IN THE SUPREME COURT OF FLORIDA
CASE NO. 88,844

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

Appellants,

vs.

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

Appellee.
_____/

INITIAL BRIEF OF APPELLANTS ALACHUA COUNTY, FLORIDA AND THE CITY OF GAINESVILLE

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

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STATEMENT OF THE CASE AND FACTS

This case is an appeal from the First District Court of Appeal which declared Chapter 94-487, Laws of Florida, a state statute of the Florida Legislature, unconstitutional on July 25, 1996. (App. 1).[1] This Court has mandatory jurisdiction under Article V, section 3(b)(1), Florida Constitution.

The Appellants in this case are Alachua County, Florida (the "County") and the City of Gainesville (the "City"). The County is a political subdivision of the State of Florida which operates under a home rule charter approved by its electors pursuant to the provisions of Article VIII, section l(g), Florida Constitution. The City is an incorporated municipality within Alachua County, Florida, established under Article VIII, section 2(a), Florida Constitution. The County and the City[2] jointly sued the Appellee, Dwight Adams, as both a citizen and a taxpayer of Alachua County, Florida, pursuant to Chapter 86, Florida Statutes, seeking a declaration of their rights and responsibilities under Chapter 94-487, Laws of Florida. (App. 6).

Chapter 94-487, Laws of Florida, is a special act expanding the uses to which the County may put the infrastructure surtax (the "Surtax") authorized by section 212.055(2), Florida Statutes.

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[1] Instead of citing to a record on appeal, all factual references will be made to the Appendix to Appellants' Initial Brief, pursuant to this Court's order, dated September 6, 1996.

[2] Unless the context clearly requires otherwise, the County and the City will be jointly referred to as "the County."

(App. 4). Specifically, the declaratory action was filed to interpret the following language from the two statutory provisions:

> The proceeds of the surtax authorized by this subsection and any interest accrued thereto shall be expended . . . to finance, plan and construct infrastructure and to acquire land for public recreation. . . . Neither the proceeds nor any interest accrued thereto shall be used for operational expenses of any infrastructure . . . .

§ 212.055(2)(d)1, Fla. Stat. (emphasis added) (App. 5). On the other hand, the Florida Legislature subsequently adopted a special act, stating:

> 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.

Ch. 94-487, § I, Laws of Fla. (emphasis added).

Following the Florida Legislature's enactment of Chapter 94-487, Laws of Florida, the County, the City, and other municipalities within Alachua County entered into an interlocal agreement, specifying that the Surtax proceeds would be used to establish, operate, and maintain a countywide recreation program. (App. 6, paras. 1, 13). In addition to negotiating this interlocal agreement, the County, as required by sections 212.055(2)(a) and (b), Florida Statutes, intended to hold a referendum vote on the question of whether to adopt the Surtax with the expanded uses as authorized in Chapter 94-487. (App. 6, paras. 15, 16). However, because of expressions of doubt as to the legality of their

intended course of action and threats of legal action by the Appellee to halt the election, the County sought judicial guidance on the relationship between the Surtax general law and the special act before proceeding with the countywide recreation and parks programs and before expending public funds to put the issue to a vote of the electors.

The Appellee timely answered the complaint, admitting most of the factual allegations and challenging only the legality of the special act and the County's intended course of action under it. (App. 7). On the same day, the Appellee also moved for judgment on the pleadings. (App. 8). In his motion and supporting memorandum of law, the Appellee argued that the special act violated the Florida Constitution for a variety of reasons, including that it violated Article VII, section l(a), Florida Constitution requiring all forms of taxation, other than ad valorem taxes, to be provided or authorized by general law only; and that it ran afoul of Article III, section 11(a)(2), Florida Constitution, prohibiting a special law on the assessment or collection of taxes for a state or county purpose. (Apps. 8, 11).

The County, with the Appellee's consent, moved to expedite the proceedings, advising the circuit court that the issues were purely legal and could be addressed without extensive factual development. Before agreeing to this consented request, the circuit court asked that the parties address the issue of its subject matter jurisdiction. Both parties complied by filing separate jurisdictional memoranda and that issue, together with the

consented motion to expedite, were set for hearing. The circuit court announced at the hearing that, based upon the written memoranda provided by the parties, it was satisfied that it had the jurisdictional authority to proceed. The circuit court then asked for argument on the merits of the special act, which were given, with the specific caveat that the County be authorized to then file its own legal memorandum supporting its arguments that the special act was but a lawful expansion of the authority to levy the Surtax form of sales tax provided by the general law provision of section 212.055(2), Florida Statutes.

The County then filed a motion for judgment on the pleadings, together with a memorandum both supporting that motion and responding to the Appellee's earlier motion. (Apps. 9, 10). The Appellee then filed a reply to the County's motion and on December 19, 1995, the circuit court entered its Final Declaratory Judgment for the Appellee. (App. 3).

The County appealed to the First District Court of Appeal, which affirmed the circuit court's decision declaring Chapter 94-487, Laws of Florida, unconstitutional. (App. 1). This appeal followed, (App. 2).

SUMMARY OF THE ARGUMENT

Because of the constitutional separation of powers, Chapter 94-487, Laws of Florida, as a special act duly enacted by the Florida Legislature, comes before this Court clothed with the presumption of validity. In construing such an act, the Court must assume that the Legislature intended to enact an effective law, and any doubts must be resolved in favor of its constitutionality. The Appellee has the burden, as challenger of the act, to overcome this strong presumption of validity and to show a clear violation of the constitution. The Appellee cannot meet this burden for several reasons.

First, contrary to the First District Court of Appeal's conclusion that the expanded uses provided in Chapter 94-487, Laws of Florida, violate Article VII, section 1(a), Florida Constitution, that constitutional provision, by its express language, relates only to the "forms of taxation." Sections 212.054 and 212.055, Florida Statutes, prescribe this Surtax "form" of a **sales** tax; the special act relates only to the purposes for which its revenues may be spent. As such, Chapter 94-487, **Laws** of Florida, need not have been enacted pursuant to general law **as** the provision of **a** "form" of taxation. Thus, it does not run afoul of Article VII, section l(a), Florida Constitution.

In addition, the special act does not violate Article III, section 11(a)(2), Florida Constitution. The **case** law construing that provision, which prohibits special acts relating to the "assessment or collection of taxes for state or county purposes,"

uniformly indicates that it prohibits only those local enactments bearing on the "mechanics" or the "manner or method" of collecting taxes. Again, sections 212.054 and 212.055, Florida Statutes, the general law provisions authorizing and detailing the Surtax and its assessment and collection procedures, supply the "mechanics" of the Surtax. In contrast, Chapter 94-487, Laws of Florida, merely expands the purposes for which the Surtax proceeds can be spent.

Finally, even if the special act conflicts with the general law authorization to levy the Surtax, the case law is clear that the later-enacted special act must prevail. Moreover, Florida's Constitution, in Article III, section 11(a)(21), provides a clear mechanism for the Legislature to address and prohibit such conflicts and they have done so a number of times in the past. However, the Legislature has not exercised its prerogative to prohibit special legislation expanding the uses of this Surtax proceeds. Absent such a prohibition, a special act has the same legislative dignity, and is entitled to the same presumption of validity, as a general law.

ARGUMENT

I. UNDER THE PRINCIPLES OF SEPARATION OF POWERS, CHAPTER 94-487, LAWS OF FLORIDA, IS PRESUMED TO BE CONSTITUTIONAL.

The special act, Chapter 94-487, Laws of Florida, just as any other exercise of the Florida Legislature's power, is presumed to be valid and constitutional. All legislative actions are presumed lawful and the burden is on the challenger to show a clear violation of the constitution before an act of the Legislature will be declared unconstitutional. Peoples Bank of Indian River County v. State Dept. of Banking and Finance, 395 So. 2d 521, 524 (Fla. 1981) ("A statute is presumed constitutional* . . . . The party challenging a statute has the burden of establishing its invalidity.") (cits. omitted).

The courts in Florida assume -- because of the judicial restraint concepts inherent in the separation of powers -- that the Legislature intends to enact effective laws. Accordingly, all doubts must be resolved in favor of constitutionality and no legislative act may be declared unconstitutional "unless it is determined to be invalid beyond a reasonable doubt." A.B.A. Industries, Inc. v. City of Pinellas Park, 366 So. 2d 761, 763 (Fla. 1979). For example, this Court, recognizing such judicial restraint has stated:

> It is no small matter for one branch of the government to annul the formal exercise by another of power committed to the latter. The courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said of

> the statute that it positively and certainly is opposed to the Constitution. This is elementary.

Greater Loretta Improvement Assoc. v. State ex rel. Boone, 234 So. 2d 665, 670 (Fla. 1970). The fact that the legislative act in question here relates to taxation in no way lessens this burden upon the challenger. See Metropolitan Dade County v. Golden Nugget Group, 448 So. 2d 515 (Fla. 3d DCA 1984), decision approved, 464 so. 2d 535 (Fla. 1985) (court applied this standard and upheld sales tax under Chapter 212, Florida Statutes, against attacks that the legislation was an unconstitutional special act or a general law of local application). Furthermore, the fact that the legislation at issue in this case involves a special act does not lessen the presumption of constitutionality. See County of Hillsborough v. Price, 149 So. 2d 912 (Fla. 2d DCA 1963); see also Wright v. Board of Public Instruction of Sumter County, 48 So. 2d 912, 914 (Fla. 1950) (special "[a]cts of the Legislature under attack come to this Court with a presumption in favor of their constitutionality, . . .").

The First District Court of Appeal ignored this constitutional concept. The court's failure to presume that Chapter 94-487, Laws of Florida, was constitutional is best exemplified by its reliance on City of Tampa v. Birdsong Motors, Inc., 261 so. 2d 1 (Fla. 1972), and State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994.). These cases articulate the principle that the authority for a county or municipality to tax must be expressly provided by the Florida Legislature in a general law. The First District Court,

however, analyzed the legislative expansion of the use of Surtax proceeds as if it occurred in a County home rule ordinance. The Court stated:

> The same cannot be said in the present case -- Alachua County is attempting under the subject special act, to use the tax revenues at issue for an ultimate purpose (maintaining infrastructure) not authorized, and indeed, prohibited by, the subject general law.

Alachua County v. Adams, 21 Fla. L. Weekly D1690, D1690-91 (Fla. 1st DCA July 25, 1996) (emphasis added). The expanded uses of the Surtax proceeds were authorized by the Florida Legislature, not the County, the City, or any other municipality within Alachua County. The legislative vehicle is a special act, not a county or municipal ordinance. Clearly, then, no legislative action by the County, the City or any municipality within Alachua County is at issue here.

While the First District Court correctly stated the principle that local governments need statutory authority to tax, it incorrectly applied this principle to the constitutional issue here. Because no home rule ordinance is involved in this case, the decision in State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994), adds nothing to, and actually detracts from, the appropriate analysis here. In the State v. City of Port Orange case, this Court considered the validity of a municipal charge imposed against property to pay for the cost of roads. No express statutory authority existed for the charge and this Court held that the municipality's home rule power did not include the authority to impose such a charge. The Court resolved all doubts concerning the municipality's power to impose the charge against the municipality

and in favor of the taxpayer on the basis that no express statutory authorization existed for the imposition.

In contrast, the charge at issue here, the Surtax on sales, clearly has a general law authorization: section 212.055(2), Florida Statutes. Thus, unlike State v. City of Port Orange, the inquiry here is not whether the County has the authority to levy the Surtax; section 212.055(2) expressly provides that authority. That section states, "the governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent." § 212.055(2)(a)1, Fla. Stat. Rather, the inquiry here is whether the Florida Legislature is constitutionally limited so that any expansion of the uses of a "form" of tax, previously authorized by general law, cannot legislatively be made by special act.

The Florida Legislature obviously believes it possesses these legislative powers; it adopted Chapter 94-487, Laws of Florida, as a special act.[3] The Legislature's decision to exercise its power in such a manner is entitled to judicial deference under constitutionally mandated separation of powers unless the legislation is "positively and certainly . . . opposed to the Constitution." Greater Loretta Improvement Assoc., 234 So. 2d at 670.

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[3] The Legislature also adopted, during the same legislative session, Chapter 94-459, Laws of Florida, a special act, which allows Clay County to use surtax proceeds to retire bonded indebtedness issued prior to July 1, 1997, a use otherwise limited to other counties by section 212.055(2), Florida Statutes.

II. THE FLORIDA CONSTITUTION DOES NOT LIMIT THE POWER OF THE LEGISLATURE TO EXPAND OR CHANGE THE USES, BY SPECIAL ACT, OF A TAX PREVIOUSLY AUTHORIZED BY GENERAL LAW.

A. Article VII, Section 1(a), Florida Constitution, Does Not Require The Use of Tax Proceeds, The Subject Matter Of Chapter 94-487, To Be Contained In A General Law.

The Florida Constitution requires that all "forms" of taxation -- other than ad valorem property taxes -- be authorized by a general law. Specifically, Article VII, section l(a) of the Florida Constitution, proclaims:

> 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.

Id. (emphasis added).

Here, the First District Court of Appeal struck Chapter 94-487, Laws of Florida, as violating this constitutional provision. While the First District Court necessarily concluded that a "form" of tax relates to all aspects of taxation, including authorized uses, and that any argument to the contrary is mere "semantics," the Court's opinion does not discuss or analyze the constitutional phrase "forms of taxation." Instead, the First District Court relies solely on this Court's holding in City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972), that taxation by **a** city or county must be authorized by the Legislature. The First District Court stated, "When a taxing statute specifies the ultimate use of

revenues raised thereunder, any change in that ultimate use must surely be considered a change in the tax itself." Alachua County, 21 Fla. L. Weekly at D1691.

This conclusion misses the constitutional question here. The issue in this case is whether an expansion of the use of tax proceeds is such an integral part of the "form" of the Surtax that the Legislature is constitutionally limited to acting solely through general legislation (and that the vehicle of a special act is thus constitutionally unavailable).

The First District Court dismissed the County's analysis as to the framework of the Florida Constitution and the meaning of the phrase "form of taxation" in Article VII, section l(a), Florida Constitution, as "largely semantic." 21 Fla. L. Weekly at D1691. This dismissal of traditional constitutional principles led to the First District Court's flawed analysis. The plain meaning of any constitutional phrase is the keystone to its interpretation; in any constitutional analysis, the semantics, or the language use, creates the constitutional design.

1. The plain meaning of Article VII, section 1(a) does not prohibit a special act which merely expands authorized uses of tax proceeds.

According to this Court, the analysis of a constitutional provision begins, and often ends, with its language. "If the language is clear and not entirely unreasonable or illogical in its operation we have no power to go outside the bounds of the

constitutional provision in search of excuses to give a different meaning to the words used therein." City of St. Petersburg v. Brilev, Wild & Associates, Inc., 239 So. 2d 817, 822 (Fla. 1970). Article VII, section 1(a), Florida Constitution, states in pertinent part, that "[n]o 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 law."

The plain meaning of this constitutional provision is clear, The "form" of a tax refers to the type of tax: ad valorem property taxes versus other types of taxes. For example, tourist development taxes, documentary stamp taxes, corporate income taxes and sales taxes are other "forms of taxation" under the plain meaning of the phrase. See, e.g., State v. Sarasota County, 549 so. 2d 659, 660 (Fla. 1989) (a gas tax is a form of tax which must be authorized by general law); and City of Tampa v. Carolina Freight Carriers Corp., 529 So, 2d 324, 326 (Fla. 2d DCA 1988) (an occupational license tax on motor carriers is a form of tax preempted to the state by general law, under the authority of Article VII, section l(a), Florida Statutes). This interpretation is supported by the commentary to this provision. The commentary on Article VII, section l(a), by the official reporter of the Constitution Revision Commission, noted:

> section l(a) establish[es] . . . a general rule which pre-empts all forms of taxation other than ad valorem taxes on real estate and tangible personal property to the state except where otherwise [provided] by general law. . . .

26 Fla. Stat. Ann. 359 (1995) (Commentary by Talbot "Sandy" D'Alemberte) (emphasis added).

Clearly, the Surtax at issue here is not an ad valorem tax; thus, under the plain meaning of the language in Article VII, section 1 (a), Florida Constitution, authorization to levy the Surtax cannot be accomplished by special act. Only a general law supplies sufficient authority for the County to levy this tax.* Such general law authority exists in this case. Section 212.055(2), Florida Statutes, clearly states, "The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent." In acknowledgment of this authorization, Chapter 94-487, Laws of Florida, declares:

> Section 1. In addition to the uses authorized by s. 212.055(2), Florida Statutes, . . . 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, . . . 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.

The plain meaning of Chapter 94-487 does not even attempt to authorize the County to levy the Surtax. In fact, Chapter 94-487 specifically references section 212.055(2), Florida Statutes, as

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[4] See Point II(B) herein for case law definitions of "levy."

authorizing the Surtax. At most, Chapter 94-487, simply outlines additional uses of the Surtax proceeds in Alachua County.

The case of City of Tampa v. Birdsong Motors, Inc., 261 so. 2d 1 (Fla. 1972), as relied on by the First District Court, does not support the Court's analysis or result in this case. In City of Tampa v. Birdsong Motors, Inc., the City of Tampa, by ordinance, imposed what it termed **a** "license tax" on businesses within the city which, was to be based upon gross sales from the preceding fiscal year. 261 So. 2d at 3, 4. This tax **was** in addition to any other license tax authorized for the privilege of doing business in the City of Tampa. And, although **a** flat license tax, such as the latter-described one, was authorized by general law under section 167.43, Florida Statutes (1971), no such authorization existed for a local sales tax.

While this Court did not specifically refer to the taxes at issue in City of Tampa v. Birdsong Motors, Inc. as "forms" of taxation, clearly the references to both a license tax and a sales tax -- and the conclusion that one, but not the other, was statutorily authorized -- are references to two different "forms" of a tax. This Court did not disapprove of a traditionally enacted license tax imposed "for the privilege of operating" **a** business because that form of a flat license tax was authorized by general law. However, this Court could not approve a form of tax which would be "measured by gross sales of the merchant." 261 So. 2d at 4. This conclusion resulted from the fact that, however

denominated by the City of Tampa, the "form" of the tax in question was a sales tax, for which no general law authorization existed.

Contrary to the First District Court's opinion, this Court's holding in City of Tampa v. Birdsong Motors, Inc. is completely consistent with the County's argument. Here, the general law provisions of sections 212.054 and 212.055, Florida Statutes, provide the "form" of the Surtax, It is a local option sales tax applied to those transactions within the applicable county which are otherwise made taxable under the general sales tax statutes. The purposes for which the Surtax revenue may be spent, the subject of Chapter 94-487, Laws of Florida, are not a "form" of taxation and **have no impact, whatsoever,** on the County's general law power to levy the Surtax.

2. The plain meaning, that a "form" of taxation refers only to the type of tax, finds support in the framers' intent and constitutional design.

While the plain **meaning of** language is the keystone to constitutional interpretation, the intent of the framers and their entire constitutional design is equally significant. For example, this Court in City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817 (Fla. 1970), interpreted Article VIII, section 1(h), Florida Constitution, which relates to **local** taxation, according to the meaning of the language and the "historical background of this provision." Id. at 822. In this case, the constitutional design and historical background of the 1968

taxation revisions supports the plain meaning interpretation that the phrase "form of taxation" is narrow in its reference and refers merely to the type of tax, not all aspects of taxation.

During the period immediately preceding the 1968 constitutional revision, the State of Florida was experiencing fundamental economic and societal change. Driven by one man-one vote constitutional principles and pending reapportionment, political power was shifting from the panhandle region to the central and southern urban centers, Florida's agricultural economy was expanding to encompass space exploration, high tech industries, and the establishment of world class tourism centers. In the area of taxation, change was also being recognized. For the first time since its adoption in 1949, the sales tax rate was increased in 1968. At the same time, the demands on local government accelerated, forcing statutory millage limitations on the use of ad valorem property taxes.

One of the most dramatic shifts in the 1968 Florida Constitution, designed to prepare Florida government to face a society undergoing these and other dramatic changes, was to reserve all taxing power for the State, to be relinquished only through general laws.[5] By way of contrast, the 1885 Florida Constitution

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[5] Another dramatic shift was the novel home rule concepts embodied in Article VIII of the 1968 constitutional revision. As a direct constitutional grant to charter counties and as a consequence of statutory implementation non-charter counties and municipalities, the home rule power to legislate by county or municipal ordinance has been institutionalized in Florida's governmental structure. Speer v. Olson, 367 So. 2d 207 (Fla. 1978); State v. City of Sunrise, 354 So. 2d 1206 (Fla. 1978); and (continued...)

had no similar limitation; all taxes could be authorized by special act as well as general law. The 1968 constitutional revision had continued the historical conservative taxing and debt limitations of previous Florida constitutions and limited the taxing capacity of the State. Faced with the reality of the present and drafting a constitutional revision for a future Florida, the framers recognized that state tax revenues would be precious under such revenue restrictions. A continuation of the 1885 constitutional policy of permitting tax authorization by special act would have been inconsistent with the competing demands of modern Florida for limited tax sources. Consequently, the 1968 revisioners required the authorization of any "form" of tax, other than the traditional ad valorem property tax, to be accomplished only by the more deliberate provisions of a general law. Thus, the clear objective of the 1968 constitutional design was to preserve and maintain for the State all potential constitutionally permitted taxing capacity -- all tax forms other than ad valorem property taxation -- to be released only by the deliberate process of general legislation. However, once the "form" of the tax had been defined by general law -- its rate and the property or transaction bearing its burden -- the power of the Legislature to provide for different uses of tax proceeds in particular localities remained untouched.

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[5](...continued)
McLeod v. Orange County, 645 So. 2d 411 (Fla. 1994). Still another fundamental change was the constitutional establishment of millage limitations on the use by local governments of ad valorem property taxes in Article VII, section 9, Florida Constitution.

Only the additional subjects of assessment and collection were felt by the framers to require uniform statewide operation and thus special acts were prohibited on these tax subjects." Consequently, Article III, section 11(a)(2), Florida Constitution, prohibits any special law pertaining to the "assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability." Id. (emphasis added). See Metropolitan Dade County v. Golden Nugget Group, 448 So. 2d 515 (Fla. 3d DCA 1984). If, as concluded by the First District Court, the phrase "all forms of taxation" in Article VII, section l(a), Florida Constitution, applies to all facets of taxation, then why did the framers expressly prohibit special acts pertaining to the "assessment or collection" of taxes for state and county purposes?

Under the First District Court's opinion, such a specific special act subject matter prohibition would be unnecessary because assessment and collection procedures would be included in the "taxing power" and thus inherent in the phrase "forms of taxation." The constitutional framers could have limited the Legislature's power to adopt special acts such as Chapter 94-487 by simply adding the phrase "use of state taxes" to Article III, section 11(a)(2),

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[6] The framers, however, in the 1968 constitutional revision chose not to expressly prohibit special acts on the tax subject matter of "use of state taxes."

Florida Constitution. However, no such express limitation exists.[7] Obviously, then, issues relating to the assessment or collection of taxes are not included within the phrase "all forms of taxation" because a specific and additional special act prohibition was necessary. Logic and common sense demand that the use of tax proceeds is likewise not defined by the phrase "all forms of taxation."

However, unlike issues relating to the assessment or collection of taxes, no constitutional or statutory provisions prohibit special legislation on the use of tax proceeds derived from "forms" of taxes authorized by general law. For example, a special act cannot increase the rate of the Surtax since the rate, as well as the transactions or property bearing the tax burden, define the "form" of the tax and must be provided by general law under Article VII, section I(a), Florida Constitution. In addition, a special act cannot eliminate the requirement of section 212.055(2), Florida Statutes, for approval by the county commission and a majority of the population of the municipalities or eliminate the requirement of an elector referendum because such provisions pertain to the assessment of a county tax and Article III, section 11(a)(2), Florida Constitution, prohibits special legislation pertaining to such subject matter. The clear distinction is an obvious reconciliation of the constitutional framework. Chapter

[7] Likewise, the Legislature has, on other occasions, exercised its constitutional prerogative to expand the list of prohibited special act subject-matter to indicate state tax uses under the provision of Article III, section 11(a)(2), Florida Constitution. See Point III herein.

94-487, Laws of Florida, which expands the Surtax uses, does not pertain to a subject matter for which special legislation is constitutionally prohibited and does not define the "form" of the taxation within Article VII, section l(a), Florida Constitution.

Consequently, the plain meaning of Article VII, section 1(a), Florida Constitution, as supported by its historical background and constitutional design, is that a "form" of taxation does not include authorized uses of tax proceeds. Accordingly, once the Florida Legislature, through a general law, authorizes a form of tax to be levied, the Legislature may later choose to expand the uses of that tax revenue by a special act.

B. Article III, Section 11(a)(2), Florida Constitution, Does Not Prohibit A Special Act Embracing The Subject Matter of Chapter 94-487.

The Florida Constitution prohibits special acts which, among other subjects, relate to the

> . . . assessment or collection of taxes for state or county purposes, including extensions of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability; . . .

Art. III, § 11(a)(2), Fla. Const. (emphasis added). One of the Appellee's specific arguments against the constitutionality of Chapter 94-487, Laws of Florida, was that it related to the "assessment or collection of taxes" for a "county purpose in violation of Article III, section 11(a)(2)." (App. 8, p. 11). Chapter 94-487, Laws of Florida does not relate to the assessment

or collection of the Surtax; thus, this constitutional provision is cannot invalidate the special act.

The intent and meaning of Article III, section 11(a) (2) has been well defined by the Florida courts. For example, in Metropolitan Dade County v. Golden Nugget Group, 448 So, 2d 515 (Fla. 3d DCA 1984), the court stated that the prohibition of Article III, section 11(a) (2)

> has been interpreted to proscribe only local enactments bearing upon the mechanics of tax assessment and collection; it does not prohibit special acts or general acts of local application that empower a local government to levy or impose a tax.

Id. at 521 (emphasis added).

Chapter 94-487, by its terms, does not establish the "mechanics" of the Surtax's assessment and collection. Those details are outlined in general law section 212.055(2), Florida Statutes, For example, section 212.055(2) requires that the Surtax be levied pursuant to a locally-adopted ordinance and that the ordinance must be put to a referendum of the county electors. § 212.055(2) (a)1, Fla. Stat. Additionally, section 212.055 outlines how the proceeds from the Surtax will be distributed to counties and municipalities and details how the surtax will be collected. In contrast to the "mechanics" of assessment and collection as contained in sections 212.054 and 212.055, Florida Statutes, Chapter 94-487, Laws of Florida, merely expands the permitted uses for the Surtax proceeds. This expansion does not violate Article III, section 11(a)(2), Florida Constitution.

Furthermore, the Florida courts have interpreted the constitutional predecessor to Article III, section 11(a)(2), to not prohibit a special act such as Chapter 94-487. Article III, section 20, Florida Constitution (1885), also prohibited special acts for the "assessment and collection of taxes for state and county purposes." In McMullen v. Pinellas County, 106 So. 73 (Fla 1925), the Supreme Court of Florida stated:

> It is true that section 20 of article 3 of our Constitution inhibits special or local laws "for the assessment and collection of taxes for state and county purposes," but such inhibition goes only to the manner or method of assessing taxes, and does not forbid the Legislature to authorize by special or local law a county to levy a tax for a local county purpose.

Id. at 74 (emphasis added). Again, Chapter 94-487 does not attempt to alter or create the "manner or method of assessing taxes." In fact, the effect of Chapter 94-487 is not even to authorize the "levy" of the Surtax. "Levy" is defined as "a limited legislative function which declares the subject and rate of taxation, it does not comprehend the entire process by which taxes are imposed." Metropolitan Dade County v. Golden Nugget Group, 448 So. 2d 515, 519 (Fla. 3d DCA 1984) (emphasis added); see also Atlantic Coast Line R. Co. v. Amos, 115 So. 315, 320 (Fla. 1927). Simply stated, Chapter 94-487 does not create the mechanics for the Surtax, does not outline the manner and method of assessing the Surtax, and does not declare the subject and rate of the taxation. All of these "mechanics" are detailed in the general law, section 212.055(2), Florida Statutes.

Furthermore, the Florida courts construing Article III, section 20, Florida Constitution (1885) (the predecessor to Article III, section 11(a)(2)), have interpreted factual scenarios similar to that presented here. For example, in Kirkland v. Phillips, 106 so. 2d 909 (Fla. 1958), the special act at issue created a port authority for Liberty County and objectors to the act argued that the act's appropriation to the port authority of additional race track funds, otherwise appropriated to the county by general **law,** violated Article III, section 20. The Supreme Court, however, stated:

> It is true that by Section 550.16, Florida Statutes, the Legislature has by general law made provisions for the distribution of the so-called additional race track tax monies. The fact that the Legislature has made this provision by general law would offer no constitutional impediment to a legislative provision by special or local law allocating the use of these funds for a special county purpose in a particular county.

Id. at 913 (emphasis added). Additionally, this Court in Wilson v. Hillsborough County Aviation Authority, 138 So. 2d 65 (Fla. 1962), stated:

> The provision of Section 20, Article III, Florida Constitution, proscribing local laws for "the assessment and collection of taxes" for county purposes was designed merely to provide uniformity in the assessment and collection process. It has never been construed to prohibit local laws which authorize a particular tax for a particular local county purpose.

Id. at 67 (emphasis added). Again, however, Chapter 94-487, Laws of Florida, does not even attempt to authorize a particular tax; that authorization comes from general law.

Finally, Chapter 94-487, Laws of Florida, does not relate to the process of collecting the Surtax. In State ex rel. Maxwell Hunter v. O'Quinn, 154 so. 166 (Fla. 1934), the Supreme Court provided a definition of "collection of taxes" with respect to the previous constitutional provision prohibiting special acts which pertain to the "assessment or collection of taxes." The Court declared:

> The collection of taxes includes the receipt by the tax collector of the amounts assessed when they become due and payable, the sale by the tax collector of property assessed when taxes are not duly paid, and the redemption and sale through the clerks of the circuit court of tax sale certificates held by the state before the two-year period expires.

Id. at 169. The mechanics of collecting the Surtax at issue here are provided by general law, section 212.055(2), Florida Statutes; Chapter 94-487, Laws of Florida, in no way attempts to alter those requirements.

Clearly, then the expanded uses of the Surtax proceeds as provided by Chapter 94-487 do not relate to the "assessment or collection of taxes" for "county purposes," and do not violate Article III, section 11, Florida Constitution.

III. ANY CONFLICT BETWEEN CHAPTER 94-487, A SPECIAL ACT, AND SECTION 212.055(2), FLORIDA STATUTES, A GENERAL LAW, IS RESOLVED IN FAVOR OF THE SPECIAL ACT.

The First District Court of Appeal concluded that the uses of the Surtax proceeds authorized in Chapter 94-487 are in direct conflict with the limitations placed on the uses for those proceeds under section 212.055(2), the authorizing general law. Thus, the

First District Court held that the general law prevailed over the special act, The Court erroneously reversed the proper analysis.

In determining whether Chapter 94-487 conflicts with section 212.055(2), Florida Statutes, an examination of the statutory language of each is necessary. As to the permitted uses of the Surtax proceeds, section 212.055 states:

> The proceeds of the surtax authorized by this subsection and any interest accrued thereto shall be expended . . . to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation, . . .
>
> * * *
>
> Neither the proceeds or any interest accrued thereto shall be used for operational expenses of any infrastructure. . . .
>
> * * *
>
> "[I]nfrastructure" means: a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities. . . .

§ 212.055(2)(d), Fla. Stat. (emphasis added). On the other hand, the Florida Legislature, through Chapter 94-487, expressly declared that the County may use the Surtax "for operation and maintenance of parks and recreation programs and facilities." Ch. 94-487, § 1, Laws of Fla. (emphasis added).

At first blush, these two statutory provisions seem to conflict. Such a conflict does not, however, alter the validity of Chapter 94-487; if the provisions conflict, then the special act will prevail. Rowe v. Pinellas Sports Authority, 461 So. 2d 72, 77 (Fla. 1984); Town of Palm Beach v. Palm Beach Local 1866, 275 So.

2d 247, 249 (Fla. 1973). This conflict will arise, though, only if a "hopeless inconsistency" exists between the two statutes. State v. Parsons, 569 So. 2d 437, 438 (Fla. 1990). Consequently, general laws and special acts should be read together and when possible, they should be harmonized,

For example, in State v. Sarasota County, 74 So. 2d 542 (Fla. 1954), Sarasota County sought to validate bonds for the purpose of "enlarging and equipping the County hospital building . . . under construction in Sarasota County." Id. at 542. The hospital was constructed through a bond issue of $750,000, which had been specifically authorized by a special act. However, Sarasota County sought to issue an additional $900,000 of bonds to construct further improvements, not authorized by the special act. Sarasota County sought validation under the general law, section 130.01, Florida Statutes, which permitted bond issues of any amount for capital improvements to "public buildings." The Supreme Court validated the additional bonds despite the argument that "even if the county [wa]s authorized under Section 130.01 to issue bonds for the construction of a hospital, the general authority therein granted has been superseded and limited by the special legislative Act, . . . and that the County [wa]s not, therefore, authorized to issue bonds in an amount in excess of $750,000. . .." Id. at 543. Despite the apparent conflict between the general law and the special act, the Supreme Court rejected the argument that the special act should prevail because

> [t]here is no "positive repugnance" between the general and the special Acts. The special Act merely gave the County specific authority, for this one particular bond issue, to issue bonds differing as to interest and maturity from those authorized to be issued under the general Act[. 1 And there is nothing in the special Act to indicate that the Legislature intended thereby to deprive the County of Sarasota of its powers under the general Act. Had the Legislature intended so to do, it could easily have included a provision to that effect.

74 so. 2d at 543. See also Headley v. State ex rel. Bethune, 166 So. 2d 479, 480 (Fla. 3d DCA 1964) ("[W]hen the provisions of the special act and the general law can be reconciled in harmony, they should both be enforced."); Dickinson v. Cahoon, 144 So. 345, 346 (Fla. 1932) ("General and special laws . . . should be construed together; the duty of the courts being to find a reasonable field of operation for both, without destroying their evident intent, but preserving the force of each, in harmony with the whole course of legislation.").

In this case, no "positive repugnancy" and no "hopeless inconsistency" exist between Chapter 94-487 and section 212.055(2). Rather, the two state statutes can easily be read in harmony. Chapter 94-487 neither expressly nor impliedly attempts to revise the subject matter or governing rules of section 212.055. Chapter 94-487, like the case of State v. Sarasota County, discussed above, simply permits one county in Florida to use the proceeds of the Surtax which is levied, assessed and collected pursuant to section 212.055(2) for an additional purpose. Consequently, Chapter 94-487 does not conflict with section 212.055(2); Chapter 94-487 merely

expands the permissible uses of section 212.055 proceeds for one specific purpose in one specific county.

Moreover, in a case closely analogous to this one, this Court approved a special act authorizing uses of another local option tax -- the tourist development tax, imposed by another charter county, Pinellas County -- for purposes not provided by general law. In Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984), this Court considered the validity of bonds issued by the Pinellas Sports Authority, an entity created by special act, to pay for the construction of **a** sports stadium. One of the revenue sources pledged to retire the bonds was Pinellas County's tourist development tax. The general law in effect at the time of the levy of the tourist development tax[8] did not specifically authorize a sports authority, created by special act, to pledge **a** county's tourist development tax revenues to construct a sports stadium. Nor did the general law specifically authorize a county to pledge such tax revenue to pay off bonds issued by another entity, i.e., the Pinellas Sports Authority. Rowe, 461 So. 2d at 77. However, the Sports Authority's charter, adopted **as** a special act, did authorize Pinellas County to pledge non-ad valorem taxes, including tourist development tax revenues, to pay such obligations incurred by the Authority. Rowe, 461 so. 2d at 77; see also Ch. 77-635, § 8(c), Laws of Fla. Thus, the Florida Legislature expanded Pinellas County's authority to pledge, or to use, its tourist tax revenues

[8] § 125.0104, Fla. Stat. (1983).

by special act, beyond the uses prescribed in the general law authorizing the tax.

In upholding the validity of Pinellas County's use of its tourist development tax revenue to secure the obligations issued by the Pinellas Sports Authority, this Court held, "When a special act (such as the PSA charter) and a general law conflict, the special act will prevail." Rowe, 461 so. 2d at 77. This Court reasoned that "[b]ecause section 8(c) of the PSA charter was enacted by subsequent special act, the authority for the pledging of tourist development tax revenues by the county to secure obligations issued by the PSA controls over any limitation imposed upon such a pledge by" the general law. Id. (emphasis added).

Furthermore, in State ex rel. Johnson v. Vizzini, 227 So. 2d 205 (Fla. 1969), this Court upheld a criminal penalty under a provision of the City of South Miami's charter -- adopted through a special act -- which authorized imprisonment for violating municipal ordinances for a maximum period of six months. This imprisonment period contradicted the general law provision, which authorized a maximum period of imprisonment of only sixty (60) days. In upholding the six month sentence, this Court relied upon the rule of law that "[w]here a general act and a special act conflict, the latter prevails." Id. at 207.

Thus, in spite of the Appellee's assertions and the First District Court's conclusion to the contrary, no meaningful distinctions exist between the case at hand and the situations involved in Rowe and Vizzini. Chapter 94-487, Laws of Florida, the

later-passed special act, must control over any conflicting limitation placed on the uses of the Surtax revenues set forth in section 212.055(2), Florida Statutes.

This general rule is supported by the fact that the Florida Constitution incorporates a clear mechanism for the Florida Legislature to use when it wants to prohibit special legislation that may be inconsistent or in conflict with general law. The Legislature has not, however, implemented this mechanism to prohibit Chapter 94-487. Article III, section 11(a)(21), Florida Constitution, provides:

> SECTION 11. Prohibited special laws.--
>
> (a) There shall be no special law or general law of local application pertaining to:
>
> * * *
>
> (21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.

When the Legislature has exercised this power to legislatively prohibit special acts on subjects of its choosing, it has done so in clear and certain terms, most often citing the constitutional provision as its basis, For example, in section 236.014, Florida Statutes, the Legislature specifically stated, "[p]ursuant to s.11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws and general laws of local application pertaining to" taxation for school purposes and the Florida Education Finance Program. In addition, at least 11 other general laws, passed by a super-majority of the Legislature under its

Article III, section 11(a)(21) power, reflects the Legislature's use of language, similar in specificity to that cited above, in all but one of the 11 statutes. That one, section 121.191, Florida Statutes passed in 1972, simply notes the prohibition without a specific recitation of the constitutional provision.

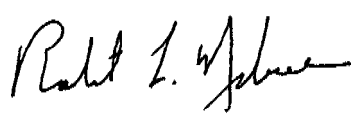
Florida is a state with diverse resources, cultures, and populations and the State's legislative authority, as granted by the Constitution, recognizes this diversity by tempering uniform statewide enactments through special laws which address particular local concerns. Unless constitutionally limited, the Legislature retains discretion to recognize local circumstances and draft local solutions. Whether the lack of statewide symmetry in legislation is wise or prudent is a decision for the Legislature; these policy concerns are not legal issues for judicial resolution.

Clearly, the Florida Legislature has not exercised its prerogative to prohibit special legislation expanding the use of the Surtax proceeds. Under the Florida case law and the framework of the Florida Constitution, the Legislature has retained its prerogative to adopt Chapter 94-487, Laws of Florida, in the exercise of its legislative judgment.

CONCLUSION

Chapter 94-487, Laws of Florida, is a constitutional special act. Neither Article VII, section 1(a), nor Article III, section 11(a)(2), Florida Constitution, prohibit its effectiveness. Furthermore, while the Florida Legislature has the clear ability to legislatively prohibit Chapter 94-487, it has not done so here. Finally, while Chapter 94-487 and section 212.055(2), Florida Statutes, should be harmonized, if a conflict does exist, the special act must prevail. This Court should reverse the ruling of the First District Court of Appeal and declare Chapter 94-487, Laws of Florida to be constitutional.

Respectfully submitted,



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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 Joseph W. Little, Esq., 3731 Northwest 13th Place, Gainesville, Florida 32605, this 16th day of September, 1996.

ROBERT L. NABORS