Text: Little, Local Government COURSE MATERIALS (Fall 2017).
       (Locally printed; book store)

First Assignments: READ: Syllabus, How Things Are Done, Addendum (etc.), Oath of Admisision, Table of Contents, Chapter 1, pp. 1-35.

Meeting dates: M, Tu, W (11:00 a.m.)

Meeting room: 355D

Read the assigned materials. Portions of the assigned pages are attached. PAY PARTICULAR ATTENTION TO “HOW THINGS ARE DONE.”

J. Little, Instructor
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Class Meeting Times: M,Tu,W 11:00 a.m., Rm 355D

Office Hours: M-F., 4:00pm to 5:00p.m, Suite 287
HOW THINGS ARE DONE

1. Attendance: Regular and punctual attendance is required. No student who has more than 7 absences will be eligible to take the final examination. No student who has a combined total of more than 9 absences plus tardies shall not be eligible to take the final examination. A student is tardy if not seated in the assigned seat at the time the student’s name is called. THE STUDENT IS RESPONSIBLE TO ASSURE THAT A TARDY IS NOT RECORDED AS AN ABSENCE. THE STUDENT IS RESPONSIBLE TO KEEP ACCOUNT OF THE ATTENDANCE RECORD AND IS NOT ENTITLED TO ANY NOTICE OR WARNING THAT LIMITS ARE ABOUT TO BE EXCEEDED.

2. Grading: Performance on the final examination is ordinarily the only basis for the assignment of grades.

3. Decorum:
   a. No eating, smoking or drinking is permitted in the classroom during class. Any student who breaches this standard will be directed to refrain and to remove offending substances from the classroom.
   b. Students are to be clean and modestly attired and SHALL NOT WEAR HATS DURING CLASS.
   c. Decorum consistent with the foregoing standards and with the “Customary and Traditional Conduct and Decorum in the United States District Court” (except for the requirement to stand) and the “Oath of Admission” to the Florida Bar is required. Abidance by these standards is a condition of satisfactory completion of the course. Failure to conform may result in a lowered grade.

4. Laptops: YOU MAY NOT USE LAPTOP COMPUTERS, ELECTRONIC TABLETS, OR OTHER ELECTRONIC DEVICES IN CLASS.

5. You must turn OFF cell phones, smart phones, texting devices, and pagers and all similar devices BEFORE ENTERING the class.

6. You will be permitted to write your examination on your computer.
ADDENDUM. CUSTOMARY AND TRADITIONAL
CONDUCT AND DECORUM IN THE UNITED
STATES DISTRICT COURT

(A) The purpose of this addendum is to state for the
guidance of those heretofore unfamiliar with the
traditions of this United States district court certain
basic principles concerning courtroom conduct and
decorum. These standards are minimal and not all-
inclusive. They are intended to emphasize and
supplement, not supplant or limit, the ethical
obligations of counsel under the Code of
Professional Responsibility or the time honored
customs of experienced trial counsel.

(B) When appearing in this United States district
court, all counsel and all persons at counsel table
should conduct themselves in the following
customary and traditional manner:

(1) Stand as court is opened, recessed or
adjourned.

(2) Stand when the jury enters or retires from
the courtroom.

(3) Stand when addressing, or being addressed
by the court.

(4) Address all remarks to the court, not the
opposing counsel.

(5) Avoid disparaging personal remarks or
acrimony toward opposing counsel and remain
wholly detached from any ill feeling between the
litigants or witnesses.

(6) Refer to all persons, including witnesses,
other counsel and the parties, by their surnames
and not by their first or given names.

(7) Counsel should request permission before
approaching the bench; and any document
counsel wishes to have the court examine should
be handed to the clerk.

(8) Unless opposing counsel has previously been
shown exhibits, any exhibit offered in evidence
should, at the time of such offer, be handed to
opposing counsel.

(9) In making objections, counsel should state
only the legal grounds for the objection and
should withhold all further comment or argument
unless elaboration is requested by the court.

(10) In examining a witness, counsel shall not
repeat or echo the answer given by the witness.

(11) Offers of, or requests for, a stipulation
should be made privately, not within the hearing
of the jury.

(12) In opening statements and in arguments to
the jury, counsel shall not express personal
knowledge or opinion concerning any matter in
issue, shall not read or purport to read from
deposition or trial manuscripts, and shall not
suggest to the jury, directly or indirectly that it
may or should request transcripts or the reading
of any testimony by the reporter.

(13) Counsel shall admonish and discourage all
persons at counsel table from making gestures,
facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time.

(14) Smoking, eating, food and drink are prohibited in the courtroom at any time.

In re The Florida Bar
73 So.3d 149, (Fla. 2011)

Recognizing the importance of respectful and civil conduct in the practice of law, we therefore revise the Oath of Admission to The Florida Bar as set forth below. New language is indicated by underscoring.

OATH OF ADMISSION

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

(Italics added; clauses added 2011)
HEART OF LEGAL ETHICS - CANDOR TO THE COURT

The heart of all legal ethics is in the lawyer's duty of candor to a tribunal. [FN5 See R. Reg. Fla. Bar 4-3.3(3) (“A lawyer shall not knowingly ... fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel....”).] It is an exacting duty with an imposing burden. Unlike many provisions of the disciplinary rules, which rely on the court or an opposing lawyer for their invocation, the duty of candor depends on self-regulation; every lawyer must spontaneously disclose contrary authority to a tribunal. It is counter-intuitive, cutting against the lawyer's principal role as an advocate. It also operates most inconveniently—that is, when victory seems within grasp. But it is precisely because of these things that the duty is so necessary.

Although we have an adversary system of justice, it is one founded on the rule of law. Simply because our system is adversarial does not make it unconcerned with outcomes. Might does not make right, at least in the courtroom. We do not accept the notion that outcomes should depend on who is the most powerful, most eloquent, best dressed, most devious and most persistent with the last word—or, for that matter, who is able to misdirect a judge. American civil justice is so designed that established rules of law will be applied and enforced to insure that justice be rightly done. Such a system is surely defective, however, if it is acceptable for lawyers to “suggest” a trial judge into applying a “rule” or a “discretion” that they know—or should know—is contrary to existing law. Even if it hurts the strategy and tactics of a party's counsel, even if it prepares the way for an adverse ruling, even though the adversary has himself failed to cite the correct law, the lawyer is required to disclose law favoring his adversary when the court is obviously under an erroneous impression as to the law's requirements.


Too many members of the Bar practice with complete ignorance of or disdain for the basic principle that a lawyer's duty to his calling and to the administration of justice far outweighs—and must outweigh—even his obligation to his client, and, surely what we suspect really motivates many such inappropriate actions, his interest in his personal aggrandizement.

Rapid Credit Corp., 566 So.2d 810, 812 n. 1 (Schwartz, C.J., specially concurring).
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CHAPTER I

RELATIONSHIP BETWEEN STATE & LOCAL GOVERNMENTS
A. STATE-COUNTY (TRADITIONAL)
AMOS v. MATHEWS
126 So. 308, 99 Fla. 1
(Florida en banc 1930)

[The state legislature enacted certain tax statutes imposing taxes on the sale of gasoline. The proceeds from taxes in the amount of two cents per gallon, known as the second and third gas taxes, were allocated for direct payment to the county governments in the counties where collected. The statute prescribed that these revenues be used in part to retire certain bonds issued by the counties to raise funds to build roads.

A citizen and taxpayer (Mathews) brought an action against the state controller (Amos) to enjoin enforcement of the statutes on the grounds that they were unconstitutional.

A separate quo warranto action was brought against the governor and other state officials challenging their authority to exercise powers granted in the statutes.

The lower court in the quo warranto proceeding sustained Defendants’ demurrer and dismissed the action but lower the court in the injunction proceeding entered an order enjoining collection of the taxes. For reasons explained below the Supreme Court affirmed dismissal of the quo warranto action and reversed the decision granting the injunction.

(The case considered other actions and issues not addressed in these excerpts.)

A major question raised by the suit was whether these taxes were state taxes or local taxes. The court held that they were local taxes, notwithstanding the fact they were levied by the legislature, because the proceeds were to be used for local purposes. This conclusion was required to sustain the taxes because of a constitutional provision that prevented the state from imposing state taxes to pay local obligations.

[The court then turned to the general question of the power to tax:]

In approaching the question of the power of the Legislature to levy taxes, it should further be borne in mind that our State Constitution is not a grant of power to the Legislature, but is a limitation voluntarily imposed by the people themselves upon their inherent lawmaking power, exercised under our Constitution through the Legislature, which power would otherwise be absolute save as it transcended the powers granted by the state to the federal government. Stone v. State, 71 Fla. 517, 71 So. 6634; Chency v. Jones, 14 Fla. 587. The state therefore possesses, as an attribute of sovereignty, the inherent power to impose all taxes not expressly or by clear implication inhibited by State or Federal Constitutions. Amos v. Gunn, 84 Fla. 285, 94 So. 615; ...Where the Constitution expressly prescribes the manner of doing a thing, it impliedly forbids its being done in a substantially different manner, even though the Constitution does not in express terms prohibit the doing of the thing in such other manner. Weinberger v. Board of Public Instruction, 93 Fla. 470, 112 So. 256.

“The true spirit of constitutional interpretation * * * is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose. * * * Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation.” Fairbank v. U.S. 181, U.S. 283, 21 S. Ct. 648, 651, 45 L. Ed. 862.

[The court then turned to more specific questions:]

With respect to the contention that, if these taxes are levied as county taxes, the direct and compulsory levy thereof by the state impairs the principle of “local self-government,” let us now consider and ascertain the intent and purpose of the people in that respect as evidenced by the adoption of the Constitution.

After dividing the government of the state into three departments, legislative, executive, and judicial, the Constitution, in articles 3 and 4 thereof, creates certain offices, namely Senators and members of the House of Representatives, a Governor and his Cabinet, to the incumbents of which offices, together with governmental affairs of the legislative and executive departments of the state. These officers, together with the judicial department provided by article 5, form the state government. The authority of these officers extends territorially throughout the state, except as to certain of the judicial officers. See Opinion of Justices, 13 Fla. 687.

Having thus constituted the state government, the Constitution in article 8 directs its attention to local county and municipal affairs. In section 1 of article 8, the Constitution ordains that “the State shall be divided into political divisions to be called counties,” and section 2 of that article provides that “the several counties as they now exist are hereby recognized as the legal political divisions of the state.” (A detailed description of the constitutional structure of county government is omitted.)

It is fundamentally true that all local powers must have their origin in a grant by the State which is the fountain and source of authority. Nevertheless, those provisions of the Constitution just above quoted, and other cognate provisions, clearly imply—and it is therefore the spirit of the Constitution—that the performance of State functions shall be confided to State officers; the performance of county functions of purely local concern shall be confided to county officers. Save as is otherwise clearly contemplated by the Constitution, there can be no compromise with that principle, the origin of which is more ancient than the Constitution itself. In England, a similar subdivision of the realm for the performance of functions exclusively local in character existed from the earliest recorded times, the English counties possessing recognized powers in matters of purely local concern. See Taylor’s Origin and History of the English Constitution, Vol I, p. 41, 42; Vol. II, p. 190. Even when our Constitution of 1885 was adopted, existing facilities for transportation and communication, coupled with the geographic location of many of our counties, were such that a journey to the State capital by the resident legislative representatives of such counties often involved a tedious and
It is contended in this case that a county is a mere arm or agency purely local concerns the complete and direct exercise of local functions in matters of these constitutionally recognized institutions and take to itself government with reference to local shape local institutions and regulate the frame work of local existence of those officers, in determining the extent of their the broadest possible nature consistent with the constitutional Constitution, although the legislature possesses powers of performance of purely local functions, is clearly recognized by county officers as a part of our form of government, and for the performance of which functions it is distinguished from its creator, the State, and for its acts and obligations when acting in purely local matters the State is not responsible. This, as we have seen, must be conceded in order to sustain the validity of county bonds. See Jackson Lbr. Co. v. Walton County, 116 So. R. 771; ..., the principles in which cases we approve generally, though in view of the plenary power of the legislature over cities, we declined in State v. Johns, 109 So. R. 228, to apply these principles to defeat a legislative appointment of certain city officers. Cooley, Taxation (4th Ed.) ...

While a county in the performance of certain functions is an agency or arm of the State, it is also something more than that. If a county were no more than a mere agent of the State,-the State acting locally,-bonds issued by a county would in effect constitute State bonds, and therefore by virtue of Sec. 6 of Art. 9 of the Constitution would be void ab initio. While the county is an agency of the State, it is also, under our Constitution, to some extent at least, an autonomous, self-governing political entity with respect to exclusively local affairs, in the performance of which functions it is distinguished from its creator, the State, and for its acts and obligations when acting in purely local matters the State is not responsible. This, as we have seen, must be conceded in order to sustain the validity of county bonds. See Jackson Lbr. Co. v. Walton County, 116 So. R. 771; ..., the principles in which cases we approve generally, though in view of the plenary power of the legislature over cities, we declined in State v. Johns, 109 So. R. 228, to apply these principles to defeat a legislative appointment of certain city officers. Cooley, Taxation (4th Ed.) ...

Article 9 of the Constitution relates to taxation and finance. Sec. 2 thereof ordains that “the legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the principal and interest of the existing indebtedness of the State.” Having thus prescribed the means for defraying expenses of the State, attention is given to the needs of local governmental subdivisions.

Of course a county has no inherent power to impose taxes. The power, if it exists, must be derived from the State. Sec. 5 of Art. 9 provides that “the legislature shall authorize” the several counties and incorporated cities and towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes * * *. The legislature may also provide for levying a special capitation tax ‘and a tax on licenses.’ But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes.” Thus the means is provided for raising revenue for local county and municipal purposes in the performance of local functions.

It is clear, therefore, that our Constitution contemplates that an exclusively State purpose must be accomplished by State taxation; an exclusively county purpose, in which the State has
no sovereign interest, by county taxation. ... In State v. Dickson, 44 Fla. 623, 33 So. R. 514, this Court held that the legislature could not compel the levy of an ad valorem county tax for an exclusively State purpose. In Jordan v. Duval County, 68 Fla. 48, 66 So. R. 298, the issue of county bonds and the levy of a county ad valorem tax to erect an armory was approved by this Court because the legislative act “authorized but did not command” the issuance of the bonds, and in the act the legislature reasonably recognized in the circumstances of the erection of that armory a dual State and county purpose. ... In A. C. L. v. Lakeland, on petition for re-hearing, 115 So. R. 672, 686, it was said; “A particular district or locality cannot lawfully be taxed for the cost of an undertaking which results only in a general benefit.”

But a single project in some instances may constitute a dual purpose and therefore may justify a levy of taxes appropriate to the purpose. ... And a local tax may be imposed by competent authority where the project is essentially a local one, though there may be some incidental and indirect general benefit. ... And when a project is to a large extent of general benefit, but also especially and peculiarly benefits a local community, the local community may be taxed for a just proportion of the cost appropriate to such special or peculiar benefits. Cooley, Taxation (4th Ed.), Sec. 315; State v. Williams, 35 Atl. R. 24. It has also been held by high authority that in such a case, and when the circumstances as to the coordinate local benefit justifies it, the local community may be taxed for the whole cost. ...

If, however, the Legislature undertook to impose a tax upon the people of one county alone to pay the salary of the State Officers created by Articles 3, 4 and 5 of the Constitution, or if the State undertook to tax a single county alone for the erection of a State building such as a State Capitol or State Prison, or State Insane Asylum, there would be no hesitation in saying there was no such power in the Legislature because such a tax would at least violate the constitutional guaranty of equal protection of the law. See Ryerson v. Uitley, 16 Mich. 269. Likewise, if a tax were imposed upon the people of the whole State to pay the salary of local officers of a given county, or to erect a building to serve a public purpose of a purely local nature, and wholly unrelated to any governmental purpose or function of the State, as for instance a county poor farm or a stockade for the confinement of county prisoners, or a county hospital authorized by statute as a county purpose no one would seriously deny that the collection of such a tax would flout the clear intention, if not the letter, of our Constitution. ...

There is no difference in principle between a tax of the nature just mentioned and a tax imposed as a State tax throughout the entire State to pay the bonded obligations of the several counties incurred in the building of roads and bridges, when the building of such roads and bridges has been previously undertaken and consummated solely as a county (or district) project, and the status of such bonded obligations previously fixed as exclusively county (or district) obligations. This is true even though the building of public roads may constitute a dual State and county function in appropriate instances, and even though the roads and bridges so constructed as county or district projects may also be beneficial to the State. On the question of the so-called “flexibility” of our Constitution to meet the changes wrought by modern conditions, it is pertinent to note here the views of the Supreme Court of the United States expressed in Euclid v. Ambler Invest. Co., 272 U.S. 365, 71 L. Ed. 303. It was there said with reference to the Federal Constitution: “While the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. * * *

* Regulations, the wisdom, necessity and validity of which as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.” To that wholesome doctrine we subscribe. But neither the present necessity for a unified system of “through” roads to accommodate the demands of modern travel by automobile, nor a desire to render State aid to local subdivisions in the payment of bonded obligations incurred by them in constructing local roads already completed as local projects but which the State is willing to now accept as beneficial to the State wide system of roads, affords any justification for centralizing the powers of local taxation in a manner not contemplated by the Constitution, nor for ignoring constitutional barriers separating State and local government. The necessity for such a system of highways may be conceded, and additional revenue for such local subdivisions may be imperative, but those objects must be accomplished by the means contemplated by our Constitution and by methods consistent with the fundamental principles of government thereby ordained. The Constitution can not be made to mean one thing at one time, and another at some subsequent time. State v. Butler, 70 Fla. 102, 69 So. R. 771.

As the second and third gas taxes are county taxes, it next becomes pertinent to consider whether the Legislature may directly levy, or may compel the levy by local officers, of a county tax. By “county tax,” as used throughout this opinion, is meant a tax for an exclusively county purpose in which the State has no sovereign interest or responsibility, and which has no connection with the duties of the county in its relation to the State.

* * *

In Article 8 of the Constitution the people recognized counties as “legal political divisions of the State” and provided for county officers. In Sec. 2 of Art. 9 the Constitution requires the legislature itself to provide revenue sufficient to defray expenses of the State. In Sec. 5 of Art. 9, which pertains to the levy of taxes to meet the expense of local county (and municipal) government the command of the Constitution is that “The legislature shall ‘authorize’ the several counties and incorporated cities or towns in the State to ‘assess and impose’ taxes for county and municipal purposes, and for no other purpose.”
It is urged that in the language of Sec. 5 of Art. 9 that “the legislature shall ‘authorize’ the several counties,” etc., the only limitation implied is that “when the legislature authorizes counties to assess and impose taxes, such authorization shall be limited to an authorization to assess and impose such taxes for county purposes only,” and that it “does not imply a limitation upon the power of the legislature to directly impose” taxes on the counties for local county purposes.

When the language of Sections 2 and 5 of Art. 9 is contrasted, however, and is considered in the light of our institutions of government and in the light of the construction placed upon what is now Sec. 2 of Art. 9 in Cheney v. Jones, supra, it is our judgement that the framers of the Constitution intended to and did withhold from the legislature the power to directly levy, or to compel a county to levy, a local county ad valorem tax for an exclusively local purpose as already defined herein. Local administration of exclusively local affairs, that is, affairs in which the State has no sovereign interest as such, is undoubtedly contemplated by our Constitution. To withhold the coordinate power of local determination as to taxation in matters of exclusively local concern, would leave little of local government. See Cooley, Taxation (4th Ed.), Sec. 416, et seq.; ... 

We wish to be clearly understood, however, that the view just expressed with reference to local county taxes is confined to the levy of ad valorem taxes for an exclusively local purpose, that is, a purpose in which the State has no sovereign interest or responsibility and which has no connection with the duties of the county in its relation to the State. To the rule that the legislature has no power to levy or compel a county to levy a county ad valorem tax there are exceptions as well established as the rule itself, some of which it will be well to notice here in order to avoid any misunderstanding of the scope of the rule just stated. Amongst those exceptions are:

(1) When the purpose of the tax is one of both local and general concern, that is, a dual purpose, such as the support of public schools, the protection of public health, safety and morals, and the construction of roads and bridges, such roads and bridges constituting parts of the State system of highways, as to which the State has plenary control, but the “construction” of roads and bridges as parts of the State system of highways is to be distinguished from the payment of county or district obligations the proceeds of which were expended for roads and bridges already constructed as purely local projects.

So this Court has approved an act of the legislature requiring a board of county commissioners to purchase land for the erection of a court house, since, as explained by Mr. Justice Brown in a concurring opinion, “it is of such importance to the State that there be a reasonably adequate court house in each county that it (the building of a court house) is not exclusively a county purpose.” State v. Tyler, 116 So. R. 760. ...

(2) When the purpose of the tax is to require the county to fully and properly perform its duty as “a legal political division of the State,” that is, as an agency in State government.

Obviously, the State possesses the power to prevent a condition of local insurgency in government. No local community has the inherent right to decide for itself whether it will or will not bear its legitimate share of State burdens in matters pertaining to general government, and the State could not confer such a right. The Legislature may therefore directly impose a tax, ad valorem or excise, for the sole purpose of enforcing legitimate contribution of several counties to the general expense of the State for State purposes, even when the purpose is exclusive of any element of local purpose.

(3) When the imposition of such a tax is necessary to compel the county to fulfill a lawful obligation resting upon it in consequence of corporate action taken by virtue of authority derived from the sovereign State, as for instance the payment of its bonds.

In each of the foregoing expected cases, (1) to (3), the State has a sovereign interest in the purpose for which the tax is levied. Consequently the purpose is not exclusively a local purpose, and such a tax would not be exclusively a local or county tax. Therefore the State possesses ample sovereign power in such cases to directly levy such a tax, ad valorem or excise, or to compel its levy by local officers. In such cases in which the State also has a sovereign interest, the people to be taxed have no absolute right to a voice in determining whether the tax shall be levied, save as they may be heard through their representatives in the Legislature.

There yet remains to be considered a fourth exception, in the case of excise or license taxes, to the rule inhibiting the direct levy by the State of a county tax.

Having provided in Sec. 2 of Art. 9 for the raising of revenue to meet the expenses of the State, under the language of which Section the Legislature could clearly impose excise or license taxes, as well as ad valorem taxes, for a State purpose; and after having provided in Sec. 5 of Art. 9 that the Legislature shall “authorize” the several counties to “assess and impose taxes” for county purposes, which also would embrace both ad valorem and excise taxes, there follows almost immediately in the same Section the further provision: “The Legislature may also provide for levying a tax on licenses,” that is, excise taxes. (Italics supplied.) It is significant that the latter provision is found in Sec. 5 of Art. 9 relating to county and municipal taxation, provision having already been made for raising revenue for State purposes, under which excise as well as ad valorem taxes could be imposed for State purposes. It is also significant that although the capitation tax, authorized in the same sentence, is required to be applied exclusively to a designated purpose, no purpose of application was specified for license taxes, except of course that it must necessarily be applied to a county purpose if levied as a county tax, because in the levy of State taxes the Legislature is confined by Sec. 2 of Art. 9 to State purposes.

We can not assume that the framers of our Constitution used words idly. We must impute some purpose to the language found in Sec. 5 of Art. 9 that “the Legislature may also provide...
The Legislature has wide, if not plenary discretion in taxes, that is, for general "expense of the State," shall be there. There is no constitutional requirement that taxes levied as State taxes amongst the several counties:

Second, as to the apportionment of the second and third gas taxes as county taxes is valid, and violates provision of Sec. 5 of Art. 9, we conclude that the levy of said county purposes is expressly recognized by the quoted phrase as to recognize the authority of the Legislature to "also" impose excise taxes for local county purposes, what was its object? The practice has been followed since 1913 with reference to occupational license taxes, see Chap. 6421, Acts of 1913, Sec. 804 R. G. S. 1920; Sec. 1051, C. G. L. 1927. See also Chap. 6881 and 6883, Acts of 1915, levying license taxes on the operation of automobiles, the first being a county tax, the second a State tax.

The view here expressed as to the purpose of the phrase under consideration, as well as the fact that it was intended to embrace all license or excise taxes and not merely occupational license taxes, is sustained by the history of the phrase in the Constitutional Convention of 1885, which will be found in the proceeding of that Convention, on pages 186, 269, 273 to 280, and 350.

The Legislature may "provide" for levying such excise taxes either by a direct imposition thereof or by delegated authority to local officers to levy such tax for a local purpose. With reference to excise taxes, the choice of method rests with the Legislature. See Canova v. Williams, 41 Fla. 509, 27 So. R 30, holding that the Legislature to directly impose such a tax for county purposes is expressly recognized by the quoted provision of Sec. 5 of Art. 9, we conclude that the levy of said second and third gas taxes as county taxes is valid, and violates no principle of local self government contemplated by the Constitution. The administration of such taxes by the Board of Administration provided by Senate Bill One, will be considered later.

Second, as to the apportionment of the second and third gas taxes amongst the several counties:

We have demonstrated that these taxes are imposed as county, not State, taxes, and we so hold.

There is no constitutional requirement that taxes levied as State taxes, that is, for general "expense of the State," shall be expended or disbursed in the particular community where collected. The Legislature has wide, if not plenary discretion in the apportionment and application of the proceeds of the State tax, except as restrained by the Constitution. ...State taxes imposed as such and collected from all the counties may properly be expended in the construction of a State road located wholly in one county, or in only a few counties, or upon a State building located wholly in one county.

[The Court affirmed dismissal of the petition for writ of quo warranto and reversed the decision that had enjoined collection of the taxes.]

NOTES

1. These authorities provide a fix as to the historical status of counties:

Davidson County v. Kirkpatrick, 266 S.W. 107, 109 (Tenn. 1924): "The county existed as a unit of government when the state was organized under the Constitution of 1796, and is an integral part, an arm, of the state."

Board of Trustees v. Scott, 101 S.W. 944, 947 (Ky. 1907): The county as a unit of government is older in point of time among the Anglo-Saxon people than either the state or the town. The matter of local self-government with them has always found its most consistent application through the medium of the county."

2. The historic function of counties was described in Stockton v. Powell, 10 So. 688, 690 (Fla. 1892) in this statement:

It was said in Cotten v. County Com'r s [., 6 Fla. 610 (1856)] that to obtain a correct interpretation of the term 'county purpose' as used in the constitution then in force, which constitution was framed in 1838-39, we must look to contemporaneous legislation on that subject, and the uniform action of the county courts under the territorial government, and that by making this reference it will be abundantly demonstrated that at that day county purposes were taken to embrace principally the erection and repair of court-houses and jails, the opening and maintaining public thoroughfares within the limits of their respective counties, by opening roads, building bridges and causeways, and keeping the same in repair, licensing and regulating ferries and toll-bridges.

When appropriate, compare with the purposes of modern Florida Counties.

BEARD v. HAMBRICK
396 So.2d 708 (Fla. 1981)

OVERTON, Justice.

This is a petition for writ of certiorari to review a decision of Ronald Hambrick, filed a complaint on May 20, 1977, seeking damages from the sheriff, Malcolm Beard, and two of his
The petitioner-sheriff contends that section 768.28 is applicable to a sheriff and that his liability for actions of his deputies set forth in section 30.07, Florida Statutes (1973), was eliminated by section 768.28, Florida Statutes (Supp.1974). He further argues that any recovery must be exclusively in accordance with the terms of section 768.28. Petitioner-sheriff also asserts that the two-year statute of limitations for wrongful death actions applies and that the action should be dismissed with prejudice because there was no compliance with the notice requirements of section 768.28(6) and that therefore no suit could properly be filed within the statutory limitations period.

The respondent-plaintiff argues that if section 768.28 is applicable to sheriffs, then the four-year statute of limitations for wrongful death actions applies and that the action should be dismissed with prejudice because there was no compliance with the notice requirements of section 768.28(6) and that therefore no suit could properly be filed within the statutory limitations period.

We do not fully agree with either party or the district court. It is our view that the clear intent and purpose of section 768.28 was to provide a broad waiver of sovereign immunity and resulting coverage of governmental officers and employees to the extent of the dollar limits set forth in the statute. District School Board v. Talmadge, 381 So.2d 698 (Fla.1980); Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla.1979).

In Talmadge we addressed the broad extent to which the state waived its sovereign immunity and the conditions and limits upon its derivative liability for the torts of its officers, employees, or agents. We further set forth the alternative ways to bring an action under the statute.

Concerning the applicability of section 768.28 to sheriffs, we find that a sheriff is a "county official," and, as such, is an integral part of the "county" as a "political subdivision" and that section 768.28 is applicable to sheriffs as a separate entity or agency of a political subdivision. In our opinion, a sheriff and his deputies were intended by the legislature to be covered under the provisions of section 768.28. The First District Court of Appeal assumed a sheriff to be such in Department of Health and Rehabilitative Services v. McDougall, 359 So.2d 528 (Fla. 1st DCA), cert. denied, 365 So.2d 711 (Fla.1978). The provisions of the Florida Constitution appear to clearly mandate this answer.

Article VIII, Florida Constitution, entitled Local Government, provides for counties in section 1. That section provides in part as follows:

SECTION 1. Counties.
(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected by the electors of the county. (Emphasis supplied.)

In our opinion, there is no reasonable way to construe article VIII, section 1, other than to include sheriffs as well as other named county officers as part of a county and, as such, within the definition of a political subdivision as used in subsection (a) of the section. To hold otherwise creates an artificial
governmental entity for sheriffs and other named county officials that was not intended by either the legislature or the framers of our constitution. The court below relied on Johnson v. Wilson, 336 So.2d 651, 652 (Fla. 1st DCA 1976), which found that a sheriff "is not a political subdivision of the state." To the extent that this conflicts with our holding that a sheriff is an official of a political subdivision of the state, that portion of Johnson is disapproved.

As an official of a political subdivision, a sheriff is subject to the provisions of section 768.28 for the negligence or wrongful act of one of his deputies or employees under circumstances in which "a private person would be liable." As this section was initially enacted, as construed by us in Talmadge, it is not the exclusive remedy for damages for tortious conduct by a government employee or official but is a means to protect and indemnify the employee and provide government responsibility to a limited degree. Having determined section 768.28 applicable to sheriffs, we proceed to the question of what is the appropriate statute of limitations when an action for wrongful death is brought under this section.

The petitioning sheriff contends that, because this statutory provision is applicable only if a private person would be liable, the two-year statute of limitations for wrongful death actions applies rather than the four-year statute of limitations contained in section 768.28(12). We reject this contention. We believe that the legislature intended that there be one limitation period for all actions brought under section 768.28. We base this belief on the prerequisite notice provisions of this section and the need to have a uniform period for actions against governmental entities. See DuBose v. Auto-Owners Insurance Co., 387 So.2d 461 (Fla. 1st DCA 1980).

Another issue in this cause concerns the continued applicability of a sheriff's liability under the provisions of section 30.07, Florida Statutes (1973). We have found that section 768.28 applies to sheriffs, although with limited liability, but it is an alternative remedy and does not repeal section 30.07 by implication as asserted by the petitioning sheriff. Section 30.07 and the long-established case law setting forth the conduct for which a sheriff is derivatively responsible under the provisions of section 30.07 are not affected by section 768.28, Florida Statutes (1974). We note that this case law limits the type of deputy conduct for which a sheriff is responsible.

We reiterate that after the parties briefed and argued the issues in this cause, chapter 80-271, Laws of Florida, was enacted and became law effective June 30, 1980. It significantly amended section 768.28(9), Florida Statutes (1979), and section 4 of the act says that the act shall apply to all actions pending in the trial or appellate courts on the effective date of the act. The amendment to this statute appears to make several changes in the operative law, including making section 768.28 the exclusive remedy and excluding as named parties employees or officials absent certain allegations of bad faith, malice, or willful and wanton misconduct.

This opinion is expressly limited to the application of sections 30.07 and 768.28 as they existed at the time the instant cause of action arose. Our remanding of this cause for further proceedings in the trial court leaves open the issues of the validity and applicability of chapter 80-271 to this cause.

For the reasons expressed, we disapprove the opinion of the district court of appeal but agree with its reversal of the trial court's order dismissing the complaint with prejudice. We remand this cause to the district court with directions for this cause to proceed in the trial court in accordance with the views expressed in this opinion.

It is so ordered.

ADKINS, BOYD, ALDERMAN and McDONALD, JJ., concur.

ENGLAND, J., dissents with an opinion, with which SUNDBERG, C. J., concurs.

ENGLAND, J., concurring in the judgment, dissents with an opinion, with which ENGLAND, J., concurring in the judgment, concur.

ENGLAND, J., dissenting.

Respectfully, I cannot subscribe to the majority's holding that section 768.28, as originally enacted, is applicable to sheriffs and subjects them to liability for the negligence or wrongful acts of their deputies. The conclusion that sheriffs, being county officials, are an integral part of the county and therefore constitute "political subdivisions" of the state under the statute is neat dialectic but horrendous law.

[Remainder Omitted.]

NOTES

1. In In re Executive Communication, 13 Fla. 687 (1870), an advisory opinion to the governor, Chief Justice Randall, offered this history of the office of sheriff:

"What is a sheriff? We must define terms used in a constitution or statute by the rules of the common law, unless the constitution or statute gives us another rule. The very word here defines itself. The derivation of the word sheriff, from the Saxon, attests the antiquity of the office. The sheriff was, in Saxon times, the reeve or bailiff of the shire, and during the Anglo-Norman period, acted as the deputy of the Count or Earl, (comes) who had the government of the county. Hence his title in Law Latin of vice-comes, and in Law French, viscount, that is, the Count's or Earl's deputy. The English shire-reeve has contracted into sheriff.—History.

"In England as in the United States, he executes civil and criminal process throughout the county, and has charge of the jails and prisoners, attends courts, and keeps the peace. His duties pertain in this State to affairs within his county, and whenever he desires to serve process or arrest an offender in another county, the process must be endorsed by some judicial officer in the other county. Th. Dig., 520.

"Sheriffs may summon the citizens to aid him in some instances, and this is the posse comitatus or power of the county. The laws of this State, in several instances, speak of this officer as the "sheriff of the county." Th. Dig., 60. The sheriff of the Supreme
Court must be the "sheriff of the county" where the court is held. Th. Dig. and Laws of 1868.

"When a prisoner is convicted and sentenced to the penitentiary, the law may authorize the sheriff, or any other person, to convey the convicts to the penitentiary. That the sheriff may perform the service and get his pay from the State will not divest him of the character of a county officer."

Various of the opinions to the governor discussed meanings of “state officer,” “county officer,” “county purpose,” and the like as they existed under the 1868 constitution. Much has changed but fundamentals remain intact.

2. Beard decided that the office of sheriff is a part of county government under Article VIII §1 Florida Constitution. The Florida Supreme Court had earlier determined that the relationship between the sheriff and appointed deputy sheriffs was not one of employer-employee, but a novel relationship based upon the concept of deputization of power. See Murphy v. Mack, 358 So.2d 822 (Fla. 1978), holding that deputy sheriffs were not employees within the meaning of Article I §6 Fla. Const. or Chapt. 447 Fla. Stat. (The public employee bargaining statute.) By contrast, Service Employees International Union v. Public Employees Relations Commission, 752 So. 2d 569 (Fla. 2000), held that deputy clerks of the office of the clerk of court may be treated as employees under Chapt. 447 Fla. Stat. The Court held:

[W]here the collective bargaining rights of public employees are in issue, the plain language of chapter 447 controls and applies across the board to all public workers, regardless of job title. The abiding bright line for determining coverage under part II is the simple "public employee/managerial employee" dichotomy set forth in section 447.203. If an individual works as an employee in the ordinary sense of the word under the criteria set forth in section 447.203(3), he or she is entitled to the protections of part II. On the other hand, if an individual works as a managerial level employee under the criteria set forth in section 447.203(4) or falls within any of the other exceptions listed in section 447.203(3), the protections of part II are inapplicable.

Id., at 573, 574. Finally, in Coastal Florida Police Benev. Ass’n, Inc. v. Williams, 838 So.2d 543 (Fla.,2003) the Supreme Court “receded from” Murphy v. Mack, and held that deputy sheriffs are also public employees entitled to the protection of the collective bargaining statute. Similarly, Serv. Employees Int’l Union Local 16, AFL-CIO v. Pub. Employees Relations Comm’n, 752 So.2d 569 (Fla.2000), held that deputy clerks of the clerks of the circuit courts are employees under the bargaining statute.

(3) See §768.28(14) in statutory supplement. What effect would it have on Beard v. Hambrick?

ALACHUA COUNTY v. POWERS
351 So.2d 32 (Fla. 1977)

ADKINS, Justice

This case arose when the Clerk of the Circuit Court of Alachua County, appellee herein and referred to as the "clerk," sued the Board of County Commissioners of Alachua County, appellant herein and referred to as the "board," seeking a declaratory judgment to clarify his fiscal duties as Clerk of the County Commission. The issues presented by the clerk were to seek clarification of his duties in four capacities: as auditor, accountant, custodian, and investor of county funds. This appeal is from the final judgment.

The trial court construed provisions of the State constitution and initially and directly passed upon the validity of Chapter 71-443, Laws of Florida, a special act relating to the Clerk of the Circuit Court of Alachua County. We have jurisdiction.

The Clerk is a constitutional officer deriving his authority and responsibility from both constitutional and statutory provisions. Security Finance Company v. Gentry, 91 Fla. 1015, 109 So. 220 (1926); Article V, Section 16, Florida Constitution.

Article V, Section 16, Florida Constitution, contains the following provisions:

"There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

Article VIII, Section 1(d), Florida Constitution, provides for the election of the clerk of circuit court, along with other officers, and also provides:

"When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

The trial court was correct in interpreting these two constitutional provisions as prescribing the only means of separating the clerk's judicial functions as clerk of the court from his clerk's county officer functions as auditor, accountant, custodian of county funds and official recorder. The office may be divided by special or general law pursuant to Article V, Section 16, Florida Constitution, or the clerk's county officer functions may be divided by county charter or special law approved by a vote of the electors pursuant to Article VIII, Section 1(d), Florida Constitution. In the absence of either of these two methods, the clerk must perform the dual role prescribed by constitutional mandate.

There is no applicable general law or special law approved by the electors which would vary those duties in Alachua County, and the county is not governed by a county charter. Under these constitutional provisions the clerk is the ex officio clerk of the board of county commissioners, the auditor, recorder and custodian of all county funds.
We first consider the clerk's auditing responsibility. Section 129.09, Florida Statutes (1975), forbids the clerk "acting as county auditor," from signing illegal warrants and provides both personal and criminal liability for violation of this provision. The clerk, as auditor, is required by law to refuse to sign and deliver a county warrant for an unlawful expenditure, even though approved by the board of county commissioners. Mayes Printing Company v. Flowers, 154 So. 2d 859 (Fla.1st DCA 1963). Although an appropriation of county funds may serve a county purpose, there must be some type of pre-audit review of the disbursement in order to be sure that the funds will not be used for an unlawful purpose.

Section 136.08, Florida Statutes (1975), provides that the accounts of the board of county commissioners and the account of any bank acting as a depository shall be subject to the inspection and examination of the "county auditor, the auditor general and the department of banking and finance or persons designated by it." Section 11.45(3)(a), Florida Statutes (Supp.1976), provides for post-audits by the auditor general of accounts and records of "county agencies," which includes the board of county commissioners and the clerk of the circuit court. See Section 11.45(1)(e), Id, defining county agencies. All agencies have the power to have a performance audit or post-audit of their accounts and records by an independent certified public accountant retained by them and paid from their public funds. Section 11.45(3) (a), Id.

The Board, as the governing body of the county, has the power to:

"Make investigations of county affairs; inquire into accounts, records, and transactions of any county department, office, or officer; and, for these purposes, require reports from any county officer or employee and the production of official records." Section 125.01(1)(s), Florida Statutes (1975).

In accomplishing this purpose the board also has the power to:

"Employ an independent accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions. Not less than five copies of each complete audit report, with accompanying documents, shall be filed with the clerk of the circuit court and maintained there for public inspection. The clerk shall thereupon forward one complete copy of the audit report with accompanying documents to the Auditor General, who shall retain the same as a public record for ten (10) years from receipt thereof." Section 125.01(1)(x), Florida Statutes (1975).

The trial court correctly determined that the Clerk was to act as county auditor in all auditing functions except when the board employs an independent auditing firm pursuant to Section 125.01(1)(x), Florida Statutes (1975).

Sections 129.07 and 129.08, Florida Statutes (1975), expressly provide civil and criminal sanction against the members of the board of county commissioners for fiscal maladministration. The board says it should not be "blindly" dependent on the clerk for information which may be necessary for proper budget administration, approval of checks and authorization of the chairman of the board to sign such checks. The board refers to White v. Crandon, 116 Fla. 162, 156 So. 303 (1934), where this Court held that county commissioners could be personally liable for funds expended without authority of law. The board also points to Davis, et al. v. Keen, 140 Fla. 764, 192 So. 200 (1939), where the Court said that the board has the power and authority to reject payment of an unlawful account, holding that the statutes imposed a discretionary power or authority on the Board to determine whether or not a claim when presented is a just and lawful account.

No one quarrels with the assertion that the responsibility for pre-auditing is shared by the board and the clerk. A duplication of official duties is not invalid when within the purview of the constitution. This Court in State ex rel. Landis v. Wheat, 103 Fla. 1, 137 So. 277 (1931), said:

"The name given a statutory officer is not material even if it is similar to a constitutional ex officio officer, if the authority conferred on the statutory officer does not conflict with the authority conferred by the Constitution on a constitutional officer. A mere duplication of official duties may not be a violation of the general intenments of the Constitution when statutory regulation of duties is authorized by the Constitution. If there is duplication of duties, no organic provision is violated. Questions of legislative policy, not of power, are involved." At 283.

While clerk has the responsibility to act as pre-auditor of county funds, the board has the right to audit its own funds and make such investigations as may be necessary before the use of any public funds. The constitutional and statutory language discussed above require that the auditing function in making such an investigation be carried out by one of three entities: pre-auditing by the clerk in his capacity as county auditor, performance audit by an independent certified public accountant (or independent accounting firm), and post-audit by the auditor general or the independent auditing firm. Section 11.45(3)(a), Florida Statutes (Supp.1976).

The board refers to a local ordinance creating the county auditing department. Under the ordinance the auditor answers directly to the board as to fiscal matters involving departments under the board's direct supervision and control not including constitutional officers. The county auditor is charged with the responsibility to develop accounting systems and procedures. The county auditor was established to provide a post-audit of county fiscal affairs, not including constitutional officers, as the auditor general fails to make such audits annually. Any effort by the board in the adoption of this ordinance to create an independent county auditing department, which is not an independent auditing firm, is beyond the authority of the board. The ordinance may properly set forth the purchasing procedures for the county and may provide for audits of any agencies purely under the control of the board. The clerk has the authority and responsibility to perform the auditing functions both as an arm of the board in auditing the records of constitutional officers and as a watchdog of the board in the case of pre-auditing accounts of the board in determining
legality of expenditure. The phrase "legality of expenditure" includes that the funds are spent for a public purpose, that the funds are spent in conformity with county purchasing procedures or statutory bidding procedures, that the expenditure does not overspend any account or fund of the budget as finally adopted and recorded in the office of the clerk. If the board becomes concerned, it has the authority to require a performance audit or post-audit by an independent accounting firm.

By expressed statutory provision, the clerk of the circuit court is made the "accountant" of the board and required to keep the "minutes and accounts" of the board. Sections 28.12 and 125.17, Florida Statutes (1975). The board is required by statute to keep an accurate and complete "set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month," for each fund carried by the board. Section 136.05, Florida Statutes (1975). We agree with the trial court that this section is satisfied by the board keeping the set of books through its clerk. This construction is in conformity with Section 136.02(2), Florida Statutes (1975), which requires each county official and board maintaining funds in a county depository to file a monthly report with the clerk of the circuit court. This statute also requires the clerk to consolidate the reports as to each bank and file the consolidated report with the department of banking and finance. If the board questions the handling of the funds under the budget and is not satisfied with the audit of the clerk, an independent accounting firm may be employed. Section 125.01(1)(x), Florida Statutes (1975).

When not otherwise provided by general law, county charter or special law approved by vote of the electors, the clerk is custodian of all county funds. Article VIII, Section 1(d), Florida Constitution. The care, custody and method of disbursing county funds must be provided by general law. Article VIII, Section 1(b), Florida Constitution.

The trial court was correct in holding invalid those provisions of Chapter 71-443, Laws of Florida, Special Acts, which attempt to designate a different custodian of county funds. This special act failed to meet the requirements of both Article VIII, Section 1(b), of the Florida Constitution, requiring a general law for the care, custody and disbursing of county funds, and Article VIII, Section 1(d), which prohibits the clerk of being divested of his custodial responsibility except by "county charter or special law approved by vote of the electors".

The board contends that the language of certain statutes clearly contemplates that the county commission shall have care and control over funds on deposit in various banks.

Section 136.05, Florida Statutes (1975), reads:

"County board to keep set of books; overdrawing prohibited. The board of county commissioners shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board."

Section 136.06, Florida Statutes (1975), further provides that money drawn from a depository shall be:

". . . upon a check or warrant issued by the board or officer drawing the same, said check or warrant . . . shall be signed by the chairman of said board, attested by the clerk or secretary of said board . . . ."

In addition, it would appear from Section 136.02(2), Florida Statutes (1975), that the board, along with other county officials, is authorized to maintain funds in a qualified county depository. However, the statute requires county officials and the board to make a monthly report on these funds to the clerk of the circuit court who in turn is required to file a consolidated report with the Department of Banking and Finance. Where the duties of the office of circuit court clerk are divided by special law between the clerk and a county comptroller, the comptroller is responsible for the monthly reports of county funds on deposit as required by this section. See Op.Attorney Gen. 073-213. Thus, it appears that the clerk of the circuit court, in his capacity as clerk of the board, auditor, recorder and custodian of county funds is ultimately responsible for accounting for county funds on deposit.

In addition, Section 219.07, Florida Statutes (Supp.1976), requires each officer to distribute all public money collected by him within seven working days to the officer, agency or fund entitled to receive it. Section 116.01, Florida Statutes (Supp.1976), requires these funds to be paid into the county treasury. The clerk, pursuant to Section 218.35(2)(b), Florida Statutes (1975), is the custodian or treasurer of all county funds, therefore all public moneys are deposited into the county treasury by him. Finally, Section 116.07, Florida Statutes (1975), requires "all . . . clerks of the circuit court and ex officio clerks of the boards of county commissioners . . . (to) keep books of account and of record . . . except such books and forms as are now otherwise provided for by law"; and Sections 28.12 and 125.17, Florida Statutes (1975), authorize the clerk to be clerk and accountant of the board of county commissioners and to keep their minutes and accounts.

From the above statutory provisions it appears that the trial court correctly interpreted Section 136.05, Florida Statutes (1975), to be satisfied by the board keeping the books and accounts through its clerk, the clerk of the circuit court.

In regard to investment of county funds the court below held that Section 28.33, Florida Statutes (1975), requiring the clerk of the circuit court to invest funds in interest bearing certificates or direct obligations of the United States, "applies to all funds in the clerk's control, whether they come from fees or commissions of the office collected or fees deposited in the registry of the court . . . or the operating funds of the office paid over by the county . . . or all other funds held by the clerk as custodian of county funds." The trial court properly recognized that:

"This would incorporate those funds held in the general operating funds of the County except as to those funds that
Clerk holds which are 'Board monies' including capital accounts. The Board may by appropriate resolution, duly adopted, designate the investment place of surplus funds . . . pursuant to Florida Statute 125.31 . . . ."

In its brief the board stipulates that the trial court properly ruled that investments of surplus may be made upon approval by the county commission by adoption of an appropriate resolution. See also Op. Attorney General 075-241A which agrees with this conclusion and states that when investment of surplus county funds is specified by the county commissioners pursuant to Section 125.31, Florida Statutes (1975), the clerk is required to carry out the directives of the county commissioners in that respect.

Thus, there appears to be no conflict with the holding of the court below that the board may by appropriate resolution designate the investment place of surplus funds and the clerk is required to carry out the board's directive. In the alternative, where the board does not so designate the investment of surplus funds, these funds are to be invested by the clerk pursuant to Section 28.33, Florida Statutes (1975).

The next question concerns the responsibility for preparation of the budget for all county officers. Section 129.01(2)(a), Florida Statutes (1975), requires the budget to be "prepared, summarized, and approved by the board of county commissioners of each county". The procedural requirements are set forth in the Florida County Commissioners Manual, Section 3-39 (1972 Revision, Supplement 4, December, 1976).

"The original responsibility for the preparation of the tentative budget rests upon the county auditor, who, unless otherwise provided by county charter or special law, is also clerk of the circuit court. He first ascertains the board's proposed fiscal policies for the ensuing fiscal year as well as the officer's operating budgets as submitted to the board. He then prepares a tentative budget for each of the funds. The budget includes all estimated receipts, taxes to be levied, and balances to be brought forward. It likewise includes all estimated expenditures, reserves and balances to be carried over at the end of the year. By July 15 the clerk must complete the tentative budget and present it to the board." At 507.

The Manual cites Article VIII, Section 1(d), Florida Constitution (1968), Sections 125.01(1)(v) and 129.03(2), Florida Statutes.

Section 2-28, Manual of Duties and Procedures for Court Clerks (December, 1976), sets forth the following procedure: "On or before July 15 of each year the clerk as county auditor, after ascertaining the proposed fiscal policies of the board for the ensuing fiscal year, must prepare and present to the board a tentative budget for each of the funds established through the budget system. The budget shall include all estimated receipts, taxes to be levied, and balances expected to be brought forward, and all estimated expenditures, reserves and balances to be carried over at the end of the year.

"The board of county commissioners must then examine the tentative budget for each fund and require that any necessary changes be made. The county auditor's estimates of receipts other than taxes, and of balances to be brought forward, cannot be revised except by a resolution of the board, duly passed and appearing in the minutes of the board."

"The remaining steps in the preparation and adoption of the budget require the board to prepare a statement summarizing the tentative budgets. The board must then advertise the summary statement according to procedure set forth in the statute, hold a meeting on the fixed day for hearing requests and complaints from the public, make whatever revisions are necessary, adopt the budget, and file the tentative budget in the office of the county auditor as a public record." At 69.

The Manual cites as authority Section 129.03 (1975).

There is no conflict in the procedures set forth in the two Manuals. However, the county administrator, when appointed, is given the power and duty to submit to the board of county commissioners for its consideration and adoption, "An annual operating budget, a capital budget, and a capital program." Section 125.74(1)(d), Florida Statutes (1975). Statutes which relate to the same or a closely related subject or object are regarded as in pari materia and should be construed together and compared with each other. Markham v. Blount, 175 So.2d 526 (Fla.1965). The Court, in construing similar statutes, should preserve the force of both without destroying their evident intent. City of St. Petersburg v. Pinellas County Power Company, 87 Fla. 315, 100 So. 509 (1924).

The trial court found no irreconcilable repugnancy between the statutes and resolved the apparent conflict so as to preserve the force of both. The trial court correctly concluded that the clerk, as county auditor, had responsibility for the preparation of the initial budget for consideration by the board. The county administrator's responsibility for preparing the budget extends only to those departments responsible to the board and which are under the jurisdiction of the board, as Section 125.74(2), Florida Statutes (1975), provides:

"It is the intent of the legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to (s.1(e), Art. VIII) of the state constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county."

To the extent not inconsistent with general or special law, the board of county commissioners has the authority to require...
every county official to submit an annual copy of his operating budget. Section 125.01(1)(v), Florida Statutes (1975). In addition, Section 218.35(4), Florida Statutes (1975), requires that the proposed budget of a county fee officer must be filed with the clerk by September 1 preceding the fiscal year of the budget. The clerk, functioning in his dual capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, prepares his budget in two parts:

"218.35 County fee officers; financial matters
(2)(a) The budget relating to the state court system, including recording, which shall be filed with the state courts administrator as well as with the board of county commissioners; and
(b) The budget relating to the requirements of the clerk as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties."

Section 218.36, Florida Statutes (1975), provides in part:
"County officers; record and report of fees and disposition of same.

(2) On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he is entitled under the provisions of chapter 145. . . ."

Chapter 145, Florida Statutes (1975), provides for the annual compensation and method of payment for the several county officers named therein; i. e.: clerk of the circuit court and county comptroller (145.051); sheriff (145.071); property appraiser (145.10); tax collector (145.11).

Section 145.022, Florida Statutes (1975), provides the method by which the guaranteed salary may be established. It reads, in pertinent part:
"Guaranteed salary upon resolution of board of county commissioners
(1) Any board of county commissioners, with the concurrence of the official involved, shall by resolution guarantee and appropriate a salary to the county official, in an amount not to exceed that specified in this chapter, if all fees collected by such official are turned over to the board of county commissioners. . . ." (Emphasis supplied.)

Section 145.131, Florida Statutes (1975), states that:
"(a)fter July 1, 1969, compensation of any official whose salary is fixed by this chapter shall be the subject of general law only. . . ."

Further, Section 145.16, Florida Statutes (1975), provides in part:
"Special laws or general laws of local application prohibited."

(2) Pursuant to s 11(a)(21), Art. III of the state constitution, the legislature hereby prohibits special laws or general laws of local application pertaining to the compensation of the following county officials:
(a) Members of the board of county commissioners;
(b) Clerk of the circuit court;
(c) Sheriff;
(d) Superintendent of schools;
(e) Supervisor of elections;
(f) Property appraiser; and
(g) Tax collector."

Finally, Article III, Section 11(a)(1), Florida Constitution, prohibits any special law or general law of local application pertaining to the election, jurisdiction or duties of officers, except officers of chartered counties.

Absent the concurrence of the county official involved and a resolution of the board of county commissioners, the circuit court clerk (and the county comptroller in those counties where the duties of the office have been divided, or the clerk of the circuit court as auditor, recorder and custodian where the duties are not divided) operates as a fee officer in carrying out his duties as clerk of the circuit court and as a budget officer in carrying out his duties as clerk of the county court. See Op. Attorney General (072-424).

However, several of the statements of the court below regarding the submission of a budget by the clerk of the circuit court in his various functional roles were in error. In summarizing its holdings, the court below stated:
"The Clerk's budget is not subject to control of the County Board of County Commissioners except as to his court functions. The auditor, Section B, functions are not subject to control by the Board up to the total income of the Clerk's office plus that amount for his salary as permitted by 145.051 and 145.141."

We feel that the proper interpretation of the various statutes is that where the circuit court clerk (and county comptroller if the duties of the office have been divided) agree to turn over all fees collected by their office to the county commissioners they become county budget officers by resolution of the board pursuant to Section 145.022(1), Florida Statutes (1975). As county budget officer, the clerk, and not the county administrator, remains responsible for submitting the budget of his office to the board of county commissioners. It was not the intent of Chapter 145, Florida Statutes (1975), to alter the clerk's authority as a constitutional officer or to place his office under the control or jurisdiction of the board. Absent this agreement and resolution, the clerk of the circuit court remains a county fee officer, responsible for establishing his own annual budget. Section 218.35(1), Florida Statutes (1975). He is required by law merely to file his proposed budget with the clerk of the county governing authority by September 1 preceding the fiscal year of the budget and to make an annual report of his finances upon the close of each fiscal year to the county fiscal officer for inclusion in the annual financial report of the county. Section 218.35(3), (4), Florida Statutes (1975).

We now consider Chapter 71-443, Laws of Florida, Special Acts. Section 1 was not ruled unconstitutional by the trial court
as it ties into Section 145.022, Florida Statutes, authorizing the board to appropriate an annual salary to the clerk with the concurrence of the county official involved, "if all fees collected by such official are turned over to the board of county commissioners." This section provides that the clerk shall receive as his sole compensation for the performance of his official duties the annual salary provided by general law, in lieu of all compensation authorized by any other law relating to his office.

Section 2, Chapter 71-443, Laws of Florida, sets out the procedure to be followed by the clerk in the preparation of the budget. In view of the pre-audit function of the clerk, the trial court reasoned that it was not logical to give the board de facto control of this function by attempting to make the clerk's office subservient to the board and under the control of the board by the appropriation process. The special law does not place the clerk in this situation. In the event the board is unreasonable in reducing the clerk's budget, an appeal mechanism is provided by Section 2(e), Chapter 71-443. Under this appeal mechanism, the clerk may appeal to the department of administration with a statement of the reasons or grounds for his complaint. The trial court erred in exempting the clerk from the budget and compensation laws as to a part of his official duties, as the law contemplates that the clerk shall participate in the budget process as to all his functions. Section 2, Chapter 71-443, is constitutional.

Section 3, of Chapter 71-443, provides that the board shall retain custody of funds appropriated for the office of clerk and provides methods of disbursement and manner of handling such funds. As discussed above, the trial court correctly held that Section 3 was unconstitutional.

Section 4, of Chapter 71-443, relates to fees and commissions. Section 4(a) provides that all fees shall be paid over to the county. This is constitutional. However, Section 4(b) provides that these "fees, commissions or other funds collected by the Clerk" shall be deposited in a special trust fund to be remitted to the board once each month. As discussed above the constitution makes the clerk custodian of all funds, and Section 4(b) was correctly held by the trial court to be unconstitutional.

We now turn to the question of whether the board may adopt a uniform pay plan for all county employees. The trial court ruled that the authority of the board to adopt a pay plan for employees of the county, pursuant to Section 125.74(1)(h), Florida Statutes (1975), does not extend to the employees of the several constitutional officers. The board says that the language of the subsection prescribing a function of the county administrator, "Recommend to the board a current position classification and pay plan for all positions in county service." (Emphasis supplied.) requires a broader interpretation by the court. We disagree. The county administrator is responsible for the administration of only those departments of the county which the board has the authority to control. Section 125.73(1), Florida Statutes (1975).

The clerk is a county officer pursuant to Article VIII, Section 1(d), Florida Constitution and, as an officer, he is delegated a portion of the sovereign power. State v. Sheats, 78 Fla. 583, 83 So. 508, 509 (1919).

The clerk is responsible for the efficient and effective operation of his office and has the authority to appoint deputies to assist him in his constitutional and statutory duties. Section 28.06, Florida Statutes (1975).

Employees of constitutional officers cannot be included in a uniform pay plan adopted by a board of county commissioners in the absence of specific statutory authorization. The present statute merely authorizes a county administrator to "recommend" to the board a uniform pay plan. There is no specific statutory authorization for the board to include the employees of other constitutional officers within a uniform pay plan for county employees. In the absence of statutory authorization the board is without power to adopt a uniform pay plan for county employees.

In summary we hold:

1. The clerk is county auditor, accountant and custodian of all funds of the county pursuant to constitutional and statutory provisions.
2. Pre-audits are conducted by the clerk in his capacity as county auditor, a performance audit may be made by an independent certified public accountant (or independent auditing firm), and post-audit may be made by the auditor general or the independent accounting firm.
3. The clerk's office may be divided by general or special law between two officers, one serving as clerk of the court and one serving as ex officio clerk of the board, auditor, recorder and custodian of all county funds, or, the duties of the clerk may be varied by county charter or special law approved by the electors of the county.
4. The clerk is responsible for submitting the initial budget proposal to the board for all constitutional county officers.
5. Sections 1, 2, and 4(a), of Chapter 71-443, Laws of Florida, are constitutional. Sections 3 and 4(b), of Chapter 71-443, Laws of Florida, are unconstitutional.
6. The clerk has investment discretion of county funds except for those surplus funds directed by resolution of the board to be invested pursuant to their directions.
7. The board is not authorized to set a uniform pay plan for employees of county constitutional officers.

The judgment of the trial judge is affirmed in part and reversed in part.

It is so ordered.

**NOTES**

1. Is this statute important to understanding **Powers?**

129.09. County auditor not to sign illegal warrants

Currentness
Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

In addition, the trial court denied the Supervisor’s request to have her office funds paid to her in twelve monthly installments, but held that the funds budgeted to the Supervisor’s office shall be disbursed in the sole discretion of the Supervisor, if the disbursement is in accordance with the budget as approved.

Respondent has raised the argument in this court that use of the Board’s central data processing system to be arbitrary or capricious, and therefore unreasonable and unnecessary. Since the trial court made no factual determination on whether the Supervisor's request was arbitrary or capricious, the case was remanded for

HATCHETT, Justice.

Is a board of county commissioners required to approve all budget requests deemed necessary by a supervisor of elections to fund authorized functions of her office, unless the board determines such appropriations to be unnecessary or unreasonable? Since the decision of the district court on this issue affects the duties of constitutional officers, we have jurisdiction to review the case pursuant to Article V, Section 3(b)(3), Florida Constitution (1968). We hold that a board of county commissioners has wide discretion in the formulation of a county budget, subject to challenge on the ground that the board acted arbitrarily or capriciously in deleting a reasonable or necessary expenditure.

This case involves a dispute between the Supervisor of Elections of Pinellas County and the Board of County Commissioners of that county over certain items requested in the Supervisor's proposed budget for the fiscal year 1975-1976. The Supervisor of Elections contends that the requested funds are necessary to maintain a system of automation in the processing of voting registration data by the use of computers and data processing equipment. The Board of County Commissioners unanimously deleted from the Supervisor's requested budget items totaling $77,500 in order to force the Supervisor to utilize the county's central data processing department, already in existence, rather than allow the Supervisor to set up her own independent and separate data processing center.

The Supervisor filed a complaint for declaratory judgment in the circuit court, charging the Board with attempting to usurp her constitutional powers, and with attempting to interfere with the administration of her office. The circuit court entered an order granting summary judgment in favor of the Board, holding that the action of the Board in deleting the proposed budget requests of the Supervisor was authorized by Chapter 129, Florida Statutes (1975), and rejecting the argument of the Supervisor that her decisions are not subject to review by the Board because of her position as a constitutional officer. The trial court stated that the Board is vested, under Chapter 129, with the exclusive power and duty to appropriate and budget county funds, limited only by the requirements of that chapter. On appeal, the district court noted that the trial court had limited its inquiry to the issue of whether the Board's action was authorized by Chapter 129, and failed to make any determination as to the necessity and reasonableness of the Supervisor's budget request. The district court noted that, under the pertinent Florida statutes, the Supervisor has the authority to employ and adopt a system of automation in the processing of registration data. The Board of County Commissioners has the duty under these same statutes to pay for any expenses incurred by the Supervisor in implementing a permanent registration system unless the Board determines the Supervisor's use of the automation system to be arbitrary or capricious, and therefore unreasonable and unnecessary. Since the trial court made no factual determination on whether the Supervisor's request was arbitrary or capricious, the case was remanded for

PINELLAS COUNTY v. NELSON
362 So.2d 279 (Fla. 1978)

HATCHETT, Justice.

Is a board of county commissioners required to approve all budget requests deemed necessary by a supervisor of elections to fund authorized functions of her office, unless the board determines such appropriations to be unnecessary or unreasonable? Since the decision of the district court on this issue affects the duties of constitutional officers, we have jurisdiction to review the case pursuant to Article V, Section 3(b)(3), Florida Constitution (1968). We hold that a board of county commissioners has wide discretion in the formulation of a county budget, subject to challenge on the ground that the board acted arbitrarily or capriciously in deleting a reasonable or necessary expenditure.

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further proceedings on that issue, under the authority of Orange County v. Allie, 238 So.2d 662 (Fla. 4th DCA 1970).

Both parties argue in this court that further trial court proceedings are necessary. The only unresolved dispute centers around the question of whether the burden of proving arbitrariness and capriciousness is upon the Supervisor or on the Board of County Commissioners. The opinion of the district court implies that this burden of proof should fall upon the Board of County Commissioners:

The board had the duty under Florida Statute 98.131(2) to pay for any expenses incurred by the plaintiff in putting in a permanent registration system unless the board found that the plaintiff's use of the automation system was arbitrary or capricious and therefore unreasonable and not necessary.

Nelson v. Pinellas, 343 So.2d 65 (Fla. 2nd DCA 1978).

In Sparkman v. County Budget Commission, 103 Fla. 242, 137 So. 809 (1931) this court rejected a constitutional attack on a statute which allowed a county budget commission to fix the amount of expenditure deemed necessary to conduct various county offices. In that case, the court recognized that these decisions by a budget commission are subject to judicial review of the reasonableness of such determinations. This court, in Green v. Taylor, 70 So.2d 502 (Fla.1954), resolved a dispute similar to the one here, involving the exercise of discretion by a county budget commission which had denied an appropriation request by a judge of a small claims court. There, this court stated:

After the commission has acted on the request and has approved or disapproved the same in whole or in part, for reasons at least prima facie sufficient, in the exercise of its Sound discretion, a review may then be had, if necessary, on the issue of whether the commission has acted arbitrarily and unreasonably, or whether it has in truth abused its discretion in limiting appropriations.

Green v. Taylor, supra, 70 So.2d at 504.

No administrative procedure for review of the Board of County Commissioners' denial of the Supervisor's budget request has been provided by general law.5

Therefore, the Supervisor was correct in seeking judicial review in the circuit court. We agree with the district court that the trial court improperly limited its scope of review only to the questions of whether the Board's action, in deleting the budget request, was authorized by Chapter 129. The trial court should have held a full factual inquiry as to the reasonableness of the budget request. We disagree, however, with the language of the district court's opinion which implies that the Board of County Commissioners has the burden of proving the request to be arbitrary and capricious before it can validly delete an item from the Supervisor's requested budget. Chapter 129 expressly imposes upon the Board of County Commissioners the duty and responsibility to oversee the budgets of all departments, agencies, and offices coming under its control for budget purposes. The Board of County Commissioners has the additional duty of raising tax monies, setting millage rates within permissible limits, and allocating those tax monies among the various county agencies. The Board of County Commissioners has wide discretion in approving, modifying, or rejecting budget requests. A county officer, such as the Supervisor of Elections, may seek judicial or administrative review of the Board's action, and should be entitled to prove that the denial of a budget request by the Board was arbitrary and capricious, or would unreasonably impair the ability of the county officer to fulfill constitutional or statutory obligations.

Therefore, we affirm the district court's decision to the extent that it reverses the order granting summary judgment and remands this case to the trial court for a full factual inquiry. We expunge, however, that language in the district court's opinion which implies that the Board of County Commissioners must prove the Supervisor's request was unreasonable and unnecessary in order to delete an item from the requested budget.

It is so ordered.

NOTES

4 Appellant, in that case, argued the investiture of supervisory power over budgets in the budget commission constituted an unlawful delegation of legislative authority.

5 Other constitutional officers have been granted, by statute, administrative review procedures. In Alachua County v. Powers, 351 So.2d 32 (Fla.1978), this court noted the appeal mechanism for the county clerk to the Department of Administration provided a method for the clerk to show the board acted unreasonably in reducing the clerk's budget. See also, Sec. 30.49, Fla. Stat. (1975) which provides an administrative budget review mechanism to the county sheriff.

1 A trial court in Escambia County v. Flowers, 390 So.2d 386 (Fla. 1st DCA 1980) found that a county commission had arbitrarily reduced the proposed budget of the county comptroller (established as a budget officer) below what was required to operate the office effectively and issued a writ of mandamus to the county commission to increase the budget. On appeal, the district court approved the factual findings but overruled the issuance of the writ of mandamus saying, "We have no reason to believe, on the record, that the Board on remand will ignore a judicial order that the Comptroller's budget as presently authorized will not allow him to carry out the constitutional duties of his office." One judge dissented to overruling the issuance of the writ saying, "I find no basis to assume that the officer upon remand of the cause could receive fair and impartial treatment."

2 In Schuler v. School Bd. of Liberty Cty., 366 So.2d 1184 (Fla. 1st DCA 1978), a question arose as to whether or not a school board must retain an attorney to represent a school superintendent when legal dispute arises between the board and
superintendent. The court held, “We are of the view that when a viable legal issue develops between a superintendent and a school board, as to the respective powers and responsibilities of each, of such magnitude as to reasonably require competent legal advice, each is entitled to independent representation by competent legal counsel at public expense and that the holder of the purse strings is required, upon request, to make appropriate financial arrangements therefor.” 366 So.2d at 1185. Should it matter whether or not the superintendent is elected or appointed?

BROWARD CTY. v. ADMIN. COMM.
321 So.2d 605 (Fla. 1st DCA 1975)

McCORD, Judge.

Petitioner seeks certiorari from final action of the Administration Commission in relation to the budget of respondent Sheriff of Broward County. The administrative proceedings leading up to the petition for certiorari were pursuant to s 30.49, Florida Statutes, as amended by Chapter 74--103, Laws of Florida, 1974, which became effective on July 1, 1974. That section relates to the fixing of the budget of the sheriff in each of the respective counties and provides for review of the approval of a sheriff's budget by the Board of County Commissioners or the Budget Commission as the case may be. It provides that within 30 days after receiving written notice of the action of the Board or Commission, the sheriff may file an appeal to the Administration Commission and it further provides as follows:

' . . . Such appeal shall be by petition to the Administration Commission, which petition shall set forth the budget proposed by the sheriff in the form and manner prescribed by the Department of Administration and approved by the Administration Commission and the budget as approved by the board of county commissioners or the budget commission, as the case may be, and shall contain the reasons or grounds for the appeal . . .

'(5) Upon receipt of the petition, the secretary of administration shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the department thereon shall be promptly submitted to the Administration Commission, which, within 30 days, shall either approve the action of the board or commission as to each separate item, or approve the budget as proposed by the sheriff as to each separate item, or amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission shall be final.’

Respondent sheriff submitted a proposed budget to the petitioner county commission requesting $8,776,147. After hearings, petitioner approved a budget for respondent sheriff in the amount of $7,574,156. Respondent sheriff then appealed the action to the 'Department of Administration.’ A hearing was held by the Department and it concluded that respondent sheriff's budget should be as fixed by the petitioner county commission. The appeal then went to the Administration Commission which is composed of the Governor and the Cabinet and after hearing, it increased respondent sheriff's budget by $1,056,038.

Under the old Administrative Procedure Act, Chapter 120, Florida Statutes, which was superseded by the new Administrative Procedure Act, Chapter 74--310, Laws of Florida, 1974, (which became effective January 1, 1975) this court construed the statute to mean that it only had authority to review quasi-judicial administrative orders on certiorari. Bay National Bank and Trust Company v. Dickinson, Fla. App.(1st), 229 So.2d 302. s 120.31, Florida Statutes, 1973, provided:

'(1) As an alternative procedure for judicial review, and except where appellate review is now made directly by the supreme court, the final orders of an agency entered in any agency proceedings, or in the exercise of any judicial or quasi-judicial authority, shall be reviewable by certiorari by the district courts of appeal within the time and manner prescribed by the Florida appellate rules.'

That section, however, was repealed by the new Administrative Procedure Act, which became effective January 1, 1975, as aforesaid. This new law does not contain the limitation that this court review only orders entered in the exercise of any judicial or quasi-judicial authority. s 120.68 of the new law provides in part as follows:

'(1) A party who is adversely affected by final agency action is entitled to judicial review. . . .

(2) Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida appellate rules.'

Inasmuch as the new Administrative Procedure Act provides that all proceedings for review of administrative agency action (except those going to the Supreme Court) shall be instituted by filing a petition in the District Court of Appeal, it appears that such is the method now to be followed regardless of the nature of the administrative action.

(That is regardless of whether it is quasi-legislative or quasi-executive as opposed to quasi-judicial.)

Since the effective date of Chapter 74--103, Laws of Florida, 1974, which amended s 30.49, Florida Statutes, the review of sheriffs' budgets as fixed by a board of county commissioners or budget commission is to the Administration Commission. In the case sub judice, the hearing by the Department of Administration and its action must be considered as only advisory to the Administration Commission and it was not bound in any way by the action of the Department of Administration. s 30.49(5), Florida Statutes, 1974, provides:
Upon receipt of the petition, the secretary of administration shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the department thereon shall be promptly submitted to the Administration Commission, which, within 30 days, shall either approve the action of the board or commission as to each separate item, or approve the budget as proposed by the sheriff as to each separate item, or amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission shall be final.’ (emphasis supplied)

We can only interpret the last sentence of the above statute to mean that the Legislature intended the action of the Administration Commission to be final. Regardless of the method of review, the court exercises a more limited review of quasi-executive or quasi-legislative action than of quasi-judicial action. In Bay National Bank and Trust Company v. Dickinson, supra, this court, in reference to the old Administrative Procedure Act, said:

'. . . The Act has no application to an agency order rendered in the performance of a quasi-executive or quasilegislative function in which legal rights, duties, privileges, or immunities are not the subject of adjudication. Such orders as this are rendered pursuant to statutory authority based upon required inquiry and investigation, and involve the exercise of a discretion by the administrative officer or agency rendering it. If quasi-executive or quasi-legislative acts are performed in violation of the mandatory requirements of law, or are infected by fraudulent, capricious, or arbitrary action of the agency, they are subject to appropriate proceedings in court of competent jurisdiction. . . .'

Upon consideration of the record in this cause and the briefs and arguments of counsel, we find no departure by the Administration Commission from the essential requirements of law. We further find no merit to petitioner's contentions that Section 30.49, Florida Statutes, is unconstitutional. See Weaver v. Heidman, Fla. App.(1st), 245 So.2d 295.

Petition for review dismissed.

RAWLS, C.J., concurr.
BOYER, J., concurring specially.

BOYER, Judge (concurring specially).

I concur that the contention that F.S. 30.49 is unconstitutional is without merit and I further concur in dismissal of the petition for review.

NOTES

1. Weaver v. Heidman, 245 So.2d 295 (Fla. 1st DCA 1971), referred to judicial review of a sheriff's budget appeal decision of the Administration Commission as quasi-legislative or quasi-executive in character. Accordingly, the appellate court could not review truly discretionary aspects of the decision but could decide only whether the Administrative Commission committed legal error or acted arbitrarily or capriciously, which is a less vigorous standard of review from that applied to quasi-judicial decisions. The appellate court also decided that certain time limits prescribed in the statute authorizing administrative review of the decision of the board of county commissioners was "directory" and not "mandatory." What is the difference? The opinion also traced the history of how the former practice of compensating sheriffs from fees generated by the office was supplanted by statutes prescribing a set level of compensation to be funded by the county commission.

2. The action in R. W. Weitzenfeld v. Dierks, 312 So.2d 194 (Fla. 1975), challenged the power of the legislature to authorize the Administration Commission to review budget decisions of a board of county commissioners and also challenged the decision of the board to strike a program from the sheriff's budget rather than to reduce the amount of funds in the budget. The action was in the nature of a petition of writ of mandamus to force the county commission to release funds for the sheriff's budget. The supreme court declined to decide the constitutional issue and resolved the case as follows:

"We find the internal operation of the sheriff’s office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county. To hold otherwise would do irreparable harm to the integrity of a constitutionally created office as well as violate the precept established by F.S. Section 30.53 and, in practical effect, gain nothing for the county.

"Accordingly, F.S. Section 30.49(4) empowers the county to make lump sum reductions or additions of monies allocated to any of the six budget items; it does not, however, authorize an intrusion into the functions which are necessarily within the purview of the office of sheriff.”

3. Compare Dierks to Daniels v. Hanson, 342 A.2d 644 (N.H. 1965). In Daniels a county convention (County legislative body) cut the sheriff’s budget and deleted specific positions in the sheriff’s force. The sheriff appealed both actions. According to the New Hampshire court:

The county convention did not possess the authority to abolish certain positions by footnotes. However, the convention was granted by the legislature the authority to fix the amount of funds to be used for salaries and expenses of deputy sheriffs. . . . But the sheriff by virtue of his office has the sole authority to determine who will occupy the deputy sheriff positions funded, and what their functions will be. Id..., 342 A.2d at 649.

4. The Florida Department of Revenue has statutory authority to approve budgets for property appraisers and tax collectors.
This is in keeping with these officials’ duties to the state as well as to local governments and in the case of property appraisers to apply appraisal methods uniformly across the state. Either the county officer or the board of county commissions may seek discretionary relief in the Administration Commission. See Board of County Com’rs Broward County Florida v. Parrish, 154 So.3d 412 (Fla. 4th DCA 2014.) (Holding that a court may issue a writ of mandamus to a county commission to fund an appraiser’s budget as approved by Florida Department of Revenue.)

DISTRICT SCHOOL BOARD OF LEE COUNTY v. ASKEW
278 So.2d 272 (Fla. 1973)

ADKINS, Justice.

This is a direct appeal from the Circuit Court for Leon County which held Fla. Stat. s 236.07, F.S.A., to be constitutional. We have jurisdiction pursuant to Fla. Const. art. V, s 3(b)(1), F.S.A.

[Appellants are seven school districts of the State that lost education funds under the procedures in s. 236.07, and the county commission of Martin County challenging the possible loss of other State funds under Fla.Stat. s 195.101(1), F.S.A.]

The educational program of Florida is funded, in part, through the Minimum Foundation Program, wherein the minimum amount of money required per instructional unit for each School District is determined according to formulae prepared by the State. The State then assumes the duty to allocate that amount necessary to provide the minimum foundation, less the amount required to be contributed by the county. The minimum financial effort traditionally required of the county has been based on county tax assessment rolls multiplied by a required level of millage, which, under the law controlling in the case Sub judice (Fla. Stat. s 236.07(8)(a), F.S.A.), was six mills. The Minimum Foundation Program, by thus providing for a uniform expenditure per teaching unit throughout the State regardless of the tax base of the various counties, meets the constitutional requirement of a uniform system of free public schools. Fla. Const., art. IX, s 1, F.S.A.

A problem arises, however, if one or more of the county tax assessors fails to provide a just valuation of taxable property in his county as is required by Fla. Const., art. VII, s 4, F.S.A. Just valuation has been interpreted by this Court to be legally synonymous with fair market value (Walter v. Schuler, 176 So.2d 81 (Fla.1965)), and it has been held that assessments of a level below 100% Cannot be tolerated. Burns v. Butcher, 187 So.2d 594 (Fla.1966). If a tax assessor fails to meet the duties of his office and under assesses, the State has been forced to pay its fair share plus a portion of the burden which should have been borne by the county, in effect forcing the State into the position of a county taxpayer. Thus, the county has benefitted from the unconstitutional behavior of its tax assessor. Fla. Stat. Ch. 195, F.S.A., provides machinery by which the State can challenge, in Court, wrongdoing by county tax assessors, and also provides authority for the Department of Revenue to regulate the procedures by which assessments are made.

In the area of school financing, however, the Legislature has chosen to ignore the findings of the tax assessors completely, and to rely on a ratio study prepared by the Auditor-General to determine allocation of State education funds. Fla. Stat. s 236.07(8), F.S.A. It is this procedure which is challenged in the case Sub judice. ***** [The legislature enacted a statute granting authority to the auditor general to certify the assessment ratio (i.e., average percentage of fair market value) of county tax rolls for the purpose of qualifying a county to receive state funding for schools. This statute was challenged as an intrusion upon the constitutional authority of county property appraisers.]

The present plan, which allows for reliance on the assessments of the Auditor- General in total disregard for the assessments of the county assessors as approved by the Boards of Tax Adjustment and certified to the Department of Revenue (Fla. Stat. s 193.114(5), F.S.A.) is an attempt to usurp the duty of the assessor. This cannot stand.

When the State has accepted the certification of the assessments on the one hand, it cannot be allowed to overturn the assessments on the other hand merely because another State official comes to a different conclusion in the exercise of his judgment than did the tax assessor in exercising his discretion.

The school districts of the State, like the citizens, have a right to rely on the findings of their duly-elected assessors where the findings have been reviewed and certified by the reviewing body.

The proper method for challenging the validity of an assessment is through the circuit court (Fla. Stat. s 194.171, F.S.A.), and the State has the power, through the Department of Revenue, to bring such an action. Fla. Stat. s 195.092, F.S.A.

The tax assessor is, of necessity, provided with great discretion (Harbond, Inc. v. Anderson, 134 So.2d 816 (Fla. App.2d, 1961)), due to the difficulty in fixing property values with certainty. Schleman v. Connecticut General Life Ins. Co., Supra, and Powell v. Kelly, Supra. The discretion is of such a quality that -

'(A) mere showing that the two assessments are different does not make one of them necessarily invalid; especially in view of the fact that these two tax rolls were prepared by different assessors.'

Keith Investments, Inc. v. James, 220 So.2d 695, p. 697
The proper test for measuring the validity of a tax assessor's action is set out in detail in *Powell v. Kelly*, Supra:

'While the assessor is accorded a range of discretion in determining valuations for the purpose of taxation. When the officer proceeds in accordance with and substantially complies with the requirements of law designated to ascertain such values, yet if the steps required to be taken in making valuations are not in fact and in good faith actually taken, and the valuations are shown to be essentially unjust or unequal abstractly or relatively, the assessment is invalid.'

223 So.2d 305, pp. 307--308.

This is the test which the status of tax assessor as a constitutional officer requires. The fact that the party challenging the assessments is the State cannot be justification for changing the test, nor for ignoring the proper procedure for challenging the actions of the tax assessor, through the courts.

In summary, we recognize the county tax assessor as a constitutional officer, elected to determine the value of property within his county. As such, he is under a constitutional duty to assess all property at full value. Fla. Const., art. VII, s 4, F.S.A., and *Walter v. Schuler*, Supra. We have held that the Legislature has the power to regulate the method of assessments, but not to interfere with the assessor's discretion. *Burns v. Butscher*, Supra. There is great difficulty in precisely fixing property values so that the assessor is provided great leeway in his assessments, so long as he follows in good faith the requirements of law, *Powell v. Kelly*, Supra. So long as the law is followed, the assessments are presumed valid until the presumption is overcome by sufficient proof to defeat every reasonable hypothesis of a valid assessment. *Powell v. Kelly*, Supra.

The State has the authority and power to challenge an assessment through circuit court (Fla. Stat. s 194.171, F.S.A.), and has a duty to the taxpayers of the State to do so in cases such as is presented here where under assessment in a county requires the State to pick up a portion of the county's fair share of the cost of education. However, we hold that the State has no power to ignore the presumption of correctness attendant to the official assessments. To rely on the findings of the Auditor-General, as required by Fla. Stat. s 236.07(8), F.S.A., ignoring the official assessments, is to negate the discretion granted to the assessors, the discretion necessary to the job, attendant to all educated estimates, and uniformly recognized in the opinions of this Court. We conclude that a finding by the Auditor-General different from that reached by a county tax assessor is, therefore, insufficient to override the official assessment in the absence of a showing that the official assessment represented a departure from the requirements of law and not merely the differences of opinion to be expected when experts approach the subjective business of assessing property.

Accordingly, the judgment of the trial court is reversed and the cause is remanded with instructions to enter an order in favor of appellants holding Fla. Stat. s 236.07(8), F.S.A., to be unconstitutional insofar as it allows for a ratio study by the Auditor-General to overrule the certified findings of the county tax assessors.

NOTES

1. See Article VII §8 Florida Constitution. Does it overrule this case?

2. At the time this case was decided, Article IX §2, Florida Constitution, provided:

   The governor and members of the cabinet shall constitute a state board of education, which shall be a body corporate and have such supervision of the system of public education as provided by law.

B. STATE- MUNICIPAL (TRADITIONAL)

STATE ex rel. JOHNSON, Atty. Gen., v. JOHNS, et al.
109 So. 228 ( Fla. 1926)

WHITFIELD, P.J.

[Relators (i.e. petitioners) filed a petition for a writ of quo warranto (on the relation of [i.e., with the authority of] the attorney general) in the Florida Supreme Court against the city officials to challenge the authority of these officials to govern the city. The Supreme Court issued the writ and the officials (respondents) answered, stating that they acted under authority of chapter 11519 of the Acts of the Legislature of the state of Florida. Relators filed a demurrer (i.e., motion to dismiss) the answer as legally insufficient. The Supreme Court overruled (i.e., denied) the demurrer and quashed the writ of quo warranto for reasons stated below.]

On the relation of the Attorney General upon allegations of the usurpation of municipal powers and offices of a pretended municipality, a writ in quo warranto proceedings was issued from this court commanding Paul R. Johns, David Fessler, R. A. Young, M C. Frost, and I. T. Parker to answer to the state by what warrant or authority of law they claim to exercise the offices, franchises, liberties, and powers as city commissioners of the city of Hollywood, Broward county, Fla.

****

Chapter 11519, Acts of 1925, the title being, 'an act to create, establish and organize a municipality in the county of Broward and state of Florida, to be known and designated as the city of Hollywood, and to define its territorial boundaries, and to provide for its government, jurisdiction, powers, franchises, and privileges,' contains the following:

'Article III.

'Section 1. Created.--The corporate authority of the city of Hollywood shall be vested in and governed by a commission consisting of five members, whose term of office shall be for a period of four years.

'J. W. Young, David Fessler, J. M. Young, Paul R. Johns, and R. A. Young shall constitute the first commission, and they shall hold office for four years and until their
successors are elected and qualified. The first election of commissioners shall be held on the first Tuesday in November in the year 1929, and every four years thereafter. Commissioners shall take office at noon on the third day after their election. Any vacancy on the commission shall be filled for the unexpired term by the remaining commissioners.'

Counsel for the relator contends that the quoted statutory provision is unconstitutional, 'in that it deprives the people of the city of Hollywood of the right of local self-government.'

The principle of local self-government is predicated upon the theory that the citizens of each municipality or governmental subdivision of a state should determine their own local public regulations and select their own local officials, but the extent to which and the manner in which the principle may be made applicable depends upon the provisions of controlling organic and statutory laws of the particular state.

* * * * *

The Legislature has plenary power over municipalities except as restrained by the Constitution. Section 8, art. 8, Const. Municipal officers are statutory officers subject to legislative action, and the right to vote in municipal elections is controlled by statute and not by organic provisions relating to state elections. See State ex rel. Attorney General v. Dillon, 32 Fla. 545, 14 So. 383, 22 L. R. A. 124. Municipal corporations have, in the absence of constitutional provisions safeguarding it to them, no inherent right of self-government which is beyond the legislative control of the state.

Whatever may be the holdings in other states that the citizens of the several municipalities in a state have the inherent right to select their municipal officers, and that such right cannot be abrogated by statutes unless authorized by the Constitution of the state (12 C. J. 754), in this state the herein quoted provisions of the organic law give to the Legislature express power to establish municipalities and to provide for their government, which includes authority to determine the form of the municipal government and to designate the persons or the method of selecting the persons who shall exercise the municipal authority when no other provision of the Constitution is thereby violated; and the provisions of the statute herein challenged, that the corporate authority of the municipality shall be vested in a commission consisting of five members whose term of office shall be four years, and that designated persons shall constitute the first commission to hold office for four years and until their successors are elected and qualified, and that any vacancy on the commission shall be filled for the unexpired term by the remaining commission, are authorized by section 8, art. 8, of the state Constitution, and such provisions do not violate any other section of the Constitution.

Section 24 of the Declaration of Rights contains the following: 'This enumeration of rights shall not be construed to impair or deny others retained by the people.'

This organic section does not so qualify or modify the express provision of section 8, art. 8, as to deprive the Legislature of any power conferred by the latter section; and the power exercised in this case by the Legislature is clearly within the scope of its express authority.

The Constitution does secure 'certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety,' and provides that 'all political power is inherent in the people. Government is instituted for the protection, security and benefit of the citizens, and they have the right to alter or amend the same whenever the public good may require' (subject to the federal government). Sections 1, 2, Dec. of Rights. The Constitution also requires the Legislature to establish a uniform system of county and municipal government, which shall be applicable, except where inconsistent local or special laws are enacted (section 24, art. 3), and further provides that 'the Legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time' (section 8, art. 8). The organic law contains no express provision relative to the right to local self-government, and the provision of section 27, art. 3, requiring officers to be elected by the people or appointed by the Governor, is expressly confined to 'all state and county officers not otherwise provided for by this Constitution.' Such provision, therefore, does not apply to municipal officers. The corresponding provision of the Constitution of 1868 included municipal officers.

Section 1, art. 3, of the Constitution, provides that: 'The legislative authority of this state shall be vested in a Senate and a House of Representatives, which shall be designated, The Legislature of the state of Florida.'

Under the provision the Legislature may exercise any lawmaking power that is not forbidden by the organic law of the land. Stone v. State, 71 Fla. 514, text 517, 71 So. 634.

The lawmaking power of the Legislature of a state is subject only to the limitations provided in the state and federal Constitutions; and no duly enacted statute should be judicially declared to be inoperative on the ground that it violates organic law, unless it clearly appears beyond all reasonable doubt that under any rational view that may be taken of the statute it is in positive conflict with some identified or designated provision of constitutional law.

A statute should be so construed and applied as to make it valid and effective if its language does not exclude such an interpretation.

Where a statute does not violate the federal or state Constitution, the legislative will is supreme, and its policy is not subject to judicial review. The courts have no veto power and do not assume to regulate state policy, but they recognize and enforce the policy of the law as expressed in valid enactments, and decline to enforce statutes only when to do so would violate organic law. City of Jacksonville v. Bowden, 67 Fla. 181, 64 So. 769.
Whatever the phrase 'local self-government' may mean in government, the Constitution of this state contains no express provision with reference thereto, and there are no provisions of the organic law that so modify the express provision of section 8, art. 8, of the Constitution, that 'the Legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time,' as to withhold from the Legislature the power to designate by statute the particular persons who shall exercise the power of a municipality created by statute, such power to designate being a part of or incidental to the quoted organic power to establish municipalities, to provide for their government, and to prescribe their jurisdiction and powers. See 1 McQuillin, Munic. Corp. § 176.

The court should not declare a statute to be void or inoperative on the ground that it is opposed to a spirit that is supposed to pervade the Constitution, or because the statute is considered unjust or unwise or impolitic.

* * * * *

In exercising the powers expressly conferred by section 8, art. 8, the Legislature must not violate any other provision of organic law, but no other provision of organic law is violated by the quoted statute which designates the persons in whom the corporate authority of the city shall be vested. The principle of 'local self-government' is not operative to nullify a legislative enactment that does not violate any express or implied provision of the state or federal Constitution. The enactment here challenged is clearly authorized by the quoted organic provision, and it does not abridge any organic right.

The demurrer to the answer is overruled and the writ quashed.

TERRELL and BUFORD, JJ., concur.

ELLIS and STRUM, JJ., concur in the opinion.

BROWN, C. J. (dissenting).

Although the persons named in the act as city commissioners for the first four years may be in every way qualified for their official duties and precisely the men whom the citizens of the community, if they had been allowed to, would have selected for these positions, I cannot think that the action of the Legislature in providing that the governing body of the city of Hollywood for the first four years of its corporate existence should consist of persons appointed by the Legislature and named in the act, all vacancies occurring to be filled by the remaining members of such board, is a legitimate exercise of legislative power. The exact question here presented seems to be a new one in this state, and is not free from difficulty.

While the Legislature could, no doubt, as an incident to its legislative power, name and appoint the members of the governing board to act temporarily until such reasonable and convenient time as might be required for the primary organization of the municipality, and the selection by the qualified voters thereof of the members of such governing body who were to hold for the first full term, I am inclined to the opinion that it cannot go beyond the field of legislative power and control through its agents the administration and government of a town or city of this state for so long a period as four years, thus depriving the city of all voice for that considerable period of time in the selection of its own governing officials. Even if a local community of this state has no inherent right of local self-government which the Legislature is bound to respect, it would appear that the Legislature cannot exercise the executive and governmental functions of a town or city, under our Constitution, either directly or through the agency of persons selected and appointed by it. Our Constitution divides the powers of government into three grand divisions--the legislative, executive, and judicial--and expressly prohibits either of these departments from exercising any power belonging to either of the others. If the Legislature has the power to govern a city through its appointed agents for four years, it may also do so for ten years, or indefinitely. The writer realizes that the authorities are divided on this question, but inclines to the view expressed in those decisions which hold that this is not a legitimate exercise of legislative power. See 12 C. J. 836-838, and cases cited; 1 McQuillin, Munic. Corp. 399-403.

The city commission appointed by the Legislature in this instance is vested with the usual power to levy taxes, require the payment of business and occupational licenses, and expend the moneys of the municipality. Thus the citizens of the municipality must endure taxation without representation for a period of four years. If the Legislature could do this in this instance, can it not deprive every town and city in this state of every vestige of local self-government, and impose upon them the rule of governing bodies in whose selection they have no voice--a principle utterly at variance to American history, traditions, and ideals of government?

Even under the iron rule of Rome, the cities of the Roman Empire were granted a certain measure of local self-government. And in England, and the British Isles generally, the right of local self-government of cities, boroughs, and towns, were secured and built up as early as the days of Alfred, proving to be one of the bulwarks of liberty in that country, and it was not until the fifteenth century that the practice of granting charters to cities was inaugurated. These charters were not so much a grant of new powers as they were a recognition and guaranty of the rights of local self-government which had long existed.

By the Great Charter, King John was required to confirm some of the charters granted during his reign, and section 16 of the Magna Charta reads as follows: 'And the city of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customers.'

Municipal local self-government, is as Judge Cooley has tersely
said, ‘of common-law origin, and having no less than common-law franchises.’ Our state, long before the Constitution of 1885 was framed, had formally adopted the English common law, where not inconsistent with our own legal system.

Is not this time-honored right of the people of municipal corporations to choose their own local officers one of the rights retained by the people under section 24 of our Declaration of Rights? Nowhere does our Constitution expressly confer the power upon the Legislature to take away this right, nor is the right of local self-government anywhere forbidden by that instrument, and the framers of the Constitutions must have contemplated that the then existing right of municipal corporations to choose their local officers to administer their local affairs would continue as the one great essential feature of municipalities in this state.

I realize that the views hereinabove expressed are those of the minority (though that minority contains such names as Cooley, Gray, and McQuillin), and that the weight of authority in this country supports the views expressed in the able opinion of Mr. Justice Whitfield. There is, however, one pronunciation by this court, in the case of Kaufman v. City of Tallahassee, 84 Fla. 634, 94 So. 697, 30 A. L. R. 471, which leans toward the construction I contend for. In that case, this court, speaking through Mr. Justice Ellis, said:

'It is unnecessary to discuss the question of whether a municipality is a political agency or subdivision of the state and in its activities acts always in a governmental capacity. While the drift of judicial thought, as tested by many decisions, seems to be toward the opinion that a city has no inherent right to local self-government and is a mere agency of the state to be governed and controlled by the Legislature even through its own agents or appointees, and that view finds some color in the language of our Constitution, * * * this court has consistently adhered to the doctrine of municipal liberty in the administration of local affairs.'

While invasions of the right of municipal local self-government on the part of Legislatures have been comparatively few in this country up to the present time, these experiments have, in many instances, resulted disastrously, and have proven that it is dangerous to depart from this time-tested principle which has grown with our growth and has become, as it were, a part of the brawn and sinew of the American system of government.

For the reasons above pointed out, I think the demurrer of the relator to the answer of the respondent should be sustained.

NOTE

Does State v. Johns sustain the proposition that the Legislature may abolish a municipality and replace it the next day with a new one with different officials designated by the Legislature? See State ex rel. Gibbs v. Couch, 190 So. 723 (Fla. 1939). If so, is this rule affected by Article VIII, 1968 Florida Constitution?

CITY OF TAMPA v. EASTON
198 So. 753 (Fla. 1940)

WHITFIELD, Presiding Justice.

The writ of error herein was taken to a judgment of the circuit court awarding damages against the city for injuries to defendant in error and his automobile, alleged to have been caused by the negligence of a named driver of an automobile truck owned by the city while it was being operated on a designated street of the city with the knowledge or consent of the city. It is contended that the city is not in law liable for the injury on the alleged ground that the truck was owned by the city and was being operated by a named driver on the city streets with the knowledge and consent of the city when the alleged negligence of the driver caused the injury.

Unlike a county, a municipality is not a subdivision of the State with subordinate attributes of sovereignty in the performance of governmental functions and correlative limited privileges, immunities and exemptions from liability for negligence of its employees or in other respects as may be recognized or provided by law. A municipality is a legal entity consisting of population and defined area, with such governmental functions and also corporate public improvement authority as may be conferred by law in a charter or other legislative enactment under the constitution.

A municipality's governmental functions and its corporate, proprietary or public improvement authority must of necessity be exercised or performed by officers, agents and employees of the municipality. The governmental functions and the corporate duties and authority of a municipality may be regarded as being distinct, with different duties, privileges or immunities and, as to corporate matters, correlative liability for negligence of its officers and agents in performing or omitting municipal nongovernmental or corporate duties or authority as may be in accord with statutory provisions or common-law principles. The liability of municipal corporations in their governmental functions or in their corporate duty or authority in furnishing public corporate improvements or facilities, is regulated by substantive law. See Keggin v. Hillsborough County, 71 Fla. 356, 71 So. 372; City of Tallahassee v. Fortune, 3 Fla. 19, 52 Am. Dec. 358. What are governmental functions and what are corporate authority or duties of a municipality are not comprehensively defined in the law but are to be determined in each case upon a judicial interpretation and application of appropriate provisions or principles of law to the facts legally shown or admitted as may be provided by controlling substantive and procedural law.

The maintenance of appropriate and reasonably safe streets and a necessary sewer system is a municipal corporate authority or duty under controlling statutes; and authority to properly use motor vehicles in such maintenance is necessarily implied from the authority or duty.

It is a duty of the municipality to be diligent in keeping its
the court, made the following very illuminating statement:

In Southern Cotton Oil Co. v. Anderson

properly operated when it is by his authority on the public

out of the obligation of the owner to have the vehicle, that is not

upon such owner liability for negligent use. The liability grows

of an instrumentality that is not dangerous per se, but is

..... The principles of the common law do not permit the owner

of an instrumentality that is not dangerous per se, but is peculiarly

dangerous in its operation, to authorize another to use such

instrumentality on the public highways without imposing upon

such owner liability for negligent use. The liability grows

out of the obligation of the owner to have the vehicle, that is not

inherently dangerous per se, but peculiarly dangerous in its use,

properly operated when it is by his authority on the public

highway. Anderson v. Southern Cotton Oil Co., 73 Fla. 432,
text page 440, 74 So. 975, text page 978, L.R.A.1917E, 715;
Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629,
16 A.L.R. 255.

In Keggin v. County of Hillsborough, 71 Fla. 356, text page
360, 71 So. 372, text page 373, Mr. Justice Ellis, speaking for
the court, made the following very illuminating statement:

'While a county may, in some respects, resemble a
municipality in that both organizations deal with public
interests, their differences are so great that the cases
discussing the latter's liability in damages for the negligent
omission to perform a public duty are not analogous to
to those in which such a liability is sought to be imposed
upon a county. The one feature which sufficiently
distinguishes them is that the counties are under the
Constitution political divisions of the state, municipalities
are not; the county under our Constitution, being a mere
governmental agency through which many of the functions
and powers of the state are exercised. County of San
Mateo v. Coburn, 130 Cal. 631, 63 P. 78, 621. It therefore
partakes of the immunity of the state from liability. Many
of the powers exercised by a municipality, such as
building and maintaining streets, erecting and operating
water supply systems, lighting and power plants, are, in
their nature and character, corporate rather than
governmental. The corporation being organized

voluntarily by the citizens of the locality for the purpose
of local government, it is given the power and charged
with the duty by the state of keeping the streets in a safe
condition. 2 Dillon's Munic. Corp. (4th Ed.) §1034; City
of Key West v. Baldwin, 69 Fla. 136, 67 So. 808. The
citizens of a municipality have a proprietary interest in the
property and funds of the municipality; the citizens of a

county have not. It is a matter of very grave doubt whether
a judgment against a county, even in those cases where
suits are permitted against it, may be satisfied by attaching
or levying upon the moneys in any particular fund, as
counsel for the plaintiff in error contend, although no
authority is cited in support of the proposition.

It is also contended in behalf of the plaintiff in error that
a municipality is a political subdivision of the state, yet it
may be sued for its negligence in permitting defects or
obstructions in the streets, resulting in injury to a person
lawfully using the streets. We do not agree with the
learned counsel that the proposition is correct, if it is
intended thereby to announce that in the exercise of all its
functions and powers a municipality acts as a political
subdivision of the state. McQuillin on Municipal
Corporations says that: A 'municipal corporation is, in
part, a public agency of the state, and in part it is
possessed of local franchises and rights which pertain to
it as a local personality or entity for its quasi private (as
distinguished from public) corporate advantage.'

I McQuillin on Munic. Corp. 168. See also, Duval County v.
Charleston Lumber & Mfg. Co., 45 Fla. 256, 33 So. 531, 60
L.R.A. 549, 3 Ann. Cas. 174. A municipality is organized
within certain limits of territory for the local advantage and
convenience of the people in the particular locality, special or
additional advantages or conveniences are thus obtained by
such organizations. It is when exercising its functions for its
quasi private corporate advantage that a city is held to be liable
for its negligence in the discharge of its duties, but a county acts
only in a public capacity as an arm or agency of the State.'
Keggin v. County of Hillsborough, 71 Fla. 356, 360, 71 So.
372.

'A municipal corporation is not liable for tortious acts
committed by its officers and agents, unless the acts complained
of were committed in the exercise of some corporate power
conferred upon it by law, or in the performance of some duty
imposed upon it by law. Such a corporation may be liable in
damages for injuries to others proximately resulting from the
doing by its officers, in an unauthorized manner, of a lawful and
authorized act, but not for doing an unlawful or prohibited act.'
Scott v. City of Tampa, 62 Fla. 275, 55 So. 983, 984, headnote
3, 42 L.R.A.,N.S., 908....

In this case the declaration contains allegations that: 'the
defendant (city) was the owner of a certain automobile truck
which was then and there being run, driven and operated by one
Thomas Loftus, with the knowledge and consent of said
defendant, in a northerly direction upon Nebraska Avenue, at
the intersection of Nebraska Avenue and Hugh Street in the City of Tampa, Florida, and at said time and place, the said Thomas Loftus did negligently and carelessly run, drive and operate said automobile into and upon the automobile of the plaintiff, by reason whereof the plaintiff was greatly injured and his automobile damaged, etc.

A demurrer to the declaration was interposed on the following grounds:

1. The allegations are insufficient to show any liability on the part of this defendant.
2. The defendant is not liable merely because of its ownership of the motor vehicle and the fact that it was operated by some person with its knowledge and consent.
3. The defendant can only be liable when negligence is caused by its exercise of a proprietary function.
4. There is no authority for holding a municipality liable in the State of Florida merely because of its ownership of a motor vehicle and the use of same with its knowledge and consent.
5. No facts are shown to render this defendant liable under the doctrine of consent.

The demurrer was overruled and the defendant city filed pleas, viz.: Not guilty; denial that the truck was being operated by Thomas Loftus with the knowledge or with the consent of defendant; several pleas of contributory negligence. Such pleas were not challenged. Other pleas averred that at the time and place as alleged the driver 'was not under the control or the supervision of defendant, and said truck was not being operated in the business of defendant'; that the driver 'was engaged upon a mission of his own without the knowledge of defendant'; that the driver 'was engaged upon a mission of his own and unconnected in any way with defendant's business'; that the driver was not the agent or servant of defendant; that the driver 'in operating the automobile truck was not acting within the scope of his employment or in the course of his master's cause.' The latter five pleas were stricken on motion.

The following additional plea was also filed:

'(14) That at the time and place alleged in the declaration the automobile truck operated by the said Thomas Loftus, and the said Thomas Loftus, were loaned or hired to the Works Progress Administration of the United States in the construction of a storm sewer project in the City of Tampa; that under such arrangement the entire control and supervision over the said Thomas Loftus and over the automobile truck which he was driving was under the foreman, superintendent, or other officer or agent of the said W. P. A. Project, and during said time, said Thomas Loftus was the agent or servant of the said Works Progress Administration.'

A demurrer to such additional plea was sustained by the Court. Verdict and judgment in $1,500 damages were rendered and defendant took writ of error. Separate errors are assigned in sustaining the demurrer to the declaration; on striking pleas 8 to 12, both inclusive, and on sustaining the demurrer to additional plea No. 14.

Plaintiff in error presents three questions:

'Is a municipal corporation liable for the negligent operation of its automobile truck solely because the truck was operated with its knowledge and consent?'

'Where a municipal corporation loans or farms out its servant and automobile truck to a third party, and such third party has the entire control and supervision or dominion over said servant, is the city liable for any negligence on the part of such driver while acting as a servant of the third party?'

The declaration does not allege that defendant's automobile truck was being operated by defendant's officer or employee, or that the driver of the truck was under the control or the supervision of defendant, or that the truck was being operated in the business of defendant. But the declaration does allege that the defendant city was the owner of the truck that was being operated by a named person with the knowledge and consent of the defendant, on the streets of the city; and that the injury as alleged was caused by the negligent and careless operation of the truck by the named person at the intersection of two streets of the city when the driver negligently and carelessly ran the automobile into and upon the automobile of plaintiff. The declaration stated a cause of action against the city, and it was not error to overrule the demurrer thereto. There was no motion for compulsory amendment of the declaration, under section 4296 (2630), C.G.L.

The city owned the truck, the demurrer admitted the allegations that the truck was operated by the named person with the knowledge and consent of defendant and that the named person did negligently and carelessly run, drive and operate said automobile into and upon the automobile of the plaintiff on a named street of the city, by reason whereof the plaintiff was greatly injured as alleged and his automobile damaged. The injury occurred on the streets of the city, which streets it was the duty of the city to exercise due care to keep safe for traffic against negligent drivers of automobiles as well as against defects in the surface of the streets. The truck being a dangerous instrumentality when in operation on the streets, its owner, the city, is liable in damages in its corporate capacity for the negligent injury of a person lawfully on the street by the person operating the truck with the knowledge and consent of the city, its owner.

The pleas which were stricken and plea No. 14, eliminated on demurrer, contained averments of conclusions without supporting averments of facts or exhibits, or else they do not contain all the elements of a defense to the charge that the defendants owned the truck, a dangerous instrumentality when in operation; that it was being operated by a named driver with the knowledge and consent of the defendant on streets which the defendant should be diligent in maintaining safe against negligent or careless use; and that plaintiff and his automobile were injured by negligence of the driver in operating the truck.
on named streets of the city at a stated time.

The conclusions averred in Plea No. 14 are not supported by any allegations or exhibits showing the truck and its driver to have been in fact or in law under the sole control of another governmental agency at the time of the injury complained of.

The evidence adduced at the trial was not brought to this Court.

Affirmed.

LIBERIS v. HARPER, 104 So. 853 (Fla. 1925)

WHITFIELD, J.

Writ of error was allowed and taken to a final order in habeas corpus remanding the petitioner who had been arrested for violating a city ordinance making it unlawful to keep, operate, or maintain 'any billiard table, pool table or bowling alley for hire or public use in any building or place, or any lot fronting or abutting any portion of Palafox street between Wright street and Zaragossa street' in the city of Pensacola, Fla. The plaintiff in error seeks to contest the validity of the ordinance.

A person held in custody under a sentence of a municipal court upon a conviction on a charge based on an ordinance alleged to be void may test the validity of the ordinance in habeas corpus proceedings, and may be discharged from custody, if the ordinance is void. Hardee v. Brown, 56 Fla. 377, 47 So. 834.

Municipalities are established by law for purposes of government. Their functions are performed through appropriate officers and agents, and they can exercise only such powers as are legally conferred by express provisions of law, or such as are by fair implication and intentment properly incident to or included in the powers expressly conferred for the purpose of carrying out and accomplishing the object of the municipality. The difficulty of making specific enumeration of all such powers as the Legislature may intend to delegate to municipal corporations renders it necessary to confer some power in general terms. The general powers given are intended to confer other powers than those specifically enumerated. General powers given to a municipality should be interpreted and construed with reference to the purposes of the incorporation. Where particular powers are expressly conferred, and there is also a general grant of power, such general grant by intendment includes all powers that are fairly within the terms of the grant and are essential to the purposes of the municipality, and not in conflict with the particular powers expressly conferred. If reasonable doubt exists as to a particular power of a municipality, it should be resolved against the city; but, where the particular power is clearly conferred, or is fairly included in or inferable from other powers expressly conferred, and is consistent with the purposes of the municipality and the powers expressly conferred, the exercise of the power should be resolved in favor of the city so as to enable it to perform its proper functions of government.

The city had statutory authority to regulate and restrain all billiard saloons (section 1871, Revised General Statutes of 1920); to exercise any power and render any service which contributes to the general welfare; prescribe limits within which business, occupations and practices liable to be nuisances or detrimental to the health, security or general welfare of the people, may lawfully be established, conducted or maintained (section 18, chapter 6386, Acts 1911); and 'to pass, for the government of the city, any ordinance not in conflict with the Constitution of the United States, the Constitution of Florida, and statutes thereof' (section 18, chapter 4513, Acts 1895).

While the quoted statutory provisions are apparently sufficient authority for the passage of an ordinance of the character of the one complained of, and for the enforcement of such ordinance in the absence of a full showing that the ordinance is arbitrary and unreasonable in its practical application, the return shows no legal warrant for the arrest and detention of the petitioner below.

The return is 'that the arrest and detention of said Liberis was pursuant to the affidavit and warrant, copies of which are hereto attached.' The attached 'affidavit' does not appear to have been sworn to before any officer, and the 'warrant' is signed only by the officer who made the arrest and is not dated or authenticated. Such 'affidavit and warrant' afford no lawful authority for the arrest and detention.

Reversed.

NOTES

1. The widely accepted rule as to the inherent powers of municipal governments is that stated by Judge John F. Dillon, as follows:

   It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.

   Dillon, Municipal Corporations, Section 237 (5th ed. 1911).

   This rule is said to have been first stated by Judge Dillon in Merriam v. Moody’s executors, 25 Iowa 163, 170 (1868). See State v. Hutchinson, 624 P. 2d 1116 (Utah 1980).

2. The rule was extensively quoted in Jacksonville Electric Co. v. City of Jacksonville, 18 So. 677 (Fla. 1895), a decision that held the City of Jacksonville’s general municipal function powers included the power to build and operate an electric generation and distribution system to supply electricity to private persons. No dispute had been made to the City’s power to supply electricity to light its own streets. The complainant was a competing private electricity company.
3. Dillon's rule also applies to counties, see, e.g., Crandon v. Hazlett, 26 So.2d 638 (Fla. 1946), and to administrative agencies of the state government, see, e.g., Department of Environmental Regulation v. Falls Chase Special Taxing District, 424 So.2d 786, 793 (Fla. 1st DCA) rev. denied, 436 So.2d 98 (Fla. 1983).

(“An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights of individuals.”)

The Florida Supreme Court has held that the attorney general may settle a claim for a state agency “under terms that are not expressly authorized by the board’s legislative grant of power.” Abramson v. Florida Psychological Association, 634 So.2d 610 (Fla. 1994).

Historically the rule also applies to school boards. State ex. rel. Glisson v. Board of Public Instruction, 123 So. 545, 546 (Fla. 1929).

C. CONTROL BY ACTS OF THE LEGISLATURE

JEFFERSON CNTY., BD. OF HEALTH V. CITY OF BESSEMER
301 So. 2d 551 (Ala. 1974)

JONES, Justice.

This appeal is from a final decree of the Circuit Court of Jefferson County, Bessemer Division, declaring Act No. 546, Acts of Alabama 1973, unconstitutional. The Bill for Declaratory Judgment was filed by five Jefferson County municipalities (later joined by the intervention of twenty-two others) against the Jefferson County Board of Health, Dr. George Hardy, as Health Officer of Jefferson County, and J. D. Smith, as Tax Collector of Jefferson (whose answer was by way of interpleader).

This case is to be decided upon a determination of three basic issues which may be simply stated as follows:

Did Act No. 546:
1. Constitute a local law so as to be void for want of a publication as required under s 106 of the 1901 Constitution of Alabama?
2. Be enacted for a public purpose, thereby making it a general law?
3. Be enacted for a public purpose, thereby making it a special law?

[Issues 1 and 2 are omitted.]

Under our rules of review, if the lower Court's declaration of unconstitutionality of Act No. 546 on any one or more of the foregoing grounds is supported by competent evidence and is in accordance with applicable legal principles, this cause is due to be affirmed; otherwise, it is due to be reversed. Since we find, after a careful review thereof, that the lower Court's holding as to ground No. 1—local versus general act—is correct, we confine our consideration to the issue of the double classification aspect of the Act and affirm.

While the record before us is voluminous, we feel that a summary of the defendants' responses to plaintiffs' request for admission of facts will suffice to set the factual context in which this controversy arose.

1. Act No. 546 was not published as if it were a local act;
2. The census figures for each city as shown in Appendix A of the Tax Collector's interpleader are correct (11 municipalities have a population of more than 5,000 and 16 have less);......
6. The classification by population of more than 500,000 applies only to Jefferson County, Alabama.

Act No. 546 reads:
‘Be It Enacted by the Legislature of Alabama:
‘Section 1. This Act shall apply to every county of the State of Alabama having a population of more than 500,000 according to the last or any subsequent federal census, and to no other county.

‘Section 2. (Herein is contained a definition of the terms ‘Board Treasurer’, ‘County’, ‘County Board of Health’, and ‘Tax Collector’.)

‘Section 3. In order further to provide for the financing of county boards of health in counties in the State of Alabama having populations in excess of 500,000, and subject to the provision of Section 4 hereof, there is hereby appropriated, allocated and otherwise ordered and directed to be set aside and paid over annually to the County Board of Health out of the ad valorem taxes collected by the Tax Collector for the several municipalities located wholly or partially in the County, the following:

(a) For each municipality having a population of more than 5,000 according to the last federal census, an amount equal to $3.00 times the population of each said municipality according to the last federal census; and
(b) For each municipality having a population of 5,000 or less an amount equal to $1.50 times the population of each said municipality according to the last federal census.”

[Remainder omitted.]

PRESUMPTIONS FAVORING VALIDITY.....

As a preface to our consideration of the constitutional issues, we point out that this Court is fully cognizant of, and in complete agreement with, the numerous longstanding and well-reasoned opinions dealing with the importance of upholding legislative acts as constitutional whenever possible. These propositions may be summarized as follows:

1. A Statute is presumed to be valid and the party challenging its constitutionality has the burden of establishing such invalidity.....
2. A court should not strike down a statute as unconstitutional unless it is convinced beyond a reasonable doubt that such statute is unconstitutional. ....

LOCAL V. GENERAL ACT

The first issue with which we are confronted is whether the Act before us can be categorized as one of general or local application, as defined in s 110, Article 4, Constitution of Alabama 1901.

‘A general law within the meaning of this article is a law which applies to the whole state; a local law is a law which applies to any political subdivision or subdivisions of the state less than the whole; a special or private law within the
meaning of this article is one which applies to an individual, association, or corporation.’

On an initial reading, the distinction between these two types of legislation seems quite lucid. As we shall presently see, however, any presupposed degree of clarity becomes only superficial in the light of our case law, which is perplexing at times in its ratio decidendi. Nevertheless, this distinction is a critical one since a local law can only become valid through compliance with s 106 of the State Constitution, which prescribes that notice of such law must be published in the county affected by its passage.

Otherwise stated, should it be determined that the Act before us is in actuality a local law passed under the guise of a general law, and thus would require publication to initially ensure its constitutionality, then the entire Act must be struck down as unconstitutional since here there was no publication.

Appellants, in support of the Act's constitutionality, maintain that Act No. 546 purports to be, and is, what has come to be known as a general act of local application. With this contention we cannot agree.

By s. 1 of the Act, it is made applicable only in counties having a population of more than 500,000. s 3 contains additional classifications which render its impact different with respect to municipalities having a population of more than 5,000 as compared to municipalities having a population of 5,000 or less.

The record amply demonstrates that Act No. 546 was a measure intended to meet the specific needs of the Jefferson County Board of Health. Like most comparable legislation, it wound its way through the legislative process as a local act, being presented to the Jefferson County legislative delegation as a matter of its local concern. As such, it would appear to run afoul of both the letter and the spirit of the standard established by this Court in State ex rel. Covington v. Thompson, 142 Ala. 98, 38 So. 679 (1904): ‘... a law which is general in its terms, and is in good faith so framed that all parts of the state may come within the circle of its operation, is a general law.’ Yet its contravention of the subsequent and now widely accepted test established in Reynolds v. Collier, 204 Ala. 38, 39, 85 So. 465, 467 (1920), is not nearly so clear, that test being:

‘...The effect of all of our decisions, in short, has been that where there is a Substantial difference in population, and the classification is made in good faith, reasonably related to the purpose to be effected and to the difference in population which forms the basis thereof, and not merely arbitrary, it is a general law, although at the time it may be applicable to only one political subdivision of the state; but that if the classification bears no reasonable relation to the difference in population, upon which it rests, in view of the purpose to be effected by such legislation, and clearly shows it was merely fixed arbitrarily, guised as a general law, and, in fact, is a local law, it is then in plain violation of the Constitution and cannot be upheld.’ (Our emphasis.)

There, and in subsequent cases, this Court recognized a larger field of operation for the so-called ‘general act of local application’ in heavily populated urban areas. The trend has been to accept the open-ended population classification applicable to Jefferson County only. Even here, however, our holdings do not present an altogether clear standard for determining whether a logical relationship exists between the classification employed and the purposes of the act. On this point, the line of demarcation between our recent decisions in Masters et al. v. Preece et al., 290 Ala. 56, 274 So.2d 33 (1973), on the one hand, and Duncan v. Meeks, 281 Ala. 452, 204 So.2d 483 (1967), or McDowell et al. v. Columbia Pictures Corporation et al., 281 Ala. 438, 203 So.2d 454 (1967), on the other, is neither black nor white, but essentially gray. Our decisions, therefore, require a case by case determination.

As we have previously indicated, such determination is here pretermitted, however, because of our treatment of the aspect of double classification of Act 546. When an act contains a scheme of double classification which eliminates its prospective application or which destroys the reasonable relationship with its subject matter, it cannot be considered as a general act. ...

The case of State ex rel. Saltsman v. Weakly, et al., 153 Ala. 648, 45 So. 175 (1907) furnishes an excellent explanation of double classification, and its authority is compelling here both because of its clear analysis of the problem and the striking similarity that its fact situation bears to the one at hand.

In Saltsman, an act was passed which provided for the establishment of police commissions in cities of 35,000 or more in counties of 125,000 or more, a classification in which only Jefferson County and the City of Birmingham could fit. The act was challenged as to its constitutionality on the grounds that it was actually a local law guised as a general one for which the required notice was not published. The Court, agreeing with this contention and referring to such as a ‘double classification’, said at 153 Ala. 653, 45 So. 176:

‘The act in question was in no sense a classification of counties, as its manifest object is to create a policy board in cities, and pertains in no way to the regulation of counties. Nor is it a bona fide classification of cities, as it expressly excludes cities of the same class, unless located in a county of a certain size. While there are cities in Alabama other than Birmingham with the necessary population, Birmingham is the only one located in a county with a population of 125,000. The substance of the act is for the sole purpose of regulating conditions in Birmingham, although the act is disguised in the garb of a general law.

While we do not wish to recede from our former decisions on this subject, and do not intend by this opinion to give the backing signal, we do think the subject and occasion appropriate for an application of judicial brakes, else section 110 of the Constitution will be absolutely emasculated. The act in question being local, although under the attempted guise of a general law, is repugnant to section 106 of the Constitution, for the reason that no notice was given of the intention to apply for the enactment of same.’

The similarity between the above and the present situation is readily apparent. The object of Act 546 is to assess the cities within Jefferson County, and pertains in no way to such regulations and assessments in other counties around the state.

For where, as here, a classification within a classification has the effect of simply designating, rather than classifying, cities within Jefferson County and thereby governing the Act's application to such cities, the challenged Act comes within the
The Supreme Court of Florida agreed and invalidated the statute. By contrast, Pinellas County Planning Council v. Smith, 360 So.2d 371 (Fla. 1978), concerned a special act that created a county planning council and authorized it to prepare a countywide land use plan. The Florida Supreme Court distinguished Burns and upheld this act, as follows:

"In this case we do not find a transfer of jurisdiction, nor do we find that the Pinellas County Planning Council will "enact ordinances and . . . obligate the County Commissioners, other county officers, boards and departments, to comply with and enforce such ordinances." The Board of County Commissioners never had the power to adopt a "countywide" land use plan. Article VIII, Section 1(f), Florida Constitution, Chapter 166, Florida Statutes (1973), Section 125.01, Florida Statutes (1973). Furthermore, the planning council, though authorized to develop a countywide plan, is not authorized to implement the plan or initiate changes to it. Any proposed plan of the council must be approved by the Board of County Commissioners. Any modification must be initiated by a local governing unit. The planning council has authority to reject proposed changes or modifications, but only where such changes or modifications would have an "adverse" effect countywide. Finally, no provision of Chapter 73-594 compels the board to approve any plan offered by the council. The discretion left to the commission precludes usurpation. Jackson Lumber Co. v. Walton County, 95 Fla. 632, 116 So. 771 (1928). For the reasons stated above, we find that Chapter 73-594, Laws of Florida, was designed to serve a valid county purpose and only incidentally affects the jurisdiction and duties of the Board of County Commissioners. Chapter 73-594 is therefore constitutional.

5. Is a law that prescribes the compensation for sheriffs in counties of population not more than 27,160 and not less than 27,050 in the last state census a special law or general law? See

NOTES

1. Compare Belcher v. Mckinney, 333 So.2d 136 (Ala. 1976). There a statute created an enhanced salary for chief deputy sheriffs who hold a law degree and are employed in a county with population greater than 600,000 in the last decennial census. The statute was enacted as a general law and was not advertised as a local law as required by the Alabama Constitution for local laws. Only one county in Alabama satisfied the population criterion in 1976. Is the statute valid? In its opinion the Alabama court quoted this statement: "... It is a fact known of all men who have reached their maturity and who have enjoyed the general experience common to mankind that populous centers are the central nurseries and hotbeds of crime. ..." What issue does this relate to?

2. The notice requirement in Section 106 of the Alabama Constitution reads as follows:

No special, private, or local law shall be passed on any subject not enumerated [elsewhere] unless notice of the intention to apply therefor shall have been published.

The corollary provision in the Florida Constitution states:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Article III §10 Florida Constitution.

3. See St. Johns River Water Management District v. Deseret Ranches, 421 So.2d 1067 (Fla. 1982), holding that a law pertaining to a state agency is general, even though the state agency, a water management district in this case, has limited geographic jurisdiction. See also, Anderson v. Board of Public Instruction for Hillsborough County, 136 So.334 (Fla. 1931).

4. Brandon Planning and Zoning Authority v. Burns, 304 So. 2d 121 (Fla. 1974), examined the validity of a special act pertaining only to Hillsborough County. The act created a zoning authority with the following powers:

All actions of the Authority shall have the force and effect of county ordinance and shall be administered and enforced by the appropriate Hillsborough County officers; that the Authority may institute any appropriate proceedings in its own name to prevent violation of its regulations; that Hillsborough County Planning Commission shall serve in an advisory capacity to the Authority; that the expenditure of public funds by the Hillsborough County Commission for the Authority and any of its functions is a valid county purpose; and that ... the general county zoning law, if in conflict, is inapplicable to the 'Brandon area.'

Hillsborough County commissioners challenged the law on the ground that it violated the following provision of the Florida Constitution:

Article III, Section 11(a)(1):

a. There shall be no special law or general law of local application pertaining to:

1. Election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;.....
Stripling v. Thomas, 132 So. 824 (Fla. 1931). What about a law that prescribes the duties of county commissioners in counties of population not less than 143,000 and not more than 154,000 in the most recent federal census? See Knight v. Board of Public Instruction for Hillsborough County, 102 Fla. 922 (1931).

RICHIEY v. TOWN OF INDIAN RIVER SHORES
337 So.2d 410 (Fla. 4th DCA 1976); (DCA 1976) affirmed, 348 So. 2d 1 (Fla. 1977)

PER CURIAM.

We have for review a final judgment declaring, among other things, that the qualifications for registering as a municipal elector set forth in Chapter 29163, Laws of Florida, 1953, (the Charter of the Town of Indian River Shores) were not affected by the portion of Chapter 73--155, Laws of Florida (1973), that made mandatory the adoption of the single permanent registration system. In pertinent part Chapter 29163 provides:

'Section 1. Registration: There shall be a registration book to register all qualified electors of the municipality. The Town Council shall prescribe the form thereof and the oath to be administered. Registration books shall be open for registration of voters or electors not less than thirty (30) days before each and every municipal election.

'Section 2. Qualification of Electors: Every person of the age of twenty-one years or over, . . . and who has an immediate beneficial ownership, interest, legal or equitable in the title to a fee simple estate in land located within the limits of the said town for not less than six months, or shall have resided within the limits of the said town for not less than six months prior to the date of registration for election, shall be deemed a qualified elector to vote in all elections pertaining to municipal affairs of the Town of Indian River Shores, excepting only Bond Elections. Qualification of electors at Bond Elections held by the municipality shall be the same as provided by the general law of the State of Florida for elections where only freeholders are qualified to vote. The term 'immediate beneficial ownership' shall be construed to include both a husband and wife where title to real estate is held in the name of the husband and wife. Provided, however, that the following classes of persons shall not be entitled to vote: Persons who are insane or idiotic, or who may have been convicted of any felony by any Court of Record; Persons who may have been convicted of bribery, or larceny, or perjury."

Article VI s 2, Chapter 29163.

In pertinent part, Chapter 73--155, provides:

'Section 1. Section 98.041, Florida Statutes, is amended to read:

98.041 Permanent single registration system established; effective date.--

A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties And municipalities. This system shall be put into use by all municipalities prior to January 1, 1974 and shall be in lieu of any other system of municipal registration. Electors shall be registered in pursuance of this system by the supervisor or by precinct registration officers, and electors registered shall not thereafter be required to register or reregister except as provided by law.

.....

Appellees filed suit for declaratory decree seeking to determine 1) who are qualified to register with appellant, the Defendant, ROSEMARY RICHEY, Supervisor of Elections of Indian River County, Florida, as qualified electors to vote in all elections in the Town of Indian River Shores and to be qualified to hold the office of member of the Town Council thereof and 2) that Section 2 of Article VI of Chapter 29163, Laws of Florida . . . is the law relating to the qualifications of electors to vote in all elections in said Town and to hold office as a member of the Town Council of said Town. The complaint prayed for an order directing appellant 'to register and qualify as qualified electors to vote in all elections in the Town of Indian River Shores all persons meeting the qualifications of such electors as set forth in Section 2 of Article VI of Chapter 29163, Laws of Florida.'

The case was presented upon the pleadings and argument of counsel without the adduction of any testimony. The trial judge entered a comprehensive final judgment in which he found, among other things that: (1) Section 2 of Article VI of Chapter 29163, Laws of Florida, relating to the qualifications of electors is a valid special act and was not repealed by Chapter 73--155, Laws of Florida; (2) it is the duty of appellant to carry out and obey the mandate of said law; (3) appellee Alex MacWilliam, Jr., is qualified to hold office in the Town of Indian River Shores. The judgment then directed appellant to 'accept as qualified to vote in all municipal elections in the Town of Indian River Shores all persons heretofore registered under the provisions of the Town Charter, and shall provide for the registration . . . . of any person who seeks to register as a qualified elector in the Town of Indian River Shores who possesses the qualifications set forth in Sections 97.041(1), 98.091(3) and 166.032, Florida Statutes, or in Section 2, Article VI of Chapter 29163, Laws of Florida . . . .'

Refined to its simplest form the primary question involved here is, does the Chapter 73--155 amendment of Section 98.041, Florida Statutes, preclude individuals from registering to vote in municipal elections of the Town of Indian River Shores if those individuals are not qualified to register with the County Supervisor of Elections so as to become qualified State electors in accordance with Section 98.041 as amended?

Chapter 73--155, a general act, did not expressly repeal the provisions of the Charter of Indian River Shores, a special act, insofar as qualification of electors is concerned. So the answer to the foregoing question depends upon a determination of whether or not the general act repealed or superseded the relevant portions of the special act by implication.
As the trial judge points out in the final judgment, repeal of a statute by implication is not favored. As the Supreme Court stated in Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194, 196, 165 A.L.R. 967 (1946):

'It is an elementary proposition that amendments by implication are not favored and will not be upheld in doubtful cases. Before the courts may declare that one statute amends or repeals another by implication it must appear that the statute later in point of time was intended as a revision of the subject matter of the former, or that there is such a positive and irreconcilable repugnancy between the law as to indicate clearly that the later statute was intended to prescribe the only rule which should govern the case provided for, and that there is no field in which the provisions of the statute first in point of time can operate lawfully without conflict.'

Thus, 'if courts can by any fair, strict, or liberal construction, find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation upon the subject, it is their duty to do so.' Curry v. Lehman, 55 Fla. 847, 47 So. 18, 21 (1908).

But try as we might to find compatibility between Sections 1 and 2 of Article VI of the Town Charter in question and Section 1 of Chapter 73--155, we are unable to do so. Consequently we conclude that the two legislative enactments are repugnant, a conclusion which impels us to hold that the legislature intended Section 1 of Chapter 73--155 to prevail, thus repealing by implication Sections 1 and 2 of Article VI of Chapter 29163, Laws of Florida.

Reviewing the repugnant aspects of the two enactments we find Section 1, Article VI of the Special Act provides for a municipal registration book, the forms to be furnished, the oath to be taken, and the time periods for the book to be open. On the other hand the title to Chapter 73--155 states, among other things, that the act relates -

'to municipal elections; amending s 98.041, Florida Statutes, to provide a single permanent registration system for all elections held within a county, Including municipal elections; amending s 98.091, Florida Statutes, to provide procedures for municipal uses of county election books; providing that certain electors are qualified to vote in municipal elections . . .' (Emphasis added.)

Section 1 then amends Section 98.041, Florida Statutes, by making the permanent registration system mandatory for municipalities. Therefore it was optional. It provides that this registration system 'shall be in lieu of any other system of municipal registration.' (Emphasis added.) It seems clear that the permanent registration system shall be in lieu of the registration system provided in the Charter of Indian River Shores.

Appellees concede that Chapter 73--155 repeals by implication Section 1 of Article VI of Chapter 29163. But they contend that Chapter 73--155 has no such impact upon Section 2 of Article VI of Chapter 29163, which specifies the qualification for voting in the Town. We disagree.

The town charter provides that any person 21 years of age who has owned the immediate beneficial ownership of a fee simple estate in land in the town for six months or any person who has resided within the town limits for not less than six months prior to registration shall be deemed a qualified elector to vote in town elections except bond elections. However, Section 98.041 makes registration in the single permanent registration system a requirement for voting in all elections. In order to qualify to register in the permanent registration system one must be a permanent resident of the county. Section 97.041(1), Florida Statutes 1974. When you add to the foregoing the fact that this single registration system is in lieu of all other registration systems, it seems to follow that a nonresident of the Town of Indian River Shores cannot vote in a town election regardless of his ownership of property therein because he cannot become a qualified elector.

* * * *

Since the question involved herein is one of great public interest throughout this state, we certify the following question to the Supreme Court of Florida:

Does Section 1 of Chapter 73--155, Laws of Florida 1973, implicitly repeal Article VI, s 2, of Chapter 29163, Laws of Florida 1953, so that only residents of a municipality may vote in a municipal election?

Reversed and remanded.

NOTES

1. On appeal, the Supreme Court affirmed the foregoing opinion by answering the certified question in the affirmative. The Supreme Court concluded: "The Legislature intended for the general law to repeal the Charter provision. Only residents may register to vote." See, 348 So.2d 1, at 2 (Fla. 1977). Justice Drew dissented, as follows:

"The power of the Legislature over municipalities, under the Constitution of 1885 and now, is plenary. That the Legislature has the power to prescribe the qualifications for voters in municipalities is beyond question. "The optional permanent registration of voters first provided for in 1953 and made mandatory in 1973 on all municipalities is basically a procedural method of registration repeatedly referred to in the act itself as 'a system.' It has nothing to do with "qualifications," a substantive matter. I can discern no reason why a compliance with the provisions of the town charter will in any way present any insurmountable problem to the supervisor of registrations, nor any reason why both acts cannot be fully applied. None have been pointed out to me in either the District Court's opinion or the majority opinion here. There is only the assertion that there is an "irreconcilable conflict." If the Legislature wants to change
the qualifications of voters in Indian River Shores it can readily do so. We should not do it for them."

Which is the better view? See also City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983).

2. Compare Phantom of Clearwater, Inc. v. Pinellas County, 894 So.2d 1011(Fla. 2nd DCA 2005), approved by Phantom of Brevard, Inc. v. Brevard County, 3 So.3d 309, 315 (Fla. 2008), which denied a claim that a charter county fireworks regulatory ordinance was preempted by fireworks regulations prescribed by general law:

Counties in Florida are given broad authority to enact ordinances. See Art. VIII, § 1(f), (g), Fla. Const.; § 125.01(3), Fla. Stat. (2003); St. Johns County v. N.E. Fla. Builders Ass'n, 583 So.2d 635, 642 (Fla.1991). The legislature can preempt that authority and may do so either expressly or by implication. See Santa Rosa County v. Gulf Power Co., 635 So.2d 96 (Fla. 1st DCA 1994). Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.

Express preemption of a field by the legislature must be accomplished by clear language stating that intent. Id. at 101 (citing Hillsborough County v. Fla. Rest. Ass'n, 603 So.2d 587, 590 (Fla. 2d DCA 1992)). We conclude that section 791.001 does not contain language creating an express preemption. This statute does not contain language similar to the phrase, “It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter”-language that has been held to establish a level of preemption in the field of telecommunication companies. ... It does not come close to the language of chapter 316, which creates a “Florida Uniform Traffic Control Law,” and specifies “the area within which municipalities may control certain traffic movement or parking in their respective jurisdiction.” ...... If the legislature intends to preempt a field, it must state that intent more expressly than the language contained in section 791.001. See, e.g., § 24.122(3), Fla. Stat. (2003) (“All matters relating to the operation of the state lottery are preempted to the state, and no county, municipality, or other political subdivision of the state shall enact any ordinance relating to the operation of the lottery authorized by this act.”); § 320.8249(11), Fla. Stat. (2003) (“The regulation of manufactured home installers or mobile home installers is preempted to the state, and no person may perform mobile home installation unless licensed pursuant to this section, regardless of whether that person holds a local license.”).

Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive. Courts are understandably reluctant to preclude a local elected governing body from exercising its local powers.

As well explained by Judge Wolf in Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So.2d 826, 831 (Fla. 1st DCA 1996), if the legislature can easily create express preemption by including clear language in a statute, there is little justification for the courts to insert such words into a statute. In the absence of express preemption, normally a determination based upon any direct conflict between the statute and a local law, as discussed in the next section, is adequate to solve a power struggle between existing statutes and newly created ordinances.

Accordingly, courts imply preemption only when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.” Id.... When courts create preemption by implication, the preempted field is usually a narrowly defined field, “limited to the specific area where the Legislature has expressed their will to be the sole regulator.” Id. ...

The legislative scheme created by chapter 791 is not pervasive, nor are the public policies concerning the use or sale of fireworks so strongly supportive of a need for statewide uniformity that no power is left to the counties to regulate this topic so long as the local laws do not conflict with chapter 791. We first observe that chapter 791 is a relatively short chapter. The entire text of chapter 791 encompasses three pages in the publication of the Florida Statutes. It does not compare in length or substance to the uniform traffic laws or the statutory regulation of telecommunications. It expressly delegates enforcement to local government and contemplates that counties will regulate outdoor displays of fireworks. It authorizes boards of county commissioners to set and require appropriate surety bonds for those people who are licensed by the county in connection with fireworks. It is difficult for a court to imply preemption of the entire field of “sale of fireworks” when the legislature affirmatively informs local government to act.

There undoubtedly is an argument that chapter 791 impliedly preempts narrow topics within the broader topic of fireworks. For example, a strong argument could be made that the legislature intended the definition of fireworks in section 791.01(4) to be a preemptive definition. That issue is not before this court in this appeal. Rather, we are asked to address whether chapter 791 is so pervasive as to the field of the sale of fireworks that Pinellas County is deprived of all local power in this regard. Under this statutory scheme, which primarily (1) defines the term “firework,” (2) requires the registration of entities that manufacture or sell them, and (3) generally prohibits their use or sale subject to specific exceptions, we find no pervasive scheme of regulation and no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict with the provisions of chapter
The court did invalidate a discrete provision of the ordinance on the basis of conflict with a discrete provision in the statute.

   Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden. In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition.

4. General laws do not necessarily repeal earlier inconsistent special laws. As stated in *State v. Sanders*, 85 So. 333, 335 (Fla.1920):
   In other words, if a special or local law and a later general law relating to the powers of a municipality are merely inconsistent in their respective provisions, and the general law does not in some express terms repeal or supersede the local law, the latter will prevail within its proper sphere of operation, unless an intent to repeal or supersede the local law clearly appears in the general law.
LOCAL GOVERNMENT
COURSE MATERIAL

FALL 2016

JOSEPH W. LITTLE
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**Office Hours:** M-F., 4:00pm to 5:00p.m, suite 287

**Final Examination:** ??????, Room TBA

**HOW THINGS ARE DONE**

1. **Attendance:** Regular and punctual attendance is required. No student who has more than 7
absences will be eligible to take the final examination. No student who has a combined total of more than 9 absences plus tardies shall not be eligible to take the final examination. A student is tardy if not seated in the assigned seat at the time the student’s name is called. THE STUDENT IS RESPONSIBLE TO ASSURE THAT A TARDY IS NOT RECORDED AS AN ABSENCE. THE STUDENT IS RESPONSIBLE TO KEEP ACCOUNT OF THE ATTENDANCE RECORD AND IS NOT ENTITLED TO ANY NOTICE OR WARNING THAT LIMITS ARE ABOUT TO BE EXCEEDED.

2. Grading: Performance on the final examination is ordinarily the only basis for the assignment of grades.

3. Decorum:
   a. No eating, smoking or drinking is permitted in the classroom during class. Any student who breaches this standard will be directed to refrain and to remove offending substances from the classroom.
   b. Students are to be clean and modestly attired and SHALL NOT WEAR HATS DURING CLASS.
   c. Decorum consistent with the foregoing standards and with the “Customary and Traditional Conduct and Decorum in the United States District Court” (except for the requirement to stand) and the “Oath of Admission” to the Florida Bar is required. Abidance by these standards is a condition of satisfactory completion of the course. Failure to conform may result in a lowered grade.

4. Laptops: YOU MAY NOT USE LAPTOP COMPUTERS, ELECTRONIC TABLETS, OR OTHER ELECTRONIC DEVICES IN CLASS.

5. You must turn OFF cell all phones, smart phones, texting devices, and pagers and all similar devices BEFORE ENTERING the class.

6. You will be permitted to write your examination on your computer.
(A) The purpose of this addendum is to state for the guidance of those heretofore unfamiliar with the traditions of this United States district court certain basic principles concerning courtroom conduct and decorum. These standards are minimal and not all-inclusive. They are intended to emphasize and supplement, not supplant or limit, the ethical obligations of counsel under the Code of Professional Responsibility or the time honored customs of experienced trial counsel.

(B) When appearing in this United States district court, all counsel and all persons at counsel table should conduct themselves in the following customary and traditional manner:

1. Stand as court is opened, recessed or adjourned.
2. Stand when the jury enters or retires from the courtroom.
3. Stand when addressing, or being addressed by the court.
4. Address all remarks to the court, not the opposing counsel.
5. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
6. Refer to all persons, including witnesses, other counsel and the parties, by their surnames and not by their first or given names.
7. Counsel should request permission before approaching the bench; and any document counsel wishes to have the court examine should be handed to the clerk.
8. Unless opposing counsel has previously been shown exhibits, any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.
9. In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court.
10. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
11. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.
12. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue, shall not read or purport to read from deposition or trial manuscripts, and shall not suggest to the jury, directly or indirectly that it may or should request transcripts or the reading of any testimony by the reporter.
13. Counsel shall admonish and discourage all persons at counsel table from making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time.
14. Smoking, eating, food and drink are prohibited in the courtroom at any time.
Recognizing the importance of respectful and civil conduct in the practice of law, we therefore revise the Oath of Admission to The Florida Bar as set forth below. New language is indicated by underscoring.

OATH OF ADMISSION

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

(Italics added; clauses added 2011)

HEART OF LEGAL ETHICS - CANDOR TO THE COURT

The heart of all legal ethics is in the lawyer's duty of candor to a tribunal. [FN5 See R. Reg. Fla. Bar 4-3.3(3) (“A lawyer shall not knowingly ... fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel....”).] It is an exacting duty with an imposing burden. Unlike many provisions of the disciplinary rules, which rely on the court or an opposing lawyer for their invocation, the duty of candor depends on
self-regulation; every lawyer must spontaneously disclose contrary authority to a tribunal. It is counter-intuitive, cutting against the lawyer's principal role as an advocate. It also operates most inconveniently—that is, when victory seems within grasp. But it is precisely because of these things that the duty is so necessary.

Although we have an adversary system of justice, it is one founded on the rule of law. Simply because our system is adversarial does not make it unconcerned with outcomes. Might does not make right, at least in the courtroom. We do not accept the notion that outcomes should depend on who is the most powerful, most eloquent, best dressed, most devious and most persistent with the last word—or, for that matter, who is able to misdirect a judge. American civil justice is so designed that established rules of law will be applied and enforced to insure that justice be rightly done. Such a system is surely defective, however, if it is acceptable for lawyers to “suggest” a trial judge into applying a “rule” or a “discretion” that they know—or should know—is contrary to existing law. Even if it hurts the strategy and tactics of a party's counsel, even if it prepares the way for an adverse ruling, even though the adversary has himself failed to cite the correct law, the lawyer is required to disclose law favoring his adversary when the court is obviously under an erroneous impression as to the law's requirements.


Too many members of the Bar practice with complete ignorance of or disdain for the basic principle that a lawyer's duty to his calling and to the administration of justice far outweighs—and must outweigh—even his obligation to his client, and, surely what we suspect really motivates many such inappropriate actions, his interest in his personal aggrandizement.

*Rapid Credit Corp.*, 566 So.2d 810, 812 n. 1 (Schwartz, C.J., specially concurring).
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CHAPTER XII

Constitutional and Statutory Supplement
[OMITTED]

CHAPTER I

RELATIONSHIP BETWEEN STATE & LOCAL GOVERNMENTS
A. STATE-COUNTY (TRADITIONAL)

AMOS v. MATHEWS  
126 So. 308, 99 Fla. 1  
(Florida en banc 1930)

[The state legislature enacted certain tax statutes imposing taxes on the sale of gasoline. The proceeds from taxes in the amount of two cents per gallon, known as the second and third gas taxes, were allocated for direct payment to the county governments in the counties where collected. The statute prescribed that these revenues be used in part to retire certain bonds issued by the counties to raise funds to build roads.]

A citizen and taxpayer (Mathews) brought an action against the state controller (Amos) to enjoin enforcement of the statutes on the grounds that they were unconstitutional.

A separate *quo warranto* action was brought against the governor and other state officials challenging their authority to exercise powers granted in the statutes.

(The case considered other actions and issues not addressed in these excerpts.)

A major question raised by the suit was whether these taxes were state taxes or local taxes. The court held that they were *local* taxes, notwithstanding the fact they were levies by the legislature, because the proceeds were to be used for local purposes. This conclusion was required to sustain the taxes because of a constitutional provision that prevented the state from imposing *state* taxes to pay local obligations.

[The court then turned to the general question of the power to tax:]

In approaching the question of the power of the Legislature to levy taxes, it should further be borne in mind that our State Constitution is not a grant of power to the Legislature, but is a limitation voluntarily imposed by the people themselves upon their inherent lawmaking power, exercised under our Constitution through the Legislature, which power would otherwise be absolute save as it transcended the powers granted by the state to the federal government. *Stone v. State*, 71 Fla. 517, 71 So. 6634; *Chency v. Jones*, 14 Fla. 587. The state therefor possesses, as an attribute of sovereignty, the inherent power to impose all taxes not expressly or by clear implication inhibited by State or Federal Constitutions. *Amos v. Gunn*, 84 Fla. 285, 94 So. 615; *...Where the Constitution expressly prescribes the manner of doing a thing, it impliedly forbids its being done in a substantially different manner, even though the Constitution does not in express terms prohibit the doing of the thing in such other manner.  *Weinberger v. Board of Public Instruction*, 93 Fla. 470, 112 So. 256.]

“The true spirit of constitutional interpretation *...* is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose. *...* Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation.” *Fairbank v. U.S.* 181, U.S. 283, 21 S. Ct. 648, 651, 45 L. Ed. 862.

[The court then turned to more specific questions:]

With respect to the contention that, if these taxes are levied as county taxes, the direct and compulsory levy thereof by the state impairs the principle of “local self-government,” let us now consider and ascertain the intent and purpose of the people in that respect as evidenced by the adoption of the Constitution.

After dividing the government of the state into three departments, legislative, executive, and judicial, the Constitution, in articles 3 and 4 thereof, creates certain offices, namely Senators and members of the House of Representatives, a Governor and his Cabinet, to the incumbents of which offices, together with governmental affairs of the legislative and executive departments of the state. These officers, together with the judicial department provided by article 5, form the state government. The authority of these officers extends territorially throughout the state, except as to certain of the judicial officers. See Opinion of Justices, 13 Fla. 687.

Having thus constituted the state government, the Constitution in article 8 directs its attention to local county and municipal affairs. In section 1 of article 8, the Constitution ordains that “the State shall be divided into political divisions to be called counties,” and section 2 of that article provides that “the several counties as they now exist are hereby recognized as the legal political divisions of the state.” (A detailed description of the constitutional structure of county government is omitted.)

It is fundamentally true that all local *powers* must have their origin in a grant by the State which is the fountain and source of authority. Nevertheless, those provisions of the Constitution just above quoted, and other cognate provisions, clearly imply, and it is therefore the spirit of the Constitution, that the performance of State functions shall be confided to State officers; the performance of county functions of purely local concern shall be confided to county officers. Save as is otherwise clearly contemplated by the Constitution, there can be no compromise with that principle, the origin of which is more ancient than the Constitution itself. In England, a similar subdivision of the realm for the performance of functions exclusively local in character existed from the earliest recorded times, the English counties possessing recognized powers in matters of...
purely local concern. See Taylor’s Origin and History of the English Constitution, Vol I, p. 41, 42; Vol. II, p. 190. Even when our Constitution of 1885 was adopted, existing facilities for transportation and communication, coupled with the geographic location of many of our counties, were such that a journey to the State capital by the resident legislative representatives of such counties often involved a tedious and devious journey of several weeks. Such isolation from the seat of the State government rendered indispensable the continued performance of purely local functions by local officers whose delegated powers were prescribed by Constitution and statute. So settled and of such ancient origin was that plan for the administration of affairs of purely local concern that it did not become the subject of an express provision in the Constitution, nor was such necessary, when it so plainly appears from the implications of the express language that a continuation and preservation of the principle as an incident to our form of government was so clearly assumed. Sec 24 of our Declaration of Rights provides; “This enunciation of rights shall not be construed to impair or deny others retained by the people.” That certain rights are retained by the people is therefore clearly implied.

This declaration and others, says Mr. Justice Brown, speaking for this Court in State v. City of Stuart, 120 So. R. 337, “even to some extent the exercise of the tremendous, but inherent and well established, powers of taxation and eminent domain.”

Under Sections 5 and 6 of Article 8, the legislature possesses plenary power over the “powers, duties and compensation” of county officers. Thus it was held in State v. Fearnside, 87 Fla. 349, 100 So. R. 256, that “there is nothing in our Constitution that prohibits the legislature from enacting a statute taking away from the boards of county commissioners, not only a part, but the whole of their powers of supervision and control of public roads and bridges, and lodging such powers elsewhere, since the control of all general public highways is vested in the State absolutely without any constitutional limitation or restriction.” ... And it is appropriate here to refer to the fact that county tax collectors and other local officers are utilized by the State in the local collection of State taxes, which in a sense might be said to be the performance by these officers of a purely ministerial and non-discretionary State function, but that custom has received the sanction of long usage, and the performance by the local officers of these duties in no wise interferes with the discretion vested in these officers in the performance of their local duties. Conversely, it has long been the practice for State officers to collect automobile and express company license taxes and to remit to the several counties a portion thereof as county taxes as provided by statute. These functions performed by the State officers are additional duties and do not interfere with their constitutional duties as State officers. But the existence of local county officers as a part of our form of government, and for the performance of purely local functions, is clearly recognized by the Constitution, although the legislature possesses powers of the broadest possible nature consistent with the constitutional existence of those officers, in determining the extent of their local powers and duties. Therefore, while the legislature may shape local institutions and regulate the frame work of local government with reference to local powers, it can not abrogate these constitutionally recognized institutions and take to itself the complete and direct exercise of local functions in matters of purely local concerns.

It is contended in this case that a county is a mere arm or agency of the State-that it is merely “the State acting locally.” The foregoing resume of our constitutional system negatives this theory so far as the administration of purely local affairs is concerned. It is true that a county is an agency of the State, having no inherent power, but deriving its powers wholly from the sovereign State. It is also true, to paraphrase the language of one of the briefs herein, that the principle of local self-government does not constitute each county “an independent sovereignty, managed by a board having legal rights.” Nevertheless, their existence as local entities for local purposes as well as their existence as legal political divisions of the State is recognized by the Constitution. The same power which created the legislature, namely, the sovereign people, recognized the counties.

While a county in the performance of certain functions is an agency or arm of the State, it is also something more than that. If a county were no more than a mere agent of the State,—the State acting locally,—bonds issued by a county would in effect constitute State bonds, and therefore by virtue of Sec. 6 of Art. 9 of the Constitution would be void ab initio. While the county is an agency of the State, it is also, under our Constitution, to some extent at least, an autonomous, self-governing political entity with respect to exclusively local affairs, in the performance of which functions it is distinguished from its creator, the State, and for its acts and obligations when acting in purely local matters the State is not responsible. This, as we have seen, must be conceded in order to sustain the validity of county bonds. See Jackson Lbr. Co. v. Walton County, 116 So. R. 771; ..., the principles in which cases we approve generally, though in view of the plenary power of the legislature over cities, we declined in State v. Johns, 109 So. R. 228, to apply these principles to defeat a legislative appointment of certain city officers. Cooley, Taxation (4th Ed.) ...

Article 9 of the Constitution relates to taxation and finance. Sec. 2 thereof ordains that “the legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the principal and interest of the existing indebtedness of the State.” Having thus prescribed the means for defraying
expenses of the State, attention is given to the needs of local governmental subdivisions.

Of course a county has no inherent power to impose taxes. The power, if it exists, must be derived from the State. Sec. 5 of Art. 9 provides that “the legislature shall ‘authorize’ the several counties and incorporated cities and towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes ** *. The legislature may also provide for levying a special capitation tax ‘and a tax on licenses.’ But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes.” Thus the means is provided for raising revenue for local county and municipal purposes in the performance of local functions.

It is clear, therefore, that our Constitution contemplates that an exclusively State purpose must be accomplished by State taxation; an exclusively county purpose, in which the State has no sovereign interest, by county taxation. ** In State v. Dickson, 44 Fla. 623, 33 So. R. 514, this Court held that the legislature could not compel the levy of an ad valorem county tax for an exclusively State purpose. ** In Jordan v. Duval County, 68 Fla. 48, 66 So. R. 298, the issue of county bonds and the levy of a county ad valorem tax to erect an armory was approved by this Court because the legislative act “authorized but did not command” the issuance of the bonds, and in the act the legislature reasonably recognized in the circumstances of the erection of that armory a dual State and county purpose. ** In A. C. L. v. Lakeland, on petition for rehearing, 115 So. R. 672, 686, it was said; “A particular district or locality cannot lawfully be taxed for the cost of an undertaking which results only in a general benefit.”

But a single project in some instances may constitute a dual purpose and therefore may justify a levy of taxes appropriate to the purpose. ** A local tax may be imposed by competent authority where the project is essentially a local one, though there may be some incidental and indirect general benefit. ** And when a project is to a large extent of general benefit, but also especially and peculiarly benefits a local community, the local community may be taxed for a just proportion of the cost appropriate to such special or peculiar benefits. Cooley, Taxation (4th Ed.), Sec. 315; State v. Williams, 35 Atl. R. 24. It has also been held by high authority that in such a case, and when the circumstances as to the coordinate local benefit justifies it, the local community may be taxed for the whole cost. **

If, however, the Legislature undertook to impose a tax upon the people of one county alone to pay the salary of the State Officers created by Articles 3, 4 and 5 of the Constitution, or if the State undertook to tax a single county alone for the erection of a State building such as a State Capitol or State Prison, or State Insane Asylum, there would be no hesitation in saying there was no such power in the Legislature because such a tax would at least violate the constitutional guaranty of equal protection of the law. See Ryerson v. Utey, 16 Mich. 269. Likewise, if a tax were imposed upon the people of the whole State to pay the salary of local officers of a given county, or to erect a building to serve a public purpose of a purely local nature, and wholly unrelated to any governmental purpose or function of the State, as for instance a county poor farm or a stockade for the confinement of county prisoners, or a county hospital authorized by statute as a county purpose no one would seriously deny that the collection of such a tax would flout the clear intendment, if not the letter, of our Constitution. **

There is no difference in principle between a tax of the nature just mentioned and a tax imposed as a State tax throughout the entire State to pay the bonded obligations of the several counties incurred in the building of roads and bridges, when the building of such roads and bridges has been previously undertaken and consummated solely as a county (or district) project, and the status of such bonded obligations previously fixed as exclusively county (or district) obligations. This is true even though the building of public roads may constitute a dual State and county function in appropriate instances, and even though the roads and bridges so constructed as county or district projects may also be beneficial to the State. On the question of the so-called “flexibility” of our Constitution to meet the changes wrought by modern conditions, it is pertinent to note here the views of the Supreme Court of the United States expressed in Euclid v. Ambler Invest. Co., 272 U.S. 365, 71 L. Ed. 303. It was there said with reference to the Federal Constitution: “While the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. ** Regulations, the wisdom, necessity and validity of which as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.” To that wholesome doctrine we subscribe. But neither the present necessity for a unified system of “through” roads to accommodate the demands of modern travel by automobile, nor a desire to render State aid to local subdivisions in the payment of bonded obligations incurred by them in constructing local roads already completed as local projects but which the State is willing to now accept as beneficial to the State wide system of roads, affords any justification for centralizing the powers of local taxation in a manner not contemplated by the Constitution, nor for ignoring constitutional barriers separating State and local government. The necessity for such a system of highways may be conceded, and additional revenue for such local subdivisions may be imperative, but those objects must be accomplished by the means **
contemplated by our Constitution and by methods consistent with the fundamental principles of government thereby ordained. The Constitution can not be made to mean one thing at one time, and another at some subsequent time. State v. Butler, 70 Fla. 102, 69 So. R. 771.

As the second and third gas taxes are county taxes, it next becomes pertinent to consider whether the Legislature may directly levy, or may compel the levy by local officers, of a county tax. By “county tax,” as used throughout this opinion, is meant a tax for an exclusively county purpose in which the State has no sovereign interest or responsibility, and which has no connection with the duties of the county in its relation to the State.

* * *

In Article 8 of the Constitution the people recognized counties as “legal political divisions of the State” and provided for county officers. In Sec. 2 of Art. 9 the Constitution requires the legislature itself to provide revenue sufficient to defray expenses of the State. In Sec. 5 of Art. 9, which pertains to the levy of taxes to meet the expense of local county (and municipal) government the command of the Constitution is that “The legislature shall ‘authorize’ the several counties and incorporated cities or towns in the State to ‘assess and impose’ taxes for county and municipal purposes, and for no other purpose.”

It is urged that in the language of Sec. 5 of Art. 9 that “the legislature shall ‘authorize’ the several counties,” etc., the only limitation implied is that “when the legislature authorizes counties to assess and impose taxes, such authorization shall be limited to an authorization to assess and impose such taxes for county purposes only,” and that it “does not imply a limitation upon the power of the legislature to directly impose” taxes on the counties for local county purposes.

When the language of Sections 2 and 5 of Art. 9 is contrasted, however, and is considered in the light of our institutions of government and in the light of the construction placed upon what is now Sec. 2 of Art. 9 in Cheney v. Jones, supra, it is our judgement that the framers of the Constitution intended to and did withhold from the legislature the power to directly levy, or to compel a county to levy, a local county ad valorem tax for an exclusively local purpose as already defined herein. Local administration of exclusively local affairs, that is, affairs in which the State has no sovereign interest as such, is undoubtedly contemplated by our Constitution. To withhold the coordinate power of local determination as to taxation in matters of exclusively local concern, would leave little of local government. See Cooley, Taxation (4th Ed.), Sec. 416, et seq.; ...

We wish to be clearly understood, however, that the view just expressed with reference to local county taxes is confined to the levy of ad valorem taxes for an exclusively local purpose, that is, a purpose in which the State has no sovereign interest or responsibility and which has no connection with the duties of the county in its relation to the State. To the rule that the legislature has no power to levy or compel a county to levy a county ad valorem tax there are exceptions as well established as the rule itself, some of which it will be well to notice here in order to avoid any misunderstanding of the scope of the rule just stated. Amongst those exceptions are:

(1) When the purpose of the tax is one of both local and general concern, that is, a dual purpose, such as the support of public schools, the protection of public health, safety and morals, and the construction of roads and bridges, such roads and bridges constituting parts of the State system of highways, as to which the State has plenary control, but the “construction” of roads and bridges as parts of the State system of highways is to be distinguished from the payment of county or district obligations the proceeds of which were expended for roads and bridges already constructed as purely local projects.

So this Court has approved an act of the legislature requiring a board of county commissioners to purchase land for the erection of a court house, since, as explained by Mr. Justice Brown in a concurring opinion, “it is of such importance to the State that there be a reasonably adequate court house in each county that it (the building of a court house) is not exclusively a county purpose.” State v. Tyler, 116 So. R. 760, ...

(2) When the purpose of the tax is to require the county to fully and properly perform its duty as “a legal political division of the State,” that is, as an agency in State government. Obviously, the State possesses the power to prevent a condition of local insurgency in government. No local community has the inherent right to decide for itself whether it will or will not bear its legitimate share of State burdens in matters pertaining to general government, and the State could not confer such a right. The Legislature may therefor directly impose a tax, ad valorem or excise, for the sole purpose of enforcing legitimate contribution of several counties to the general expense of the State for State purposes, even when the purpose is exclusive of any element of local purpose.

(3) When the imposition of such a tax is necessary to compel the county to fulfill a lawful obligation resting upon it in consequence of corporate action taken by virtue of authority derived from the sovereign State, as for instance the payment of its bonds.

In each of the foregoing expected cases, (1) to (3), the State has a sovereign interest in the purpose for which the tax is levies. Consequently the purpose is not exclusively a local purpose, and such a tax would not be exclusively a local or county tax. Therefore the State possesses ample sovereign
power in such cases to directly levy such a tax, *ad valorem* or excise, or to compel its levy by local officers. In such cases in which the State also has a sovereign interest, the people to be taxed have no absolute right to a voice in determining whether the tax shall be levied, save as they may be heard through their representatives in the Legislature.

There yet remains to be considered a fourth exception, in the case of excise or license taxes, to the rule inhibiting the direct levy by the State of a county tax.

Having provided in Sec. 2 of Art. 9 for the raising of revenue to meet the expenses of the State, under the language of which Section the Legislature could clearly impose excise or license taxes, as well as *ad valorem* taxes, for a State purpose; and after having provided in Sec. 5 of Art. 9 that the Legislature shall “authorize” the several counties to “assess and impose taxes” for county purposes, which also would embrace both *ad valorem* and excise taxes, there follows almost immediately in the same Section the further provision: “The Legislature may also provide for levying a tax on licenses,” that is, excise taxes. (Italics supplied.) It is significant that the latter provision is found in Sec. 5 of Art. 9 relating to county and municipal taxation, provision having already been made for raising revenue for State purposes, under which excise as well as *ad valorem* taxes could be imposed for State purposes. It is also significant that although the capitation tax, authorized in the same sentence, is required to be applied exclusively to a designated purpose, no purpose of application was specified for license taxes, except of course that it must necessarily be applied to a county purpose if levied as a county tax, because in the levy of *State* taxes the Legislature is confined by Sec. 2 of Art. 9 to State purposes.

We can not assume that the framers of our Constitution used words idly. We must impute some purpose to the language found in Sec. 5 of Art. 9 that “the Legislature may also provide for levying a tax on licenses.” The clause was designed to accomplish some object. It is our judgment that by virtue of the quoted provision found in Sec. 5 of Art. 9 the Constitution contemplates not only that the Legislature may “authorize” the several counties to assess and impose license or excise taxes, but the “Legislature” may “also” provide for levying excise or license taxes. This broad authority not having been confined to the levy of such taxes for State purposes, then in view of the inherent power of the State to levy all taxes not inhibited by State of Federal Constitutions the authority extends to the levy by the Legislature of such taxes for local county purposes. See *Amos v. Gunn*, 84 Fla. 285, 94 So. R. 615.

If that was not the object of the quoted provision we must disregard it, for it would be utterly superfluous, because under Sec. 2 of Art. 9 the Legislature could levy an excise tax for State purposes, and under the first portion of Sec. 5 of Art. 9 the Legislature could “authorize” the levy of such a tax by local officers for local purposes. Unless, then, the purpose of the quoted phrase was to recognize the authority of the Legislature to “also” impose excise taxes for local county purposes, what was its object? The practice has been followed since 1913 with reference to occupational license taxes, see Chap. 6421, Acts of 1913, Sec. 804 R. G. S. 1920; Sec. 1051, C. G. L. 1927. See also Chap. 6881 and 6883, Acts of 1915, levying license taxes on the operation of automobiles, the first being a county tax, the second a State tax.

The view here expressed as to the purpose of the phrase under consideration, as well as the fact that it was intended to embrace all license or excise taxes and not merely occupational license taxes, is sustained by the history of the phrase in the Constitutional Convention of 1885, which will be found in the proceeding of that Convention, on pages 186, 269, 273 to 280, and 350.

The Legislature may “provide” for levying such excise taxes either by a direct imposition thereof or by delegated authority to local officers to levy such tax for a local purpose. With reference to excise taxes, the choice of method rests with the Legislature. See *Canova v. Williams*, 41 Fla. 509, 27 So. R. 30, holding that the Legislature to directly impose such a tax for county purposes is expressly recognized by the quoted provision of Sec. 5 of Art. 9, we conclude that the levy of said second and third gas taxes as county taxes is valid, and violates no principle of local self government contemplated by the Constitution. The administration of such taxes by the Board of Administration provided by Senate Bill One, will be considered later.

Second, as to the apportionment of the second and third gas taxes amongst the several counties:

We have demonstrated that these taxes are imposed as county, not State, taxes, and we so hold.

There is no constitutional requirement that taxes levies as State taxes, that is, for general “expense of the State,” shall be expended or disbursed in the particular community where collected. The Legislature has wide, if not plenary discretion in the apportionment and application of the proceeds of the State tax, except as restrained by the Constitution. ...State taxes imposed as such and collected from all the counties may properly be expended in the construction of a State road located wholly in one county, or in only a few counties, or upon a State building located wholly in one county.

**NOTES**

1. These authorities provide a fix as to the historical status of counties:

*Davidson County v. Kirkpatrick*, 266 S.W. 107, 109 (Tenn.
provisions before filing the complaint, the statute of limitations for wrongful death actions applies and that the action should be dismissed with prejudice because there was no compliance with the notice requirements of section 768.28(6) and that therefore no suit could properly be filed within the statutory limitations period.

The respondent-plaintiff argues that if section 768.28 is applicable to sheriffs, then the four-year statute of limitations contained in section 768.28(12) is applicable and this cause may consequently proceed.

We do not fully agree with either party or the district court. It is our view that the clear intent and purpose of section 768.28 was to provide a broad waiver of sovereign immunity and resulting coverage of governmental officers and employees to the extent of the dollar limits set forth in the statute. District School Board v. Talmadge, 381 So.2d 698 (Fla.1980); Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla.1979).

In Talmadge we addressed the broad extent to which the state waived its sovereign immunity and the conditions and limits upon its derivative liability for the torts of its officers, employees, or agents. We further set forth the alternative ways to bring an action under the statute.

Concerning the applicability of section 768.28 to sheriffs, we find that a sheriff is a "county official," and, as such, is an integral part of the "county" as a "political subdivision" and that section 768.28 is applicable to sheriffs as a separate

When appropriate, compare with the purposes of modern Florida Counties.

BEARD v. HAMBRICK
396 So.2d 708 (Fla. 1981)

OVERTON, Justice.

This is a petition for writ of certiorari to review a decision of Ronald Hambrick, filed a complaint on May 20, 1977, seeking damages from the sheriff, Malcolm Beard, and two of his deputies for alleged negligent omissions which caused Ronald Hambrick's death on May 21, 1975. The action was brought under Florida's wrongful death act and filed within the two-year statute of limitations period prescribed in section 95.11(4)(c), Florida Statutes (Supp.1974). However, there was no compliance with the advance notice requirement of section 768.28(6) prior to the filing of the action. One month after filing the lawsuit, the respondent attempted to comply with these notice provisions and gave notice to Sheriff Malcolm Beard and to the Commissioner of Insurance. Petitioners, as defendants, filed a motion to dismiss, alleging that because the respondent failed to comply with the notice provisions before filing the complaint, the statute of limitations of two years had run. The trial court, after stating the facts agreed to by the parties, entered an order of dismissal with prejudice. The district court reversed the trial court and found that: (1) the cause of action was not barred by the statute of limitations, and (2) section 768.28 applies only to certain governmental units and a sheriff's office is not included within this statutory provision.

The petitioner-sheriff contends that section 768.28 is applicable to a sheriff and that his liability for actions of his deputies set forth in section 30.07, Florida Statutes (1973),6 was eliminated by section 768.28, Florida Statutes (Supp.1974). He further argues that any recovery must be exclusively in accordance with the terms of section 768.28. Petitioner- sheriff also asserts that the two-year statute of limitations for wrongful death actions applies and that the action should be dismissed with prejudice because there was no compliance with the notice requirements of section 768.28(6) and that therefore no suit could properly be filed within the statutory limitations period.

We do not fully agree with either party or the district court. It is our view that the clear intent and purpose of section 768.28 was to provide a broad waiver of sovereign immunity and resulting coverage of governmental officers and employees to the extent of the dollar limits set forth in the statute. District School Board v. Talmadge, 381 So.2d 698 (Fla.1980); Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla.1979).

In Talmadge we addressed the broad extent to which the state waived its sovereign immunity and the conditions and limits upon its derivative liability for the torts of its officers, employees, or agents. We further set forth the alternative ways to bring an action under the statute.

Concerning the applicability of section 768.28 to sheriffs, we find that a sheriff is a "county official," and, as such, is an integral part of the "county" as a "political subdivision" and that section 768.28 is applicable to sheriffs as a separate

6Section 30.07, Florida Statutes (1973),
Provides:
Deputy sheriffs-Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.
entity or agency of a political subdivision. In our opinion, a sheriff and his deputies were intended by the legislature to be covered under the provisions of section 768.28. The First District Court of Appeal assumed a sheriff to be such in *Department of Health and Rehabilitative Services v. McDougall*, 359 So.2d 528 (Fla. 1st DCA), cert. denied, 365 So.2d 711 (Fla. 1978). The provisions of the Florida Constitution appear to clearly mandate this answer.

Article VIII, Florida Constitution, entitled Local Government, provides for counties in section 1. That section provides in part as follows:

**SECTION 1. Counties.**

(a) **POLITICAL SUBDIVISIONS.** The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

....

(d) **COUNTY OFFICERS.** There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

(c) **COMMISSIONERS.** Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected by the electors of the county. (Emphasis supplied.)

In our opinion, there is no reasonable way to construe article VIII, section 1, other than to include sheriffs as well as other named county officers as part of a county and, as such, within the definition of a political subdivision as used in subsection (a) of the section. To hold otherwise creates an artificial governmental entity for sheriffs and other named county officials that was not intended by either the legislature or the framers of our constitution. The court below relied on *Johnson v. Wilson*, 336 So.2d 651, 652 (Fla. 1st DCA 1976), which found that a sheriff "is not a political subdivision of the state." To the extent that this conflicts with our holding that a sheriff is an official of a political subdivision of the state, that portion of *Johnson* is disapproved.

As an official of a political subdivision, a sheriff is subject to the provisions of section 768.28 for the negligence or wrongful act of one of his deputies or employees under circumstances in which "a private person would be liable."

As this section was initially enacted, as construed by us in *Talmadge*, it is not the exclusive remedy for damages for tortious conduct by a government employee or official but is a means to protect and indemnify the employee and provide government responsibility to a limited degree. Having determined section 768.28 applicable to sheriffs, we proceed to the question of what is the appropriate statute of limitations when an action for wrongful death is brought under this section.

The petitioning sheriff contends that, because this statutory provision is applicable only if a private person would be liable, the two-year statute of limitations for wrongful death actions applies rather than the four-year statute of limitations contained in section 768.28(12). We reject this contention.

We believe that the legislature intended that there be one limitation period for all actions brought under section 768.28. We base this belief on the requisite notice provisions of this section and the need to have a uniform period for actions against governmental entities. See *DuBose v. Auto-Owners Insurance Co.*, 387 So.2d 461 (Fla. 1st DCA 1980).

Another issue in this cause concerns the continued applicability of a sheriff's liability under the provisions of section 30.07, Florida Statutes (1973). We have found that section 768.28 applies to sheriffs, although with limited liability, but it is an alternative remedy and does not repeal section 30.07 by implication as asserted by the petitioning sheriff. Section 30.07 and the long-established case law setting forth the conduct for which a sheriff is derivatively responsible under the provisions of section 30.07 are not affected by section 768.28, Florida Statutes (1974). We note that this case law limits the type of deputy conduct for which a sheriff is responsible.

We reiterate that after the parties briefed and argued the issues in this cause, chapter 80-271, Laws of Florida, was enacted and became law effective June 30, 1980. It significantly amended section 768.28(9), Florida Statutes (1979), and section 4 of the act says that the act shall apply to all actions pending in the trial or appellate courts on the effective date of the act. The amendment to this statute appears to make several changes in the operative law, including making section 768.28 the exclusive remedy and excluding as named parties employees or officials absent certain allegations of bad faith, malice, or willful and wanton misconduct.
This opinion is expressly limited to the application of sections 30.07 and 768.28 as they existed at the time the instant cause of action arose. Our remanding of this cause for further proceedings in the trial court leaves open the issues of the validity and applicability of chapter 80-271 to this case.

For the reasons expressed, we disapprove the opinion of the district court of appeal but agree with its reversal of the trial court's order dismissing the complaint with prejudice. We remand this cause to the district court with directions for this cause to proceed in the trial court in accordance with the views expressed in this opinion.

It is so ordered.

ADKINS, BOYD, ALDERMAN and MCDONALD, JJ., concur.

ENGLAND, J., dissents with an opinion, with which SUNDBERG, C. J., concurs.

ENGLAND, J., dissenting.

Respectfully, I cannot subscribe to the majority's holding that section 768.28, as originally enacted, is applicable to sheriffs and subjects them to liability for the negligence or wrongful acts of their deputies. The conclusion that sheriffs, being county officials, are an integral part of the county and therefore constitute "political subdivisions" of the state under the statute is neat dialectic but horrendous law.

[Remainder Omitted.]

NOTES

1. In In re Executive Communication, 13 Fla. 687 (1870), an advisory opinion to the governor, Chief Justice Randall, offered this history of the office of sheriff:

What is a sheriff? We must define terms used in a constitution or statute by the rules of the common law, unless the constitution or statute gives us another rule. The very word here defines itself. The derivation of the word sheriff, from the Saxon, attests the antiquity of the office. The sheriff was, in Saxon times, the reeve or bailiff of the shire, and during the Anglo-Norman period, acted as the deputy of the Count or Earl, (comes,) who had the government of the county. Hence his title in Law Latin of vice-comes, and in Law French, viscount, that is, the Count's or Earl's deputy. The English shire-reeve has contracted into sheriff.–History.

“In England as in the United States, he executes civil and criminal process throughout the county, and has charge of the jails and prisoners, attends courts, and keeps the peace. His duties pertain in this State to affairs within his county, and whenever he desires to serve process or arrest an offender in another county, the process must be endorsed by some judicial officer in the other county. Th. Dig., 520.

“Sheriffs may summon the citizens to aid him in some instances, and this is the posse comitatus or power of the county. The laws of this State, in several instances, speak of this officer as the "sheriff of the county." Th. Dig., 60. The sheriff of the Supreme Court must be the "sheriff of the county" where the court is held. Th. Dig. and Laws of 1868.

“When a prisoner is convicted and sentenced to the penitentiary, the law may authorize the sheriff, or any other person, to convey the convicts to the penitentiary. That the sheriff may perform the service and get his pay from the State will not divest him of the character of a county officer.”

2. Beard decided that the office of sheriff is a part of county government under Article VIII §1 Florida Constitution. The Florida Supreme Court had earlier determined that the relationship between the sheriff and appointed deputy sheriffs was not one of employer-employee, but a novel relationship based upon the concept of deputization of power. See Murphy v. Mack, 358 So.2d 822 (Fla. 1978), holding that deputy sheriffs were not employees within the meaning of Article I §6 Fla. Const. or Chapt. 447 Fla. Stat. (The public employee bargaining statute.) By contrast, Service Employees International Union v. Public Employees Relations Commission, 752 So. 2d 569 (Fla. 2000), held that deputy clerks of the office of the clerk of court may be treated as employees under Chapt. 447 Fla. Stat. The Court held:

[Where the collective bargaining rights of public employees are in issue, the plain language of chapter 447 controls and applies across the board to all public workers, regardless of job title. The abiding bright line for determining coverage under part II is the simple "public employee/managerial employee" dichotomy set forth in section 447.203. If an individual works as an employee in the ordinary sense of the word under the criteria set forth in section 447.203(3), he or she is entitled to the protections of part II. On the other hand, if an individual works as a managerial level employee under the criteria set forth in section 447.203(4) or falls within any of the other exceptions listed in section 447.203(3), the protections of part II are inapplicable.

Id., at 573, 574. Finally, in Coastal Florida Police Benev. Ass'n, Inc. v. Williams, 838 So.2d 543 (Fla., 2003) the Supreme Court “receded from” Murphy v. Mack, and held that deputy sheriffs are also public employees entitled to the protection of the collective bargaining statute. Similarly, Serv. Employees Int'l Union Local 16, AFL-CIO v. Pub. Employees Relations Comm'n, 752 So.2d 569 (Fla. 2000), held that deputy clerks of the clerks of the circuit courts are employees under the bargaining statute.

(3) See §768.28(14) in statutory supplement. What effect would it have on Beard v. Hambrick?
ALACHUA COUNTY v. POWERS
351 So.2d 32 (Fla. 1977)

ADKINS, Justice

This case arose when the Clerk of the Circuit Court of Alachua County, appellee herein and referred to as the "clerk," sued the Board of County Commissioners of Alachua County, appellant herein and referred to as the "board," seeking a declaratory judgment to clarify his fiscal duties as Clerk of the County Commission. The issues presented by the clerk were to seek clarification of his duties in four capacities: as auditor, accountant, custodian, and investor of county funds. This appeal is from the final judgment.

The trial court construed provisions of the State constitution and initially and directly passed upon the validity of Chapter 71-443, Laws of Florida, a special act relating to the Clerk of the Circuit Court of Alachua County. We have jurisdiction.

The Clerk is a constitutional officer deriving his authority and responsibility from both constitutional and statutory provisions. Security Finance Company v. Gentry, 91 Fla. 1015, 109 So. 220 (1926); Article V, Section 16, Florida Constitution.

Article V, Section 16, Florida Constitution, contains the following provisions:

"There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

Article VIII, Section 1(d), Florida Constitution, provides for the election of the clerk of circuit court, along with other officers, and also provides:

"When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

The trial court was correct in interpreting these two constitutional provisions as prescribing the only means of separating the clerk's judicial functions as clerk of the court from his clerk's county officer functions as auditor, accountant, custodian of county funds and official recorder. The office may be divided by special or general law pursuant to Article V, Section 16, Florida Constitution, or the clerk's county officer functions may be divided by county charter or special law approved by a vote of the electors pursuant to Article VIII, Section 1(d), Florida Constitution. In the absence of either of these two methods, the clerk must perform the dual role prescribed by constitutional mandate.

There is no applicable general law or special law approved by the electors which would vary those duties in Alachua County, and the county is not governed by a county charter. Under these constitutional provisions the clerk is the ex officio clerk of the board of county commissioners, the auditor, recorder and custodian of all county funds.

We first consider the clerk's auditing responsibility. Section 129.09, Florida Statutes (1975), forbids the clerk "acting as county auditor," from signing illegal warrants and provides both personal and criminal liability for violation of this provision. The clerk, as auditor, is required by law to refuse to sign and deliver a county warrant for an unlawful expenditure, even though approved by the board of county commissioners. Mayes Printing Company v. Flowers, 154 So.2d 859 (Fla. 1st DCA 1963). Although an appropriation of county funds may serve a county purpose, there must be some type of pre-audit review of the disbursement in order to be sure that the funds will not be used for an unlawful purpose.

Section 136.08, Florida Statutes (1975), provides that the accounts of the board of county commissioners and the account of any bank acting as a depository shall be subject to the inspection and examination of the "county auditor, the auditor general and the department of banking and finance or persons designated by it." Section 11.45(3)(a), Florida Statutes (Supp. 1976), provides for post-audits by the auditor general and the department of banking and finance or persons designated by it. Section 11.45(1)(e), Florida Statutes (1975), provides for post-audits by the auditor general and the department of banking and finance or persons designated by it. Section 11.45(3)(b), Florida Statutes (1975), provides for post-audits by the auditor general and the department of banking and finance or persons designated by it.

The Board, as the governing body of the county, has the power to:

"Make investigations of county affairs; inquire into accounts, records, and transactions of any county department, office, or officer; and, for these purposes, require reports from any county officer or employee and the production of official records". Section 125.01(1)(s), Florida Statutes (1975).

In accomplishing this purpose the board also has the power to:

"Employ an independent accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions. Not less than five copies of each complete audit report, with accompanying documents, shall be filed with the clerk of the circuit court and maintained there for
The clerk shall thereupon forward one complete copy of the audit report with accompanying documents to the Auditor General, who shall retain the same as a public record for ten (10) years from receipt thereof. Section 125.01(1)(x), Florida Statutes (1975).

The trial court correctly determined that the Clerk was to act as county auditor in all auditing functions except when the board employs an independent auditing firm pursuant to Section 125.01(1)(x), Florida Statutes (1975).

Sections 129.07 and 129.08, Florida Statutes (1975), expressly provide civil and criminal sanction against the members of the board of county commissioners for fiscal maladministration. The board says it should not be "blindly" dependent on the clerk for information which may be necessary for proper budget administration, approval of checks and authorization of the chairman of the board to sign such checks. The board refers to White v. Crandon, 116 Fla. 162, 156 So. 303 (1934), where this Court held that county commissioners could be personally liable for funds expended without authority of law. The board also points to Davis, et al. v. Keen, 140 Fla. 764, 192 So. 200 (1939), where the Court said that the board has the power and authority to reject payment of an unlawful account, holding that the statutes imposed a discretionary power or authority on the Board to determine whether or not a claim when presented is a just and lawful account.

No one quarrels with the assertion that the responsibility for pre-auditing is shared by the board and the clerk. A duplication of official duties is not invalid when within the purview of the constitution. This Court in State ex rel. Landis v. Wheat, 103 Fla. 1, 137 So. 277 (1931), said:

"The name given a statutory officer is not material even if it is similar to a constitutional ex officio officer, if the authority conferred on the statutory officer does not conflict with the authority conferred by the Constitution on a constitutional officer. A mere duplication of official duties may not be a violation of the general intenments of the Constitution when statutory regulation of duties is authorized by the Constitution. If there is duplication of duties, no organic provision is violated. Questions of legislative policy, not of power, are involved." At 283.

While clerk has the responsibility to act as pre-auditor of county funds, the board has the right to audit its own funds and make such investigations as may be necessary before the use of any public funds. The constitutional and statutory language discussed above require that the auditing function in making such an investigation be carried out by one of three entities: pre-auditing by the clerk in his capacity as county auditor, performance audit by an independent certified public accountant (or independent accounting firm), and post-audit by the auditor general or the independent auditing firm. Section 11.45(3)(a), Florida Statutes (Supp. 1976).

The board refers to a local ordinance creating the county auditing department. Under the ordinance the auditor answers directly to the board as to fiscal matters involving departments under the board's direct supervision and control not including constitutional officers. The county auditor is charged with the responsibility to develop accounting systems and procedures. The county auditor was established to provide a post-audit of county fiscal affairs, not including constitutional officers, as the auditor general fails to make such audits annually. Any effort by the board in the adoption of this ordinance to create an independent county auditing department, which is not an independent auditing firm, is beyond the authority of the board. The ordinance may properly set forth the purchasing procedures for the county and may provide for audits of any agencies purely under the control of the board. The clerk has the authority and responsibility to perform the auditing functions both as an arm of the board in auditing the records of constitutional officers and as a watchdog of the board in the case of pre-auditing accounts of the board in determining legality of expenditure. The phrase "legality of expenditure" includes that the funds are spent for a public purpose, that the funds are spent in conformity with county purchasing procedures or statutory bidding procedures, that the expenditure does not overspend any account or fund of the budget as finally adopted and recorded in the office of the clerk. If the board becomes concerned, it has the authority to require a performance audit or post-audit by an independent accounting firm.

By expressed statutory provision, the clerk of the circuit court is made the "accountant" of the board and required to keep the "minutes and accounts" of the board. Sections 28.12 and 125.17, Florida Statutes (1975). The board is required by statute to keep an accurate and complete "set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month," for each fund carried by the board. Section 136.05, Florida Statutes (1975). We agree with the trial court that this section is satisfied by the board keeping the set of books through its clerk. This construction is in conformity with Section 136.02(2), Florida Statutes (1975), which requires each county official and board maintaining funds in a county depository to file a monthly report with the clerk of the circuit court. This statute also requires the clerk to consolidate the reports as to each bank and file the consolidated report with the department of banking and finance. If the board questions the handling of the funds under the budget and is not satisfied with the audit of the clerk, an independent accounting firm may be employed. Section 125.01(1)(x), Florida Statutes (1975).

When not otherwise provided by general law, county charter or special law approved by vote of the electors, the clerk is
The trial court was correct in holding invalid those provisions of Chapter 71-443, Laws of Florida, Special Acts, which attempt to designate a different custodian of county funds. This special act failed to meet the requirements of both Article VIII, Section 1(b), of the Florida Constitution, requiring a general law for the care, custody and disbursing of county funds, and Article VIII, Section 1(d), which prohibits the clerk of being divested of his custodial responsibility except by "county charter or special law approved by vote of the electors".

The board contends that the language of certain statutes clearly contemplates that the county commission shall have care and control over funds on deposit in various banks.

Section 136.05, Florida Statutes (1975), reads: "County board to keep set of books; overdrawing prohibited. The board of county commissioners shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board."

Section 136.06, Florida Statutes (1975), further provides that money drawn from a depository shall be:
"... upon a check or warrant issued by the board or officer drawing the same, said check or warrant ... shall be signed by the chairman of said board, attested by the clerk or secretary of said board ..."

In addition, it would appear from Section 136.02(2), Florida Statutes (1975), that the board, along with other county officials, is authorized to maintain funds in a qualified county depository. However, the statute requires county officials and the board to make a monthly report on these funds to the clerk of the circuit court who in turn is required to file a consolidated report with the Department of Banking and Finance. Where the duties of the office of circuit court clerk are divided by special law between the clerk and a county comptroller, the comptroller is responsible for the monthly reports of county funds on deposit as required by this section. See Op. Attorney Gen. 073-213. Thus, it appears that the clerk of the circuit court, in his capacity as clerk of the board, auditor, recorder and custodian of county funds is ultimately responsible for accounting for county funds on deposit.

In addition, Section 219.07, Florida Statutes (Supp.1976), requires each officer to distribute all public money collected by him within seven working days to the officer, agency or fund entitled to receive it. Section 116.01, Florida Statutes (Supp.1976), requires these funds to be paid into the county treasury. The clerk, pursuant to Section 218.35(2)(b), Florida Statutes (1975), is the custodian or treasurer of all county funds, therefore all public moneys are deposited into the county treasury by him. Finally, Section 116.07, Florida Statutes (1975), requires "all . . . clerge of the circuit court and ex officio clerks of the boards of county commissioners . . . (to) keep books of account and of record . . . except such books and forms as are now otherwise provided for by law"; and Sections 28.12 and 125.17, Florida Statutes (1975), authorize the clerk to be clerk and accountant of the board of county commissioners and to keep their minutes and accounts.

From the above statutory provisions it appears that the trial court correctly interpreted Section 136.05, Florida Statutes (1975), to be satisfied by the board keeping the books and accounts through its clerk, the clerk of the circuit court.

In regard to investment of county funds the court below held that Section 28.33, Florida Statutes (1975), requiring the clerk of the circuit court to invest funds in interest bearing certificates or direct obligations of the United States, "applies to all funds in the clerk's control, whether they come from fees or commissions of the office collected or fees deposited in the registry of the court . . . or the operating funds of the office paid over by the county . . . or all other funds held by the clerk as custodian of county funds." The trial court properly recognized that:

"This would incorporate those funds held in the general operating funds of the County except as to those funds the Clerk holds which are 'Board monies' including capital accounts. The Board may by appropriate resolution, duly adopted, designate the investment place of surplus funds . . . pursuant to Florida Statute 125.31 . . . ."

In its brief the board stipulates that the trial court properly ruled that investments of surplus may be made upon approval by the county commission by adoption of an appropriate resolution. See also Op. Attorney General 075-241A which agrees with this conclusion and states that when investment of surplus county funds is specified by the county commissioners pursuant to Section 125.31, Florida Statutes (1975), the clerk is required to carry out the directives of the county commissioners in that respect.

Thus, there appears to be no conflict with the holding of the court below that the board may by appropriate resolution designate the investment place of surplus funds and the clerk is required to carry out the board's directive. In the alternative, where the board does not so designate the investment of surplus funds, these funds are to be invested by the clerk pursuant to Section 28.33, Florida Statutes (1975).
The next question concerns the responsibility for preparation of the budget for all county officers. Section 129.01(2)(a), Florida Statutes (1975), requires the budget to be “prepared, summarized, and approved by the board of county commissioners of each county.” The procedural requirements are set forth in the Florida County Commissioners Manual, Section 3-39 (1972 Revision, Supplement 4, December, 1976).

"The original responsibility for the preparation of the tentative budget rests upon the county auditor, who, unless otherwise provided by county charter or special law, is also clerk of the circuit court. He first ascertains the board's proposed fiscal policies for the ensuing fiscal year as well as the officer's operating budgets as submitted to the board. He then prepares a tentative budget for each of the funds. The budget includes all estimated receipts, taxes to be levied, and balances to be brought forward. It likewise includes all estimated expenditures, reserves and balances to be carried over at the end of the year. By July 15 the clerk must complete the tentative budget and present it to the board." At 507.

The Manual cites Article VIII, Section 1(d), Florida Constitution (1968), Sections 125.01(1)(v) and 129.03(2), Florida Statutes.

Section 2-28, Manual of Duties and Procedures for Court Clerks (December, 1976), sets forth the following procedure:

"On or before July 15 of each year the clerk as county auditor, after ascertaining the proposed fiscal policies of the board for the ensuing fiscal year, must prepare and present to the board a tentative budget for each of the funds established through the budget system. The budget shall include all estimated receipts, taxes to be levied, and balances expected to be brought forward, and all estimated expenditures, reserves and balances to be carried over at the end of the year.

"The board of county commissioners must then examine the tentative budget for each fund and require that any necessary changes be made. The county auditor's estimates of receipts other than taxes, and of balances to be brought forward, cannot be revised except by a resolution of the board, duly passed and appearing in the minutes of the board."

"The remaining steps in the preparation and adoption of the budget require the board to prepare a statement summarizing the tentative budgets. The board must then advertise the summary statement according to procedure set forth in the statute, hold a meeting on the fixed day for hearing requests and complaints from the public, make whatever revisions are necessary, adopt the budget, and file the tentative budget in the office of the county auditor as a public record." At 69.

The Manual cites as authority Section 129.03 (1975).

There is no conflict in the procedures set forth in the two Manuals. However, the county administrator, when appointed, is given the power and duty to submit to the board of county commissioners for its consideration and adoption, “An annual operating budget, a capital budget, and a capital program.” Section 125.74(1)(d), Florida Statutes (1975). Statutes which relate to the same or a closely related subject or object are regarded as in pari materia and should be construed together and compared with each other. Markham v. Blount, 175 So.2d 526 (Fla.1965). The Court, in construing similar statutes, should preserve the force of both without destroying their evident intent. City of St. Petersburg v. Pinellas County Power Company, 87 Fla. 315, 100 So. 509 (1924).

The trial court found no irreconcilable repugnancy between the statutes and resolved the apparent conflict so as to preserve the force of both. The trial court correctly concluded that the clerk, as county auditor, had responsibility for the preparation of the initial budget for consideration by the board. The county administrator's responsibility for preparing the budget extends only to those departments responsible to the board and which are under the jurisdiction of the board, as Section 125.74(2), Florida Statutes (1975), provides:

"It is the intent of the legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to (s.1(e), Art. VIII) of the state constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county."

To the extent not inconsistent with general or special law, the board of county commissioners has the authority to require every county official to submit an annual copy of his operating budget. Section 125.01(1)(v), Florida Statutes (1975). In addition, Section 218.35(4), Florida Statutes (1975), requires that the proposed budget of a county fee officer must be filed with the clerk by September 1 preceding the fiscal year of the budget. The clerk, functioning in his dual capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, prepares his budget in two parts:

"218.35 County fee officers; financial matters (2)(a) The budget relating to the state court system, including recording, which shall be filed with the state courts administrator as well as with the board of
Finally, Article III, Section 11(a)(1), Florida Constitution, prohibits any special law or general law of local application pertaining to the election, jurisdiction or duties of officers, except officers of chartered counties.

Absent the concurrence of the county official involved and a resolution of the board of county commissioners, the circuit court clerk (and the county comptroller in those counties where the duties of the office have been divided, or the clerk of the circuit court as auditor, recorder and custodian where the duties are not divided) operates as a fee officer in carrying out his duties as clerk of the circuit court and as a budget officer in carrying out his duties as clerk of the county court. See Op. Attorney General (072-424).

However, several of the statements of the court below regarding the submission of a budget by the clerk of the circuit court in his various functional roles were in error. In summarizing its holdings, the court below stated:

“The Clerk's budget is not subject to control of the County Board of County Commissioners except as to his court functions. The auditor, Section B, functions are not subject to control by the Board up to the total income of the Clerk's office plus that amount for his salary as permitted by 145.051 and 145.141.”

We feel that the proper interpretation of the various statutes is that where the circuit court clerk (and county comptroller if the duties of the office have been divided) agree to turn over all fees collected by their office to the county commissioners they become county budget officers by resolution of the board pursuant to Section 145.022(1), Florida Statutes (1975). As county budget officer, the clerk, and not the county administrator, remains responsible for submitting the budget of his office to the board of county commissioners. It was not the intent of Chapter 145, Florida Statutes (1975), to alter the clerk's authority as a constitutional officer or to place his office under the control or jurisdiction of the board. Absent this agreement and resolution, the clerk of the circuit court remains a county fee officer, responsible for establishing his own annual budget. Section 218.35(1), Florida Statutes (1975). He is required by law merely to file his proposed budget with the clerk of the county governing authority by September 1 preceding the fiscal year of the budget and to make an annual report of his finances upon the close of each fiscal year to the county fiscal officer for inclusion in the annual financial report of the county. Section 218.35(3), (4), Florida Statutes (1975).

We now consider Chapter 71-443, Laws of Florida, Special Acts. Section 1 was not ruled unconstitutional by the trial court as it ties into Section 145.022, Florida Statutes, authorizing the board to appropriate an annual salary to the clerk with the concurrence of the county official involved, "if all fees collected by such official are turned over to the board of county commissioners." This section provides that the clerk shall receive as his sole compensation for the
performance of his official duties the annual salary provided by general law, in lieu of all compensation authorized by any other law relating to his office.

Section 2, Chapter 71-443, Laws of Florida, sets out the procedure to be followed by the clerk in the preparation of the budget. In view of the pre-audit function of the clerk, the trial court reasoned that it was not logical to give the board de facto control of this function by attempting to make the clerk's office subservient to the board and under the control of the board by the appropriation process. The special law does not place the clerk in this situation. In the event the board is unreasonable in reducing the clerk's budget, an appeal mechanism is provided by Section 2(e), Chapter 71-443. Under this appeal mechanism, the clerk may appeal to the department of administration with a statement of the reasons or grounds for his complaint. The trial court erred in exempting the clerk from the budget and compensation laws as to a part of his official duties, as the law contemplates that the clerk shall participate in the budget process as to all his functions. Section 2, Chapter 71-443, is constitutional.

Section 3, of Chapter 71-443, provides that the board shall retain custody of funds appropriated for the office of clerk and provides methods of disbursement and manner of handling such funds. As discussed above, the trial court correctly held that Section 3 was unconstitutional.

Section 4, of Chapter 71-443, relates to fees and commissions. Section 4(a) provides that all fees shall be paid over to the county. This is constitutional. However, Section 4(b) provides that these "fees, commissions or other funds collected by the Clerk" shall be deposited in a special trust fund to be remitted to the board once each month. As discussed above the constitution makes the clerk custodian of all funds, and Section 4(b) was correctly held by the trial court to be unconstitutional.

We now turn to the question of whether the board may adopt a uniform pay plan for all county employees. The trial court ruled that the authority of the board to adopt a pay plan for employees of the county, pursuant to Section 125.74(1)(h), Florida Statutes (1975), does not extend to the employees of the several constitutional officers. The board says that the language of the subsection prescribing a function of the county administrator, "Recommend to the board a current position classification and pay plan for all positions in county service." (Emphasis supplied.) requires a broader interpretation by the court. We disagree. The county administrator is responsible for the administration of only those departments of the county which the board has the authority to control. Section 125.73(1), Florida Statutes (1975).

The clerk is a county officer pursuant to Article VIII, Section 1(d), Florida Constitution and, as an officer, he is delegated a portion of the sovereign power. State v. Sheats, 78 Fla. 583, 83 So. 508, 509 (1919).

The clerk is responsible for the efficient and effective operation of his office and has the authority to appoint deputies to assist him in his constitutional and statutory duties. Section 28.06, Florida Statutes (1975).

Employees of constitutional officers cannot be included in a uniform pay plan adopted by a board of county commissioners in the absence of specific statutory authorization. The present statute merely authorizes a county administrator to "recommend" to the board a uniform pay plan. There is no specific statutory authorization for the board to include the employees of other constitutional officers within a uniform pay plan for county employees. In the absence of statutory authorization the board is without power to adopt a uniform pay plan for county employees.

In summary we hold:

1. The clerk is county auditor, accountant and custodian of all funds of the county pursuant to constitutional and statutory provisions.

2. Pre-audits are conducted by the clerk in his capacity as county auditor, a performance audit may be made by an independent certified public accountant (or independent auditing firm), and post-audit may be made by the auditor general or the independent accounting firm.

3. The clerk's office may be divided by general or special law between two officers, one serving as clerk of the court and one serving as ex officio clerk of the board, auditor, recorder and custodian of all county funds, or, the duties of the clerk may be varied by county charter or special law approved by the electors of the county.

4. The clerk is responsible for submitting the initial budget proposal to the board for all constitutional county officers.

5. Sections 1, 2, and 4(a), of Chapter 71-443, Laws of Florida, are constitutional. Sections 3 and 4(b), of Chapter 71-443, Laws of Florida, are unconstitutional.

6. The clerk has investment discretion of county funds except for those surplus funds directed by resolution of the board to be invested pursuant to their directions.

7. The board is not authorized to set a uniform pay plan for employees of county constitutional officers.

The judgment of the trial judge is affirmed in part and reversed in part.

It is so ordered.

NOTE

See also Brock v. Board of County Commissioners of Collier County, 21 So.2d 844 (Fla. 2nd 2009), addressing
other specific conflicts between the role of the clerk of the county commission and the board of county commissioners. *Brock* referred to the provision of Article II §5 (c) Florida Constitution that mandates, “The powers, duties, compensation and method of payment of state and county officers shall be fixed by law” and the statutes to reach three conclusions. First, the board and not the clerk has authority to prepare annual financial statements as required by law. Second, the clerk has the power to conduct internal post-payment audits of expenditures after having approved the expenditures. This power flowed from the clerk’s power to conduct pre-audits of expenditures. Third, the clerk had the power to conduct investigations pertaining to county funds that had not been submitted to the clerk. One judge dissented to the second and third propositions.

In support of its decision, the *Brock* majority cited this authority:

“A statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete.”


It is the well settled rule in this state that if a statute imposes a duty upon a public officer to accomplish a stated governmental purpose, it also confers by implication every particular power necessary or proper for complete exercise or performance of the duty, that is not in violation of law or public policy.

*Peters v. Hansen*, 157 So.2d 103, 105 (Fla. 2d DCA 1963);...)

**PINELLAS COUNTY v. NELSON**  
362 So.2d 279 (Fla. 1978)

HATCHETT, Justice.

Is a board of county commissioners required to approve all budget requests deemed necessary by a supervisor of elections to fund authorized functions of her office, unless the board determines such appropriations to be unnecessary or unreasonable? Since the decision of the district court on this issue affects the duties of constitutional officers, we have jurisdiction to review the case pursuant to Article V, Section 3(h)(3), Florida Constitution (1968). We hold that a board of county commissioners has wide discretion in the formulation of a county budget, subject to challenge on the ground that the board acted arbitrarily or capriciously in deleting a reasonable or necessary expenditure.

This case involves a dispute between the Supervisor of Elections of Pinellas County and the Board of County Commissioners of that county over certain items requested in the Supervisor's proposed budget for the fiscal year 1975-1976. The Supervisor of Elections contends that the requested funds are necessary to maintain a system of automation in the processing of voting registration data by the use of computers and data processing equipment. The Board of County Commissioners unanimously deleted from the Supervisor's requested budget items totaling $77,500 in order to force the Supervisor to utilize the county's central data processing department, already in existence, rather than allow the Supervisor to set up her own independent and separate data processing center.

The Supervisor filed a complaint for declaratory judgment in the circuit court, charging the Board with attempting to usurp her constitutional powers, and with attempting to interfere with the administration of her office. The circuit court entered an order granting summary judgment in favor of the Board, holding that the action of the Board in deleting the proposed budget requests of the Supervisor was authorized by Chapter 129, Florida Statutes (1975), and rejecting the argument of the Supervisor that her decisions are not subject to review by the Board because of her position as a constitutional officer. The trial court stated that the Board is vested, under Chapter 129, with the exclusive power and duty to appropriate and budget county funds, limited only by the requirements of that chapter.

On appeal, the district court noted that the trial court had limited its inquiry to the issue of whether the Board's action was authorized by Chapter 129, and failed to make any determination as to the necessity and reasonableness of the Supervisor's budget request. The district court noted that, under the pertinent Florida statutes, the Supervisor has the authority to employ and adopt a system of automation in the processing of registration data. The Board of County Commissioners has the duty under these same statutes to pay for any expenses incurred by the Supervisor in implementing a permanent registration system unless the Board determines the Supervisor's use of the automation system to be arbitrary or capricious, and therefore unreasonable and unnecessary. Since the trial court made no factual determination on

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1 Respondent has raised the argument in this court that use of the Board’s central data processing center would violate her statutory duty, under Sec. 98.161 (3), Fla. Stat. (1975) to exclusive custody and control over registration data. This issue was not addressed by either the trial or appellate court, and we do not consider it here.

2 In addition, the trial court denied the Supervisor’s request to have her office funds paid to her in twelve monthly installments, but held that the funds budgeted to the Supervisor’s office shall be disbursed in the sole discretion of the Supervisor, if the disbursement is in accordance with the budget as approved.
whether the Supervisor's request was arbitrary or capricious, the case was remanded for further proceedings on that issue, under the authority of Orange County v. Allie, 238 So.2d 662 (Fla. 4th DCA 1970).

Both parties argue in this court that further trial court proceedings are necessary. The only unresolved dispute centers around the question of whether the burden of proving arbitrariness and capriciousness is upon the Supervisor or on the Board of County Commissioners. The opinion of the district court implies that this burden of proof should fall upon the Board of County Commissioners:

The board had the duty under Florida Statute 98.131(2) to pay for any expenses incurred by the plaintiff in putting in a permanent registration system unless the board found that the plaintiff's use of the automation system was arbitrary or capricious and therefore unreasonable and not necessary.

Nelson v. Pinellas, 343 So.2d 65 (Fla. 2nd DCA 1978).

In Sparkman v. County Budget Commission, 103 Fla. 242, 137 So. 809 (1931) this court rejected a constitutional attack on a statute which allowed a county budget commission to fix the amount of expenditure deemed necessary to conduct various county offices. In that case, the court recognized that these decisions by a budget commission are subject to judicial review of the reasonableness of such determinations. This court, in Green v. Taylor, 70 So.2d 502 (Fla.1954), resolved a dispute similar to the one here, involving the exercise of discretion by a county budget commission which had denied an appropriation request by a judge of a small claims court. There, this court stated:

After the commission has acted on the request and has approved or disapproved the same in whole or in part, for reasons at least prima facie sufficient, in the exercise of its Sound discretion, a review may then be had, if necessary, on the issue of whether the commission has acted arbitrarily and unreasonably, or whether it has in truth abused its discretion in limiting appropriations.

Green v. Taylor, supra, 70 So.2d at 504.

No administrative procedure for review of the Board of County Commissioners' denial of the Supervisor's budget request has been provided by general law.5

Therefore, the Supervisor was correct in seeking judicial review in the circuit court. We agree with the district court that the trial court improperly limited its scope of review only to the questions of whether the Board's action, in deleting the budget request, was authorized by Chapter 129. The trial court should have held a full factual inquiry as to the reasonableness of the budget request. We disagree, however, with the language of the district court's opinion which implies that the Board of County Commissioners has the burden of proving the request to be arbitrary and capricious before it can validly delete an item from the Supervisor's requested budget. Chapter 129 expressly imposes upon the Board of County Commissioners the duty and responsibility to oversee the budgets of all departments, agencies, and offices coming under its control for budget purposes. The Board of County Commissioners has the additional duty of raising tax monies, setting millage rates within permissible limits, and allocating those tax monies among the various county agencies. The Board of County Commissioners has wide discretion in approving, modifying, or rejecting budget requests. A county officer, such as the Supervisor of Elections, may seek judicial or administrative review of the Board's action, and should be entitled to prove that the denial of a budget request by the Board was arbitrary and capricious, or would unreasonably impair the ability of the county officer to fulfill constitutional or statutory obligations.

Therefore, we affirm the district court's decision to the extent that it reverses the order granting summary judgment and remands this case to the trial court for a full factual inquiry. We expunge, however, that language in the district court's opinion which implies that the Board of County Commissioners must prove the Supervisor's request was unreasonable and unnecessary in order to delete an item from the requested budget.

It is so ordered.

NOTES

(1) A trial court in Escambia County v. Flowers, 390 So.2d 386 (Fla. 1st DCA 1980) found that a county commission had arbitrarily reduced the proposed budget of the county comptroller (established as a budget officer) below what was required to operate the office effectively and issued a writ of mandamus to the county commission to increase the budget. On appeal, the district court approved the factual findings but overruled the issuance of the writ of mandamus saying, "We have no reason to believe, on the record, that the Board

clerk to show the board acted unreasonably in reducing the clerk's budget. See also, Sec. 30.49, Fla. Stat. (1975) which provides an administrative budget review mechanism to the county sheriff.
on remand will ignore a judicial order that the Comptroller's budget as presently authorized will not allow him to carry out the constitutional duties of his office." One judge dissented to overruling the issuance of the writ saying, "I find no basis to assume that the officer upon remand of the cause could receive fair and impartial treatment."

(2) In Schuler v. School Bd. of Liberty Cty., 366 So.2d 1184 (Fla. 1st DCA 1978), a question arose as to whether or not a school board must retain an attorney to represent a school superintendent when legal dispute arises between the board and superintendent. The court held, "We are of the view that when a viable legal issue develops between a superintendent and a school board, as to the respective powers and responsibilities of each, of such magnitude as to reasonably require competent legal advice, each is entitled to independent representation by competent legal counsel at public expense and that the holder of the purse strings is required, upon request, to make appropriate financial arrangements therefor." 366 So.2d at 1185. Should it matter whether or not the superintendent is elected or appointed?

BROWARD CTY. v. ADMIN. COMM. 321 So.2d 605 (Fla. 1st DCA 1975)

McCORD, Judge.

Petitioner seeks certiorari from final action of the Administration Commission in relation to the budget of respondent Sheriff of Broward County. The administrative proceedings leading up to the petition for certiorari were pursuant to s 30.49, Florida Statutes, as amended by Chapter 74--103, Laws of Florida, 1974, which became effective on July 1, 1974. That section relates to the fixing of the budget of the sheriff in each of the respective counties and provides for review of the approval of a sheriff's budget by the Board of County Commissioners or the Budget Commission as the case may be. It provides that within 30 days after receiving written notice of the action of the Board or Commission, the sheriff may file an appeal to the Administration Commission and it further provides as follows:

' . . . Such appeal shall be by petition to the Administration Commission, which petition shall set forth the budget proposed by the sheriff in the form and manner prescribed by the Department of Administration and approved by the Administration Commission and the budget as approved by the board of county commissioners or the budget commission, as the case may be, and shall contain the reasons or grounds for the appeal . . .

‘(5) Upon receipt of the petition, the secretary of administration shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the department thereon shall be promptly submitted to the Administration Commission, which, within 30 days, shall either approve the action of

the board or commission as to each separate item, or approve the budget as proposed by the sheriff as to each separate item, or amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission shall be final.'

Respondent sheriff submitted a proposed budget to the petitioner county commission requesting $8,776,147. After hearings, petitioner approved a budget for respondent sheriff in the amount of $7,574,156. Respondent sheriff then appealed the action to the 'Department of Administration.' A hearing was held by the Department and it concluded that respondent sheriff's budget should be as fixed by the petitioner county commission. The appeal then went to the Administration Commission which is composed of the Governor and the Cabinet and after hearing, it increased respondent sheriff's budget by $1,056,038.

Under the old Administrative Procedure Act, Chapter 120, Florida Statutes, which was superseded by the new Administrative Procedure Act, Chapter 74--310, Laws of Florida, 1974, (which became effective January 1, 1975) this court construed the statute to mean that it only had authority to review quasi-judicial administrative orders on certiorari. Bay National Bank and Trust Company v. Dickinson, Fla. App.(1st), 229 So.2d 302. s 120.31, Florida Statutes, 1973, provided:

' (1) As an alternative procedure for judicial review, and except where appellate review is now made directly by the supreme court, the final orders of an agency entered in any agency proceedings, or in the exercise of any judicial or quasi-judicial authority, shall be reviewable by certiorari by the district courts of appeal within the time and manner prescribed by the Florida appellate rules.'

That section, however, was repealed by the new Administrative Procedure Act, which became effective January 1, 1975, as aforesaid. This new law does not contain the limitation that this court review orders entered in the exercise of any judicial or quasi-judicial authority. s 120.68 of the new law provides in part as follows:

' (1) A party who is adversely affected by final agency action is entitled to judicial review. . . .

(2) Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida appellate rules.'
Inasmuch as the new Administrative Procedure Act provides that all proceedings for review of administrative agency action (except those going to the Supreme Court) shall be instituted by filing a petition in the District Court of Appeal, it appears that such is the method now to be followed regardless of the nature of the administrative action.

(That is regardless of whether it is quasi-legislative or quasi-executive as opposed to quasi-judicial.)

Since the effective date of Chapter 74--103, Laws of Florida, 1974, which amended s 30.49, Florida Statutes, the review of sheriffs' budgets as fixed by a board of county commissioners or budget commission is to the Administration Commission. In the case sub judice, the hearing by the Department of Administration and its action must be considered as only advisory to the Administration Commission and it was not bound in any way by the action of the Department of Administration. s 30.49(5), Florida Statutes, 1974, provides:

'Upon receipt of the petition, the secretary of administration shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the department thereon shall be promptly submitted to the Administration Commission, which, within 30 days, shall either approve the action of the board or commission as to each separate item, or approve the budget as proposed by the sheriff as to each separate item, or amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission shall be final.' (emphasis supplied)

We can only interpret the last sentence of the above statute to mean that the Legislature intended the action of the Administration Commission to be final. Regardless of the method of review, the court exercises a more limited review of quasi-executive or quasi-legislative action than of quasi-judicial action. In Bay National Bank and Trust Company v. Dickinson, supra, this court, in reference to the old Administrative Procedure Act, said:

'. . . The Act has no application to an agency order rendered in the performance of a quasi-executive or quasi-legislative function in which legal rights, duties, privileges, or immunities are not the subject of adjudication. Such orders as this are rendered pursuant to statutory authority based upon required inquiry and investigation, and involve the exercise of a discretion by the administrative officer or agency rendering it. If quasi-executive or quasi-legislative acts are performed in violation of the mandatory requirements of law, or are infected by fraudulent, capricious, or arbitrary action of the agency, they are subject to assault by appropriate proceedings in court of competent jurisdiction. . . .' Upon consideration of the record in this cause and the briefs and arguments of counsel, we find no departure by the Administration Commission from the essential requirements of law. We further find no merit to petitioner's contentions that s 30.49, Florida Statutes, is unconstitutional. See Weaver v. Heidtman, Fla. App.(1st), 245 So.2d 295.

Petition for review dismissed.

Rawls, C.J., conurs.

Boyer, J., concurring specially.

BoyER, Judge (concurring specially).

I concur that the contention that F.S. 30.49 is unconstitutional is without merit and I further concur in dismissal of the petition for review.

Notes

1. Does Broward County impose a different rule from Daniels v. Hanson, 342 A.2d 644 (N.H. 1965)? In Daniels a county convention (County legislative body) cut the sheriff's budget and deleted specific positions in the sheriff's force. The sheriff appealed both actions. According to the New Hampshire court:

The county convention did not possess the authority to abolish certain positions by footnotes. However, the convention was granted by the legislature the authority to fix the amount of funds to be used for salaries and expenses of deputy sheriffs... But the sheriff by virtue of his office has the sole authority to determine who will occupy the deputy sheriff positions funded, and what their functions will be.

342 A.2d at 649.

2. Weaver v. Heidtman, 245 So.2d 295 ( Fla. 1st DCA 1971), referred to judicial review of a sheriff's budget appeal decision of the Administration Commission as quasi-legislative or quasi-executive in character. Accordingly, the appellate court could not review truly discretionary aspects of the decision but could decide only whether the Administration Commission committed legal error or acted arbitrarily or capriciously, which is a less vigorous standard of review from that applied to quasi-judicial decisions. The appellate court also decided that certain time limits prescribed in the statute authorizing administrative review of the decision of the board of county commissioners was "directory" and not "mandatory." What is the difference? The opinion also traced the history of how the former practice of compensating sheriffs from fees generated by the office was supplanted by statutes prescribing a set level of compensation to be funded by the county commission.
A problem arises, however, if one or more of the county tax schools. Fla. Const., art. IX, s 1, F.S.A. constitutional requirement of a uniform system of free public of the tax base of the various counties, meets the expenditure per teaching unit throughout the State regardless Foundation Program, by thus providing for a uniform 236.07(8)(a), F.S.A.), was six mills. The Minimum law controlling in the case Sub judice (Fla. Stat. s multipliers by a required level of millage, which, under the county has been based on county tax assessment rolls to any of the six budget items; it does not, however, authorize make lump sum reductions or additions of monies allocated to the sheriff’s budget rather than to reduce the amount of funds in the budget. The action was in the nature of a petition of writ of mandamus to force the county commission to release funds for the sheriff’s budget. The supreme court declined to decide the constitutional issue and resolved the case as follows: “We find the internal operation of the sheriff’s office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county. To hold otherwise would do irreparable harm to the integrity of a constitutionally created office as well as violate the precept established by F.S. Section 30.53 and, in practical effect, gain nothing for the county.”

Accordingly, F.S. Section 30.49(4) empowers the county to try to any of the six budget items; it does not, however, authorize an intrusion into the functions which are necessarily within the purview of the office of sheriff.”

DISTRICT SCHOOL BOARD OF LEE COUNTY v. ASKEW 278 So.2d 272 (Fla. 1973)

ADKINS, Justice.

This is a direct appeal from the Circuit Court for Leon County which held Fla. Stat. s 236.07, F.S.A., to be constitutional. We have jurisdiction pursuant to Fla. Const. art. V, s 3(b)(1), F.S.A.

The educational program of Florida is funded, in part, through the Minimum Foundation Program, wherein the minimum amount of money required per instructional unit for each School District is determined according to formulae prepared by the State. The Department of Revenue to regulate the procedures by which assessments are made. In the area of school financing, however, the Legislature has chosen to ignore the findings of the tax assessors completely, and to rely on a ratio study prepared by the Auditor-General to determine allocation of State education funds. Fla. tat. s 236.07(8), F.S.A. It is this procedure which is challenged in the case Sub judic.

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ADKINS, Justice.

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[The legislature enacted a statute granting authority to the auditor general to certify the assessment ratio (i.e., average percentage of fair market value) of county tax rolls for the purpose of qualifying a county to receive state funding for schools. This statute was challenged as an intrusion upon the constitutional authority of county property appraisers.] The present plan, which allows for reliance on the assessments of the Auditor- General in total disregard for the assessments of the county assessors as approved by the Boards of Tax Adjustment and certified to the Department of Revenue (Fla. Stat. s 193.114(5), F.S.A.) is an attempt to usurp the duty of the assessor. This cannot stand.

When the State has accepted the certification of the assessments on the one hand, it cannot be allowed to overturn the assessments on the other hand merely because another State official comes to a different conclusion in the exercise of his judgment than did the tax assessor in exercising his discretion.

The school districts of the State, like the citizens, have a right to rely on the findings of their duly-elected assessors where the findings have been reviewed and certified by the reviewing body.

The proper method for challenging the validity of an assessment is through the circuit court (Fla. Stat. s 194.171, F.S.A.), and the State has the power, through the
Department of Revenue, to bring such an action. Fla. Stat. s 195.092, F.S.A.

The tax assessor is, of necessity, provided with great discretion (Harbond, Inc. v. Anderson, 134 So.2d 816 (Fla. App.2d, 1961)), due to the difficulty in fixing property values with certainty. Schleman v. Connecticut General Life Ins. Co., Supra, and Powell v. Kelly, Supra. The discretion is of such a quality that -

'(A) mere showing that the two assessments are different does not make one of them necessarily invalid; especially in view of the fact that these two tax rolls were prepared by different assessors.'

Keith Investments, Inc. v. James, 220 So.2d 695, p. 697 (Fla.App.4th, 1969).

The proper test for measuring the validity of a tax assessor's action is set out in detail in Powell v. Kelly, Supra:

'While the assessor is accorded a range of discretion in determining valuations for the purpose of taxation when the officer proceeds in accordance with and substantially complies with the requirement of law designated to ascertain such values, yet, if the steps required to be taken in making valuations are not in fact and in good faith actually taken, and the valuations are shown to be essentially unjust or unequal abstractly or relatively, the assessment is invalid.'

223 So.2d 305, pp. 307--308.

This is the test which the status of tax assessor as a constitutional officer requires. The fact that the party challenging the assessments is the State cannot be justification for changing the test, nor for ignoring the proper procedure for challenging the actions of the tax assessor, through the courts.

In summary, we recognize the county tax assessor as a constitutional officer, elected to determine the value of property within his county. As such, he is under a constitutional duty to assess all property at full value. Fla. Const., art. VII, s 4, F.S.A., and Walter v. Schuler, Supra. We have held that the Legislature has the power to regulate the method of assessments, but not to interfere with the assessor's discretion. Burns v. Butcher, Supra. There is great difficulty in precisely fixing property values so that the assessor is provided great leeway in his assessments, so long as he follows in good faith the requirements of law. Powell v. Kelly, Supra. So long as the law is followed, the assessments are presumed valid until the presumption is overcome by sufficient proof to defeat every reasonable hypothesis of a valid assessment. Powell v. Kelly, Supra.

The State has the authority and power to challenge an assessment through circuit court (Fla. Stat. s 194.171, F.S.A.), and has a duty to the taxpayers of the State to do so in cases such as is presented here where under assessment in a county requires the State to pick up a portion of the county's fair share of the cost of education. However, we hold that the State has no power to ignore the presumption of correctness attendant to the official assessments. To rely on the findings of the Auditor-General, as required by Fla. Stat. s 236.07(8), F.S.A., ignoring the official assessments, is to negate the discretion granted to the assessors, the discretion necessary to the job, attendant to all educated estimates, and uniformly recognized in the opinions of this Court. We conclude that a finding by the Auditor-General different from that reached by a county tax assessor is, therefore, insufficient to override the official assessment in the absence of a showing that the official assessment represented a departure from the requirements of law and not merely the differences of opinion to be expected when experts approach the subjective business of assessing property.

Accordingly, the judgment of the trial court is reversed and the cause is remanded with instructions to enter an order in favor of appellants holding Fla. Stat. s 236.07(8), F.S.A., to be unconstitutional insofar as it allows for a ratio study by the Auditor-General to overrule the certified findings of the county tax assessors.

It is so ordered.

CARLTON, C.J., ROBERTS, McCAIN and DEKLE, JJ., and SPECTOR, District Court Judge, concur.

NOTE

See Article VII §8 Florida Constitution. Does it overrule this case?

B. STATE- MUNICIPAL (TRADITIONAL)

STATE ex rel. JOHNSON, Atty. Gen., v. JOHNS, et al. 109 So. 228 (Fla. 1926)

WHITFIELD, P.J. (after stating the facts as above).

On the relation of the Attorney General upon allegations of the usurpation of municipal powers and offices of a pretended municipality, a writ in quo warranto proceedings was issued from this court commanding Paul R. Johns, David Fessler, R. A. Young, M C. Frost, and I. T. Parker to answer to the state by what warrant or authority of law they claim to exercise the offices, franchises, liberties, and powers as city commissioners of the city of Hollywood, Broward county, Fla.

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Chapter 11519, Acts of 1925, the title being, 'an act to
create, establish and organize a municipality in the county of Broward and state of Florida, to be known and designated as the city of Hollywood, and to define its territorial boundaries, and to provide for its government, jurisdiction, powers, franchises, and privileges,' contains the following:

'Article III.
'City Commission.
'Section 1. Created.--The corporate authority of the city of Hollywood shall be vested in and governed by a commission consisting of five members, whose term of office shall be for a period of four years.
'J. W. Young, David Fessler, J. M. Young, Paul R. Johns, and R. A. Young shall constitute the first commission, and they shall hold office for four years and until their successors are elected and qualified. The first election of commissioners shall be held on the first Tuesday in November in the year 1929, and every four years thereafter. Commissioners shall take office at noon on the third day after their election. Any vacancy on the commission shall be filled for the unexpired term by the remaining commissioners.'

Counsel for the relator contends that the quoted statutory provision is unconstitutional, 'in that it deprives the people of the city of Hollywood of the right of local self-government.'

The principle of local self-government is predicated upon the theory that the citizens of each municipality or governmental subdivision of a state should determine their own local public regulations and select their own local officials, but the extent to which and the manner in which the principle may be made applicable depends upon the provisions of controlling organic and statutory laws of the particular state.

* * * * *

The Legislature has plenary power over municipalities except as restrained by the Constitution. Section 8, art. 8, Const. Municipal officers are statutory officers subject to legislative action, and the right to vote in municipal elections is controlled by statute and not by organic provisions relating to state elections. See State ex rel. Attorney General v. Dillon, 32 Fla. 545, 14 So. 383, 22 L. R. A. 124. Municipal corporations have, in the absence of constitutional provisions safeguarding it to them, no inherent right of self-government which is beyond the legislative control of the state....

Whatever may be the holdings in other states that the citizens of the several municipalities in a state have the inherent right to select their municipal officers, and that such right cannot be abrogated by statutes unless authorized by the Constitution of the state (12 C. J. 754), in this state the herein quoted provisions of the organic law give to the Legislature express power to establish municipalities and to provide for their government, which includes authority to determine the form of the municipal government and to designate the persons or the method of selecting the persons who shall exercise the municipal authority when no other provision of the Constitution is thereby violated; and the provisions of the statute herein challenged, that the corporate authority of the municipality shall be vested in a commission consisting of five members whose term of office shall be four years, and that designated persons shall constitute the first commission to hold office for four years and until their successors are elected and qualified, and that any vacancy on the commission shall be filled for the unexpired term by the remaining commission, are authorized by section 8, art. 8, of the state Constitution, and such provisions do not violate any other section of the Constitution.

Section 24 of the Declaration of Rights contains the following:

'This enumeration of rights shall not be construed to impair or deny others retained by the people.'

This organic section does not so qualify or modify the express provision of section 8, art. 8, as to deprive the Legislature of any power conferred by the latter section; and the power exercised in this case by the Legislature is clearly within the scope of its express authority.

The Constitution does secure 'certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety,' and provides that 'all political power is inherent in the people. Government is instituted for the protection, security and benefit of the citizens, and they have the right to alter or amend the same whenever the public good may require' (subject to the federal government). Sections 1, 2, Dec. of Rights. The Constitution also requires the Legislature to 'establish a uniform system of county and municipal government, which shall be applicable, except' where inconsistent local or special laws are enacted (section 24, art. 3), and further provides that 'the Legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time' (section 8, art. 8). The organic law contains no express provision relative to the right to 'local self-government,' and the provision of section 27, art. 3, requiring officers to be elected by the people or appointed by the Governor, is expressly confined to 'all state and county officers not otherwise provided for by this Constitution.' Such provision, therefore, does not apply to municipal officers. The corresponding provision of the Constitution of 1868 included municipal officers.

Section 1, art. 3, of the Constitution, provides that:

'The legislative authority of this state shall be vested in a Senate and a House of Representatives, which shall be designated, 'The Legislature of the state of Florida.'

Under the provision the Legislature may exercise any lawmaking power that is not forbidden by the organic law of the land. Stone v. State, 71 Fla. 514, text 517, 71 So. 634.
The demurrer to the answer is overruled and the writ quashed.

TERRELL and BUFORD, JJ., concur.

ELLIS and STRUM, JJ., concur in the opinion.

BROWN, C. J. (dissenting).

Although the persons named in the act as city commissioners for the first four years may be in every way qualified for their official duties and precisely the men whom the citizens of the community, if they had been allowed to, would have selected for these positions, I cannot think that the action of the Legislature in providing that the governing body of the city of Hollywood for the first four years of its corporate existence should consist of persons appointed by the Legislature and named in the act, all vacancies occurring to be filled by the remaining members of such board, is a legitimate exercise of legislative power. The exact question here presented seems to be a new one in this state, and is not free from difficulty.

While the Legislature could, no doubt, as an incident to its legislative power, name and appoint the members of the governing board to act temporarily until such reasonable and convenient time as might be required for the primary organization of the municipality, and the selection by the qualified voters thereof of the members of such governing body who were to hold for the first full term, I am inclined to the opinion that it cannot go beyond the field of legislative power and control through its agents the administration and government of a town or city of this state for so long a period as four years, thus depriving the city of all voice for that considerable period of time in the selection of its own governing officials. Even if a local community of this state has no inherent right of local self-government which the Legislature is bound to respect, it would appear that the Legislature cannot exercise the executive and governmental functions of a town or city, under our Constitution, either directly or through the agency of persons selected and appointed by it. Our Constitution divides the powers of government into three grand divisions—the legislative, executive, and judicial—and expressly prohibits either of these departments from exercising any power belonging to either of the others. If the Legislature has the power to govern a city through its appointed agents for four years, it may also do so for ten years, or indefinitely. The writer realizes that the authorities are divided on this question, but inclines to the view expressed in those decisions which hold that this is not a legitimate exercise of legislative power. See 12 C. J. 836-838, and cases cited; 1 McQuillin, Munic. Corp. 399-403.

The city commission appointed by the Legislature in this instance is vested with the usual power to levy taxes, require the payment of business and occupational licenses, and
expend the moneys of the municipality. Thus the citizens of the municipality must endure taxation without representation for a period of four years. If the Legislature could do this in this instance, can it not deprive every town and city in this state of every vestige of local self-government, and impose upon them the rule of governing bodies in whose selection they have no voice—a principle utterly at variance to American history, traditions, and ideals of government?

Even under the iron rule of Rome, the cities of the Roman Empire were granted a certain measure of local self-government. And in England, and the British Isles generally, the right of local self-government of cities, boroughs, and towns, were secured and built up as early as the days of Alfred, proving to be one of the bulwarks of liberty in that country, and it was not until the fifteenth century that the practice of granting charters to cities was inaugurated. These charters were not so much a grant of new powers as they were a recognition and guaranty of the rights of local self-government which had long existed.

By the Great Charter, King John was required to confirm some of the charters granted during his reign, and section 16 of the Magna Charta reads as follows:

'And the city of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customers.'

Municipal local self-government, is as Judge Cooley has tersely said, 'of common-law origin, and having no less than common-law franchises.' Our state, long before the Constitution of 1885 was framed, had formally adopted the English common law, where not inconsistent with our own legal system.

Is not this time-honored right of the people of municipal corporations to choose their own local officers one of the rights retained by the people under section 24 of our Declaration of Rights? Nowhere does our Constitution expressly confer the power upon the Legislature to take away this right, nor is the right of local self-government anywhere forbidden by that instrument, and the framers of the Constitutions must have contemplated that the then existing right of municipal corporations to choose their local officers to administer their local affairs would continue as the one great essential feature of municipalities in this state.

I realize that the views hereinafter expressed are those of the minority (though that minority contains such names as Cooley, Gray, and McQuillin), and that the weight of authority in this country supports the views expressed in the able opinion of Mr. Justice WHITFIELD. There is, however, one pronouncement by this court, in the case of Kaufman v. City of Tallahassee, 84 Fla. 634, 94 So. 697, 30 A. L. R. 471, which leans toward the construction I contend for. In that case, this court, speaking through Mr. Justice Ellis, said:

'It is unnecessary to discuss the question of whether a municipality is a political agency or subdivision of the state and in its activities acts always in a governmental capacity. While the drift of judicial thought, as tested by many decisions, seems to be toward the opinion that a city has no inherent right to local self-government and is a mere agency of the state to be governed and controlled by the Legislature even through its own agents or appointees, and that view finds some color in the language of our Constitution, * * * this court has consistently adhered to the doctrine of municipal liberty in the administration of local affairs.'

While invasions of the right of municipal local self-government on the part of Legislatures have been comparatively few in this country up to the present time, these experiments have, in many instances, resulted disastrously, and have proven that it is dangerous to depart from this time-tested principle which has grown with our growth and has become, as it were, a part of the brawn and sinew of the American system of government.

For the reasons above pointed out, I think the demurrer of the relator to the answer of the respondent should be sustained.

NOTE

Does State v. Johns sustain the proposition that the Legislature may abolish a municipality and replace it the next day with a new one with different officials designated by the Legislature? See State ex. rel. Gibbs v. Couch, 190 So. 723 (Fla. 1939). If so, is this rule affected by Article VIII, 1968 Florida Constitution?

CITY OF TAMPA v. EASTON
198 So. 753 (Fla. 1940)

WHITFIELD, Presiding Justice.

The writ of error herein was taken to a judgment of the circuit court awarding damages against the city for injuries to defendant in error and his automobile, alleged to have been caused by the negligence of a named driver of an automobile truck owned by the city while it was being operated on a designated street of the city with the knowledge or consent of the city. It is contended that the city is not in law liable for the injury on the alleged ground that the truck was owned by the city and was being operated by a named driver on the city streets with the knowledge and consent of the city when the alleged negligence of the driver caused the injury.

Unlike a county, a municipality is not a subdivision of the State with subordinate attributes of sovereignty in the performance of governmental functions and correlative
A municipality's governmental functions and its corporate, proprietary or public improvement authority must of necessity be exercised or performed by officers, agents and employees of the municipality. The governmental functions and the corporate duties and authority of a municipality may be regarded as being distinct, with different duties, privileges or immunities and, as to corporate matters, correlative liability for negligence of its officers and agents in performing or omitting municipal nongovernmental or corporate duties or authority as may be in accord with substantive law or common-law principles. The liability of municipal corporations in their governmental functions or in their corporate duty or authority in furnishing public corporate improvements or facilities, is regulated by substantive law. See Keggin v. Hillsborough County, 71 Fla. 356, 71 So. 372; City of Tallahassee v. Fortune, 3 Fla. 19, 52 Am. Dec. 358. What are governmental functions and what are corporate authority or duties of a municipality are not comprehensively defined in the law but are to be determined in each case upon a judicial interpretation and application of appropriate provisions or principles of substantive law to the facts legally shown or admitted as may be provided by controlling substantive and procedural law.

The maintenance of appropriate and reasonably safe streets and a necessary sewer system is a municipal corporate authority or duty under controlling statutes; and authority to properly use motor vehicles in such maintenance is necessarily implied from the authority or duty.

It is a duty of the municipality to be diligent in keeping its streets in a safe condition as to their lawful use as well as their surface requirements. When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being operated with the knowledge and consent of the municipality through its officers or employees and used on the streets for lawful street, sewer or other corporate purposes, the municipality may be liable for injuries to persons or property proximately caused by negligence of the truck driver in operating the truck on the streets which are required by law to be maintained by the municipality in a reasonably safe condition for traffic thereon, in the absence of a defense duly shown, particularly if the facts constituting the defense are peculiarly within the actual or constructive knowledge of the municipality through its officers or employees. When the plaintiff alleges an injury proximately caused by negligence of the driver of a motor truck on the streets of the municipality, the truck being owned by the municipality and operated with the knowledge and consent of the municipality, the declaration may not be subject to demurr since it does not wholly fail to state any cause of action. Whether the declaration is subject to a motion for compulsory amendment under the statute depends upon the contents of the declaration and the applicable law.

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In Keggin v. County of Hillsborough, 71 Fla. 356, text page 360, 71 So. 372, text page 373, Mr. Justice Ellis, speaking for the court, made the following very illuminating statement:

'While a county may, in some respects, resemble a municipality in that both organizations deal with public interests, their differences are so great that the cases discussing the latter's liability in damages for the negligent omission to perform a public duty are not analogous to those in which such a liability is sought to be imposed upon a county. The one feature which sufficiently distinguishes them is that the counties are under the Constitution political divisions of the state, municipalities are not; the county under our Constitution, being a mere governmental agency through which many of the functions and powers of the state are exercised. County of San Mateo v. Coburn, 130 Cal. 631, 63 P. 78, 621. It therefore partakes of the immunity of the state from liability. Many of the powers exercised by a municipality, such as building and maintaining streets, erecting and operating water supply systems, lighting and power plants, are, in their nature and character, corporate rather than governmental. The corporation being organized voluntarily by the citizens of the locality for the purpose of local government, it is given the power and charged with the duty by the state of keeping the streets in a safe condition. 2 Dillon's Munic. Corp. (4th Ed.) §1034; City of Key West v. Baldwin, 69 Fla. 136, 67 So. 808. The citizens of a municipality have a proprietary interest in the property and funds of the municipality; the citizens of a county have not. It is a matter of very grave doubt whether a judgment against a county, even in those cases where suits are permitted.
plaintiff, by reason whereof the plaintiff was greatly injured
operate said automobile into and upon the automobile of the
City of Tampa
the intersection of Nebraska Avenue and Hugh Street in the
defendant, in a northerly direction upon Nebraska Avenue, at
one Thomas Loftus, with the knowledge and consent of said
defendant (city) was the owner of a certain automobile
which was then and there being run, driven and operated by
Thomas Loftus with the knowledge or with the
consent of defendant; several pleas of contributory
negligence. Such pleas were not challenged. Other pleas
averred that at the time and place as alleged the driver 'was
not under the control or the supervision of defendant; that the
driver 'was engaged upon a mission of his own and unconnected in
any way with defendant's business'; that the driver
'was engaged upon a mission of his own without the knowledge of defendant'; that the
driver 'was engaged upon a mission of his own and unconnected in
any way with defendant's business'; that the driver
'in operating the automobile truck was not acting within the
scope of his employment or in the course of his master's
cause.' The latter five pleas were stricken on motion.

The following additional plea was also filed:
'(14) That at the time and place alleged in the declaration
the automobile truck operated by the said Thomas
Loftus, and the said Thomas Loftus, were loaned or
hired to the Works Progress Administration of the
United States in the construction of a storm sewer
project in the City of Tampa; that under such
arrangement the entire control and supervision over the
said Thomas Loftus and over the automobile truck which
he was driving was under the foreman, superintendent,
or other officer or agent of the said W. P. A. Project, and
during said time, said Thomas Loftus was the agent or
servant of the said Works Progress Administration.'

A demurrer to such additional plea was sustained by the
Court. Verdict and judgment in $1,500 damages were
rendered and defendant took writ of error. Separate errors are
assigned in sustaining the demurrer to the declaration;
on striking pleas 8 to 12, both inclusive, and on sustaining

against it, may be satisfied by attaching or levying upon
the moneys in any particular fund, as counsel for the
plaintiff in error contend, although no authority is cited
in support of the proposition.

It is also contended in behalf of the plaintiff in error that
a municipality is a political subdivision of the state, yet
it may be sued for its negligence in permitting
defects or obstructions in the streets, resulting in injury
to a person lawfully using the streets. We do not agree
with the learned counsel that the proposition is correct, if
it is intended thereby to announce that in the exercise
of all its functions and powers a municipality acts as a
political subdivision of the state. McQuillin on
Municipal Corporations says that: 'A municipal
corporation is, in part, a public agency of the state, and
in part it is possessed of local franchises and rights
which pertain to it as a local personality or entity for its
quasi private (as distinguished from public) corporate
advantage.'

I McQuillin on Munic. Corp. 168. See also, Duval County v.
Charleston Lumber & Mfg. Co., 45 Fla. 256, 33 So. 531, 60
L.R.A. 549, 3 Ann. Cas. 174. A municipality is organized
within certain limits of territory for the local advantage and
convenience of the people in the particular locality, special or
additional advantages or conveniences are thus obtained by
such organizations. It is when exercising its functions for its
quasi private corporate advantage that a city is held to be
liable for its negligence in the discharge of its duties, but a
county acts only in a public capacity as an arm or agency of
the State.' Keggin v. County of Hillsborough, 71 Fla. 356,
360, 71 So. 372.

'A municipal corporation is not liable for tortious acts
committed by its officers and agents, unless the acts
complained of were committed in the exercise of some
Corporate power conferred upon it by law, or in the
performance of some duty imposed upon it by law. Such a
corporation may be liable in damages for injuries to others
proximately resulting from the doing by its officers, in an
unauthorized manner, of a lawful and authorized act, but not
for doing an unlawful or prohibited act.' Scott v. City of
Tampa, 62 Fla. 275, 55 So. 983, 984, headnote 3, 42
L.R.A.,N.S., 908....

In this case the declaration contains allegations that: 'the
defendant (city) was the owner of a certain automobile truck
which was then and there being run, driven and operated by
one Thomas Loftus, with the knowledge and consent of said
defendant, in a northerly direction upon Nebraska Avenue, at
the intersection of Nebraska Avenue and Hugh Street in the
City of Tampa, Florida, and at said time and place, the said
Thomas Loftus did negligently and carelessly run, drive and
operate said automobile into and upon the automobile of the
plaintiff, by reason whereof the plaintiff was greatly injured
and his automobile damaged, etc.

A demurrer to the declaration was interposed on the
following grounds:
'1. The allegations are insufficient to show any liability
on the part of this defendant.
'2. The defendant is not liable merely because of its
ownership of the motor vehicle and the fact that it was
operated by some person with its knowledge and
consent.
'3. The defendant can only be liable when negligence is
caused by its exercise of a proprietary function.
'4. There is no authority for holding a municipality liable
in the State of Florida merely because of its ownership
of a motor vehicle and the use of same with its
knowledge and consent.
'5. No facts are shown to render this defendant liable
under the doctrine of consent?'

The demurrer was overruled and the defendant city filed
pleas, viz.: Not guilty; denial that the truck was being
operated by Thomas Loftus with the knowledge or with the
consent of defendant; several pleas of contributory
negligence. Such pleas were not challenged. Other pleas
averred that at the time and place as alleged the driver 'was
not under the control or the supervision of defendant; that the
driver 'was engaged upon a mission of his own without the knowledge of defendant'; that the
driver 'was engaged upon a mission of his own and unconnected in
any way with defendant's business'; that the driver
'was engaged upon a mission of his own and unconnected in
any way with defendant's business'; that the driver
'in operating the automobile truck was not acting within the
scope of his employment or in the course of his master's
cause.' The latter five pleas were stricken on motion.

The following additional plea was also filed:
'(14) That at the time and place alleged in the declaration
the automobile truck operated by the said Thomas
Loftus, and the said Thomas Loftus, were loaned or
hired to the Works Progress Administration of the
United States in the construction of a storm sewer
project in the City of Tampa; that under such
arrangement the entire control and supervision over the
said Thomas Loftus and over the automobile truck which
he was driving was under the foreman, superintendent,
or other officer or agent of the said W. P. A. Project, and
during said time, said Thomas Loftus was the agent or
servant of the said Works Progress Administration.'

A demurrer to such additional plea was sustained by the
Court. Verdict and judgment in $1,500 damages were
rendered and defendant took writ of error. Separate errors are
assigned in sustaining the demurrer to the declaration;
on striking pleas 8 to 12, both inclusive, and on sustaining
the demurrer to additional plea No. 14.

Plaintiff in error presents three questions:

'Is a municipal corporation liable for the negligent operation of its automobile truck solely because the truck was operated with its knowledge and consent?'

'Where a municipal corporation loans or farms out its servant and automobile truck to a third party, and such third party has the entire control and supervision or dominion over said servant, is the city liable for any negligence on the part of such driver while acting as a servant of the third party?'

The declaration does not allege that defendant's automobile truck was being operated by defendant's officer or employee, or that the driver of the truck was under the control or the supervision of defendant, or that the truck was being operated in the business of defendant. But the declaration does allege that the defendant city was the owner of the truck that was being operated by a named person with the knowledge and consent of the defendant, on the streets of the city; and that the injury as alleged was caused by the negligent and careless operation of the truck by the named person at the intersection of two streets of the city when the driver negligently and carelessly ran the automobile into and upon the automobile of plaintiff. The declaration stated a cause of action against the city, and it was not error to overrule the demurrer thereto. There was no motion for compulsory amendment of the declaration, under section 4296 (2630), C.G.L.

The city owned the truck, the demurrer admitted the allegations that the truck was operated by the named person with the knowledge and consent of defendant and that the named person did negligently and carelessly run, drive and operate said automobile into and upon the automobile of the plaintiff on a named street of the city, by reason whereof the plaintiff was greatly injured as alleged and his automobile damaged. The injury occurred on the streets of the city, which streets it was the duty of the city to exercise due care to keep safe for traffic against negligent drivers of automobiles as well as against defects in the surface of the streets. The truck being a dangerous instrumentality when in operation on the streets, its owner, the city, is liable in damages in its corporate capacity for the negligent injury of a person lawfully on the street by the person operating the truck with the knowledge and consent of the defendant on streets which the defendant should be diligent in maintaining safe against negligent or careless use; and that plaintiff and his automobile were injured by negligence of the driver in operating the truck on named streets of the city at a stated time.

The conclusions averred in Plea No. 14 are not supported by any allegations or exhibits showing the truck and its driver to have been in fact or in law under the sole control of another governmental agency at the time of the injury complained of.

The evidence adduced at the trial was not brought to this Court.

Affirmed.

LIBERIS v. HARPER,
104 So. 853 (Fla. 1925)

WHITFIELD, J.

Writ of error was allowed and taken to a final order in habeas corpus remanding the petitioner who had been arrested for violating a city ordinance making it unlawful to keep, operate, or maintain 'any billiard table, pool table or bowling alley for hire or public use in any building or place, or any lot fronting or abutting any portion of Palafox street between Wright street and Zaragoosa street' in the city of Pensacola, Fla. The plaintiff in error seeks to contest the validity of the ordinance.

A person held in custody under a sentence of a municipal court upon a conviction on a charge based on an ordinance alleged to be void may test the validity of the ordinance in habeas corpus proceedings, and may be discharged from custody, if the ordinance is void. Hardee v. Brown, 56 Fla. 377, 47 So. 834.

Municipalities are established by law for purposes of government. Their functions are performed through appropriate officers and agents, and they can exercise only such powers as are legally conferred by express provisions of law, or such as are by fair implication and intentment properly incident to or included in the powers expressly conferred for the purpose of carrying out and accomplishing the object of the municipality. The difficulty of making specific enumeration of all such powers as the Legislature may intend to delegate to municipal corporations renders it necessary to confer some power in general terms. The general powers given are intended to confer other powers than those specifically enumerated. General powers given to a municipality should be interpreted and construed with reference to the purposes of the incorporation. Where particular powers are expressly conferred, and there is also a general grant of power, such general grant by intention
includes all powers that are fairly within the terms of the grant and are essential to the purposes of the municipality, and not in conflict with the particular powers expressly conferred. If reasonable doubt exists as to a particular power of a municipality, it should be resolved against the city; but, where the particular power is clearly conferred, or is fairly included in or inferable from other powers expressly conferred, and is consistent with the purposes of the municipality and the powers expressly conferred, the exercise of the power should be resolved in favor of the city so as to enable it to perform its proper functions of government. ...

The city had statutory authority 'to regulate and restrain all billiard saloons' (section 1871, Revised General Statutes of 1920); to 'exercise any power and render any service which contributes to the general welfare; prescribe limits within which business, occupations and practices liable to be nuisances or detrimental to the health, security or general welfare of the people, may lawfully be established, conducted or maintained' (section 18, chapter 6386, Acts 1911); and 'to pass, for the government of the city, any ordinance not in conflict with the Constitution of the United States, the Constitution of Florida, and statutes thereof' (section 18, chapter 4513, Acts 1895).

While the quoted statutory provisions are apparently sufficient authority for the passage of an ordinance of the character of the one complained of, and for the enforcement of such ordinance in the absence of a full showing that the ordinance is arbitrary and unreasonable in its practical application, the return shows no legal warrant for the arrest and detention of the petitioner below.

The return is 'that the arrest and detention of said Liberis was pursuant to the affidavit and warrant, copies of which are hereto attached.' The attached 'affidavit' does not appear to have been sworn to before any officer, and the 'warrant' is signed only by the officer who made the arrest and is not dated or authenticated. Such 'affidavit and warrant' afford no lawful authority for the arrest and detention.

Reversed.

NOTES

1. The widely accepted rule as to the inherent powers of municipal governments is that stated by Judge John F. Dillon, as follows:

   It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.

Dillon, Municipal Corporations, Section 237 (5th ed. 1911).

This rule is said to have been first stated by Judge Dillon in Merriam v. Moody’s executors, 25 Iowa 163, 170 (1868). See State v. Hutchinson, 624 P. 2d 1116 (Utah 1980).

2. The rule was extensively quoted in Jacksonville Electric Co. v. City of Jacksonville, 18 So. 677 (Fla. 1895), a decision that held the City of Jacksonville’s general municipal function powers included the power to build and operate an electric generation and distribution system to supply electricity to private persons. No dispute had been made to the City’s power to supply electricity to light its own streets. The complainant was a competing private electricity company.

3. Dillon’s rule also applies to counties, see, e.g., Crandon v. Hazlett, 26 So.2d 638 (Fla. 1946), and to administrative agencies of the state government, see, e.g., Department of Environmental regulation v. Falls Chase Special Taxing District, 424 So.2d 786, 793 (Fla. 1st DCA) rev. denied,436So.2d98(Fla.1983)

(“An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights of individuals.”)

The Florida Supreme Court has held that the attorney general may settle a claim for a state agency “under terms that are not expressly authorized by the board’s legislative grant of power.” Abramson v. Florida Psychological Association, 634 So.2d 610 (Fla. 1994).

Historically the rule also applies to school boards. State ex rel. Glisson v. Board of Public Instruction, 123 So. 545, 546 (Fla. 1929).

4. Is a law that prescribes the compensation for sheriffs in counties of population not more than 27,160 and not less than 27,050 in the last state census a special law or general law? See Stripling v. Thomas, 132 kSo. 824 (Fla. 1931).

What about a law that prescribes the duties of county commissioners in counties of population not less than 143,000 and not more than 154,000? See Knight v. Board of Public Instruction for Hillsborough County, 102 Fla. 922 (1931).

C. CONTROL BY ACTS OF THE LEGISLATURE
BELCHER v. McKinney
333 So.2d 136 (Alabama 1976)

SHORES, Justice.

Belcher, chief deputy sheriff in Jefferson County, filed a bill for declaratory judgment and mandatory injunction seeking to uphold the constitutionality of Act No. 389, Acts of Alabama 1975, approved September 18, 1975, and seeking to require the Personnel Board of Jefferson County to comply with that act. The trial court dismissed the complaint after finding Act No. 389 to be unconstitutional. Belcher appealed.

The Act in question provides compensation for the chief deputy sheriff in counties having populations of . . . 600,000 or more, according to the most recent federal decennial census. The compensation is to be no less . . . than three pay grades above the highest pay grade, including educational incentive pay, in the classified service of the county of the position next below the position of chief deputy sheriff, provided such chief deputy sheriff holds a law degree. The Act operates retroactively to January 1, 1975.

The trial court concluded:

(1) The Act, s 2, contains a double classification--providing one pay rate for chief deputies who hold a law degree and another for those chief deputies who do not (in those counties with the requisite population);

(2) that Act No. 389 is a local act and was not advertised pursuant to the requirements of s 106, Article 4, of the Alabama Constitution;

(3) that the population classification bore no relation to the purpose of the Act, i.e., to reward a chief deputy for holding a law degree;

(4) that a chief deputy is not required in Jefferson County, 'nor does it appear that one would be required . . .' in those counties which may come within the classification in the future;

(5) that the chief deputy sheriff is not a public officer, that this is merely a 'position' and that the '. . . Civil Service Law, Section 656, Appendix, Code of Alabama, Recompiled 1958, requires the Director of Personnel, subject to the approval of the Personnel Board, to grade, classify and establish salaries . . .' in such position;

(6) that the Act would repeal the Civil Service Law, which the legislature clearly did not intend to do;

(7) that Amendment II to the Alabama Constitution permits retroactive pay in this instance.

The appellant submits:

(1) That a county of over 600,000 in population has particularly severe crime problems by virtue of its large population;

(2) that, therefore, it is especially desirable to have a chief deputy in such a county with a law degree to aid in solving the problems peculiar to such a county;

(3) that the double classification condemned in Jefferson County Board of Health v. City of Bessemer, 293 Ala. 237, 301 So.2d 551 (1974), refers to double classification only in terms of population;

(4) that any problem of conflict with Act No. 389 and the Civil Service Law is taken care of by Section 4 of Act No. 389:

'All laws or parts of laws which conflict with this act are hereby repealed.';

(5) that the provision providing for educational incentive pay is clear;

(6) that the question of whether the law school conferring the degree is accredited or not is immaterial; and

(7) that Amendment II to the Alabama Constitution permits retroactive pay in this instance.

Is Act 389 a general law or a local law as defined by Section 110 of the Alabama Constitution? If the Act is local then it is void, as the appellant concedes, since Section 106 of the Constitution was not complied with.

Reynolds v. Collier, 204 Ala. 38, 85 So. 465 (1920), set out three tests that an act, based on a population classification, must meet to be a general act: (1) There must be a substantial difference in population; (2) the classification must be made in good faith; and (3) the classification must be reasonably related to the purpose sought to be achieved by the act. The first requirement operates only in the context of a classification that is not open-ended. Opinion of the Justices, 263 Ala. 174, 81 So.2d 699 (1955). In applying the second part of the test, we must '. . . accord to the lawmaking body of the state government sincerity of purpose and fairness in dealing with the people of the state.' Wages v. State, 225 Ala. 2, 4, 141 So. 707, 708 (1932). We find nothing to suggest that the classification in this act was not made in good faith, nor that the legislature was not sincere in its purpose in passing this act. The third requirement of Reynolds is a central issue in this case.

The appellees insist that no relationship exists between the population criteria set out in this act and the purpose of the act. We cannot agree. Although our law requires state-wide uniformity in substantive criminal law, census legislation concerning the administration of criminal justice has been
upheld. *Dixon v. State*, 27 Ala.App. 64, 167 So. 340, cert denied, 232 Ala. 150, 167 So. 349 (1936). The *Dixon* opinion adopted the opinion of the trial court in that case, which observed:

"... It is a fact known of all men who have reached their maturity and who have enjoyed the general experience common to mankind that populous centers are the central nurseries and hotbeds of crime. ..."

(27 Ala. App. at 68, 167 So. at 343)

Concededly, as we noted in *Jefferson County Board of Health v. City of Bessemer*, supra, 293 Ala. at 242, 301 So.2d at 555, '... our holdings do not present an altogether clear standard for determining whether a logical relationship exists between the classification employed and the purposes of the act,' but can we say that the act in the instant case is not based upon a rational relationship? See *Dearborn v. Johnson*, 234 Ala. 84, 88, 173 So. 864 (1937). We think not. Of course, we are aided by the presumption that the legislature made an informed judgment as to the need in employing this classification. *Wages v. State*, supra. We hold that the requirements set out in Reynolds have been met.

Nevertheless, there may be, and we are urged to find, other infirmities which may be fatal to the statute. The appellees observe that Act 389 applies only to "counties having populations of 600,000 or more according to the most recent federal decennial census ..." which forever limits its application to Jefferson County. We may, of course, take judicial notice of the fact that the Act is presently applicable only to *Jefferson County*. *Masters v. Price*, 290 Ala. 56, 274 So.2d 33 (1973). However, this alone does not compel the conclusion that the statute is a local one. *Brittain v. Weatherly*, 281 Ala. 683, 207 So.2d 667 (1968). Still, for the Act to be a 'general' law it must have application to a shifting class. In other words, there must exist a possibility of application to other counties which may come within the classification fixed by the statute. Ostensibly, a statute which is tied to a specific census would prevent its prospective application. This court, however, has interpreted a phrase similar to the one in *Jefferson County*. *Masters v. Price*, supra, 290 Ala. 56, 274 So.2d 33 (1973). This interpretation is conclusive in the instant case; thus, Act 389 will apply to counties subsequently falling within the population classification provided in the Act.

The appellees also argue that the Act provides for a double classification. If the chief deputy sheriff in a qualifying county has a law degree, the Act fixes his rate of compensation; if he does not, the Act provides '... his compensation shall be as set for the position of chief deputy sheriff in the classified service of the county.' A double classification Per se is not necessarily fatal as both conditions may be reasonably related to the objective of the statute. *Board of Revenue of Jefferson County v. Huey*, 195 Ala. 83, 70 So. 744 (1916). The danger in the use of such a classification is that it may prevent the prospective application of the Act or may destroy the reasonable relationship with its subject matter. *Jefferson County Board of Health v. City of Bessemer*, supra. The question in the instant case, however, is whether the Act has a double classification at all. The second classification, as defined by the appellees, adds nothing to existing law. The rate of compensation for deputy sheriffs is already fixed by the personnel board; the statute merely acknowledges this fact and provides for compensation for a chief deputy sheriff holding a law degree. As we read the Act, it contains only one classification. But, assuming there are two in Act 389, we cannot say that both were not reasonably related to the purpose of the statute--to provide for the more efficient administration of justice in the large urban areas. We find no double classification that would render the statute constitutionally infirm.

...... In summary, we find Act 389...to be constitutionally inoffensive. In arriving at this conclusion, we are fully aware of cogent criticism of census legislation in general and, specifically, criticism that the legislature, by enacting such legislation, has ignored the Constitution. ... While these arguments are impressive, we are reluctant at this time to overturn a long line of cases establishing standards for 'general' laws, or standards for determining reasonable relationship of the classification to the objective of the legislative enactment. In any case, we resist the temptation at this point to interpret differently the applicable provisions of the Constitution of 1901.

REVERSED AND REMANDED.

JONES, J., dissents. [omitted.]

NOTES

1. The notice requirement in Section 106 of the Alabama Constitution reads as follows:

   No special, private, or local law shall be passed on any subject not enumerated [elsewhere] unless notice of the intention to apply therefor shall have been published.

The corollary provision in the Florida Constitution states:

   No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

   Article III §10 Florida Constitution.

2. See *St. Johns River Water Management District v. Deseret Ranches*, 421 So.2d 1067 (Fla. 1982), holding
that a law pertaining to a state agency is general, even though the state agency, a water management district in this case, has limited geographic jurisdiction. See also, Anderson v. Board of Public Instruction for Hillsborough County, 136 So.334 (Fla. 1931).

3. Brandon Planning and Zoning Authority v. Burns, 304 So. 2d 121 (Fla. 1974), examined the validity of a special act pertaining only to Hillsborough County. The act created a zoning authority with the following powers:

- All actions of the Authority shall have the force and effect of county ordinance and shall be administered and enforced by the appropriate Hillsborough County officers; that the Authority may institute any appropriate proceedings in its own name to prevent violation of its regulations; that Hillsborough County Planning Commission shall serve in an advisory capacity to the Authority; that the expenditure of public funds by the Hillsborough County Commission for the Authority and any of its functions is a valid county purpose; and that the general county zoning law, if in conflict, is inapplicable to the Brandon area.

Hillsborough County commissioners challenged the law on the ground that it violated the following provision of the Florida Constitution:

Article III, Section 11(a)(1):

- There shall be no special law or general law of local application pertaining to:
  1. Election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies.

The Florida Supreme Court agreed and invalidated the statute.

By contrast, Pinellas County Planning Council v. Smith, 360 So.2d 371 (Fla. 1978), concerned a special act that created a county planning council and authorized it to prepare a countywide land use plan. The Florida Supreme Court distinguished Burns and upheld this act, as follows:

In this case we do not find a transfer of jurisdiction, nor do we find that the Pinellas County Planning Council will "enact ordinances and . . . obligate the County Commissioners, other county officers, boards and departments, to comply with and enforce such ordinances." The Board of County Commissioners never had the power to adopt a "countywide" land use plan.

Article VIII, Section 1(f), Florida Constitution, Chapter 166, Florida Statutes (1973), Section 125.01, Florida Statutes (1973). Furthermore, the planning council, though authorized to develop a countywide plan, is not authorized to implement the plan or initiate changes to it. Any proposed plan of the council must be approved by the Board of County Commissioners. Any modification must be initiated by a local governing unit. The planning council has authority to reject proposed changes or modifications, but only where such changes or modifications would have an "adverse" effect countywide. Finally, no provision of Chapter 73-594 compels the board to approve any plan offered by the council. The discretion left to the commission precludes usurpation. Jackson Lumber Co. v. Walton County, 95 Fla. 632, 116 So. 771 (1928) Link.

For the reasons stated above, we find that Chapter 73-594, Laws of Florida, was designed to serve a valid county purpose and only incidentally affects the jurisdiction and duties of the Board of County Commissioners. Chapter 73-594 is therefore constitutional.

RICHEY v. TOWN OF INDIAN RIVER SHORES
337 So.2d 410 (Fla. 4th DCA 1976),(DCA 1976) affirmed,
348 So. 2d 1 (Fla. 1977)

PER CURIAM.

We have for review a final judgment declaring, among other things, that the qualifications for registering as a municipal elector set forth in Chapter 29163, Laws of Florida, 1953, (the Charter of the Town of Indian River Shores) were not affected by the portion of Chapter 73--155, Laws of Florida (1973), that made mandatory the adoption of the single permanent registration system. In pertinent part Chapter 29163 provides:

'Section 1. Registration: There shall be a registration book to register all qualified electors of the municipality. The Town Council shall prescribe the form thereof and the oath to be administered. Registration books shall be open for registration of voters or electors not less than thirty (30) days before each and every municipal election.

'Section 2. Qualification of Electors: Every person of the age of twenty-one years or over, . . . and who has an immediate beneficial ownership, interest, legal or equitable in the title to a fee simple estate in land located within the limits of the said town for not less than six months, or shall have resided within the limits of the said town for not less than six months prior to the date of registration for election, shall be deemed a qualified elector to vote in all elections pertaining to municipal affairs of the Town of Indian River Shores, excepting only Bond Elections. Qualification of electors at Bond Elections held by the municipality shall be the same as provided by the general law of the State of Florida for elections where only freeholders are qualified to vote. The term 'immediate beneficial ownership' shall be construed to include both a husband and wife where title to real estate is held in the name of the husband and
wife. Provided, however, that the following classes of persons shall not be entitled to vote: Persons who are insane or idiotic, or who may have been convicted of any felony by any Court of Record; Persons who may have been convicted of bribery, or larceny, or perjury.'

Article VI s 2, Chapter 29163.

In pertinent part, Chapter 73--155, provides:

'Section 1. Section 98.041, Florida Statutes, is amended to read:

98.041 Permanent single registration system established; effective date.--

A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties And municipalities. This system shall be put into use by all municipalities prior to January 1, 1974 and shall be in lieu of any other system of municipal registration. Electors shall be registered in pursuance of this system by the supervisor or by precinct registration officers, and electors registered shall not thereafter be required to register or reregister except as provided by law.

.....

Appellees filed suit for declaratory decree seeking to determine 1) 'who are qualified to register with appellant, the Defendant, ROSEMARY RICHEY, Supervisor of Elections of Indian River County, Florida, as qualified electors to vote in all elections in the Town of Indian River Shores and to be qualified to hold the office of member of the Town Council thereof and 2) 'that Section 2 of Article VI of Chapter 29163, Laws of Florida . . . is the law relating to the qualifications of electors to vote in all elections in said Town and to hold office as a member of the Town Council of said Town.' The complaint prayed for an order directing appellant 'to register and qualify as qualified electors to vote in all elections in the Town of Indian River Shores all persons meeting the qualifications of such electors as set forth in Section 2 of Article VI of Chapter 29163, Laws of Florida.'

The case was presented upon the pleadings and argument of counsel without the adduction of any testimony. The trial judge entered a comprehensive final judgment in which he found, among other things that: (1) Section 2 of Article VI of Chapter 29163, Laws of Florida, relating to the qualifications of electors is a valid special act and was not repealed by Chapter 73--155, Laws of Florida; (2) it is the duty of appellant to carry out and obey the mandate of said law; (3) appellee Alex MacWilliam, Jr., is qualified to hold office in the Town of Indian River Shores. The judgment then directed appellant to 'accept as qualified to vote in all municipal elections in the Town of Indian River Shores all persons heretofore registered under the provisions of the Town Charter, and shall provide for the registration . . . of any person who seeks to register as a qualified elector in the Town of Indian River Shores who possesses the qualifications set forth in Sections 97.041(1), 98.091(3) and 166.032, Florida Statutes, or in Section 2, Article VI of Chapter 29163, Laws of Florida . . .'

Refined to its simplest form the primary question involved here is, does the Chapter 73--155 amendment of Section 98.041, Florida Statutes, preclude individuals from registering to vote in municipal elections of the Town of Indian River Shores if those individuals are not qualified to register with the County Supervisor of Elections so as to become qualified State electors in accordance with Section 98.041 as amended?

Chapter 73--155, a general act, did not expressly repeal the provisions of the Charter of Indian River Shores, a special act, insofar as qualification of electors is concerned. So the answer to the foregoing question depends upon a determination of whether or not the general act repealed or superseded the relevant portions of the special act by implication.

As the trial judge points out in the final judgment, repeal of a statute by implication is not favored. As the Supreme Court stated in Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194, 196, 165 A.L.R. 967 (1946):

'It is an elementary proposition that amendments by implication are not favored and will not be upheld in doubtful cases. Before the courts may declare that one statute amends or repeals another by implication it must appear that the statute later in point of time was intended as a revision of the subject matter of the former, or that there is such a positive and irreconcilable repugnancy between the law as to indicate clearly that the later statute was intended to prescribe the only rule which should govern the case provided for, and that there is no field in which the provisions of the statute first in point of time can operate lawfully without conflict.'

Thus, 'if courts can by any fair, strict, or liberal construction, find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation upon the subject, it is their duty to do so.' Curry v. Lehman, 55 Fla. 847, 47 So. 18, 21 (1908).

But try as we might to find compatibility between Sections 1 and 2 of Article VI of the Town Charter in question and Section 1 of Chapter 73--155, we are unable to do so. Consequently we conclude that the two legislative enactments are repugnant, a conclusion which impels us to hold that the legislature intended Section 1 of Chapter 73--155 to prevail, thus repealing by implication Sections 1 and
2 of Article VI of Chapter 29163, Laws of Florida.

Reviewing the repugnant aspects of the two enactments we find Section 1, Article VI of the Special Act provides for a municipal registration book, the forms to be furnished, the oath to be taken, and the time periods for the book to be open. On the other hand the title to Chapter 73--155 states, among other things, that the act relates -

'to municipal elections; amending s 98.041, Florida Statutes, to provide a single permanent registration system for all elections held within a county, including municipal elections; amending s 98.091, Florida Statutes, to provide procedures for municipal uses of county election books; providing that certain electors are qualified to vote in municipal elections . . . .' (Emphasis added.)

Section 1 then amends Section 98.041, Florida Statutes, by making the permanent registration system mandatory for municipalities. Therefore it was optional. It provides that this registration system 'shall be in lieu of any other system of municipal registration.' (Emphasis added.) It seems clear that the permanent registration system shall be in lieu of the registration system provided in the Charter of Indian River Shores.

Appellants concede that Chapter 73--155 repeals by implication Section 1 of Article VI of Chapter 29163. But they contend that Section 73--155 has no such impact upon Section 2 of Article VI of Chapter 29163, which specifies the qualification for voting in the Town. We disagree.

The town charter provides that any person 21 years of age who has owned the immediate beneficial ownership of a fee simple estate in land in the town for six months or any person who has resided within the town limits for not less than six months prior to registration shall be deemed a qualified elector to vote in town elections except bond elections. However, Section 98.041 makes registration in the single permanent registration system a requirement for voting in all elections. In order to qualify to register in the permanent registration system one must be a permanent resident of the county. Section 97.041(1), Florida Statutes 1974. When you add to the foregoing the fact that this single registration system is in lieu of all other registration systems, it seems to follow that a nonresident of the Town of Indian River Shores cannot vote in a town election regardless of his ownership of property therein because he cannot become a qualified elector.

* * * *

Since the question involved herein is one of great public interest throughout this state, we certify the following question to the Supreme Court of Florida:

Does Section 1 of Chapter 73--155, Laws of Florida 1973, implicitly repeal Article VI, s 2, of Chapter 29163, Laws of Florida 1953, so that only residents of a municipality may vote in a municipal election?

Reversed and remanded.

NOTES

1. On appeal, the Supreme Court affirmed the foregoing opinion by answering the certified question in the affirmative. The Supreme Court concluded: “The Legislature intended for the general law to repeal the Charter provision. Only residents may register to vote.” See, 348 So.2d 1, at 2 (Fla. 1977). Justice Drew dissented, as follows:

“The power of the Legislature over municipalities, under the Constitution of 1885 and now, is plenary. That the Legislature has the power to prescribe the qualifications for voters in municipalities is beyond question.

“The optional permanent registration of voters first provided for in 1953 and made mandatory in 1973 on all municipalities is basically a procedural method of registration repeatedly referred to in the act itself as ‘a system.’ It has nothing to do with "qualifications," a substantive matter. I can discern no reason why a compliance with the provisions of the town charter will in any way present any insurmountable problem to the supervisor of registrations, nor any reason why both acts cannot be fully applied. None have been pointed out to me in either the District Court's opinion or the majority opinion here. There is only the assertion that there is an "irreconcilable conflict." If the Legislature wants to change the qualifications of voters in Indian River Shores it can readily do so. We should not do it for them.”

Which is the better view? See also City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983).

2. Compare Phantom of Clearwater, Inc. v. Pinellas County, 894 So.2d 1011(Fla. 2nd DCA 2005), approved by Phantom of Brevard, Inc. v. Brevard County, 3 So.3d 309, 315 (Fla. 2008), which denied a claim that a charter county fireworks regulatory ordinance was preempted by fireworks regulations prescribed by general law.

Counties in Florida are given broad authority to enact ordinances. See Art. VIII, § 1(f), (g), Fla. Const.; § 125.01(3), Fla. Stat. (2003); St. Johns County v. N.E. Fla. Builders Ass’n, 583 So.2d 635, 642 (Fla.1991). The legislature can preempt that authority and may do so either expressly or by implication. See Santa Rosa County v. Gulf Power Co., 635 So.2d 96 (Fla. 1st DCA 1994). Preemption essentially takes a topic or a field in which local government
might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.

Express preemption of a field by the legislature must be accomplished by clear language stating that intent. Id. at 101 (citing *Hillsborough County v. Fla. Rest. Ass’n*, 603 So.2d 587, 590 (Fla. 2d DCA 1992)). We conclude that section 791.001 does not contain language creating an express preemption. This statute does not contain language similar to the phrase, “It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter”—language that has been held to establish a level of preemption in the field of telecommunication companies. .... It does not come close to the language of chapter 316, which creates a “Florida Uniform Traffic Control Law,” and specifies “the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions.” .... If the legislature intends to preempt a field, it must state that intent more expressly than the language contained in section 791.001. See, e.g., § 24.122(3), Fla. Stat. (2003) (“All matters relating to the operation of the state lottery are preempted to the state, and no county, municipality, or other political subdivision of the state shall enact any ordinance relating to the operation of the lottery authorized by this act.”); § 320.8249(11), Fla. Stat. (2003) (“The regulation of manufactured home installers or mobile home installers is preempted to the state, and no person may perform mobile home installation unless licensed pursuant to this section, regardless of whether that person holds a local license.”).

Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive. Courts are understandably reluctant to preclude a local elected governing body from exercising its local powers.

As well explained by Judge Wolf in *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826, 831 (Fla. 1st DCA 1996), if the legislature can easily create express preemption by including clear language in a statute, there is little justification for the courts to insert such words into a statute. In the absence of express preemption, normally a determination based upon any direct conflict between the statute and a local law, as discussed in the next section, is adequate to solve a power struggle between existing statutes and newly created ordinances.

Accordingly, courts imply preemption only when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.” Id.... When courts create preemption by implication, the preempted field is usually a narrowly defined field, “limited to the specific area where the Legislature has expressed their will to be the sole regulator.” Id. ...

The legislative scheme created by chapter 791 is not pervasive, nor are the public policies concerning the use or sale of fireworks so strongly supportive of a need for statewide uniformity that no power is left to the counties to regulate this topic so long as the local laws do not conflict with chapter 791. We first observe that chapter 791 is a relatively short chapter. The entire text of chapter 791 encompasses three pages in the publication of the Florida Statutes. It does not compare in length or substance to the uniform traffic laws or the statutory regulation of telecommunications. It expressly delegates enforcement to local government and contemplates that counties will regulate outdoor displays of fireworks. It authorizes boards of county commissioners to set and require appropriate surety bonds for those people who are licensed by the county in connection with fireworks. It is difficult for a court to imply preemption of the entire field of “sale of fireworks” when the legislature affirmatively informs local government to act.

There undoubtedly is an argument that chapter 791 impliedly preempts narrow topics within the broader topic of fireworks. For example, a strong argument could be made that the legislature intended the definition of fireworks in section 791.01(4) to be a preemptive definition. That issue is not before this court in this appeal. Rather, we are asked to address whether chapter 791 is so pervasive as to the field of the sale of fireworks that Pinellas County is deprived of all local power in this regard. Under this statutory scheme, which primarily (1) defines the term “firework,” (2) requires the registration of entities that manufacture or sell them, and (3) generally prohibits their use or sale subject to specific exceptions, we find no pervasive scheme of regulation and no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict with the provisions of chapter 791.

The court did invalidate a discrete provision of the ordinance on the basis of conflict with a discrete provision in the statute.

3. More generally, *Rinzler v. Carson*, 262 So.2d 661, 667, 668 (Fla. 1972) stated. Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may
it authorize what the legislature has expressly forbidden......In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition.

D. HOME RULE