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## COMMENT

### TOWARD SOLVING THE DOUBLE TAXATION DILEMMA AMONG FLORIDA'S LOCAL GOVERNMENTS: THE MUNICIPAL SERVICE TAXING UNIT

KATHERINE A. EMRICH

*"Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas."*

—FLA. CONST. art. VIII, § 1(h).

#### I. INTRODUCTION

The constitutional provision quoted in the epigraph prohibits county governments from taxing property located in municipalities to pay for services provided by the county government exclusively in the unincorporated areas.<sup>1</sup> The principle behind this prohibition is simple: a person should not be taxed for services not received. However, this concept, most commonly referred to as the "double taxation" issue, has probably been the single most controversial area of inequity in financing local government services in Florida.<sup>2</sup>

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1. For purposes of this article, the following terms have the definitions indicated below:

(1) "Unincorporated areas" include all property in the county which is not within the borders of an incorporated area; typically, suburbs and urban fringe areas are contained in this category.

(2) "Incorporated areas," "cities" and "municipalities" are used interchangeably.

(3) "Countywide" refers to both the unincorporated and incorporated areas within a county.

(4) The terms "ad valorem taxes" and "property taxes" are used interchangeably and refer to taxes imposed on real, not personal, property.

2. FLA. ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, *THE DOUBLE TAXATION ISSUE* 5 (1978) [hereinafter cited as *THE DOUBLE TAXATION ISSUE*]. See also FLA. DEP'T OF COMMUNITY AFFAIRS, *DUAL TAXATION IN FLORIDA: AN UPDATE* (1979) [hereinafter cited as *DUAL TAXATION IN FLORIDA: AN UPDATE*]; T. Wilkes, *Double Taxation: What Role for the State Constitution?* (1977) (unpublished report to the 1978 Florida Constitution Revision Commission).

Under the existing local government home rule authority in Florida, city residents pay ad valorem taxes to a municipality for the provision of urban or municipal-type services. FLA. STAT. ch. 166 (1979). The county government also levies taxes against these same residents and uses such proceeds to provide services countywide. FLA. STAT. ch. 125 (1979). However, if county funds which are collected countywide are used to provide urban services only to residents in the unincorporated areas, double taxation of municipal residents results. Under these circumstances, municipal residents are taxed twice—once by the municipality and again by the county—but they receive the service only once, from the municipality. Hence, the phrase "double taxation" has been coined.

Double taxation has long been a matter of contention between municipal and county governments.<sup>3</sup> Municipalities assert that their residents are unfairly taxed for the services they receive, while counties contend that "if the cities desire to provide services which duplicate those provided by the county, the residents living outside the cities should not be penalized for it."<sup>4</sup> This conflict has often resulted in litigation.<sup>5</sup> The courts have been called upon to analyze a number of factors in determining whether double taxation exists. Furthermore, in an attempt to eliminate the problem, the legislature has authorized city and county governments to provide for more effective service delivery systems and equitable funding structures.<sup>6</sup>

Initially, this comment will review the origin and development of the double taxation issue which culminated in the adoption of the prohibition provision in the 1968 Florida Constitution. Next, it will

3. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 5. The Council emphasized that the problem of double taxation in the area of city-county relations has existed since Florida became a state.

At its first session in 1845, the Legislature enacted a county roads act which mandated the conscription of able-bodied males to work on county roads, Ch. 58, Laws of Florida, 1845. During this period in history physical burden was frequently substituted for a tax burden. The courts viewed this physical burden in the same manner as the burdens of jury duty and militia. (*Galloway v. Town of Tavares*, 37 Fla. 58, 19 So. 170, 1896). It soon became evident that the Legislature had imposed a double burden on municipal residents who were conscripted once to work on municipal streets and again to work on county roads outside their municipalities. In 1856 the Legislature alleviated this double burden for the citizens of Jacksonville by exempting them from road duty outside the city, Ch. 820, Laws of Florida, 1856. This was followed in 1881 by a general act exempting all municipal citizens from county road duty in unincorporated areas, Ch. 3295, Laws of Florida, 1881. As taxation began to replace physical burden, counties were authorized to levy ad valorem taxes in lieu of citizen conscription for road duty, and the Legislature required the sharing of these revenues between counties and municipalities, Ch. 4014, Laws of Florida (1891).

*Id.* n.1.

4. Burgess & Carlton, *Inequity in County Taxation: How Pinellas Solved It*, 3 FLA. ENV'T'L AND URB. ISSUES 1 (1976).

5. See discussion of court cases *infra*.

6. Pursuant to the 1968 Florida Constitution, the legislature has authorized broad grants of home rule power to cities and counties under, respectively, chapters 166 and 125, Florida Statutes (1979). Several mechanisms are available under general law whereby local governments can help remedy their double tax difficulties. The Florida Advisory Council on Intergovernmental Relations explains in its report on double taxation that such mechanisms include annexation, incorporation, city-county consolidation, city dissolution, the creation of special taxing districts and municipal service taxing units, and the transfer of functions between local governments. However, the Council notes that because of a variety of political and practical reasons, many of these mechanisms have not been fully utilized. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 21.

outline how courts have responded to the double taxation problem. This comment will then examine the innovative legislative vehicle created in an attempt to resolve the issue, the "municipal service taxing unit." Finally, it will review recent challenges to the constitutionality of this taxation mechanism.

## II. HISTORICAL PERSPECTIVE

In the early years of Florida's development, the division of responsibility for provision of governmental services was fairly well defined.<sup>7</sup> Counties, predominantly rural areas which served as political subdivisions of the state, provided the administrative services through which the powers of the state were exercised.<sup>8</sup> The cities, on the other hand, being largely urban in character, furnished services of a "municipal-type," such as street lighting, fire and police protection, garbage collection, paving and maintenance of streets, and the like.<sup>9</sup> However, as development progressed, services provided by both cities and counties "began to broaden in both type and intensity, and conflicts as to the responsibilities of service provision began to arise."<sup>10</sup>

With the tremendous influx of new residents into Florida following World War II, extensive urban development took place in the unincorporated areas.<sup>11</sup> Of necessity, county governments began to provide municipal-type services to residents located in the unincorporated sections of their jurisdictions.<sup>12</sup> The primary revenue source which the counties utilized in order to provide these services was the property tax, which is levied countywide.<sup>13</sup> It was at

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7. See generally Juergensmeyer & Gragg, *Limiting Population Growth in Florida and the Nation: The Constitutional Issues*, 26 U. FLA. L. REV. 758, 759-65 (1974); Sparkman, *The History and Status of Local Government Powers in Florida*, 25 U. FLA. L. REV. 271, 271-76 (1973); Note, *Municipal and County Ordinances: Looming Difficulties Under Florida's New Judicial Article*, 26 U. FLA. L. REV. 255, 258 (1974).

8. *Keggin v. Hillsborough County*, 71 So. 372, 373 (Fla. 1916). See also Sparkman, *supra* note 7, at 273. Sparkman notes that under the constitution of 1838, counties were "used as the basis for the establishment and administration of certain aspects of the state judicial system, for the administration of the election laws, and as the basis of the plan of apportionment of representation in the general assembly." *Id.* (citations omitted).

9. See THE DOUBLE TAXATION ISSUE, *supra* note 2, at 5.

10. PLANNED MANAGEMENT CORP., HILLSBOROUGH COUNTY DOUBLE TAXATION STUDY 1 (1978).

11. T. Wilkes, *supra* note 2, at 3.

12. See THE DOUBLE TAXATION ISSUE, *supra* note 2, at 5-6.

13. Sittig, *Pinellas Court Rules on Double Tax Issue*, FLA. MUNICIPAL RECORD, Jan. 1976, at 3. Mr. Raymond Sittig, who is Executive Director of the Florida League of Cities, points out that urban development forced counties into providing a variety of municipal-type services, thus placing the city taxpayer into the position of supporting, via the property

this juncture that allegations of "double taxation" began to be heard among local government officials.<sup>14</sup>

Municipalities claimed that the counties were paying for municipal-type services from countywide ad valorem taxes and that these services were provided only to the unincorporated areas and not to the municipalities. They also asserted that these tax dollars were derived primarily from property situated within municipal limits.<sup>15</sup> Essentially, city residents complained that they were being taxed twice for the same service: once for municipal services they were receiving from the city, and again for municipal services they were not receiving from the county.<sup>16</sup>

County government officials responded that they were being forced through urbanization to relinquish their traditional role of providing only general countywide services, and that they were functioning in the dual capacity of providing both countywide services and services highly localized to certain urbanized unincorporated areas.<sup>17</sup> These officials asserted that due to restrictive annexation laws and limited revenue flexibility, counties were obligated to provide municipal-type services using their primary source of

tax, a "substantial array of services designed principally to benefit the residents of the unincorporated areas." *Id.*

14. *Id.* The Florida Constitution guarantees ad valorem taxing powers to both cities and counties and requires that their tax rates be uniform throughout their respective jurisdictions. FLA. CONST. art. VII, §§ 1(a), 2, 9(a). Thus, the city resident is subject to property taxation by two local governments (the city and county), while the resident of the unincorporated area is subject only to property taxation by the county.

15. See Sittig, *supra* note 13, at 9. In several urban counties, "in excess of 70% of the county general fund property tax revenue flowed from property located inside municipalities." *Id.*

16. See *id.* Sittig notes examples of double taxation in a report prepared by the Palm Beach Municipal League:

Within the report were several pictorial demonstrations of this "double taxation" issue. The first photograph showed two county sheriff patrol cruisers—whose entire services were provided in the rural [*i.e.*, unincorporated] area. The two cruisers were purchased at a cost of \$5,600. The city taxpayer paid [sic] \$3,920 and received no measurable benefit from this expenditure. The rural taxpayer paid \$1,680 and 99+ % of the cruisers' services benefited the unincorporated taxpayer in rural law enforcement programs. A second graphic illustration involved the purchase of a county road grader at a cost of \$30,300. The city taxpayer paid \$21,210 and again received no measurable benefit. The rural taxpayer paid \$9,090 and again, received 99+ % of benefit of the service of this grader in maintaining rural roads. Hundreds of other examples were cited in the purchase of tractors, mowers, and other capital equipment utilized in the unincorporated area of the county, and funded from the county general fund.

*Id.*

17. Interview with Gary L. Van Ostrand, Executive Director, Fla. Advisory Council on Intergovernmental Relations, in Tallahassee, Fla. (Sept. 26, 1980).

revenue—the property tax.<sup>18</sup> County officials noted that the underlying factors which caused double taxation were largely beyond any single government's control. These factors included: (1) the “rapid urbanization in the unincorporated areas adjacent to established cities, with attendant demands for municipal services”;<sup>19</sup> (2) the existence of largely “static municipal boundaries”;<sup>20</sup> (3) the overlapping “hodgepodge of governmental jurisdictions”;<sup>21</sup> (4) the “lack of differentially assigned service responsibilities”;<sup>22</sup> and, (5) the “relative location of residents.”<sup>23</sup>

Though there seemed to be a general consensus on the root causes of double taxation, there was not much agreement among cities and counties on a remedy to the problem. Thus, in 1966, municipal representatives in South Florida sought relief by challenging this tax inequity in the courts in *Dressel v. Dade County*.<sup>24</sup> In a taxpayers' class action suit, municipal officials and residents sought to prevent Dade County from collecting taxes for the county fire department from any city which furnished its own fire protection. The plaintiffs asserted that the county was providing fire service mainly to the unincorporated areas and not to the municipalities, and that the service was being paid for largely by municipal residents who also had to pay a city tax for their local fire service.<sup>25</sup>

After extensive discovery proceedings, the trial court ruled against the taxpayers on a motion for summary judgment.<sup>26</sup> The circuit judge reasoned that as long as the county was willing to

18. Address by L. A. Hester, County Administrator of Broward County, to the Constitution Revision Commission at the Local Government Hearing (Sept. 8, 1977) (on file at FSU Law Review) [hereinafter cited as L. A. Hester Address]. See also THE DOUBLE TAXATION ISSUE, *supra* note 2, at 22. That report indicates that annexation of populated unincorporated areas to existing cities would lessen the impact of double taxation because “the number of residents outside of municipalities would be reduced, therefore resulting in a possible reduction in county government service responsibilities.” *Id.* However, Florida's annexation law, FLA. STAT. ch. 171 (1979), is “so restrictive” that most annexation efforts are not successful. Additionally, unincorporated residents “who may be benefiting from the occurrence of double taxation are unlikely to vote to be annexed.” *Id.*

19. DUAL TAXATION IN FLORIDA: AN UPDATE, *supra* note 2, at 2.

20. *Id.*

21. L. A. Hester Address, note 18 *supra*.

22. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 9. The report by the Council contains a fairly thorough analysis of the causes of double taxation.

23. *Id.*

24. 219 So. 2d 716 (Fla. 3d Dist. Ct. App.), *cert. discharged*, 226 So. 2d 402 (Fla. 1969). The *Dressel* suit was initiated prior to the adoption of FLA. CONST. art. VIII, § 1(h).

25. 219 So. 2d at 717.

26. *Id.*

provide fire service to any municipality, it could collect taxes whether or not the area already had fire protection.<sup>27</sup> The language of the Dade County Home Rule Charter empowering the county to render fire protection throughout the county was important to the court's decision.<sup>28</sup> The trial judge acknowledged that municipal residents received "substantially lesser benefits" from the county fire department than did residents in the unincorporated areas, but stated that under the constitutional principles governing taxation, consideration of the degree of benefits was not relevant.<sup>29</sup> The court suggested that the cities could eliminate the double taxation inequity by transferring the responsibility to provide fire service to the county.<sup>30</sup>

Municipal representatives appealed to the Third District Court of Appeal, but that court adopted the opinion of the trial court.<sup>31</sup> Appellants subsequently appealed to the Florida Supreme Court which discharged their petition for writ of certiorari.<sup>32</sup>

The hopes of city taxpayers for a judicial remedy to their double tax difficulties had been dampened by the *Dressel* decision. Not to be deterred, however, municipal officials sought to bring the tax inequity issue to the attention of the 1968 Florida Constitution Revision Commission.<sup>33</sup> They were successful in this effort and a prohibition against double taxation was included in article VIII, section 1(h) of the new constitution.<sup>34</sup>

Prior to the 1968 revision, Florida's constitution had not ex-

27. *Id.* at 718-19.

28. *Id.* at 720-21. Dade County received a special grant of home rule power in the mid-1950's. See FLA. CONST. art. VIII, § 6(e).

29. *Dressel*, 219 So. 2d at 719-20. The court noted that the United States Supreme Court had

"repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that [the taxpayer] can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him."

*Id.* at 720 (quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 523 (1937)).

30. *Id.* at 719.

31. *Id.*

32. 226 So. 2d 402 (Fla. 1969).

33. Sittig, *supra* note 13, at 3. The counsel for the Florida League of Cities, Ralph A. Marsicano, was appointed to the 37-member Constitution Revision Commission, created by the 1965 legislature. He was primarily responsible for "securing Commission consideration of the 'double taxation' issue." *Id.*

34. The voters approved the proposed constitution which took effect on January 7, 1969. For a discussion of how other states approach the problem of double taxation, see T. Wilkes, *supra* note 2, at 20-23.

pressly addressed the double tax issue.<sup>35</sup> This new provision is particularly distinctive since it is the only taxation provision in the 1968 constitution in which benefit is a requirement for taxation.<sup>36</sup> The constitutional prohibition essentially limits the power of counties to tax municipal property for services which do not provide municipal property owners with a real and substantial benefit.

Municipal officials undoubtedly believed that the language of section 1(h) would negate the effect of the *Dressel* opinion and would remedy the city taxpayers' burden by requiring a benefit to be conferred when municipal property was taxed. Much to their dismay, however, the Florida courts initially interpreted the new constitutional provision narrowly.

### III. JUDICIAL RESPONSES TO DOUBLE TAXATION

Article VIII, section 1(h) was first construed by the Florida Supreme Court in *City of St. Petersburg v. Briley, Wild & Associates, Inc.*<sup>37</sup> The City of St. Petersburg challenged the construction of a \$50 million sewage treatment facility by Pinellas County.<sup>38</sup> The facility was to be financed by countywide ad valorem taxes. It would be located in the unincorporated area, and be of primary service to residents of the unincorporated area.<sup>39</sup> The crucial question in *Briley* was whether the proposed sewer plant, supported by taxes levied countywide, would benefit municipal residents, or whether it would exclusively benefit unincorporated area residents and thus violate the double taxation prohibition of article VIII, section 1(h).<sup>40</sup> Based on testimony that inadequate sewage treatment in the unincorporated area was polluting the water throughout the county and thereby creating a countywide pollution problem, the trial judge found that establishing such a plant would be of "beneficial use to and in the best interest of" the residents of

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35. D'Alemberte, Commentary, in 26A FLA. STAT. ANN. 271 (West 1970).

36. *Tucker v. Underdown*, 356 So. 2d 251, 253 n.7 (Fla. 1978). Linking taxation to benefits received is an exception to the general rule, articulated in *Hunter v. Owens*, 86 So. 839, 845 (Fla. 1920), that the question of benefit and of unlawful burdens does not arise when the tax is uniform, for a public purpose, and within the power of the legislature to prescribe. This general rule was the basis for the court's decision in *Dressel*. 219 So. 2d at 719-20.

37. 239 So. 2d 817 (Fla. 1970).

38. *Id.* at 818-19.

39. *Id.* at 819-23. It was conceded by the parties that residents of two of the larger cities in Pinellas County, St. Petersburg and Clearwater, would not use the sewage treatment facility.

40. *Id.* at 820.



both incorporated and unincorporated areas.<sup>41</sup> The court, therefore, held that construction of the plant with countywide revenues did not violate the constitutional provision prohibiting double taxation.<sup>42</sup>

In affirming the lower court decision, the Supreme Court of Florida construed the "exclusive benefit" language of section 1(h) as requiring no "direct and primary use benefit from a particular service to city-located property," but rather as requiring only a "real and substantial" benefit to accrue to city property.<sup>43</sup> The court emphasized that it is "sufficient to authorize county taxation of such property if the benefits accruing to the municipal areas are found to be real and substantial and not merely illusory, ephemeral and inconsequential."<sup>44</sup>

The supreme court found that the sewage facility would confer real and substantial benefits on cities and their residents in terms of the accompanying reduction in water pollution and increase in health protection, even though such benefits would not be direct "in the sense that the owners of city-located property [would] physically use the expanded treatment plant."<sup>45</sup>

The real and substantial benefit standard of *Briley* was applied three years later in *Burke v. Charlotte County*.<sup>46</sup> In that case, county commissioners had levied taxes countywide to provide for the construction, paving and repair of roads. None of the roads were within the limits of any municipality.<sup>47</sup> City residents in Punta Gorda brought suit protesting the use of tax moneys collected countywide to improve only nonmunicipal roads. The trial court granted summary judgment in favor of the county, finding that good roads in the unincorporated area would be of some bene-

41. *Id.*

42. *Id.*

43. *Id.* at 823.

44. *Id.*

45. *Id.* The court noted in dictum that certain services might not meet the real and substantial benefit standard. Examples included:

a library set up in an unincorporated area for the use and benefit of the area residents or, perhaps, a park or recreation facility for the residents of such area. Even the establishment of fire fighting facilities in a particular unincorporated area may not reasonably be said to be of consequential benefit to the incorporated areas.

*Id.* at 824.

See Little, *New Attitudes About Legal Protection for the Remains of Florida's Natural Environment*, 23 U. FLA. L. REV. 459, 485 (1971) (arguing that the pollution problem was the real reason for the result reached by the trial court and the Florida Supreme Court).

46. 286 So. 2d 199 (Fla. 1973).

47. *Id.*

fit to city residents.<sup>48</sup> The Supreme Court of Florida affirmed the holding of the lower court and stated that the actual and potential benefits to be derived by city residents in the present case were "at least as great" as the benefits derived by the city residents in *Briley*.<sup>49</sup>

The Florida Supreme Court in *Briley* and *Burke* interpreted the "exclusive benefit" language of section 1(h) to mean that county taxation of property inside a municipality would be proscribed *only* when the county service provides no real and substantial benefit to property or residents in the city. The determination of whether the benefits to municipal residents were real and substantial would be a question of fact to be decided on a case-by-case basis. The courts in each case would have to analyze not only the benefit or service, but also the relationship between the city and county regarding the particular service.

City officials were frustrated by the supreme court's permissive interpretation of the double tax provision in *Briley* and *Burke*. The *Briley-Burke* standard appeared to these officials to portend the unlikelihood of any relief from the judicial branch. It was three years before the constitutional issue was again brought before the court. *Alsdorf v. Broward County*,<sup>50</sup> was the first successful challenge of county expenditures brought by city residents under the double taxation provision.<sup>51</sup> In that case, twenty-four mayors in Broward County, in their governmental capacities and as citizen-taxpayers, asserted that over thirty county functions provided no real and substantial benefit to the cities.<sup>52</sup> The Florida Supreme Court declared that it would not construe the "exclusive benefit" language in section 1(h) so strictly as to deprive it of all effectiveness. The court emphasized that the mandate against double taxation was not only "absolute and unequivocal," but that its intent was obvious as well.<sup>53</sup> Speaking for the majority, Justice England stated that "Article VIII, Section 1(h) of the Florida Constitution

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48. *Id.* at 200.

49. *Id.* at 201.

50. 333 So. 2d 457 (Fla. 1976).

51. The composition of the court had changed in the interim. Chief Justice Overton, Justices England, Hatchett and Sundberg were not members of the court when *Briley* and *Burke* were decided.

52. *Id.* at 457-58. The trial court agreed with the city officials that certain county services benefited only unincorporated residents; however, the court dismissed their suit ruling that section 1(h) was not self-executing because legislative guidelines were necessary to determine whether double taxation existed. *Id.* at 458-59.

53. *Id.* at 459.

is self-executing, and . . . with or without legislative interpretation the courts will be required to draw the lines between acceptable and prohibited municipal taxation."<sup>54</sup> The supreme court acknowledged that "extensive judicial labor" would be necessary to fashion solutions to double taxation problems,<sup>55</sup> and remanded the case to the lower court to formulate an equitable remedy to the extent the county had violated the provision.<sup>56</sup>

With *Alsdorf*, the supreme court recognized that municipal taxpayers should have some recourse for settling their double taxation difficulties. Local governments were put on notice that the courts were prepared to expend a great deal of effort in fashioning remedies when double tax problems were presented to them for resolution. Both county and city officials, however, wanted to diminish the prospect of costly and time consuming court judgments under section 1(h).<sup>57</sup> Furthermore, many local government officials realized that because of the complexity of the double taxation issue, the courts were not the most appropriate forum within which to resolve the issue.<sup>58</sup> As one author noted:

The nature of the state judicial process and structure, . . . sometimes causes contradictory rulings and less than uniform applica-

54. *Id.* at 460.

55. *Id.* at 459.

56. *Id.* at 460. The courts did indeed expend "extensive judicial labor" in the *Alsdorf* case. After the case was remanded, representatives from the cities and the county reached an agreement and stipulated which services were of no real and substantial benefit to the incorporated areas, *i.e.*, sheriff's road patrol, building and zoning, street lighting, fire protection, garbage collection, school crossing guards, a percentage of the county administrator's overhead, and a percentage of the planning budget. The parties could not agree as to library services, emergency medical services, or parks and recreation and, thus, those issues remained to be resolved by the court. Before the trial began, however, two taxpayers who resided in the unincorporated area petitioned to intervene and challenged the stipulation between the county and the cities agreeing that the sheriff's road patrol was of no real and substantial benefit to the incorporated areas of the county. DUAL TAXATION IN FLORIDA: AN UPDATE, *supra* note 2, at 20-21. In a lengthy opinion, the judge at trial allowed the taxpayers in the unincorporated area to intervene and set aside the stipulation between the cities and the county as to the sheriff's road patrol. The court held: (1) the county's emergency medical services should not be supported by city taxes where the individual city was providing its own emergency medical service; (2) the county neighborhood park system was not of benefit to cities and therefore a tax on city property for that expense was improper; and (3) the county library program, urban and regional park system, and sheriff's road patrol were of benefit to city residents. The court ruled further that a request for a refund by the cities of alleged improperly collected taxes would be denied. *Alsdorf v. Broward County*, 46 Fla. Supp. 38 (Cir. Ct. 1977), *aff'd*, 373 So. 2d 695 (Fla. 4th Dist. Ct. App. 1979).

57. Interview with Gary L. Van Ostrand, Executive Director, Fla. Advisory Council on Intergovernmental Relations, in Tallahassee, Fla. (Sept. 26, 1980).

58. See generally DUAL TAXATION IN FLORIDA: AN UPDATE, *supra* note 2, at 7-8.

tion of the dual taxation prohibition throughout the state.

However, these differences of judicial opinion regarding equitable distribution of the costs and benefits of city and county services are understandable, given the nature of public services. Many public services yield benefits beyond the boundaries of the political jurisdiction delivering the services. This makes precise, clear-cut connections between taxes paid and benefits received virtually impossible to identify. This difficulty is further compounded when attempting to trace taxes and benefits back and forth between two overlapping governments, the county and city, which separately tax and spend for some of the same types of services. Clearly, tax and benefit "spillovers", so prevalent in local public service delivery, render judicial interpretation of "exclusively for the benefit" an imprecise science, ripe for disagreement and contradiction.<sup>59</sup>

In sum, *Briley*, *Burke* and *Alsdorf* forced cities and counties into the realization that settlement of double tax disputes would best be accomplished not by judicial resolution, but by negotiation and utilization of mechanisms provided by general law.<sup>60</sup> Local governments wanted to avoid the prospect of a multiplicity of lawsuits throughout the state.<sup>61</sup> Furthermore, recently-enacted legislation which was aimed at remedying double taxation by allowing counties to set up separate taxing units spurred local governments to begin settling their double tax difficulties out of court.<sup>62</sup>

#### IV. LEGISLATIVE RESPONSE TO DOUBLE TAXATION: THE MUNICIPAL SERVICE TAXING UNIT

In 1974 the Florida Legislature enacted a comprehensive statute which provided a mechanism responsive to the issue of double taxation.<sup>63</sup> The intent of the act was to allow county governments to

59. *Id.*

60. See note 6 *supra*.

61. See T. Wilkes, *supra* note 2, at 17.

62. See discussion of municipal service taxing units *infra*.

63. Ch. 74-191, 1974 Fla. Laws 511 (current version in scattered sections of FLA. STAT. chs. 125, 200 (1979)). This "mechanism" found its genesis in the deliberations of the Florida Commission on Local Government created by the Florida Legislature in 1972. Ch. 72-44, 1972 Fla. Laws 188 (repealed 1974). The Commission, a temporary advisory body representing the legislative and executive branches as well as the public, was mandated to examine the operation and organization of Florida's local governments and to recommend necessary changes to the Florida Legislature. In its final report, the Commission described the double tax problem as "the single highlighted issue of inequity in financing local services in Florida." FLA. COMMISSION ON LOCAL GOVERNMENT, FINAL REPORT OF THE COMMISSION ON ACTIONS TAKEN DURING 1972-74, RECOMMENDATIONS FOR THE FUTURE 25 (1974). The substance

furnish municipal-type services to the rapidly growing unincorporated areas without imposing any of the tax burden for those services on municipal residents.<sup>64</sup> Essentially, the act established a method by which county governments could confine the tax burden for a particular service to those portions of the unincorporated areas receiving the service.

The act authorizes counties to establish municipal service taxing or benefit units (MSTU) in all or part of the unincorporated areas of the county in order to provide municipal-type services to those areas.<sup>65</sup> The types of services that may be provided by the MSTU's are fire protection, law enforcement, recreation service and facilities, water, streets, transportation and other essential services. Counties are authorized to levy an additional or differential tax within the MSTU in order to provide municipal-type services; thus, city residents are not taxed for services provided to residents of the MSTU's. The MSTU's may borrow money, issue bonds, revenue certificates and other obligations of indebtedness. Authorization to levy additional taxes within the constitutional ten mill limit for municipal services is derived from the second sentence of arti-

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of the Commission's proposals to the legislature were incorporated into chapter 74-191.

In 1973 the legislature began addressing the tax inequity problem by requiring counties to prepare their budgets in a form that reflected the division of receipts and expenditures between the incorporated and unincorporated areas of the county. This was done to improve the quality of information in analyzing the double tax issue. Ch. 73-349, § 5, 1973 Fla. Laws 1261 (current version at FLA. STAT. § 129.01(2)(b) (1979)).

64. Fla. H.R., Committee on Community Affairs, Staff Summary of CS/HB 3280 at 1 (April 1974) (on file with committee). The staff summary notes that "the intent [of the bill] is to make those who are receiving such services bear the financial burden, rather than force municipal residents to carry, as they have, a large part of this financial load." *Id.*

65. FLA. STAT. § 125.01(1)(q), (r) (1979). The 1974 legislation authorizes counties to establish MSTU's

for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. It is hereby declared to be the intent of the Legislature that this paragraph is the authorization for all counties to levy additional taxes within the limits fixed for municipal purposes within such municipal service taxing units under the authority of the second sentence of Article VII, Section 9(b) of the state constitution.

[And to] [l]evy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments, borrow and expend money, and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations as may be provided by general law.

Ch. 74-191, § 1, 1974 Fla. Laws 511.

cle VII, section 9(b) of the Florida Constitution.<sup>66</sup>

By creating an MSTU, a county isolates a municipal service in the unincorporated area and levies taxes for such purposes within the taxing unit. The cost of such municipal service is then excluded from the countywide tax levy. Thus, the city taxpayer pays a lesser county millage, to cover only countywide services, while the unincorporated taxpayer pays a higher millage to cover both countywide services and municipal-type services provided only to the unincorporated area.

The statute which established the MSTU vehicle (the MSTU Act) further provides a procedure whereby municipalities may petition the county for relief when they believe a service financed by countywide revenues is particularly benefiting the unincorporated area.<sup>67</sup> Upon receipt of such a petition, the county government is

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66. FLA. STAT. § 200.071(3) (1979). Section 9(b), article VII of the Florida Constitution provides the authority for the county to levy additional taxes within the unincorporated area. The second sentence of section 9(b) states, "A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes." FLA. CONST. art. VII, § 9(b). That same section further provides that 10 mills may be levied for county purposes, and 10 mills for municipal purposes. Thus, under Chapter 74-191, counties may levy a tax for purely county purposes on a countywide basis and may levy a separate tax for municipal purposes on its residents in the unincorporated area.

The landmark case construing the impact of the constitutional millage limitations of section 9(b), article VII was State *ex rel.* Dade County v. Dickinson, 230 So. 2d 130 (Fla. 1969). In *Dickinson*, the court interpreted section 9(b) to authorize a countywide tax up to 20 mills for the combined municipal and county services offered by Dade County.

67. FLA. STAT. § 125.01(6) (1979). The 1974 legislation provides as follows:

(6)(a) The governing body of a municipality or municipalities by resolution, or the citizens of a municipality or county by petition of ten percent of the qualified electors of such unit, may identify a service rendered specially for the benefit of the property or residents in unincorporated areas and financed from countywide revenues and petition the board of county commissioners to develop an appropriate mechanism to finance such activity which either may be by taxes, special assessments or service charges levied solely upon residents or property in the unincorporated area, by the establishment of a municipal service taxing or benefit unit pursuant to paragraph (q) of subsection (1) of this section or by remitting the identified cost of service paid by the taxes levied upon property situate within the municipality or municipalities to the municipality or municipalities.

(b) The board of county commissioners within 90 days shall file a response to such petition which shall either reflect action to develop appropriate mechanisms or reject said petition and state findings of fact demonstrating that the service does not specially benefit the property or residents of the unincorporated areas.

Ch. 74-191, § 4, 1974 Fla. Laws 511.

Oftentimes, before the beginning of the petition procedure, cities have utilized outside consultants to study the occurrence of double taxation by identifying those county services which are not of countywide benefit. These studies are utilized to buttress the city's position in negotiating with the county under the MSTU Act. The Florida Advisory Council points out that due to methodological problems many of these studies distort the existence and the extent of the double tax problem. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 31.

mandated to reply within ninety days in one of the following ways: (1) establish an MSTU with funds from special assessments, service charges, or taxes levied within such unit only; (2) finance the service via funds derived solely from the unincorporated areas; (3) remit to the city the cost of the service paid by taxes levied upon property situated within that city; or (4) reject the city petition upon findings of fact showing that the particular service or services do not specially benefit the unincorporated areas.<sup>68</sup>

Establishment of the petition procedure represents an effort to encourage dialogue between cities and counties concerning the double tax issue. The petition procedure, linked with a mandate that the county respond, insures that the issue will be explored.

A final provision of the 1974 legislation authorizes counties to establish special taxing districts.<sup>69</sup> Unlike MSTU's which provide services only in the unincorporated areas of a county, special taxing districts may be established in both the unincorporated and incorporated areas (subject to passage of an ordinance by the affected municipality) within which municipal services may be provided with funds derived from within the district. These taxing districts have been utilized on occasion by counties and cities in remedying double tax difficulties.<sup>70</sup>

One year after the MSTU Act passed, the legislature amended the law to allow counties to levy the additional tax within an MSTU *without voter approval*.<sup>71</sup> This amendment was adopted in response to an opinion by the Florida attorney general which concluded that a referendum was required prior to the levy of taxes within an MSTU, since the MSTU legislation did not expressly provide that a referendum was not required.<sup>72</sup> Specific legislative intent language included in the new law states:

[The] granting of the power to all counties to levy taxes within

68. FLA. STAT. § 125.01(6) (1979). There is no method by which a city may appeal should the county commission reject the petition. The original recommendation by the Florida Commission on Local Government did provide for appeal to the State Department of Community Affairs, but this was not included in the final version of the legislation. See THE DOUBLE TAXATION ISSUE, *supra* note 2, at 26.

69. FLA. STAT. § 125.01(5)(a)-(c) (1979).

70. The Florida Advisory Council notes, however, that special districts are "not likely to lead to the resolution of double taxation problems" because of the requirement of voter approval for the levy of ad valorem taxes. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 23. For a discussion of the distinction between MSTU's and special taxing districts see note 79 *infra*.

71. Ch. 75-63, 1975 Fla. Laws 144 (codified at FLA. STAT. § 125.01(1)(r) (1979)).

72. 1975 FLA. OP. ATT'Y GEN. 075-24.

the unincorporated areas without a referendum for municipal services furnished . . . is within the constitutional power of all counties to levy ad valorem taxes; and is in recognition of the existing and potential inequality of placing the tax burden of municipal services furnished to residents in the unincorporated areas on all residents of a county.<sup>73</sup>

Few counties initially utilized the powers granted by the MSTU Act.<sup>74</sup> However, the importance of this clear mandate, which allows counties the ability to equalize the tax burden, gradually began to stimulate the use of such power by counties across the state.<sup>75</sup> A

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73. Ch. 75-63, 1975 Fla. Laws 144 (codified at FLA. STAT. § 125.01(1)(r) (1979)). The legislative intent language states:

WHEREAS, Chapter 74-191, Laws of Florida, intended to amend section 125.01(1)(q) and (r), Florida Statutes, to grant to all counties the home rule power flexibility to isolate the burden of ad valorem taxes levied for the furnishing of municipal services within the limits fixed for municipal purposes on those areas receiving the benefit of such municipal services, and

WHEREAS, the attorney general, in his opinion number 075-24, dated February 5, 1975, failed to recognize the constitutional distinction between a special district and a municipal service taxing unit created as a taxing vehicle to grant to all counties the taxing flexibility to levy ad valorem taxes within the limits fixed for municipal purposes for the furnishing of municipal services within those areas receiving the benefit of such municipal services and construed Chapter 74-191, Laws of Florida, to require a referendum of the electors within a municipal service taxing unit prior to the levy of ad valorem taxes for the municipal services furnished; and defeated the intent of the legislature in enacting Chapter 74-191, Laws of Florida, to provide home rule power for all counties to address and solve the controversy of double taxation between residents of the incorporated and unincorporated areas, and

WHEREAS, the legislature hereby affirms the will of the people in adopting the State Constitution of 1968 that ad valorem taxes shall not be levied in excess of 10 mills for county purposes and 10 mills for municipal purposes, and that property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas, and

WHEREAS, the Legislature declares that the granting of the power to all counties to levy taxes within the unincorporated areas without a referendum for municipal services furnished is within the constitutional protection of such millage limitation; is within the constitutional power of all counties to levy ad valorem taxes; and is in recognition of the existing and potential inequality of placing the tax burden of municipal services furnished to residents in the unincorporated areas on all residents of a county . . . .

*Id.*

74. See generally THE DOUBLE TAXATION ISSUE, *supra* note 2, at 27.

75. According to a recent survey, there are nineteen counties in the state which have established one or more MSTU's within the unincorporated area. They are: Brevard, Charlotte, Collier, Dade, Escambia, Indian River, Lee, Marion, Martin, Monroe, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Putnam, Seminole and Volusia. The services provided within the MSTU's include street lighting, fire and police protection, and road and



recent study by the Florida Advisory Council on Intergovernmental Relations stated that those MSTU's which have been established have "substantially reduced the amount of double taxation which may have otherwise occurred statewide."<sup>76</sup>

Since the enactment of the MSTU legislation, two plaintiffs have come before the Florida Supreme Court seeking its invalidation.<sup>77</sup> In *Gallant v. Stephens*,<sup>78</sup> taxpayers residing in the unincorporated areas of Pinellas County filed suit against the county alleging that the legislature did not have the power to authorize a county to establish an MSTU in the unincorporated area and to levy ad valorem taxes for municipal purposes without voter approval.<sup>79</sup> Pinellas County had set up its MSTU covering the *entire* unincorporated area to furnish such services as police and fire protection, recreation, sewage and garbage collection and street maintenance.<sup>80</sup>

The trial court upheld the constitutionality of sections 125.01(1)(q) and (r), Florida Statutes,<sup>81</sup> which authorize counties to establish MSTU's within which taxes may be levied without a referendum.<sup>82</sup> The Florida Supreme Court affirmed.<sup>83</sup> Speaking for

bridge maintenance. In Dade County, one MSTU was created for the sole purpose of providing school crossing monitors! Telephone interview with Daniel O. White, Associate with Lowndes, Drosdick, Doster and Kantor in Orlando, Fla. (Sept. 23, 1980).

76. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 27.

77. *Gallant v. Stephens*, 358 So. 2d 536 (Fla. 1978); *Tucker v. Underdown*, 356 So. 2d 251 (Fla. 1978). Lawsuits have been filed in recent years in Palm Beach, Volusia and Seminole counties challenging the establishment of MSTU's; however, those cases are currently pending before circuit courts. Telephone interview with Claude L. Mullis, Counsel for the Florida League of Cities in Tallahassee, Fla. (Sept. 30, 1980). In *Watts v. Volusia County*, No. 78-3320-CA-01-K (Fla. Volusia Cir. Ct., filed Sept. 28, 1978), the use of MSTU's is being challenged as a violation of the "one-man, one-vote" principle because the county governing body, elected on a countywide basis, is making political decisions affecting a smaller group (residents of the MSTU).

78. 358 So. 2d 536 (Fla. 1978).

79. *Id.* at 538. Plaintiffs further argued that MSTU's were essentially special taxing districts and thus voter approval was required under section 9(b) of article VII. The Florida Supreme Court rejected this argument and underscored the difference between an MSTU and a special taxing district. *Id.* at 540-41. An MSTU is a dependent taxing vehicle of county government authorized without voter approval and located solely in the unincorporated areas of a county. A special taxing district is a separate independent unit of government within which are performed specialized functions within limited boundaries. Voter approval is required for any tax levy within a special taxing district. *Id.* at 539-40.

80. *Id.* Pinellas County was one of the first counties in the state to establish an MSTU. On September 9, 1975, the Board of County Commissioners adopted a resolution to establish the taxing unit coextensive with the entire unincorporated area and set a 1.355 millage rate. *Burgess & Carlton, supra* note 4, at 2.

81. (1979).

82. *Gallant*, 358 So. 2d at 537.

83. *Id.* at 541.

the majority, Justice England reasoned that the last sentence of article VII, section 9(b) of the Florida Constitution authorized the legislature to sanction "taxing units as a method by which counties may tax to provide municipal services, within the 10 mill limit for 'municipal purposes', without voter approval."<sup>84</sup>

Similar issues were again brought before the court in *Tucker v. Underdown*.<sup>85</sup> *Tucker* involved a constitutional challenge to five separate MSTU's which covered various geographic areas embracing less than the entire unincorporated area of Brevard County. A sixth MSTU was also challenged which covered the entire unincorporated area of the county.<sup>86</sup> Unincorporated area residents argued that these taxing units, which were created to provide street lighting and solid waste disposal services, were unconstitutional.<sup>87</sup> Citing *Alsford*, the residents of the unincorporated areas claimed they could not be taxed since they were not receiving real and substantial benefits from the services provided within the MSTU's.<sup>88</sup> The trial judge rejected the plaintiffs' contentions and determined that nothing in the cases construing the relevant constitutional provisions and statutes required consideration of "direct 'benefit' as a basis for taxation."<sup>89</sup> The apparent reasoning of the trial court in rejecting the benefit-tax nexus principle as applied to unincorporated area residents was that nothing in article VIII, section 1(h) places any limitation on the power of the counties to tax the unincorporated areas.<sup>90</sup> The constitutional prohibition limits *only* the counties' ability to tax municipal property for services for which the municipal property owner receives no real and substantial benefit. The Florida Supreme Court agreed with the conclusion of the lower court that no stringent relationship between taxation and benefits was required on the facts of the case.<sup>91</sup> The court further cited *Gallant* in affirming the constitutionality of the Brevard MSTU's.<sup>92</sup>

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84. *Id.* at 540.

85. 356 So. 2d 251 (Fla. 1978).

86. *Id.* at 252-53.

87. *Id.* at 253.

88. *Id.*

89. *Id.*

90. See Brief for Appellees at 46, *Tucker v. Underdown*, 356 So. 2d 251 (Fla. 1978).

91. 356 So. 2d at 253. The holding in *Tucker* has created an inequitable situation for those unincorporated area residents who reside within MSTU's, but receive no benefits. Although the court stated that this did not violate the double tax prohibition, this aspect of the use of MSTU's should be addressed. See THE DOUBLE TAXATION ISSUE, *supra* note 2, at 30; DUAL TAXATION IN FLORIDA: AN UPDATE, *supra* note 2, at 11.

92. 356 So. 2d at 253. Eleven months after *Tucker* was decided, the Florida Supreme

In *Gallant* and *Tucker* the supreme court expressly upheld the power of counties to establish MSTU's and to impose ad valorem taxes in all or part of the unincorporated area, without voter approval. The court sanctioned the MSTU vehicle as a method by which local governments could remedy their double tax problems. Judicial approval of this concept has encouraged communication and cooperation between cities and counties regarding not only taxation inequities, but other areas of intergovernmental dispute as well.<sup>93</sup>

Despite the "prevalence, general success, and legality" of MSTU's, they are not without their detractors.<sup>94</sup> Two recent reports published on the subject of double taxation suggest that several problems may occur as utilization of MSTU's becomes more prevalent.<sup>95</sup> There is the concern that MSTU's are, in effect, "quasi-municipalities," yet they "lack municipal powers and the right of direct electoral representation."<sup>96</sup> Creation of MSTU's throughout the state could lead to a "hodge-podge series of districts which mimic our current municipal pattern" of excluding areas with relatively low property values because these districts are most often dependent on property taxes.<sup>97</sup> Furthermore, when MSTU's are created to encompass the entire unincorporated area, rural unincorporated residents may carry the tax burden for services provided only in urbanized unincorporated areas.<sup>98</sup> Local governments should be aware of these potential problems and avoid them wherever possible.

Once the constitutionality of the MSTU vehicle was established, the courts and the legislature were free to address the issue of the appropriate scope of the double tax prohibition. In 1979 the legislature amended the MSTU Act to provide that no countywide revenues, with several specific exceptions, shall be used to fund services or projects where no real and substantial benefits accrue to the property or residents of municipalities.<sup>99</sup> The effect of the act

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Court cited *Tucker* with approval in upholding the validation of general obligation bonds issued by a Pasco County MSTU for acquisition of sewer and water systems. *Speer v. Olson*, 367 So. 2d 207, 211 (Fla. 1978).

93. Interview with Gary L. Van Ostrand, Executive Director, Fla. Advisory Council on Intergovernmental Relations, in Tallahassee, Fla. (Sept. 26, 1980).

94. DUAL TAXATION IN FLORIDA: AN UPDATE, *supra* note 2, at 10.

95. *Id.*; THE DOUBLE TAXATION ISSUE, *supra* note 2, at 27.

96. THE DOUBLE TAXATION ISSUE, *supra* note 2, at 27.

97. *Id.* at 30.

98. *Id.* See discussion of the *Tucker* decision at note 91, *supra*.

99. Ch. 79-87, § 1, 1979 Fla. Laws 422 (codified at FLA. STAT. § 125.01(7) (1979))

is to make "all county revenues including state and federal revenues shared with county governments," subject to the double tax prohibition.<sup>100</sup> The legislature's concern is to "ensure that funds received by a county government in its capacity as countywide government are used to provide services to the entire county, and are not simply used to provide municipal services for the unincorporated areas."<sup>101</sup>

This amendment to the MSTU Act addressed the concerns expressed in the Florida Supreme Court decision in *Manatee County v. Town of Longboat Key*.<sup>102</sup> In that case, the court held that the double tax proscription in the constitution applied only to property taxes.<sup>103</sup> Speaking for the majority, Justice Hatchett recognized the consequence inherent in this holding and called for the legislature to address the matter:

We are aware of the possibility that with this holding, counties may use revenues not derived from property taxation exclusively for projects benefiting residents and property in unincorporated areas causing a serious imbalance in benefits received between county and municipal property owners and residents. The Legislature must address this possibility.<sup>104</sup>

In response to the Justices' concern, the legislature expanded the

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provides:

(7) No county revenues, except those derived specifically from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, or program area, shall be used to fund any service or project provided by the county where no real and substantial benefit accrues to the property or residents within a municipality or municipalities.

*Id.*

One of the principle unresolved issues in the above provision is the intent of the legislature as to what county revenues are "derived specifically from or on behalf of" the unincorporated areas. This ambiguity has yet to be resolved by the courts.

The 1979 legislature also expanded the remittance provision under the MSTU Act to allow counties to remit the identified overcharge against a municipality (due to double taxation) in the proportion of county ad valorem taxes collected within the city to the total amount of countywide ad valorem taxes collected by the county. Such remittance must be within six months of the adoption of the county budget. FLA. STAT. § 125.01(6)(a) (1979).

The 1980 legislature further addressed this subject to provide that cities may remit all or part of the funds they receive from a double tax remittance to their taxpayers. Ch. 80-53, § 1, 1980 Fla. Laws 168 (to be codified at FLA. STAT. 166.215).

100. FLA. ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, DOUBLE TAXATION 3 (1980) [hereinafter cited as DOUBLE TAXATION].

101. *Id.*

102. 365 So. 2d 143 (Fla. 1978).

103. *Id.* at 144.

104. *Id.* at 148.

double tax prohibition such that "all county sources of revenue [will] be considered in double taxation cases."<sup>105</sup>

The *Manatee* decision addressed other important issues affecting the double taxation question. An important remedy issue was raised by the challenge of the propriety of trial court enforcement of a money judgment against a county because of a finding of double tax violations in past years.<sup>106</sup> The supreme court acknowledged that a court may use its "equity powers" to enforce statutory remedies (*i.e.*, the MSTU Act) for a "specifically identified [double tax] evil."<sup>107</sup> The court held, however, that because the MSTU Act provides counties with a choice among alternatives in alleviating double tax conflicts, a trial court could not choose the specific alternative and thus could not enter a money judgment against a county.<sup>108</sup> The court also receded from its earlier decision in *Alsdorf* regarding the authority of courts to fashion formulas for double tax conflicts. The court warned that "We are now certain . . . that courts should not fashion formulas and make choices among alternatives for counties . . . . [and that] [c]ourts must be cautious about drawing lines in areas best suited for legislative action."<sup>109</sup>

Thus, the Florida Supreme Court in *Manatee* retreated from its earlier activist posture in *Alsdorf* and held that when courts resolve double tax controversies they should not go beyond ordering the local governments to comply with the statutory dictates. The court suggested that it was the role of the legislature to fashion the appropriate alternative courses of action which could be followed by the local governments to avoid double taxation violations.

In the most recent double taxation case to reach the appellate court level, the City of Ormond Beach challenged the levy by Volusia County of a countywide library tax.<sup>110</sup> The city, which had its

105. DOUBLE TAXATION, *supra* note 100, at 2 n.2 (emphasis omitted).

106. 365 So. 2d 143, 145 (Fla. 1978).

107. *Id.* at 147. In a similar case handed down almost a year after *Manatee*, the supreme court cited *Manatee* with approval and reiterated that it was the function of courts to use their equity powers to enforce statutory remedies, but not to require a money judgment against a county because of double taxation in past years. *Sarasota County v. Town of Longboat Key*, 375 So. 2d 847, 848 (Fla. 1979).

108. 365 So. 2d at 147. The *Manatee* court also settled two other issues relating to double taxation. The court held that the doctrine of sovereign immunity does not prohibit a suit by a city to enforce the remedies under the MSTU Act and that a taxpayer "is not an indispensable party to an action" under the act. *Id.*

109. *Id.* at 148.

110. *City of Ormond Beach v. County of Volusia*, 383 So. 2d 671 (Fla. 5th Dist. Ct. App. 1980).

own library system, argued that taxing municipal residents to support the county library system constituted a violation of the constitutional double tax proscription because municipal residents received no real and substantial benefits from the county program.<sup>111</sup> The trial court stated that the county library system offered many services which the city system did not, and thus, held that the county system rendered a real and substantial benefit to city residents.<sup>112</sup> The Fifth District Court of Appeal affirmed.<sup>113</sup> While acknowledging that article VIII, section 1(h) is to "prevent double taxation of municipally-situated property for a single benefit," the appellate court noted that the trial court had found no double taxation to exist "since the taxes assessed by the City and County were not for the same services."<sup>114</sup>

As is evidenced by the issues raised in *Ormond Beach*, the problem of double taxation is an ongoing source of friction between cities and counties in Florida. Although certain areas of disagreement have been settled by court decisions, new areas of conflict continue to arise. Utilization of MSTU's, however, has eased the severity of the double tax problem and has aided cooperation and communication among local governments to a great extent.

## V. CONCLUSION

The problem of double taxation has been a source of dispute between counties and cities for many years. This problem was addressed in the 1968 Constitution by a provision which prohibits the inequitable expenditure of locally raised revenues for the exclusive benefit of residents of unincorporated areas. In addition, the legislature has addressed the problem through the creation of the MSTU vehicle and the extension of the prohibition to cover all sources of county revenue. The Florida courts have upheld the constitutionality of the MSTU's which facilitate cooperation and dialogue between city and county governments by allowing equitable adjustments to the tax base between municipal and unincorporated taxpayers. In the years ahead, finding solutions to the double taxation problem will essentially be the responsibility of local government officials. The MSTU vehicle and other general law mecha-

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111. *Id.* at 673.

112. *Id.* at 674.

113. *Id.*

114. *Id.*

nisms will afford these officials the ability to address the unique needs of their individual communities.