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I. INTRODUCTION

At least twenty-two states have amended their constitutions to provide for municipal home-rule in some degree.[1] The objective of home-rule amendments is to free municipalities from state legislative control in the realm of local affairs. A matter is deemed "local" only when it is held to have no effect on citizens of the particular state living outside the municipality involved.[2]

In the State of Florida, since World War II, various attempts have been made to consolidate governmental functions within Dade County.[3] In 1945, 1947, and 1953, consolidation proposals were advanced in an attempt to merge city and county governments. The 1953 proposal failed by a mere 980 votes.[4] These proposals, although failing, did alert public officials to the fact that there was a metropolitan problem.[5]

Subsequently, the City of Miami created the Metropolitan Miami Municipal Board to study and evaluate metropolitan government.[6] The Board was succeeded by two Charter Boards and led to the granting of a commission by the State Legislature to draft a constitutional amendment and charter designed to institute "home rule" in Dade County.[7] On November 6, 1956, the state electorate adopted the constitutional amendment, Article VIII, Section 11. The Home Rule Charter subsequently was approved by the Dade County citizenry on May 21, 1957, in a special referendum.

Article VIII, Section 11, of the Florida Constitution, as amended in 1956, was to the effect that

> [T]he electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body.[8]

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1. Among the states so numbered are: Arizona, California, Colorado, Florida, Georgia, Idaho, Louisiana, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin. See Note, 72 HARV. L. REV. 738 (1959). For an excellent treatment of the Metropolitan special district cast in a constitutional light with the overall legal aspects, see generally, Tobin, *Metropolitan Special District: Intercounty Metropolitan Government of Tomorrow*, 14 U. MIAMI L. REV. 333 (1960).

2. See Dasch v. Jackson, 170 Md. 251 183 Atl. 534 (1936); Note, 72 HARV. L. REV. 741 (1959).

3. Note, 73 HARV. L. REV. 526 (1960).

4. Public Administration Service, Government of Metropolitan Miami (1954).

5. See note 3 *supra* at 530. *Id.* at Preface.

6. See note 3 *supra* at 530-31.

7. *Ibid.*

8. FLORIDA CONST. art. VIII, § 11(1).

The ensuing Home Rule Charter[9] contained numerous provisions designed to permit the exercise of a wide range of powers by the County Commissioners acting as the legislative body of the new county-wide government.

Thus, as a result of these powers, the Commissioners have effected a complete administrative reorganization of the Dade County government in addition to taking the following steps[10] leading toward a metropolitan form of government:

1) Creation of a Metropolitan court system which tries all traffic cases originating in Dade County plus all cases arising under the Home Rule Charter.
2) Adoption of a uniform traffic code which is enforced throughout the county by municipal and county officers.
3) Initiation of a county-wide traffic engineering department.
4) Establishment of a county tax reassessment program which will lead to uniform assessment and collection of taxes.
5) Initiation of the Metropolitan Dade County Planning Department designed to aid in future development plans.
6) Planning of a county-wide water and sewer service.
7) Appointment of the Metropolitan County Transit Authority.
8) Adoption of a uniform building code.
9) Establishment of uniform standards for motor vehicle inspections.
10) Passage of regulations covering all county activities in gun sales, animal licensing, dynamiting, and the sale of used-car parts.
11) Creation of a central police radio communications system.
12) Completion of a central accident records bureau.

The Charter and the legislative activities of the County Commissioners have resulted in provoking considerable litigation. This in turn had led to some confusion and conflict as to the present legal status of metropolitan government (hereinafter Metro) in Dade County. It is hoped that a brief survey treatment of the important judicial decisions in this area will serve to clarify Metro's position as viewed by the courts.

The reader will note that the cases are discussed in chronological order.

II. SURVEY OF JUDICIAL DECISIONS

In *Gray v. Golden*,[11] the Florida Supreme Court upheld the proposed constitutional amendment providing for home rule in Dade County. The court, in a lengthy opinion, stated that the proposed amendment to Article VIII, Section 11, of the Florida Constitution did not violate the

9. Code of Metropolitan Dade County, Florida. The Charter is recorded in Official Records Book 182, p. 667, Public Records of Dade County, Florida.
10. The Miami Herald, Oct. 19, 1960, p. 7-A, col. 5.
11. 89 So.2d 785 (Fla. 1956).

constitutional requirement that any revision or amendment of the constitution may relate to one subject or any number of subjects, but that no amendment shall consist of more than one revised article of the constitution. The lower court had construed the "revised article" requirement to mean that no amendment of a single article of the Constitution can limit, restrict or modify the provisions of any other constitutional article. It was the view of the lower court that the proposed amendment would permit such broad powers to be exercised by the new Metropolitan Government that the lawmaking powers of the state legislature would be impaired, that the state's judicial department would be affected, and that the power and jurisdiction of state agencies would be usurped.

In reversing the lower court's decree, the court stated that the express terms of the proposed amendment prohibited such future happenings. The opinion relied heavily on the case of *City of Coral Gables v. Gray*,[12] wherein the Florida Supreme Court had ruled that in order to constitute more than one amendment, the proposition submitted must not only relate to more than one subject but, in addition, must have at least two separate and distinct purposes not dependent upon or connected with each other.

The court stated:

> [I]f several propositions that are unrelated are submitted as one and cannot be reconciled as such on any reasonable thesis, then they meet the condemnation of the constitutional mandate. We have no such situation here, local self-government is the only concern of the proposed amendment.

In *Dade County v. Kelly*[13] the Sheriff of Dade County challenged an ordinance of the County Commission and the controlling provisions of the Home Rule Charter, insofar as they applied in the matter of transferring the duties of the County Police and County Fire Departments, in addition to the non-civil process services of the County Sheriff, to the Public Safety Department.

The Circuit Court of Dade County entered a temporary injunction and an appeal was taken by the County. In affirming the order appealed from, the Supreme Court held that under the Dade County Home Rule Amendment, total abolition of a county office is a condition precedent to a transfer of its functions. Thus, charter provisions purporting to grant to the County Commissioners authority to transfer any of the functions of county officers, and to make piecemeal transfers while the office of County Sheriff was still in existence, transcended the amendment and was void.[14]

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12. 154 Fla. 881, 19 So.2d 318 (1944).

13. 99 So.2d 856 (Fla. 1957); Alloway, *Florida Constitutional Law*, 14 U. MIAMI L. REV. 501, 517-18 (1960).

14. It is interesting to note that upon expiration of Sheriff Kelly's elective term in January of 1961, he was appointed by the County Manager as County Sheriff for an unspecified term.

Justice Thornal, concurring in part and dissenting in part, expressed the view that the amendment in question should have been construed to allow Dade County more flexibility and a broader opportunity for experimentation within the outer limits of the organic law. The Justice, joined by Chief Justice Terrell, believed this view to be more nearly consonant with the express directive of the Home Rule Amendment that it be liberally construed.

In *Chase v. Cowart*,[15] Florida's highest court affirmed a lower decree which determined that the Dade County Budget Commission had been abolished by adoption of the Home Rule Charter on May 21, 1957. In addition, the Supreme Court decided that a general act of the State Legislature was ineffective insofar as it attempted to ratify, affirm, and validate the Charter. The Charter, as approved, contained the specific proviso that "The Budget Commission created by Chapter 21874, Laws of Fla., 1943, is hereby abolished and Chapter 21874 shall no longer be of any effect."

The court opined:

> We consider the basic question in this cause to be whether or not the electors of Dade County had given to them in Section 11 [of the Florida Constitution] the authority and power to abolish the Dade County Budget Commission. We are of the opinion that they had the authority to do so under the provisions of subsection (1)(c), Section 11, and that by adoption of the home rule charter they have done so.

In *State v. City of Miami*,[16] Justice Drew, speaking for the Supreme Court, held that the Dade County Home Rule Charter, applicable to the waterworks system in the City of Miami, did not impair the power of the city to issue water revenue bonds. The State, as defendant in this proceeding by the City of Miami to validate a waterworks bond issue, contended that the Charter deprived the City of the exclusive right to operate a waterworks system in the City.

However, the court was of the view that while the County Commissioners acting under the Charter could exercise certain powers over municipalities of Dade County and any water supply system operated by any municipality therein, such powers had no effect until affirmatively exercised in accordance with the Charter. Thus, since the County (Metro) had not acted, the City could not be prevented from acting to improve its own water service facilities.

Dade County v. Dade County League of Municipalities[17] presented a case wherein the constitutionality of a proposed "municipal autonomy

15. 102 So.2d 147, 150 (Fla. 1958); Alloway, *Florida Constitutional Law*, 14 U. MIAMI L. REV. 501, 518 (1960).
16. 103 So.2d 185 (Fla. 1958).
17. 104 So.2d 512, 518 (Fla. 1958); Alloway, *Florida Constitutional Law*, 14 U. MIAMI L. REV. 501, 518 (1960).

amendment" to the previously approved Home Rule Charter was considered. Plaintiff sought a declaratory decree regarding the proposal's constitutionality, and requested an injunction against the holding of a special election to dispose of the autonomy amendment. It was conceded that the holding of the election would involve an expenditure of approximately $85,000, and it would be to the interest of the taxpayers of the county to have a determination of the proposed amendment prior to the expenditure of public funds. Appellants contended that the amendment contravened various parts of Article VIII, Section 11, of the Florida Constitution, and that if adopted, it would for all practical purposes destroy the concept of Dade County metropolitan government inherent in the Charter.

The Court determined that if the electorate of Dade County wished to limit the Home Rule Charter in any manner, that such was its prerogative. Its view was that:

> [T]he invalidity of the entire amendment not having been shown the submission of the amendment to the electorate for approval or disapproval is proper.

The proposed amendment was subsequently defeated.

In *Dade County v. Young Democratic Club of Dade County*,[18] the question in issue went to the constitutionality of sections 2.03 and 2.04 of the Charter, which provided for the non-partisan election of county commissioners in Dade County. Considering the matter as one calling for a close scrutiny of the language of the Home Rule Amendment, the opinion said:

> [W]hen the electors of the state approved the Home Rule Amendment for Dade County, the electors of the county were expressly authorized to determine the 'method of election' of county commissioners. Pursuant to such authorization, they adopted the non-partisan plan and we think they had ample power to do so.

The court added that nothing in the Florida Constitution prohibits candidates from qualifying for office in Dade County under a different rule from that under which they qualify in other counties.

The significant decision in *Miami Shores v. Cowart*[19] upheld the Metropolitan Traffic Code which expressly nullified and superseded the traffic ordinances of *all* the municipalities in Dade County, and provided that violations of the Code should be tried *exclusively* in the Metropolitan Court of Dade County.

The court, in its opinion, considered itself compelled to quote extensively from the Chancellor's decree which had ruled in favor of the area-wide Code. Typical was the phrasing to the effect that:

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18. 104 So.2d 636, 639 (Fla. 1958); Alloway, *Florida Constitutional Law*, 14 U. MIAMI L. REV. 501, 518 (1960).

19. 108 So.2d 468, 470 (Fla. 1958); Alloway, *Florida Constitutional Law*, 14 U. MIAMI L. REV. 501, 518 (1960).

> [T]he type of metropolitan government adopted for Dade County allocated to the municipalities specific rights of self determination . . . in municipal affairs, and reserved to the county . . . power to pass ordinances . . . relating to the affairs, property and government throughout the county. . . . It recognizes the most vital single problem facing Dade County; that is, the urgent need for the establishment of an area-wide framework for effective local government.

Thus, the County Traffic Code was validated since it fell within the constitutional mandate given to the County Commissioners to provide regulation and control on a *county-wide basis* of those municipal functions and services which are susceptible to, and could be carried on most effectively under a *uniform plan of regulation applicable to Dade County as a whole.* This case would seem to settle the jurisdictional question as to the Metro Traffic Code. Therefore, it would appear that the City of Miami Beach is currently acting without jurisdiction in attempting to enforce the City's superseded traffic laws by trying violators in the municipality's traffic court.

Involved in *City of Miami v. Kenton*[20] was a class suit which sought to recover fines paid to the City for violations of city traffic ordinances after March 1, 1958. The date noted was the effective date of a Metro ordinance, 57-12, which regulated traffic matters throughout the county, and expressly nullified all municipal traffic ordinances. It appears that the city had continuously tried violations of city traffic ordinances in the city court before and after March 1, 1958. It was alleged that there were approximately 190,000 persons per annum who had paid fixed fines to the city as a result of summons without the necessity of going to court. In addition, it was alleged that over 50,000 persons yearly were tried, convicted and paid fines to the City of Miami.

In denying entitlement of the plaintiffs to recover the fines paid to the city after enactment of the county ordinance, the Supreme Court, speaking through Justice Terrell, relied on the rule that where one makes a payment of any sum under a claim of right with knowledge of the facts, such a payment is voluntary and cannot be recovered. The court stated there was no showing either that any of the payments were made under protest, or that the offenses provoking the fines were not committed. In employing the above described device, the court permitted the city to escape from what might well have been a devastating financial blow. In addition, the Metro Traffic Code was upheld.

In the twin cases of *City of Miami v. Benitez*,[21] and *City of Miami v. Baldwin*,[22] the city—plaintiff advanced the argument that Miami had adopted the Metro traffic ordinances and, therefore, had concurrent jurisdiction with the Metro Court to try offenders of county traffic ordinances.

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20. 115 So.2d 547 (Fla. 1959).
21. 116 So.2d 463 (Fla. App. 1959).
22. 116 So.2d 464 (Fla. App. 1959).

The traffic offenses had occurred on the streets of the city of Miami. Thereafter, the offenders were convicted in the Municipal Court of the City. The Circuit Court had reversed the judgment of conviction. In affirming the reversal, the District Court of Appeal relied on the prior Florida Supreme Court decisions in *City of Miami v. Keton*[23] and *City of Miami Beach v. Cowart*.[24] The effect of the Court of Appeal cases was to hold that under the Dade County traffic ordinance and the Metropolitan Court ordinance, the Municipal Court of the City of Miami had no jurisdiction to hear and determine charges of violations of the Dade County traffic ordinance.

A novel contention of the City of Miami Beach was condemned by the Florida Supreme Court in *City of Miami v. Cowart*.[25] Here, the City espoused the argument that the Home Rule Amendment authorized the metropolitan government of Dade County to function only in the *unincorporated* areas of Dade County.

The court said, laconically, that the contention was "untenable for reasons so obvious as to make discussion thereof unnecessary." The opinion referred to the *Miami Shores* decision[26] as controlling in this case.

Just what particular Metro ordinances were under attack in the instant case were not specified. However, the tersely worded opinion by Justice Roberts expressed the view that the ordinances dealt with municipal services which were "susceptible to, and could be most effectively carried on under, a uniform plan of regulation, applicable to the county as a whole." Since the ordinances complied with the *Miami Shores* case "standard,"[27] they were upheld without question.

The case of *State ex rel. Greenberg v. Dade County*[28] involved the construction of a Metro licensing ordinance which provided for issuing of certificates of competency for county-wide use by certain trades including the electrical trade. The ordinance contained a "grandfather clause" which purported to permit a tradesman who met certain requirements to receive a license without examination. Thus, a person who, within a stated period, had received a trade license from one of a number of cities within the county, or who submitted proof of more than five years licensed practice of his trade in the unincorporated county area was entitled, by the terms of the Metro ordinance, to receive a license permitting practice anywhere within Dade County, unless an examining board, *in its discretion*, deemed otherwise.

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23. See note 20 *supra*.
24. See note 19 *supra*.
25. 116 So.2d 432 (Fla. 1960).
26. See note 19 *supra*.
27. *Ibid*.
28. 120 So.2d 625, 627 (Fla. App. 1960).

Appellant submitted proof of a ten-year licensed participation in his trade within the unincorporated county area. The county had originally issued the trade license. The trial court construed the ordinance, 57-25, to be discretionary in the above respect, and mandamus to compel the issuance of the certificate was denied.

In reversing the trial court, the Court of Appeal held the proper construction of the ordinance to be that upon a showing of the licensed exercise of his trade in the unincorporated area for the time specified, the appellant had submitted proof on which it thereafter became the duty of the Board to extend the former's certificate so as to include the total area of the county. The opinion dogmatically stated:

> It is clear that a licensing ordinance which allows a board to issue or withhold a certificate of competency, at its whim and not according to any fixed or ascertainable standards, requirements or qualifications of the applicant, would not be valid.

Thus, the court effectively eliminated the discretionary element contained within the licensing provision.[29]

A series of interesting problems presented themselves in *Boyd v. County of Dade*,[30] wherein two parties were convicted in the Metro Court of drunken driving in violation of a Metro ordinance. At the trial the defendants made a motion for trial by jury contending they were entitled to a jury trial under the state constitution; the trial judge denied the motion. Thereafter, defendants appealed directly to the Florida Supreme Court as permitted under the constitutional provision allowing appeals to be taken from "trial courts"[31] directly to the Supreme Court in cases construing controlling provisions of the Constitution. In rejecting the defendants' claim of entitlement to a jury trial for the offenses charged, the court relied on the landmark cases of *Hunt v. City of Jacksonville*[32] and *State ex rel. Sellers v. Parker*,[33] wherein it was held by the Florida Supreme Court that violations of municipal ordinances were infractions, the trial of which could be conducted without a jury. The court was astute in noting that trials in municipal courts were conducted generally without juries long prior to the adoption of the constitution and thus, did not fall within the constitutional guarantee regarding jury trials. The court had no difficulty in construing a metropolitan county court to be in close proximity with a municipal court.

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29. Metro's subsequent appeal against the appellate court ruling was rejected by the Florida Supreme Court in January, 1961. The practical effect of the Greenberg case will be to force Metro to grant some 350 unrestricted licenses to tradesmen heretofore barred from working in certain Dade County municipalities, notably, Miami, Miami Beach, and Coral Gables. See The Miami Herald, Jan. 20, 1961, p. 17-A, col. 2.

30. 123 So.2d 323 (Fla. 1960).

31. See State v. Furen, 118 So.2d 6 (Fla. 1960).

32. 34 Fla. 504, 16 So. 398 (1894).

33. 87 Fla. 181, 100 So. 260 (1924).

The special financial interest of one of the County Commissioners in real estate located on Elliott Key, an island to the southeast of Miami proper, was pertinent in the recent case of *Fossey v. Dade County*.[34] The Home Rule Charter contained a provision that:

> Any county official or employee of the county who has a special financial interest, direct or indirect, in any action by the Board shall make known that interest and shall refrain from voting upon or otherwise participating in such transaction.[35]

Commissioner Ralph A. Fossey was the owner of a one-half interest in approximately 64 acres of land on Elliott Key, one of several keys to be connected with the mainland by a proposed system of causeways. In view of the Charter provision, a question arose as to whether the Commissioner was disqualified to vote on a Board resolution for the issuance of bonds to construct the causeway system. The circuit court, in declaratory judgment action, decreed the plaintiff-Commissioner to be barred from participating or voting regarding the causeway resolution. The appellate court, in affirming the circuit court's decree, stated that Commissioner Fossey's financial interest would be affected in a very real and substantial manner depending on the outcome of the vote of the Board of which he was a member. Thus, the Charter provision was applicable to preclude the commissioner's vote under the factual circumstances.

III. Conclusion

It is becoming increasingly apparent that the emergence of the sprawling center of urban life that is Dade County, Florida, has created myriad governmental and economic problems which require an advanced political structure for their solution.[36] A three and one-half year period is too short a time to determine whether the Metro Charter has provided Dade County with the ultra-modern political mechanism which so many civic-minded individuals have envisioned. However, an analysis of the significant judicial determinations construing the Charter power-wise, permits discernment of momentous advancements by Metro toward the objective for which it was designed, namely, "effective home rule government in this county. . . ."[37] Consequently, in view of Metro's brief, but successful history, one can only look to its future with optimism.[38]

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34. 123 So.2d 755 (Fla. App. 1960).
35. Metropolitan Dade County, Fla., Code, Charter § 4.03(e).
36. See Note, 73 Harv. L. Rev. 582 (1960). See generally Wolff, Miami Metro (1960), for a well-written treatise depicting the economic and ecological phases of the new governmental structure in Dade County.
37. Metropolitan Dade County, Fla., Code, Charter § 8.06(a).
38. Interview with Professor Edward Sofen, Dept. of Government, Univ. of Miami, in Coral Gables, Fla., Dec. 20, 1960. Professor Sofen is of the opinion that various economic factors will contribute to Metro's development. He believes that Metro's ability to take over certain county-wide functions and relieve the municipalities of the attendant financial burdens will do much to lessen organized resistance to Metro.

By and large, the judiciary have given a faithful allegiance to the mandate of the Home Rule enabling amendment[39] which proclaims:

> It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs *and this section shall be liberally construed to carry out such purpose. . . .* (Emphasis added.)

With the continued support of the judiciary, Metro appears destined for a bright future in Dade County's government. A contrary prognostication would ignore Metro's past advances and future potentialities.

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39. FLORIDA CONST. art. VIII, § 11(9).