

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO.: 66,289

FOURTH DISTRICT
COURT OF APPEAL
NO. 84-527

BROWARD COUNTY, a political)
subdivision of the State of Florida,)
)
Petitioner,)
)
vs.)
)
CITY OF FORT LAUDERDALE and)
ROBERT O. COX,)
)
Respondents.)

BRIEF OF RESPONDENTS

EUGENE L. HEINRICH
JEFFREY A. O'KEEFE
McCUNE, HIAASEN, CRUM, FERRIS
& GARDNER, P.A.
Attorneys for Respondents
Post Office Box 14636
Fort Lauderdale, Florida 33302
(305) 462-2000

LAW OFFICES OF McCUNE, HIAASEN, CRUM, FERRIS & GARDNER, FORT LAUDERDALE, FLORIDA

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LAW OFFICES OF MCCUNE, HIAASEN, CRUM, FERRIS & GARDNER, FORT LAUDERDALE, FLORIDA

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LAW OFFICES OF MCCUNE, HIAASEN, CRUM, FERRIS & GARDNER, FORT LAUDERDALE, FLORIDA

PREFACE

Respondents, CITY OF FORT LAUDERDALE and ROBERT O. COX, hereby adopt the Statement of Case and Facts as set forth in Petitioner's Brief, except to add a point of clarification regarding the ordinances enacted by the parties prior to the adoption of the charter amendments which are the subject matter of this action. Prior to the charter amendments Section 8.04 of the Broward County Charter provided:

"...any county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict regardless of whether such municipal ordinance was adopted or enacted before or after the county ordinance..."

[Appendix, Tab 1.]

Petitioner correctly states that Broward County enacted an Ordinance No. 83-1 in 1983 relating to handgun management and that in response the City of Fort Lauderdale enacted an Ordinance No. C-83-16 in conflict therewith. (Brief of Petitioner at 5) (Appendix, Tab 2 and Tab 3). However, it needs to be noted that pursuant to Section 8.04, the Broward County Ordinance No. 83-1 was rendered ineffective within the boundaries of the City of Fort Lauderdale by the Fort Lauderdale ordinance.

LAW OFFICES OF MCCUNE, HIAASEN, CRUM, FERRIS & GARDNER, FORT LAUDERDALE, FLORIDA

ARGUMENT

BROWARD COUNTY HAS UNILATERALLY AND UNCONSTITUTIONALLY ATTEMPTED TO TRANSFER TO ITSELF THE CITY OF FORT LAUDERDALE'S GOVERNMENTAL POWER AND FUNCTION RELATING TO HANDGUN MANAGEMENT IN VIOLATION OF ARTICLE VIII, SECTION 4 OF THE FLORIDA CONSTITUTION.

The Supreme Court has interpreted Article VIII, Section 4 of the Florida Constitution to mean that "...a transfer of governmental powers requires distinctive procedures for the initiation of a transfer, that is, by law or by resolution of the governing bodies of each of the governments affected." Sarasota County v. Town of Longboat Key, 355 So.2d 1197, 1201 (Fla. 1978). Article VIII, Section 4 of the Florida Constitution provides:

§4. TRANSFER OF POWERS. By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

In Sarasota County, the Sarasota County Commission adopted an ordinance proposing five amendments to the County charter which would transfer the responsibilities for performing five distinct governmental functions from four Sarasota County cities to the county. In each of the five proposed amendments it was provided:

..."The Board of County Commissioners shall have power to carry out and enforce this section by appropriate ordinances which, notwithstanding any other provisions of this Charter, shall prevail over any municipal ordinances in conflict therewith."

[355 So.2d at 1198.]

The cities challenged the proposed amendments by seeking injunctive relief before the amendments could be voted on by the residents of Sarasota County. The trial court entered a permanent injunction prohibiting the referendum on the dual grounds that the ordinance violated Article VIII, Section 3 of the Florida Constitution and was unconstitutionally vague. *

The Supreme Court unanimously affirmed the decision on a different ground than the two above. It held that the county's ordinance violated Article VIII, Section 4 of the Florida Constitution since it was not initiated by law nor by resolution of all of the affected governments.

In the instant case, Broward County is only one of the "governments affected" by the transfer of power as a result of its charter amendments and subsequent enactment of Ordinance No. 84-41 pursuant thereto. (Appendix, Tab 4 and Tab 5). One of the other "governing bodies" affected, the City of Fort Lauderdale, has not adopted an ordinance or resolution permitting the transfer of power relating to handgun management or control.

* The cities had, however, also asserted violation of Article VIII, Section 4 in their injunctive action in the trial court.

As a matter of record, the City Commission of the City of Fort Lauderdale on February 15, 1983, passed an ordinance, No. C-83-16, in response to Broward County's earlier attempt to enact an ordinance involving handgun control or management. Section 2 of this City of Fort Lauderdale ordinance specifically provides:

That no requirements relating to the acquisition, transfer, or management of firearms shall be effective within the City of Fort Lauderdale other than those imposed by Federal or State law or by an ordinance of the City of Fort Lauderdale. Specifically, Broward County Ordinance No. 83-1 and the regulations established thereby, shall not apply within the City of Fort Lauderdale.

[Appendix, Tab 3]

The enactment of Ordinance No. C-83-16 relating to handgun management is an exercise of the very power relating to handgun management which has been involuntarily "transferred" to Broward County by its charter amendments and subsequent enactment of Ordinance No. 84-41. Prior to the charter amendments, Section 8.04 of the Broward County Charter provided:

"...any county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict regardless of whether such municipal ordinance was adopted or enacted before or after the County ordinance..."

[Appendix, Tab 1]

Consequently, as noted by the Fourth District Court of Appeal, the municipalities retained the "exclusive" power or authority to regulate handguns within their boundaries prior to the charter amendments and enactment of Ordinance No. 84-41. (Appendix, Tab 6, p. 2). The municipalities retained this power by having an ordinance already in existence or by enacting in the future an ordinance in conflict with the county's ordinance, just as the City of Fort Lauderdale did in 1983.

One aspect of the power to regulate handguns, by enacting an ordinance in conflict with a county ordinance, has been referred to as "opting out". For example, under Charter Section 8.04 Fort Lauderdale's Ordinance No. C-83-16 was totally and completely "in conflict with" any Broward County ordinance concerning the acquisition, transfer, or management of firearms and any Broward County ordinance on this governmental control subject could not be effective within the municipality.

But now, pursuant to the charter amendments and the subsequent enactment of Ordinance No. 84-41, Fort Lauderdale's Ordinance No. C-83-16 has been rendered totally ineffective since it relates to the acquisition, transfer, and management of firearms and is in conflict with Ordinance No. 84-41. Thus, once the charter amendments and ordinance became effective the City of Fort Lauderdale's exclusive power to regulate handguns was transferred to the Petitioner. Petitioner as much as concedes this point at the end of its brief. (Brief of Petitioner at 19) It

should not be overlooked that the power to "prevail", once transferred, leaves the door wide open for the County to enact further ordinances on the subject whenever "necessary" to defeat a future attempted municipal ordinance relating to this governmental function.

Petitioner creatively attempts to argue that it can somehow preempt the City's power to regulate handguns and negate the full force and effect of Article VIII, Section 4, by relying upon totally inapposite case law arising under the unique Dade County Home Rule Charter, and upon general constitutional and statutory provisions

Unlike the Broward County Charter, the Dade County Home Rule Charter was adopted pursuant to the Dade County "Home Rule Amendment" to the Florida Constitution of 1885. Art. VIII, Sect. 11. Fla.Const. In 1968 Section 11 was incorporated into the 1968 Constitution by Article VIII, Section 6(e). Article VIII, Section 4, the subject matter of this proceeding, also became part of the Florida Constitution at that time. Section 6(e) goes on to provide that Section 11:

"...shall remain in full force and effect as to [Dade County], as if this article [Article VIII, 1968 Constitution] had not been adopted..."

Therefore, Section 6(e) controls over Section 4 of Article VIII and in effect negates the applicability of Section 4 in cases where the Dade County "Home Rule Amendment" is applicable. See Metropolitan Dade County v. City of Miami, 396

So.2d 144 (Fla. 1980). Furthermore, the cases cited by Petitioner cannot possibly support its "preemption" argument since Dade County has this unique constitutional authority pursuant to Article VIII, Section 6(e) to control municipal functions. See Miami Shores Village v. Cowart, 108 So.2d 468 (Fla. 1958); City of North Miami Beach v. Metropolitan Dade County, 317 So.2d 110 (Fla. 3d DCA 1975); and City of Hialeah Gardens v. Dade County, 348 So.2d 1174 (Fla. 3d DCA 1977). This is in direct contrast to Broward County's lack of such constitutional authority and the fact that Article VIII, Section 4 controls the instant case.

Additionally, Petitioner argues that Article VIII, Section 1(g) of the Florida Constitution establishes the basis for "charter preemption" (Brief of Petitioner at 7). Nevertheless, the court in Sarasota County, supra, rejected a similar argument by holding:

"[n]ot only are we disinclined to read into Section 4 something that is not expressly provided, but we are all the more reluctant to elevate the general provisions of Article VIII, Section 1(g) to a dominant position over the specific provisions of Article VIII, Section 4."

[355 So.2d at 1201]

Despite this holding, Petitioner attempts to lead one to the conclusion that Section 166.02(3)(d), Fla.Stat., somehow elevates Section 1(g) to a position of prominence over Article VIII, Section 4. (Brief of Petitioner's at 10). Respondent submits that a general statutory provision cannot

elevate a general constitutional provision "to a dominant position over the specific provision of Article VIII, Section 4."

Petitioner also relies upon another statutory provision, §125.86(7), Fla.Stat., in support of its preemption argument. (Brief of Petitioner at 10-11). Yet, it concedes that the court in Sarasota County specifically held that that section could not supersede the procedural requirements of Article VIII, Section 4. (Brief of Petitioner at 11). The court in Sarasota County specifically held:

We think it clear from the specificity of the procedure in Section 4 that the "by law" reference connotes that need for a separate legislative act addressed to a specific transfer, in the same manner that two or more resolutions of the affected governments would address a specific transfer. Section 125.87(7), in contrast, does no more than provide general authority for county commissions to exercise police powers. It in no way provides "by law" the procedures necessary to initiate the transfer of governmental functions or powers.

[355 So.2d at 1201]

Thus, this statutory provision cannot "preempt" or negate the applicability of Article VIII, Section 4 to this case.

Petitioner again attempts to negate the full force and effect of Article VIII, Section 4, by citing a decision rendered by the Fourth District Court of Appeal having nothing to do with Article VIII, section 4. See City of Coconut Creek v. Broward County Board of County

Commissioners, 430 So.2d 959 (Fla. 4th DCA 1983). That case cannot be applied to the instant case for several reasons. One is that it did not involve a challenge to proposed charter amendments. Another is that this court was guided by specific statutory provisions concerning the powers of municipalities and counties in the areas of land use planning and plat approval. See 430 So.2d at 963. In the instant case, there are no specific Florida Statutes concerning the powers of municipalities and counties in the area of handgun management.

The most important difference between City of Coconut Creek and the instant case is that the court in City of Coconut Creek did not render its decision based upon Article VIII, Section 4 of the Florida Constitution. As a matter of fact, that constitutional provision was not cited once in the entire opinion and was obviously not raised or asserted by the cities. Consequently, Appellee cannot argue that City of Coconut Creek controls the issue involving the violation of Article VIII, Section 4.

Petitioner may be confused regarding the court's decision in and application of the Sarasota County case (Brief of Petitioner at 14), but the Supreme Court and the Fourth District Court of Appeal seem to be in accord as to transfers of governmental functions or powers. Petitioner attempts to distinguish Sarasota County by arguing that the Broward County Charter amendments did not expressly attempt to transfer or consolidate a municipal function from the city to the county. This may be true if one were to just

read the amendments and not consider the effect of their application. However, the presence or absence of the words "transfer" or "consolidate" does not control the determination as to whether a transfer has occurred. It is the effect of the legislation, and once the charter amendments and subsequent ordinance became effective in the instant case, the Petitioner's argument fails since their effect was to extinguish the City of Fort Lauderdale's exclusive governmental power relating to handgun management.

In addition, the Supreme Court has not "narrowed" the holding in Sarasota County as asserted by Petitioner. In the cases relied upon by Petitioner to support this argument the courts simply held that Sarasota County was not applicable since there was no transfer of power involved in either situation. See Miami Dolphins, Inc. v. Metropolitan Dade County, 394 So.2d 981, 985 (Fla. 1981); City of Palm Beach Gardens v. Barnes, 390 So.2d 1188, 1189 (Fla. 1980). The courts in no way held that Article VIII, Section 4 was inapplicable because there was less than a complete transfer of power involved. (See Opinion of the Fourth District Court of Appeal, Appendix, Tab 6, p. 4).

Sarasota County is applicable to the instant case because the charter amendments and Ordinance No. 84-41 have completely divested the City of Fort Lauderdale of its exclusive power to regulate handguns within its boundaries. Theoretically, the City can still enact ordinances relating to handgun management, but such ordinances would not be worth the paper they would be written on in view of the

superiority given to the Broward County ordinance by the charter amendments and the ability of the Petitioner to enact prevailing ordinances in conflict therewith. Fort Lauderdale's inability to enforce an ordinance within its own city limits establishes that Petitioner has unilaterally transferred to itself the City of Fort Lauderdale's power relating to handgun management.

Even assuming, arguendo, that the instant case involved only a partial transfer of power Respondents would submit that the Fourth District Court of Appeal was correct in holding that Sarasota County bars the transfer of any municipal powers to the county unless accomplished in accord with Article VIII, Section 4 (Appendix, Tab 6, p. 5) Accord Fire Control Tax District No. 7 Trail Park v. Palm Beach County, 423 So.2d 539 (Fla. 4th DCA 1982). In Fire Control, a Special Act, Chapter 63-1747, authorized the Palm Beach County Commission to create, establish, and abolish fire control districts and to fix boundaries for those districts. Pursuant to Chapter 63-1747, the Palm Beach County Commission established fire control districts, including District No. 7. Subsequently, the Commission passed a resolution reducing the boundaries of No. 7 and enlarging the boundaries of another district by transferring a portion of No. 7's land and the accompanying governmental control thereover to the other district. Neither the Board of Fire Commissioners for either district nor the voters were consulted or accorded their right under Article VIII, Section 4 to approve or disapprove such a transfer.

The court held that Article VIII, Section 4 applied to that particular situation and that any part of Chapter 63-1747 inconsistent with Section 4 was invalid. Specifically, the court held invalid that portion allowing the Commission to fix the boundaries without a resolution by the governing body of the areas to be affected. In other words, the "partial transfer" of a portion of District No. 7's land and its governmental control over same to another district was prohibited by Article VIII, Section 4.

LAW OFFICES OF MCCUNE, HIAASEN, CRUM, FERRIS & GARDNER, FORT LAUDERDALE, FLORIDA

CONCLUSION

Unlike Dade County, Broward County has no constitutional authority to "preempt" municipal powers or functions since the Florida Constitution contains no Broward County "Home Rule Amendment". Further, the general constitutional provisions of Article VIII Sections 1(c) and (g) cannot negate Broward County's constitutional obligation to comply with the procedural requirements of Article VIII, Section 4 in this case. Therefore, there can be no "preemption" by Broward County of the municipal power relating to handgun management, but rather, Broward County must comply with Article VIII, Section 4.

Article VIII, Section 4 and the court's decision in Sarasota County establish that Article VIII, Section 4 is applicable to any transfer of governmental powers or functions. This case involves Broward County's unilateral transfer of the City of Fort Lauderdale's power relating to handgun management in violation of Article VIII, Section 4.

Respondents respectfully request that the question certified by the Fourth District Court of Appeal be answered in the affirmative and that the October 10, 1984 opinion of the Fourth District Court of Appeal be affirmed.

Respectfully submitted,
MCCUNE, HIAASEN, CRUM, FERRIS
& GARDNER, P.A.
Attorneys for Respondents
Post Office Box 14636
Fort Lauderdale, Florida 33302
(305) 462-2000

By Eugene L. Heinrich
EUGENE L. HEINRICH

By Jeffrey A. O'Keefe
JEFFREY A. O'KEEFE

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing has been furnished by mail, to SUSAN F. DELEGAL, General Counsel for Broward County, Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 and SAMUEL S. GOREN, ESQUIRE, Josias and Goren, P.A., Attorney for Jane Carroll, 3040 East Commercial Boulevard, Fort Lauderdale, Florida 33308, this 28th day of January, 1985.

MCCUNE, HIAASEN, CRUM, FERRIS
& GARDNER, P.A.
Attorneys for Respondents
Post Office Box 14636
Fort Lauderdale, Florida 33302
(305) 462-2000

By Eugene L. Heinrich
EUGENE L. HEINRICH

By Jeffrey A. O'Keefe
JEFFREY A. O'KEEFE