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## Florida Constitutional Law: Validity of County Utility Board

Claude K. Slater

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FLORIDA CONSTITUTIONAL LAW: VALIDITY  
OF COUNTY UTILITY BOARD

*Florida Power Corporation v. Pinellas Utility Board,*  
40 So.2d 350 (Fla. 1949)

A Special Act of 1947<sup>1</sup> created the Pinellas Utility Board for Pinellas County, Florida; provided for the regulation of sale and service of electricity within the county; granted the Board power, after hearings, to fix rates; and provided that the Board of County Commissioners should provide funds for the operation of the Utility Board. The Florida Power Corporation challenged the constitutionality of this act, and a decree was entered finding the equities of the cause with the defendants and dismissing the bill of complaint. On appeal, HELD, the act does not violate the provisions of either the Florida or the Federal Constitution. Decree affirmed, Justices Terrell and Thomas dissenting.

The function of regulation of public utilities is vested in the State Legislature by the Florida Constitution.<sup>2</sup> Hence, the basic issue in the instant case is whether the Florida Legislature can delegate this function<sup>3</sup> to a county board without constitutional violation. This regulatory power may be exercised by the Legislature itself or delegated to a state commission or board.<sup>4</sup> There is also little question regarding the propriety of delegating this function to a municipality.<sup>5</sup> The validity of using county tax funds has been the usual basis for contesting the legality of a delegation of such a legislative function to a county board.<sup>6</sup> The Florida Constitution expressly prescribes that the Legislature shall authorize counties and

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State v. City of Elizabeth, 56 N. J. L. 71, 28 Atl. 51 (1894). *But see* Riley v. Sweat, 110 Fla. 362, 368, 149 So. 48, 51 (1933).

<sup>1</sup>Fla. Laws, Special Acts of 1947, c. 24815.

<sup>2</sup>FLA. CONST. Art. XVI, §30; Miami Bridge Co. v. Miami Beach Ry., 152 Fla. 458, 12 So.2d 438 (1943).

<sup>3</sup>FLA. CONST. Art. XVI, §30.

<sup>4</sup>Cooper v. Tampa Elec. Co., 154 Fla. 410, 17 So.2d 785 (1944); Miami Bridge Co. v. Miami Beach Ry., 152 Fla. 458, 12 So.2d 348 (1943); State *ex rel.* Railroad Comm'rs v. Southern Tel. & Constr. Co., 65 Fla. 270, 61 So. 506 (1913).

<sup>5</sup>Morin v. City of Stuart, 111 F.2d 773 (C. C. A. 5th 1940); Pine Bluff v. Arkansas Traveler Bus Co., 171 Ark. 727, 285 S. W. 375 (1926); Miami Bridge Co. v. Miami Beach Ry., 152 Fla. 458, 12 So.2d 438 (1943); State *ex rel.* Buford v. Pinellas County Power Co., 87 Fla. 243, 100 So. 504 (1924).

<sup>6</sup>State v. County of Monroe, 148 Fla. 111, 3 So.2d 754 (1941); County Comm'rs Escambia County v. Pilot Comm'rs, 52 Fla. 197, 42 So. 697 (1906).

incorporated cities or towns to assess and impose taxes for county and municipal purposes only.<sup>7</sup> The term "county purposes" is not, however, defined or amplified by the Constitution.<sup>8</sup> It is within the province of the Legislature, by proper enactment, to designate such objectives;<sup>9</sup> and the courts are not authorized to render such determination ineffectual unless either the Constitution is violated or the particular enactment has absolutely no legal or practical relation to any county purpose.<sup>10</sup> If an enactment is not clearly in conflict with the Constitution, legislative intent as expressed therein should be sustained.<sup>11</sup> The function of the judiciary is to confine the legislature and the county authorities within constitutional limits but not to restrain the exercise of discretion within these limits.<sup>12</sup>

What constitutes a county purpose is not static and inflexible.<sup>13</sup> Activities that have been held to be pursuant to county purposes are widely varied, for instance: building bridges;<sup>14</sup> supervising and protecting harbors;<sup>15</sup> maintaining free county schools;<sup>16</sup> supervising county welfare boards;<sup>17</sup> conducting a free county fair;<sup>18</sup> building county hospitals;<sup>19</sup> paying state militia called to aid county authorities in enforcing the law;<sup>20</sup> providing an armory;<sup>21</sup> providing a franchise for a toll bridge;<sup>22</sup> regulating ferries, toll bridges, and their rates;<sup>23</sup> improving navigation;<sup>24</sup> build-

<sup>7</sup>FLA. CONST. Art. IX, §5.

<sup>8</sup>Jackson Lumber Co. v. Walton County, 95 Fla. 632, 116 So. 771 (1928); Earle v. Dade County, 92 Fla. 432, 109 So. 331 (1926); Jordan v. Duval County, 68 Fla. 48, 66 So. 298 (1914).

<sup>9</sup>State *ex rel.* Board of Public Instr'n v. Lee, 146 Fla. 392, 1 So.2d 166 (1941); Jordan v. Duval County, 68 Fla. 48, 66 So. 298 (1914).

<sup>10</sup>See note 8 *supra*.

<sup>11</sup>County Comm'rs Escambia County v. Pilot Comm'rs, 52 Fla. 197, 42 So. 697 (1906).

<sup>12</sup>Stockton v. Powell, 29 Fla. 1, 10 So. 688 (1892).

<sup>13</sup>State v. County of Monroe, 148 Fla. 111, 3 So.2d 754 (1941).

<sup>14</sup>Skinner v. Henderson, 26 Fla. 121, 7 So. 464 (1890).

<sup>15</sup>County Comm'rs Escambia County v. Pilot Comm'rs, 52 Fla. 197, 42 So. 697 (1906).

<sup>16</sup>State *ex rel.* Board of Public Instr'n v. Lee, 146 Fla. 392, 1 So.2d 166 (1941).

<sup>17</sup>State *ex rel.* Buford v. Daniel, 87 Fla. 270, 99 So. 804 (1924).

<sup>18</sup>Earle v. Dade County, 92 Fla. 432, 109 So. 331 (1926).

<sup>19</sup>State v. Walton County, 97 Fla. 59, 119 So. 865 (1929).

<sup>20</sup>Rushton v. State *ex rel.* Collins, 75 Fla. 422, 78 So. 345 (1918).

<sup>21</sup>Jordan v. Duval County, 68 Fla. 48, 66 So. 298 (1914).

<sup>22</sup>Carlton v. Constitution Indemnity Co., 117 Fla. 143, 157 So. 431 (1934).

<sup>23</sup>State *ex rel.* Young v. Duval County, 76 Fla. 180, 79 So. 692 (1918).

<sup>24</sup>Stockton v. Powell, 29 Fla. 1, 10 So. 688 (1892).