

IN THE SUPREME COURT OF FLORIDA

Case No. 80,286

STATE OF FLORIDA,  
DEPARTMENT OF EDUCATION,

Appellant,

vs.

KAY E. GLASSER, et al.

Appellees.

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**BRIEF OF AMICUS CURIAE  
DADE, HERNANDO AND ORANGE COUNTIES**

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## STATEMENT OF THE CASE AND FACTS

This case was brought by the School Board of Sarasota County against the County tax collector, seeking to overturn section 236.25(1), Florida Statutes (1989) and section 509 of chapter 91-193, Laws of Florida. Those provisions had the effect of reducing the amount of ad valorem taxation the school board could levy. The trial court found the provisions unconstitutional and the Second District Court of Appeal affirmed this judgment.

Amici, three Florida counties, sought permission to file this brief in order to address a single issue that this case implicates: Whether the Legislature may reduce the ad valorem millage of counties below the ten mill cap referenced in article VII, section 9(b) of the Florida Constitution. In the opinion reviewed here, State, Department of Education v. Glasser, No. 91-2336 (Fla. 2d DCA July 31, 1992) (App. 1), the Second District Court of Appeal construed article VII, section 9 to be an express grant of power to local governments to levy up to ten mills of ad valorem taxation without interference by the Legislature. This issue also is present in a case awaiting a decision on jurisdiction before this Court. Board of County Commissioners, Hernando County v. State, Department of Community Affairs, 598 So.2d 182 (Fla. 1st DCA 1992); Supreme Court Case No. 80,158 (App. 4).

## SUMMARY OF ARGUMENT

This brief will address only the discussion at pages 17 through 20 of the slip opinion, and only in the context of county governments; whether the uniformity provisions of Article IX, section 4 of the Florida Constitution or the unique nature of school boards implicate other considerations is not the direct concern of Amici Dade, Hernando and Orange Counties. Amici solely are concerned with the argument, raised by Appellants, that the Legislature may reduce county millage below ten mills.

The plain meaning of article VII, section 9, Florida Constitution, as well as the historical context in which it was passed, and the official record of the proceedings that led to its final form conclusively show that the Legislature was not intended to have the power to reduce the millage of any county, school district or municipality. Any other construction would not be in the public interest.

## ARGUMENT

### I. THE 1968 REVISION TO THE FLORIDA CONSTITUTION DIRECTLY GRANTED AD VALOREM TAXING POWER TO COUNTIES, WHICH THE SECOND DCA CORRECTLY RECOGNIZED.

The court below made two important, related holdings regarding the power of local governments to levy ad valorem taxes. First, the Second District Court of Appeal found that the constitution was a grant of power to local governments. The court held: "[A]rticle VII, section 9 and article IX, section 4(b) expressly grant constitutional authority to the school districts to levy ad valorem taxes for school purposes within the ten mill limit of article VII, section 9(b)." State, Dept. of Education v. Glasser, No. 91-2336 (Fla. 2d DCA July 31, 1992) at 17 (App. 1).

It is without dispute that, while this holding is phrased in terms of school districts, it would be equally applicable to counties. The constitution makes no distinction between the ad valorem taxing power of counties, school districts and municipalities. "Counties, school districts and municipalities shall . . . be authorized by law to levy ad valorem taxes . . . ." Art. VII, § 9(a), Fla. Const.

Second, the Court held that the Legislature could not restrict the power to levy up to ten mills. The Court held:

We find no language in either the express terms of section 9 or the commentary on this provision to support DOE's contention that the Legislature can restrict the school district's authority to levy ad valorem taxes. The commentary states that subsection (a) "empowers counties, school districts and municipalities to levy ad valorem taxes within the limitations of subsection (b)." The commentary on subsection (a) further states

that the language was changed in the new constitution so that "only counties, municipalities and school districts have constitutional authority to levy ad valorem taxes." Likewise, the commentary on subsection (b) states that "counties, municipalities and school districts may not impose" ad valorem taxes in excess of ten mills. Subsection (b) is a restriction on the school district's constitutional authority to levy ad valorem taxes. There is no indication that this limitation is directed to the Legislature.

Slip op. at 18-19.

Thus, the Glasser court recognized that article VII, section 9 was a grant of taxing power by the people, through the Constitution, to local governments, who could levy any millage up to ten mills without restriction by the Legislature.

Appellant, in seeking to ensure that the public schools retain a uniform per-pupil allotment of funds through the Florida Education Finance Program (FEFP), has argued that the Legislature may restrict all local government millage, apparently on a case-by-case basis. This interpretation is not supported by the plain meaning of the Constitution or an examination of the historical context in which it was passed.

**A. The Plain Meaning of Article VII, Section 9 Gives the Legislature no Power to Reduce County, School District or Municipal Millage Below 10 Mills.**

Article VII, section 9 of the Florida Constitution states:

(a) Counties, school districts and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal

property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for all the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

Art. VII, § 9, Fla. Const. (emphasis supplied).

The plain meaning of emphasized portions is that counties, school boards and municipalities may levy up to ten mills of ad valorem taxation, and it is clear from reading section 9 as a whole, with its unusual detail and explicitness, that the drafters were attempting to circumscribe the Legislature's power and control over ad valorem taxes.

The section deals with most major forms of local government and strictly sets out what millages they may levy. The Legislature is not explicitly given any power to reduce or eliminate any ad valorem taxes. The last phrase of subsection (a) demonstrates that it was the constitution, and not the Legislature, that should

determine what ad valorem taxes were appropriate. There is an obvious intent to cover as many possible contingencies as possible within the constitution, so that the Legislature need act only by passing enabling legislation.

Thus, the only reasonable construction of the entire section is that the drafters set up a framework, granted ad valorem taxing power solely to local governments, and commanded the Legislature, through the use of the mandatory word "shall," to put into law what the constitution had granted.

Had the drafters, as Appellant argues, intended to make the ten mills a ceiling, under which the Legislature could operate freely, they would have employed a limiting phrase such as "for all county purposes, a millage authorized by law but not exceeding 10 mills." No such phrase applies to county-purpose millage and no such phrase should be implied.

In construing a constitution, the intent of the framers is paramount. Metropolitan Dade County v. City of Miami, 396 So.2d 144 (Fla. 1980). While the Court may look to the historical context, In Re Advisory Opinion to the Governor, 223 So.2d 35 (Fla. 1969), there is no need to resort to such materials when the words are clear and unambiguous on their face. See, e.g. State Racing Comm'n v. McLaughlin, 102 So.2d 574 (Fla. 1958). Even if, however, the Court were to find a latent or patent ambiguity in article VII, section 9, the history of the passage of the 1968 Constitution conclusively points to the fact that the drafters intended that

document as a grant of power to local governments to levy ad valorem taxes and imposed only a limit on that power.

**B. The 1968 Constitutional Revision Dramatically Altered the Governmental Relationship Between Counties and the State.**

The people in approving the 1968 constitutional revision fundamentally altered the relationship between local governments and the state. This fundamental and dramatic realignment of governmental power to tax, to regulate and to provide needed services is ignored or misapprehended by the Appellant.

Under the 1885 Florida Constitution, all county governmental power required express authorization in a general law or special act.<sup>1</sup> The customary legislative vehicle was a special act. Likewise, under the 1885 Florida Constitution, all taxing power rested with the State and required express legislative delegation by either a special act or general law.<sup>2</sup> Appellant repeatedly states that there existed no "inherent power" to tax by local governments under the 1885 Florida Constitution. This 1885 constitutional relationship between counties and the state is significant, however, only to the extent it enhances an understanding of the fundamental change crafted in the 1968 Constitutional revision, so Appellant's reliance on the old relationship is misplaced and misleading. Amici agree there was

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<sup>1</sup> See Art. VIII, §1, Fla. Const. (1885) and Amos v. Matthews, 126 So. 308 (Fla. 1930).

<sup>2</sup> Art. IX, §§1 and 5, Fla. Const. (1885).

no inherent power to tax under the 1885 Constitution.<sup>3</sup> The disagreement is over the Department's blind refusal to see the changes in the framework of government adopted in the 1968 revision which render those statements dated and irrelevant.

First, article VIII of the 1968 revision unleashed a revolution in its authorization of county home rule power to legislate. This novel constitutional delegation of the power of self-government to counties lies in article VIII, section 1(f) and (g) of the 1968 Constitution. The county power of self-government is legislatively implemented by the adoption of an ordinance by the county commission. Eliminated is the need for a special act.<sup>4</sup>

Second, article VII of the 1968 revision sorted out the sovereign taxing power and the requirement of authorization by the Legislature. The use of the special act as a method of legislative authorization of a tax was abandoned in the new 1968 Constitutional framework. All forms of taxation other than the ad valorem tax are "preempted" to the state except as provided by "general law."<sup>5</sup>

This fundamental revision of governmental power diminishes the value of prior constitutional precedents. All forms of taxation,

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<sup>3</sup> Thus, the authorities cited in footnote 14 of Appellant's brief are inapposite and unpersuasive, as they are pre-1968 cases.

<sup>4</sup> See Section 125.01(3)(a), Florida Statutes. As noted by the Florida Supreme Court in State v. Orange County, 281 So.2d 310, 312 (Fla. 1973): "Instead of going to the Legislature to get a special bill passed . . . the Orange County Commissioners under the authority of the 1968 Constitution and enabling statutes now may pass an ordinance for such purpose . . . ."

<sup>5</sup> Art. VII, §§2 & 9(a), Fla. Const.

other than the ad valorem tax, are preempted to the state to be authorized by the Legislature only by general law. The sole tax constitutionally reserved for special act authorization is the ad valorem tax.<sup>6</sup> This traditionally local tax source is directly granted to the counties by the constitution and such a constitutional mandate can be implemented by general or special law: "Counties . . . shall be authorized by law to levy ad valorem taxes . . . ." Art. VII, §9(a), Fla. Const.

The fact that "shall" means what it says is amply supported by the record of proceedings leading to the adoption of article VII, section 9. One part of the debate that is very telling has been misapprehended by the Department. As originally considered, subsection 9(a) (subsection 9(b) was added in later drafts) said that local governments "may" be empowered to levy ad valorem taxes, but an amendment was proposed by Revision Commission Member Ralph Marsicano that would change the phrase to "shall be authorized by law." Commission Member Ralph Turlington inquired about the effect of the amendment.

MR. TURLINGTON: Mr. Marsicano, what does this actually do: Can you think of any legal rights that this gives the cities that the word "may" doesn't give them?

MR. MARSICANO: I think it makes the Legislature more conscious of the fact that it's got to make provisions for the finances of our local governments.

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<sup>6</sup> The state is constitutionally barred from utilization of the ad valorem property tax: "No state ad valorem taxes shall be levied upon real estate or tangible personal property." Art. VII, §1(a), Fla. Const.

MR. TURLINGTON: You say that this is exactly like the present constitution?

MR. MARSICANO: That is right. If you put the word "shall: in, it goes back to the present constitution.

MR. SEBRING: Will the gentleman yield?

CHAIRMAN SMITH: Do you yield to Mr. Sebring, Mr. Marsicano?

MR. MARSICANO: Yes, sir.

MR. SEBRING: May I suggest, sir, that what you are proposing has more far-reaching implications than the mere substitute of the word "shall" for "may."

MR. MARSICANO: Judge, I will be glad to have you suggest it.

MR. SEBRING: May I suggest to you, sir, that the counties and municipalities of the state -- and this is in partial answer to you, Mr. Turlington -- have no inherent right to levy taxes. Such right as they have is just purely by delegation from the congress and without that delegation, the counties and the municipalities would be entirely impotent.

MR. MARSICANO: That is correct.

MR. SEBRING: Would you yield further?

MR. MARSICANO: Yes, sir.

MR. SEBRING: Would you yield to the possibility that not only -- and I hope that I am talking directly to your amendment -- that not only should that section contain the change of the word from "may" to "shall," but that it ought to carry with it the language of present Article IX, which not only imposes on the Legislature the duty to authorize the several counties and incorporate its cities to assess and impose taxes for county and municipal purposes, and for no other purposes, but that one line also carries with it an extremely vital elementary provision, that all property shall be taxed upon the principles

established for state taxation, which is a very meaningful thing.

MR. MARSICANO: I have no objection to that further amendment, Judge.

Transcript of Public Hearing of December 2, 1966, Constitution Revision Commission, at pages 1094-96, vol. 59, Supreme Court of Florida Library (App. 2).

Thus, the intent of the drafters was to give local governments constitutional authority to levy ad valorem taxes. Under this direct constitutional authorization to tax, the role of the Legislature is limited to establishing an assessment and collection process to ensure that property, in Judge Sebring's<sup>7</sup> words, "shall be taxed upon the principle established for state taxation."<sup>8</sup>

The Department argues that the preceding dialogue proves that the Legislature may reduce local government millage, apparently by proving that at the time of the revision there was no inherent power to tax. Amici concede that such power did not exist under the 1885 Constitution. The Department, however, has failed to apprehend the significance of the changes wrought by the 1968 constitutional revision.

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<sup>7</sup> In addition to serving on the Florida Supreme Court and as Dean of the Stetson University College of Law, Justice Harold L. Sebring was a Florida constitutional law and taxation scholar.

<sup>8</sup> See, e.g., the taxation principles established in the following constitutional provisions: Art. VII, §§1(a), 2 (uniform rate); 3 (property tax exemptions); 4 (just valuation assessment); and 6 (homestead exemption). See also Art. III, §11(a)(2) which prohibits special laws or general laws of local application pertaining to the "assessment or collection of taxes for state or county purposes."

First of all, Amici do not accept Appellant's argument that Judge Sebring was referring to the proposed new constitution when he spoke of local governments having no inherent right to levy taxes; rather, he was speaking of the situation that existed prior to the new constitution. That is why he spoke of "more far-reaching implications" than the substitution of one word for another. He recognized that what was being proposed in the amendment was a permanent delegation of control over the ad valorem taxing power, from the state to counties and cities (schools were added later). This amendment, he recognized, was a complete reversal of emphasis regarding local taxation.

Other historical materials support this conclusion. As originally drafted, subsection (b) read:

Ad valorem taxes shall not be levied in excess of the following millages on the dollar of assessed value for the following purposes: For all county purposes, including special taxing districts lying wholly within a county, ten mills . . . .

Amendment No. 731 to HJR 3 XXXX (67), found in Minutes, Committee of Whole House, House of Representatives Constitutional Revision Sessions, July 31 and August 21, 1967, page 2 (located in loose leaf, Art. VII, § 9 materials, Supreme Court of Florida Library) (App. 3).

Representative Yarborough suggested an amendment that would have made subsection (b) read: "Ad valorem taxes may be limited by general or special law." Id. at 4. It was defeated. Id. Thereafter, Representative Mann proposed an amendment to subdivision (b) that would have read:

Ad valorem taxes may be limited by general or local law, provided that millages in excess of those provided by law may be levied for periods not longer than two years when authorized by vote of the owners of freeholds not wholly exempt from taxation.

It was defeated, too. Id. The Legislature's rejection of these provisions, which would explicitly have given the state the power to reduce counties' ability to levy ad valorem taxes to below 10 mills for county purposes, shows that the original intent of the drafters was to allow local governments the unfettered freedom to levy up to the ten-mill county purpose cap.

That article VII, section 9, standing alone, authorizes counties to levy ad valorem taxes is also recognized in the commentary on the provision:

This section empowers counties, school districts and municipalities to levy ad valorem taxes within the limitations of subsection (b) below.

. . . .

The Revision Commission had recommended that counties and municipalities be authorized to levy any taxes for their respective purposes except those prohibited by the Constitution. That language was changed in the new Constitution so that only counties, municipalities and school districts have constitutional authority to levy ad valorem taxes. The language, mandatory in tone, does contemplate a legislative act for they "shall be authorized by law" to levy ad valorem taxes

. . . .

T. D'Alemberte, Commentary, Art. VII, §9, 26A Fla. Stat. Ann. 142-143 (1970) (emphasis supplied). This commentary makes no mention of the authority of the Legislature to limit county millage because no such authority exists.

**C. Appellant Relies on Authorities that are Inapposite or Unpersuasive.**

Appellant's position is that all taxing power resides in the Legislature, which may dole it out as that body sees fit. In Appellant's scheme, article VII, section 9(a) commands the Legislature to empower counties, school districts and municipalities to levy ad valorem taxes, and subsection (b) sets the limits of that power. As long as the Legislature grants anything larger than zero mills, Appellant argues, it has not acted unconstitutionally.<sup>9</sup>

In support of this proposition, Appellant misstates the Second District Court of Appeal's holding, exaggerates its impact and attempts to raise the specter of chaos and anarchy if the lower court's sensible construction of the constitution is adopted. Appellant, however, cites to no case that holds that the Legislature may reduce the millage of any county, school district or municipality below 10 mills. The more persuasive authorities demonstrate that in article VII, section 9, the drafters of the 1968 constitution drastically reduced the Legislature's role in local government taxation.

The most definite statement on the subject is that the Legislature has no authority to preempt counties in the levy of ad

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<sup>9</sup> If Appellant's interpretation is correct, the question naturally occurs: How low could the Legislature set millage? Presumably, it could reduce the millage of any individual county, or that of all counties in the state, to any figure greater than zero mills, regardless of how infinitesimal. This might seem an absurd result, but under Appellant's interpretation, there would be nothing to prevent such an occurrence.

valorem taxation. Mallard v. Tele-Trip Co., 398 So.2d 969 (Fla. 1st DCA), rev. denied 411 So.2d 384 (Fla. 1981), involved a challenge to a levy of ad valorem taxes on leasehold property. The property owner argued that such taxes had been preempted to the state by statute, but the court disagreed.

Article VII, Section 9, by the use of the mandatory word "shall," appears to mandate the Legislature to authorize only the counties the power to levy ad valorem taxes. Hence, it does not appear that the Legislature has the power to revoke the counties' authority to levy such taxes in part or in full.

Id. at 973 (citation omitted) (emphasis supplied). In attempting to distinguish Mallard, Appellant has overlooked the emphasized language.

Appellant relies on Wilson v. School Board of Marion County, 424 So.2d 16 (Fla. 5th DCA 1983), which is inapposite to this case. Wilson dealt with the process for levying ad valorem taxes, not the inherent authority of a county to levy ad valorem taxes. The Legislature has prescribed a process by general law for counties, which preempts the county from legislating in the area.<sup>10</sup> That the Legislature has the authority to prescribe the process for the levy of the tax (as Judge Sebring contemplated) does not equate with the power to restrict or infringe on the levy of 10 mills of ad valorem taxation by counties. The Fifth DCA's dicta that cities and school

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<sup>10</sup> Ch. 200, Fla. Stat. See, Board of County Commissioners of Dade County v. Wilson, 386 So.2d 556 (Fla. 1980) (invalidating initiative petition which sought to set millage limit by ordinance and holding that process for a county in setting millage is preempted to the state).

boards have no inherent power to tax, 424 So.2d at 19-20, is based upon old law (i.e., the 1885 Constitution and one case construing it), and thus should be ignored.

Appellant also overlooks the fact that this Court has recognized that the authority of municipalities to tax may be authorized by the Constitution or the Legislature. City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1 (Fla. 1972). In determining whether a city license tax was lawful, the Court examined article VII, section 9 and commented: "From the foregoing provisions of the Florida Constitution [i.e., subsections (a) and (b)], it is clear that except for ad valorem taxes, municipalities may be granted the power to levy any tax only by general law." 261 So.2d at 3. The same rationale holds that counties' authority to tax may be provided directly by the Constitution.

In pressing its point, the Department has misstated the Glasser court's holding, and then attempted to demonstrate dire consequences that would result therefrom. Appellant says the Second District Court of Appeals' opinion has ignored the phrase "shall be authorized by law," which appears in article VII, section 9(a).

In fact, the Second DCA's opinion is completely in harmony with the only reasonable interpretation of the phrase, which is a command to the Legislature that it pass laws empowering counties, school districts and municipalities to levy ad valorem taxes. The grant of power in article VII, section 9 is not absolute, for the drafters left to the Legislature the power to set procedures for

assessing and collecting such taxes. Beyond that, however, the Legislature has no say.

The Department's position is that if the drafters had wished counties, schools and municipalities to have this power, it would have directly granted such power without involving the Legislature. Given, however, that the Legislature has control over the creation of counties, school districts and municipalities, the drafters would have been acting inconsistently had the constitution not involved the Legislature, if only to require it to perform what amounts to a ministerial act, in empowering local governments.

Furthermore, requiring a legislative act symbolically transfers the power over this area of taxation from the state, which held such power under the 1885 constitution, to local governments. Mr. Marsicano recognized this factor when he remarked: "I think [the use of the word 'shall'] makes the Legislature more conscious of the fact it's got to make provisions for the finances of our local governments."

Thus, Appellant's argument that the Second DCA's opinion makes section 9(a) "meaningless," is without support. Applt's. Brf. at 34. Section 9(a), far from being meaningless, means that the power to levy ad valorem taxes is expressly granted to the counties, school districts and municipalities in the state. In fact, section 9(a) would only be meaningless if, as the Department argues, article VII, section 1 inherently requires legislative authorization of local taxes; if that were the case, then the phrase in section 9(a) would be surplusage. Courts must avoid

construing any section of the constitution to make it superfluous, meaningless or inoperative, however. Burnsed v. Seaboard Coastline R. Co., 290 So.2d 13 (Fla. 1974). Thus, one can answer Appellant's rhetorical question "Why must the Legislature pass a law on a subject which is already spelled out in the Constitution?" Id. If it does not mean that power is directly granted by the constitution, through the Legislature, if you wish, to local governments, then what is its purpose?

Likewise, the Court should ignore appellant's sweeping assertion that the Second DCA's opinion would make the phrase "authorized by law" meaningless and thus would undermine all manner of statutes and laws, with the implication that anarchy would rule. This is nonsense.

To support this point, Appellant has found all the times the constitution uses the phrase "by law" and proclaims that all these constitutional provisions would be meaningless if "a District Court faithful to principle would also ignore the language in the other thirty-one sections of the Constitutions which have been identified." Applt's. Brf. at 25-26.

The other provisions are set out in an appendix. Close examination shows that not one of the cited provisions that contains the phrase "by law" is remotely equivalent to the mandatory language in article VII, section 9(a). There is a dispositive distinction between a command such as "shall be authorized by law" and the phrase "as provided by law," which appears in one form or another in at least twenty-five of the

thirty-two<sup>11</sup> provisions. "As provided by law" is a grant of discretion, as analysis of several of the authorities cited by Appellant will demonstrate.

For example, in article I, section 18, the constitution states: "No administrative agency shall impose a sentence of imprisonment nor shall it impose any other penalty except as provided by law." In other words, the Legislature, rather than each individual agency, is given the duty and discretion to determine which agencies shall be allowed to impose sentences and under what conditions.

Article II, section 8(d) states: Any public officer . . . convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law." Under this provision, the Legislature sets the procedures under which such forfeiture takes place.

Article V, section 3(b)(2) reads: "When provided by general law [the Supreme Court] shall hear appeals from final judgments entered in proceeding for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service." Thus, the Legislature may, if it chooses, divest this Court of its jurisdiction to hear cases involving municipal bond validations or decisions of the Public Service

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<sup>11</sup> The inclusion of article V, section 4(b)(1) appears to have been by accident, as the phrase "by law" does not appear.

Commission. It does not, however, have the ability to determine the scope of the court's review of those cases.

Article V, section 14 states: "All justices and judges shall be compensated only by state salaries fixed by general law." This provision gives the Legislature the power to set judicial salaries.

Article VII, section 9(b) states: "A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal services." This provision means that the Legislature, which under article VII, section 9(a) has the discretion to allow special districts to levy ad valorem taxes, also has the discretion to authorize additional taxes to pay for municipal services provided by counties.

In most cases, the phrase referred to in Appellant's appendix is "as provided by law," meaning in the manner the Legislature provides. See, e.g., art. X, § 4(c), Fla. Const. One exception is article II, section 7, which commands the Legislature that "[a]dequate provision shall be made by law for the abatement of air and water pollution and excessive noise." Thus, the constitution commands that something be done about certain problems, but leaves the details up to the Legislature.

Article VII, section 9 is different, in that it is considerably more specific in what it commands and how it commands. It leaves no discretion to the Legislature in the area of ad valorem taxes.

Appellant goes to great lengths to prove that article VII, section 9 is not self-executing, to suggest the apparent point that

any constitutional provision that requires a legislative enactment to be effective, may also be restricted by the Legislature. There is no authority cited for this apparent conclusion, however. In any event, Appellant cannot prove that article VII, section 9 is, if not self-executing, the functional equivalent. As stated before, the constitution commands the Legislature to execute article VII, section 9. If the Legislature were to repeal the laws it enacts pursuant to article VII, section 9, it would be bound by the constitution to re-enact them. In other words, whether the statute is self-executing is irrelevant, since article VII, section 9 clearly directs the Legislature to act, and circumscribes its actions.

In support of this position, the Department relies upon Horne v. Markham, 288 So.2d 196 (Fla. 1974) and Desert Ranches of Florida, Inc. v. St. Johns River Water Management District, 406 So.2d 1132 (Fla. 5th DCA 1981) aff'd in part, rev'd in part, 421 So.2d 1065 (Fla. 1982). Neither case furnishes any support for the proposition that the Legislature may reduce, on an ad hoc basis or generally, the ad valorem taxing power of counties, school districts or municipalities.

Horne, rather than furnishing support for Appellant's position, actually supports Amici's argument that the Legislature's power over ad valorem taxation is purely administrative. That case involved a challenge by a property owner to the Legislature's requirement that application for the homestead amendment be made by April 1; the landowner claimed that the constitution created a

right that prevented such a requirement. The Court held, however, that the Constitution specifically gave to the Legislature the right to set procedures by declaring that the right to homestead exemption vested "upon establishment of right thereto in the matter prescribed by law." Art. VII, § 6, Fla. Const. Thus, this Court held, the right to homestead exemption is, under the express words of the Constitution, not absolute. 288 So.2d at 199.

This view is consistent with the position Amici have taken, and alluded to by Justice Sebring, that the "principles of state taxation," i.e., the procedures that the state has established for the assessing property values and collecting taxes -- purely administrative functions -- may be set by the Legislature. It is an unacceptable leap, however, to conclude that control over procedure gives the Legislature control to reduce the amount of millage each local government has decided, through its elected officials, is best suited for that county, district, or municipality.

Desert Ranches involved a claim that a water management district's levy of ad valorem taxes was an illegal state ad valorem tax; it did not involve an attempt by the Legislature to reduce the millage levied by the district. The case is not remotely on point, as it involved a special district, which is specifically under the control of the Legislature as regards the power to levy ad valorem taxation. "[S]pecial districts may[] be authorized by law to levy ad valorem taxes . . . ." Art. VII, § 9(a), Fla. Const., emphasis supplied.

**II. PUBLIC POLICY SUPPORTS LIMITING LEGISLATIVE INTERFERENCE WITH LOCAL GOVERNMENT TAXATION.**

Appellant, while seeking to advance the worthy goal of free and uniform schools, goes too far in its construction of article VII, section 9 of the Florida Constitution. The approach the Department of Education has advocated contemplates an unhealthy interplay between state and local governments.

Appellant's approach would allow the Legislature to drastically reduce the power of local governments by turning on and off, at will, one of the principal revenue producing mechanisms counties and municipalities possess: ad valorem taxes. The potentials for abuse in such a system are obvious. The Legislature would possess astonishing power over local governments by virtue of this control, which could be exercised at the expense, or benefit, of individual counties or cities.

On the other hand, if the interpretation urged by Amici is adopted by this Court, the state will have no say in local government ad valorem taxation.<sup>12</sup> Counties, cities and school boards will be able to levy up to ten mills for county purposes, and more if the voters in each county, municipality or district approve. This interpretation is completely in harmony with the

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<sup>12</sup> The lone exception would be the creation of special districts. It is noteworthy, however, that the Constitution requires the Legislature to submit any special district with ad valorem taxing power to the residents for a referendum. Art. VII, § 9(b), Fla. Const. Under the FEFP, local millages are set without notice to local residents. Article VII, section 9(b) relating to special district millage is further proof that the drafters of the 1968 Constitution wished localities to have a great deal of autonomy as regards ad valorem taxation.

scheme of government created by the 1968 constitutional revision which, simply stated, is that local decisions should be made by locally elected officials, and that local governments should have a sufficient revenue base with which to operate.

CONCLUSION

The opinion of the Second District Court of Appeal reached the sensible, logical conclusion that article VII, section 9 of the Florida Constitution grants power over ad valorem taxation to the counties, school districts and municipalities, and that the Legislature may not usurp that power. This part of the District Court of Appeal's decision should be approved.

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 United States Mail to the following service list this 30th day of November, 1992.

  
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