O/G 10-3-84

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 65,324

THE GOLDEN NUGGET GROUP, et al.,
Petitioner,

vs.

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

RESPONDENTS' BRIEF ON THE MERITS

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CASE LAW

STATEMENT OF THE FACTS AND OF THE CASE

On July 19, 1983, the Governor signed into law an Act of the Legislature, Chapter 83-354, Laws of Florida (1983), authorizing, by definition, certain counties to levy a three percent tax on the rental of certain accommodations for a period of 30 days or less. The proceeds of this "bed tax" are to be used for the construction and improvement of facilities such as convention centers, coliseums, and exhibition centers. This new law, known as the Convention Development Tax Statute, will be referred to herein as "the statute." A copy of this statute is included as Exhibit "A" in the Appendix attached hereto.

In the absence of any specific designation in the state statute as to who should collect the tax, and in light of an Attorney General Opinion, which opined that the Florida Department of Revenue had no authority to collect the tax, Metropolitan Dade County enacted an ordinance providing that the County should collect the tax authorized by the statute. A copy of the Attorney General Opinion No. 83-71 is included in the Appendix as Exhibit "B".

The Board of County Commissioners of Dade County enacted the ordinance based upon the presumption that,

if the Attorney General was correct and the Department of Revenue could not collect the tax, then Dade County must have the authority to do so either specifically or by implication. This ordinance, which became effective on November 1, 1983, levied the convention development tax throughout Dade County and provided the procedures for collection, distribution and enforcement of the tax. A copy of this ordinance (sometimes referred to herein as "the ordinance") is included in the Appendix as Exhibit "C".

As provided in the statute, the County ordinance permitted municipalities already collecting a municipal resort tax to pass resolutions exempting themselves from the new convention development tax.[1]

The Petitioners, ten hotel owners and a tour operator in the Sunny Isles area of Dade County, sued Metropolitan Dade County and the Tax Collector, seeking to have Chapter 83-354, Laws of Florida (1983) and Dade County Ordinance No. 83-91 declared unconstitutional.

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[1]In Dade County, the three municipalities of Miami Beach, Bal Harbor and Surfside are the only ones which collect a municipal resort tax. See Chapter 67-930, Laws of Florida (1967).

The City of Miami and the City of Miami Beach both intervened as Defendants, and the Greater Miami Hotel and Motel Association was allowed to file an amicus curiae brief.

The Petitioner's motion for preliminary injunction was granted and the case proceeded to final hearing on an expedited basis, with the final hearing occurring only 7 days after the filing of the Complaint.

Subsequent to the final hearing, the trial court, on November 10, 1983, entered its Order Granting Declaratory and Injunctive Relief, declaring the statute and the ordinance invalid and enjoining the County from collecting the tax. The essential basis of the lower court's ruling was that the statute and the ordinance conflicted with certain provisions of Chapter 212, Fla. Stat. The court declined to rule on the constitutional and remaining issues raised in the complaint. However, all of the issues were extensively argued both in memoranda submitted by the parties and during argument of counsel at the hearings.

The trial court entered its Order granting declaratory and injunctive relief declaring the statute and ordinance invalid and enjoining Dade County from collecting the tax.

Respondents' motion for rehearing was denied and an appeal to the Third District Court of Appeal ensued, also on an expedited basis.

Upon Petitioners' motion the trial court required that the the tax moneys collected by Petitioners be held in escrow pending an appeal to the Third District Court of Appeal.

The Third District Court of Appeal reversed the trial court's finding of unconstitutionality. In its opinion the Third District found:

1. The challenged statute, Chapter 83-354, was passed within the regulatory scheme of Chapter 212 which provides for a collection mechanism by the State Department of Finance;

2. The act is not unconstitutional as a special or local act;

3. The act is not unconstitutional as a violation of equal protection;

4. The act is not unconstitutional as a violation of due process requirements;

5. The act is not unconstitutional as a violation of uniform taxation protections;

The Third District's initial opinion was supplemented by the following clarification:

> The funds collected by Dade County . . . along with all accrued interest, are to be paid over to the State Department of Revenue.

The Petitioners petitioned for the issuance of a writ of certiorari and this Court has accepted jurisdiction.

Defendants then filed a motion for rehearing based on newly discovered information. The motion was denied on November 23, 1983.

This brief is filed on behalf of Dade County and Steven Smith, Dade County's Acting Tax Collector, and the Intervenors, the City of Miami and the City of Miami Beach, all of whom will be referred to collectively as Respondents.

ARGUMENTS

It should be noted at the outset that a statute comes before the Court with a presumption of constitutionality and validity. If there are several possible interpretations of a statute, the one which preserves its constitutionality and validity must be followed. Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983); Miami Dolphins Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981); Goulden v. Kirk, 47 So.2d 567 (Fla. 1950). Respondents respectfully submit that the statute is valid without any strained or twisted interpretations of law.

I. THE DISTRICT COURT CORRECTLY UPHELD CHAPTER 83-354 AS A VALID GENERAL LAW.

A. THE ACT IS NOT UNCONSTITUTIONAL AS A SPECIAL OR LOCAL ACT WHICH LACKS REFERENDUM AND NOTICE PROVISIONS.

The District Court did not err in upholding Chapter 83-354 as a valid general law which does not violate Article III, Section 10 of the Florida Constitution. The statute allows each county, as defined in Section 125.011(1), Fla. Stat., to levy the three percent convention development tax. Section 125.011(1) provides:

> "County" means any county operating under a home rule charter adopted pursuant to §§10, 11 and 24, of Art. VIII, of the Constitution of 1885, as preserved by Art. VIII, §6(e), of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the power herein conferred.

If they had 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 thus be within the purview of the statute. Apparently, only Dade County has to date, and on the date of the statute's enactment, adopted a Home Rule Charter under the constitutional provisions cited in §125.011(1) and, therefore, only Dade County is currently eligible to

levy the three percent convention development tax. However, it is respectfully submitted that Chapter 83-354 is a valid general law, notwithstanding the fact that Dade County is currently the only county eligible to levy the tax, because the statute has the potential of applying to more than one (namely, three) counties.

There are two categories of laws: general laws and special laws. Although the Florida Constitution does not offer definitions of general and special laws, case law indicates that 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 are general laws.

More specifically, a general law has been defined as a statute relating to subdivisions of the state or to subjects or to persons or things as a class based upon proper distinctions and differences that are inherent in or are peculiar or appropriate to the class. State v. Daniel, 99 So. 804, 809 (Fla. 1924); Cesary v. Second National Bank of North Miami, 369 So.2d 917, 921 (Fla. 1979). "It is well established that a general law does not lose its general law status so long as it operates uniformly upon subjects as they may exist in the state,

applies uniformly within permissible classifications, operates universally throughout the state or so long as it relates to a state function or instrumentality." State ex rel. Landis v. Harris, 120 Fla. 555, 163 So. 237 (1934); Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983). By authorizing all counties as defined in Section 125.011(1) to levy a 3% convention development tax on the rentals of certain accommodations for a period of six months or less, Chapter 83-354 sets up a classification scheme which clearly fits the definition of a general law.

i. CHAPTER 83-354 IS A GENERAL LAW BECAUSE IT OPERATES UNIFORMLY UPON ALL PERSONS OR SUBJECTS BROUGHT UNDER IT.

Chapter 83-354 is a general law because it operates uniformly upon all persons or subjects brought under it. This Court has recently held that 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 uniform fashion." Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra at 881. By its own words Chapter 83-354 permits

"each county, as defined in Section 125.011(1)" to enact the 3 percent convention development tax.[2] The tax applies uniformly to rentals derived from "any living quarters or accommodations in a hotel, apartment hotel, motel, apartment, apartment motel, rooming house, tourist or trailer camp, or condominium" which are rented, leased or used for a period of six months or less.[3]

ii. CHAPTER 83-354 IS A GENERAL LAW BECAUSE IT IS POTENTIALLY APPLICABLE TO COUNTIES OTHER THAN DADE.

The District Court correctly held that the statute is a general law despite the fact that Dade County is

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[2]The Statute, as amended by the Legislature in 1984, reads in pertinent part as follows:

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (3), and (4) of section 212.057, Florida Statutes, as created by chapter 83-354, Laws of Florida, are amended and subsections (5), (6), (7), (8), (9), and (10) are added to said section to read:

212.057 Convention development tax; adoption; application of revenues; administration and collection.

(1) Each county, as defined in s. 125.011(1), may levy, pursuant to an ordinance enacted by the governing body of the county, a 3 percent convention development tax on the amount of any payment made by any person to rent, lease, or use for a period of 6 months ~~30 days~~ or 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, except payments made by a person to rent, lease, or use any living quarters or accommodations which are exempt under part 1 of chapter 212.

[3]See footnote 2.

presently the only county eligible to levy the tax because Chapter 83-354 has the potential of applying to more than one county. As far back as 1885, this Court held that the fact that there may be at the time of the enactment of a statute only one member of a class [there, a municipality] does not of itself render the statute creating this class special and unconstitutional. Ex Parte George S. Wells, 21 Fla. 280 (1885). Since that time, a substantial number of cases have held that where the classification is reasonably related to the purpose of the act, the statute will be considered a general law even though at the time of its enactment, it may be applicable only to one county, so long as the statute is potentially applicable to other counties. Board of Public Instruction v. County Budget Comm., 90 So.2d 707 (Fla. 1956); Yoo Wha v. Kelly, 154 So.2d 161 (Fla. 1963); Blount v. State Road Dept., 87 So.2d 507 (Fla. 1956). State v. Daniel, supra; Anderson v. Board of Public Instruction, 136 So.334 (Fla. 1931); Lewis v. Mathis, 345 So.2d 1066 (Fla. 1977); Biscayne Kennel Club, Inc. v. Fla. State Racing Commission, 165 So.2d 762 (Fla. 1964).

In the case at bar the District Court cites and relies upon a recent case in which this Court affirmed

this view, Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra. In that case this Court held that Chapter 80-88, Laws of Fla. (codified as Section 550.075, Fla. Stat.) was a general law and not a special law notwithstanding that at the time of enactment it applied only to one particular racetrack. Chapter 80-88 concerned harness race tracks having a certain "handle" (i.e., the amount bet during a period of time) and the amount of tax revenue generated. At the time of enactment of the statute, there were two harness racing establishments in the State; and only one, referred to as Seminole, apparently could take advantage of the new statute.

Both the trial court and the district court of appeal had found that the statute was a special act and therefore unconstitutional for not having followed the notice and other requirements for special laws. This Court reversed, upholding the statute as a general law, and stating that "[u]niformity of treatment within the class is not dependent upon the number of persons in the class." Id. at 881. This Court specifically held:

> The controlling point is that even though this class did in fact apply to only one track, it is open and has the potential of applying to other tracks. As we said in Bis-

cayne Kennel Club, Inc. v. Florida State Racing Commission, 165 So.2d 762, 763 (Fla. 1964):

> Because all of the classifications effected (sic) by this act are made on the basis of factors which are potentially applicable to others and which are not purely arbitrary in relation to the subject regulated or the conduct authorized, we conclude that the current effect of the law stipulated to by the parties is not controlling and it must be sustained as a general act of uniform operation.

(footnote omitted). The requirement of a ten-year history would not in and of itself preclude another track sometime in the future from converting. The fact that matters is that the classification is potentially open to other tracks.

434 So.2d at 882. (Emphasis added).

Similarly, in another recent case, a statute governing rent control measures was held by this Court to be a general law applicable statewide despite the fact that the City of Miami Beach was the only city to come under the statute by virtue of having adopted an implementing ordinance. City of Miami Beach v. Frankel, 363 So.2d 555 (Fla. 1978).

In the instant case it is clear that Chapter 83-354 is a general law because it is potentially applicable to

counties other than Dade. Chapter 83-354 permits each county as defined in Section 125.011(1), Fla. Stat., to levy the three percent convention development tax.

If they had adopted home rule charters, under the cited sections of Article VIII of the Florida Constitution, Hillsborough and Monroe counties would fall within the definition of "county" in Section 125.011(1) along with Dade. At the time of the enactment of the statute, it could be categorically stated that Hillsborough and Monroe counties were empowered to enact Home Rule Charters[4] and thus come within the purview of the definition of "county" contained in Section 125.011(1). Upon such an event, these counties would be individually empowered by Chapter 83-354 to levy the three percent convention development tax. The legislative classification was not a "closed class" when the statute was enacted, but could potentially encompass two other counties within the state. Accordingly, Chapter 83-354 could not and cannot be considered a special law. See Department of Legal Affairs v. Sanford-Orlando Kennel Club, supra; Board of

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[4]Pursuant to the cited sections in the Constitution of 1885.

Public Instruction v. County Budget Commission, supra.; Lewis v. Mathis, supra. State v. Dade County, 39 So.2d 807 (Fla. 1949); State v. Dade County, 25 So.2d 1 (Fla. 1946); State v. City of Miami Beach, 234 So.2d 103 (Fla. 1970); County of Dade v. City of North Miami Beach, 109 So.2d 362 (Fla. 1959).

iii. THE ACT MUST BE ACCORDED GENERAL LAW STATUS BECAUSE IT RELATES TO A STATE FUNCTION.

The Act must be accorded general law status because it relates to a significant state function. In a recent case this Court stated that 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. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra at 881. In Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra, discussed earlier in this brief, the Court noted that the State of Florida has a legitimate pecuniary interest in the regulation of harness racing because of the substantial revenue it receives from parimutuel betting. In view of this state interest, this Court found that Chapter 80-88 was a general law

despite the fact that only one of the state's two harness racing establishments, Seminole Racetrack, would specifically benefit from the enactment. Id.

Similarly, another recent case, Deseret Ranches v. St. Johns River Water Mgmt. Dist., 406 So.2d 1132 (Fla. 5 DCA 1981), modified on appeal at 421 So.2d 1067 (Fla. 1982), dealt with a grant of power to a water management district to levy an ad valorem tax. The determinative question was whether Chapter 77-382, Laws of Fla., creating the district was a general or a special act. The district court found it to be a special act because it did not operate uniformly throughout the state and was not potentially applicable to other areas of the state, but operated only within the geographical bounds of the water management district.

This Court reversed. The Court, in so doing, recognized that the waters of the state constituted a basic state resource and that the water management districts further the state function of water resource conservation. "We have repeatedly held that a law does not have to be universal in application to be a general law if it materially affects the people of the state." St. Johns River Water Mgmt. Dist. v. Deseret Ranches, supra at 1069, citing Cantwell v. St. Petersburg Port

Authority, 21 So.2d 139, 140, 155 Fla. 651 (1945), and Cesary v. Second National Bank of No. Miami, 369 So.2d 917 (Fla. 1979).

In the case at bar Chapter 83-354 is a general law because it relates to the state function of raising state revenue, notwithstanding the fact that only three counties are potentially eligible to levy the tax. Chapter 83-354 recites that it creates Section 212.057, Fla. Stat., as part of Chapter 212, Fla. Stat. Therefore, in determining the purpose of Chapter 83-354 and its status as a general or special law, it must be construed in conjunction with the other provisions of Chapter 212. See St. Johns River Water Management District v. Deseret Ranches of Florida, supra at 1068;[5]

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[5]In St. Johns River Water Management District v. Deseret Ranches of Florida, 421 So.2d 1067, 1068 (Fla. 1982), this Court determined that Chapter 77-382, which created the Greater St. Johns River Basin, was a general rather than a special law. In doing so, this Court construed Chapter 77-382 together with chapter 373 "The Florida Water Resources Act":

> In view of the nature and history of this enactment, we hold that it is a general law rather than a special law. Chapter 77-382 was enacted as an amendment to chapter 373, Florida Statutes, and we must construe it in conjunction with that chapter. Recognizing that the waters in the state are among Florida's basic resources, the Florida Legislature, through chapter 373, "The Florida Water Resources Act," provided a comprehensive statewide plan for the conservation, protection, management, and control of state waters. §373.016.

Miami Dolphins v. Metropolitan Dade County, supra at 989. Chapter 212, known as the "Florida Revenue Act of 1949" imposes taxes on certain business transactions as part and parcel of a comprehensive tax program devised by the legislature to raise revenue for the entire state. This Court has taken judicial notice of the fact that a significant portion of the State's revenue is derived from sales taxes levied on tourist related purchases and rental accommodations. The promotion of expanded facilities of the kind provided for in the statute in order to increase tourism overall in the state is certainly a legitimate state function that could lead to increased state revenues. State v. City of Miami Beach, 234 So.2d 103, 105 (Fla. 1970).

Thus, Chapter 83-354 should be construed as a general law because it relates to the state functions of raising revenue and tourism. See Miami Dolphins v. Metropolitan Dade County, supra; Department of Legal Affairs v. Sanford-Orlando Kennel Club, supra at 883. Undisputably, construction and expansion of convention facilities furthers the State of Florida's legitimate pecuniary interests in raising revenue and tourism, its number one industry. See State v. City of Miami Beach, 234 So.2d 103, 105 (Fla. 1970).

iv. CHAPTER 83-354 IS A GENERAL LAW BECAUSE ITS CLASSIFICATION SCHEME IS RATIONALLY RELATED TO THE PURPOSE OF THE ACT.

The District Court correctly held that Chapter 83-354 is a general law because its classification scheme is rationally related to the purpose of the Act. The District Court stated that when the legislature establishes a classification there is a presumption in favor of its reasonableness:

> [I]f any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. 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 there were public considerations justifying the particular classification and distinction made. Lewis v. Mathis, 345 So.2d 1066, 1068 (Fla. 1977).

The party who challenges a classification of a statute has the burden of proving that the classification does not rest upon any reasonable basis and is therefore arbitrary. Cesary v. Second National Bank of North Miami, 369 So.2d 917 (Fla. 1979). Accord, Anderson v. Board of Public Instruction for Hillsborough County, 136 So. 334, 337 (Fla. 1931).

In the case at bar Chapter 83-354 purports to utilize revenues collected from the three percent convention development tax as follows:

> (a) Two-thirds of the proceeds shall be used to extend, enlarge, and improve the largest existing publicly-owned convention center in the county;
>
> (b) One-third of the proceeds shall be used to construct a new multi-purpose convention/coliseum/exhibition center or the maximum components thereof as funds permit in the most populous municipality in the county; and
>
> (c) After the completion of any project under paragraph (a) or (b), tax revenues and interest accrued may be used to acquire, construct, extend, enlarge, remodel, repair, improve or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, or auditoriums.
> (Emphasis supplied)

The three percent convention development tax seeks to raise funds for the expansion, construction and improvement of convention-related facilities that in turn will contribute to an increase in tourist related income both to the municipalities and to the state in the form of sales taxes. This is in keeping with the purpose of Chapter 212 as discussed previously.

In view of this purpose, it is clear that the District Court did not err in finding a reasonable basis for the classification in this statute.

The reasonable basis for the classification by counties in this statute is clearly reflected in the legislative history of Sections 125.011 - 125.021, Fla. Stat. which contain the definition of "county" used in the subject statute. These sections first appeared in 1945 when the Florida Legislature enacted Chapter 22963, Laws of Florida (1945), generally referred to as the Dade County Port Authority Act. This was because "county" was defined in the act as any county having a population of 260,000 inhabitants or more, according to the latest Federal census, and the only county in the State then having a population sufficient to acquire the additional powers conferred by the statute was Dade County. Apart from the definition of the term "County", the 1945 statute was almost identical to today's Sections 125.011 - 125.021, Fla. Stat. (hereinafter referred to as "The Port Authority Act"). A casual look at the 1945 act, then applicable only to Dade County, indicates that the act gave Dade County extensive power and authority to establish and operate major airport and seaport facilities. The Court will recall that the

construction of the present Miami International Airport facility began shortly after the enactment of this act in 1945.

In 1971, shortly after the official release of the new 1970 Federal Decennial Census, the Legislature repealed the Port Authority Act of 1945 and enacted Chapter 71-249, Laws of Florida 1971, in its stead. This statute was a general act that at the time of its enactment was specifically applicable to Dade County and available to two other counties, namely, Monroe and Hillsborough. The definition of the term "County" appeared in the definitional section of the 1971 law and remains the same today.

In due course the legislative revisors codified Chapter 71-249, Laws of Florida, as Sections 125.011 - 125.021, Fla. Stat. It is commonly referred to today as the "Port Authority Act of 1971."

The three counties to which the 1971 Port Authority Act pertained or was available at the time of enactment had at least four characteristics in common. They were all riparian, they were all located in the southern half of Florida, they all had built extensive airport or seaport facilities, or both, and they had each developed substantial tourist-oriented economies with the tourists

arriving and departing in substantial numbers in and from the airport and seaport facilities developed and being developed within their respective boundaries. The major airport facility recently constructed in Hillsborough County, the long established airport and seaport in Key West, and the expanding facilities in Dade County comprising the Dodge Island Seaport (now the largest cruise port in the world based on the number of passengers) and the Miami International Airport reflect the rational nexus among the three counties that bind them together in a sensible grouping or class.

During the last two decades these three counties have developed or plan to develop facilities that will bring a growing number of tourists to conventions within them. They have each developed substantial airport and/or seaport facilities, and they now would like to encourage growing tourist business by the development of substantial convention facilities within their respective boundaries. Viewed in this light, there is a logical progression from the initial development of airport and seaport facilities into substantial tourist oriented economies which now require expanded convention and other tourist related facilities within the areas.

The same rational nexus among the three counties linked together as a class in the Port Authority Act of 1971 continues on in the recently enacted statute where each of the three counties is or could become empowered to levy taxes on the occupancy of certain housing accommodations for six months or less in order to develop or expand convention facilities that will attract substantially more conventioneers and tourists in days to come. The same legal classification of three counties bound together by certain common characteristics since 1971 thus continues on under the new statute.

Permitting these three counties to utilize a 3% tax on tourist-related rentals to fund a plan for developing convention facilities clearly demonstrates a reasonable relationship between the classification and the subject matter of the act. Furthermore in the case at bar, as in Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra, where the classification of "financially ailing" harness tracks was found reasonable, this classification bears a substantial relationship to the purpose of increasing state revenue and promoting tourism. Undoubtedly, the District Court was correct in finding that the Act is not unconstitu-

tional as a special law which lacks referendum and notice provisions.

B. THE ACT IS NOT UNCONSTITUTIONAL AS A SPECIAL OR LOCAL ACT CONCERNING A PROHIBITED SUBJECT.

Chapter 83-354 does not violate Article III, Section 11, of the Florida Constitution. The said Article III, Section 11, provides in pertinent part:

> §11. Prohibited special laws
>
> (a) There shall be no special law or general law of local application pertaining to:
>
> (2) assessment or collection of taxes for state or county purposes, including extention of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability;

As demonstrated in Section A of this brief, the District Court correctly determined that Chapter 83-354 is a valid general law and thus does not violate Article III, Section 11.

Assuming, arguendo, that the Act is a general law of local application, the statute still does not violate Article III, Section 11, of our Constitution. The language of Article III, Section 11, deals only with the mechanics of collection including "extension of time," "relief of tax officers from due performance of their

duties" and "relief of their sureties from liability." This Court has consistently interpreted the language of Article III, Section 11, of the Florida Constitution narrowly and to mean that the organic prohibition proscribes only local enactments bearing upon the mechanical methods of tax assessment and collection. It does not prohibit special acts or general laws of local application that empower a local government to levy or impose a tax; it merely prohibits individual enactments that would permit a non-uniform method of assessment or collection.

In McMullen v. Pinellas County, 106 So. 73 (Fla. 1925), this Court stated:

> It is true that section 20 of article 3 of our Constitution [the predecessor of Section 11, Article 3] inhibits special or local laws 'for the assessment and collection of taxes for state and county purposes,' but such inhibition goes only to the manner or method of assessing taxes, and does not forbid the Legislature to authorize by special or local law a county to levy a tax for a local county purpose. Kroegel v. Whyte, 62 Fla. 527, 56 So. 498 (1911); Hunder v. Owens, 80 Fla. 812, 86 So. 839 (1920).

In Wilson v. Hillsborough County Aviation Authority, 138 So.2d 65 (Fla. 1962), this Court remained consistent and true to its earlier holding and recited:

> The provision of Section 20, Article III, Florida Constitution,proscribing local laws for 'the assessment and collection of taxes' for county purposes was designed merely to provide uniformity in the assessment and collection process. It has never been construed to prohibit local laws which authorize a particular tax for a particular local county purpose. Whitney v. Hillsborough Co., 99 Fla. 628, 129 So. 486 (1930); Kroegel v. Whyte, 62 Fla. 527, 56 So. 498 (1911).

138 So.2d 65, 67 (Fla. 1962).

In the case at bar Petitioners claim that the District Court erred in relying upon McMullen and Wilson, supra, and in holding that Section 11, Article III, of the Florida Constitution proscribes only local enactments having to do with mechanical methods of tax assessment and collection.

Petitioners base their contention that the District Court erred on the fact that McMullen and Wilson were decided prior to the 1968 Constitution, and that 1968 constitutional provisions modified the earlier holdings. Respondents respectfully disagree and submit that the District Court did not err in following McMullen and Wilson despite the changes in the 1968 Constitution.

The District Court correctly followed this Court's interpretation of Article III, Section 11, of the

Constitution as expounded in McMullen and Wilson supra. Although these cases were decided under the 1885 Constitution, they have not been overruled in subsequent cases nor has there been any meaningful change in the wording of Article III, Section 11, in the 1968 Constitution. The provision still pertains solely to the mechanical details of assessment and collection.

Furthermore, the change in location and wording of the organic provision dealing with local taxation (Article IX, Section 5, of the 1885 Constitution which became Article VII, Section 9, of the 1968 Constitution) does not, as Petitioners claim, modify this Court's interpretation of Article III, Section 11. Article IX, Section 5, of the 1885 Constitution provided as follows:

> §5 Taxes for County and Municipal Purposes. The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes. . .

Article VII, Section 9 of the 1968 Constitution now states:

> §9 Local Taxes.
> (a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes for their respective purposes. . .

Recent cases dealing with Article VII, Section 9, in the 1968 Constitution have not modified this Court's interpretation of old Article III, Section 11, in any way, but instead interpret the new provision as a prohibition against the levying of taxes by local entities in the absence of an enabling statute. See Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976); Belcher Oil Company v. Dade County, 271 So.2d 118 (Fla. 1972). In each of the cited cases interpreting Article VII, Section 9, the new provision is utilized to invalidate taxes initiated by municipalities or counties without any statutory authorization. The new organic language has never been interpreted to be a modification of Article III, Section 11.

Petitioners also argue that Section 125.01(r), Fla. Stat. and Article VII, Section 9, of the current Florida Constitution both require that the levy of taxes by local entities be by general law. As demonstrated above, Chapter 83-354 is, as the District Court correctly held, a general law that does not violate either of these provisions.

Respondents maintain that the District Court correctly held that Chapter 83-354 is a general law

authorizing three potential counties at their option to levy a convention development tax. It does not violate Section 125.01(r), Florida Statutes, or Article VII, Section 9, of our Constitution, nor does it fall within the prohibited area defined by Article III, Section 11, of our Constitution.

II. SECTION 212, FLA. STAT. REQUIRES THE COLLECTION OF THE TAX IMPOSED BY CHAPTER 83-354 BY THE STATE DEPARTMENT OF REVENUE.

Chapter 212, Florida Statutes, which was in effect prior to the enactment of Chapter 83-354, provides for a collection mechanism for 83-354 revenues. The State Department of Revenue is the only department with the authority to collect and the funds can only be deposited in the State's General Fund. The fact that Chapter 83-354 did not provide for a separate collection or distribution mechanism does not invalidate the statute, since the challenged mechanism already existed as part of Chapter 212.

At trial, the Court invalidated Ch. 83-354 based on Petitioners' argument that, because of the absence of collection or distribution provisions, Ch. 83-354 was defective. The Third District Court of Appeal disagreed and adopted the Respondents' position that Ch. 212 in fact provides for the required collection and distribution mechanisms.

Chapter 83-354 was enacted as §212.057, Fla. Stat. that is, within Chapter 212, Florida's "Tax on Sales, Use and Other Transactions". The statute's validity becomes apparent with a careful scrutiny of its applicable provisions.

Section 212.15(1) Fla. Stat. provides that "[t]he taxes imposed by this chapter shall become state funds at the moment of collection . . . ." The funds collected belong to the State and cannot be used to pay any other indebtedness of the collecting party. United States v. Associated Developers of Florida, Inc., 400 So.2d 17, (Fla. 1st DCA 1980).

"The department [of revenue] shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by this chapter." §212.18(2), Fla. Stat. The historical note under §212.18(2), Fla. Stat. states that Chapter 69-106, Laws of Fla., the Governmental Reorganization Act of 1969, created a Department of Revenue, and transferred thereto the powers, duties and functions of the comptroller under this chapter relative to the collection of State revenues.

Once state revenues are collected, the department of revenue "shall pay over to the Treasurer of the

State, all funds received and collected by it under the provisions of this chapter, to be credited to the account of the General Revenue Fund of the state." §212.20(1), Fla. Stat.

Section 213.05, Fla. Stat. clearly defines the duties of the Department of Revenue as that of taxation under ". . . Chapter 212, tax on sales, use, and other transactions . . ." The Department thus has the duty and responsibility of administering the state revenue laws. Upon making any deposits in the State Treasury, the Department is obligated to inform the State Treasurer as to the source of the revenue and the fund into which the money is being deposited. 1982 Op. Att'y Gen. Fla. 082-41, (June 1, 1982).

There is no question concerning the deposit of Chapter 212 revenues:

> Any and all tax monies collected by the Department of Revenue shall be deposited in the appropriate fund as provided by law.
> §213.10, Fla. Stat.

Section 215.32(1)(a), Fla. Stat. provides for the deposit "in the state treasury unless specifically provided otherwise by law" of all Chapter 212 revenues. The statute is clear: where revenues are to be collected by the State, without a specific fund being

designated in the law, such as in the instant case, then the revenues are to be deposited into the State Treasury. The "undesignated" moneys can be deposited into either the: General Revenue Fund, Trust Funds, Working Capital Fund or the Federal Revenue Sharing Fund.

Thus, Chapters 212, 213 and 215 provide that the Convention Development Tax Revenues are to be collected by the Florida Department of Revenue (section 212.18[2]) and deposited in the General Revenue Fund (section 212.20[1]).

The only collection problem with implementing Chapter 83-354 was created by Attorney General Opinion 83-71, which triggered the enactment of Dade County's Ordinance 83-91. The Third District corrected the problem when it stated: "We disapprove of Attorney General Opinion No. 83-71, and the Trial Court's reliance upon it . . ." The Court then struck that portion of County Ordinance 83-91 relating to collection and mandated the Department of Revenue to collect the revenues involved.

In addition, Chapter 212, Fla. Stat. provides that the Florida Department of Revenue should collect the tax, pursuant to §212.18, Fla. Stat., and credit the

collections to the State General Revenue Fund, pursuant to §212.20, Fla. Stat. Once in the General Revenue Fund, funds collected are available for appropriation by the Legislature and can be appropriated to their intended use, as are other funds collected under various statutes.

Interpreting the convention development tax statute as part of Chapter 212, Fla. Stat., the new law would be read as part of and in pari materia with other provisions in Chapter 212, Fla. Stats. Any procedural provisions missing from Chapter 83-354 would be supplied by existing provisions in Chapter 212. Any provisions relating to Chapter 212 taxes found in other statutes will apply equally to Chapter 83-354.

In Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981), this Court found that the tourist development tax statute (§125.0104, Fla. Stat.) should be read in pari materia with the provisions of Chapter 212, Fla. Stat., and that any elements missing from the tourist development statute were sufficiently implemented by Chapter 212. This was held even though the tourist development statute (Section 125.0104, Fla. Stats.) was not part of Chapter 212, and only incorporated the provisions of Chapter 212

by reference. In the instant situation, the convention development tax statute is expressly included in Chapter 212, making such reference unnecessary. The conclusion reached by this Court in Miami Dolphins is even more applicable and appropriate here where the Legislature specifically designated the new statute to come within Chapter 212, Fla. Stat.

Section 215.32, Fla. Stat. provides that, upon receipt and deposit of the tax funds collected by the State Department of Revenue, such funds will be available for appropriation by the Legislature. This section states in relevant part:

> (1) All monies received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the Treasurer and the Department of Banking and Finance within the following funds, which funds are hereby created and established:
>
> (a) General Revenue Fund;
> (b) Trust funds;
> (c) Working Capital Fund; and
> (d) Federal Revenue Sharing Fund.
>
> (2) The source and use of each of these funds shall be as follows:
>
> (a) The General Revenue Fund shall consist of all monies received by the state from every source

whatsoever, except as provided in paragraphs (b) and (c). Said monies shall be expended pursuant to General Revenue Fund appropriations act or transferred as provided in paragraph (c).

Thus, as in other taxes imposed under Chapter 212, Florida Statutes, an appropriation act of the legislature was necessary to fulfill the intent of Chapter 83-354. That act was enacted by the legislature in 1984 as Chapter 84-67, which appropriated all funds collected to the Dade County Convention Development Trust Fund, established further procedures for collection by the Department of Revenue, provided an automatic procedure for disbursement of Revenues not requiring further appropriations, and provided for penalties for non payment.

The intent of the legislature was thus fulfilled.

III. THE ACT IS CONSTITUTIONAL AND DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES.

Chapter 83-354 is a constitutional act which does not violate Equal Protection guarantees. In attacking the thirty (30) day or less durational classification originally set forth in the statute to determine which rentals are subject to the tax, Petitioners fail to mention or consider in their arguments the fact that the statute has since been amended to extend the tax-free

period from the original thirty (30) days until the present period of six (6) months.[6] This six month period is identical to the durational classifications set up in the 2% tourist development tax which was upheld by this Court. See Miami Dolphins v. Metro Dade County, supra, at 989.

The durational classification set forth in the Act, which has previously been upheld in similar tourist-oriented tax legislation, does not violate Equal Protection guarantees. The classification does not involve inherently suspect categories such as race or religion, and Plaintiffs do not seek protection for a fundamental right entitled to strict judicial scrutiny. Instead Chapter 83-354 is concerned with the right to impose a tax to raise revenue to expand, improve and construct new convention sites. Where taxation is concerned, and no specific federal right apart from equal protection is imperiled, the states have great leeway in making classifications which, in their judgment, produce reasonable systems of taxation. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 358, (1973).

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[6]See footnote 2.

The U.S. Supreme Court has said that:

> [I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and aggressive discrimination against particular persons and classes. Madden v. Kentucky, 309 U.S. 83, 88, (1940).

Thus, the Legislature has wide discretion in choosing a classification scheme or arrangement. Plaintiffs attacking the constitutionality of a legislative classification carry the burden of proving that any such classification 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). Further, statutory classifications need only bear some rational relationship to a legitimate state purpose. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 172, (1972); Patch Enterprises, Inc. v. McCall, 447 F.Supp. 1075, 1080 (M.D. Fla. 1978).

Chapter 83-354 presently authorizes the imposition of a three percent convention development tax on rentals

of defined living quarters for a period of six months or less. Respondents submit that the durational distinctions drawn in the statute to determine who shall pay the tax are reasonably related to the purpose of the statute and, therefore, do not violate the Equal Protection Clause.

As demonstrated earlier in this brief, the purpose of the statute is to increase revenues derived from tourism by providing funds to be used to build, extend, enlarge and improve publicly-owned convention, coliseum, and exhibition centers and to permit the construction of stadiums, arenas, and auditoriums. (See Section 1 of the statute.) These types of facilities are frequently desired and used by tourists and other persons renting the kinds of accommodations being taxed pursuant to the statute. Having such facilities available would also promote more tourists and conventioneers and increase the rentals derived from the types of accommodation taxed, such as hotel and motel rooms. Thus, there is a rational relationship between the purpose of the statute and the classification based on duration of use. Furthermore, this Court has effectively already rejected Petitioners' argument by holding that there was no equal protection violation that arose because of the

imposition of the 2% tourist development tax on persons who rent this same type of accommodation for a period of six (6) months or less in Miami Dolphins, Ltd. v. Metropolitan Dade County, supra at 988.

The Legislature is presumed to know the needs of the state with regard to tourist facilities. The Legislature determined that it was fiscally sound to impose the costs of accelerated expansion, renewal and improvement of convention centers on those who used and were entertained within the facilities planned. Such a determination is certainly enough to uphold the statute against the constitutional attack that it is violative of Equal Protection guarantees.

The fact that conventioneers who happen to rent the accommodations for more than six months are not taxed is meaningless insofar as the constitutional provision is concerned. In Ivy Steel and Wire Co., Inc. v. City of Jacksonville, 401 F.Supp. 701, 705 (M.D. Fla. 1975), the court upheld a water pollution charge imposed only against those hooking up with the Jacksonville sewer system after a certain date. The court's opinion stated:

> Plaintiffs argue that the ordinance unfairly requires that one group of persons pay for the benefit and

> exempts the other who also receive the benefit. However true this may be, the ordinance is not rendered unconstitutional. Our system of government frequently imposes certain burdens on some groups while exempting others.

In the case at bar, as in Ivy and Miami Dolphins, supra, the legislative allocation of the tax burden to sustain the cost of the development of convention centers is not subject to constitutional attack simply because others who may conceivably receive a benefit are not also being taxed. The issue is not whether all groups are taxed but whether all within the group are taxed on a like basis. Here, the convention development tax operates equally upon all renters of the designated types of accommodations for six months or less who are within the taxing areas.

Furthermore, the fact that the statute allows the levy of the convention development tax in certain Home Rule Charter counties does not make it violative of the Equal Protection Clause.

In Dade County the convention facilities to be constructed or expanded must be located within the City of Miami and the City of Miami Beach. The Plaintiffs who challenge the statute are essentially partnerships, limited partnerships and corporations owning and/or

operating hotels and motels not located within the two cities named. Their obvious motivation is fear of competition from hotels or motels that will be closer to the convention facilities to be developed or expanded. In this connection, the recent case styled Department of Legal Affairs v. Sanford-Orlando Kennel Club, supra, becomes relevant. That case makes clear that, so long as there is some kind of rational basis for the classification of subjects grouped together in the statute challenged, the validity of the statute should be upheld even though a group of competitors may be disadvantaged by the statute coming into effect.

IV. THE ACT DOES NOT VIOLATE THE DUE PROCESS CLAUSE.

Petitioners state that the phrase "for a period of 30 days or less" used in the statute is unconstitutionally vague. As previously noted, this phrase is no longer a part of the statute, which was amended to change the original thirty-day period used in imposing the tax to a period of six months or less. The phrase "for a period of six (6) months or less" now used in the amended Act was used in the tourist development tax (See Section 125.0104(3)(a), Fla. Stat.), which tax and statute, as noted above, have already been upheld in

Miami Dolphins v. Metropolitan Dade County, supra. Assuming, arguendo, that the phrase "for a period of thirty (30) days or less" had remained in the amended statute, the phrase is sufficiently clear to people of ordinary intelligence and is analogous to the phrase "for a period of six months or less" already upheld.

V. THE ACT DOES NOT VIOLATE UNIFORM TAXATION PROTECTIONS.

The District Court correctly held that the Act did not violate uniform taxation protections.

Article VII, Section 2, of the Florida Constitution reads,

> All ad valorem taxation shall be at a uniform rate within each taxing unit . . .

It is apparent that Article VII, Section 2, of our Constitution by its terms applies only to ad valorem taxes. The tax imposed by the statute is not an ad valorem tax because it is not based on the assessed value of property (See definition of "ad valorem tax" in Section 192.001(1), Fla. Stat.) It is an excise or sales tax based on the use of certain property and was designated to come within Chapter 212, Fla. Stat., which is entitled and concerns taxes on sales, uses and other transactions.

Furthermore, the tax authorized by the statute is uniform throughout the area in which it is levied - 3% of the rental price. In other words, everywhere the tax is levied, it is levied at the same rate and each municipality having its own tourist resort tax has the same opportunity to "opt out". This makes it uniform. See Gallant v. Stephens, 358 So.2d 536 (Fla. 1978); Tucker v. Underdown, 356 So.2d 251 (Fla. 1978); St. Johns River Management District v. Deseret Ranches of Florida, 421 So.2d 1067 (Fla. 1982). Not every taxpayer need benefit equally from a tax. Dressel v. Dade County, 219 So.2d 716 (Fla. 3d DCA 1969).

Conclusion

The Court is respectfully requested to affirm the comprehensive opinion of the District Court of Appeal, Third District of Florida, in this cause. In addition to the cases cited in this brief, and particularly Miami Dolphins Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981) and Department of Legal Affairs v. Sanford Kennel Club, Inc., 434 So.2d 879 (Fla. 1983), Respondents rely heavily on State v. City of Miami Beach, 234 So.2d 103 (Fla. 1970), a copy of which is included in the Appendix as Exhibit "D".

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand on this 13th day of August, 1984, upon Gerald F. Richman, Esquire and Bruce A. Christensen, Esquire, Floyd, Pearson, Stewart, Richman, Greer, Weil & Zack, P.A., One Biscayne Tower, 25th Floor, Miami, Florida 33131-1868.

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