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Raymond P. Murphy vs Lee County

NEXT CASE ON THE COURT'S CALENDAR IS RAYMOND MURPHY VERSUS LEE COUNTY. MR. BARR AND HE CAN. -- MR. BARR. -- MR. BARANEK.

I AM HERE, MAY IT PLEASE THE COURT, REPRESENTING THE PETITIONER, MR. MURPHY. THIS IS A DISPUTE BETWEEN THE TOWN OF FORT MYERS BEACH AND THE COUNTY IN WHICH FORT MYERS BEACH IS LOCATED, LEE COUNTY. IT COMES TO THIS COURT IN THE CONTEXT OF A BOND VALIDATION CASE. WE WOULD BE HERE ON A DISPUTE ON THE DISTRICT OUT OF APPEAL. IT CONCERNS THE COUNTY AND THE WATER SYSTEM WITHIN THE TOWN, A COMPANY CALLED AVITAR, OWNED THROUGH A BUNCH OF SUBSIDIARIES.

THIS WATER SYSTEM IS IN THE TOWN OF JUST MORE THAN FORT MYERS BEACH, CORRECT?

YES. THE COUNTY ACQUIRED THE SYSTEM WITHIN THE TOWN AND THE SYSTEM WITHIN THE COUNTY.

BECAUSE IT ACQUIRED THE WHOLE SYSTEM.

IT ACQUIRED THE WHOLE SYSTEM. BUT THESE BONDS CONCERN SOLELY THE SYSTEM WITHIN THE TOWN. AS A MATTER OF FACT, THE TOTAL AMOUNT OF THE BONDS WAS \$135 MILLION, AND THE COUNTY SPLIT OFF THE TOWN'S SYSTEM BONDS AND BROUGHT A VALIDATION ACTION ON THOSE. THEY NEVER EVEN VALIDATED THE BONDS FOR THE REST OF THE COUNTY WIDE SYSTEM, SO WE ONLY HAVE A BOND VALIDATION CASE THAT EXISTS IS THIS ONE, CONCERNING THE BONDS TO BUY THE SYSTEM WITHIN THE TOWN. THERE ARE ARGUMENTS, AND SINCE YOU MENTION IT, JUSTICE WELLS, THERE ARE ARGUMENTS FROM THE COUNTY THAT THIS IS ALL JUST PART OF ONE SYSTEM. HOWEVER, THE COUNTY CHOOSES NOT TO RESPOND TO THE FACT THAT, WHEN THEY SPLIT OFF THIS SYSTEM, THEIR DOCUMENTS, THEIR RESOLUTIONS, DESCRIBE IT AS A SEPARATE AND SEVERABLE WATER SYSTEM.

DOES THE COUNTY HAVE A PREEXISTING SEWER SYSTEM IN THE TOWN?

THE COUNTY THERE, IS A PREEXISTING SEWER SYSTEM IN THE COUNTY. IT IS IN THE TOWN. IT IS OPERATED BY THE COUNTY. YES, SIR.

AND DO WE KNOW ANYTHING ABOUT THAT?

OTHER THAN THAT IT EXISTS.

BUT I GUESS WHAT I AM TRYING TO SAY, SECTION 153, FOR INSTANCE, TALKS ABOUT THE FACT THAT COUNTIES MAY HAVE WATER AND SEWER SYSTEMS IN THE TOWN, WITH THE TOWN'S PERMISSION.

WITH THE TOWN'S PERMISSION. YES, SIR. OF COURSE THAT IS ALL WE ARE ASKING FOR.

I AM WONDERING HOW IT IS THAT THE COUNTY HAS SEWER SYSTEM THERE, AND THERE IS NO DISPUTE ABOUT THE SEWER SYSTEM.

HISTORICALLY, THE SEWER SYSTEM EXISTED BEFORE THE TOWN CAME INTO EXISTENCE, AS DID

THE WATER SYSTEM. THIS TOWN WAS INCORPORATED IN 1995, AND --

WHY ISN'T THE CITY THRILLED THAT THE COUNTY IS GOING TO BUY THE WATER SYSTEM? I MEAN, I REALIZE THAT PROBABLY DOESN'T COME WITHIN THE -- BUT SOMEHOW WHAT IS THE INSIGHT INTO WHY?

THE TOWN WANTS TO BUY THE SYSTEM. THE TOWN WANTS TO PURCHASE THE SYSTEM, OBSERVE IT AND OPERATE IT.

DID THEY -- OWN IT AND OPERATE IT.

DID THEY ATTEMPT TO?

DID THEY ATTEMPT TO? YES. YES. JUSTICE QUINCE. THAT IS WHAT THIS LITIGATION IS ALL ABOUT.

BUT PRACTICALLY, DID THE PEOPLE WHO OWNED THE SYSTEM AT FIRST, I --

AFTER I TAR. -- AVITAR.

DID THEY PUT THE SYSTEM UP --

NO. WHAT HAPPENED WAS AVITAR OWNED SYSTEMS ALL OVER THE STATE OF FLORIDA. OVER IN HILLSBOROUGH COUNTY, CAROL WOOD IS A PART OF AVITAR. HOWEVER, ALL OF THE AVITAR SYSTEMS WERE IN UNINCORPORATED AREA. ALL AVITAR SYSTEMS ARE IN UNINCORPORATED -- NONE OF THEM ARE IN CITIES EXCEPT ONE, IS THE ONLY AVITAR SYSTEM THAT IS IN A CITY. AVITAR SAID THAT IT WANTED TO SELL ALL OF ITS SYSTEMS, SIMULTANEOUSLY, IN ONE PACKAGE DEAL, SO AVITAR NEVER OFFERED THE TOWN OF FORT MYERS BEACH, THE RIGHT TO BUY OR THE OPPORTUNITY TO BUY ALL OF ITS SYSTEMS STATEWIDE, AND OBVIOUSLY THE TOWN PROBABLY COULD NOT HAVE BOUGHT THEM, IF IT WANTED TO. I MEAN, YOU KNOW, LEGALLY SPEAKING. WHY WOULD IT OWN A WATER SYSTEM IN TAMPA? SO IN ANSWER TO YOUR QUESTION, THIS LITIGATION IS WHERE THE TOWN STEPPED IN AND ATTEMPTED TO BUY THIS SYSTEM. THEY COULDN'T BUY THE SYSTEM.

HOW COULD THEY BUY IT, IF THE SELLER WON'T SELL IT TO THEM?

WELL, OBVIOUSLY THEY COULDN'T, UNTIL THE SELLER PUT IT ON THE BLOCK, AND TRIED TO SELL IT OR DID SELL IT TO THE --

HOW DID HE PARCEL IT OUT? DID THE SELLER EVER PUT IT OUT THAT YOU COULD BUY JUST THAT PORTION OF IT?

NO. NO.

WHAT DOES THE CITY GAIN BY OBSTRUCTING THE COUNTY FROM BUYING IT?

THE CITY IS ONLY TRYING TO STOP THE COUNTY IN THIS LITIGATION, FROM BUYING THE SYSTEM WITHIN ITS TOWN. IT IS NOT --

I GUESS IF THIS COMPANY IS ONLY GOING TO SELL TO THE COUNTY --

OH, NO. THAT ALL CHANGED. I AM SORRY. THAT ALL CHANGED, WHEN THE LITIGATION BEGAN. THEN, AS I SAID EARLIER, THE --

THEY DIVIDED IT UP.

THEY SAID, OKAY, WE WILL BUY THE REST OF THE SYSTEM. THAT IS ALREADY DONE.

AND THE SELLER HAS AGREED TO THAT.

AND THE SELLER HAS AGREED TO. THAT BUT THE SELLER --

THE SELLER HAS NEVER AGREED TO SELL TO THE CITY, THOUGH?

WELL, THE COUNTY ISSUED THE BONDS, AND AS SOON AS THE BONDS GET APPROVED, THEY ARE BUYING T.

THE COUNTY IS. BUT THE SELLER HAS NEVER AGREED TO SELL IT TO THE CITY.

TO THE CITY. KNOW THE THAT WE ARE AWARE OF. I MEAN, WITHIN THIS RECORD -- I CAN'T DISCUSS WHAT HAS GONE ON.

THAT ALL SOUNDS LIKE AN INTERESTING DISPUTE, BUT -- HOW DOES IT GET INTO --

I WOULD LOVE TO GET TO MY LEGAL ARGUMENTS AS TO WHY IT IS WRONG.

LET'S GET INTO THE BOND CASE AND HOW THIS COURT IS GOING TO HAVE THE POWER TO, WITHIN ITS NARROW LIMITS OF REVIEWING VALIDATION OF BONDS, GET INTO THIS MATTER? TELL ME ABOUT THAT.

ALL RIGHT. I THINK THE BEST DISCUSSION OF YOUR SCOPE OF REVIEW IN A BOND VALIDATION CASE IS IN GRW CORPS, THE DEPARTMENT OF CORRECTIONS, AND IT BASICALLY SAYS THAT THIS COURT, IN A BOND CASE, NARROWLY NARROWLY-RECOGNIZABLE STANDARD, STILL IS TO REVIEW ALL LEGAL AND FACTUAL ISSUES THAT MAY CAST DOUBT ON THE VALIDITY OF THE BOND ISSUE, AND WE THINK, IF I CAN GET TO THEM, THAT WE HAVE SOME VERY COMPELLING LEGAL REASONS WHY THIS BOND ISSUE IS INVALID. JUST AS A MATTER OF LAW. I MEAN, WE HAVE GOT A LOT OF FACTUAL ARGUMENTS, TOO, BUT I AM NOT GOING TO TALK ABOUT THOSE. THE LEGAL ARGUMENTS ARE, FIRST OF ALL, THAT IT VIOLATES ARTICLE VIII, SECTION 4 OF THE FLORIDA CONSTITUTION THAT REQUIRES, WHEN YOU TRANSFER POWERS BETWEEN GOVERNMENTAL ISSUES, THAT THERE AND VOTE.

THAT IS WHAT WE ARE TALKING ABOUT HERE. ARE WE TALKING ABOUT TRANSFERRING POWER, OR ARE WE TALKING ABOUT BUYING AN ALREADY-ESTABLISHED SORT OF COMMERCIAL UNIT HERE? COULD SOMEONE ELSE OTHER THAN THE CITY OR COUNTY, HAVE PURCHASED THIS WATER SYSTEM FROM AVITAR?

I SUPPOSE, IF AVITAR HAD WANTED TO SELL IT, IT IS CONCEIVABLE THAT SOMEONE ELSE COULD HAVE PRVED PURCHASED IT.

SO WHY -- COULD HAVE PURCHASED IT.

SO WHY ISN'T THE COUNT ANY THE SAME POSITION AS ANY OTHER PERSON WHO COULD HAVE PURCHASED THIS WATER SYSTEM?

WELL, BECAUSE THE FURNISHING OF WATER, WITHIN A MUNICIPALITY, IS A MUNICIPAL FUNCTION. IT IS A FUNCTION OF THE MUNICIPALITY, AND IN THIS CASE, THE ONLY THING THE MUNICIPALITY ASKS IS THAT IT BE ABLE TO TRY AND BUY IT. NOW, YOU KNOW, I DON'T KNOW WHETHER IT WILL BE SUCCESSFUL IN BUYING IT, BUT THE ARGUMENT THAT THEY MAKE, JUSTICE QUINCE, IS, I THINK, YOU KNOW, THE BASIS FOR YOUR QUESTION. YOU ARE SAYING, WELL, LET THEM GO INTO BUSINESS, IF THEY WANT TO, AND THAT IS THE ARGUMENT THAT THE OPPOSITION MAKES THAT THERE IS NO CONSTITUTIONAL VIOLATION HERE, BECAUSE THE CITY, REALLY, HASN'T LOST

ANYTHING. IT CAN STILL GO IN THE WATER BUSINESS, IF IT WANDERS TO. IT CAN SET UP ITS OWN LITTLE WATER SYSTEM, IN ITS OWN TOWN, TODAY, IF IT WANTS TO. THAT IS THE ARGUMENT THEY MAKE. BUT THAT IS WRONG.

WHY THIS ARGUMENT, WHEN THE LANGUAGE OF THAT SECTION OF THE CONSTITUTION SAYS BASICALLY ANY FUNCTION OR POWER OF THE COUNTY, MUNICIPALITY OR SPECIAL DISTRICT MAY BE TRANSFERRED TO OR CONTRACTED TO BE PERFORMED PIE ANOTHER. I MEAN, YOU ARE NOT TAKING AWAY THE CITY'S ABILITY TO FUNCTION IN THIS PARTICULAR AREA, ARE WE?

YES, YOU ARE. THIS ABSOLUTELY TAKES IT AWAY. AS WE HAVE ARGUED, IN OUR BRIEF, THERE IS A STATUTE, WHICH ABSOLUTELY PREVENTS OR PREVENTED THE TOWN FROM GOING IN COMPETITION WITH AVITAR. THEY COULD NOT HAVE ESTABLISHED THEIR OWN WATER SYSTEM IN COMPETITION WITH AVITAR. IN ADDITION, THE MOUNT DORA CASE OUT OF THE FIFTH DISTRICT IS SORT OF A LANDMARK DECISION, AND IT SAYS THAT YOU CAN'T HAVE COMPETING GOVERNMENTAL ENTITIES RUNNING A PUBLIC UTILITY, IN THE SAME GEOGRAPHIC AREA. IN OTHER WORDS, THEIR ARGUMENT THAT WE COULD JUST GO INTO COMPETITION TOMORROW IS LEGALLY WRONG, AND THEY ARE SERIOUSLY SUGGESTING TO THIS COURT THAT THIS COURT WRITE AN OPINION SAYING IT IS PERFECTLY FINE FOR THE TOWN TO START A WATER SYSTEM, NOW, AND COMPETE WITH THEIR WATER SYSTEM, WITHIN THE TOWN. THAT IS NOT THE LAW OF THE STATE OF FLORIDA, AND IT WOULD BE THE WORST OF ALL PUBLIC POLICIES TO ALLOW A COUNTY AND A CITY TO COMPETE IN -- WITHIN THE TOWN.

LET ME ASK YOU A QUESTION ABOUT, AGAIN, WHAT WE ARE HERE ON, AND WHETHER THIS IS THE CORRECT FORUM FOR SOME OF THE ISSUES THAT YOU ARE RAISING. YOU SAID YOU HAVE A SEPARATE LEGAL REASON WHY THE BONDS ARE NOT VALID. YOU SAID THERE ARE, ALSO, FACTUAL REASONS, BUT WOULDN'T THE BETTER COURSE TO BE TO HAVE AN INJUNCTION SOUGHT AND THEN HAD THAT BEEN THE FORUM FOR LOOKING AT THE ACTUAL PURCHASE? ISN'T THAT A BETTER WAY?

JUSTICE PARIENTE, YOU ARE ABSOLUTELY RIGHT, AND THAT IS PRECISELY WHAT THE TOWN DID. THE TOWN FILED AN INJUNCTION ACTION, AND A DECLARATORY DECREE ACTION, SAYING THIS IS INVALID. THEY FILED THAT SUIT IN CIRCUIT COURT. THE NEXT THING THAT HAPPENED IS THE COUNTY FILES THIS BOND VALIDATION PROCEEDING.

WAS THE INJUNCTION ACTION STILL GOING ON?

NO. IT IS JUST SITTING, PENDING. IT HAS NEVER GONE ANYWHERE, BECAUSE THERE IS GENERAL LAW TO THE EFFECT THAT THE BOND VALIDATION, BASICALLY, SWEEPS EVERYTHING TOGETHER, AND ALL THESE ISSUES GET DETERMINED IN THE BOND VALIDATION CASE. WE WOULD HAVE MUCH PREFERRED TO BE IN OUR INJUNCTION ACTION OVER THERE. WE JUST GOT OUT MANEUVERED. THEY CAME ALONG AND FILED THIS SUIT, SECONDARILY, AND SAID WE ARE GOING TO VALIDATE THESE BONDS, AND WE ARE NOT GOING TO SUE THE TOWN, AND THEY ALONG, IN THEIR COMPLAINT -- AND THEY ALLEGE, IN THEIR COMPLAINT, THAT THE TOWN'S PERMISSION IS NOT REQUIRED. THEY ALLEGE THAT IN THEIR COMPLAINT, AND MR. MURPHY, WHO HAPPENS TO BE THE MAYOR OF THE TOWN BUT APPEARED SOLELY AS AN INDIVIDUAL TAXPAYER, CAME IN AND SAID WAIT A MINUTE. THE TOWN IS AN INDISPENSIBLE PARTY HERE, AND THEY SAID NO, IT ISN'T. THIS IS A BOND VALIDATION CASE. WE DON'T HAVE TO SUE YOU AND WE DON'T HAVE TO GET YOUR PERMISSION, AND WE ARE BUYING YOUR SYSTEM WITHOUT YOU EVEN BEING A PARTY.

WHO WERE THE PARTIES IN THE INJUNCTION ACTION?

THE CITY SUED THE COUNTY.

AND THAT HAS JUST STAYED IN CIRCUIT COURT.

WELL, TO BE FRANK I DON'T THINK IT HAS EVEN STAYED, BUT IT IS SETTING.

NO ACTION HAS BEEN TAKEN. IT IS GONE.

YOU ARE ABSOLUTELY RIGHT. THAT IS WHY I STARTED OFF THIS THING SAYING WE ARE HERE ONLY BECAUSE IT IS BOND VALIDATION. WE SHOULD BE IN THE DISTRICT COURT OF APPEAL, BECAUSE THAT IS WHERE THE CASE SHOULD HAVE BEEN TRIED.

SHOULDN'T YOU HAVE TRIED TO HAVE PURSUED THAT ACTION, AND THEN IF IT WAS --

WELL -- JUSTICE PARIENTE, WE WERE A LITTLE NERVOUS. A FINAL JUDGMENT GOT ENTERED IN THIS BOND VALIDATION CASE, SAYING THAT THE TOWN'S PERMISSION WAS UNNECESSARY. THAT THE CASE COULD NOT BE DISMISSED FOR WANT OF AN INDISPENSIBLE PARTY. THE FINAL JUDGMENT WAS ENTERED. WE COULDN'T VERY WELL SIT BY AND GO ASK THE CIRCUIT COURT TO OVERRULE IT.

MR. BARR AND HE CAN, I KNOW YOU HAVE SAID -- MR. BARANEK, YOU HAVE SAID SEVERAL TIMES THAT YOU HAD SOME LEGAL REASON. PLEASE TELL US WHAT THOSE ARE.

NUMBER ONE, THE CONSTITUTION. A VOTE IS REQUIRED. THIS IS THE TRANSFER OF A SERVICE. THAT IS THE SERVICE OF PROVIDING WATER. THAT HAS BEEN TAKEN AWAY FROM US. UNDER THE LAW, WE CAN'T COMPETE, AND THEY ARE LEGALLY WRONG ON THAT, AND THIS COURT SHOULD NOT RULE THAT ONE GOVERNMENTAL ENTITY CAN COMPETE WITH ANOTHER GOVERNMENTAL ENTITY, WITHIN THE MUNICIPAL BOUNDARIES AFTER TOWN. THAT IS NUMBER ONE. NUMBER TWO, IS THEY, ALSO, VIOLATED THE STATUTE, WHICH IS -- WHICH SETS OUT WHAT THEY HAVE TO DO BEFORE THEY CAN ISSUE THESE BONDS. THAT IS 125.3401. THE HEARING THAT THEY HAD UNDER THAT STATUTE, THEY WERE REQUIRED TO CONSIDER A WHOLE LOT OF DIFFERENT FACTORS, AND THEY WEREN'T EVEN TRYING TO BUY THIS SYSTEM SEPARATELY, WHEN THEY HAD THAT HEARING. THEY DID NOT CONSIDER THE FACTORS THAT THEY HAD TO CONSIDER. NOW, WE HAVE ADDRESSED THAT IN DETAIL IN OUR BRIEF. I SIMPLY DON'T HAVE TIME TO GET IT TO IT, BUT THOSE ARE -- TO GET TO IT, BUT THOSE ARE COMPELLING LEGAL ARGUMENTS. THEY DID NOT FOLLOW THE LAW, AND THIRDLY, BOND VALIDATION ON KAYS BONDS TO PURCHASE A SYSTEM IN DIRECT VIOLATION OF THE INTERLOCALE AGREEMENT WHICH CREATED THE GUA, AND IT, ALSO, VIOLATES THE COUNTY'S OWN ORDINANCES. THE GUA INTERLOCAL AGREEMENT SAYS THAT THE TOWN HAS THE EXCLUSIVE RIGHT TO BUY THIS SYSTEM.

WHAT IS YOUR POSITION ABOUT THE APPLICABILITY OF CHAPTER 153?

JUSTICE ANSTEAD, I AM NOT QUITE SURE WHETHER YOU MEAN IN -- SPECIFICALLY IN REGARD TO THE INTERLOCAL AGREEMENT OR MORE IN A MORE GENERAL SENSE. INTERESTINGLY ENOUGH, JUSTICE ANSTEAD, WE DIDN'T ARGUE EW 153 IN OUR BRIEF. THEY SPEND FIVE AND-A-HALF PAGES OF THEIR BRIEF ARGUING AGAINST 153. WE THINK WE WIN THIS CASE WITHOUT 153.

THEY DIDN'T CITE 153 AS THE AUTHORIZING LEGISLATION TO ISSUE THE BOBDZ?

NO, SIR -- THE BONDS?

NO, SIR. ACTUALLY THEY SAY, IN THEIR BRIEF, THAT ALTHOUGH WE HAVE ABANDONED THE 153 ARGUMENT, IT IS RAISED IN THE AMICUS BRIEF AND THEY SPEND THREE AND-A-HALF PAGES ARGUING AGAINST IT.

WHAT IS YOUR POSITION ABOUT WHETHER CHAPTER 153 APPLIES OR DOESN'T APPLY?

JUSTICE ANSTEAD, WE HAVEN'T RAISED IT IN OUR BRIEF AS COMPELLING AUTHORITY FOR FINDING OF ERROR. WE THINK 153 IS JUST LIKE ANY NUMBER OF THE OTHER STATUTES WHICH

CERTAINLY CONTEMPLATE, IF NOT ABSOLUTELY REQUIRE, A VOTE. ASK THE VOTERS. THAT IS ALL WE ARE ASKING FOR HERE.

I WAS HAVING DIFFICULTY UNDERSTANDING EXACTLY WHEN IT APPEARS THAT THE LANGUAGE IN 153 IS REALLY THE STRONGEST LANGUAGE, AND THE MOST POINTED, IN SUPPORT OF YOUR POSITION, IF IT APPLIES.

IF IT APPLIED.

IF IT APPLIES THAT YOU WOULD NOT --

JUSTICE ANSTEAD, QUITE HONESTLY, WE THOUGHT THAT THERE WERE HOLES IN OUR 153 ARGUMENT, BECAUSE OF ALL OF THEIR ALTERNATIVE APPROACHES TO 153. WE THINK WE ARE RIGHT, WITHOUT 153. EVEN THOUGH IT, ALONG WITH NUMEROUS OTHER STATUTES, I MEAN, WE DID CITE IT IN OUR BRIEF, IN, I THINK, IN ONE OF THE FIRST FOOTNOTES.

I DON'T KNOW THAT CHAPTER 153 IS A LIMITING CHAPTER. THAT IS THAT -- WHETHER IT SAYS THAT THIS IS AN EXCLUSIVE WAY TO --

OUR INITIAL ARGUMENT ON PAGE 18 OF OUR BRIEF WAS WE QUOTED THE CONSTITUTION, AND THEN WE SAID THAT THERE ARE SEVERAL STAUS IN FLORIDA THAT EMBODY THE SAME CONCEPT, UNDER ANALOGOUS CIRCUMSTANCES, AND WE LIST THEM. 153.01, 153.03, AND 163.07, ALL OF WHICH REQUIRE A VOTE. WE SAY THIS IS UNCONSTITUTIONAL. IT DIDN'T REQUIRE A VOTE, BUT EVEN IF THEY DIDN'T NEED A VOTE, THEY DID IT WRONG, BECAUSE THEY DIDN'T COMPLY WITH THE STATUTE, AND THEY DID IT WRONG BECAUSE THEY VIOLATED THEIR OWN INTERLOCAL AGREEMENT AND THEIR OWN COUNTY ORDINANCE, WHICH SAYS THEY CAN LOCAL ISSUE REVENUE BONDS TO BUILD THINGS IN THE UNINCORPORATED AREAS.

BUT THOSE THREE THING THAT IS WE LOOK AT ON A BOND VALIDATION, WHICH IS WHETHER THEY HAVE THE AUTHORITY TO ISSUE THE BOND, WHETHER THE BOND IS FOR A LEGAL PURPOSE, AND WHETHER THEY HAVE FOLLOWED THE REQUIREMENTS FOR THE ISSUANCE OF THE BONDS. WHICH OF THOSE THREE ITEMS HERE --.

NUMBER THREE. IN OTHER WORDS THEY DIDN'T FOLLOW THE REQUIREMENTS. THAT IS THE 120 -- THE STATUTORY REQUIREMENT ON WHAT YOU HAVE TO DO AT THE PUBLIC HEARING, NOR DID THEY FOLLOW THEIR OWN INTERLOCAL AGREEMENT, NOR DID THEY FOLLOW THEIR OWN ORDINANCES. THEY VIOLATED THEM ALL.

SO ALL OF THOSE ITEMS THAT WERE FURTHER DISCUSSED ARE PART OF --

ALL OF THOSE FIT DIRECTLY WITHIN THE THIRD ELEMENT OF THIS COURT'S SCOPE OF REVIEW, ALBEIT I THINK WE OUGHT TO BE IN A DISTRICT COURT OF APPEAL, BUT HERE WE ARE.

HERE WE ARE. DO YOU WANT TO SAVE ANY TIME FOR REBUTTAL? YOU MAY.

THANK YOU. MY NAME IS JAMES JAEGER AND WITH ME IS YOLANDA VIACAVA, AND I WILL SHARING MY TIME WITH HER. LET ME PUT THIS CHRONOLOGY THAT ADDRESSES JUSTICE PARIENTE'S QUESTION. INITIALLY THERE WAS A TRANSACTION. THERE WAS AN INTERGOVERNMENTAL AGENCY CREATED, CALLED THE FLORIDA GOVERNMENTAL UTILITIES AUTHORITY, WHICH IS, UNDER CHAPTER 163, WAS CREATED BY FIVE COUNTIES. THE REASON WHY IS TO PURCHASE THE AVITAR FACILITIES. AVITAR WAS NOT GOING TO SELL ANY OF ITS UTILITIES INDIVIDUALLY. IT WOULD SELL IT COLLECTIVELY. AND BY ENTERING INTO ONE OF THESE INTERLOCAL AGREEMENTS AND FORMING THIS ENTITY, THE COUNTIES WERE ABLE TO DO IT. THE -- RIGHT BEFORE THAT WAS TO CLOSE, THE TOWN OF FORT MYERS BEACH, FILED FOR A TEMPORARY AND PERMANENT INJUNCTION AGAINST LEE COUNTY AND THE FLORIDA

GOVERNMENTAL UTILITIES AUTHORITY, SEEKING TO ENJOIN NOT ONLY THE CLOSING OF THE FACILITY IN LEE COUNTY BUT THE FACILITY IN EVERY OTHER COUNTY THAT WAS GOING TO BE ACQUIRED. A TEMPORARY INJUNCTION HEARING WAS HELD, AND THE JUDGE, WHO WAS THE SAME TRIAL JUDGE AS THE VALIDATION, DENIED THE TEMPORARY INJUNCTION. AT THAT POINT, LEE COUNTY FINANCIALLY SEPARATED THE TRANSACTION, IN THAT THEY SAID, FINE. THE PORTION THAT IS WITHIN THE TOWN'S BOUNDARIES, WE WILL VALIDATE THAT ISSUE THAT YOU HAVE RAISED. WE WILL SIT THERE, THE REMAIN REMAINING SYSTEMS AND THE OTHER COUNTIES AND THAT PORTION IN THE UNINCORPORATED AREA OF LEE COUNTY, WHICH INCLUDES A WATER AND A WAYS WATER SYSTEM -- AND A WASTEWATER SYSTEM, WENT AND CLOSED, I BELIEVE, IN EARLY APRIL OF 1999. THAT ACTION IS, I GUESS, TECHNICALLY STILL PENDING, BUT THE TEMPORARY INJUNCTION IS FOUND TO BE LACKING. IT WAS NOT I SHOULD IN THE COURT AT -- IT WAS NOT ISSUED, AND THE COURT AT THAT TIME FOUND THERE WAS NO LIKELIHOOD OF SUCCESS. THE ISSUES THAT HAVE BEEN RAISED IN THIS, AND I WILL KIND OF TRY TO HIT THROUGH THEM. I BELIEVE THAT THERE ARE PROBLEMS WITH SOME OF THOSE ISSUES, AS FAR AS BEING OUTSIDE OF THE SCOPE OF THIS COURT'S REVIEW FOR BOND VALIDATIONS. I THINK THAT THERE IS A ISSUE RAISED CONCERNING THE AUTHORITY OF THE COUNTY, WHICH I WILL ADDRESS, AND, ALSO, SOME PROCEDURE REQUIREMENTS. THOSE ARE THE ONLY TWO AREAS THAT I THINK HAVE ACTUALLY BEEN IMPINDICATED. -- IMPLICATED.

WOULD YOU ADDRESS WHETHER THERE WAS A PROPER PROCEEDING, REGARDING THE INTERLOCAL REQUIREMENTS, AFTER THE ISSUE BY THE TOWN?

WE BELIEVE THAT THE COUNTY CLEARLY DID COMPLY WITH ALL OF THE PROCEDURAL REQUIREMENTS, AND CHAPTER 125.301 REQUIRES THAT A COUNTY, BEFORE ANY KIND OF ACQUISITION OF A UTILITY SYSTEM, MUST HOLD A PUBLIC HEARING, AND AT THAT HEARING THERE ARE CERTAIN CRITERIA THAT MUST BE CONSIDERED, AND IT IS PRICE AND CUSTOMERS AND THE PUBLIC INTEREST. THIS HEARING WAS HELD. PUBLIC NOTICE WAS GIVEN. THE TOWN PARTICIPATE PD IN THAT HEARING. AND EACH AND EVERY -- PARTICIPATED IN THAT HEARING, AND EACH AND EVERY FACTOR IN THAT STATUTE WAS ADDRESSED BY THE COUNTY, AND THEY ADOPTED A RESOLUTION, WHICH WAS ADMITED IN EVIDENCE, WHICH SET FORTH THE FINDINGS AS TO EACH ONE. THE ISSUE THAT THEY HAVE RAISED IS THAT HEARING CONSIDERED NOT ONLY THE PORTION OF THE UTILITY IN THE UNINCORPORATED AREA BUT, ALSO, THE PORTION WITHIN THE TOWN. THEY ARE SAYING THAT WE NOT ONLY HAVE TO HOLD THAT HEARING. WE HAVE TO HOLD ANOTHER HEARING TO ADDRESS THE WATER DISTRIBUTION SYSTEM, THE SMALL TERMINUS PIECE THAT IS WITHIN THE TOWN'S BOUNDARY, AGAIN, AND WE DON'T BELIEVE THE STATUTE REQUIRES THAT. WE BELIEVE THAT THAT HEARING ADDRESSED AND, AT THE SAME TOTAL PRICE FOR THE ENTIRE SYSTEM THAT IS BEING PAID --

WHAT ARE THESE BONDS THAT ARE BEING VALIDATED GOING TO BE USED FOR IN.

THE BONDS -- USED FOR?

THESE BONDS ARE GOING TO BE FOR THE ACINGS SATION OF THE TERMIN OVER-FOR THE ACQUISITION OF THE TERMINUS PIECE OF THE WATER SYSTEM.

THEIR ACCUSATION IS THAT, SINCE THERE IS A DIRECT KRORLATION BETWEEN THIS BOND REVENUE OR THIS PURCHASE, THAT THERE HAS TO BE A HEARING THAT WOULD JUST COVER THESE BONDS? CORRECT?

WELL, IT DOESN'T EVEN GO TO THE BONDS. IT IS TO THE ACQUISITION, OR THE HEARING IS ONLY REQUIRING THE SYSTEM. WHAT WE ARE SAYING IS THAT WHAT YOU HAVE IN THE TOWN ARE PIPES. THERE ARE NO WELLS. THERE IS NO WATER SOURCE. THERE IS NO SUPPLY. THAT IS ALL LOCATED IN THE UNLINKTED -- THE UNINCORPORATED AREA THAT HAS BEEN ACQUIRED, SO THE SYSTEM WAS CONSIDERED AS A WHOLE, BECAUSE IT IS A UNIFIED SYSTEM. IT WAS SEPARATED,

FINANCIALLY, IN ORDER TO ADDRESS THOSE ISSUES OF THE TOWN AND NOT ENDANGER THE BONDS OF THE OTHER COUNTIES, SO IT WAS SEPARATELY CONSIDERED FINANCIALLY, BUT THAT IS IT. THAT OTHERWISE THEY ARE A UNIFIED SYSTEM, AND IN FACT, IF -- THERE WOULD BE NO WATER SUPPLY FOR THAT SYSTEM, WITHOUT THE PORTION IN THE UNINCORPORATED AREA, WHICH WAS, ALSO, CONSIDERED AT THE 125 HEARING, AND WE BELIEVE THAT IS ALL THAT IS REQUIRED. WHAT THE STATUTE --

WHAT IS THE CITY TRYING TO BUY, THEN? JUST THOSE PIPES? IS THAT WHAT YOU ARE SAYING?

WELL, AND THEN THEY WOULD ENTER INTO A CONTRACT WITH THE COUNTY FOR BULK WATER. THEY WOULD BUY THEIR WATER IN MASS THAT WOULD COME OVER THE SAME PIPES THAT WERE ACQUIRED IN THE UNINCORPORATED AREA AND DISTRIBUTE IT, THEMSELVES, AMONGST DISTRIBUTION SYSTEM. THAT IS, I BELIEVE, ALL THEY WOULD BE GETTING. BUT THE STATUTE, ITSELF, 125, VERY CLEARLY IS INTENDED TO HAVE A PUBLIC PARTICIPATION CONCERNING A UTILITY ACQUISITION AND TO DEAL WITH VERY SPECIFIC FACTORS, AND THEY WERE, IN FACT, DEALT WITH. THE SAME PURCHASE PRICE WAS CALCULATED FOR THE PIECE IN THE TOWN, AS FOR THE UNINCORPORATED AREA, SO THE TOTAL PRICE IS THE SAME, AS WAS CONSIDERED IN THE JANUARY HEARING BY THE COUNTY. THE SAME RATES THAT ARE GOING TO BE CHARGED IN THE UNINCORPORATED AREA AND THE TOWN ARE, ALSO, GOING TO BE CHARGED. THE SAME OPERATION, AND BY THE SAME INDIVIDUALS THAT WAS CONSIDERED IN THE HEARING, IS, IN FACT, GOING TO OCCUR, UPON THE ACQUISITION OF THIS PIECE, SO WE THINK THAT, TO SAY THAT YOU HAVE TO INDIVIDUALLY LOOK AT THESE IS, REALLY, FORM OVER SUBSTANCE. THE COUNTY CONDUCTED THE HEARING. IT ADDRESSED IT. THEY BROUGHT THE PUBLIC IN. THEY GOT THEIR INPUT AND MADE THE DETERMINATION THAT IT WAS IN THE BEST INTEREST --

DID ANYTHING ELSE COME UP AT THAT HEARING, OTHER THAN THE JUSTICE ISSUE? WAS THIS CAUSE SPECIFICALLY FOR THE PURPOSE, OR IS THIS SOMETHING ON THE AGENDA OR AT THE MEETING?

THIS WAS CALLED, THIS WAS A SPECIFIC HEARING. IT MAY HAVE BEEN -- I AM NOT SURE IF THERE WERE OTHER MATTERS ON THE AGENDA, BUT THIS WAS SET SPECIFICALLY BECAUSE THE STATUTE REQUIRED IT. THE 125.340-1. IT HAD NOTHING TO DO WITH ANY DISPUTE WITH THE TOWN. IT IS REQUIRED IN ANY UTILITY ACQUISITION BY A COUNTY.

AND THE PUBLIC NOTICED THAT THIS WAS WHAT WAS GOING TO BE TAKEN UP.

YES. IT WAS PUBLICLY NOTIFIED. PUBLISHED. IN A SPECIAL PUBLICATION, NOT JUST BOARD OF COUNTY COMMISSIONERS.

RIGHT.

SO WE BELIEVE THAT, PROCEDURALLY HAD, THAT HAS BEEN COMPLIED WITH. LET ME ADDRESS, BRIEFLY, THE TRANSFER OF POWERS ARGUMENT. ARTICLE VIII, SEX 4 IS REALLY A MIDDLE -- SECTION 4 IS REALLY A MIDDLE OF THE ROAD CONSOLIDATION, ALLOWING THE GOVERNMENT TO CONSOLIDATE SOME FUNCTIONS BUT NOT THEIR ENTIRE OPERATIONS INTO ONE CORE GOVERNMENT OF THE ONE GOVERNMENT GAINS THE EXCLUSIVE POWER AND AUTHORITY TO SERVICE A PARTICULAR FUNCTION AND THEY LOSE IT. BECAUSE THAT IS THE FRAMEWORK FOR LOCAL GOVERNMENTS, DUAL FRAMEWORK BY LOCAL GOVERNMENTS IS MANDATED BY THE CONSTITUTION. HERE THERE IS NO LOSS OF POWER. NO LOSS OF FUNCTION BY THE TOWN. THEY MAY HAVE LOST A BUSINESS OPPORTUNITY BUT THAT IS ALL THEY HAVE LOST. IF, IN FACT, THIS COURT APPROVES THE BONDS AND THE COUNTY BUYS THE FACILITY, IF THERE WAS A TRUE TRANSFER OF POWERS, THE CITY WOULD NEVER BE ABLE TO OPERATE THE WATER SYSTEM. BUT THEY COULD -- BUT IF THEY GO AND BUY IT FROM THE COUNTY SUBSEQUENTLY, THEY STILL HAVE THE POWER TO RUN IT. WHAT THEY HAVE LOST IS THE OPPORTUNITY TO OPERATE THIS SYSTEM, BECAUSE THE COUNTY HAS BOUGHT IT.

SO IS MR. BERANEK CORRECT, WHEN HE SAYS THAT THE CITY CANNOT OPERATE A COMPETING WATER SYSTEM IN FORT MYERS BEACH?

THERE ARE CASES OF BOTH IN THE FIFTH DISTRICT, THE MOUNT DORA CASE AND THE LAKE COUNTY CASE, THE DEAL WITH HOW TRANSITIONS ARE MADE BETWEEN AN EXISTING UTILITY AND ONES, AND THE RULE, I DON'T THINK THIS COURT HAS EVER HAD AN OPPORTUNITY TO CONSIDER THAT. BUT I AM NOT SURE THAT ISN'T A COLLATERAL ISSUE TO THIS COURT'S BOND VALIDATION, BECAUSE WHETHER THE TOWN, UNDER SOME CIRCUMSTANCE, MAY OR MAY NOT BE ABLE TO COMPETE WITH THAT, IS, REALLY, NOT THE ISSUE IN THE BOND TRANSACTION.

WELL, IT SEEMS RELEVANT THAT, IF THE COUNTY IS THERE OPERATE AGO WATER SYSTEM AND THE CITY CANNOT OPERATE A COMPETING WATER SYSTEM, THEN HAVEN'T YOU DE FACTO TAKEN, TRANSFERRED THE CITY'S POWER FOR THIS KIND OF SERVICE TO THE COUNTY?

I DON'T THINK SO. I THINK THAT, WHAT -- I THINK WHAT THAT CONSTITUTES -- NOW, THAT IS NOT A PROHIBIT OTHER PROVISION OF THE CONSTITUTION -- A PRO HINT OR I POWER OF -- A PROHIBITORY POWER OF THE CONSTITUTION. I DON'T THINK THAT IS MEANT THAT THERE IS A LOSS OF POWER, LOSS OF AUTHORITY, MERELY BECAUSE SOME OTHER ENTITY MAY HAVE A PRIOR RIGHT TO OFFER THAT SERVICE. I DON'T KNOW THAT IS WHAT IS PROVIDED BY THE CONSTITUTION.

I DON'T KNOW HOW YOU HAVE ARRANGED FOR THE ALLOCATION OF YOUR TIME, BUT I WANT YOU TO BE AWARE OF THAT.

THANK YOU. BRIEFLY THE QUESTION CONCERNING THE COUNTY'S ORDINANCES HAS BEEN RAISED. THE PARTICULAR ORDINANCE THAT WAS CITED IN THE BRIEF FOR THE APPELLANT DEALS WITH FUNDING OF IMPROVEMENTS IN THE UNINCORPORATED AREA, AND THAT PARTICULAR PROVISION VERY CLEARLY TALKS IN TERMS OF SPECIAL ASSESSMENTS. THIS UTILITY SYSTEM IS NOT BEING ACQUIRED BY SPECIAL ASSESSMENTS MUCH THE BONDS WILL NOT BE REPAID BY SPECIAL ASSESSMENTS. IT IS BEING FUNDED BY THE NET OPERATING REVENUES OF THE SYSTEM, ITSELF, SO THAT IS NOT APPLICABLE. MORE PERTINENT TO THAT PROVISION IS THAT IS THERE A SECTION IN THAT ORDINANCE WHICH SAYS THAT THESE POWERS ARE SUPPLEMENTAL TO ANY OTHER POWER THE COUNTY MAY HAVE. THEREFORE THEY ARE, IN FACT, IT IS NOT MEANT TO BE AN EXCLUSIVE REMEDY. THE ISSUE CONCERNING THE INTERLOCAL AGREEMENT, I BELIEVE, IS CLEARLY A COLLATERAL MATTER. THE INTERLOCAL AGREEMENT ENTERED IS BETWEEN THE FLORIDA GOVERNMENTAL UTILITIES AUTHORITY AND LEE COUNTY, AND IT DOES HAVE A PROVISION THAT THE GOVERNMENTAL UTILITIES AUTHORITY MAY SELL THE SYSTEM, EITHER TO AN AUTHORITY MEMBER, LEE COUNTY, OR TO SOME OTHER PUBLIC ENTITY. IT IS AN ALTERNATIVE. EITHER OF THE ENTITIES. WHETHER THE TOWN HAS ANY RIGHTS, AND WHAT ARE THOSE RIGHTS, THAT IS AGAINST FLORIDA GOVERNMENTAL UTILITIES AUTHORITY, BECAUSE CLEARLY LEE COUNTY IS RECOGNIZED AS SOMEONE WHO CAN ACQUIRE THE SYSTEM, UNDER THAT INTERLOCAL. WE BELIEVE THAT THE EXTENT OF THOSE RIGHTS THAT THEY MAY HAVE AGAINST THE GOVERNMENTAL UTILITIES AUTHORITY ARE CLEARLY A COLLATERAL MATTER. FINALLY, LET ME JUST TOUCH BRIEFLY ON THE INDISPENSIBLE PARTY. THE MATTER WAS FILED, UNDER CHAPTER 75, TO ADDRESS THIS ISSUE OF THE BEING ABLE TO ACQUIRE A SYSTEM WITHIN THE MUNICIPAL BOUNDARIES. COURTESY COPY WAS PROVIDED TO THE TOWN. MR. MURPHY, MR. BERANEK HAS INDICATED WAS THE MAYOR OF THE TOWN. HE WAS REPRESENTED BY THE TOWN ATTORNEY AT THE HEARING BEFORE THE JUDGE. PROPER NOTICE WAS GIVEN, AS REQUIRED BY THE STATUTE, AND WE BELIEVE THAT IS ALL THAT IS NECESSARY. UNDER THIS COURT'S CASE LAW, THE ONLY INDISPENSIBLE PARTIES ARE THE STATE AND THE ISSUING ENTITY, AND THAT IS WHO ARE BEFORE THE COURT, AND WE THINK THAT IS GROUNDED IN -- THERE IS GOOD RATIONAL FOR THAT. A VALIDATION IS, IN ESSENCE, A PUBLIC LITIGATION. IT IS TO ADDRESS THESE THREE OR FOUR NARROW ISSUES FOR THE PUBLIC AS A WHOLE. THE STATE ATTORNEY REPRESENTS THE

PUBLIC, TO MAKE SURE THAT THESE ISSUES ARE RAISED, AND IN FACT THE STATUTE GIVES A LIBERAL INTERVENTION POLICY. ANY INTERESTED PARTY MAY INTERVENE. WE BELIEVE THAT WE HAVE COMPLIED WITH THE LAW AND THE REQUIREMENTS OF THE STATUTE AND THAT ALL PARTIES WERE BEFORE THE COURT. WE WOULD ASK THAT THIS COURT AFFIRM THE DECISION OF THE TRIAL COURT AND VALIDATE THESE BONDS, AND I WILL GIVE THE REMAINDER OF MY TIME TO MISS VIACAVA. THANK YOU, YOUR HONOR.

MISS VIACAVA.

MAY IT PLEASE THE COURT. MY NAME IS YOLANDE VIACAVA, AND I REPRESENT THE APPELLEE, THE STATE OF FLORIDA THROUGH THE 20th JUDICIAL CIRCUIT. THE STATE'S BOND VALIDATION HEARING IS NOT SIMPLY TO DETERMINE THE POLITICAL WISDOM OF THE PURCHASE. WE ARE THERE TO DETERMINE IF THE STATUTORY REQUIREMENTS HAVE BEEN COMPLIED WITH, AND IN THIS CASE, BASED ON STATUTE 75.05, AS WELL AS STATUTE 125.031, THE STATE COULD NOT FIND THAT ANY LEGAL IMPROPRIETIES HAD TAKEN PLACE IN THIS PARTICULAR MATTER. THE STATE WAS PRESENT FOR THE HEARING. THE STATE WAS ABLE TO CROSS-EXAMINE THE WITNESSES PRESENTED BY THE COUNTY, ADD DREING THE MATTER OF WHETHER A PUBLIC HEARING WAS, IN FACT, HELD, WHAT ISSUES WERE CONSIDERED. COUNTY PUT ON AN ECONOMIST, WHO ADVISED WHAT THE BONDS WERE GOING TO BE FOR AND HOW THEY WOULD BE PAID BACK, THAT IT WOULD NOT INVOLVE RAISING TAXES. IT WOULD BE PAID FOR WITH REVENUE BONDS. ALL OF THOSE FACTS WERE CONSIDERED AT THE TIME OF THE HEARING, AND BASED ON THE STATUTES THAT WERE PRESENTED IN FRONT OF THE COURT, THE STATE WOULD FIND THAT THE DECISION WAS PROPERLY REACHED THAT THERE WERE NO LEGAL IMPROPRIETIES IN THIS PARTICULAR MATTER, AND WE WOULD AGREE WITH THE DECISION OF THE CIRCUIT COURT.

THANK YOU VERY MUCH. MR. BERANEK.

I AM SORRY. I MUST ADMIT I HAVE LOST TRACK.

SIX TENTHS OF A MINUTE.

I WILL GIVE YOU A COUPLE OF MINUTES.

ONE THING I NEVER GOT AROUND TO MENTIONING IS THE FACT THAT THIS IS A HOME RULE COUNTY, BUT UNLIKE MOST HOME RULE COUNTIES, IN LEE COUNTY, THE COUNTY CHARTER PROVIDES THAT MUNICIPAL ORDINANCES GOVERN OVER COUNTY ORDINANCES. IN OTHER WORDS IN THIS COUNTY, THE VOTERS HAVE SAID THEY WANT THE MUNICIPALITIES TO REMAIN SUPREME AND AUTONOMOUS. THE CITY CAN PASS AN ORDINANCE. WE HAVEN'T GOTTEN TO THAT CONTROVERSY YET. BUT HERE, IN THIS COUNTY, THE COUNTY ORDINANCES PREVAIL -- EXCUSE ME. THE CITY ORDINANCES PREVAIL OVER COUNTY ORDINANCES. JUSTICE WELLS, YOU ASKED IF THEY HAD A PROPER HEARING. WE HAVE LISTED ALL OF THE STATUTORY FACTORS, BUT ONE OF THE FACTORS THEY DID NOT AND COULD NOT HAVE CONSIDERED IS IF THEY DECIDE TO BUY SOMETHING, THEY HAVE TO CONSIDER WHAT ARE THE ALTERNATIVES? WELL, AT THE TIME OF THAT HEARING, THEY WERE TALKING ABOUT BUYING A COUNTYWIDE SYSTEM. THEY WERE NOT TALKING ABOUT ISSUING BONDS TO BUY THE SYSTEM WITHIN THE TOWN ALONE. AND THE ALTERNATIVE, THE OBVIOUS ALTERNATIVE IS SELL IT TO THE TOWN. THEY DID NOT CONSIDER THAT WAS NOT CONSIDERED. AND IT COULD NOT HAVE BEEN CONSIDERED, UNDER THE POSTURE THE THING, ONE BIG PACKAGE DEAL, THE WAY IT CAME FORWARD AT THAT PUBLIC HEARING. THAT IS ONLY ONE OF NUMEROUS, BUT THAT ONE THEY COULD NOT HAVE CONSIDERED. AND OPPOSING COUNSEL ARGUES, WELL, IF WE BUY IT LATER, WELL, IF WE BUY IT LATER, THAT IS ANOTHER LAWSUIT, I AM SURE, BUT IF THEY WANT TO SELL THIS THING TO US, THAT IS WHAT WE HAVE BEEN TRYING TO ACCOMPLISH SINCE THE BEGINNING. THEY DON'T WANT TO SELL IT. THEY -- THE ARGUMENT IS, ALSO, MADE THAT IT IS JUST SOME PIPES. WHO CARES. IT IS JUST A LITTLE SYSTEM. ACTUALLY IT IS PIPES AND OTHER BOOSTER STATIONS. WELL, IF IT IS SUCH A LITTLE

SYSTEM THAT NOBODY CARES ABOUT, THEY SURE DON'T WANT TO SELL IT TO US. I DON'T KNOW WHAT THE POLITICAL REASONS FOR THEIR TREMENDOUS ATTITUDE THAT THEY WON'T SELL IT TO THE CITY. THEY WON'T EVEN ASK THE CITY. THEY CAME TO THE CITY AND SAID WE ARE GOING TO BUY IT, AND WE ARE NOT -- WE DON'T HAVE TO GET YOUR PERMISSION, AND WE ARE NOT GOING TO. THIS CASE SHOULD HAVE BEEN LITIGATED IN THE INITIAL INJUNCTION ACTION. THANK YOU.

THANK YOU VERY MUCH. THANKS TO ALL OF YOU FOR YOUR ASSISTANCE.