CITY OF DUNEDIN v. CONTRACTORS AND BUILDERS

1. **ASSOCIATION OF PINELLAS COUNTY**

312 So. 2d 763;

District Court of Appeal of Florida, Second District.

April 30, 1975

SUBSEQUENT HISTORY: Rehearing Denied June 10, 1975.

OPINION: GRIMES, Judge.

This case involves the authority of a municipality to charge a so-called "impact fee" for the privilege of connecting to its water and sewer systems.

The City of Dunedin (city) passed certain ordinances which imposed a fee of $325 for each water connection and $375 for each sewer connection "to defray the cost of production, distribution, transmission and treatment facilities for water and sewer provided at the expense of the City of Dunedin." These fees were in addition to charges imposed for the cost of physically connecting into the systems. Certain local contractors, together with the Contractors and Builders Association of Pinellas County, filed suit seeking declaratory and injunctive relief against the imposition of these fees. The final judgment stated in part:

The City of Dunedin is enjoying, or suffering, depending upon one's viewpoint, growth problems. The demand for sewer and water connections has strained the capabilities of the sewer and water departments to near the breaking point. Attempting to cope with the demand for sewer and water connections, the City adopted Ordinance 72-26, which as amended assessed against new connections a total 'impact fee' of approximately $700.00 for dwelling or commercial units.

... The salutary purpose of Ordinance 72-26 strikes a sympathetic chord with the Court. Implicit in the ordinance is the philosophy that those who are creating the inordinate demand for services ought to bear the prime cost of the same. ...

However, the court concluded that the city was without authority to impose the fees and entered a judgment enjoining their collection.

There are three reported Florida decisions dealing with a form of impact fee. The cases of Venditti-Siravo, Inc. v. City of Hollywood, 1973, 39 Fla.Supp. 121, and Janis Development Corp. v. City of Sunrise, 1973, 40 Fla.Supp. 41, dealt with ordinances which imposed a surcharge on building permits. The funds derived by the surcharge in Venditti were to be used for acquiring and developing parks, and the funds collected in Janis were to be used for roads. Hence, there was only a nebulous relationship between the subject upon which the charge was being imposed and the facilities for which the money was going to be spent. In each case the court properly characterized the fee as a tax which was beyond the city's authority to impose. In Pizza Palace of Miami, Inc. v. City of Hialeah, Fla.App.3d, 1970, 242 So.2d 203, our sister court held that a sewer connection fee could not be charged against a lessee because the ordinances of the city provided that the owner had the responsibility for connecting to the sewer lines. The

court pointed out that it was unnecessary to its decision to pass upon the validity of the sewer connection charge itself. Thus, it is evident that the case sub judice is a case of first impression in Florida.

The imposition of fees such as those in this case have been upheld in several other jurisdictions**. In Brandel v. Civil City of Lawrenceburg, 1967, 249 I**nd. 47, 230 N.E.2d 778, the court sustained an ordinance setting a $200 fee for those who connected to a new section of the sewage system and a $62.50 fee for those who connected to the old sewage system. The court noted that the fee was in the nature of a "use tax" for the "services" of disposing of sewage from particular property. The court rejected a charge of discrimination, pointing out that the original cost of the old system was less than that of the new system and, therefore, it was logical that the charges for its use would be less than those for the use of the new system.

In Hartman v. Aurora Sanitary District, 1961, 23 Ill.2d 109, 177 N.E.2d 214, the District established a capital improvement fund for the purpose of building new sewage facilities to be financed by a $160 connection fee charged for connections in recently annexed territories. The connection fee for the original territory of the District was $15. In upholding the $160 fee, the court said:

... It is patent that the rapid expansion of our municipalities has rendered inadequate prior facilities developed for the health and welfare of the community. It is only proper that all citizens of the community should share equally in the cost of maintaining a sanitary plant which benefits the health and welfare of the entire community by the proper disposal of sewage. It would seem equally fair that those property owners who benefit especially, not from the maintenance of the system, but by the extension of the system into an entirely new area, should bear the cost of that exten–sion. ...

A city ordinance raising the sewer connection charge for single family dwellings from $25 to $255 was attacked in Hayes v. City of Albany, 1971, 7 Or.App. 388, 490 P.2d 1018. The money was earmarked for the construction and expansion of the city's sanitary sewer system. The plaintiff contended the ordinance was invalid as being a tax and further argued that even though it be considered a "user charge" it was void because it was not "just and equitable." In upholding the ordinance, the Oregon court distinguished several adverse decisions on the basis that in those cases the funds collected could be used for general public purposes, whereas the proceeds from the sewer connection charge were limited to the development and maintenance of the sewage disposal system. The court concluded that the city had the power to make a charge reasonably commensurate with the burden currently imposed or reasonably anticipated upon the system.

One of the most recent cases on the subject is Home Builders Association of Greater Salt Lake v. Provo City, 1972, 28 Utah 2d 402, 503 P.2d 451, in which the City of Provo enacted an ordinance imposing a sewer connection fee for each living unit in newly constructed buildings. The purpose of the fee, which admittedly exceeded the cost of inspection and connection, was to provide the requisite funds to improve and enlarge the sewer system. In sustaining the ordinance, the court held that the fee was neither a tax nor an assessment but a payment for services furnished.

While many parts of this country are experiencing growth due to the population explosion, at the present time no state is more imminently faced with the problems inherent in population increase

than Florida. Where a city's water and sewer facilities would be adequate to serve its present inhabitants were it not for drastic growth, it seems unfair to make the existing inhabitants pay for new systems when they have already been paying for the old ones. The question posed here is whether the city could legally finance the expansion through increased connection charges. The court below concluded that the connection charge was, in reality, a tax. If this is so, it cannot be sustained because a municipality cannot impose a tax, other than ad valorem taxes, unless authorized by general law.

In construing Fla.Stat. § 180.13 (1971) our Supreme Court in Cooksey v. Utilities Commission, Fla.1972, 261 So.2d 129, said:

"Implicit in the power to provide municipal services is the power to construct, maintain and operate the neces–sary facilities. The fixing of fair and reason–able rates for utilities services provided is as incident of the authority given by the Constitution and statutes to provide and maintain those services. ..."

The imposition of fees for the use of a municipal utility system is not an exercise of the taxing power nor is it the levy of a special assessment. State v. City of Miami, 1946, 157 Fla. 726, 27 So.2d 118. In our view, connection fees such as those involved in this case do not constitute a ta**x but a charge which may be made for the use of the utility service pursuant to the authority of its charter and Fla.Stat.** § 180.13 (1971**), providing they meet the criteria hereafter set forth. We hold that where t**he growth patterns are such that an existing water or sewer system will have to be expanded in the near future, a municipality may properly charge for the privilege of connecting to the system a fee which is in excess of the physical cost of connection, if this fee does not exceed a proportionate part of the amount reasonably necessary to finance the expansion and is earmarked for that purpose. Having announced the rule, we must now determine its applicability to the instant case.

The evidence clearly demonstrates dramatic growth within the area logically served by the city systems. The evidence also supports the fact that the sewer and water systems were running near capacity and the expansion of these systems was imminent. The only expert witness at the trial testified that the average charge per connection necessary to finance the expansion within the area to be reasonably served was $357 for water and $631 for sewer, both of which were in excess of the fees established by the ordinance. Hence, the amount of the fee appears reasonable for the purpose for which it is imposed. The trial judge found the fees to be unreasonable charges, but this was premised upon his view that the cost of prospective capital improvements could not be considered in setting the amount of the connection charges.

Our greatest concern in this case was whether the funds collected as a result of the fees were clearly earmarked for capital expansion. The language of the ordinances does not unequivocally mandate the use of the funds for capital improve–ments. Yet, the evidence shows that the fees were established for this purpose, and the city has steadfastly handled the funds separately with a view toward expanding the monies only for improvements to the respective systems. In this regard we are assisted by the finding of the court below "that the proceeds derived from the $700 connecting fees are earmarked by the city for capital improvements to the systems as a whole." Clearly, the use of such funds must be so limited, and in view of the position taken by the city in this litigation, any use of the funds contrary to these purposes would be subject to appropriate

legal sanction.

At the trial, the appellees also attacked the ordinances on constitutional grounds. The judge did not pass on the constitu–tional questions because, having determined that the fee was a tax which was beyond the authority of the city to assess, he deemed it unnecessary to do so. What we have already said adequately disposes of the constitutional questions. We believe the ordinanc–es are constitutional and do not unlawfully discriminate against newcomers as asserted by appellees. The fees are payable by every person who hereafter connects into the city's water ow sewer system, even if he has lived in the city all his life and his property is in the heart of the city. See Home Builders Associa–tion of Greater Salt Lake v. Provo City, supra; Airwick Industries, Inc. v. Carlstadt Sewerage Authority, 1970, 57 N.J. 107, 270 A.2d 18.

The ordinances in question are valid and enforceable. Therefore, the claims for refund sought in appellees' cross-appeal cannot be sustained.

Appellees also filed a petition to review as inadequate a cost judgment entered subsequent to the final judgment. Pursuant to Craft v. Clarembeaux, Fla.App.2d, 1964, 162 So.2d 325, this petition was treated as a Notice of Interlocutory Appeal. In light of our decision in this case, the cost judgment must also be set aside.

Reversed.

CONTRACTORS AND BUILDERS ASSOCIATION OF PINELLAS COUNTY

v. CITY OF DUNEDIN

329 So. 2d 314

Supreme Court of Florida

February 25, 1976

SUBSEQUENT HISTORY: Rehearing Denied April 2, 1976.

OPINION BY: HATCHETT

In an action for declaratory judgment, brought against the City of Dunedin in Circuit Court, provisions of certain ordinances **were adjudged defective, as being an ultra vires attempt by the city to impose taxes; and the city was enjoined from collecting fees the ordinances required as a precondition for municipal water and sewerage service. In a**ddition, the Circuit Court ordered the City to refund the fees, but only to persons who had paid under protest. On appeal to the District Court of Appeal, Second District, that court reversed the circuit court judgment, City of Dunedin, Florida v. Contractors and Builders Association of Pinellas County, etc. et al., 312 So.2d 763; and, on June 10, 1975, certified that its decision passed upon a question of great public interest. As is customary in cases where such certificates have been entered, we exercise our discretion to review on its merits the decision below.E.g., Grant v. State, 316 So.2d 282 (Fla.1975); Winston v. State, 308 So.2d 40 (Fla.1974) (reh. den. 1975). See Fla.Const. art. V, § 3(b)(3).

A. Plaintiffs in the trial court, petitioners here, are building contractors, an incorporated

association of contractors, and owners of land situated within the city limits of Dunedin**. They do not complain of all the fees Dunedin requires to be collected upon issuance of building permits, but contend that** monies which the city collects and earmarks for "capital improve−ments to the [water and sewerage] system as a whole" (R. 725) constitute taxes, which a municipality is forbidden to impose, in the absence of enabling legislation. It is agreed on all sides that "a municipality cannot impose a tax, other than ad valorem taxes, unless authorized by general law," 312 So.2d at 766, and that no general law gives such authorization here. Respon−dent contends that these fees are not taxes, but user charges analogous to fees collected by privately owned utilities for services rendered. For the reasons stated in Judge Grimes' scholarly opinion, we accept this analogy, but we decline to uphold a revenue generating ordinance that omits provisions we deem crucial to its validity. We are unpersuaded, moreover, that the limitations, which the city has in fact placed on fees collected pursuant to Dunedin, Fla., Code §§ 25-31, 25-71(c) and (d), can suffice to make those fees "just and equitable", within the meaning of Fla.Stat. § 180.13(2) (1973). In principle, however, we see nothing wrong with transferring to the new user of a municipally owned water or sewer system a fair share of the costs new use of the system involves.

But the fees in Janis Development and Venditti-Siraro bore no relationship to (and were greatly in excess of) the costs of the regulation which was supposed to justify their collection. In each case, the fees were required to be paid as a condition for issuance of building permits. In the Janis Development case, $200.00 per dwelling unit built was put into a fund for road maintenance. In Venditti-Siraro, one percent of estimated construction costs went into a fund for parks. Because the surcharges were collected for purposes extraneous to the enforcement of the building code, the courts concluded that the surcharges amounted in law to taxes, which the municipalities had not been authorized to impose. In contrast, evidence was adduced here that the connection fees were less than costs Dunedin was destined to incur in accommodating new users of its water and sewer systems. We join many other courts in rejecting the contention that such connection fees are taxes**.**

The avowed purpose of the ordinance in the present case is to raise money in order to expand the water and sewerage systems, so as to meet the increased demand which additional connections to the system creates. The municipality seeks to shift to the user expenses incurred on his account. A private utility in the same circumstances would presumably do the same thing, in which event surely even petitioners would not suggest that the private corporation was attempting to levy a tax on its customers**.**

Under the constitution, Dunedin, as the corporate proprietor of its water and sewer systems, can exercise the powers of any other such proprietor (except as Fla.Stat.§§ 180.01 et seq., or statutes enacted hereafter, may otherwise provide.**) Municipal corporations have "governmental, corporate and proprietary powers" and "may exercise any power for** municipal purposes, except as otherwise provided by law." Fla.Const. art. VIII, § 2(b); City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla.1972)**. "Implicit in the power to provide municipal services is the power to construct, maintain and o**perate the necessary facilities." Cooksey v. Utilities Commission, 261 So.2d 129, 130 (Fla. 1972). There are no provisions in Chapter 180, Florida Statutes, expressly governing capital acquisition other than through deficit financing**, but it is provided** that the "legislative body of the municipali−ty... may establish just and equitable rates or charges" for water and sewerage. Fla.Stat. § 180.13(2) (1973). See generally Annot., 61

A.L.R.3d 1236, 1248-1259 (1975).

When a municipality sells debentures as a means of financing the extension or enlargement of a public utility, the indebtedness thus incurred is eventually made good with utility revenues; and anticipated revenues "may be pledged to secure moneys advanced for the ... improvement." Fla.Stat. § 180.07(2) (1973). When money for capital outlay is borrowed, water and sewer rates are set with a view towards raising the money necessary to repay the loan. State v. City of Tampa, 137 Fla. 29, 187 So. 604, 609 (1939); State v. City of Miami, 113 Fla. 280, 152 So. 6 (1933) (reh. den. 1934) ("certificates of indebtedness ... are payable as to both principal and interest solely out of a special fund to be created ... out of the net earnings" At 13).

Water and sewer rates and charges do not, therefore, cease to be "just and equitable" merely because they are set high enough to meet the system's capital requirements, as well as to defray operating expenses. State v. City of Tampa, supra; State v. City of Miami, supra. We see no reason to require that a municipality resort to deficit financing, in order to raise capital by means of utility rates and charges. On the contrary, sound public policy militates against any such inflexibility [emphasis added]**. It may be a simpler technical task to amortize a kn**own outlay, than to predict population trends and the other variables necessary to arrive at an accurate forecast of future capital needs. But raising capital for future use by means of rates and charges may permit a municipality to take advantage of favorable conditions, which would alter before money could be raised through issuance of debt securities; and the day may not be far distant when municipalities cannot compete successfully with other borrowers for needed capital. The weight of authority supports the view that raising capital for future outlay is a legitimate consideration in setting rates and charges. Hayes v. City of Albany, 7 Or.App. 277, 490 P.2d 1018 (1971); Hartman v. Aurora Sanitary District, 23 Ill.2d 109, 177 N.E.2d 214 (1961); Home Builders Ass'n of Greater Salt Lake v. Provo City, 28 Utah 2d 402, 503 P.2d 451 (1972). n9

It is also established that differential utility rates and charges may be "just and equitable". Fla.Stat. § 180.13(2) (1973); Hayes v. City of Albany, supra, notwith−standing the differential. In Brandel v. Civil City of Lawrenceburg, 249 Ind. 47, 230 N.E.2d 778 (1967), the court upheld an ordinance setting differential connection charges where two distinct sewerage systems had been engineered in the same political entity. The user connecting to the more expensive system paid a higher connection charge. Another common type of differential charge makes the character of the user determinative of utility rates:

In determining reasonable rate relationships, a municipality may sometimes take into account the purpose for which a customer receives the service .... Courts have recognized that differences in sewer use rates for residential customers and various other customers may be reasonable. Some customers may be subject to a flat rate while other customers are subject to rates based on water consumption or type and number of receptacles. Rutherford v. City of Omaha, 183 Neb. 398, 160 N.W.2d 223, 228 (1968) (authorities omitted)

Dunedin distinguishes between residential and commercial users, on one hand, and industrial users, on the other. See ante, pp. 316-317 n. 1, and petitioners do not question this distinction. Here the issue is whether differential connection charges are "just and equitable", when they vary depending on the time at which the connection to the utility system is made.

Raising expansion capital by setting connection charges, which do not exceed a pro rata share of

reasonably anticipated costs of expansion, is permissible where expansion is reasonably required, if use of the money collected is limited to meeting the costs of expansion.n10 Users "who benefit especially, not from the maintenance of the system, but by the extension of the system... should bear the cost of that extension." [emphasis added] Hartman v. Aurora Sanitary District, supra, 177 N.E.2d at 218. On the other hand, it is not "just and equitable" for a municipally owned utility to impose the entire burden of capital expenditures, including replacement of existing plant, on persons connecting to a water and sewer system after an arbitrarily chosen time certain**.**

The cost of new facilities should be borne by new users to the extent new use requires new facilities, but only to that extent. When new facilities must be built in any event, looking only to new users for necessary capital gives old users a windfall at the expense of new users [emphasis added].

When certificates of indebtedness are outstanding, new users, like old users, pay rates which include the costs of retiring the certificates, which represent original capitalization. State v. City of Miami, supra. New users thus share with old users the cost of original facilities. For purposes of allocating the cost of replacing original facilities, it is arbitrary and irrational to distinguish between old and new users, all of whom bear the expense of the old plant and all of whom will use the new plant**. The limitation on use of the funds, shown to exist de facto in the present case, has the effect of placing the whole burden of** supplementary capitalization, including replacement of fully depreciated assets, on a class chosen arbitrarily for that purpose.

In Hayes v. City of Albany, supra, the situation was very much like the situation here. An existing system faced the imminent prospect of expansion and, as of a date certain, residential connection fees climbed from $25 to $255. (A hypothetical industrial user's charges soared from $200 to a prohibitive $400,000.) These charges were to be deposited in a fund restricted as follows:

All monies received from the Sewer Connection Charges plus interest, if any, shall be deposited in the Sanitary Sewer Capital Reserve Fund... and shall be expended from that fund only for the purpose of making major emergency repairs, extending or oversizing, separating, or con−structing new additions to the treatment plant or collection and interceptor systems. 490 P.2d at 1020.

If the ordinance in the present case had so restricted use of the fees which it required to be collected, there would be little question as to its validity. We conclude that the ordinance in the present case cannot stand as it is written.

The same considerations which underlie statutes of frauds require that a revenue producing ordinance explicitly set forth restrictions on revenues it generates, where such restrictions are essential to its validity. As between private parties, a contract "that is not to be performed within the space of one year", Fla.Stat. § 725.01 (1973), or which is "for the sale of goods for the price of $500 or more", Fla.Stat. § 672.201 (1973), is unenforce−able unless reduced to writing, with certain exceptions not pertinent here. Counsel for respondent has represented that the fees collected under the ordinance exceed $196,000.00. Brief for Respondent at 53. Nothing in the record indicates that capital outlay for expansion will be completed within a year's time.

The failure to include necessary restrictions on the use of the fund is bound to result in confusion, at best. City personnel may come and go before the fund is exhausted, yet there is nothing in writing to guide their use of these moneys, although certain uses, even within the water and sewer systems, would undercut the legal basis for the fund's existence. There is no justification for such casual handling of public moneys, and we therefore hold that the ordinance is defective for failure to spell out necessary restrictions on the use of fees it authorizes to be collected. Nothing we decide, however, prevents Dunedin from adopting another sewer connection charge ordinance, incorporating appropriate restrictions on use of the revenues it produces. Dunedin is at liberty, moreover, to adopt an ordinance restricting the use of moneys already collected. We pretermit any discussion of refunds for that reason.

The decision of the District Court of Appeal is quashed and this case is remanded to the District Court with directions that the District Court dispose of the question of costs; and that the District Court thereafter remand for further proceed−ings in the trial court not inconsistent with this opinion. In the trial court's consideration de novo of the question of refunds the chancellor is at liberty to take into account all pertinent developments since entry of his original decree.

It is so ordered.

THE CITY OF DUNEDIN, FLORIDA v. CON−TRACTORS AND

BUILDERS ASSOCIA−TION OF PINELLAS COUNTY

358 So. 2d 846

District Court of Appeal of Florida, Second District

May 5, 1978

OPINION BY: RYDER

We are revisited by adversaries in a case involving the authority of a municipality to charge a so-called "impact fee" for the privilege of connecting to its water and sewer systems. This time, the issue is whether appellees are entitled to refund of impact fees previously paid under protest to the City of Dunedin.

In City of Dunedin v. Contractors and Builders Association of Pinellas County, 312 So.2d 763 (Fla.2d DCA 1975), we reversed the judgment of the trial court and held certain ordinances adopted by Dunedin in 1972 which imposed "impact fees" valid and enforceable. A properly drafted impact fee ordinance is lawful and not an unauthorized tax. We, however, were concerned by the fact that the terms of the City's ordinances did not unequivocally mandate the use of the funds for capital improvements of the water and sewer systems, but nevertheless opined the ordinance was valid since the City had in fact earmarked the proceeds for capital improvements to the systems as a whole. Thereafter, we certified the matter to the Supreme Court as one of great public interest.

The Supreme Court, in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla.1976), agreed, in general, with this court's reasoning regarding the validity of imposing impact fees, but held the Dunedin ordinances defective for failure to spell

out necessary restrictions on the use of fees collected. Thus, the Supreme Court quashed this court's opinion and remanded the matter to the trial court for further proceedings consistent with its opinion.

While the prior appeal was pending, the City of Dunedin had enacted Ordinance No. 74-19. Ordinance 74-19 provided that the proceeds accumulated by the fees can be used only for the expansion of the water or sewer system and trust funds were established therefor. After remand, the City enacted Ordinance No. 76-19. Ordinance 76-19 provided that the use of any funds previously collected under the 1972 Ordinances is restricted to extension or construction of new additions to the treatment plant and systems so as to meet the increased demand which additional connections to the system create.

Also during the appeal of this case, due to the dire need for sewer and water system expansion, the City of Dunedin engaged in the issuance of bonds in 1974 for enlargement of the City's sewer and water system. However, the disputed impact fees still remain in escrow and have not been spent.

After remand from the Supreme Court, the trial court conducted proceedings. A motion for summary judgment by the City of Dunedin on the basis of these ordinances was denied. The trial court held an evidentiary hearing and subsequently entered its supplemental judgment in which it declared Ordinances 74-19 and 76-19 "legally sufficient to permit the imposition and collection of an impact fee." However, the trial court also stated that the enactment of Ordinances 74-19 and 76-19 could not justify denying appellees their right to a refund of the impact fees they had previously paid under protest. For authority, the trial court cited Forbes Pioneer Boat Line v. Board of Commissioners, 258 U.S. 338, 42 S.Ct. 325, 66 L.Ed. 647 (1921).

Further, the trial court wrote in its supplemental judgment that "though not necessary, it is appropriate to pass upon one other issue raised by the parties" and made the finding that all of the improvements for which the impact fees in issue were collected are now in existence and are being paid from the proceeds of the bond issue floated by the City in 1974. This appeal ensues.

There is no question that a municipality may now impose "impact fees." The only question we have before us now is whether or not those appellees who paid impact fees under protest are entitled to a refund.

The supreme court's decision in Contractors, supra, is the law of the case. Consequently, we affirm that portion of the judgment finding the ordinances legally sufficient to permit the City to impose and collect impact fees; however, we reverse that portion of the judgment which orders a refund of impact fees paid under protest.

The Forbes case, is inapplicable to the case sub judice. The Forbes case involved the unlawful exaction of tolls by a drainage district from persons utilizing the lock of a canal. As the litigation to recover the fees so collected progressed, the Florida Legislature passed an act that purported to validate their collection. However, the United States Supreme Court held that ratification of an act is not good if attempted at a time when the ratifying authority could not do the act. In other words, the drainage district was without authority to exact a charge for the passage of the plaintiff's boat through the canal, and the United States Supreme Court held that the authority could not be later conferred retroactively by the State Legislature so as to permit the drainage

district to keep the charge exacted from plaintiff.

On the contrary, in instant case the City of Dunedin initially had the authority to exact an impact fee and, further, we are very much persuaded by the words of Mr. Justice Hatchett in Contractors, supra, wherein he wrote " . . . Nothing we decide, however, prevents Dunedin from adopting another sewer connection charge ordinance, incorporating appropriate restrictions on use of the revenues it produces. Dunedin is at liberty, moreover, to adopt an ordinance restricting the use of moneys already collected. We pretermit any discussion of refunds for that reason." (Emphasis ours) 329 So.2d 314 at 322.

The very question of refunds was before the Florida Supreme Court at the time it issued its decision. Had the Supreme Court wished to order a refund of these impact fees to appellees then, it would have done so at that time. However, it pretermitted this question to allow the City to adopt an ordinance restricting the use of the moneys already collected. Although Mr. Justice Hatchett also indicated that during the trial court's consideration de novo of the question of refunds the chancellor was at liberty to take into account all pertinent developments since entry of his original decree, we are of the opinion that the City has followed the directions of the supreme court explicitly. It has specifically earmarked the impact funds for the water and sewer system expan−sion. Those funds may now be used for the purposes of further expansion or retiring bonds issued for the earlier (post-1974) expansion of the system.

Consequently, that portion of the chancellor's supplemental judgment ordering the return of the fees to those persons paying under protest is REVERSED.