IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,324

THE GOLDEN NUGGET GROUP, et al.,

Petitioners,

vs.

METROPOLITAN DADE COUNTY, and STEPHEN L. SMITH, Acting Tax Collector, CITY OF MIAMI, and CITY OF MIAMI BEACH,

Respondents.

_____/

RESPONDENTS' BRIEF ON JURISDICTION

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STATEMENT OF THE FACTS AND CASE

In 1983 the Legislature enacted Chapter 83-354, Laws of Florida (1983),[1/] authorizing counties as defined therein[2/] to levy a 3% tax on the rental of certain accommodations for a period of 30 days or less. Pursuant to the authority granted by Chapter 83-354, Dade County enacted Ordinance No. 83-91.[3/] This ordinance levied the convention development tax throughout Dade County[4/] and, in light of Attorney General Opinion No. 83-71,[5/] which opined that the Florida Department of Revenue had no authority to collect the tax, provided that the County would collect the tax.

The Plaintiffs, ten hotel owners and a tour operator doing business in the Sunny Isles area of Dade County, filed this action, alleging that Chapter 83-354 and the County ordinance are invalid and unconstitutional for numerous reasons. The trial court declared the statute and the ordinance invalid and enjoined the County from collecting the tax.[6/]

Defendants appealed. The Third District Court of Appeal reversed and, at the request of all parties, also resolved the other issues, holding that Chapter 83-354 is a valid general law and that neither it

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1/ See Petitioners' Appendix, Exhibit E.

2/ The law is applicable to "all counties as defined by Section 125.011(1)," Fla.Stats. This statute refers to counties operating under a home rule charter adopted pursuant to Sections 10, 11 and 24 of Article VIII of the 1885 Constitution. These sections refer to Monroe, Dade and Hillsborough Counties. On the date of enactment of Chapter 83-354, Dade County was the only one of the three operating under a home rule charter.

3/ See Respondents' Appendix, Exhibit A. Dade County Ord. No. 84-43, which was enacted by the County on June 5, 1984, and amends Ord. No. 83-91, is attached as Exhibit B in Respondent's Appendix.

4/ As provided in the statute, the County ordinance permitted municipalities presently collecting a municipal resort tax pursuant to Chapter 67-930, Laws of Florida, to pass resolutions exempting themsleves from the new tax. In Dade County, the three municipalities of Miami Beach, Bal Harbour, and Surfside collect a municipal resort tax.

5/ See Petitioners' Appendix, Exhibit G.

6/ The essential basis of the lower court's ruling was that the statute and the ordinance conflicted with certain provisions of Chapter 212, Fla. Stats. The court declined to rule on the constitutional and remaining issues raised in the complaint.

nor the County ordinance violated any constitutional provision.[7/] The petitioners sought rehearing,[8/] which the court denied.[9/]

In 1984, subsequent to the decision below, the Florida Legislature enacted Chapter 84-67, Laws of Fla., which in part amended Chapter 83-354.[10/]

ARGUMENT

THIS COURT SHOULD NOT INVOKE ITS DISCRETIONARY JURISDICTION.

None of the three bases or numerous arguments advanced by Petitioners warrants the exercise of this Court's discretionary jurisdiction. The decision of the Third District Court of Appeal adheres to previous decisions of this and other Florida courts and is entirely consistent with Florida law.

A. THE APPELLATE COURT CORRECTLY FOUND THAT CHAPTER 83-354 DID NOT VIOLATE ARTICLE III, SECTION 10 OF THE FLORIDA CONSTITUTION BECAUSE IT IS NOT A SPECIAL LAW REQUIRING NOTICE.

Article III, Section 10 of the Florida Constitution requires notice or a referendum before enactment of special laws. However, Chapter 83-354 is not a special law.

Chapter 83-354 is, and was properly found to be [p.8 of 3rd DCA decision], a general law and more specifically, a general law of local application,[11/]

7/ The Third District's decision is in Petitioners' Appendix, Exhibit A.

8/ See Petitioners' Appendix, Exhibit B. A copy of Respondents' (Appellants' below) Reply to the Petition for Rehearing is attached hereto as Exhibit C of Respondents' Appendix.

9/ See Petitioners' Appendix, Exhibit C.

10/ See Respondents' Appendix, Exhibit D.

11/ There are two categories of laws: general laws and special (also known as local) laws. Within the category of general laws is the sub-category of general laws of local application. A special law is one that relates to a particular person or thing or some other particular subject. See, e.g., State ex rel. Gray v. Stoutamire, 179 So.730 (Fla.1938); Carter v. Norman, 38 So.2d 30 (Fla.1941). All other laws would be general laws. (cont'd)

because it potentially applies to more than one county,[12] and is based upon a reasonable classification.[13] Therefore, Article III,

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11/ (cont'd)

This Court has defined a general law as a "statute relating to subdivisions of the state or to subjects, persons or things of a class based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class." Carter v. Norman, supra, at 32; State v. Daniel, 99 So. 804 (Fla.1924); Cesary v. Second National Bank of North Miami, 369 So.2d 917 (Fla. 1979). A general law does not have to be applicable to every person or to every locality in the state. "A general law operates uniformly, not because it operates on every person in the state, but because every person brought under the law is affected by it in a uniform fashion. ... Uniformity of treatment within the class is not dependent upon the number of persons in the class." Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla.1983). A general law does not lose that status so long as it applies uniformly within permissible classifications, operates universally throughout the state or as long as it relates to a state function or instrumentality. Id.

12/ Had they adopted home rule charters under the cited sections of Article VIII of the Florida Constitution, Dade, Hillsborough and Monroe counties would fall within the definition of "county" and would be within the purview of Chapter 83-354. Apparently, only Dade County had on the date of the statute's enactment, and has to date, adopted a Home Rule Charter under those constitutional provisions and, therefore, only Dade County is currently eligible to levy the three per cent convention development tax. Notwithstanding this, however, Chapter 83-354 is a valid general law because the statute has the potential of applying to more than one county.

On several previous occasions, this Court has upheld the constitutionality of a statute as a general and not a special law even though at the time of enactment the statute only applied to one class member. E.g., Ex Parte George S. Wells, 21 Fla. 280 (1885); State v. Daniel, 99 So. 804 (Fla. 1924); Anderson v. Board of Public Instruction, 136 So.2d 334 (Fla. 1931); City of Coral Gables v. Crandon, 25 So.2d 1 (Fla. 1946); State v. Dade County, 27 So.2d 283 (Fla. 1946); State v. Dade County, 39 So.2d 807 (Fla. 1949); Blount v. State Road Dept., 87 So.2d 507 (Fla. 1956); Board of Public Instruction v. County Budget Comm., 90 So.2d 707 (Fla. 1956); Dade County v. City of Miami Beach, 109 So.2d 362 (Fla. 1959); Yoo Wha v. Kelly, 154 So.2d 161 (Fla. 1963); Biscayne Kennel Club, Inc. v. Fla. State Racing Commission, 165 So.2d 762 (Fla. 1964); State v. City of Miami Beach, 234 So.2d 103 (Fla. 1970); Lewis v. Mathis, 345 So.2d 1066 (1977); Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, 434 So.2d 879 (Fla. 1983).

13/ The courts have recognized that the Legislature has wide discretion in choosing classifications and that one who challenges the constitutionality of such a classification must show that it is arbitrary and does not rest upon any reasonable basis. State v. City of Miami Beach, 234 So.2d 103, 106 (Fla. 1970); Anderson v. Board of Public Instruction, 136 So.334, 338 (Fla. 1931). (cont'd)

Section 10 is not applicable, and the decision below is consistent with previous decisions of this Court regarding general and special laws.[14/]

13/ (cont'd)

The purpose of Chapter 83-354 is to assist in the construction and improvement of facilities such as convention and exhibition centers to promote tourism. The three counties potentially eligible to impose the tax under the statute (Dade, Monroe and Hillsborough) have developed or plan to develop facilities that will attract a growing number of convention tourists, for the good of an ailing tourist industry. The court below found this "is clearly a reasonable classification." [Opinion p. 7]. Petitioners characterize this conclusion of the lower court as "absurd", "inaccurate and irrational," and "constitutes direct express conflict." [Petitioners' Brief p.3]. Respondents respectfully disagree. Particularly in light of the broad discretion afforded the Legislature in forming classifications, the presumption that the Legislature is knowledgeable about the conditions and needs of the citizens of this State, and the lower court appropriately having taken judicial notice of the pertinent background, the lower court's determination that the legislative classification is "clearly reasonable" cannot be said to be totally arbitrary or irrational and, therefore, should not be disturbed.

> The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that that there were public considerations justifying the particular classification and distinction made. Lewis v. Mathis, 345 So.2d 1066, 1068 (Fla. 1977).

Since 1971, the same three counties have been joined together for statutory classification purposes in §125.011(1), Fla.Stats. (The Port Authority Act), which permits these same counties to construct, operate and maintain airports and seaports. Convention facilities and the promotion of convention development are natural outgrowths of, and mutually supportive of, tourism, airports and seaports.

Finally, the inclusion of some counties and the exclusion of others does not render the classification invalid. As this Court stated when upholding the original Port Authority Act (Chapter 22963, Laws of Florida (1945):

> It may be admitted that Dade County is at present the only county within that class, but it may as well be admitted that other counties are potentially within the designated classification. Whether all counties are potentially within it is not material. The scope and effect of the subject regulated is the material thing and determines the validity of the Act.

State v. Dade County, 27 So.2d 283, 284 (Fla. 1946).

14/ This Court in Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983), recently held that Section 550.075, Fla.Stats., was a valid general law and not a special law notwithstanding that it only applied to one particular racetrack. At the time of enactment of the statute, there were only two (cont'd)

B. CHAPTER 83-354 DOES NOT FALL WITHIN THE PROHIBITED SUBJECT MATTER OF ARTICLE III, SECTION 11(a)(2) OF THE CONSTITUTION.

The Respondents' argument to the Third District Court was essentially that (a) the prohibition in Article III, Section 11(a)(2) of the 1968 Constitution prohibited the Legislature from enacting either special laws or general laws of local application pertinent to the assessment or collection of taxes for state and county purposes, and (b) that, as judicially interpreted, "the assessment or collection of taxes" related only to the mechanics of tax assessment and collection rather than to the power to levy and collect such taxes. The Third District Court agreed with this position.

14/ (cont'd)

harness racing establishments in the State and only one, referred to as Seminole, apparently could take advantage of the new statute. Recognizing that the State has a legitimate pecuniary interest in racing, this Court found that the classification was reasonably related to the subject matter and was therefore a proper exercise of legislative power, even though there was only one class member.

In Deseret Ranches v. St. Johns River Water Mgmt. Dist., 406 So.2d 1132 (Fla. 5th DCA 1981), modified on appeal at 421 So.2d 1067 (Fla. 1982), this Court upheld a law which granted the power to a water management district to levy an ad valorem tax. The district court had determined it to be a special act as it did not operate uniformly throughout the state and was not potentially applicable to other areas of the state since its applicability was limited to the geographical bounds of one district. This Court reversed, recognizing that the waters of the state were a basic state resource and that the water management districts further the state function of water resource conservation.

In State v. City of Miami Beach, 234 So.2d 103 (Fla. 1970), this Court upheld the constitutionality of Chapter 67-930, Laws of Florida (1967), a law authorizing a 2% municipal resort tax on room rentals, food and beverages. Pursuant to that law, the resort tax could be adopted only by municipalities that 1) were located in counties having a population within certain designated brackets based on the latest decennial census, and 2) had certain authorizing charter provisions prior to a certain date [approximately six months after the effective date of the law]. This Court took judicial notice that Dade and Broward Counties and potentially other counties fell within the population ranges and that only the municipalities of Miami Beach and Bal Harbour had the necessary charter provisions prior to the deadline date. The Court opined:

> In light of the purpose of Ch. 67-930 and this state's interest in the promotion and further development of the tourist industry, we hold that the population classifications are reasonable and Ch. 67-930 is a valid general law.

234 So.2d at 106 (footnote omitted). See also City of Miami Beach v. Frankel, 363 So.2d 555 (Fla. 1978).

Thus, the decision of the lower court is consistent with decisions of this Court and the requirements of Florida organic law.

Petitioners contend that the 1968 Constitution altered the meaning of the 1885 constitutional language, and that this alteration somehow superceded the holdings of this Court in Wilson v. Hillsborough County Aviation Authority, 138 So.2d 65 (Fla. 1962), and McMullen v. Pinellas County, 106 So. 73, 90 Fla. 298 (Fla. 1925). This contention is without merit because the 1968 Constitution did not change or modify the constitutional provision in any manner pertinent to this case.[15/] Though the 1968 constitutional prohibition was expanded to cover general laws of local application as well as special laws, the prohibition still pertains only to the mechanical aspects of assessing and collecting taxes. Chapter 83-354 is not concerned with any mechanical aspect of taxation, but with the empowerment or authority of a county to levy the tax. The two cases cited remain the law of Florida, and Petitioners have cited no cases to the contrary.[16/]

Petitioners also rely on Article VII, Section 9 of the 1968 Constitution when contending that non-ad valorem taxes may be authorized only by general law. Respondents respectfully submit that a general law of local application

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15/ The two cases cited interpreted the provision contained in Article III, Section 20 of the 1885 Constitution which read, in pertinent part:

> The Legislature shall not pass special or local laws in any of the following enumerated cases: that is to say,... for assessment and collection of taxes for State and county purposes;...

This is legally indistinguishable from the language that appears in Article III, Section 11(a)(2) of the 1968 Constitution which recites in pertinent part:

> There shall be no special law or general law of local application pertaining to:
>
> * * *
>
> (2) assessment or collection of taxes for state and county purposes. ...

16/ State v. O'Quinn, 154 So. 166 (Fla. 1934), does not conflict with the decision below, as alleged by Petitioners. That case dealt with the improper delegation of state legislative authority to a county commission and the sale of tax certificates at a discount, a mechanical aspect of tax collection admittedly prohibited by Section 11(a)(2), Article III.

(as the Third District found that Chapter 83-354 is) is in every respect a general law that meets this organic requirement.

Thus, the change in Florida's Constitution upon which Petitioners rely in this case is not material or relevant to the issue before the Court and in no way diminishes the applicability of the cited decisions.

C. CHAPTER 83-354 DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES.

Petitioners contend that: (a) the convention development tax levied by Chapter 83-354 on persons renting living quarters for 30 days or less involves classifications based on both duration of tenancy and type of living quarters, and (b) that such classifications have no rational basis, are arbitrary, and therefore violative of the Equal Protection Clauses in both the Federal and State Constitutions.

A classification provision virtually identical to the provision involved in this case was approved by this Court in Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981).[17/]

Although the convention development tax pertained to rentals for periods of 30 days or less and the tourist development tax related to rentals of six months or less, each imposed a tax based on duration of rental term. The time period difference is inconsequential to the issue of legal validity. Thus, this Court's approval of the tourist tax in Miami Dolphins over strong contentions of equal protection

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17/ Chapter 83-354 authorizes the levying by the county involved of a convention development tax "on the amount of any payment made by any person to rent, lease or use for a period of 30 days or less any living quarters or accommodations in a hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, tourist or trailer camp, or condominium." In the Miami Dolphins case a tourist development tax was levied on "every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment motel, rooming house, tourist or trailer camp or condominium for a term of 6 months or less..." (Section 125.0104(3)(a), Fla.Stat. (1977)).

violation based on residency, duration of tenancy, and type of living quarters, is dispositive here.[18/]

D. THE INTERPRETATION OF THE ACT BY THE THIRD DISTRICT COURT OF APPEAL IS REASONABLE AND WHOLLY CONSISTENT WITH THE REQUIREMENTS OF CHAPTER 212, FLA.STAT.

Petitioners' error on this point arises from a reliance on an incorrect assumption, namely that Chapter 83-354 contained no mechanism of any kind for the collection of the tax. That assumption is untrue because the 1983 Legislature expressly intended Chapter 83-354 to become part of Chapter 212, Fla.Stat., and specifically to become Section 212.057 in that Chapter. See Section 1, Chapter 83-354, Exhibit E in Petitioners' Appendix. Therefore, Section 212.18(a), Fla.Stat., which provided for collection by the Department of Revenue of all taxes imposed by Chapter 212, became applicable.[19/]

It was therefore proper and appropriate for the District Court to conclude that the Florida Department of Revenue had the duty and responsibility of collecting this tax. It therefore restored what should have occurred in the first place by directing Dade County, which had collected the tax up to that point, to remit all the tax moneys collected to the Department of Revenue. There was nothing "erroneous" or "tortured" or "strained" in the Third District's decision.

E. NO OTHER ERRORS IN THE DISTRICT COURT'S OPINION.

Petitioners in this miscellaneous potpourri section first claim that the statute imposing the tax is vague to the point of invalidity. In attempting to demonstrate this contention, they ask a series of

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[18/] Respondents note that the 1984 Florida Legislature amended the convention development tax, including a change in the 30 days or less rental period to a period of six months or less. Thus, the convention development tax is now identical to the tourist development tax in terms of the time period involved. See Chapter 84-67, Laws of Florida (1984), attached as Exhibit D in Respondents' Appendix.

[19/] Section 212.18(a), Fla.Stat., recites in pertinent part: "(2) The department [of Revenue] shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by this chapter."

rhetorical questions involving hypothetical hotel guests who book for 20 days but then stay for 31 or who book for 31 days but only stay for 29. Such occasional problems will arise and have to be answered under the statutes and rules and regulations that will be promulgated by the Department of Revenue in the future from time to time. A similar objection was rejected by this Court in Miami Dolphins, supra.[20/]

Finally, Petitioners argue that the challenged tax is not levied uniformly throughout the County and therefore violates the equal protection provisions of the state and federal constitutions. The tax at issue is an excise rather than an ad valorem tax and therefore Article VII, Section 2 of the State Constitution is not applicable. Further, the tax is uniform throughout the area in which it is levied; everywhere the tax is levied, it is levied at the same 3% rate. This complies with the kind of uniformity sanctioned by this Court.[21/]

The actual test for determining whether a statutory classification comports with equal protection is "whether the difference between those included in a class and those excluded from it bears a substantial relationship to the legislative purpose. ..." Lasky v. State Farm Insurance Co., 296 So.2d 9, 198 (Fla. 1974). The District Court correctly concluded that "the same substantial relationship between the classification

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20/ Such questions that arise in the future will be answered on an individual basis as they arise in the same way that similar questions that have arisen under the transient rentals tax (Section 212.03, Fla.Stat.) have been answered since 1949, in the same way that such questions that have arisen under the admissions tax (Section 212.04, Fla.Stat.) have been answered since 1949, in the same way that such questions that have arisen under the sales or storage or use taxes imposed by virtue of Sections 212.05, 212.06, 212.07 and 212.08, Fla.Stat., have been answered since 1949, and finally in the same way that such questions that have arisen under the Local Option Tourist Development Tax (Section 125.0104, Fla.Stat.) have been answered since 1977. No state statute need discuss or consider every single anomolous or extraordinary situation that may arise under its terms. This should be the function of subsequently adopted administrative rules and regulations and, if necessary, Attorney General's Opinions.

21/ See, e.g., Gallant v. Stephens, 358 So.2d 536 (Fla. 1978); Tucker v. Underdown, 356 So.2d 251 (Fla. 1978); and St. Johns River Management District v. Desert Ranches of Florida, 421 So.2d 1067 (Fla. 1982).

and the Act's purpose identified in our discussion of the Act as a general law satisfies the requirements of the equal protection clause." [pp.9]

CONCLUSION

Petitioners' Brief contains virtually no discussion as to why this Court should exercise its discretionary jurisdiction in this particular case. In such circumstances, the Supreme Court of Florida should decline to accept jurisdiction over a broad range of issues which have been comprehensively considered and discussed by the Third District Court in a carefully reasoned opinion resolved in accordance with legal principles recited and relied upon on many occasions by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENTS' BRIEF ON JURISDICTION was mailed on this 18 day of June, 1984, to: GERALD F. RICHMAN, Esquire, and BRUCE A. CHRISTENSEN, Esquire, Floyd Pearson Richman Greer Weil Zack & Brumbaugh, P.A., One Biscayne Tower, 25th Floor, Miami, FL 33131-1868.

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