

Winter 1975

## City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764 (Fla. 1974)

David K. Miller

Follow this and additional works at: <http://ir.law.fsu.edu/lr>



Part of the [State and Local Government Law Commons](#)

---

### Recommended Citation

David K. Miller, *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974), 3 Fla. St. U. L. Rev. 137 (2014).  
<http://ir.law.fsu.edu/lr/vol3/iss1/11>

This Comment is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Florida State University Law Review by an authorized editor of Scholarship Repository. For more information, please contact [bkaplan@law.fsu.edu](mailto:bkaplan@law.fsu.edu).

**Municipal Corporations—RENT CONTROL—CITY OF MIAMI BEACH MAY ENACT RENT CONTROL ORDINANCE UNDER MUNICIPAL HOME RULE POWERS ACT—*City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).**

Since 1969 the City of Miami Beach has sought to pass a rent control ordinance. The first such ordinance cited a finding that an inflationary rent spiral and a housing shortage required the remedial action;<sup>1</sup> the plight of low income retired persons appears to have been particularly in mind.<sup>2</sup> This ordinance was struck down by the Florida Supreme Court in *City of Miami Beach v. Fleetwood Hotel, Inc.*<sup>3</sup> The court there held that the home rule provisions of the 1968 Florida Constitution,<sup>4</sup> absent enabling legislation, did not empower the city to enact rent controls.<sup>5</sup> The court also declared that an inflationary spiral was not an emergency sufficient to justify rent controls;<sup>6</sup> that the ordinance lacked sufficient objective guidelines and standards and thus constituted an unlawful delegation of authority to the city rent agency;<sup>7</sup> and that the ordinance conflicted with landlord-tenant provisions of the Florida statutes.<sup>8</sup>

In the subsequent session the Florida Legislature passed the Municipal Home Rule Powers Act.<sup>9</sup> Miami Beach again attempted to control rents.<sup>10</sup> The second ordinance was designed to meet the

1. Miami Beach, Fla., Ordinance 1791, Oct. 15, 1969.

2. See *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 809 (Fla. 1972) (Ervin, J., dissenting).

3. 261 So. 2d 801 (Fla. 1972).

4. FLA. CONST. art. VIII, § 2(b).

5. 261 So. 2d at 804. For a discussion of the home rule aspects of the case see 1 FLA. ST. U.L. REV. 360 (1973). That comment found the *Fleetwood* court's conclusion questionable in light of the plain language of the constitutional home rule section, FLA. CONST. art. VIII, § 2(b), and in light of statutory provisions allowing cities to amend their charters and exercise any power not prohibited by general or special law. See Fla. Laws 1969, ch. 69-242, § 1; ch. 69-33, §§ 1, 2 (repealed 1973).

6. 261 So. 2d at 804. As to the requirement that rent control be justified by emergency conditions, see *Bowles v. Willingham*, 321 U.S. 503 (1944); *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934); *Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922); *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170 (1921); *Block v. Hirsh*, 256 U.S. 135 (1921); *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874 (D.V.I. 1961).

7. 261 So. 2d at 805-06.

8. *Id.* at 806.

9. FLA. STAT. §§ 166.011-.042 (1973).

10. The Act became effective October 1, 1973. The city enacted rent control in the following months, amending and rewriting its ordinance several times. All references hereinafter to "the ordinance" refer to Miami Beach, Fla., Ordinance 73-1978, Dec. 31, 1973, upon which the city relied at the trial. Brief for Appellee at 2, *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

difficulties encountered in court by its predecessor.<sup>11</sup> Almost immediately a Miami Beach landlord attacked the ordinance, and the Act under which it was passed, in Dade County Circuit Court. The circuit court held, under *Fleetwood Hotel*, that the ordinance lacked sufficient objective guidelines and standards, that it conflicted with Florida landlord-tenant and probate law, and that the Municipal Home Rule Powers Act itself was invalid under article III, section 1, and article VIII of the 1968 Florida constitution.<sup>12</sup> The city appealed. In *City of Miami Beach v. Forte Towers, Inc.*,<sup>13</sup> the Florida Supreme Court unanimously upheld the home rule act and the power to pass rent control thereunder. But a divided court held that in attempting to delegate such power to the administrator the city had provided insufficient guidelines, and thus the ordinance was invalid.<sup>14</sup>

Despite the court's failure to uphold the Miami Beach ordinance, *Forte Towers* is a substantial victory for Florida's cities and towns. Traditionally bound by Dillon's Rule, municipalities possessed only those powers expressed or implied in a legislative delegation, or indispensable to municipal purpose.<sup>15</sup> The rule served to keep municipali-

---

11. The 1969 ordinance posited the use of emergency power on an "inflationary spiral" and a "housing shortage." Miami Beach, Fla., Ordinance 1791, § 1, Oct. 15, 1969. The *Fleetwood* court found an increase in the cost of living alone inadequate to justify rent control. 261 So. 2d at 804. The 1973 ordinance contained a more elaborate justification, invoking the "health, safety and general welfare of the citizens of Miami Beach." Miami Beach, Fla., Ordinance 73-1978, § 1(a), Dec. 31, 1973.

The 1973 ordinance also sought to rectify the lack of sufficient guidelines and standards. Rents were affixed by registration of the rates charged on October 1, 1973. Adjustments were to be made, not by the "equities of the matter," as in the earlier ordinance, but on the basis of a schedule tied to cost-of-living and tax increases. Further adjustments were to be allowed for specifically enumerated extraordinary events. Miami Beach, Fla., Ordinance 73-1978, §§ 4(b), (c), Dec. 31, 1973. The basis for calculating a fair return, below which adjustment would be automatically allowed, was not left to the administrator's discretion, but fixed at assessed value. Miami Beach, Fla., Ordinance 73-1978, § 4(c)(4)(v), Dec. 31, 1973. The rent administrator was not permitted to decontrol rents for certain classes of housing at his own discretion, but could only recommend such action to the city council. Miami Beach, Fla., Ordinance 73-1978, § 16, Dec. 31, 1973. Housing violations were treated as grounds for withholding rent increases rather than ordering decreases. Miami Beach, Fla., Ordinance 73-1978, § 4(c)(3)(iii), Dec. 31, 1973. Provisions were made for administrative hearings, judicial review, and maximum duration of the ordinance. Miami Beach, Fla., Ordinance 73-1978, §§ 7, 8, 17, Dec. 31, 1973.

12. *Forte Towers, Inc. v. City of Miami Beach*, No. 73-31459 (Fla. Dade Co. Cir. Ct., Jan. 22, 1974). See notes 28, 29 *infra*.

13. 305 So. 2d 764 (Fla. 1974).

14. *Id.* at 765. See notes 33-40 and accompanying text *infra*.

15. Dillon's Rule is as follows: "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 or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplish-

ties within boundaries set out by the legislatures that created them.<sup>16</sup> Home rule is a reaction to the difficulties encountered by both municipalities and legislatures under this arrangement.<sup>17</sup> It may become the national norm.<sup>18</sup>

Home rule is of two general types, legislative and constitutional.<sup>19</sup>

---

ment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable." 1 J. DILLON, MUNICIPAL CORPORATIONS § 237, at 448-49 (5th ed. 1911). Dillon's Rule is reflected in Florida case law. *See, e.g.,* Heriot v. City of Pensacola, 146 So. 654, 656 (Fla. 1933); Malone v. City of Quincy, 62 So. 922, 924 (Fla. 1913). *See also* Rinzler v. Carson, 262 So. 2d 661 (Fla. 1972) (express legislative grant required to support municipal firearms regulation); St. Joe Natural Gas Co. v. City of Ward Ridge, 265 So. 2d 714 (Fla. 1st Dist. Ct. App. 1972), *cert. denied*, 272 So. 2d 817 (Fla. 1973) (express or implied grant of power required to support city's grant of exclusive utility franchise); 23 FLA. JUR. *Municipal Corporations* § 63 (1959). Dillon's Rule also states: "Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied." 1 J. DILLON, MUNICIPAL CORPORATIONS § 237, at 449-50 (5th ed. 1911). The Florida courts approved: "If reasonable doubt exists as to a particular power of a municipality, it should be resolved against the city." *Liberis v. Harper*, 104 So. 853, 854 (Fla. 1925), *cited with approval in* City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801, 803 (Fla. 1972). The effect of the Municipal Home Rule Powers Act on this presumption of invalidity is unresolved under *Forte Towers*. *See note 65 infra*. For thorough discussion of the powers traditionally exercised by Florida municipalities see Sparkman, *The History and Status of Local Government Powers in Florida*, 25 U. FLA. L. REV. 271 (1973).

16. Florida municipalities have always owed their existence to the legislature. 23 FLA. JUR. *Municipal Corporations* § 2 (1959). Prior to the adoption of the 1968 constitution the relationship was spelled out by FLA. CONST. art. III, § 24 (1885), which provided:

The Legislature shall establish an uniform system of county and municipal government . . . . The Legislature shall by general law classify cities and towns according to population, and shall by general law provide for their incorporation, government, jurisdiction, powers, duties and privileges under such classifications . . . .

FLA. CONST. art. VIII, § 8 (1885) provided:

The Legislature shall have 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 . . . .

For a discussion of the complex procedures by which municipalities were legislatively governed through general laws, special laws, local laws, and laws of local application, see Sparkman, note 15 *supra*, at 279-83.

17. A primary purpose of the Act was to eliminate the "local bill evil." 305 So. 2d at 766; *accord, In re Apportionment Law*, 281 So. 2d 484, 486 (1973). A striking reduction in local bills on the legislative agenda, from 42% to 15% of all bills introduced, appears to be largely attributable to home rule provisions passed in the 1968 constitution. *See Note, Municipal and County Ordinances: Looming Difficulties Under Florida's New Judicial Article*, 26 U. FLA. L. REV. 255, 258 n.15 (1974).

18. *See* Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 U.C.L.A.L. REV. 671, 680-81 n.37 (1973), listing nine states other than Florida that have adopted home rule in some form since 1960. This calculation may be conservative. *See* MICH. CONST. art. VII, § 22 (1963).

19. *See* Sparkman, note 15 *supra*, at 283, *citing* LEGISLATIVE RESEARCH COUNCIL REPORT RELATIVE TO MUNICIPAL HOME RULE (PROPOSED CONSTITUTIONAL AMENDMENT), MASS. SEN. DOC. NO. 950, at 36 (March 10, 1965). Constitutionally mandatory, or self-

Prior to the adoption of the 1968 constitution, Florida home rule was generally legislative, although certain counties were guaranteed home rule by constitutional provision.<sup>20</sup> The 1968 constitution adopted home rule in article VIII, section 2(b):

(b) POWERS. Municipalities shall have governmental, 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. Each municipal legislative body shall be elective.

In *Fleetwood Hotel*, the court held section 2(b) was not self-executing and therefore the municipal charter would continue to be the paramount source of municipal power absent additional legislation. Because the Miami Beach Charter did not expressly provide power to control rents, and the charter's general welfare clause was held to be insufficient to provide rent control powers, the court struck the rent control ordinance.<sup>21</sup>

The subsequent enactment of the Municipal Home Rule Powers Act held forth the promise that municipalities might finally deal with their problems in a creative, efficient manner, without having to request special authorization in the form of local bills. The expressed intent of the Act was to fulfill the inchoate constitutional home rule provision, remove legislative direction, and vest discretion in the municipalities as to the exercise, terms and conditions of the powers granted.<sup>22</sup> The heart of the Act is contained in section 166.021, the "Powers" section, which provides in pertinent part:

(1) As provided in § 2(b), Art. VIII of the state constitution, municipalities shall have the governmental, corporate and proprietary

---

executing, home rule is the stronger type, and legislative home rule based solely on a statutory grant, the weaker. Under *Fleetwood Hotel* Florida appears to have a hybrid type, a non-self-executing constitutional provision that enables the legislature to enact home rule. See 261 So. 2d at 803-04.

20. Dade and Hillsborough Counties were granted charter-making powers under FLA. CONST. art. VIII, §§ 11, 24 (1885). Municipalities were governed by art. III, § 24, and art. VIII, § 8. See note 16, *supra*. The provisions of the 1885 constitution providing county home rule were incorporated in the 1968 constitution. See note 31 *infra*.

21. 261 So. 2d at 803-04.

22. FLA. STAT. §§ 166.021(4), 166.042(1) (1973). Section 166.021(4) declares that "It is the further intent of the legislature . . . to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those . . . expressly prohibited." An attorney general's opinion suggests that this language refers specifically to *Fleetwood Hotel*, 1973 FLA. ATT'Y GEN. OP. 073-267, at 3.

powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

Most of the remainder of the "Powers" section concerns exceptions and limitations to this authority. Excluded are annexation, merger and extraterritorial power, and certain changes in municipal sovereignty or internal structure.<sup>23</sup> Also excluded are subjects expressly prohibited by the constitution, expressly preempted to the state or county by the constitution or general law, or preempted by certain county charters.<sup>24</sup> There remains, however, a robust grant of authority. The constitution or general law forecloses municipal action only as to subjects that are "expressly" prohibited or preempted; the word "expressly" is used four times,<sup>25</sup> and never qualified by juxtaposition with "impliedly." Thus those powers which the state possesses but has not exercised, and powers exercised but not expressly prohibited or preempted, may apparently be exercised by any one of the 400 Florida municipalities.<sup>26</sup>

23. FLA. STAT. §§ 166.021(3)(a), (4) (1973).

24. FLA. STAT. §§ 166.021(3)(b)-(d) (1973).

25. FLA. STAT. §§ 166.021(1), (3)(b), (c), (4) (1974).

26. This grant of power has an awesome potential for mischief as well as for virtue. In some constitutional provisions and statutes, the intent to preempt the subject matter is fairly clear. *See, e.g.*, FLA. STAT. § 847.09 (1973) (obscenity and profanity). The vast majority of provisions, however, are not so clear-cut. Some merely vest authority in a state organ without any mention of local authority. *See, e.g.*, FLA. STAT. § 624.307 (1973) (Department of Insurance); FLA. STAT. § 458.01 (1973) (Board of Medical Examiners). Others vest power in a state body, but expressly encourage consistent local action. *See, e.g.*, FLA. STAT. § 380.021 (1973) (environmental land and water management); FLA. STAT. § 501.213 (1973) (deceptive and unfair trade practices). Where should the line of express preemption be drawn?

Equally complex problems are presented by statutes which contain undefined terms, and make no mention of municipal authority to provide clarification. *See, e.g.*, FLA. STAT. §§ 83.44, .45 (1973), requiring good faith in performance of a residential rental agreement and disallowing unconscionable agreements. Can Miami Beach clarify these terms, and thereby impose more rights and duties on the landlord or tenant?

While statutes can be easily amended to provide express preemption, constitutional provisions are not so easily altered. One such troublesome provision is FLA. CONST. art. III, § 11, which prohibits special laws or general laws of local application pertaining to such subjects as assessment and collection of taxes, rules of evidence and punishment, private contractual liens, private incorporation, and occupations regulated by state agencies. Can the legislature legitimate municipal action where it cannot enact special legislation? At least one public official feels this is not authorized. Interview with Gerald L. Knight, Assistant Attorney General, Department of Legal Affairs, in Tallahassee, December 12, 1974.

In *Forte Towers*, a short per curiam opinion upheld the Act, citing reasons set forth in the separate opinion by Justice Dekle.<sup>27</sup> The Dekle opinion spoke for a unanimous court on the constitutionality of the Act and the power of municipalities to enact rent controls thereunder. The opinion rejected arguments that the Act was an invalid usurpation of judicial power to define municipal purpose,<sup>28</sup> or

---

Problems may also result if ordinances conflict with common law. FLA. STAT. § 2.01 (1973) enacts the common law, and Florida courts have long held that an ordinance may not " 'be inconsistent with common law, equity and public policy, unless exceptions are permitted . . . ' McQuillin, *Municipal Corporations*, 2nd Ed., page 119." *Blicht v. City of Ocala*, 195 So. 406, 407 (Fla. 1940), *quoted in Griffin v. Sharpe*, 65 So. 2d 751, 752 (Fla. 1953), and *Miami Shores Village v. Wm. N. Brockway Post No. 124*, 24 So. 2d 33, 35 (Fla. 1945). Because the Municipal Home Rule Powers Act postdated both the treatise and these cases, there may be some doubt as to whether municipalities have been given new powers to create a cause, remedy or procedural right, and if so, in what cases.

There is also the public policy problem of intermunicipal conflicts. The freedom of municipalities to enact conflicting ordinances may depend upon: (1) the degree of physical proximity and interrelation of particular municipalities; (2) the extent to which they are governed by an existing metropolitan or regional authority; and (3) the necessity or desirability of uniformity on particular issues, especially those having extraterritorial effects. Potential problem areas include commercial licensing and practices, nuisance and pollution control, and statutory negligence. Such problems are particularly difficult if municipal ordinances are not easily accessible to the public. These difficulties are discussed in Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 U.C.L.A.L. REV. 671 (1973). The number of potential conflicts is given by the formula  $N = (C^2 - C) \div 2$ , where N is the number of conflicts and C the number of jurisdictions. *Id.* at 759 n.400.

Finally, what is the effect of the Act on such statutory language as "except as provided by general law"? *See, e.g.*, FLA. CONST. art. VII, § 1(a), preempting all forms of taxation other than ad valorem taxation to the states except as provided by general law. This section might be read *in pari materia* with FLA. CONST. art. VIII, § 9(a) and FLA. STAT. §§ 166.021, 212.081(3)(b) (1973) to authorize municipalities to levy excise taxes on sales, admissions, and leases.

27. 305 So. 2d at 765.

28. The trial court had ruled that the entire "Powers" section of the Act was invalid because a subsection defined municipal purpose as "any activity or power which may be exercised by the state or its political subdivisions." FLA. STAT. § 166.021(2) (1973). Such a definition, the trial court held, constituted an improper delegation of legislative authority in that it empowered municipalities to deal in matters "inherently reserved to the state alone," such as master-servant and landlord-tenant relationships, and probate law. *Forte Towers, Inc. v. City of Miami Beach*, No. 73-31459, at 2 (Fla. Dade Co. Cir. Ct., Jan. 22, 1974). Appellee pressed this argument on appeal, noting that FLA. CONST. art. III, § 1 vests the state's legislative power in the legislature, and the constitution does not authorize the legislature to delegate that power. Thus, appellee argued, the Act was void as "an unconstitutional attempt to completely abdicate a constitutionally vested power and duty." Brief for Appellee at 15, *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

Justice Dekle, however, noted that the grant of power was provided not by the definitional subsection, but by FLA. STAT. § 166.021(1) (1973), which expressly empowers municipalities to "exercise any power for municipal purposes, except when

delegation of legislative powers reserved to the state.<sup>29</sup> The opinion held that the Act constituted the additional legislation required by *Fleetwood Hotel* to empower municipalities to enact rent control ordinances,<sup>30</sup> and that the Act was applicable to Miami Beach despite constitutional provisions granting a charter to Dade County.<sup>31</sup> The

---

expressly prohibited by law." 305 So. 2d at 766. The Dekle opinion then held that rent control, given sufficient justifying conditions, was a proper municipal purpose. *Id.* Because rent control was *judicially* cognizable as a proper municipal purpose, the Dekle opinion declined to decide whether the definitional section of the act was overbroad. *Id.* As a proper municipal purpose not expressly prohibited by law, the Dekle opinion held that rent control fell within § 166.021(1)'s grant of power. *Id.*

29. In response to the holding below invalidating the Act on this ground, the Dekle opinion stated:

[T]he trial court failed to apply the rule that statutes will be so construed as to uphold their constitutional validity whenever possible. And here the statute may be upheld, for F.S. § 166.021(3)(c) expressly excludes from the grant of power to municipalities "any subject expressly preempted to state or county government by the constitution or by general law." Thus even if a rent control ordinance which was passed under the authority of [the Act] should seek to regulate such a matter preempted by the State, it would be invalid to that extent under the terms of the authorizing statute itself. While a provision of that nature would require the invalidating of such a provision of the statute, it does not necessitate or even justify a finding that the total statute is invalid.

305 So. 2d at 767 (footnote omitted).

30. *Id.* Some language in *Fleetwood* had indicated "specific" or "express" state authorization would be required to empower municipalities to enact rent control ordinances. *See* 261 So. 2d at 804. The Dekle opinion relied not on specific statutory language, but on a finding, supported by the Act's legislative history, of specific legislative intent to grant municipalities rent control powers. *See* note 52 and accompanying text *infra*.

In concluding that the Act empowered municipalities to enact rent control ordinances, the Dekle opinion noted that an attorney general's opinion had reached a similar conclusion. The attorney general's opinion, however, relied heavily on the definitional subsection of the Act—a subsection the Dekle opinion expressly declined to consider. *See* 1973 FLA. ATT'Y GEN. op. 073-267, at 5; note 28 *supra*.

31. 305 So. 2d at 767. It had been argued that even if the Act were valid, FLA. CONST. art. VIII, § 6(e) and FLA. STAT. § 166.021(3)(d) (1973) rendered the Act inapplicable to Miami Beach. FLA. CONST. art. VIII, § 6(e) provides that all provisions of the Metropolitan Dade County Home Rule Charter shall continue to be valid if authorized under FLA. CONST. art. VIII, § 11 (1885), and that § 11 of the former constitution will remain in full force. It was argued that, pursuant to the Metro County Charter, rent control powers could be granted to a Dade County municipality only by municipal charter amendment. In response Justice Dekle held that although § 5.03 of the Metro County Charter controls amendment of Dade County municipal charters, charter amendment was not the *only* procedure for conferring additional powers on a Dade County city. Since the Metro County Charter provides that each municipality may exercise all powers not inconsistent with the charter, Justice Dekle held that the legislature could properly confer additional powers on a Dade County city provided those powers did not conflict with the county charter. Justice Dekle then found that the municipal rent controls did not conflict with the county charter.

FLA. STAT. § 166.021(3)(d) (1973) exempts from the grant of municipal powers subjects preempted to a county pursuant to county charter adopted under constitutional

Act therefore conferred on Miami Beach the power to pass a rent control ordinance.<sup>32</sup>

The subsequent treatment of the ordinance suggests the problems municipalities may encounter in attempting to exercise rent control powers granted by the Act. The court struck the ordinance, as it had in *Fleetwood Hotel*, because the ordinance lacked "sufficient" guidelines and hence was an unlawful delegation of municipal legislative power.<sup>33</sup> In *Fleetwood Hotel*, the guidelines were held to be insufficient because they lacked objective standards and thus gave the city rent agency excessive discretion in enforcing the ordinance.<sup>34</sup> In *Forte Towers*, the guidelines were held to be insufficient because they were found to be confiscatory, arbitrary, and unreasonable by Justices Dekle, Roberts, Boyd, and Overton.<sup>35</sup>

The per curiam opinion did not elaborate on the finding of insufficient guidelines. Instead, it again referred to the special concurrence of Justice Dekle. Justice Dekle accepted the trial court's finding that the ordinance was unambiguous,<sup>36</sup> but noted that the purpose of rent control was to stabilize rentals and prevent extortionate rent increases during inflationary periods while allowing landlords a fair return on their investment.<sup>37</sup> He found the guidelines to be so fixed and arbitrary that the administrator could not allow a fair return to landlords in certain situations, and thereby avoid confiscatory effects.<sup>38</sup> However, the Dekle opinion did suggest that guidelines could

---

authority. Justice Dekle held that this subsection was inapplicable because Dade County had not preempted rent control powers.

32. 305 So. 2d at 768.

33. *Id.* at 765.

34. 261 So. 2d at 805-06.

35. *See* 305 So. 2d at 765 (per curiam opinion); *id.* at 768-69 (Dekle, J., concurring); *id.* at 771-72 (Overton, J., concurring).

36. *Id.* at 765.

37. *Id.* at 768, citing *Foti v. Heller*, 137 A.2d 10 (N.J. Super. Ct. App. Div. 1957). *See also* *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874, 880 (D.V.I. 1961).

38. 305 So. 2d at 768. The Dekle opinion stated that the city council may have been "overly conscientious in its efforts to spell out everything," and that "needed in such an ordinance is a greater flexibility." *Id.* The city may have overreacted to the *Fleetwood Hotel* court's finding, 261 So. 2d at 805-06, of insufficient guidelines.

The constitutional perils of inflexible rent control provisions were noted in dicta in *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874 (D.V.I. 1961). There the court called attention to rent control provisions, not before the court, that authorized approval of landlords' applications for rent increases only to compensate landlords for structural changes and capital improvements. The court stated, "Unless these statutory provisions are to be construed by the courts or amended by the Legislature so as to authorize the fixing of a rent which is fair and reasonable to both landlord and tenant under all the circumstances of each case, they would seem plainly to be invalid as depriving the landlord of the fair value of his property without due process of law." *Id.* at 886.

be promulgated that would avoid due process pitfalls.<sup>39</sup> It thus seems possible for Miami Beach to frame a valid rent control ordinance, provided the ordinance contains objective guidelines as required by *Fleetwood Hotel* and those guidelines incorporate criteria suggested by case law alluded to in *Forte Towers*.<sup>40</sup>

*Forte Towers* may thus prove most helpful to municipalities attempting to regulate and protect local housing markets. Emergency rent control is a valuable adjunct to housing code enforcement, zoning, and the set of powers<sup>41</sup> by which a city can provide low-income housing or encourage private parties to do so. As land useable for residential

---

The specific provisions to which the Dekle opinion objected involved limitations on rent increases. Under the ordinance, a landlord was eligible for an increase only if his net return was less than six percent of the assessed valuation of his property. Net return was to be calculated by subtracting operating expenses from earned income. However, mortgage interest, amortization, depreciation and debt service were not to be included in operating expenses. Miami Beach, Fla. Ordinance 73-1978 § 4(c)(4)(v), Dec. 31, 1973. Justice Dekle reasoned that assessed valuation is an inadequate basis for computing fair return, since property may be underassessed (although possibly in violation of FLA. STAT. § 193.011 (1973)) and assessments often fail to reflect *current* value. 305 So. 2d at 769. Justice Dekle noted that the net effect of undervaluation and the operating expense exclusions was to require appellees to incur considerable losses to qualify for an increase. *Id.* Such results, Justice Dekle stated, "simply do not square with the requirements of due process; they would constitute confiscation beyond the control of the Administrator under the tools he is given to work with." *Id.*

Justice Ervin's dissent, joined by Justices Adkins and McCain, pointed out that the landlord might bring his property to full assessed value by submitting a lawful tax return. *Id.* at 772. Note, however, that section 4(c)(4)(v) of the ordinance used for its basis assessed valuation on October 1, 1973, or three months prior to enactment. And even if the freeze date were judicially readjusted, as suggested by Justice Ervin, *id.*, full assessed valuation might not reflect fair market value at the time an increase was sought.

Justice Dekle's view that assessed valuation is an improper basis for measuring fair return on a landlord's investment is supported by cases holding that rent increase formulas must be based on present fair market value. *Karrick v. Cantrill*, 277 F. 578 (D.C. Cir. 1921); *Hirsch v. Weiner*, 190 N.Y.S. 111 (Sup. Ct. 1921). It also seems clear that depreciation must be included in operating expenses. *See id.* But Justice Dekle's implication, 305 So. 2d at 769, that mortgage interest should be considered a deductible operating expense conflicts with prior decisions. In the *Hirsch* case, the court stated:

The landlords should not be allowed to charge as an operating expense the interest paid on mortgages, or expense in negotiating mortgages. The reason for this is apparent. The landlord is getting a return on his total investment which includes that part represented by the mortgages in the property, which must be paid to save the amount actually advanced.

190 N.Y.S. 111, 117; *accord* *Kress, Dunlap & Lane, Ltd. v. Downing*, *supra*, at 883, 886. 39. 305 So. 2d at 768; *see also* note 40 *infra*.

40. For discussion of criteria appropriate to assuring fair return on the landlord's investment, *see Karrick v. Cantrill*, 277 F. 578 (D.C. Cir. 1921); *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874 (D.V.I. 1961); *Hirsch v. Weiner*, 190 N.Y.S. 111 (Sup. Ct. 1921). *See also* note 38 *supra*.

41. For example, condemnation and subsidy.

purposes becomes more scarce, some cities may find that barriers to entry prevent the traditional market checks on unwarranted rent increases. Inasmuch as the repercussions of private decisions in the housing market (including misallocation of income and displacement of persons) are primarily local rather than statewide, it is logical that a local government have the legal authority to exercise those powers which the state might exercise in a statewide emergency. This unspoken rationale for emergency municipal rent control might also support other measures to protect the local housing supply, such as conditioning building permits for luxury housing on the provision of a certain number of low-rent units.

But, taken as a whole, *Forte Towers* does not authorize a rash of municipal activity in heretofore forbidden areas. *Fleetwood Hotel* was overturned to the extent that it allowed only action authorized by municipal charter.<sup>42</sup> Although *Forte Towers* acknowledged the Act's broad grant of home rule authority to municipalities,<sup>43</sup> there is a leitmotif of caution throughout the opinions. There are no broad dicta about the virtues of home rule. Nor did the court suggest what powers, other than rent control, have been conferred by the Act.<sup>44</sup> However, the tests applied by Justice Dekle to the Miami Beach ordinance may provide municipalities with clues as to what ordinances will withstand judicial scrutiny. Those tests include:

1. *Existence of Valid Municipal Purpose.*—Article VIII, section 2(b) of the constitution allows municipalities to “exercise any power for municipal purposes except as otherwise provided by law.” The Act’s “Powers” section contains similar language. Thus existence of a valid municipal purpose is both a constitutional and a statutory prerequisite to the exercise of home rule powers. Although municipal purpose is not defined by the constitution, it is defined by the Act as “any activity or power which may be exercised by the state or its political subdivisions.”<sup>45</sup>

The Dekle opinion did not rule on the validity of the Act’s definitional subsection. Municipalities relying on the definitional subsection to establish municipal purpose may argue that the subsection

---

42. 305 So. 2d at 768.

43. The Dekle opinion twice referred to the “broad grant of power” of the Act. *Id.* at 766, 767. Similar language was used in *In re Apportionment Law*, 281 So. 2d 484, 486 (Fla. 1973).

44. The Dekle opinion did note, however, that “the intent of [the Act] was largely to eliminate the ‘local bill evil’ . . . .” 305 So. 2d, *Citing In re Apportionment Law*, 281 So. 2d 484 (Fla. 1973). See also note 17 *supra*. The Act should encompass, then, at least those powers which have previously been the proper subject of local and special legislation.

45. FLA. STAT. § 166.021(2) (1973).

is a legislative definition of a constitutional term, and therefore is controlling so long as the definition bears a reasonable relationship to constitutional purposes.<sup>46</sup> But municipalities relying on the subsection must be prepared to confront the argument, raised in *Forte Towers*,<sup>47</sup> that determination of proper municipal purpose is for the judiciary.<sup>48</sup> In *Forte Towers*, the court avoided resolving such issues by recognizing judicially that rent control was a municipal purpose, citing a leading treatise on municipal corporations and case law from other jurisdictions.<sup>49</sup> Municipalities should therefore seek judicial expansion of the municipal purpose concept in addition to relying on the statutory definition.

2. *Lack of Expressly Prohibited or Preempted Purposes.*—By the terms of the Act, ordinances will be ultra vires if their subject matter is “expressly prohibited” or “expressly preempted” by general law or the constitution.<sup>50</sup> The Dekle opinion offered no guidance as to the meaning of these terms, simply concluding that rent control was not prohibited.<sup>51</sup> This conclusion was buttressed by reference to the Act’s legislative history—notably the defeat of an amendment which would have excluded rent control from the Act’s grant of powers.<sup>52</sup> In cases where the Act’s legislative intent is less clear, the court should examine closely the intent of potentially conflicting statutes to determine what matters are prohibited or preempted.<sup>53</sup> Saving the constitutionality of the Act in future cases may require an expansive reading of the words “expressly preempted.”<sup>54</sup>

46. See *Greater Loretta Improvement Ass'n v. State ex rel. Boone*, 234 So. 2d 665, 670 (Fla. 1970); *Jasper v. Mease Manor, Inc.*, 208 So. 2d 821 (Fla. 1968).

47. Brief for Appellee at 10-12.

48. The *Forte Towers* court found it unnecessary to reach this contention. See note 28 *supra*. It might also be argued that the legislative definition is so broad that, in effect, definition of municipal purpose is left to municipalities and therefore is subject to careful judicial review. Cf. *City of Bradentown v. State*, 102 So. 556, 557 (Fla. 1924).

49. The Dekle opinion cited *Inganamort v. Borough of Fort Lee*, 293 A.2d 720 (N.J. Super. Ct. 1972); *Warren v. City of Philadelphia*, 115 A.2d 218 (Pa. 1955); and 7 E. McQuillin, *Municipal Corporations* § 24.563(d) (1928). 305 So. 2d at 766.

50. See notes 24-26 and accompanying text *supra*.

51. 305 So. 2d at 767.

52. *Id.* The rejected amendment also would have denied municipalities power to control wages and prices.

53. The pitfalls of a preemption doctrine are illustrated by case law on federal preemption of interstate commerce regulation, where a balancing of interest test is used. See, e.g., *Southern Pac. Co. v. Arizona*, 325 U.S. 761 (1945). This approach entails deep involvement in the minutiae of fact situations. See, e.g., *City of Burbank v. Lockheed Air Term., Inc.*, 411 U.S. 624 (1973); *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960).

54. See note 26 *supra*. The questions raised therein suggest that in some cases findings of preemption may be required even though the phrase “expressly preempted” is absent from constitutional or statutory provisions.

3. *Lack of Conflict with County Charters.*—A third consideration raised by the Dekle opinion is whether the municipal ordinance conflicts with a county home rule charter adopted pursuant to the constitution.<sup>55</sup> Where the charter prohibits the action embodied in the proposed ordinance, the ordinance would be unconstitutional; if the county charter preempts the field the ordinance would be ultra vires. Mere “preemption” as well as “express preemption” may invalidate the ordinance.<sup>56</sup> The preemption provisions could thus make it possible for a county to keep municipalities in check by amending the county charter.

4. *Lack of Due Process Defects.*—Municipal ordinances are presumptively valid if they are within municipal power.<sup>57</sup> But the Dekle opinion makes it clear that this presumption and the Act’s broad grant of power will not shield ordinances from due process attacks. In *Forte Towers*, due process defects<sup>58</sup> led the court to conclude that the ordinance lacked “sufficient guidelines and standards” and hence was an unlawful delegation of municipal authority.<sup>59</sup> In considering due process issues, the court may also look to the sufficiency of preconditions to the exercise of the police power. In *Forte Towers*, the majority accepted the trial court’s finding that an emergency—a prerequisite to rent control—existed. But two justices took strong issue with the majority on this point,<sup>60</sup> and in cases involving less compelling fact situations<sup>61</sup> existence of a precondition may become a central issue.

5. *Lack of Statutory Conflicts.*—Finally, the court might find that

55. 305 So. 2d at 767-68. See note 31 *supra*.

56. FLA. STAT. §§ 166.021(3)(c), (4) (1973).

57. 23 FLA. JUR. *Municipal Corporations* §§ 102-03 (1959).

58. Though the Dekle opinion found the ordinance’s guidelines to be confiscatory, arbitrary and unreasonable, it elaborated only the confiscation issue. Justice Ervin’s dissenting opinion also was concerned primarily with the confiscation issue. See note 38 *supra*.

59. 305 So. 2d at 765.

60. Justice Roberts, joined by Justice Boyd, stressed that rent control was a drastic measure, to be exercised only in extreme situations. *Id.* at 770. Justice Roberts took the view that rent control had been authorized not because of an emergency, but “for the convenience of tenants who are living in accommodations apparently beyond their financial ability.” *Id.* at 772. Justice Roberts’ view of the emergency issue stands in derogation of case authority treating municipal declarations of emergency as conclusive. See, e.g., *Glackman v. City of Miami Beach*, 51 So. 2d 294 (Fla. 1951); *State ex rel. Swift v. Dillon*, 79 So. 29 (Fla. 1918).

61. The circuit court, in upholding the city council’s finding of emergency, stated: “[I]f it were not for the highly extraordinary, unusual and unique factual situation existing in the South Beach area . . . the Court’s opinion and determination of the question [might] have been different.” *Forte Towers, Inc. v. City of Miami Beach*, No. 73-31459, at 4-5 (Fla. Dade Co. Cir. Ct., Jan. 22, 1974).

even though a field of law is not expressly preempted, an ordinance contains provisions conflicting with specific statutory provisions and therefore is invalid. In *Fleetwood Hotel*, the first Miami Beach ordinance was struck for conflict with statutory landlord-tenant provisions.<sup>62</sup> Although similar claims were advanced in *Forte Towers*, the issue was not reached by the court.<sup>63</sup> Arguments relying on the *Fleetwood Hotel* rationale of statutory conflicts thus remain a threat to municipal ordinances.

In *Forte Towers*, the court upheld an overwhelming legislative mandate<sup>64</sup> for home rule in the face of a strong challenge. Yet only rent control was specifically held to be within the Act's grant of power, and the court did not indicate whether the Act altered the presumptions previously applicable to municipal ordinances.<sup>65</sup> Though it

---

62. *Fleetwood Hotel* found conflict between an ordinance provision making it unlawful to remove housing units from the market if an eviction would result and general law provisions governing duration and termination of tenancies. 261 So. 2d at 806. See Miami Beach, Fla., Ordinance 1791 § 16A.5.D, Oct. 15, 1969; FLA. STAT. §§ 83.03, .04, .06, .20 (1973). The *Fleetwood Hotel* court stated:

Municipal ordinances are inferior in status and subordinate to the laws of the State and must not conflict therewith. If doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute.

261 So. 2d at 806 (citations omitted).

63. 305 So. 2d at 768, 769; Brief for Appellee at 30-41, *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974). Without alluding to specific provisions of the ordinance, appellee contended the ordinance conflicted with FLA. CONST. art. III, § 11(a)(3), (4), (7), (9) (prohibited special laws); FLA. STAT. §§ 83.43(3), (4), (6) (1973) (definitions of landlord, tenant and rent); FLA. STAT. §§ 83.46, .57, .58, .59 (1973) (termination of tenancies); and FLA. STAT. §§ 83.55, 85.011, 713.691 (1973) (landlord's remedies and lien for rent). Appellee further claimed that ordinance provisions governing disposition of a tenant's rights on his death violated constitutional limitations on special and local legislation. See Miami Beach, Fla., Ordinance 73-1978 § 14, Dec. 31, 1973; FLA. CONST. art. III, §§ 11(a)(13), (18).

64. The Senate passed the Act by a vote of 35 to 2. FLA. S. JOUR. 775. (1973). The House passed the Act by a vote of 97 to 8. FLA. H.R. JOUR. 1331 (1973). The 1974 session of the legislature also passed enabling legislation, although counties were the primary beneficiaries. See COMMISSION ON LOCAL GOVERNMENT, FINAL REPORT 2 (1974). The trend in favor of municipal home rule is somewhat dampened by the judicial reorganization provisions of the state constitution, which require that ordinances be enforced in state courts and that municipal courts be phased out. FLA. CONST. art. V, §§ 1, 20 (1973). Article V, § 17 requires that municipal ordinances be enforced by state attorneys unless otherwise provided in the general law. For discussion see Note, *Municipal and County Ordinances: Looming Difficulties Under Florida's New Judicial Article*, 26 U. FLA. L. REV. 255 (1974).

65. Previously, any doubts as to the existence of a municipal power have been resolved against the municipality, but ordinances were presumed to be valid if within municipal power. See notes 15, 57 *supra*. These presumptions were not expressly applied in the Dekle opinion. Indeed, the Dekle opinion may be read as virtually

might reasonably be assumed that the Municipal Home Rule Powers Act gives municipal ordinances a strong presumption of validity, the battery of tests applied by the court suggest otherwise. If the court chooses, it may limit the Act by attacking its flanks, using the methods outlined above on a case-by-case basis. In the course of defining the Act's outer boundaries, *Forte Towers* will be cited and analyzed again and again by courts and litigants. The initiative now clearly lies with the cities. They may take heart in the fact that a previously unsympathetic court at least did not expressly discourage municipalities from flexing their new muscles.

DAVID K. MILLER

---

**Uniform Commercial Code—SECURED TRANSACTIONS—PRIORITY OF PERFECTED SECURITY INTEREST IN AFTER-ACQUIRED PROPERTY OVER CONFLICTING PURCHASE MONEY SECURITY INTEREST NOT TIMELY FILED IS LIMITED TO DEBTOR'S EQUITY IN COLLATERAL.—*International Harvester Credit Corp. v. American National Bank*, 296 So. 2d 32 (Fla. 1974).**

On April 8, 1969, Machek Farms, Inc. executed an installment note and security agreement with the American National Bank. The agreement encumbered all property thereafter acquired by Machek. Two days later the bank filed a financing statement concerning the agreement. Under a retail installment contract dated April 25, 1969, Machek purchased and received from the Florida Truck and Tractor Company (FTT) two items of farm equipment, each having a purchase price of slightly less than \$2,000. FTT filed no financing statement concerning this transaction. On August 8, 1969, under a similar contract with the same company, Machek purchased and received seven more items of farm equipment. Four of those items had a purchase price below \$2,500; three had a price in excess of that figure. FTT assigned the August 8 contract to the International Harvester Credit Corporation (IHCC), which filed a financing statement on September 3, 1969. Machek subsequently defaulted on payment of the installment note and on both contracts made with FTT. After Machek voluntarily returned the equipment purchased under both

---

reversing them; if future cases follow the pattern of *Forte Towers*, municipalities will have less difficulty establishing new powers under the Act than defending the means chosen to exercise those powers.