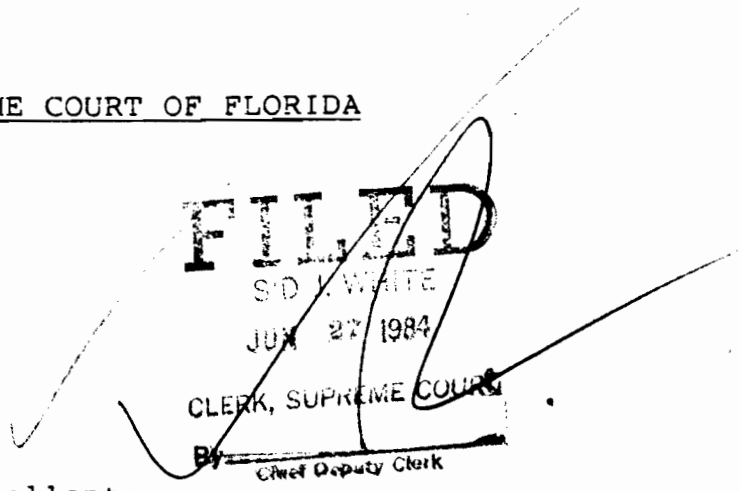
IN THE SUPREME COURT OF FLORIDA



WALLACE ORR, Secretary, State of Florida, Department of Labor and Employment Security; and D. ROBERT GRAHAM, Governor of the State of Florida

Appellants,

vs. CASE NO. 65,487

DAVID L. TRASK,

Appellee

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BRIEF OF AMICUS CURIAE, THE FLORIDA HOUSE OF REPRESENTATIVES, REPRESENTATIVE H. LEE MOFFITT, REPRESENTATIVE HERBERT F. MORGAN, AND THE FLORIDA SENATE, SENATOR N. CURTIS PETERSON, JR., HARRY A. JOHNSTON, II

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STATEMENT OF THE CASE AND FACTS

Amicus adopts the Statement of the Facts and of the Case contained in Appellants' Brief.

POINT ON APPEAL

DID THE TRIAL COURT ERR IN FINDING THAT THE LEGISLATURE CANNOT BY THE ANNUAL APPROPRIATIONS ACT TERMINATE THE OFFICE OF APPELLEE, A DEPUTY COMMISSIONER OF INDUSTRIAL CLAIMS?

ARGUMENT

THE TRIAL COURT ERRED IN FINDING THAT THE LEGISLATURE CANNOT BY THE GENERAL APPROPRIATIONS ACT TERMINATE THE OFFICE OF APPELLEE, A DEPUTY COMMISSIONER OF INDUSTRIAL CLAIMS.

The people, in whom all political power is inherent, have vested the legislative power of the state in the Legislature. Article I, Section 1, Fla. Const.; Article III, Section 1, Fla. Const. The Legislature is a policymaking body. It exercises the sovereign power of the state, including the power to create and abolish offices as well as the power to authorize the expenditure of state funds.

In issue is the power of the Legislature to direct through proviso language in the general appropriations act a reduction in the number of Deputy Commissioners of Industrial Claims in specific geographic regions of the state. Item 1203 of the 1983 general appropriations act provides as follows:

> 1203 Salaries and Benefits Positions 78
> From Workers' Compensation
> Administrative Trust Fund.....2,370,723
>
> Funds and positions in Specific Appropriation 1203 contemplate the elimination of one Deputy Commissioner by July 1, 1983 and three Deputy Commissioners by December 31, 1983; one from District J and three from District K.

With the exception of certain portions vetoed on June 30, 1983, which are not applicable to this case, the general appropriations act was approved by the Governor and filed with the Secretary of State as Chapter 83-300, Laws of Florida.

There is substantial authority to support the principle that the legislative authority to create an office is concomitant with the authority to abolish an office. This principle has been succinctly stated:

> In general, the legislature or other governmental authority which possesses the power to create an office has the power, in the absence of some restriction imposed by a higher authority, to abolish an office but the intention of the competent authority to abolish must be clear. See 67 C.J.S., Officers, s.14.

In Florida, the courts have recognized this principle in a long line of cases. City of Jacksonville v. Smoot, 83 Fla. 575, 92 So. 617 (1922); Hall v. Strickland, 170 So. 2d 827 (Fla. 1965); and City of Miami v. Rodriquez - Quesada, 388 So. 2d 258 (Fla. 3d DCA 1980).

In the exercise of this power, the Florida Legislature has abolished offices by general act/1 and by special act./2 This power to abolish an office is applicable whether the "office" is thought of as a particular class of officers (e.g. the office of deputy commissioner) or whether it is a single position, one

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/1 See, for example, Chapter 76-168, Laws of Florida, as amended by Chapter 77-456, Laws of Florida, repealing chapter 490, Fla. Stat., and abolishing the Board of Examiners of Psychology; also, Chapter 83-182 and Chapter 84-35, Laws of Florida, abolishing (and reconstituting) the Hospital Cost Containment Board.

/2 See, for example, Chapter 7659, Laws of Florida, 1917, which was the act at issue in Smoot, supra.

officer within the class. This is true because the ability to abolish an entire class of officers, being the greater power, must necessarily carry with it the power to eliminate less than the whole class.

What distinguishes this case from prior Florida examples, however, is the use of the general appropriations act to set the number of authorized Deputy Commissioner positions. The general appropriations act sets the number of positions and the funding level for all state governmental entities for the ensuing fiscal year. The act reflects those positions justified by agencies in subcommittee and committee hearings. It also reflects changes necessary to implement policy and to eliminate waste and inefficiency. Although restricted in the matter which can be constitutionally contained in the general appropriations act by Article III, Section 3, Fla. Const., its use to establish the number of authorized Deputy Commissioner positions is a valid and properly exercised power. The appropriation contained in Item 1203 as well as the additional proviso language is the product of these factors and is also consistent with the principles of Brown v. Firestone, 382 So. 2d 654 (Fla. 1980). In Brown, this Court stated:

> The Florida Legislature is vested with the authority to enact appropriations and reasonably to direct their use. In furtherance of the latter power, the legislature may attach qualifications or restrictions to the use of appropriated funds. Id. at 663.

An effective policymaker adjusts to changing conditions and the appropriation contained in Item 1203 was such an adjustment, and was the result of a calculated legislative initiative. In

1979, the Legislature enacted a substantial reform of the workers' compensation system. See Chapter 79-40, Laws of Florida, and Chapter 79-312, Laws of Florida. A study by the Joint Committee on Workmen's Compensation recommended many of the changes embodied in the 1979 bill. One of the goals of the study and the bill was to increase the efficiency, and thereby reduce the costs, of the system then in effect./3 The primary mechanism to achieve this efficiency was implementation of the wage-loss concept, which was the heart of the reforms which passed.

In the Legislative Budget Request submitted by the Office of Chief Commissioner for the 1983 fiscal year, there is evidence that measurable progress toward the legislative goals has been achieved. Within the budget request it is stated under the subsection title "Program Need":

> Since the 1979 amendments to Chapter 440, Florida Statutes, the total caseload has decreased. This reduction has been constant, from 23,109 hearings held in 1979-80 to 15,616 hearings held in 1981-82. However, the complexity and judicial time expended on each case has increased.../4

The Legislature was squarely presented with a policy decision. In the face of a 32.4% reduction in caseload, the Legislature determined that 4 deputy commissioners, 14.8% of the

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3/ A memorandum from Senator MacKay, Chairman of the Joint Committee, presenting the committee's findings and recommendations is attached in Appendix A.

4/ A copy of the transmittal letter, the table of contents, and the Program Component section from the budget document are attached in Appendix B.

total number of deputy commissioners positions, should be eliminated effective December 31, 1983.

This decision surely was within the province of the Legislature. In fact, it is essential that the Legislature under its appropriations authority participate in such a decision. Article VII, Sec. 1(c), Fla. Const. It cannot be argued that the elimination of statutorily created positions in the name of economy and efficiency is not a valid exercise of legislative authority. It is well settled that the judiciary will not question the wisdom of legislative acts or substitute its own judgment for that of the Legislature. State v. Yu, 400 So. 2d 762 (Fla. 1981); Hamilton v. State, 366 So. 2d 8 (Fla. 1978); Holley v. Adams, 238 So. 2d 401 (Fla. 1970); In Re Advisory Opinion to the Governor, 239 So. 2d 1 (Fla. 1970)

The use of the general appropriations act to abolish an office is not without guidelines. In Brown this Court discussed the authority of the Legislature in light of the "one subject" limitation of Article III, Section 12, Fla. Const. Two general principles were established, one of which states that the appropriations act "must not change or amend existing law on subjects other than appropriations."/5 Brown, supra., at 664. This principle has been adhered to in Item 1203 and in the enactment of the 1983 general appropriations act.

5/ The second principle requires a direct and rational relationship between the purpose of an appropriation and any qualification or restriction attached hereto. Appellee has not challenged the validity of the proviso attached to Item 1203.

Before, during, and after the passage of the 1983 general appropriations act, the term of office for Deputy Commissioners is four years. Appellee admitted at the final hearing in the trial court that the statute, section 440.45, Fla. Stat., had not been amended by Chapter 83-300. (Transcript of Final Hearing, p. 14) Thus, every authorized position/6 in the class of officers of Deputy Comissioners is entitled to a four year term. Subsequent to December 31, 1983 Appellee was no longer in an authorized position.

Appellee asserted in the trial court that he has "a vested right and title" to his office. The Order below provides no definition of this alleged right and title but apparently accords it superiority over the exercise of sovereign legislative powers. Assuming that there is some defined property interest, no court has held such an interest to be absolute, protecting against all encroachments. Rather, the interest is limited by due process considerations. Certainly one aspect of due process must include the nature of the political system which gave birth to such property interest. See Gordon v. Leatherman, 450 F.2d 562 (5th Cir. 1971). Thus, the interest must be balanced against the countervailing interests. Here, those countervailing interests include a public policy decision to promote efficiency and economy in state government through the elimination of unnecessary positions as documented in the budgetary process. If

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6/ "Authorized position" is defined in s. 216.011(1)(d), Fla. Stat., to mean "a position included in an approved budget."

the property interests of a state officer, whose position was created by statute/7, override the legitimate exercise of the sovereign power to enact "[l]aws making appropriations for salaries of public officers and other current expenses of the state...", then public policymaking is a slave unto itself. The tail is wagging the dog. Such an absurd result should not be sanctioned by this Court.

7/ A distinction should be drawn between the case sub judice and Article V, Section 9, Fla. Const., which sets certain procedural requirements for abolishing a judicial office. That section prohibits the premature termination of a judge's term of office. There is no similar restraint on the Legislature in truncating the terms of statutory officers.

CONCLUSION

The trial court's holding that the Legislature cannot by the general appropriations act terminate the office of appellee, a Deputy Commissioner of Industrial Claims, is clearly erroneous. Such a holding ignores the power of the Legislature to create and abolish an office as well as the power of the Legislature to effectuate policy through the general appropriations act. The legislative authority is clear and overrides any interest in or right to the office possessed by Appellee. The order of the trial court, being clearly erroneous, should be reversed by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief and appendix thereto has been sent by U. S. Mail to DAN TURNBULL, Assistant General Counsel, Department of Labor & Employment Security, 131 Montgomery Building, 2562 Executive Center Circle East, Tallahassee, Florida 32301; GERALD T. CURINGTON, Assistant Attorney General, Suite 1501 , The Capitol, Tallahassee, Florida 32301; STEPHEN M. SLEPIN, ESQ., 1114 East Park Avenue, Tallahassee, Florida 32301; and ARTHUR J. ENGLAND, JR., ESQ., 1400 Southeast First National Bank Building, 100 S. Biscayne Boulevard, Miami, Florida 33131, this 27th day of June, 1984.

Chris Haughee