O/a 10-3-84

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 65,324

FILED
SID J. WHITE
JUL 20 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

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.

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Petitioners are a group of resort hotels in Dade County and a tour operator who brought an action in the Circuit Court for declaratory and other relief challenging the validity of newly enacted Chapter 83-354 [the "Act"] and Dade County Ordinance 83-91 [the "Ordinance"]. These imposed a three percent Convention Development Tax on rentals of certain accommodations in addition to the five percent Sales Tax and two percent Tourist Development Tax already levied, bringing the total tax to ten percent. The Petitioners raised several constitutional and non-constitutional challenges to these two laws. Respondents are Dade County and its Tax Collector and two municipalities (Miami and Miami Beach) who were granted intervention by the Circuit Court. The two municipalities are the sole recipients of the tax funds.

At the hearing before the Honorable Jack M. Turner the facts were stipulated and the issues solely of a legal nature. A Final Judgment holding the Act and Ordinance invalid on the non-constitutional grounds was entered on November 10, 1983. A copy of the Judgment is included in the Appendix [D]. Having invalidated the laws the Trial Court chose not to rule on the "serious constitutional issues" raised. An appeal to the District Court by Respondents followed.

On February 28, 1984 the District Court reversed the Trial Court's principal holding, affirming the Trial Court's determination that the tax collection section of the Ordinance was invalid. The District Court decided the Constitutional issues in favor of the Act's validity de novo. The Petition to Invoke Discretionary Jurisdiction followed denial of the Motion for Rehearing by the District Court. Jurisdiction was granted on June 29, 1984 and exists under Article

V, Sect. 3(b)(3), Fla. Constitution (1968), and Rule 9.030(a)(2)(A)(i), (ii) and (iv), F.R.App.P.

STATEMENT OF FACTS

In the closing days of the legislative session, Dade and Duval Counties each had enacted separate convention tax bills. Each does not refer specifically to the County affected, but in fact limits the definition of counties affected such that each only actually applies to one county. The "Dade" Statute, Chapter 83-354 (§ 212.057, Fla. Stat.),[1] specifically applies only to counties as defined by

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[1] The Statute reads (with certain portions underlined for emphasis):

1983 REGULAR & SPECIAL SESSIONS Ch. 83-354

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

Section 1. Section 212.057, Florida Statutes, is created 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 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.

(2) All tax revenues and any interest accrued thereon received pursuant to this section shall be used 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;

(footnote 1 cont'd)

(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.

(d) For the purposes of completion of any project pursuant to this section, tax revenues and interest accrued may be used:

1. As collateral, pledged or hypothecated, for projects authorized by this section, including bonds issued in connection therewith; or

2. As a pledge or capital contribution in conjunction with a partnership, joint venture, or other business arrangement between a municipality and one or more business entities for projects authorized by this section.

(3) The governing body of each municipality in a county in which a municipal tourist tax is levied may adopt a resolution prohibiting the levy of the convention development tax within such municipality. If the governing body adopts such a resolution, the convention tax shall be levied by the county in all other areas of the county except such municipality provided, no funds collected pursuant to this act may be expended in a municipality which has adopted such a resolution.

(4) Before the county enacts an ordinance levying and imposing the tax, the county shall notify the governing body of each municipality in which projects are to be developed pursuant to paragraphs (2)(a) or (b). The governing bodies of such municipalities shall designate or appoint an authority to administer and disburse such proceeds and any other related source of revenue. The members of each such authority shall be selected

Sec. 125.011(1) of the Florida Statutes.[2] That statute in turn limited the definition to counties which have adopted home rule under three subsections of the 1885 Florida Constitution, as preserved by the 1968 Constitution. Each of the three subsections applies to a different Florida county: Dade, Hillsborough and Monroe. Only Dade County has adopted a "home rule" charter pursuant to this authority —so in the entire state, only Dade County actually had the right to adopt the three percent tax under this chapter.

The Duval statute, Chapter 83-356, is a similar tax, but only for two percent, and cleverly applies only to counties whose government has been consolidated with one or more municipalities, i.e., only Duval County. The most significant difference between 83-354 (Dade) and 83-356 (Duval) is that Dade's allows a three percent tax while Duval allows two percent. Both are "convention taxes" and both apply only to a single county. The remaining differences are obvious special "tailoring" as to expenditures.

(footnote 1 cont'd)

> from the tourism and hospitality industry that does business within such municipality and shall serve at the pleasure of the governing body of such municipality. The annual budget of such authority shall be subject to approval of the governing body of the municipality.
>
> Section 2. This act shall take effect upon becoming a law.

[2] 125.011(1):

> (1) "County" means any county operating under a home rule charter adopted pursuant to ss. 10, 11 and 24 of Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.

Dade's tax, as contrasted to Duval's, is carefully designed to fit the needs of only Dade County: 2/3 of the revenue collected must go to Miami Beach to refurbish and expand its existing facility; the remaining 1/3 must go to the City of Miami to build a new facility. No other municipality or area of the County may receive the funds. Not surprisingly, Miami and Miami Beach are the only two municipalities joining in the County's position. Broward County, for example, cannot impose a convention tax under either the Dade or Duval Convention Tax Acts. It must go to the Legislature to get its own obviously "special act".

Meanwhile, the residents of Hillsborough and Monroe counties, (the only one's even potentially in Dade's "class") as contrasted to Dade, need not fear imposition of the tax without the legislative notice or referendum required for a special act for they cannot be subjected to it without first changing their entire form of government to one of Home Rule. Thus their citizens are protected from the evils of a legislative special act; Dade's citizens are deprived of the intended constitutional protections if the Act is upheld.

Because of the imposition of the tax, Petitioners are faced with loss of business in amounts not specifically calculable. Their primary competition comes from Broward County to the immediate North, which cannot impose the tax, and from the municipalities of Surfside and Bal Harbour to the immediate South, both of which municipalities have "opted out" of the tax, an option prohibited to Petitioners and other hotels in their area. Hence, a tour group or any other customer renting a room in these other areas would pay three percent less tax. Tour operators are extremely cost conscious especially when attracting foreign tourists to this general area. It was stipulated that Petitioners below would have testified that based upon their experience, and announced reaction to the new tax,

they would be at a competitive disadvantage and face a definite loss of business, although they cannot give an exact amount.

In determining the Act Constitutional the District Court made findings de novo outside the Record in the Trial Court. Rather than accept the Legislature's determination that the Act applied to certain counties based upon whether they had enacted home rule government under the 1885 Florida Constitution, the District Court stated that the counties were classified based upon having "substantial tourist-oriented economies," noting that "these counties in particular have developed or plan to develop facilities that will attract a growing number of convention tourists." [Opinion p. 7] Neither finding is based upon the record below, nor even accurate.

The District Court likewise struggled with the Trial Court's determination that the Act did not contain a collection mechanism allowing the revenue to be collected by either the State Department of Revenue or the County then spent by the County. In essence, the District Court agreed with the Trial Court, but, incredibly, reversed holding the Department of Revenue had an unimplied right to collect and could hold the funds essentially for a future mandatory expenditure by the Legislature.

ARGUMENT

I. THE ACT IS UNCONSTITUTIONAL AS A SPECIAL OR LOCAL ACT BECAUSE IT LACKS NOTICE AND REFERENDUM PROVISIONS AND CONCERNS A PROHIBITED SUBJECT.

The first serious constitutional issue facing this Court for determination can be simply stated: Whether it is proper in Florida for the Legislature to enact local tax acts, applicable to only one county (or local

jurisdiction), without affording notice or referendum to the citizens. Petitioners fervently maintain such local or special tax acts without notice or referendum are unconstitutional, being in violation of Article III, Section 10, Article III, Section 11, as well as Article VII, Section 9 of the Florida Constitution (1968), and prohibited under Florida Statute Sec. 125.01(c).

A. Prohibited Special Act Without Referendum or Notice.

For any special law to be enacted in a constitutional manner notice or referendum requirements must be met:

> Article III, Section 10. Special laws. No special law shall be passed unless Notice of intention to seek enactment thereof has been published in the manner provided by general law. Such Notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors in the area affected.

Chapter 33-354 is unquestionably a special law for which no notice nor right of referendum was provided. In order for laws pertaining to subdivisions of the state or to subjects, persons or things of a class to be valid, the classification inherent in them must be based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class. Classification must be reasonable, not arbitrary, and must have some reasonable relation to the subject matter in respect to which the classification is imposed. Waybright v. Duval County, 196 So. 430 (Fla. 1940); The Department of Legal Affairs v. Sanford - Orlando Kennel Club, Inc., 434 So. 2d 879 (Fla. 1983). It is undisputed that this Act only applies to one county, Dade, and even potentially if two others vote to change their form of government, a maximum of only three. There is no constitutionally rational basis to limit that Act to the one or even these three counties.

A statute such as this tax which relates to a particular person or thing or particular subject of a class (Dade County) is a special one. Carter v. Norman, 38 So. 2d 30 (Fla. 1941). On the other hand, a statute relating to subdivisions of a state or to subjects, persons or things of a class, based upon proper classifications and differences that inhere in or are peculiar or appropriate to the class is a general law. Carter v. Norman, supra at 32. Finally, a statute relating to a particular subdivision or portions of the state or to particular places of classified locality; or, one that uses a classification scheme or some other criteria so its application is restricted to particular localities, is a local law or general law of local application. Carter v. Norman, supra at 32; City of Miami Beach v. Frankel, 363 So. 2d 555, 558 (Fla. 3rd DCA 1978).

No matter how classified initially, the classification must rest upon a difference which bears some reasonable and just relation to the subject matter affected by the act in respect to which the classification is proposed. Carter v. Norman, supra at 32. Neither the District Court nor the Respondents below could identify a rational classification for this Act which also applies uniformly to the subjects of the classification. Yet the District Court held the Act to be a general law. A general law must operate "uniformly upon subjects as they may exist in the state" and must apply "uniformly within permissible classifications." Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra at 881.

Stretching logic into illusion the District Court committed two errors in finding Chapter 83-354 to be a general law. First it completely ignored the classification system actually used by the Legislature for purposes of the Act, then attempted to justify the Act by choosing its own classification system, found

nowhere in the Act, but failed to apply it uniformly in determining the validity of the law.

In a highly convoluted fashion Chapter 83-354 defines the counties it applies to in such a manner as to only be applicable to Dade County. First, it refers to Chapter 125.011(1), Florida Statutes. That Statute limits "counties" by its terms, through reference to the 1885 Florida Constitution, to three: Dade, Monroe and Hillsborough. These are the only counties permitted under the 1885 Constitution to enact Home Rule Charters. Of these only Dade has enacted such a charter. Neither of the other two counties can fit the classification, except by further legislative act and referendum of the people adopting such a charter, thereby changing their form of government.

That this convoluted definition of affected counties is little more than a subterfuge is revealed by what occurred in the Legislature itself when the law was enacted. In the closing days of the legislative session, Dade and Duval counties both pressed for and had enacted <u>separate</u> convention tax bills. Each does not refer specifically to the county affected, but both in fact limit the definition of counties as to only apply to one county. Is it not intuitative that if the county classification system bore some rational relationship to the purpose of this legislation, a definition of "county" that at least fit both Dade and Duval could have been chosen?

In essence what the District Court has done is permit a local tax act to be adopted without referendum or notice. If some circuitious definition buried in Florida law (the prior 1885 Constitution) can be found to limit legislation to only Dade County, is there any doubt that similar tactics to avoid Article III, Section 10 of the Florida Constitution can be found to limit any legislation to any particular

county or locality? Can constitutional rights of the people of referendum or notice be so easily swept aside? Such blatant circumvention of the Constitution is dangerous precedent and fundamental error.

Petitioners do not suggest merely that the limitation to one county makes this a special act. Nor does the possibility that it could apply to two other counties make the law a valid general law. A class of three which cannot grow without further legislative or constitutional amendment is just as "closed" as a class of one which cannot grow. The potential "class" involving Dade County cannot even be expanded to the three counties without a referendum by the electors of the other two counties — the very thing the Legislature has sought to circumvent by disguising the Act to appear that it has broader application than it does. Thus, the Constitutional protection of referendum has been denied the citizens of Dade, while it is available to the rest of the "class" — Hillsborough and Monroe Counties.

Likewise, Petitioners do not argue that a limitation to one county (or three) makes the classification invalid. Rather, it is the fact that the limitation is arbitrary and has no rational relationship to the purpose of the Act that incontrovertably makes it a special law, subject to the notice and referendum protections of the Florida Constitution.

In evaluating population acts which may apply to only one county, this Court has held that where there is a substantial difference in population and the classification on a population basis for legislative purposes is reasonably related to the purposes to be effected, the law is a general law even though at the time it may be applicable to only one political subdivision of the state. But, if the subject matter of the act and the public purposes to be effectuated thereby bear no

reasonable relation to the difference in population upon which it rests, even though it has been passed under the guise of a general law, it is in fact a "local law." If no notice is published or the law contains no provision for a referendum, the law is invalid, an impermissible special or local law, and unconstitutional, Crandon, et al. v. Hazlett, 26 So. 2d 538 (Fla. 1946).

The definition contained in this Act limits its applicability to Dade County. No other county could be included in the Act without further legislative action and a referendum, and even then the Act is limited to only Monroe and Hillsborough Counties, in addition to Dade. The Act does not describe "county" for purposes of classification in terms susceptible of generic application in the future through population growth or the happening of any future event. As such, the statute is impermissibly limited. Compare, West Flagler Kennel Club, v. Florida State Racing Commission, 153 So. 2d 5 (Fla. 1963). Cf. Opinion to the Governor, 239 So. 2d 1, 5 (Fla. 1970) (appropriation may not be made contingent upon unrelated event.)

The imposition of the Dade County tax is comparable to the situation considered by this Court in Walker v. Pendarvis, 132 So. 2d 186 (Fla. 1961). In that case the question was whether a population act applicable only to Duval County was a special or local law. The Court found it to be special law and that the use of the word "now" created a closed class. See also, Carter v. Norman, supra. Whether the classification is subject to additional counties joining the class by no further legislative act appears to be the basis of the decision in State v. City of Miami Beach, 234 So. 2d 103 (Fla. 1970), wherein a population classification applicable to only Broward and Dade Counties, but open for others to potentially grow into, was held valid.

The key to whether a classification is valid or not is whether it is "reasonably related to the purposes to be effected . . . not on mere arbitrary lines of demarcation." Id. at 105. It takes no great analytical leap to see plainly the purpose of this statute is not reasonably related to its closed classification. Dade County is not the only county which may need or desire to develop convention facilities. The Legislature even demonstrated that by enacting a separate special law for Duval County on the exact subject.

Form of government was the classification specifically used by the Legislature to determine adoption of the tax under Chapter 83-354. Yet that classification system is not even mentioned by the District Court opinion. No attempt to rationally relate the classification system actually chosen is made. The Legistature's class is simply ignored. The reason why is obvious. Form of government has absolutely no relationship in reason to the purpose of the Act, funding development of convention facilities. If it does let the Respondents now demonstrate it to this Court.

What highlights the lack of rational relationship is that home rule form of government itself is not even the criteria chosen by the Legislature. It is only home rule adopted under a certain provision of the former Florida Constitution of 1885. Pinellas County, for example, also has home rule government authorized not by the 1885 Constitution but by act of the Legislature, Chapter 80-590, Laws of Florida. Yet it cannot impose this tax. The utter nonsense of this classification only reveals its true purpose, to limit the Act only to Dade County.

Ignoring the Legislature's classification scheme of the Act, the District Court accepted one suggested by Respondents below; that being that the three counties to which Chapter 83-354 potentially applies "have developed or plan to

develop facilities that will attract a growing number of convention tourists." (Opinion p. 7) Out of the blue the District Court decides that having "tourist-oriented economies" is the rational nexus linking the classification with the purpose of the Act.

Petitioners acknowledge that a classification based upon "tourist-oriented economies" rationally relates to the purpose of funding building of convention centers. But obvious error exists in the District Court's holding that this was the basis upon which this Act is a general law. That error is threefold. First, this is clearly not the classification system of the Act adopted by the Legislature, but one invented by the Respondents and the District Court. Indeed, where is it in the Act?

Second, there is no finding by the Circuit Court, no stipulated fact, no evidence or testimony that these three counties "have developed or plan to develop facilities that will attract a growing number of convention tourists." The Circuit Court was not even asked to make such a finding. This Record has nothing to support this contention by the District Court. Such wandering from the record in the trial court is reversible error. Maistrosky v. Harvey, 133 So. 2d 103 (2d DCA Fla. 1961); cert. den. 138 So. 2d 336; Kelley v. Kelley, 75 So. 2d 191 (Fla. 1954); Frank v. Jensen, 118 So. 2d 545 (Fla. 1960). At best, this is judicial fantasy by the appellate court. Since when did Hillsborough County have a "tourist-oriented economy"? To paraphrase Sandberg, it is Florida's County of the "Big Shoulders." Its economy is primarily based on business, commerce and industry, not tourism. Additionally, what evidence is there, judicially noted or otherwise, that "no growth" Monroe County plans to develop facilities to attract convention tourists?

The third error is the most fundamental. As stated by the District Court, quoting this Court:

> 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.

Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra at 881.

If indeed "tourist-oriented economies" were the classification system, then to be a general law that classification would have to apply uniformly throughout the state. This Act (even assuming that were the actual classification system), is not uniform of application. Broward County has a tourist-oriented economy, it cannot adopt the tax. Neither can Palm Beach nor Orange Counties. Upon what rational basis are they so precluded?

The case of Pinellas County most clearly highlights the charade of declaring Chapter 83-354 a general law. It has a "tourist-oriented economy" and with its Bayfront Center has built a "facilit[y] that will attract a growing number of convention tourists" [Opinion, p. 7], yet it can never fit into the classification system of the Act and adopt the Convention Develoment Tax. It even has home rule government adopted in 1980 pursuant to the authorization of Chapter 80-590, Laws of Florida. It qualifies under either the Legislature's or the District Court's classification system for this Act, but cannot impose the tax.

As to Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra, Respondents and the District Court fail to grasp the fundamental basis of the rationale which validated that act (as a general law) and must invalidate this one. There the act was written to provide that certain harness tracks which fell

below a particular daily "handle" (essentially gross revenue) could also hold dog races. The purpose was to aid ailing harness tracks and enrich the state coffers from the larger tax applicable to a larger "handle". Any harness track, wherever located, could partake if it did not exceed the revenue ceiling. The rational connection between the classification system (the daily "handle" ceiling) and the purpose of the act (aid to ailing tracks and added state revenues) is clear. Contrast that legislative scheme to the Dade Convention Tax Act. No other counties can partake of this statute regardless of what happens to them (except Hillsborough and Monroe, only if they change their form of government).

Also illustrative by contrast is the Tourist Development Tax established by Fla. Stat. Sec. 125.0104. See Miami Dolphins Ltd. v. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981). There the purpose of the legislation, tourist development, is closely related to that of this statute, convention center development (likely leading to more tourists). However, Sec. 125.0104 allows any county in the state to impose the tax. With the purposes of the two statutes so similar, the vast difference in what subdivisions may levy the tax cannot be justified.

It is obvious that an obscure clause of Florida law was used solely for the purpose of limiting this Act to Dade County without directly saying so. No justification of the gerrymandered classification can be made no matter whether the actual classification system chosen by the Legislature (home rule government under the 1885 Constitution) is used or the one invented by the District Court (tourist-oriented economies). If Chapter 83-354 is a general law, then any act can be written with some circuitous definition to only apply to one jurisdiction, without a rational basis for doing so, and Article III, Section 10 of the Florida Constitution

and its attendant rights of notice and referendum, are meaningless. The holding below is not only error, but reckless precedent and must be reversed.

B. Special Law on Prohibited Subject.

Florida's Constitution absolutely prohibits the enactment of special laws such as this tax:

> Article III, Section 11. Prohibited Special laws. 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.

The District Court, erroneously relying upon two cases[3] decided prior to pertinent changes in Florida law on this point, held this provision to be applicable only to the mechanics of collection, but not to acts which impose a local tax. After these two cases were decided, a fundamental change occurred in both the Constitution of Florida and the Florida Statutes regarding this exact issue. The Constitution of 1885, applicable to the decisions in Wilson and McMullen, provided in Article IX Section 5:

> **§ 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. . .

The successor to this provision, Article VII Sec. 9 of the 1968 Constitution, inserts a requirement that such legislative authorization for county taxes be by general law:

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[3] Wilson v. Hillsborough County Aviation Authority, 138 So. 2d 65 (Fla. 1962), and McMullen v. Pinellas County, 106 So 73 (1925).

> **§ 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. . . (Emphasis added).

Likewise Florida Statute Sec. 125.01(r) now requires that the power to levy and collect taxes for county purposes be provided by general law.

> (r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing district, and special assessments, borrow and expend money, and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law . . .

(Emphasis added).

Where Article III, Section 11 of the Florida Constitution prohibits special laws or general laws of local application pertaining to the assessment or collection of taxes, it is absolutely clear that present Florida law now prohibits such special or local acts which levy and collect taxes.

The District Court decision below is directly contrary not only to the legislative changes made after Wilson and McMullen, but with long established prior law. In State ex rel. Maxwell Hunter, Inc. v. O'Quinn, 154 So. 166 (Fla. 1934), this Court addressed a similar situation and held invalid a statute dealing with delinquent taxes which purported to affect only certain counties. The Court held that for the collection of the tax to be within constitutional requirements, regulations for collection of taxes shall be uniform throughout the state. Likewise, it considered the question of assessment where done on a basis that is not uniform throughout the state. The Court stated:

> The question herein is not merely one of the reasonableness of the classification to make an enactment a general and not a local law as may be done to some subjects of statutory regulation without violating the provisions of Section 20, Article 3 of the Constitution . . . Any enactment covering less than the entire state and related to the collection of taxes for state and county purposes may, in its operation and effect, be a violation of the provisions of the State Constitution which require uniform and equal rates of taxation, and forbid local or special laws for the assessment and collection of taxes for state and county purposes, which organic provisions by intendment require laws on such subjects to be of uniform operation throughout the entire state; and as a consequence, if so violative of the organic law, such an enactment is inoperative. O'Quinn, supra at 168. (Emphasis added)

The Court concluded at 169:

> In view of the prescribed organic system for state and county taxation, there appears to be no permissible classification by population or otherwise for statutory regulations which directly effect the assessment or the collection of taxes for state and county purposes. (Emphasis added).

The Dade Act and Ordinance both conflict directly with the constitutional and legislative restraints which concern the levy and collection of the Convention Development Tax. The District Court committed error by relying upon two cases which have been restricted by later legislation. From O'Quinn it is manifest the tax is unconstitutional. Numerous Florida counties, operating under completely different forms of government, have convention facilities, desire, or seek the same. Singling out one county by a convoluted definition is no more than a charade to disguise a prohibited special act.

There is no rational basis to limit the three percent convention tax to one home rule county, i.e., Dade, the two percent convention tax to counties whose

government has been consolidated with one or more municipalities, i.e., Duval, and leave the other than 65 counties in Florida powerless to enact a convention tax unless they first act to change their form of government. The legislative purpose is clear: to make two special laws look like two general laws, but "[n]o matter what one chooses to call it, a rose is a rose is a rose . . . ." Lake Placid Holding Co. v. Paparone, 414 So. 2d 564, 566 (2 DCA Fla. 1982).

The Statute and Ordinance are defective and unconstitutional. They are local or special acts on a constitutionally prohibited subject enacted in a constitutionally prohibited manner.

II. THE DISTRICT COURT ERRED IN HOLDING THE COLLECTION PROVISIONS OF CHAPTER 83-354 VALID.

The District Court's interpretation of the Act is unreasonable and erroneous. It concluded the Act was not defective in its lack of collection mechanisms and that the funds collected were to be held in the General Revenue Fund awaiting future appropriation.

To understand how far-fetched that construction is, the Court must understand how this Act relates to other Statutes. Such an understanding led both to the Attorney General of Florida and the Trial Court to conclude the Act was not valid. The District Court committed error by not looking to the plain language of the Act to determine its intent and validity. American Bankers Life Assur. Co. v. Williams, 212 So. 2d 777 (1st DCA Fla. 1968).

The Statute creates Sec. 212.057, Florida Statutes. Florida Statute Sec. 212.18 provides for collection of all revenue under that Chapter by the Department of Revenue:

> 212.18 Administration of law; rules and regulations.—
>
> (2) The department shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by this chapter . . . . (emphasis added).

Under Sec. 212.20 such funds collected under the Chapter are to be paid to the General Revenue Fund.

> 212.20 Funds collected, disposition; additional powers of department; operational expense.—
>
> (1) The department 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.

Chapter 83-354, in sharp contrast to § 125.0104 - the Tourist Development Tax, provides no mechanism for collection at all while implying that revenues collected will be segregated and mandating that they shall only be used for certain convention center projects. Thus, the Act is in direct conflict with the chapter of the Florida Statutes under which the Legislature expressly directed it was enacted. As a result, the Attorney General in Opinion 83-71, issued September 30, 1983, stated the Dade Statute (as well as the very similar Duval County Statute) was deficient and provided no mechanism for collection by the Department of Revenue:

> Chapter 83-354, Laws of Florida, contains no language authorizing or directing the Department of Revenue to administer, collect, or enforce the tax imposed by county ordinance enacted pursuant to the aforesaid law. Moreover, Ch. 83-354, supra, contains no language authorizing or requiring the Department of Revenue to disburse, transfer or distribute any funds generated from the tax to the county or city nor does said law by its terms create any trust fund as the repository of these tax

> revenues or provide statutory authority for the Department of Revenue to distribute or disburse funds from any such trust fund or from the general revenue fund. In short, the aforesaid law makes no specific reference to the Department of Revenue and does not by its terms impose any statutory duty, responsibility or authority on the Department of Revenue with regard to the administration, collection, and enforcement or disbursement or distribution of the tax authorized to be imposed by ordinance by certain counties.
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> * * *
>
> It is well established under Florida law that adminstrative officers and agencies have only such powers or authority granted by statute and that where there is a question as to the existence of authority, the question should be resolved against the existence of the authority. See, Florida State University v. Jenkins, 323 So. 2d 597 (1 DCA Fla., 1975); Dept. of Health and Rehabilitative Services v. Florida Psychiatric Soc., 382 So. 2d 1280 (1 DCA Fla., 1980); State ex rel. Greenberg v. Florida State Board of Dentistry, 297 So. 2d 628 (1 DCA Fla., 1974), cert. dismissed, 300 So. 2d 900 (Fla. 1974); St. Regis Paper Company v. State, 237 So. 2d 797 (1 DCA Fla., 1970); Edgerton v. International Company, 89 So. 2d 488 (Fla. 1956); State v. Smith, 35 So. 2d 650 (Fla. 1948).
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> * * *
>
> Based upon the foregoing principles of law, it is my opinion that the Department of Revenue is not authorized or required by statute to administer, collect and enforce or disburse or distribute the convention development tax authorized to be imposed by certain counties under the provisions of Chs. 83-354 and 83-356, Laws of Florida.

The District Court has attempted to put this Humpty Dumpty back together again by a tortured reading of the Act which actually emasculates the

entire expenditure sections of the law.[4]

Section 2 of the Chapter 83-354 has been, in essence, erased by the District Court's holding that the tax revenues collected should be held in the General Revenue Fund awaiting further appropriation measures. This holding flatly contradicts the Act's requirement that all revenues shall be spent in a certain manner. Section 2 provides:

> (2) All tax revenues and any interest accrued thereon received pursuant to this section shall be used 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.
>
> (d) For the purposes of completion of any project pursuant to this section, tax revenues and interest accrued may be used:
>
> 1. As collateral, pledged or hypothecated, for projects authorized by this section, including bonds issued in connection therewith; or
>
> 2. As a pledge or capital contribution in conjunction with a partnership, joint venture, or

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[4] Notably the District Court did not resurrect the Dade Ordinance which attempted to fill in the missing parts of the Act with a provision for collection by the County Tax Collector, nor did the District Court accept Respondents position that a trust fund (for Dade County) had been authorized pursuant to Fla. Stat. § 215.32. Since no cross-petition to this Court was filed by Respondents as to these aspects of the District Court's decision, they are not discussed here.

other business arrangement between a municipality and one or more business entities for projects authorized by this section.

What happened to this part of the Act under the District Court's interpretation? By awaiting further appropriation of the funds does the District Court mean that the Legislature is required to appropriate in the future? The Act says "shall be used." If so, will the District Court mandate the Legislature to act and only appropriate in accordance with Section 2? What possible authority exists whereby the District Court can require the Legislature to so act? If it cannot, then what happened to Section 2 of the Act?

To understand the statute's obvious defects, one need merely contrast the collection procedure provided by the Tourist Development Tax, § 125.0104, Florida Statutes, with Chapter 83-354. Note, for example, its provisions for collection by the Florida Department of Revenue, segregation of the funds, and creation of a county trust fund as a condition precedent to receipt of funds.[5]

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[5] Section 125.0104(3) provides in part:

(f) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under s. 212.03. The same duties and privileges imposed by chapter 212 upon dealers in tangible property, respecting the collection and remission of tax; the making of returns; the keeping of boods, records, and accounts; and compliance with the rules of the Department of Revenue in the administration of said chapter shall apply to and be binding upon all persons who are subject to the provisions of this section. However, the Department of Revenue may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed $25.

In determining this Act invalid the Attorney General contrasted it with Section 125.0104 and Chapter 83-355, the sequentially next enacted law of the same session:

> In further support of my opinion and by way of example, please see Senate Bill 11-C, Ch. 83-355, Laws of Florida, which imposes specific duties and responsibilities on the Department of Revenue in regard to administration, collection, and enforcement of the discretionary additional 1 percent tax authorized by that statute and provides for the distribution and administrative costs with reference to that tax. In addition, Senate Bill 11-C specifically authorizes the Department of Revenue to deposit the money collected pursuant thereto in a

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(footnote 5 cont'd)

> (g) The Department of Revenue shall keep records showing the amount of taxes collected, which records shall also include records disclosing the amount of taxes collected for and from each county in which the tax authorized by this section is applicable. These records shall be open for inspection during the regular office hours of the Department of Revenue, subject to the provisions of s. 213.053.
>
> (h) Collections received by the Department of Revenue from the tax, less costs of administration of this section, shall be paid and returned, on a monthly basis, to the county which imposed the tax, for use by the county in accordance with the provisions of this section. They shall be placed in the county Tourist Development Trust Fund of the respective county, which shall be established by each county as a condition precedent to receipt of such funds.
>
> (i) The Department of Revenue, under the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.
>
> (j) The Department of Revenue shall promulgate such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

"Criminal Justice Facilities Tax Trust Fund" created by said law instead of depositing the same in the General Revenue Fund of the State as required by §212.20, F.S. See also, §10, Ch. 82-154, Laws of Florida, relating to the Local Government Half-cent Sales Tax, creating the Local Government Half-cent Sales Tax Clearing Trust Fund and providing that moneys in the fund be distributed monthly by the Department of Revenue to participating units of local government. Cf., the Local Option Tourist Development Act, §125.0104, F.S., and more specifically §§125.0104(3)(f), (g), and (h), F.S.; §212.055, F.S. (1982 Supp.), which do not set up specific trust funds but do specifically direct how disbursement should be made by the Department of Revenue.

The hopeless conflicts built into this ill-conceived last minute legislation cannot be corrected. It obviously lacks collection procedures whereby the Department of Revenue is authorized to act. The District Court's gymnastics to eliminate this flaw lead it to pretending the expenditure provisions of Section 2 do not exist, and the absurd implied proposition that the Legislature must appropriate the funds in a certain manner in the future. Quite simply, this Act is invalid.

III. THE ACT IS UNCONSTITUTIONAL AS A VIOLATION OF EQUAL PROTECTION GUARANTEES.

The tax imposed is levied on "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" etc. When, for purposes of distributing some benefit or imposing some burden, a state or county attempts to classify persons on the basis of the duration of their residence within its boundaries, the distinctions it draws are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Zobel v. Williams, 457 U.S. 55 (1982); Vlandis v. Kline,

412 U.S. 441 (1973); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). In Florida, such distinctions are also subject to scrutiny under Article I, Section 2 of the Florida Constitution. Osterndorf v. Turner, 426 So. 2d 539 (1982). A law will survive such scrutiny only if the distinctions it draws rationally further a legitimate state purpose. In the absence of a rational basis for disparities in treatment, a law must be declared unconstitutional. Zobel, 457 U.S. at 60; Osterndorf, 426 So. 2d at 545.

In Osterndorf, this Court held §196.031(3)(e), Florida Statutes (Supp. 1980), unconstitutional under the Equal Protection Clause of the Florida Constitution. §196.031(3)(e) granted an enhanced homestead exemption of $25,000 to homeowners who had been residents of Florida for 5 consectutive years immediately prior to claiming the exemption, while homeowners with less than 5 years residency received only a standard $5,000 exemption. The state had advanced four bases for the distinction drawn by the statute.[6]

The Court ruled that "none of the four bases argued by the state . . . meets the rational basis test." Id. at 545.

> We find there is no rational basis for distinguishing between bona fide residents of more than 5 consecutive years and bona fide residents of less than 5 consecutive years in the payment of taxes on their homes. This disparate treatment of resident

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[6] These were (1) That new residents have an immediate fiscal impact upon local governments' capital outlay and should pay their own share of this tax burden; (2) that tax savings should be passed on to longer term residents who have in recent years contributed tax dollars that have created a revenue surplus and made the increased tax exemptions possible; (3) that this statute would discourage fraudulent homestead exemption applications; and (4) that the statute would avoid the possibility of excessive immigration of individuals who desire lower taxes but are in need of many governmental services.

> homeowners cannot be allowed if our Equal Protection Clause is to have any real meaning.

Id. at 545.

Persons in Dade County who (a) own homes or (b) rent living quarters for terms of 31 days or more or (c) rent single family homes for any duration, are not required to pay the tax. Thus, for purposes of payment of the tax, residents are classifed on the basis of the duration and type of their residence in Dade County. There is no rational basis for this classification. Imposition of the tax thus violates the Equal Protection Clause of both the United States and Florida Constitutions.

Likewise, on the issue of rationality, Petitioners entertain visitors whose initial period of stay is less than thirty days, but thereafter may exceed thirty days. No rational distinction exists between a person who visits Dade for twenty-nine days to use a facility, as opposed to one who stays for thirty-one days, in order to determine imposition of a tax to build convention centers.

Finally, there is no possible reasonable basis to impose a tax to build a convention center on a person paying on a month to month basis for a trailer lot in a trailer camp near Homestead or for a condominium in North Miami Beach, while the tax is not imposed on another person who rents a house in Miami for that same month.

In this case the District Court Opinion offered no explanation of any rational basis for the disparate treatment accorded (1) persons who reside in Dade County and who either (a) own homes, (b) rent single family homes for any length of time, or (c) rent any type of living quarters for terms of 31 days or more and (2) persons in Dade County who rent living quarters (other than single family homes) for terms of 30 days or less. Absent a rational basis for the distinction, the

disparity in treatment as to imposition of the Tax violates the Equal Protection Clause of both the United States and Florida Constitutions.

Likewise, there is no rational basis for the distinction drawn between counties which fall into the limitation (Dade) and those that do not. Because the definitional distinction bears no rational relationship to the imposition of the three percent Convention Development Tax, the Statute cannot withstand scrutiny under the Equal Protection Clauses and must be declared unconstitutional.

If the applicability of a statute is so limited that its classification does not rationally relate to its purpose, it is unconstitutional. In West Flagler Kennel Club v. Florida State Racing Com'n., supra, this Court made the applicable tests clear:

> Thus, with all due regard to presumptions of statutory validity and reasonable basis for legislative classification, we must and do conclude that the applicability of Chapter 61-1940 is delimited in such fashion and to such extent that the alleged classification can have no conceivable foundation in real and substantial differences in conditions affecting the subject regulated, and therefore is not based on distinctions "appropriate to a class."[6]
>
> [6] Shelton v. Reeder, Fla.1960, 121 So. 2d 145. 14 Fla.Jur. 515, 517. "Mere difference is not enough; the attempted classification must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis." State ex rel. Vars v. Knott, 135 Fla. 206, 184 So. 752, 754; Fronton, Inc. v. Florida State Racing Commission, note 5, supra.

In glaring contrast to the instant tax are other tourist development and transient rental taxes that have been upheld, e.g., Fla. Stat. § 212.03 and Fla. Stat. § 125.0104. For example, the Tourist Development Tax authorized by Section

125.0104, Florida Statutes (1981), is also levied on persons who rent living quarters or accommodations in hotels, motels, and apartments.[7] However, Section 125.0104 provides: any county in this state may levy and impose a tourist development tax and, there is an extensive and specific statutory scheme for the collection and distribution of taxes as contrasted to the instant Act that is wholly silent except for its reference to Chapter 212. There is absolutely no rational basis for singling out counties as to whether they should be permitted to impose a tax designed to raise money for convention development purposes. Appellants have not suggested a plausible one. The statute is unconstitutional.

The "opt-out" provisions of the Statute and Ordinance, relating to certain municipalities in Dade County which can exclude themselves from the tax also present Equal Protection violations. These are, however, discussed below as to "Uniform Taxation".

IV. THE ACT IS UNCONSTITUTIONAL AS A VIOLATION OF DUE PROCESS REQUIREMENTS.

The rental, lease or use of certain living quarters or accommodations "for a period of thirty days or less" is the event which triggers the imposition of the Convention Development Tax. However, neither Statute nor Ordinance define the phrase, "period of thirty days or less," and as such, both laws are unconstitutionally vague. Although perhaps not initially apparent, the practical problems this lack of definition creates are substantial, as outlined below. The

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[7] Other terms are different from the Convention Development Tax, including the vital fact that $125.0104 has a referendum requirement.

District Court merely concluded there was no ambiguity, without any explanation. [Opinion, p. 9]

Article I, Section 9 of the Florida Constitution and the Fourteenth Amendment of the Constitution of the United States both require that a legislative enactment be sufficiently definite as to apprise those to whom it applies what is required of them. Camp v. Board of Public Instruction, 368 U.S. 278, 7 L.Ed. 2d 285, 82 S.Ct. 275 (1961), State v. Wershow, 343 So. 2d 605 (Fla. 1977). A statute is unconstitutionally vague if persons of common intelligence must necessarily guess at its meaning and differ as to its application. Camp v. Board of Public Instruction, supra.

From the language of these laws it is impossible to determine the real period of rental, lease or use that falls within the scope of the tax. Section 83.46, Florida Statutes (1981) provides that in the absence of agreement, the duration of a renter's residential tenancy depends upon the "periods" for which the rent is payable.[8] If the rental period is weekly, the tenancy is from week to week; if the rental period monthly, the tenancy is from month to month. On this basis the Dade Act purports to impose a tax on many persons who pay their rent on a weekly or monthly basis. Those under §83.46, who rent one month at a time, under a fair

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[8]Section 83.46(2) reads:

> (2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(emphasis added).

reading of the Statute and Ordinance, are liable for the tax in the five months per year having thirty days or less, but not in the other seven months. Likewise, residents who pay their rent each week would be required to always pay the tax, even if they permanently reside here. Such a result is absurd, but is created by the vagueness. The District Court did not address this obvious defect at all.

What does a hotelier do under the statute as to tax collection from a guest who comes for four weeks and then ends up staying 33 days, or for a "period" of 33 days, but stays only 28 days? Is the tax collectable or not? No provision exists for refunds. Does a visitor only pay the tax for one thirty day period each year (or even only once in his life)? The statute does not answer these questions, nor do Appellants.

The vagueness of the statute is further aggravated by its penal nature. Failure to collect and remit this tax is punishable under Chapter 212. Judicial scrutiny of a law for vagueness is particularly stringent when the law is penal in character. State v. Wershow, supra; Cf., D'Alemberte v. Anderson, 349 So. 2d 164 (Fla. 1977). To be valid, a penal enactment must carry a sufficiently definite warning as to the conduct it commands or prohibits. Papachristou v. City of Jacksonville, 405 U.S. 156, L.Ed.2d 110, 92 S.Ct. (1972), State v. Lindsay, 248 So. 2d 377 (Fla. 1973). As discussed above, the application of this tax is uncertain due to the ambiguities of the implementing statute and ordinance. Accordingly, the Statute lacks the required definiteness as to the course of conduct prescribed and is therefore invalid.

V. THE ACT IS UNCONSTITUTIONAL AS A VIOLATION OF UNIFORM TAXATION PROTECTIONS.

The District Court committed reversible error by holding that the Act did not violate uniform taxation protections. From its Opinion it is difficult to tell the Court was even determining the same case that was before it. It completely ignored the prime basis of Petitioners' attack, not even sparing one word on the subject. Instead it limited its decision to the principle that Article VII, Section 2 of the Florida Constitution[9] is limited to ad valorem taxes, and this is not such a tax, all of which is true but was not the basis for the challenge.

Although the Florida constitutional provision recited is addressed to ad valorem taxes, its basic principle of uniform taxation in the taxing unit is one of universal application. This is true because the principle, and Article VII, Section 2, both are founded on Equal Protection guarantees of the United States Constitution and the 14th Amendment thereto. Equal Protection guarantees apply to taxation statutes with no less force. See Kahn v. Shevin, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974).

Specifically, the Equal Protection clause requires uniform rates of taxation in the taxing unit. In Gilman v. City of Sheboygan, 2 Black (U.S.) 510, 17 L.Ed. 305, 309 (1863), the United States Supreme Court noted:

> Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation.

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[9] Article VII, Section 2, of the Florida Constitution provides:

> SECTION 2. Taxes; rate.—All ad valorem taxation shall be at a uniform rate within each taxing unit, ...

> Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable.

This principle is well established. See Pine Grove Township v. Talcott, 19 Wall (U.S.) 666, 22 L.Ed. 227 (1874), and 71 Am.Jur.2d, State and Local Taxation, § 152 and cases cited therein. Likewise, it is without question that these requirements apply to the rate of taxation by a county. Foster v. Pryor, 189 U.S. 325, 23 S.Ct. 549, 47 L.Ed. 835 (1903).

Under the Act (and Ordinance) all municipalities within Dade County may "opt out" of the tax if they have a municipal resort tax. Bal Harbour and Surfside have so chosen to be exempt. Coral Gables has also voted to exempt itself although it may not have legal authority under this confusing statute to do so.[10]

As a result of this hodgepodge, Petitioners must charge three percent more tax (totalling ten percent)[11] than their closest competitors which are in Surfside and Bal Harbour (as well as those immediately north in Broward County). Thus, the rate of taxation in the taxing district is not uniform.

The Local Option Tourist Development Act (Section 125.0104) also contained a similar "opt-out" provision, although that aspect was not discussed by

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[10] Coral Gables voted to exempt itself, but has no municipal resort tax. Its plight highlights the anomaly created by these laws. Unincorporated areas, such as "Sunny Isles", and even municipalities such as Coral Gables, which will not benefit from the tax, may have to collect it while areas which have potentially much greater benefit, Bal Harbour and Surfside, are exempt.

[11] Five percent sales tax, two percent county-wide tourist tax and now the three percent convention tax are required to be charged by Petitioners.

this Court in the case challenging that Act, Miami Dolphins Ltd. v. Metropolitan Dade County, supra. There, however, the "opt-out" provision was included to establish uniform taxation on a county-wide basis as to a resort tax. Since the three municipalities (Miami Beach, Bal Harbour and Surfside) had existing city resort taxes of two percent, it brought the county-wide taxation to a uniform seven percent. The opposite effect will occur if the "opt-out" provisions of this Act are permitted. Unequal tax rates in the county are created — Bal Harbour and Surfside remaining at a total of seven percent with everyone else at ten percent.

Uniformity of taxation within the taxing district is required by the Florida Constitution.

> This provision of the Constitution has been construed many times to mean that the rate of taxation for state progress shall be uniform throughout the state, for county purposes uniform throughout the county, for municipal purposes uniform throughout the municipality, and for district purposes uniform throughout the district.

Town of Palm Beach v. City of West Palm Beach, 55 So. 2d 566, 571 (Fla. 1951); W. J. Howey Co. v. Williams, 195 So. 181 (Fla. 1940).

CONCLUSION

Holding this gerrymandered Act to be a general law was error. It clearly is a special local tax act limited to Dade County. No amount of excusing, pretending or imagining and will transform this obviously special act into a general law. Neither the classification system chosen by the Legislature nor that invented by the District Court wholly outside the Record rationally relate to the purpose of the Act and uniformly apply statewide. Local tax laws are prohibited by Florida law. Federal and State Constitutional guarantees of equal protection, due process

and uniform taxation have been violated. This Court should now correct the error and dangerous precedent set by the District Court below.

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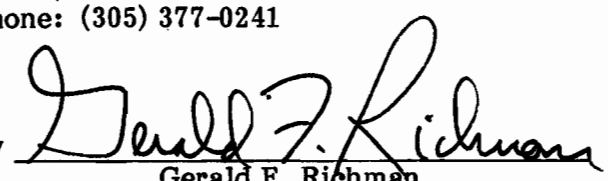
By 
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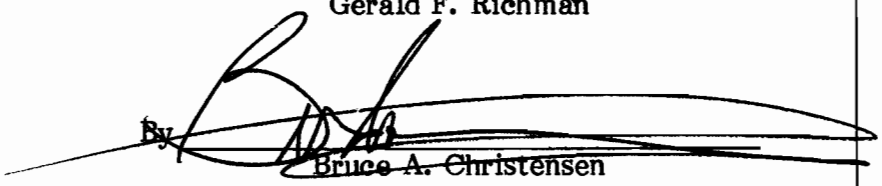
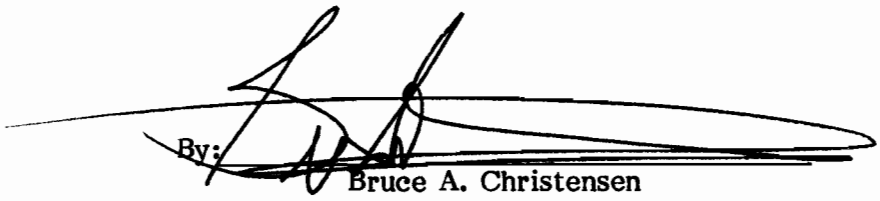
By 
Bruce A. Christensen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand, this 19 day of July, 1984, to: Jose Garcia-Pedrosa, City of Miami Attorney, 169 East Flagler Street, Suite 1101, Miami, Florida 33131; Vicki Jay, Esquire, Assistant County Attorney, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; and by mail to Lucia Allen Dougherty, Esq., City of Miami Beach Attorney, 1700 Convention Center Drive, Miami Beach, Florida 33139.

By: 
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