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# MUNICIPAL CORPORATIONS

EDITH E. BROIDA\*

Within the past two years the Supreme Court of Florida has been confronted with a myriad of cases in the realm of municipal corporation law. Many of the decisions follow the numerical weight of authority; other cases raise unique problems thereby creating matters of controversy whatever be the decision. In the latter group fall such cases as *Miami v. Benson*,<sup>1</sup> concerning municipal contracts made with parties having a relationship with the city; *State v. Broward County*,<sup>2</sup> requiring a decision as to whether voting machines are a governmental necessity; *Olivier v. St. Petersburg*<sup>3</sup> and several other cases involving the matter of notice to the city preceding a suit in tort; *Suwanee County Hospital Corporation v. Golden*,<sup>4</sup> establishing the liability of a county hospital to a paying patient. The numerous cases in municipal tort liability indicate that the storm still rages as to the questions of (1) whether governmental or proprietary function, and if the former, then (2) shall negligence create liability.

Many regulatory ordinances were declared invalid, but zoning laws were with a few exceptions upheld. Quite a number of acts relating to municipal law were passed, amended and revised by the 1951 and 1953 sessions of the Florida Legislature. Of importance were the enabling act for municipal off-street parking facilities,<sup>5</sup> and the Sanitary Sewer Financing Act of 1951.<sup>6</sup>

## BOND VALIDATION<sup>7</sup>

*Public purpose.*—In considering the numerous cases before it on validation of bonds and certificates of indebtedness issued without an approving vote of the freeholders, the court reaffirmed previous holdings that certificates of indebtedness for an authorized public purpose, payable solely from revenues derived from utilities service, excise taxes, licenses or some other source than ad valorem taxes, may be issued.<sup>8</sup> Determining

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1. 63 So.2d 916 (Fla. 1953).

2. 54 So.2d 513 (Fla. 1951).

3. 65 So.2d 71 (Fla. 1953).

4. 56 So.2d 911 (Fla. 1951).

5. FLA. STAT. c. 183 (Fla. 1951).

6. FLA. STAT. c. 184 (Fla. 1951).

7. See Alloway, *Constitutional Law*, this issue, for a more complete analysis of bond validation cases.

8. *Bessemer Properties v. McVicar*, 63 So.2d 647 (Fla. 1953); *State v. Dade County*, 62 So.2d 405 (Fla. 1953); *State v. St. Petersburg*, 61 So.2d 416 (Fla. 1952); *State v. Fort Lauderdale*, 60 So.2d 32 (Fla. 1952); *State v. Miami Shores Village*, 60 So.2d 541 (Fla. 1952); *State v. Jacksonville*, 53 So.2d 306 (Fla. 1951).

those certificates which were issued for a public purpose, the court found proceeds of water revenue certificates could be used to extend water facilities by the purchase of a water system under the power of a municipality to protect the general welfare. Furthermore, courts cannot interfere with reasonable discretion exercised by the town council in the management of one of its utilities.<sup>9</sup> General obligation bonds and sewer revenue bonds were held under the Sewer Financing Act to be valid when combined to pay the cost of a sewage disposal system.<sup>10</sup> In a companion case the court found these bonds issued for a public purpose.<sup>11</sup>

A well reasoned decision indicating an awareness of modern educational developments, determined that recreational facilities are a municipal purpose, and certificates issued to acquire realty for an extension of such facilities under a statute authorizing same and setting up a fund for payment thereof do not require an approving vote of the freeholders.<sup>12</sup> Construction of additional incinerator and garbage disposal facilities is a governmental necessity.<sup>13</sup> Certificates, the proceeds from which were to be used to construct dormitories at the University of Florida and to be repaid from revenues from the project were validated as being for a public purpose although some private gain would result.<sup>14</sup>

The court, however, refused to allow an issue of certificates for the purpose of financing acquisition of land and erection of an industrial building thereon to be leased to a private corporation for sufficient rentals to retire the principal and interest of the certificates.<sup>15</sup> The majority decision, in *State v. Broward County* found certificates of indebtedness issued for the purchase of voting machines as authorized by Chapter 25181, Acts of 1949, to be paid for by an ad valorem tax on all taxable property in the county were not for a governmental necessity and must be approved by freeholder vote. Mr. Justice Roberts strongly dissented to this opinion on the basis that such machines increase "the integrity of election." On rehearing the decision was affirmed, and Mr. Justice Roberts again dissented, stating:

. . . where there is a constitutional command to perform an act of government, the political subdivision upon which the

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9. *Riviera Beach v. State*, 53 So.2d 828 (Fla. 1951).

10. *State v. Miami*, 62 So.2d 407 (Fla. 1953).

11. *Ibid. Accord*, *State v. North Miami Beach*, 63 So.2d 281 (Fla. 1953); *State v. Homestead*, 59 So.2d 742 (Fla. 1952).

12. *State v. Jacksonville*, 53 So.2d 306 (Fla. 1951).

13. *Jacksonville v. Nichols Engineering and Research Corp.*, 49 So.2d 529 (Fla. 1951).

14. *State v. Board of Control*, 66 So.2d 209 (Fla. 1953).

15. *State v. North Miami*, 58 So.2d 553 (Fla. 1952).

responsibility to execute, that organic command ultimately rests is under a mandatory duty to carry out such command as a function of government . . .<sup>16</sup>

In addition, a county hospital cannot be classified as a governmental necessity essential to the administration of a county government as is a jail or courthouse.<sup>17</sup>

*Source of revenue.*—Where the source of revenue to repay the bonds was concerned, the court found that a municipal cigarette tax is an excise tax and may be used by municipalities as the legislature directs without an approving vote of the people.<sup>18</sup> Fines and forfeitures arising from sentences imposed by the municipal court of the city, however, could not be the sole source of payment of the principal and interest of special obligation stockade certificates.<sup>19</sup> The issue of bonds for the construction and operation of port terminal facilities to be financed by net revenues from the terminal and net proceeds of parking meter revenues could not be upheld. The court restated its position enunciated in *State v. Daytona Beach*<sup>20</sup> and *State v. Miami Beach*<sup>21</sup> that excess revenue from parking meters not needed for maintenance and upkeep was not a tax and could be applied to use in general traffic control. In the case at hand,<sup>22</sup> however, such application would not be valid as the use is not within general traffic control. Such parking meter revenues also could not be utilized to reconstruct, pave and improve roads and streets.<sup>23</sup>

*Miscellaneous.*—The ultimate test of the validity of obligations issued by the county without an approving vote of the freeholders is the remedy of the holder of the obligations in the event of default. The language of certificates to be delivered to a contractor stipulated that to insure their payment and interest from the building tax levied for the construction of a new jail and repair of the courthouse, the full faith and credit of said county is irrevocably pledged. Such certificates seemed to indicate the interest would be paid from some other source and are invalid.<sup>24</sup>

In other decisions on bond validation the court held: under the constitutional authorization for refunding bonds an agent may be employed to direct the city in such proceedings without a vote of the freeholders;<sup>25</sup>

16. 54 So.2d 513, 517 (Fla. 1951).

17. *State v. Florida State Improvement Commission*, 60 So.2d 747 (Fla. 1952).

18. *State v. Homestead*, 59 So.2d 742 (Fla. 1952).

19. *State v. Miami*, 63 So.2d 333 (Fla. 1953).

20. 42 So.2d 764 (Fla. 1949).

21. 47 So.2d 865 (Fla. 1950).

22. *Chase v. City of Sanford*, 54 So.2d 370 (Fla. 1951).

23. *Panama City v. State*, 60 So.2d 658 (Fla. 1952).

24. *Sunshine Construction of Key West Inc. v. Board of Commissioners*, 54 So.2d 524 (Fla. 1951).

25. *Avon Park v. Sullivan, Nelson & Goss*, 50 So.2d 122 (Fla. 1951).

a bond issue proposed for the purpose of refunding previous bonds was valid although in excess of the amount of the original issue;<sup>26</sup> bonds issued by divisions of the state are governed by the laws of the state notwithstanding provisions for the payment at maturity at some designated place without the boundaries of the state;<sup>27</sup> certificates of indebtedness for construction of a county jail could be issued in anticipation of collection of the tax for such purpose and without a freeholder's vote;<sup>28</sup> only those bond issues proposed which were voted on by a majority of qualified electors could be validated;<sup>29</sup> notice of certificates of indebtedness not in conformity with procedural statute was nonetheless valid where validated by a subsequent act;<sup>30</sup> certificates of indebtedness issued to retire bonds are inferred to be valid under the act authorizing the original issue;<sup>31</sup> Article IX, Section 5 is not applicable to a special taxing district where the board of county commissioners is authorized to issue bonds for erosion control and impose an ad valorem tax without approval of the freeholders.<sup>32</sup>

#### MUNICIPAL EMPLOYEES AND OFFICERS

Although municipal employees have served for a length of time, the fact that they have not qualified for civil service status will preclude them from attaining such status or an elevation in position requiring such status.<sup>33</sup> A member of the police department received permission from the city government, the chief of police, and the civil service board to engage in the sale of alcoholic beverages. The civil service board then adopted a regulation prohibiting civil service members from engaging in enterprises inconsistent with their duties as city employees. After notification and leave of absence to dispose of his business, he was suspended when unable to so dispose of it. The court held that the regulation was a lawful exercise of the board's power, but that while all public employees hold their positions subject to necessary changes in new regulations, they cannot be discriminated against or discharged except for cause after notice and opportunity to be heard. A reasonable time to dispose of his business should be afforded.<sup>34</sup> *Query*: What is a reasonable time to dispose of a business?

Under civil service an employer may no longer discharge an employee who has expressed himself freely as long as he does not impair the

26. *State v. Gladeview Drainage District*, 59 So.2d 359 (Fla. 1952).

27. *Ibid.*

28. *State v. St. Johns County*, 60 So.2d 530 (Fla. 1952).

29. *State v. Miami*, 53 So.2d 524 (Fla. 1951).

30. *State v. Lafayette County*, 55 So.2d 799 (Fla. 1952).

31. *State v. Escambia County*, 52 So.2d 125 (Fla. 1951).

32. *State v. Anna Maria Erosion Prevention District*, 58 So.2d 845 (Fla. 1952).

33. *Bloodworth v. Suggs*, 60 So.2d 768 (Fla. 1952); *St. Petersburg v. Bolender*, 54 So.2d 31, (Fla. 1951); *State ex rel. King v. Harris*, 49 So.2d 803 (Fla. 1951).

34. *Johnson v. Trader*, 52 So.2d 333 (Fla. 1951).

administration of the service in which he is engaged; therefore, slanderous remarks about a fire chief made by a fireman did not warrant the fireman's suspension.<sup>35</sup> The right of an officer to compensation is not impaired by his occasional or protected absence or a temporary incapacity to perform his duties or the neglect of his duties. A duly elected sheriff was entitled to his statutory five percent commission although he was not present at the time several persons were arrested by an elisor for conducting a lottery.<sup>36</sup>

### MUNICIPAL CONTRACTS

Two contracts were held to be illegal when the other contracting party was deemed to be a city official or employee having an interest in the contract. In *Cromer v. Layton*<sup>37</sup> the town retained an agent to procure an option to purchase a water system. The agent while serving in this capacity had procured the option in his own name for a lesser amount than that for which the sale was proposed to be made to the town. There was a sufficient fiduciary relationship to afford a right to equitable relief by the town. Again, an investment company, engaged by the City of Miami to market bonds purchased the securities. In this highly controversial issue the court upheld the maxim followed in this state, "no man can serve two masters." The company, the court found, is an official of the city while acting in such advisory capacity, and therefore, the purchase was invalid.<sup>38</sup> However, an engineer who had been hired by a city to draft plans and specifications for an incinerator did not have such an interest as to render the contract invalid when he later became associated with the successful bidder, since at the time he worked for the city he was an independent contractor and had no connection with the bidder.<sup>39</sup>

Plans and specifications for a city incinerator calling for the use of a patented automatic device solely controlled by one of the bidders did not prevent bidding on the incinerator from being on a competitive basis, since the automatic device was in competition with non-automatic devices.<sup>40</sup> The award of the bid was a valid exercise of the lawful powers of the city commission. An oral contract made by a city with a building contractor altering the original agreement by accepting extras in place of additional buildings to commercial use was invalid. The contractor could not be released from his obligation except by advertisement or competitive bidding. Mr. Justice Terrell said, ". . . court of equity

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35. *St. Petersburg v. Pfeiffer*, 52 So.2d 796 (Fla. 1951).

36. *Hanchey v. State ex rel. Roberts*, 52 So.2d 429 (Fla. 1951).

37. 64 So.2d 556 (Fla. 1953).

38. *Miami v. Benson*, 63 So.2d 916 (Fla. 1953).

39. *Hinds v. State ex rel. Knight*, 59 So.2d 634 (Fla. 1952).

40. *Ibid.*

will not tolerate slipshod methods in the conduct of municipal business . . . ."<sup>41</sup>

To prevent the City of Miami from executing a certain housing contract, a taxpayer filed a complaint asking for a restraining order. The court found the question premature since a taxpayer has no interest to sue to enjoin an illegal or unauthorized act of a municipal corporation unless such act will result in an increase of his taxes or in otherwise direct or indirect pecuniary injury to him.<sup>42</sup> The validity of a contract by which the city gave the operator of a wrecking and towing business the exclusive right for five years to keep the streets cleared of wrecks and impediments to traffic was considered. Although the terms of the commissioners might end before the term of the contract, the commissioners' terms are staggered and the contract is a valid exercise of the proprietary function of the city and for the general welfare. Moreover, it had been shown to operate advantageously and the court would not interfere with a crucial business matter.<sup>43</sup> A dissenting opinion asserted that the removal of cars so as not to impede traffic is a governmental duty and therefore a delegation of police power which could not be made to exceed the terms of the commissioners in office. A lease of land by the county aviation authority to an airline guaranteeing the same rights, privileges, and concessions accorded any other airline was not violated by leasing space for a neon sign.<sup>44</sup>

#### MUNICIPAL TORT LIABILITY

The requirement of sufficient notice to the city in conformance with the provisions established in the municipal charter as a condition precedent to personal injury suits against the city has been upheld in two cases before the Supreme Court. Both cases had dissenting opinions indicating that there is still doubt as to the acceptance of this requirement. In the recent case of *Olivier v. St. Petersburg*<sup>45</sup> the dissent held the charter provision to be a violation of Section 20 of Article III of the Constitution forbidding the passage of special or local laws regulating the practice of courts. The majority opinion decided that written notice setting forth the time but not the place of injury did not conform to specifications in the charter requiring both. The court further held that the charter provision is not unconstitutional as a special or local law as it has as its primary purpose the avoidance of litigation by giving the city reasonable opportunity to investigate claims for injuries, determine the question of

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41. *Universal Const. Co. v. Gore*, 51 So.2d 429 (Fla. 1951).

42. *Bryan v. Miami*, 56 So.2d 924 (Fla. 1951).

43. *Daly v. Stokell*, 63 So.2d 644 (Fla. 1953).

44. *Hillsborough County Aviation Authority v. National Airlines*, 63 So.2d 61 (Fla. 1953).

45. See note 4 *supra*.

liability, and effectuate a settlement if justified. In another case an unsigned statement dictated to an insurance adjuster of the town's liability carrier was held to be insufficient notice to the town attorney.<sup>46</sup> Mr. Justice Terrell dissented. An exception, however, was made to the strict requirement of notice where the plaintiff remained unconscious from the injury for the full period allowed for the giving of notice. Just how much time should be allowed for the performance of the condition after consciousness was regained remained for the trial court.<sup>47</sup> Notice to decide to the city was immaterial when the plaintiff elected to sue the city hospital in implied contract.<sup>48</sup>

An extremely important decision to municipal tort liability was that in *Suwanee County Hospital Corporation v. Golden*,<sup>49</sup> wherein the court held that a paying patient in a county hospital has the same rights against the hospital as if he were a patient in a private hospital. As to him, the municipality is performing a proprietary function. The decision in *Holbrook v. Sarasota*<sup>50</sup> reiterates this doctrine and holds also that a patient injured by the negligence of hospital employees may sue in contract rather than tort.

When a municipality is given charter powers by the Legislature to engage in business and to contract and to be contracted with, it cannot escape liability for breach of a contract, express or implied, by asserting that the breach sounds in tort and the damager person can only bring action sounding in tort.<sup>51</sup>

In the following instances the court found that the city had no liability in tort actions: for injuries occurring on connecting link roads which have been taken over by the state road department for maintenance and repair, pursuant to statutory authority;<sup>52</sup> for alleged negligent failure to furnish medical aid at the time of arrest;<sup>53</sup> for damages for the wrongful refusal to issue a building permit to repair a condemned building.<sup>54</sup> A municipality was not liable for injuries resulting from alleged beatings by two police officers of the municipality, on the basis that a municipal corporation is not liable for the tortious acts of its police officers committed as incident to the exercise of a purely governmental function.<sup>55</sup> Enforcement of liability, however, might in this instance assure a more careful selection of police personnel by the city. Another instance of a declaration of non-liability of a municipal corporation in maintaining a governmental

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46. *Miami Springs v. Lasseter*, 60 So.2d 774 (Fla. 1952).

47. *Miami Beach v. Alexander*, 61 So.2d 917 (Fla. 1952).

48. *Goff v. Fort Lauderdale*, 65 So.2d 1 (Fla. 1953).

49. 56 So.2d 911 (Fla. 1951).

50. *Holbrook v. Sarasota*, 58 So.2d 862 (Fla. 1952).

51. *Id.* at 865.

52. *Leialoha v. Jacksonville*, 64 So.2d 924 (Fla. 1953).

53. *Britt v. Ocala*, 65 So.2d 753 (Fla. 1953).

54. *Akin v. Miami*, 65 So.2d 54 (Fla. 1953).

55. *Miami v. Bethel*, 65 So.2d 34 (Fla. 1953).



function is observed in *William v. Green Cove Springs*.<sup>56</sup> An incarcerated prisoner had perished in a jail fire. Justices Terrell, Hobson, and Roberts strongly dissented to this view. Justice Terrell objected to non-liability in a situation of such negligent administration. The objection made seems to be well founded.

No liability was imposed on the city when a car went over a bulkhead at Dinner Key. The evidence showed the driver had been drinking and that no other cars had ever gone over that bulkhead. The court found no negligence on the part of the city.<sup>57</sup>

An action for injury to a child six years of age was barred by the twelve month statute of limitation under Florida Statutes Section 95.24, although blindness in one eye was not discovered until eighteen months after the accident.<sup>58</sup> The applicable Florida statute providing that no action shall be brought for negligence against the city unless brought within twelve months from the time of the injury or damage had been previously held to be constitutional in *Coleman v. St. Petersburg*.<sup>59</sup>

A city, however, is not relieved of liability merely because an ordinance places the burden on the owner of abutting property to repair and construct sidewalks or pay for their construction by the city. In this state, repair and upkeep of streets is a proprietary function and in exercising such function a governmental agency of this state cannot be immunized from liability for its torts.<sup>60</sup> A city is also liable if it has had notice of a defective sidewalk;<sup>61</sup> or if the defect has been in existence so long that it could have been discovered by the exercise of reasonable care.<sup>62</sup>

#### MUNICIPAL FUNCTIONS

A statute authorized the City of Jacksonville to acquire, construct, own and operate radio broadcasting stations and all improvements as the city deemed necessary or desirable for use in connection therewith. In *State v. Jacksonville*<sup>63</sup> the court held that the use of television equipment by this municipally owned radio station amounted to employment of a new and improved phase of broadcasting by the same station; that radio and television were distinct phases of a single function, although television was unknown when the statute was passed. Authorization by the legislature to the City of Miami Beach to build an auditorium carried with it the implied authority to operate the auditorium on behalf of

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56. 65 So.2d 56 (Fla. 1953).

57. *Miami v. Fuller*, 54 So.2d 198 (Fla. 1951).

58. *Cristiana v. Sarasota*, 65 So.2d 878 (Fla. 1953).

59. 62 So.2d 409 (Fla. 1953).

60. *Woods v. Palatka*, 63 So.2d 636 (Fla. 1953).

61. *Daytona Beach v. Humphreys*, 53 So.2d 871 (Fla. 1951).

62. *Mullis v. Miami*, 60 So.2d 174 (Fla. 1952).

63. 50 So.2d 532 (Fla. 1951).

the public interest or economic welfare of the city, although such operation was in competition with private theatrical business.<sup>64</sup>

#### MUNICIPAL RIGHTS AND LIABILITIES

Interest coupons detached from negotiable municipal bonds are not barred by the running of the statute of limitations from the date of the maturity of the bond but from the date of maturity of the interest coupon although no demand for payment is made, unless the obligor is able to show the ability and continued readiness and willingness to pay the sum due under the coupon at and after the date of its maturity.<sup>65</sup> An unaccepted offer to the city to dedicate a street, and lack of public use left the city unable to enforce private rights vesting in purchasers of the platted lots or to enjoin private use of the property.<sup>66</sup>

The Board of County Commissioners of Broward County applied to the Florida State Improvement Commission to construct certain roads, bridges, and tunnels at different places in the county, to be financed from funds of the Florida State Road Department including federal aid allocations and proceeds of revenue bonds. The City of Hollywood asked for a declaratory decree. Mr. Justice Terrell stated that since the application had not been approved nor had the State Board of Administration approved the legal and fiscal sufficiency of the bonds or certificates of indebtedness, the questions presented were premature. Under a constitutional provision creating the State Board of Administration, the State Road Department is the sole judge as to the manner in which eighty per cent of the surplus gas tax funds shall be applied to state roads and the Supreme Court would not assume an improper exercise of discretion before the application was granted.<sup>67</sup>

Lands held in trust by the city as trustee are to be used, managed, and administered forever in the public interest and for the citizens of the city. They do not fall within any of the classifications of real estate to which liens for services, labor or materials for improving property under a contract with the owner may attach and are not covered by the mechanics' lien law.<sup>68</sup> County commissioners cannot withdraw lands from a duly advertised valid tax sale and dedicate them for public use, but they could be compelled by mandamus to execute a deed to the successful bidder.<sup>69</sup> Proceeds of a bond issue to be used for the purpose of extending and improving a county hospital in Dade County were properly expendable to construct and equip a unit of the hospital for

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64. *Starlight Corp. v. Miami Beach*, 57 So.2d 6 (Fla. 1952).

65. *Panama City v. Free*, 52 So.2d 133 (Fla. 1951).

66. *Crystal River v. Williams*, 61 So.2d 382 (Fla. 1952).

67. *Hollywood v. Broward County*, 54 So.2d 205 (Fla. 1951).

68. *St. Augustine v. Brooks*, 55 So.2d 96 (Fla. 1951).

use as a medical school.<sup>70</sup> A purported conveyance by a town which had been abolished by the legislature was void and the town could not have held title to the realty as trustee for the benefit of others.<sup>71</sup>

#### MUNICIPAL TAXING POWER

Although lands have been ousted from the jurisdiction of a municipality, they are nevertheless subject to be taxed for debt service for bonds issued while those lands were apparently within the boundaries of the municipality, when the bonds and tax were not protested for twenty years by the community.<sup>72</sup> In another instance the property was situated outside the incorporate limits of the town but within the extended area of the town. The court held that if the property had had been subject to benefits from the bond funds at the time the property was included in the limits of the city, it would be subject to a levy of the tax. Here, it was not.<sup>73</sup> The mere fact that an island is serviced with water by a city does not give the city jurisdiction to levy taxes thereon.<sup>74</sup>

Determining a case concerning the taxation of a pier erected on tidelands on the ocean side of the county below low-water mark of the Atlantic Ocean, the Supreme Court held that the county had a right to exercise police control over the area and could tax the pier in return, since no paramount authority was attempted to be exercised against the sovereign authority of the United States. The court further found that the case of *U. S. v. California*<sup>75</sup> did not hold that the exclusive title and right of possession in the fee of the tidelands is in the United States, but that only the oil deposits are. The paramount right of possession is in the United States with concurrent right of possession in the sovereign state not to be exercised in conflict with the United States.<sup>76</sup>

The reduction of a special assessment lien was affirmed on the basis that liens against abutting property for paving should be diminished by the amount of depreciation in value of the property in relation to the prior and present use by the public of a residential street.<sup>77</sup> Benefits accruing to abutting land by reason of local improvements render such special assessments in relation to such improvement valid. A finding of such benefits is presumed to be correct and can be overcome only by strong,

69. *State ex rel. Wadkins v. Owens*, 62 So.2d 403 (Fla. 1953).

70. *Crow v. Dade County*, 54 So.2d 753 (Fla. 1951).

71. *Anglin v. Lauderdale By the Sea*, 60 So.2d 619 (Fla. 1952).

72. *Certain Lands Upon Which Town of Lake Placid Taxes are Delinquent v. Lake Placid*, 49 So.2d 542 (Fla. 1951).

73. *Town of Largo v. Roberts*, 57 So.2d 18 (Fla. 1952).

74. *Miami Beach v. State ex rel. Wood*, 56 So.2d 520 (Fla. 1952).

75. 332 U.S. 19 (1947).

76. *Carnasion v. Paul*, 53 So.2d 304 (Fla. 1951).

77. *Tallahassee v. Baker*, 53 So.2d 636 (Fla. 1951).

clear, and direct proof; but where property owners did not avail themselves of the remedies provided by law to restrain such assessment for two years and expenses had been incurred by the city, they were estopped.<sup>78</sup> Half of a tax collection on property within a city levied for a special road and bridge fund belonged to the city where the county had collected on the same property for the general fund.<sup>79</sup> The city commissioner, however, has no authority to pledge the city's portion of taxes, returned to it from a special county road tax on county property, to the county for a period of thirty years for payment of revenue bonds to aid in a bridge and tunnel program throughout the county.<sup>80</sup>

Under a statute authorizing municipalities to impose a state tax on cigarettes, but requiring ad valorem tax relief for municipal taxpayers as a condition precedent, the municipality was not authorized to impose the tax and use the funds for general operating expenses without making a reduction in over-all ad valorem tax millage.<sup>81</sup> Debt service taxes and general operating taxes of the county could not be imposed on lands held for the state in the name of the Game and Fresh Water Fish Commission, pursuant to Chapter 13533, Acts of 1929, Sections 372.12 and 372.19 repealing prior acts.<sup>82</sup> Acts abolishing and recreating a town created a de facto corporation rendering its citizens liable for taxes.<sup>83</sup> A statute authorizing a tax on fuel oil but not on kerosene was not discriminatory, unreasonable or arbitrary and applied to public and private utilities alike.<sup>84</sup>

The city has no authority to compromise tax claims, but where such has been done it would be inequitable to allow the compromise to be declared invalid.<sup>85</sup> However, this shall apply only to current taxes upon which the period of redemption has not expired.<sup>86</sup> Statutes authorizing the levy of taxes are to be strictly construed. If the authority to tax is doubtful, the doubt must be resolved against the tax.<sup>87</sup> Following this reasoning in *Paramount-Gulf Theatres v. Pensacola*<sup>88</sup> the court held that an amusement tax could not be levied on a pledge of revenue certificates to build a city auditorium; nor was a charitable hospital subject to ad valorem taxes because some few of its patients paid where the proceeds derived were applied to the charitable purposes of the institution.<sup>89</sup> An advertising tax may be lawfully imposed;<sup>90</sup> and a tax to retire county

78. *Rosche v. Hollywood*, 55 So.2d 909 (Fla. 1952).

79. *Lee County v. Fort Myers*, 52 So.2d 792 (Fla. 1951).

80. *Nelson v. Fort Lauderdale*, 54 So.2d 207 (Fla. 1951).

81. *State ex rel. Panama City v. Gay*, 52 So.2d 417 (Fla. 1951).

82. *State ex rel. Charlotte County v. Webb*, 49 So.2d 93 (Fla. 1950).

83. *Demko v. Judge*, 58 So.2d 692 (Fla. 1952).

84. *Orlando v. Natural Gas and Appliance Co.*, 57 So.2d 853 (Fla. 1952).

85. *Oldsmar v. Monnier*, 56 So.2d 527 (Fla. 1951).

86. *Ibid.*

87. *Paramount-Gulf Theatres v. Pensacola*, 62 So.2d 431 (Fla. 1951).

88. *Ibid.*

89. *Orange County v. Orlando Osteopathic Hospital*, 66 So.2d 285 (Fla. 1953).

90. *Miller v. Ryan*, 54 So.2d 60 (Fla. 1951).

jail certificates not to exceed five mills per annum for a period of ten years was not too vague and indefinite.<sup>91</sup> An insurance company was relieved from paying municipal taxes on premiums as falling within the provisions of Florida Statutes Chapter 175.<sup>92</sup>

#### REGULATORY ORDINANCES

*Invalid.*—Regulatory ordinances must be enacted in the light of the public interest and also in the interest of the business regulated. An ordinance restricting barbershop hours had no relation to the health, safety, and welfare of barbers or the public and was shown to be an unreasonable deterrent to the conduct of the business. The relation to the public of such a business makes it subject to reasonable regulation relating only to the competency of barbers, sanitation, and protection of the public against the spread of communicable diseases.<sup>93</sup> The provisions of a city ordinance containing safety measures regulating the speed of trains within the city to 15 miles per hour, enforcing a complete stop at crossings, and prohibiting double crossings except where automatically and manually operated gates existed, were held to be unreasonable. The court considered twelve accidents in one year not a sufficient indication of danger to citizens to necessitate the imposition of further safety measures on the part of the railroad to their greater expense, and the impediment of interstate passenger and freight movement of trains.<sup>94</sup> A resolution granting a certificate of public convenience and necessity for operation of a bus system within a city without any exception as to picking up and discharging passengers en route carries the same implication upon the granting of a renewed application and cannot be revoked, altered or suspended unless good cause be shown after due notice and opportunity for a hearing to the permittee.<sup>95</sup>

The court found a city ordinance authorizing the city to investigate character and decline a beer and wine license to one whom it finds unfit is a direct contravention of the state beverage act, Florida Statutes Section 562.45, authorizing municipalities to enact ordinances regulating hours, location and sanitary conditions of a business. One who had received a state license could not be refused a city license on the basis of character.<sup>96</sup> Imposing prohibitions against building construction at certain hours and locations was harsh and the ordinance ambiguous, said the court. The forbearance forced on the property owner was entirely out of proportion to any benefit redounding to the public.<sup>97</sup> The

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91. *State v. Sumter County*, 60 So.2d 529 (Fla. 1952).

92. *Larson v. American Title and Insurance Co.*, 52 So.2d 816 (Fla. 1951).

93. *Miami v. Shell's Super Store*, 50 So.2d 883 (Fla. 1951).

94. *Loftin v. Miami*, 53 So.2d 654 (Fla. 1951).

95. *Miami v. South Miami Coach Lines*, 59 So.2d 52 (Fla. 1952).

96. *State ex rel. Anthony Distributors Inc. v. Pickett, City Treasurer and Collector of City of Sarasota*, 59 So.2d 856 (Fla. 1952).

97. *Bay Harbor Island v. Schlapik*, 57 So.2d 855 (Fla. 1952).

court refused to rule on a request for a declaratory judgment as to whether a city had a right to regulate the speed limit on state and federal highways passing through its limits, since there was no controversy and it could not give an advisory opinion to the parties, the attorney-general and the city.<sup>98</sup> The court declared the invalidity of an ordinance which prohibited the building of a multi-level garage in designated areas without approval and permit by the city council. Such approval and permit to be granted or denied after a public hearing to determine the effect upon the traffic of the proposed area. It was held this ordinance restricted the lawful use of property and allowed the use of arbitrary discrimination between citizens.<sup>99</sup>

*Valid.*—The court upheld the validity of a number of ordinances which it reviewed. The validity of an ordinance permitting the suspension for cause of the council-selected city manager, which suspension was to be presented before the council by the mayor was questioned by the latter. The court found the ordinance valid and continuous suspensions of the manager by the mayor unwarranted.<sup>100</sup> An ordinance providing that a plumber must take an examination before being licensed, and awarding reciprocity to those licensed in other cities in the county having the same requirements was valid. The board of examiners of plumbers of the city was free to exercise discretion in barring one who was unable to pass the examination although licensed in the county, where no exam was required.<sup>101</sup> Another ordinance provided a minimum width of land to be dedicated to streets and sidewalks, the size of the lot to be platted, and requirements for dead end streets. It was held to be reasonable.<sup>102</sup>

The imposition of a charge on users of a sanitary sewage system for the purpose of raising money to be spent for preliminary engineering services in furthering a plan for the disposal of sewage was valid as a protective measure for the health of the city as a whole, although the burden would at first be borne by a relatively few.<sup>103</sup> The trial court ruling that a City of Fort Lauderdale ordinance was valid was affirmed by the Supreme Court. The ordinance made mere possession of gaming implements and gambling paraphernalia a crime or unlawful act and was upheld on the basis of the statutory provision authorizing a city or town council to suppress and prohibit all houses of ill fame, lotteries, and all games or devices in the nature of lotteries, gambling, and gaming

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98. *Ervin v. North Miami Beach*, 66 So.2d 235 (Fla. 1953).

99. *Drexel v. Miami Beach*, 64 So.2d 317 (Fla. 1953).

100. *Jones v. Slick*, 56 So.2d 459 (Fla. 1952).

101. *Gause v. Miami*, 59 So.2d 258 (Fla. 1952).

102. *Garvin v. Baker*, 59 So.2d 360 (Fla. 1952).

103. *Buchanan v. Miami*, 49 So.2d 336 (Fla. 1951).

houses, and authorizing a destruction of all instruments or devices used for the purpose of gaming.<sup>104</sup>

#### LICENSES AND ZONING

A number of cases confronted the court as to the determination of the validity of the authority of a city in restricting the issuance of liquor licenses. Generally, the court held a municipality in the exercise of its power to regulate the sale of intoxicating liquors within its territorial limits may limit the number of permits or licenses to be issued within stated areas within the municipality.<sup>105</sup> Moreover, Florida Statutes Section 561.44 empowers a city to establish zoning ordinances restricting locations of liquor stores, and sales of liquor may in particular zones be limited to sales from package stores.<sup>106</sup> The basic purpose of the ordinance is well founded in the protection of the health and morals of the general public. The question of whether an emergency exists necessitating the passage of an amendatory ordinance prohibiting the sale of liquors in places of business located within 1000 feet of each other rests in the discretion of the city council.<sup>107</sup>

An ordinance passed by Lake Maitland prohibited the issuance of any permit to vend intoxicating liquors within 750 feet of a licensed place then in existence during the period that the population was less than 2500. This was held to be a reasonable exercise of the zoning power.<sup>108</sup> A second ordinance in the same town established a zone within which it would be unlawful to carry on the business of vending beverages containing alcohol of more than one per cent by weight. This in effect left only a small stretch of property wherein a license could be issued. A license had already been issued in that stretch. The ordinance limiting the issuance of another license for 750 feet combined with the second limiting ordinance amounted to a limitation of but one license in the town and was prohibitory rather than regulatory. The court found the ordinance<sup>109</sup> a violation of Florida Statutes Section 561.20 which permits regulation, but adds:

. . . such limitation shall in no event be such as to prohibit the issuance of at least two such licenses in any such city or town.

There is a limitation on the number of appropriation ordinances taxing an occupation under an occupational license. An emergency ordinance requiring wholesale dry cleaning plants to pay an annual

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104. *State ex rel. Allen v. Kelley*, 50 So.2d 527 (Fla. 1951).

105. *Buscher v. Mangan*, 59 So.2d 745 (Fla. 1952); *Brown v. Miami Beach*, 54 So.2d 689 (Fla. 1951).

106. *Gross v. Miami*, 62 So.2d 418 (Fla. 1953).

107. *Clackman v. Miami Beach*, 51 So.2d 294 (Fla. 1951).

108. *Ragozzino v. Lake Maitland*, 54 So.2d 364 (Fla. 1951).

109. *Downsborough v. Lake Maitland*, 57 So.2d 21 (Fla. 1952).

occupational license fee when an appropriation ordinance already included the licensing of such plants was invalid.<sup>110</sup> In another instance it was found that a license for deep-sea fishing can constitute a license for water sight-seeing under a city ordinance requiring licensing for both.<sup>111</sup>

An ordinance prohibiting the sale for consumption on the premises of non-intoxicating beer in a small area within the city limits did not follow the procedure prescribed by Chapter 20202, Laws of Florida, Special Acts of 1939, a special zoning law for Winter Haven. The court found this later act did not repeal the State Beverage Act reserving to cities the power to regulate liquor establishments and to establish zoning ordinances. This zoning ordinance was reasonably necessary.<sup>112</sup> The regulation of signs in a business zone was upheld.<sup>113</sup> The operation of a city garbage disposal plant was declared not to be a nuisance per se. The surrounding property owners had acquired their property with full knowledge of the plant and were not entitled to relief.<sup>114</sup> Certain lots which had been used for business before the city had rezoned the area for residences were held to fall into the classification of the section of the ordinance stating that:

A non-conforming use shall not be continued, if by reason of odors, noxious fumes, smoke, noise or otherwise it shall become a nuisance to residents in adjoining R or A use districts.<sup>115</sup>

A long line of decisions of the supreme court had adhered to the principle that the court would not substitute its judgment for that of the city where the validity of a zoning ordinance was in question, but would sustain the legislative intent of the ordinance if the matter is fairly debatable. The court had previously deviated from this holding in a decision on the rehearing of *Miami Beach v. First Trust Co.*,<sup>116</sup> the *Firestone* case, and found such an ordinance invalid. The problem arising again, the court returned to its original holding.<sup>117</sup> And in the recent case of *Miami Beach v. Hogan*<sup>118</sup> the city brought certiorari against the owner of realty to review an order of the circuit court staying prosecution of condemnation proceedings instituted by the city to condemn realty for the purpose of a park. The zoning ordinance was upheld. On the same reasoning, a variance based on unnecessary hardship and granted by the board of adjustment on appeal from an order by the board of

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110. *Headley v. State ex rel. Walker*, 51 So.2d 37 (Fla. 1951).

111. *Excursions Inc. v. Miami*, 60 So.2d 161 (Fla. 1952).

112. *Ellis v. Winter Haven*, 60 So.2d 620 (Fla. 1952).

113. *Merritt v. Peters*, 65 So.2d 861 (Fla. 1953).

114. *State ex rel. Knight v. Miami*, 53 So.2d 637 (Fla. 1951).

115. *Perkins v. Coral Gables*, 57 So.2d 663 (Fla. 1952).

116. 45 So.2d 681 (Fla. 1950).

117. *State ex rel. Office Realty Co. v. Ehinger*, 46 So.2d 601 (Fla. 1950).

118. 63 So.2d 493 (Fla. 1953).



county commissioners was upheld. The court would not substitute its judgment for that of the adjustment board.<sup>119</sup>

On two occasions it was found that the zoning authority was exercised without relation to the public health, safety, or welfare. Property within a limited business zone, primarily desirable for business should not have been rezoned again to residence.<sup>120</sup> Another town was compelled to issue a gas station permit and remove an R-2 classification.<sup>121</sup> A zoning ordinance was passed and adopted by Hollywood without notice and public hearing. It was declared invalid. An act requiring the city to appoint a city planning and zoning board, with powers defined by city ordinance, did not authorize the city commission to enact zoning ordinances based on recommendations by members of such board, without notice and public hearing as required by general law.<sup>122</sup>

#### VALIDITY OF ELECTIONS

To conform with city charter provisions the title of an ordinance must be comprehensive enough to put the electorate on notice of the contents of the ordinance.<sup>123</sup> A title informing of a low cost housing project of the city, state and federal authority but not as to the fact that sewers, water mains, sidewalks, and all municipal services are to be furnished at the expense of the city, or what type of streets, or whether the city would be responsible for the taxes, did not conform.<sup>124</sup> Of three bond proposals submitted, only one received a majority vote, thereby rendering the other two invalid.<sup>125</sup> The 1951 election code providing that a bond election shall not be held at the same time as a municipal election of city commissioners does not repeal all local laws in conflict until after January 1, 1954.<sup>126</sup> The inclusion of an election on the issue of a housing contract at the same time as a primary election was valid as there would be no additional expense by the inclusion.<sup>127</sup>

#### EMINENT DOMAIN

A declaration of rights was requested in an action subsequent to a condemnation suit. The plaintiffs declared there was an accounting due to them for the use of the land by the city under a landlord-tenant relationship or on the basis of trespass for the twenty years prior to

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119. *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). *Accord*, *Segal v. Miami*, 63 So.2d 496 (Fla. 1953).

120. *Miami Shores Village v. Bessemer Properties Inc.*, 54 So.2d 108 (Fla. 1951).

121. *Surfside v. Normandy Beach Development*, 57 So.2d 844 (Fla. 1952).

122. *Hollywood v. Rix*, 52 So.2d 135 (Fla. 1951).

123. For a comprehensive study of Florida zoning laws consult Wright, *Zoning Under the Florida Laws*, 7 *MIAMI L.Q.* 324 (1953); and Bartley, *Legal Problems in Florida Municipal Zoning*, 6 *FLA. L. REV.* 355 (1953).

124. *Bryan v. Miami*, 51 So.2d 300 (Fla. 1951).

125. *State v. Dade County*, 54 So.2d 57 (Fla. 1951).

126. *State v. Miami*, 54 So.2d 250 (Fla. 1951).

127. See note 43 *supra*.

the condemnation. The judgment in the condemnation suit was held to be *res judicata* since the parties did not in the condemnation suit show that the judgment did not include compensation for a prior use.<sup>128</sup> An interesting contention was that brought by a leaseholder, in an eminent domain proceeding, who attempted to show through the testimony of an insurance agent that the building of a new road, the property for which would be taken in eminent domain, would increase the hazards of its business, thereby requiring more insurance. This could not, reasoned the court, be considered a damage chargeable to the public in an eminent domain proceeding.<sup>129</sup> A governmental subdivision can be made to pay reasonable attorney's fees in an action subsequent to a condemnation suit when the condemnation suit has been voluntarily dismissed. Florida Statutes Section 73.16 reads, "All costs of proceedings shall be paid by petitioner including a reasonable attorney's fee."<sup>130</sup>

Another question before the court concerned the title or ownership of land between different parties in an eminent domain proceeding as to the disposition of the award between them. The award, stated the court, should be made by the jury in the eminent domain proceedings and the apportionment of the money should be made later in a proper proceeding after the interest, title, or ownership of the various parties has been determined. Title should be tried by a jury of six rather than the jury of twelve used in the eminent domain proceedings.<sup>131</sup> When any or all of an action in a condemnation proceeding is dismissed by the condemnor's attorney, the dismissal will be construed as that of the condemnor unless there is a showing to the contrary.<sup>132</sup>

### DEDICATION

Without any Florida precedent to guide them, the court followed the general weight of authority and the Illinois case of *Village of Lee v. Harris*,<sup>133</sup> in deciding that the acceptance of the dedication of some of the streets shown on a plat, and the opening and paving of same shall be considered a dedication of all the streets so shown and not subject to revocation or withdrawal. This rule will be followed unless some person has acquired the title, or right to possession of a particular street by (a) a mesne conveyance, (b) adverse possession, or (c) the public authorities are estopped.<sup>134</sup>

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128. *Miami v. Osborne*, 55 So.2d 120 (Fla. 1953).

129. *Natural Gas and Appliance Co. v. Marian County*, 58 So.2d 701 (Fla. 1952).

130. *DeSoto County v. Highsmith*, 60 So.2d 915 (Fla. 1953).

131. *Peeler v. Duval County*, 66 So.2d 247 (Fla. 1953).

132. *Conner v. State Road Dep't of Florida*, 66 So.2d 257 (Fla. 1953).

133. 206 Ill. 428, 69 N.E. 230 (1903).

134. *Indian Rocks Beach South Shore, Inc. v. Ewell*, 59 So.2d 647 (Fla. 1952).

## EVIDENCE

The Supreme Court held the circuit court to be in error in re-weighting evidence adduced before the civil service board of Pensacola for the purpose of determining where the preponderance of evidence lay; but the court may examine the record to determine whether there is substantial evidence to justify the finding of the administrative body, and may inquire into the jurisdiction of the administrative body to ascertain whether that body proceeded in accordance with the authority conferred on it by controlling law.<sup>135</sup> The plaintiffs have the burden of convincing the courts that the proceedings are illegal or unreasonable and unnecessary in a suit to enjoin a city from annexing contiguous land. The rule to which the court is committed is that there must be a present showing of population, industrialization or similar reason to authorize the bringing of large areas of land into a municipality. Wild, unoccupied, unimproved lands so remote from a municipality that they can receive no benefit therefrom should not be included therein.<sup>136</sup>

In a suit by a municipality to restrain interference with the use of property as a street, and where the evidence sustained the determination that the way had not become a public street either by dedication or public user, the fact that the original ordinance abandoning the street could not be found did not preclude the defendant from relying on the ordinance and the city was estopped from questioning the contents of the ordinance.<sup>137</sup>

## PROCEDURE AND REMEDIES

An action against a municipal corporation is inherently local and must be brought in the county in which the municipality is located.<sup>138</sup> A bill for a declaratory decree was a proper procedure for the city to bring to determine the seniority of two vieing police officers notwithstanding that the remedy of quo warranto was also available. Florida Statutes Section 87.12 provides that "The existence of another adequate remedy shall not preclude a decree for . . . declaratory relief."<sup>139</sup>

In a landowner's quo warranto proceeding to oust land from an area annexed by the city on the ground that wild, unimproved lands were not benefited by annexation, recitals in the municipal ordinances that the city had been and would be unable to render usual and ordinary benefits were not of such nature that the trial court could take judicial knowledge of their complete inaccuracy or falsity. Though such landowner may under certain circumstances seek injunction against collection of municipal

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135. *Pensacola v. Maxwell*, 49 So.2d 527 (Fla. 1950).

136. *Gillette v. Tampa*, 57 So.2d 27 (Fla. 1952).

137. *Crystal River v. Williams*, 61 So.2d 382 (Fla. 1952).

138. *Williams v. Lake City*, 62 So.2d 732 (Fla. 1953).

139. *Lockleer v. West Palm Beach*, 51 So.2d 291 (Fla. 1951).

taxes on land, the possibility of such equitable relief would not of itself bar the landowner from seeking ouster through quo warranto when the facts justify the same; nor would the landowner be barred by the fact that he does not represent all of the land annexed and that other landowners could later bring suit or might desire to remain in the municipal limits.<sup>140</sup>

Where an action brought by holders of municipal recreational bonds who were also general and utility taxpayers in the city, benefitted the city monetarily, the plaintiffs were entitled to recover attorney's fees payable from the money so recovered.<sup>141</sup>

A demand that city officials take action with respect to a wrong against the city by one sustaining a fiduciary relation to the city is not necessary as a prerequisite to action by a private individual on behalf of the city, where circumstances are such as to indicate that the request if made would be unavailing.<sup>142</sup> An affidavit charging that a councilman has indulged in activities inimical to the best interests of the citizens of the city in an effort to recall him did not meet the requirements of the city charter requiring a charge of a misdeed having some relationship to the performance of duties of office stronger than a belief or idea. The councilman had a property right in the office to which the people had elected him and could not be forced into a recall election to determine whether he should be ousted only a few months after entering his term, in the absence of a substantial compliance with the law prescribing the procedure for such drastic action.<sup>143</sup>

The contention that a non-freeholder has not such an interest in a bond election as to bring an action questioning the validity of the election is without merit.<sup>144</sup> A taxpayer has the right to bring suit to enjoin the illegal act of a statutory commission in the expenditure of public funds and need not wait until the injury is accomplished.<sup>145</sup>

#### LEGISLATIVE ACTS

The 1951 legislature passed a number of statutes concerning municipal corporations. Some of these have already been tested. The passage of Sections 74.01, .03, .09, .15 (1)(2) amended those sections of the Florida Statutes on proceedings supplemental to eminent domain. The constitutionality of the statute was questioned in *State Road Dep't v. Forehand*.<sup>146</sup> The court held the purpose of the statute was to provide a summary method of securing possession of property for public purposes pending condemnation proceedings, and at the same time meet the requirements of due process. The statute requires adequate notice and

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140. *State ex rel. Watson v. Hallandale*, 52 So.2d 797 (Fla. 1951).

141. *Universal Construction Co. v. Gore*, 51 So.2d 429 (Fla. 1951).

142. *Cromer v. Layton*, 64 So.2d 556 (Fla. 1953).

143. *Richard v. Tomlinson*, 49 So.2d 798 (Fla. 1951).

hearing. Section 95.37 provides a limitation for relief claims against the state.

A new county annual budget act was passed repealing all other laws in conflict.<sup>147</sup> The validity of the budget act was upheld in *Chase v. Board of Public Instruction of Dade County*,<sup>148</sup> in which case the court found that such an act was general rather than local, creating county budget commissions in counties of not less than 250,000 population and defining their powers and duties, and is applicable to counties within its class and potentially applicable to every county in the state. The budget act is a later expression than the school code of the legislature on the question of budgeting and supercedes its provisions in counties where the budget commission has been created. The budget commission is authorized to change, alter, amend, increase, or decrease any item and total amount or amounts of any estimate of expenditure or receipts prepared or submitted by the board whose budget is under consideration, since its purpose is sound financing and balancing of all county budgets. However, it is beyond the power of the commission to reduce the millage fixed by the freeholders.

Section 165.01 was amended to change the number of inhabitants of a town which may desire to incorporate from 25 to 150. That portion of the statute which reads "It is unlawful for the male and female inhabitants, who are freeholders and registered voters of any hamlet . . ." was interpreted as meaning that freeholders qualified to participate in a meeting to incorporate a grant were not required to be registered as freeholders.<sup>149</sup> Sections 182.01 to 182.22 were repealed and 182.23 was passed making provision for police officers' insurance and annuity fund. The legislature passed an enabling act for municipal off-street parking facilities.<sup>150</sup> The Sanitary Sewer Financing Act of 1951 became Section 184.

In a suit to determine the constitutionality of the Palm Beach Sanitary District Bill, it was held that the expenditure of county funds for the holding of a referendum election as required by the bill would be an expenditure of county funds for a county purpose and therefore constitutional. The constitutional requirement of a uniform and equal rate of taxation requires that the rate of taxation for state purposes shall be uniform throughout the state, uniform throughout the county for county purposes, etc., but where the act authorizes an ad valorem tax

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144. *Bryan v. Miami*, 51 So.2d 300 (Fla. 1951).

145. *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953).

146. 56 So.2d 901 (Fla. 1952).

147. FLA. STAT. c. 129 (1951).

148. 52 So.2d 125 (Fla. 1951).

149. *Coreytown v. State*, 60 So.2d 482 (Fla. 1952).

150. FLA. STAT. c. 183 (1951).

to be levied it may be levied at a different rate in each of the affected municipalities.<sup>151</sup>

The Florida State Defense Council, Section 249, was repealed and replaced by Civil Defense, Section 252, and the New Social Welfare Law, Section 409, was revised. Interpreting a village charter providing that the village should be governed by a council of five and a majority of three constitutes a quorum, the court found where two members were no longer on the council due to non-residence that two could not constitute a quorum.<sup>152</sup> In a declaratory decree to adjudicate the validity of Chapter 26775, Acts of 1951, the court found the Board of Public Instruction of Brevard County authorized to create as special tax school districts, high school tax areas and elementary school tax areas, and to issue bonds and impose ad valorem taxes on lands thereon to pay interest and principal on said bonds. The ten mill limitation, however, could not be exceeded.<sup>153</sup>

An act authorized re-employment of retired employees of the city but did not fix their compensation. The assumption is that the legislature intended that the amount of compensation would be adjusted by the employing authorities and the employees at the time of employment.<sup>154</sup> In holding Chapter 27950 unconstitutional the court opined that when the constitution provides ways and means for accomplishing a purpose, the means provided is exclusive of every other means, including those attempted by the legislature; therefore, this act which created a county school building authority with the authorization to construct and enlarge school buildings and to issue refunding bonds for that purpose, and to rent the completed buildings to the county board of public instruction was unconstitutional where the act, bond issue, and proposed rental contract contemplated raising and appropriating funds without the approving vote of the freeholders as required by Section 6, Article IX, and Section 17, Article XII of the Florida Constitution.<sup>155</sup>

At the 1953 session of the legislature a number of statutes relating to municipal corporations were passed. Municipalities were authorized to adopt published codes by reference;<sup>156</sup> codification of municipal ordinances were authorized; eminent domain proceedings were extended;<sup>157</sup> provisions were made for mosquito control districts;<sup>158</sup> a state turnpike authority was created;<sup>159</sup> other acts passed related to revenue bonds;<sup>160</sup>

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151. *Palm Beach v. West Palm Beach*, 55 So.2d 566 (Fla. 1951).

152. *Clark v. North Bay Village*, 54 So.2d 240 (Fla. 1951).

153. *Smith v. Board of Public Instruction*, 56 So.2d 713 (Fla. 1952).

154. *State ex rel. Poston v. Kennedy*, 54 So.2d 369 (Fla. 1951).

155. *State v. Volusia County School Bldg. Authority*, 60 So.2d 761 (Fla. 1952).

156. Fla. Laws 1953, c. 28000.

157. Fla. Laws 1953, c. 28001.

158. Fla. Laws 1953, c. 28131.

159. Fla. Laws 1953, c. 28128.

160. Fla. Laws 1953, c. 28045.

the publishing of ordinances,<sup>161</sup> and the expansion of municipal boundaries.<sup>162</sup>

In a case of first impression, *Adams v. Housing Authority*, the constitutionality of Section 42.08 of the Housing Authorities Law was questioned. This section authorizes the acquisition of real estate in a blighted area for the purpose of clearing such area by eminent domain proceedings to make it available for sale or lease to private enterprise. The court held this to be unconstitutional where the benefit to the public would be incidental since incidental benefits to the public do not create a public purpose, and it is unconstitutional to take land from one man against his will to make it available to another for a private purpose.<sup>163</sup> This position was reiterated in a later case.<sup>164</sup> Interpreting a question concerning a special act creating the City of Ocoee, which provided for annexation of land, the court held that the title of such act, as in all other legislative acts, must be broad enough to give reasonable notice that such authority is being or may be conferred by the provisions of the act.<sup>165</sup>

#### CONCLUSION

That area in municipal corporation law concerning the issuance and validation of municipal bonds is as yet fraught with confusion and complexity. The state constitution and statutes set forth the guiding principles, limitations and restrictions, but since their interpretation remains on the court, and the court is not always consistent, there is no predictability whether an issuance will be valid.

An extremely questionable region is that of municipal tort liability. The application by the court of strict construction in the requirement of notice to the city and the twelve month statute of limitations in actions brought against the city in tort at times appears to reach an inequitable conclusion. With yet greater distaste one views the doctrine of non-liability for failure to afford medical aid to a prisoner at the time of arrest, for injuries from beatings by police officers, for the death of a prisoner in a jail fire. Approaching the problem from a practical standpoint, were a city to be liable for the conduct of its employees while they are acting in their official capacity, such liability might act as a spur to a more circumspect selection of those employees, particularly in the municipal police departments from whence the larger portion of the wrongful conduct appears to emanate.<sup>166</sup>

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161. Fla. Laws 1953, c. 28166.

162. Fla. Laws 1953, c. 28284.

163. 60 So.2d 663 (Fla. 1953).

164. *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953).

165. *City of Ocoee v. Bowness*, 65 So.2d 7 (Fla. 1953).

166. An excellent symposium on municipal corporation law in Florida has appeared in 7 *FLA. L. REV.* (1953).