Florida Law Review

Volume 25 | Issue 3 Article 8

March 1973

Municipal Powers in Florida: By Constitutional Right or Legislative Grace?

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CASE COMMENTS

MUNICIPAL POWERS IN FLORIDA: BY CONSTITUTIONAL RIGHT OR LEGISLATIVE GRACE?*

City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972)

Appellants enacted a rent control ordinance setting rent ceilings on various leased properties.[1] Several affected lessors brought suit questioning the constitutionality of the ordinance, seeking injunctive relief and a declaratory judgment. The Circuit Court of Dade County found the ordinance invalid,[2] and the city appealed. The Supreme Court of Florida affirmed and HELD, the ordinance was an unlawful exercise of municipal power and an unlawful delegation of legislative authority by the city council.[3]

Municipalities in Florida have no inherent powers,[4] deriving authority for their actions entirely from the state.[5] In accordance with existing legal theory,[6] the Florida Constitution of 1885 empowered the legislature to charter municipalities and to amend or revoke the charter at any time.[7] Supplementing these broad powers, the courts enunciated three rules that finalized legislative supremacy over municipal affairs. First, the municipal charter became, through judicial declaration, the organic law of the municipality and thus the source of all its powers.[8] Second, adoption of Dillon's Rule[9]

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*EDITOR'S NOTE: This case comment was awarded the *George W. Milam Award* as the outstanding case comment submitted in the fall 1972 quarter.

1. In accordance with United States Supreme Court guidelines for rent control in Levy Leasing Co. v. Siegel, 258 U.S. 242 (1922), the city declared that rapidly spiralling rental rates had created an emergency housing situation.

2. Fleetwood Hotel, Inc. v. City of Miami Beach, 33 Fla. Supp. 192 (1970).

3. 261 So. 2d 801 (Fla. 1972) (Ervin and McCain, JJ., dissenting; Dekle, J., concurring in part, dissenting in part).

4. Cobo v. O'Bryant, 116 So. 2d 233 (Fla. 1959); State *ex rel.* Johnson v. Johns, 92 Fla. 187, 109 So. 228 (1926). The doctrine of inherent powers was developed to restrict the power of state legislatures to use municipal offices for patronage purposes. In the leading case of People v. Hurlburt, 24 Mich. 44, 108 (1871) (Cooley, J.), the right of municipalities to choose their own officials was declared to be an inherent right "which no power in the state could override or disregard."

5. "It is fundamentally true that all local *powers* must have their origin in a grant by the State which is the fountain and source of authority." Amos v. Mathews, 99 Fla. 1, 32, 126 So. 308, 320 (1930). "The city is a creature of the legislature and has only those powers granted it by charter or legislative act." City of Coral Gables v. Giblin, 127 So. 2d 914, 919 (3d D.C.A. Fla. 1961), *aff'd*, 149 So. 2d 561 (Fla. 1963).

6. With the mass ingress of immigrants to the cities in the middle 1800's, municipal governments became the strongholds of powerful political machines. Consequently, central legislative control though often equally corrupt, became the preferred scheme of municipal government. *See* Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 647 (1964).

7. FLA. CONST. art. VIII, §8 (1885) states: "The Legislature shall have the power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time."

8. Clark v. North Bay Village, 54 So. 2d 240, 242 (Fla. 1951).

9. 1 J. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 448 (5th ed.

allowed municipalities only such powers as were expressly granted or arose by necessary implication from such grants.[10] Finally, grants of municipal powers were to be strictly construed and all doubts resolved against the municipality.[11] The operation of these rules and their counterparts in other jurisdictions[12] brought repeated criticism from both legal writers and municipal associations.[13] It was suggested that problems caused by rapid urbanization were best solved at the local level,[14] and that the delay and expense necessary for legislative action could be avoided with greater municipal initiative.[15]

The concept of home rule[16] became the principal means for achieving some degree of local autonomy.[17] In Florida the first attempt to relieve the legislature of some of its local control came by constitutional amendment, granting municipalities in Dade County the exclusive power to make, amend, and repeal their own charters.[18] While allowing a few cities limited self-determination, the amendment did little to solve the basic problems confronting the legislature. It did nothing, for example, to mitigate the harsh construction of municipal charters.[19] Nor did it effectively reduce the great number of local bills requiring legislative action.[20]

Consequently, a new approach was taken in the 1968 constitution—giving municipalities general powers in the absence of conflicting state law.[21] This

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1911) states: "It is a general and undisputed proposition of law that *a municipal corporation possesses and can exercise the following powers and no others*: First, those granted in *express words*; second, those *necessarily implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensible."

10. *See, e.g.*, City of Clearwater v. Caldwell, 75 So. 2d 765 (Fla. 1954).

11. *See, e.g.*, Liberis v. Harper, 89 Fla. 477, 104 So. 853 (1925).

12. *E.g.*, Paper v. Westerdale, 254 Iowa 1356, 121 N.W.2d 159 (1963); Kronschnabel v. City of St. Paul, 272 Minn. 256, 137 N.W.2d 200 (1965); City of Jackson v. Freeman-Howie, Inc., 239 Miss. 84, 121 So. 2d 120 (1960); Jacobs v. City of Omaha, 181 Neb. 101, 147 N.W.2d 160 (1966).

13. *See* Sandalow, *supra* note 6, at 652-53.

14. Note, *Constitutional Revision: County Home Rule in Florida—The Need for Expansion*, 19 U. FLA. L. REV. 282, 285 (1966).

15. Sandalow, *supra* note 6, at 655.

16. "Home rule" means that, as to the affairs of a municipality, which affect the relation of the citizens with their local government, they shall be freed from state interference, regulation and control, and all other matters purely of local interest, advantage, and convenience shall be left to the people thereof for their own determination. People *ex rel.* Attorney General v. Johnson, 34 Colo. 143, 159 86 P. 233, 238 (1905). *See* 2 E. MCQUILLIN, MUNICIPAL CORPORATIONS §9.08 (3d ed. rev. 1966).

17. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269 (1969).

18. FLA. CONST. art. VIII, §8(g) (1885). This was retained in the 1968 constitution as art. VIII, §6.

19. *See, e.g.*, City of Coral Gables v. Giblin, 127 So. 2d 914 (3d D.C.A. Fla. 1961), *aff'd*, 149 So. 2d 561 (Fla. 1961).

20. *See* Note, *supra* note 14, at 287-88. For a detailed breakdown of the number of local or special bills passed by the Florida Legislature see Sparkman, *The History and Status of Local Government Powers in Florida*, 25 U. FLA. L. REV. 271 (1973).

21. FLA. CONST. art. VIII, §2(b) provides in part: "Municipalities shall have govern-

apparent change in the source of municipal powers, however, has failed to receive subsequent judicial recognition. Thus, the court in *State* ex rel. *Johnson v. Vizzini*[22] stated that municipalities have only such powers as the legislature expressly grants to them. Such a view, although proper under the 1885 constitution,[23] appears to ignore the grant in article VIII of the new constitution.[24] Because the court dealt with the problem only peripherally, however, the decision is weakened as precedent.[25] Only slightly more definite is *Gontz v. Cooper City*[26] where the court considered the power of a municipal police chief to suspend a subordinate. Relying entirely on old case law the court affirmed the rule that all municipal powers must be granted in the charter.[27] More recently, in *Town of Belleair v. Moran*,[28] a municipal zoning ordinance was invalidated because there was no express statutory authority for it. A dissenting judge argued that the new constitutional provision gave municipalities local zoning power unless specifically prohibited by statute. According to the dissent no affirmative authority was necessary; the absence of negative legislation was sufficient.[29] Furthermore, a 1972 opinion of the attorney general advised that municipal powers must be derived from explicit authorization in statute or charter, apparently suggesting that the constitutional grant of powers is superseded by the charter grant.[30]

In the instant case a sharply divided court found the rent control ordinance invalid on several grounds.[31] Apparently creating a new "majority position" throughout the nation, the court found that regulation of rental rates was of statewide concern and therefore not a municipal function.[32]

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mental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and *may exercise any power for municipal purposes except as otherwise provided by law.*" (Emphasis added.)

22. 227 So. 2d 205 (Fla. 1969).

23. FLA. CONST. art. VIII, §8 (1885).

24. FLA. CONST. art. VIII, §2(b) (1968).

25. The court was primarily concerned with the sentencing power of a municipal judge, which was largely governed by the judiciary article of the Florida constitution. *See* State *ex rel.* Johnson v. Vizzini, 227 So. 2d 205 (Fla. 1969).

26. 228 So. 2d 913 (4th D.C.A. Fla. 1969).

27. This is not entirely the fault of the court, as the sole authority cited by counsel for either side was a single naked sentence from CORPUS JURIS SECUNDUM. *Id.*

28. 244 So. 2d 532 (2d D.C.A. Fla. 1971).

29. *Id.* at 536. This was the first opinion recognizing the effect of the 1968 constitution on the source of municipal powers.

30. OP. ATT'Y GEN. FLA. 072-118 (March 29, 1972). *But cf.* OP. ATT'Y GEN. FLA. 072-216 (July 10, 1972) (City of Orlando has power to enact ordinances for municipal purposes unless otherwise specified by law).

31. 261 So. 2d 801 (Fla. 1972). The case was decided on five grounds, two of which are of major importance and are discussed in the text accompanying notes 33-41 *infra*. In addition, the court invalidated the rent control ordinance because (1) there was no emergency as a matter of fact, (2) the rent control ordinance conflicted with the Florida statute dealing with landlord-tenant relationships, and (3) the ordinance was too vague to be constitutional as a delegation of powers.

32. Prior to *Fleetwood* the courts had evenly split on this subject. Holding that municipalities do have the power to enact rent control ordinances in the absence of conflicting state legislation are: Old Colony Gardens v. City of Stamford, 147 Conn. 60, 156

Although the decision may seem harsh to those concerned with the plight of the tenant in Florida,[33] the judiciary is generally conceded to be best equipped to distinguish between local and statewide problems.[34] Far more significant, however, is the instant court's ruling concerning the source of municipal powers. Citing *Gontz*,[35] it declared that the paramount law of the municipality is its charter, which gives it *"all the powers it possesses."*[36] Then strictly construing the charter under Dillon's Rule, the court found no authorization for rent control. Although article VIII of the 1968 constitution was considered the court continued to rely, without further explanation, upon principles established in cases arising under the 1885 constitution.[37]

By affirming the rules developed in earlier case law, the court retained the status quo as it existed prior to adoption of the 1968 constitution. The proposition that *all* municipal powers are derived from a charter is patently inconsistent with a theory that powers arise from any other source, including the constitution. Since this renders the constitutional grant a dead letter, the effect of *Fleetwood,* if followed,[38] will be to keep municipal rule by legislative

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A.2d 515 (1959); Heubeck v. City of Baltimore, 205 Md. 203, 107 A.2d 99 (1954); Warren v. City of Philadelphia, 387 Pa. 362, 127 A.2d 703 (1956). *Contra,* Marshal House, Inc. v. Rent Review & Grievance Bd., 260 N.E.2d 200 (Mass. 1970); Tietjens v. City of St. Louis, 359 Mo. 439, 222 S.W.2d 70 (1949); Wagner v. Mayor & Municipal Council of City of Newark, 24 N.J. 467, 132 A.2d 794 (1957). Interpretation of these cases has proved troublesome, and *Heubeck, Warren,* and *Old Colony Gardens* were cited by the majority and dissenting opinions in *Fleetwood* to support antithetical points of law. The apparent reason for this inconsistency is that the rent control ordinance in each case was struck down as contrary to state legislation or legislative intent, though the court admitted the municipality's power to enact one in the absence of such legislation.

Since any price ceiling abridges freedom of contract, Levy Leasing Co. v. Siegal, 258 U.S. 242 (1922), and other private rights, *see, e.g.,* Block v. Hirsh, 256 U.S. 135 (1921), many jurisdictions have not favored municipal activity in this field without legislative approval. Comment, *Municipal Home Rule Power: Impact on Private Legal Relationships,* 56 IOWA L. REV. 631, 632 (1971).

33. Florida courts have refused to modify any of the common law rules relating to landlord and tenant. McKenzie v. Atlantic Manor, Inc., 181 So. 2d 554, 555 (3d D.C.A. Fla. 1965). Thus, in the absence of fraud, concealment, or express covenant the landlord has no duty to the tenant to maintain or repair the premises. Wiley v. Dow, 107 So. 2d 166, 168 (1st D.C.A. Fla. 1958). This has prompted the Florida Law Revision Council to propose an entirely new landlord-tenant act that would force the landlord to warrant the habitability of his property and would prohibit retaliatory conduct on his part for any tenant complaint. Florida Law Revision Council, Florida Landlord and Tenant Act (Second Draft, Sept. 28, 1972). *See also* Commentary, *Landlord's Lament: New Tenant Remedies in Florida,* 24 U. FLA. L. REV. 769 (1972).

34. Comment, *supra* note 32, at 637.

35. 228 So. 2d 913 (1969).

36. 261 So. 2d at 803 (emphasis added).

37. *E.g.,* Clark v. North Bay Village, 54 So. 2d 240 (Fla. 1951); Liberis v. Harper, 89 Fla. 477, 104 So. 853 (1925).

38. One commentator has suggested that the decision will be followed only in its narrower aspect relating to rent control and not as to municipal powers generally. Sparkman, *supra* note 20, at 305, 306. However, at least one lower court has declined to narrow the scope of *Fleetwood. See* Admiral Dev. Corp. v. City of Maitland, 267 So. 2d 860 (4th D.C.A. Fla. 1972) (a municipality has no power to enact an ordinance requiring dedication of subdivision land without specific charter authorization).

grace in Florida. This seems directly contrary to both the spirit of the constitution and the trend in other jurisdictions.[39]

Aside from the unlikely possibility that the legislature intended to adopt a meaningless clause in the constitution, all indices militate against the result reached in *Fleetwood*. In what was probably meant to be an enabling statute,[40] the legislature restated article VIII, section 2(b), with the added declaration that "the provisions of this section shall be so construed as to secure for municipalities *the broad exercise of home rule powers granted by the constitution.*"[41] Even without this clear expression of intent there is ample indication of legislative purpose to compel liberal construction of article VIII. The Florida Constitution Revision Committee[42] compared its proposed draft of the article with provisions in seven of the most recent state constitutions, finding it most similar to those of Alaska, Hawaii, and the Model State Constitution.[43] Since each of these constitutions provides that local governments shall have those powers not denied them by the state,[44] municipalities would exercise all powers not specifically prohibited.[45] The legislature adopted the committee's draft with little change.[46]

To explain the new constitution to the electorate, the Legislative Reference Bureau issued a pamphlet with analyses of the changes. It was stated that, under the 1968 constitution, "municipalities would be given additional powers to perform services *unless specifically prohibited by law.*"[47] Thus,

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39. The considerable majority of state constitutions now contain home rule provisions of some sort, more than half of which have been added since World War II. Vanlandingham, *supra* note 17, at 277-78.

40. FLA. STAT. §167.005 (1971). Although article VIII does not call for implementing legislation, the legislature enacted this statute either as a cautionary measure or as a reaffirmation of its desire to reduce its responsibility for local government.

41. *Id.* (emphasis added).

42. The Florida Constitution Revision Committee was created by the legislature to make recommendations for revision to the legislature and the cabinet. 4 SENATE BILLS 977 (1965).

43. INSTITUTE OF GOVERNMENTAL RESEARCH, COMPARISON OF SELECTED FEATURES OF SIX RECENT STATE CONSTITUTIONS AND THE 1885 CONSTITUTION: A TABULAR ANALYSIS 7 (1966) (prepared for the Florida Constitution Revision Committee).

44. ALASKA CONST. art. X, §11 is perhaps the broadest of all state constitutions: "A home rule borough or city *may exercise all legislative powers not prohibited by law or charter.*" (Emphasis added.) HAWAII CONST. art. VII, §2, declares that charters drafted by the municipality shall be superior to statutory provisions unless they are general law. NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 96 (6th ed. 1963), recommends in §8.02: "A county or city may exercise any legislative power or perform any function which is not denied to it by its charter . . . and is within such limitations as the legislature may establish by general law."

45. NATIONAL MUNICIPAL LEAGUE, *supra* note 44, at 97.

46. Commentary to FLA. CONST. art. VIII, §2(b), 26A F.S.A. 291 (1970). The first sentence, which originally read "municipalities shall have the power of self-government" was deleted by the legislature.

47. LEGISLATIVE REFERENCE BUREAU, DRAFT OF PROPOSED 1968 CONSTITUTION 25 (1968) (emphasis added).

without the presence of any legislative grant, the municipality would have "residual powers."[48] Other commentaries agree with this analysis.[49]

The purpose of home rule has never been to insure complete local autonomy, for general laws override conflicting municipal ordinances.[50] Rather, home rule seeks to delineate an area where municipalities can govern without threat of legislative interference.[51] The judicial refusal to allow municipal home rule, however, means the legislature is once again the source of municipal powers in Florida. To exercise powers not expressly conferred in its charter, a city must seek legislative approval by special law.[52] This is a time-consuming process, for both the city and the legislature, fostering log-rolling and political dealmaking.[53] Although municipalities that are allowed to amend their charters do not have to go to the legislature for additional powers, they must call an election to ratify the amendment.[54] This too is time-consuming and costly. Since the court persists in marching to the beat of a bygone era, the only clear solution to the problem is a judicial change of position. Absent this, a legislative declaration of intent might be persuasive in encouraging municipal initiative and swaying the court. Until then, it appears that home rule in Florida will remain imbedded in the nineteenth century rather than enshrined in the state constitution.

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48. *Id.* at 26.
49. Commentary to FLA. CONST. art. VIII, §2 (b), 26A F.S.A. 291 (1970).
50. Southern Bell Tel. & Tel. Co. v. Town of Surfside, 186 So. 2d 777 (Fla. 1966).
51. Dyson, *Ridding Home Rule of the Local Affairs Problem*, 12 KAN. L. REV. 367, 368 (1964).
52. *See* note 20, *supra.*
53. Vanlandingham, *supra* note 17, at 270.
54. *See* OP. ATT'Y GEN. FLA. 072-118 (March 29, 1972).