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Although the Florida Constitution contains no express provision authorizing the formation of special taxing districts,[1] many have been formed by the Legislature and have been in existence for a number of years. The power of the Legislature to create special taxing districts stems from its inherent power to tax[2] and is limited, but not conferred by the State and Federal Constitutions, which are designed to protect persons and property against governmental abuse and oppression.[3] Where the taxing district is formed and empowered solely to impose a special assessment[4] no serious constitutional question is raised, for it has been well settled that when a portion of a community is to be specially benefited by the enhancement of property through public expenditure, a contribution in consideration of the special benefits must be made by those persons receiving them.[5] However, where the taxing district is created and empowered to levy an ad valorem tax a great deal of doubt exists as to its constitutionality because of the language used in a single case, namely, *Crowder v. Phillips*.[6] It is therefore

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1. FLA. CONST. Art. IX, § 6 does by implication permit the formation of special taxing districts since it provides, " . . . the Counties, Districts, or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate, to be held in the manner to be prescribed by law . . . ."

2. Lee v. Atlantic Coast Line R.R., 145 Fla. 618, 630, 200 So. 71, 76 (1941): "Section 1, Article 9 of the Constitution does not limit the taxing power of the legislature to state, county, and municipal taxation. Taxing districts are now a part of the fiscal taxing system of the state. . . . Statutory taxing power is as pertinent to taxing districts as it is to the state, counties, and municipalities unless restrained by a paramount law."

3. Hunter v. Owens, 80 Fla. 812, 86 So. 839 (1920); Amos v. Mathews, 99 Fla. 1, 17, 126 So. 308, 315 (1930), "In approaching the question of the power of the Legislature to levy taxes, it should further be borne in mind that our State Constitution is not a grant of power to the Legislature, but is a limitation voluntarily imposed by the people themselves upon their inherent lawmaking power, exercised under our Constitution through the legislature, which power would otherwise be absolute save as it transcended the power granted by the State to the Federal Government." See Lee v. Atlantic Coast Line R.R., 145 Fla. 618, 200 So. 71 (1941).

4. Klemm v. Davenport, 100 Fla. 627, 631, 129 So. 904, 907 (1930), "A 'special assessment' is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon the theory that the portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment."

5. Whitney v. Hillsborough County, 99 Fla. 628, 127 So. 486 (1930); Atlantic Coast Line R.R. v. Lakeland, 94 Fla. 347, 115 So. 669 (1927); COOLEY, TAXATION 1153 (3d ed. 1903).

6. 146 Fla. 428, 1 So.2d 629 (1941).

the purpose of this article to determine, through an analysis of the cases, the law as it exists today relative to the constitutionality of special taxing districts with general ad valorem taxing powers.

Prior to 1941, the law was clear and consistent in upholding the constitutionality of general ad valorem taxing powers for taxing districts. In fact, when confronted squarely with the problem in *Hunter v. Owens*, the Florida Supreme Court declared:[7]

> It is within the power of the Legislature to establish a district of the character here considered as a governmental agency to effect the lawful public purpose of insuring the public health, comfort, convenience, and welfare of the district and its inhabitants, and to impose an ad valorem tax therefor.

The case involved the constitutionality of an act[8] creating and incorporating a special taxing district known as the South Lake Worth Inlet District. The act created a district from a portion of Palm Beach County for the purpose of opening, cutting and maintaining an inlet or waterway at some point in the district between Lake Worth and the Atlantic Ocean. This project, as the act provided, was necessary for the maintenance of the health, comfort and convenience of the district inhabitants. A Board of Commissioners was created as the governing body of the District and was empowered to acquire property; borrow money; issue bonds, subject to approval by the qualified electors of the District; and to levy a tax not exceeding 10 mills on a dollar in any one year upon all the real and personal property within it. The complainant, a taxpayer having real estate within the District, contested the constitutionality of the act on the ground, among others, that the Board of Commissioners had no authority to exercise the taxing powers conferred upon it since the Legislature is empowered by the Constitution to levy taxes for state, county and municipal purposes only. Therefore, the complainant argued, in authorizing a tax levy for a district purpose, the Legislature had exceeded its constitutional grant of power. In advancing this argument, the complainant relied heavily upon the Constitutional provision which declares:[9]

> The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation.

In denouncing the contention of the complainant, the Supreme Court held to the effect that the Legislature, in the exercise of its inherent sovereign powers, may impose taxes for governmental purposes. The only limitations imposed upon that power are in the federal and state constitutional provisions designed to protect persons and property from oppressive governmental action. In the instant case the court reasoned that there was a fair

7. 80 Fla. 812, 829, 86 So. 839, 844 (1920).
8. Fla. Spec. Acts 1915, c. 7080.
9. FLA. CONST. Art. IX, § 5.

relation between the taxing power under the act and the purpose of maintaining the health, convenience and comfort of the inhabitants of the district. From all indications, the court continued, the statute is not on its face oppressive of private rights and it does not appear that its operation will violate the organic law.

It is important to note that the tax to be levied under the act involved in the *Hunter*[10] case was upon all real and personal property within the district. There was no pretense made anywhere in the act that the property within the district would be enhanced in value by the tax imposed. Nor was there any attempt made by the Legislature to condition the amount of the tax upon the benefits derived by the property owners from the enhancement of their property. The tax was to be levied upon all property within the tax district and was based upon property valuations. It therefore becomes evident that the Legislature authorized the imposition of a general ad valorem[11] tax. Thus we find the Supreme Court upholding an act which established a special taxing district with general ad valorem taxing powers.

This same attitude was reflected by the Supreme Court of Florida in *Indian River Mosquito Control District v. Board of County Commissioners.*[12] In that case, the constitutionality of one[13] of several acts[14] creating mosquito control districts throughout the State of Florida was being attacked. Insofar as that act created a special taxing district and established a governing body with power to impose bonded indebtedness, acquire property both real and personal, borrow money and levy an ad valorem tax, it was similar to the act involved in the *Hunter* case. The avowed purpose of both acts was the maintenance of the health, comfort and convenience of the inhabitants of the district. The manner in which the purpose was to be accomplished constituted the major point of difference. In the one case, the act[15] called for construction of a waterway. The other[16] called for all steps necessary for the elimination of mosquitoes. However, in both cases the governing board was authorized to levy an ad valorem tax. In upholding the constitutionality of the Mosquito Control District the Court declared:[17]

> The Indian River Mosquito Control District Act not being void or unconstitutional on its face, whatever objections may be raised

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10. Hunter v. Owens, 80 Fla. 812, 86 So. 839 (1920).

11. BLACK'S LAW DICTIONARY 51 (3d ed. 1933): "The term *ad valorem* tax is as well defined and fixed as any other used in political economy or legislature, and simply means a tax or duty upon the value of the article or thing subject to taxation."

12. 103 Fla. 946, 138 So. 625 (1932); State v. Helseth, 104 Fla. 208, 140 So. 655 (1932).

13. Fla. Spec. Acts 1925, c. 11128, as amended, Fla. Spec. Acts 1929, c. 14381.

14. Fla. Spec. Acts 1937, c. 18437 (Brevard Mosquito Control Dist.); Fla. Spec. Acts 1937, c. 18963 (East Volusia County Anti Mosquito Dist. No. 4).

15. Fla. Spec. Acts 1915, c. 7080.

16. See note 13 *supra.*

17. Indian River Mosquito Control Dist. v. Board of County Comm'rs, 103 Fla. 946, 953, 138 So. 625, 629 (1932).

> in that connection must result from its application to particular situations involving special states of facts.

It thus became evident that the Supreme Court remained steadfast in holding that a special taxing district with general ad valorem taxing power is not in and of itself oppressive of private rights and thereby unconstitutional. However, in 1941, the Court in *Crowder v. Phillips*[18] used language which has been interpreted as completely opposed to its previous holdings. In fact, a literal interpretation requires that conclusion, for the Court through Justice Chapman declared:[19]

> It is our conclusion that a district may not be created with general taxing authority but must be restricted to the power to levy assessments for special benefits and that the general power of taxation can be exercised only by the county. In the instant case it appears that the power to assess and impose the ad valorem tax was attempted to be delegated to a district for the establishment of an improvement by which real property located in the area would not be specially benefited. The district trustees could not be given that authority but could only have been empowered to make assessments where special benefits could be traced to the real property located in the region.

No mention was made by the Court of either the *Hunter* or the *Mosquito Control District* cases. This fact coupled with the language used by the court in the *Crowder* case, has led many to believe that the *Hunter* and the *Mosquito Control District* cases were overruled by implication. However, a careful analysis of the act[20] involved in the *Crowder* case indicates that it is readily distinguishable from the acts[21] involved in the *Hunter* and *Mosquito Control District* cases.

In the *Crowder* case, the constitutionality of the act[22] creating the Leon County Hospital District was in issue. The act was similar to the one involved in the *Hunter* and *Mosquito Control District* cases insofar as it created a special taxing district and established a governing body with power to issue bonds, acquire property, borrow money and to levy an ad valorem tax. However, there existed one very important distinction that has been too often overlooked. In the *Crowder* case, the act involved created a district with boundaries identical to and co-extensive with the boundaries of the County of Leon. The Leon County Hospital District was in fact all of Leon County. The Board of Commissioners of the district was authorized to levy and assess a general ad valorem tax upon all the property in the county. The entire county was taxed, the entire county was to be served and the governing authority was vested in a district. It was not the Board of County Commissioners who were to levy the tax but rather the Board of

18. 146 Fla. 428, 1 So.2d 629 (1941).
19. Crowder v. Phillips, 146 Fla. 428, 443, 1 So.2d 629, 631 (1941).
20. Fla. Spec. Acts 1939, c. 19939.
21. Fla. Spec. Acts 1915, c. 7080; Fla. Spec. Acts 1925, c. 11128, as amended, Fla. Spec. Acts 1929, c. 14381.
22. Fla. Spec. Acts 1939, c. 19939.

Commissioners of the district. It was, therefore, apparent to the Court that under the Leon County Hospital District Act, a district was created and empowered to levy and assess a general ad valorem tax for what was clearly a county purpose in contravention of the Florida Constitution.[23] As the Court declared:

> Under the Act, the county is not authorized to construct and maintain the hospital as a county project. . . .

The situation involved in both the *Hunter* and *Mosquito Control District* cases was completely different. The acts did not purport to encompass the entire county. Nor was the tax levy to be imposed upon all the property within the county. Only the district was to be benefited and only the district paid for those benefits. The district was created for the purpose of imposing the tax burden properly upon only those to be benefited by the improvement.

If there was any doubt that a distinction did in fact exist between the *Crowder* case on the one hand and the *Hunter* and *Mosquito Control District* cases on the other, it was very recently dispelled in the important case of *Langley v. South Broward Hospital District*.[24] The act[25] in issue created a special taxing district, which consisted of approximately one-third of Broward County, for the purpose of constructing and maintaining hospital facilities for the district inhabitants. A Board of Commissioners was established as the district's governing authority and was empowered to levy an ad valorem tax on all taxable property within the district at a rate not to exceed five mills per annum on the dollar valuation. In contending that the act was unconstitutional, the appellant took full advantage of the strong language used by the Court in the *Crowder* case.[26]

> In the instant case, as we have already stated, although an attempt was made by the legislature to establish a district, there could be no special assessments for benefits and the tax authorized is a general one upon all property according to value by a board of trustees. Under the Constitution the right to assess and impose taxes is reposed in the County Commissioners and may not be delegated to a board created for that and other purposes.

Appellant further argued that the *Hunter*[27] and *Mosquito Control District*[28] cases were not applicable, for the improvements contemplated by the acts involved in those cases could reasonably be construed as enhancing the value of the property and thereby upholding the taxing power as a special assessment. However, the Supreme Court, while fully cognizant of the fact that the South Broward Hospital District Act did create a special taxing district with ad valorem taxing powers, upheld its constitutionality

23. FLA. CONST. Art. IX, § 5.
24. 53 So.2d 781 (Fla. 1951).
25. Fla. Spec. Acts 1947, c. 24415.
26. 146 Fla. 428, 443, 1 So.2d 629, 631 (1941).
27. 80 Fla. 812, 86 So. 839 (1920).
28. 103 Fla. 946, 138 So. 625 (1932).

in a per curiam opinion[29] on authority of the *Hunter* and *Mosquito Control District* cases. Thus we find that the Supreme Court of Florida has been consistent in holding first, that the Legislature has the power to create special taxing districts and, second, that a special taxing district can be authorized, consistent with the Constitution, to impose an ad valorem tax.

29. Langley v. South Broward Hospital District, 53 So.2d 781 (1951).