cited by COUNTY do not establish its point. For example, State v. Sarasota County, 549 So.2d 659 (Florida 1989), involves the application of a county charter referendum requirement for pledging revenues and raises no issue of taxing by special law. In Sarasota County, this Court specifically quoted the Florida Constitution as follows:

> Under our constitution, all forms of taxation except ad valorem taxation "are preempted to the state except as provided by general law." Art. VII §1(a), Florida Const. Each of the taxes in question is authorized by state statutes and collected by the Department of Revenue.

549 So.2d at 660. (Underlining supplied.) That quotation is this Court's full reference to Article VII §1, and does not purport to

define "all forms of taxation." The case itself raises no issue of taxing by special law.

Similarly, Tampa v. Carolina Freight Carrier Corp., 529 So.2d 324 (Florida 2nd DCA 1988) involves no attempt by a local government to levy a tax purportedly authorized by special law. Instead, it involved an attempt by the City of Tampa to levy an occupational tax which was authorized by general law (i.e., §205.063 Fla. Stat.) on an activity -- i.e., leasing of motor vehicles -- which the court determined the state had preempted to itself. 529 So.2d at 326. Again, the Court merely paraphrased the constitution saying, "Article VII, section 1(a), Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes on real estate or tangible personal property." Id. The district court did not purport to define "all forms of taxation" and had no occasion to do so.

In contrast to these non-specific references to the Constitution, this Court spoke specifically to the meaning of Article VII §1(a) in City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1, 3 (Fla. 1972), as follows:

> Taxation by a city must be expressly authorized by either the constitution or grant of the Legislature, and any doubts as to the powers sought to be exercised must be resolved against the municipality and in favor of the general public. Certain Lots, Etc. v. Town of Monticello, 159 Florida 134, 31 So.2d 905 (1947). Statutes authorizing a municipality to tax are to be strictly construed, are not to be extended by implication, and are not to be enlarged so as to include any matter not specifically included, even though said matter may be closely analogous to that included. City of Miami v. Kayfetz, 158 Florida 758, 30 So.2d 521 (1947).
>
> Prior to adoption of the Florida Constitution of 1968, the authority of a city to impose taxes could be enacted by

special or local act (as in its Charter which is approved as a special law). Smith v. City of Miami, supra. Under the Constitution of Florida adopted in 1968, this authorization for a city to tax must hereafter be authorized by general law, except in the case of ad valorem taxes.

Florida Const. Art. VII, §1 (1968) provides in part as follows:

"(a) 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." (emphasis ours).

Florida Const. Art. VII, §9 (1968), similarly limits the taxing authority of municipalities:

"(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution." (emphasis ours).

From the foregoing provisions of the Florida Constitution it is clear that, except for ad valorem taxes, municipalities may be granted the power to levy any tax only by general law. Thus, the question presented is whether the tax imposed by the City of Tampa is authorized by general law. Any tax not authorized by general law must necessarily fall by virtue of the preemption clause of Florida Const. Art. VII, §1 (1968). (Emphasis and italics added.)

Birdsong equates the "all other forms of taxation" language found in Article VII §1 (a), which the Court itself emphasized with italics, with the conclusion that "municipalities may be granted the power to levy any tax only by general law." (Emphasis supplied.) Hence, every statute that authorizes "any tax" and not just those tax statutes that prescribe a "form of taxation," must be enacted by general law. Because Article VII §1(a) makes no distinction among taxing entities, the power to delegate taxing authority is restricted as to all taxing entities -- counties and special districts as well as municipalities. Birdsong also

demonstrates that this conclusion is required by Article VII §9(a) Florida Constitution, which states: "Counties, school districts and municipalities ... may be authorized by general law to levy other taxes." Birdsong, then, repudiates the view County espouses in this case.

Belcher Oil Company v. Dade County, 271 So.2d 118 (Fla. 1972), explained Birdsong as follows:

> As the Florida Constitution and the case law of this state evidence, the State, through the legislative branch of the government, possesses an inherent power to tax, and a municipality may exercise a taxing power only to the extent to which such power has been specifically granted to it by general law. See Fla. Constitution, Article VII, s 1(a);. . . The right to determine the subjects of taxation and exemptions therefrom is within the Legislature's prerogative in the exercise of its sovereign power. But this right is subject to the controlling constitutional limitations. Cassady v. Consolidated Naval Stores, Inc., 119 So.2d 35, (Fla. 1960). This Court has held in City of Tampa et al. v. Birdsong, supra, municipalities may not impose a particular tax unless specifically authorized by general law to do so.

271 So. 2d at 122. (Underlining supplied.) Hence, Belcher explicitly states that the general law limitation applies to each particular tax, and not solely to statutes authorizing some general "form of taxation," as COUNTY contends. Moreover, State v. City of Port Orange, 650 So.2d 1, 3 (Fla. 1995), reaffirmed Birdsong and also cautioned against manipulative uses of the taxing powers, saying:

> This Court has held that taxation by a city must be expressly authorized either by the Florida Constitution or grant of the Florida Legislature. "Doubt as to the powers sought to be exercised must be resolved against the municipality and in favor of the general public." City of Tampa V. Birdsong Motors, Inc., 261 So.2d 1, 3 (Florida 1972). It is our view that the power of a municipality to tax should not be

broadened by semantics which would be the effect of labeling what the City is here collecting a fee rather than a tax.

650 So.2d at 3.

Here, COUNTY is attempting to make semantic arguments to avoid a straightforward conclusion: because Ch. 94-487 is a special law that purports to authorize COUNTY the power to tax, it is unconstitutional.

B. THE LEGISLATURE HAS NOT AUTHORIZED COUNTY TO LEVY THE "FORM OF TAXATION" REFERRED TO IN CH. 94-487.

Although the foregoing wholly repudiates COUNTY's "form of taxation" argument, an alternative analysis of Ch. 94-487 requires the same conclusion. Because Ch. 94-487 is a special act, it cannot empower COUNTY to levy any tax. Nevertheless, if COUNTY can produce another valid general law taxing statute that authorizes it to levy a sales surtax to maintain and operate facilities, then Ch. 94-487 might arguably authorize COUNTY to make additional uses of legally acquired revenues of that sort. To gain any benefit from this argument, COUNTY must produce a tax statute enacted by general law that authorizes it to levy a surtax to operate and maintain facilities. The Local Government Infrastructure Surtax found in § 215.055 (2) Fla. Stat. does not provide COUNTY such taxing authority. Instead, §212.055(2) Fla. Stat. authorizes counties to levy the surtax only to fund "infrastructure," which it defines to include only "fixed capital expenditure or fixed capital costs associated with the reconstruction or improvement of public facilities . . ." § 212.055(2)(d)2 Fla. Stat. (Underlining supplied.) Furthermore, the law explicitly incorporates the

Legislature's intention that the "fixed capital" limitation must be stringently adhered to, as follows: "Neither the proceeds nor any interest accrued thereto shall be used for operational expenses of any infrastructure." § 212.055(2) (d)1 Fla. Stat. (Underlining supplied.) Hence, COUNTY cannot rely upon §212.055(2) Fla. Stat. as authority to levy the "form of taxation" it purports to possess.

In short, § 212.055(2) Fla. Stat. provides COUNTY no authority to levy a tax to operate and maintain facilities of any type. To the extent Ch. 94-487 purports to amend § 212.055(2) Fla. Stat., it is unconstitutional. To the extent Ch. 94-487 does not purport to amend § 212.055(2) Fla. Stat. but merely purports to authorize the expenditure of funds levied in pursuance thereof, it is wholly ineffective. Subsection § 255.055(2) Fla. Stat. authorizes COUNTY to levy the surtax for infrastructure as defined and for nothing else. In fact, Ch. 94-487 plainly purports to make an amendment to §255.055(2) Fla. Stat. Consequently, it is unconstitutional.

V. ARTICLE III §11(a)(2) FLORIDA CONSTITUTION DOES NOT CONTROL THIS CASE.

In part II.B. of its initial brief, pp. 16-21, COUNTY argues that Article III §11(a)(2) Florida Constitution does not control this case, which ADAMS readily concedes. Instead, as demonstrated above, the case is controlled and Ch. 94-487 is invalidated by Article VII §1 (a) and Article VII §9(a) Florida Constitution. A brief examination of the historical relationship between Article III, §11(a)(2) and Article VII §9(a) further makes this point.

The historical evolution of the 1968 Florida Constitution from the 1885 Florida Constitution shows that Article VII §9(a) of the 1968 Constitution was designed to make a specific change to the Legislature's power to enact special laws to authorize local governments to tax. In that regard, the 1885 Florida Constitution contained two provisions that are of direct relevance here:

> Article III §20 (The Legislative Article):
>
> The Legislature shall not pass special or local laws ... for assessment, and collection of taxes for State and county purposes... , and,
>
> Article IX, § 5 (the taxation and finance article):
>
> The Legislature shall authorize the several counties ... to assess and impose taxes for county and municipal purposes.

In Koegel v. Whyte, 56 So. 498 (Fla. 1911), this Court considered and rejected the argument that Article III, §20 1885 Florida Constitution deprived the Legislature of the power to enact special laws to authorize counties to impose taxes for county purposes. Instead, this Court drew a distinction between assessment of taxes (e.g., assessment of property values in connection with ad valorem taxes) and the imposition of taxes (i.e., authority to impose the tax in any amount.) Although the Court initially gave credence to the rejected argument, upon "further consideration," the Court concluded: "...we are now of the opinion that other provisions of our organic law permit us [to conclude] that the prohibition [i.e., in Article III §20 1885 Constitution) goes only to the manner or method of assessing taxes,

and does not forbid the Legislature to authorize by special or local laws a county to levy a tax for a lawful county purpose." Id., at 499. (Underlining supplied). In so holding, this Court referred specifically to Article IX §5, quoted above, and concluded.

> We cannot construe the inhibition against special or local laws for the assessment and collection of taxes for county purposes as an inhibition against an imposition of a tax for a county purpose, in the face of the command to authorize the several counties to assess and impose taxes for county purposes. A general law authorizing all the counties to assess and levy tax for a county purpose, of course, authorizes the several counties, each and every, to do so; but this power would have existed, had the word 'several' been omitted. We cannot accuse the makers of our Constitution of using words idly, and we can give effect to this word only by declaring that it permits the Legislature to grant by special or local law authority to a county, or several counties, to assess and levy a special tax for a legitimate county purpose, provided only the manner and method of assessing and collecting the tax be regulated by the general law.

Id. (Underlining supplied.) From this history, it is apparent that if Ch. 94-487 were to have been controlled by the 1885 Constitution as applied in Koegel v. Whyte, then that statute could have been a lawful enactment despite the fact that it would have been a special law.

What COUNTY ignores is that the Constitution has changed; the latitude the 1885 Constitution left the Legislature in this regard has been positively taken away by the 1968 Florida Constitution. Specifically, the provisions in the 1968 Constitution that are corollary to the two 1885 Constitution provisions quoted above, are:

Article III §11 1968 Florida Constitution (The Legislature

Article):

> (a) There shall be no special law or general law of local application pertaining to:
>
> (2) assessment or collection of taxes for state or county purposes . . . , and,

Article VII §9(a) 1968 Florida Constitution (The taxation article):

> (a) Counties, school districts, and municipalities shall ... be authorized by law to levy ad valorem and <u>may be authorized by general law</u> to levy <u>other taxes</u>, for their respective purposes. . . .

(Underlining supplied).

Under settled tenets of constitutional construction, a change in the language of the Constitution demonstrates an intention to change the effect. A comparison of the operative language of Article III §20 1885 Constitution and that of Article III §11(a)(2) 1968 Florida Constitution reveals but a single minor change: the connector "and" in the 1885 Constitution has been changed to "or" in the 1968 Constitution. This must be taken as further limiting the power of the Legislature to enact special law statutes pertaining to tax assessment and tax collection. Nevertheless, this change has no relevancy to the validity of Ch. 94-487 because that statue pertains to the <u>imposition</u> of a tax.

By contrast, a comparison of Article IX §5 1885 Florida Constitution and Article VII § 9(a) 1968 Florida Constitution discloses a more far reaching substantive change. In short,

Article VII §9 (a) 1968 Constitution has been revised to deprive the Legislature of the power that Koegel v. Whyte had held was not deprived by the 1885 Constitution; that is, the revised language of Article VII §9(a) plainly denies the Legislature the power to authorize counties to impose "other taxes" by special law. Because Ch. 94-487 is a special law and purports to authorize COUNTY to impose an "other tax" (i.e., a tax other than an ad valorem tax on real property or tangible personal property), it is plainly unconstitutional under Article VII §9(a) 1968 Florida Constitution and is void.

To this argument need be added only that COUNTY's references to Kirkland v. Phillips, 106 So.2d 909 (Fla. 1958) and Wilson v. Hillsborough County Aviation Authority, 138 So.2d 65 (Fla. 1962) provide no grounds upon which Ch. 94-487 may be saved from unconstitutionality. Kirkland involved a special law that amended a general law that dictated the allocation of tax revenues that derived from an entirely different taxing statute enacted by general law that imposed no condition on the power to tax in terms of permitted uses. 138 So.2d at 913. The special law made no attempt whatsoever to change the authority to tax, as does Ch. 94-487. Furthermore, Kirkland was decided in 1958, which was before the restrictions of Article VII §1(a) and Article VII §9(a) 1968 Constitution came into force. Hence, Kirkland, has no relevance to this case.

Wilson also antedates the 1968 Constitution, and, thus, has no relevance to this case.

For these reasons ADAMS respectfully submits that the appeal should be denied.

VI. IN A CONFLICT BETWEEN § 215.055(2) FLA. STAT. AND CH. 94-487, § 215.055(2) MUST PREVAIL.

In its initial brief (part III, p.p. 25-33), COUNTY argues that a conflict between Ch. 94-487 and § 212.055(2) Fla. Stat. must be resolved in favor of the special law. This contention has been thoroughly repudiated by the preceding portions of this brief. Although a special law may sometimes amend a general law, Articles VII §1(a) and Article VII §9(a) 1968 Florida Constitution deny to any special law the power to amend a general law that authorizes a county to levy "other taxes" (i.e., other than ad valorem taxes on real estate or tangible personal property). Hence, the conflict here is between Ch. 94-487 and the Constitution, and the Constitution must prevail. COUNTY's reliance on State ex rel. Johnson v. Vizzini, 227 So.2d 205 (Fla. 1969) is defeated by this principle.

Finally, COUNTY wrongly submits Rowe v. Pinellas Shorts Authority, 461 So.2d 72 (Fla. 1984), for the proposition that a taxing statute can be amended by special law to enlarge the power to tax for permitted uses beyond those authorized and limited by general law. This is demonstrably false. Rowe involved the question of whether the proceeds of the Tourist Development Tax authorized by §125.0104 Fla. Stat. (enacted by general law) could be pledged to secure the sale of bonds. Rowe involved no attempt to enact a special law to enlarge the power to tax by increasing the permitted uses of a tax as authorized and limited by general law. Instead, the primary question in Rowe was whether the county's power to pledge the proceeds of a properly levied and fully

authorized tax could be expanded by special law.

The structure of the Tourist Development Tax (§125.0104 Fla. Stat.) is prescribed by general law, as follows:

> Section 3. TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE. (This subsection essentially prescribes what transactions are to be taxed: certain sales transactions).
>
> Section 4. ORDINANCE LEVY TAX; PROCEDURE. (This subsection requires, among other things, the adoption of "the county plan for tourist development.")
>
> Section 5. AUTHORIZED USES OF REVENUE. (This subsection limits the taxes "for the following purposes only." The stated purposes expressly include: "To acquire, construct, operate or promote one or more publicly owned and operated sports arenas, coliseums. ..." It also includes subsection (c) pertaining to pledging the tax revenues to refund outstanding bonds.)
>
> Section 6. REFERENDUM. (This section requires a referendum prior to the effectiveness of any tax.)

The particular tax involved in Rowe had been properly enacted in accordance with all the foregoing requirements of §125.0104 Fla. Stat. including approval by a 1978 referendum. 461 So.2d at 73. The Rowe dispute arose in 1982 when the county brought a bond validation suit in which it sought to validate bonds that pledged the revenues of the properly levied tax. The purpose was to issue new bonds secured by the Tourist Development Tax revenues and to refund outstanding sports authorities bonds. Rowe involved no attempt to change the permitted uses of the tax as prescribed and limited by general law.

Although the primary question raised in Rowe was whether the county's power to borrow money against properly authorized taxes could be expanded by special law, this Court nevertheless examined whether the county had in fact properly enacted the tax. In making the examination, this Court plainly indicated that the power to tax authorized by §125.0104 is circumscribed by all the limiting conditions in §125.0104 including the specific uses prescribed in the enacting statute. Rowe stated:

> In permitting Florida counties to levy a Tourist Development Tax, section 125.0104(4)a, Florida Statutes (1983) provides in pertinent part:
>
> (a) [refers to tourist development plan]
>
> The statute further prescribes certain requisites for the ordinance levying the tax in sections 125.0104(4) (b) and (c):
>
> (b) [omitted].
>
> (c) [requires plan for tourist development.] The plan shall set forth the anticipated net tax tourist tax revenue ... and a list, in order of priority, of the proposed uses of the said tax revenue by specific project or special use as the same are authorized under subsection (5).

461 So.2d at 72, 73. (Underlining supplied.) This Court thus indicated that the uses prescribed by the general tax statute are requisites that condition the power to tax. After examining the Rowe tax plan and ordinances this Court also concluded: "We hold that ordinance 18-20 fully complies with the statute's [i.e., §125.0104 Fla. Stat.] mandates." That is, the Rowe tax fully complied with the general law as enacted including its prescribed limitations on uses.

Rowe may properly be cited for the proposition that the power to pledge lawfully collected tax revenues as prescribed in general

law may be enlarged in a particular county by special law. This is an enlargement of the county's power to borrow money and is not an enlargement of its power to tax. Neither Article VII §1(a) nor Article VII §9(a) Florida Constitution conditions and limits the Legislature's power to authorize counties to borrow money - only the power to tax.

What the Legislature did in Rowe is an unexceptional application of the general rule that the Legislature possesses plenary legislative power and may execute it by general or special law as it sees fit. The difficulty for COUNTY in this case is that Article VII §1(a) and Article VII §9(a) Florida Constitution explicitly restrict the Legislature's power in the taxing field: except for ad valorem taxes on real estate and tangible personal property, all delegated taxes must be authorized by general law. As this Court stated in Birdsong, any tax (except ad valorem taxes) must be authorized by general law. In short, the power to tax and the power to borrow money and pledge lawful tax revenues are entirely different powers and the difference is of constitutional dimension in Florida. Rowe pertains only to the power to borrow money and to pledge lawful revenue; it plainly does not stand for and may not properly be cited for the proposition that the power to tax may be expanded by special law.

CONCLUSION

For reasons stated herein, because Ch. 94-437 is a special law that purports to authorize COUNTY to levy a non-ad valorem tax, it violates Article VII §1(a) Florida Constitution and Article VII

§9(a) Florida Constitution and is unconstitutional and void. Accordingly, ADAMS respect submits that this Court should affirm the decision appealed from in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed this 3rd day of October 1996 to Robert L. Nabors, Esq. and Harry F. Chiles, Esq., P.O. Box 11008, Tallahassee, FL 32302, attorneys for Appellants.

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