OA 10-1-84

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.

DAVID L. TRASK,

Appellee.
_____/

CASE NO. 65,487

Appeal taken from the Circuit Court
of the Eleventh Judicial Circuit,
in and for Dade County, Florida

ANSWER BRIEF OF APPELLEE
(Deputy Commissioner David L. Trask)

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PRELIMINARY STATEMENT

Appellee, Judge David L. Trask, has moved this appeal dismissed as moot. This Court has reserved ruling.

An appellant may not seek reversal of a lower court order for error cured by subsequent events or events that fail to materialize. Myers v. State, 31 So. 275 (Fla. 1901); Stephens Lumber Co. v. Cates, 56 So. 298 (Fla. 1911), reh. den.; Welch v. Moothart, 89 So.2d 485 (Fla. 1956); Molne v. Keyes Co., 357 So.2d 262 (Fla. 3d DCA 1978); Appellate Review, 3 Fla.Jur.2d §285.

It is a fundamental principle of appellate procedure that only actual controversies should be reviewed by direct appeal, not academic or moot questions. Cottrell v. Amerkan, 35 So.2d 383 (Fla. 1948); Evans v. Carroll, 104 So.2d 375 (Fla. 1958); Bahia Mar Caterers v. City of Fort Lauderdale, 85 So.2d 591 (Fla. 1956); State v. Board of Public Instruction of Orange County, 216 So.2d 195 (Fla. 1968); Board of Public Instruction of Orange County v. Budget Commission of Orange County, 249 So.2d 6 (Fla. 1971); DuPuis v. 79th Street Hotel, Inc., 231 So.2d 532 (Fla. 3d DCA 1970), cert. den.; Appellate Review, 3 Fla.Jur.2d §286.

As demonstrated herein, viz., STATEMENT OF THE FACTS and CHRONOLOGY, this case was and is moot and would always have been moot had the Appellants not created the very problem (a fifth

Miami Deputy Commissioner for a few months) for which they seek to punish David L. Trask.

Appellants impute to the Legislature a violation of Article II, §3, Fla. Const., by insisting that: The Legislature decided who should judge Dade-Monroe compensation cases, we didn't, and that "who" was anyone but David L. Trask. Cf., State ex rel. Attorney General v. Gleason, 12 Fla. 190 (Fla. 1869); Simmons v. State, 160 Fla. 626, 36 So.2d 207 (Fla. 1948); State ex rel. Watson v. Caldwell, 156 Fla. 618, 23 So.2d 855 (Fla. 1946), supp. 24 So.2d 797; Landis v. Bird, 163 So. 248 (Fla. 1935); In re. Advisory Opinion to the Governor, 276 So.2d 25 (Fla. 1973), inter alia.

Appellants' invasion of David L. Trask's property rights in and to an existent office to which he has title, also implicates federal "due process" considerations.

Too, Article I, §10, U.S. Const., and Article I, §10, Fla. Const., prohibiting the impairment of contract are material.

STATEMENT OF THE FACTS

David L. Trask, appointed twice by Governor Reubin Askew and once by Governor D. Robert Graham pursuant to §440.45, Fla. Stat. (after recommendation of the Third District Court of Appeal Judicial Nominating Commission):

1. Is one of four District K (Dade and Monroe Counties) Deputy Commissioners,

2. Is commissioned to serve a four-year term of office expiring January 26, 1986,

3. And has never been removed for cause, nor purportedly removed for cause (nor for any other reason) by the Governor.

Transcript of Circuit Court proceedings (March 13, 1984), at 18-19; Stipulation of the Parties (Pl. Exhibit 1).

Wallace Orr, Secretary of the Department of Labor and Employment Security, sent to Judge Trask an August 1983 letter declaring ouster of Appellee or abolition or deletion of his "position" effective December 31, 1983. Stipulation of the Parties (Pl. Exhibit 1).

In August 1983 -- when Wallace Orr notified this Appellee that his office would be abolished effective December 31, 1983 -- Judge Trask was the second-senior Deputy Commissioner in District K, with a term due to end pursuant to §440.45, Fla. Stat., in

January 1986 -- and the most junior Deputy Commissioner's term was due to expire November 4, 1983 (Appellate Proffer, Orr letter to Graham, August 22, 1983, p. 2), but the Appellants herein re-appointed that junior commissioner, thereby creating by December 31, 1983 the fifth District K Deputy Commissioner's position. Appellee was precluded by the lower court from pursuing this line of inquiry at trial. See, transcript of Circuit Court proceedings at pp. 90-92.

Thereafter, the Appellants having recreated a fifth position by appointing Judge Tomlinson (even as they sought to oust Judge Trask), Judge Esquiroz resigned and reduced the number of District K deputies again to four. Transcript of Circuit Court proceedings, at 22-23.

At the time of the trial of this cause, and since then, there have been four District K Deputy Commissioners: Honorable Alan Kuker, Honorable David L. Trask, Honorable William Johnson, Honorable John Tomlinson. Transcript of Circuit Court proceedings, at 24.

Lanny Larson, Director of Administrative Services for Mr. Orr's Department of Labor and Employment Security, id. at 31, is the man responsible for requests for deletion, and his office initiated the intended deletion process. Id. at 32-33. Mr. Larson believed that Judge Trask's budgetary position number was "02603." Id. at 34. Mr. Larson said specifically, "Yes, I believe it's

number 02603." Id. at 54. Mr. Larson believes that Judge Trask's budgetary position number (02603) was deleted by virtue of a letter sent to the Department in December 1983 from the Governor's Office per Thomas Herndon, id. at 55, although there is no reference on that letter to position number 02603. Ibid. See also, transcript of Circuit Court proceedings at 56.

However, Lanny Larson has never looked at Judge Trask's "State of Florida, Division of Personnel Exempt Position Description," id. at 56, and has never seen, therefore, Judge Trask's "position number 08189675-06." Id. at 56-57.

Nor has he seen the following Trask position number: "Deputy Commissioner David Trask, position number 2118967506." Id. at 57.

Mr. Larson, testifying for Appellants (defendants below), explained the conflict on the grounds that number 02603 is "the budget number," in the opinion of the Department, id. at 60, but that the Department's (the Appellant's) documentation referred to it as a "position number." Then he qualified that distinction or explanation by noting that this relates to budget positions having more than one funding source, ibid., but admitted that he has no knowledge of Deputy Commissioners being paid from anything other than the workers' compensation administration trust fund. Id. at 60.

Mr. Larson further testified that the accepted and

appropriate procedure, upon the resignation of Deputy Commissioner Esquiroz (to take a circuit court seat), would be to assign David L. Trask to the vacated Esquiroz position. Id. at 64.

Mr. Larson himself did not write the Department's letter to the Governor (reportedly to delete a position number attributable to Judge Trask), some person in his office did. Id. at 64-65. Conveniently, Mr. Larson did not remember the discussion of the Department to the effect that a Deputy Commissioner with a term of office could not be summarily removed from that office supposedly by an appropriations act. Ibid.

The defendants below, Appellants before this Court, then produced William Kinock of the Governor's Office, id. at 68, who testified that the normal process of adding or deleting is through the appropriations process, where the Legislature does not identify a position number for deletion. Id. at 70-71. Mr. Kinock addressed an appropriations provision for the Office of Chief Commissioner for Workers' Compensation. Id. at 72. Mr. Kinock, or his office, made a recommendation to delete three "positions" in the Office of the Chief Commissioner of Workers' Compensation. Id. at 76-77. The Governor's Office recommended that positions be deleted through attrition, voluntary resignation or expiration of term of appointment. Id. at 77-78. And that recommendation was submitted to the Legislature. Ibid.

Mr. Kinock testified that the Deputy Commissioners' salaries are from the Workers' Compensation [sic] Trust Fund, id. at 81, and that although he testified that additions or deletions are effectuated by the Legislature, the Appropriations Act does not complete the process or actually result in the intended reductions. Ibid. Any deletion of a position is accomplished administratively by the Executive Branch. Id. at 81-82. In this cross-examination, Mr. Kinock (who purported to be an expert) indicated that he was not sure what a state officer is. Id. at 83. In dealing with the matter at hand, Mr. Kinock did not know that he was dealing with David L. Trask or that he was a state officer with a fixed term of office. Ibid. Indeed, Mr. Kinock then conceded that he did not in fact sign the letter that deleted the position (or purported to do so). Id. at 83-84. Asked again whether he took the final action, or has ever taken the final action, to delete the position of a state officer holding a term of office, Mr. Kinock gave a blushingly anticipable reply: "I don't have that responsibility. . . ." Id. at 84.

Thus Mr. Kinock testified, on cross-examination, that until he came to the trial he was not aware that the subject (David L. Trask) has a four-year term of office that expires in January 1986: "That's correct. I was not aware of that." Id. at 84-85.

Mr. Kinock, like Mr. Larson, was unable to testify as to the amount of money in the Workers' Compensation Administrative Trust Fund on December 31, 1983, id. at 85 and see also Larson at 64, but see Stipulation of the Parties (Pl. Exhibit 1) re sufficient monies.

Mr. Kinock testified that someone in his office, not Mr. Larson, initiated the process to delete what he thought was Judge Trask's position. Mr. Kinock was asked whether he personally purported to delete Judge Trask's position number, and he again answered in an anticipable fashion: "I do not take the final action. . . ." Id. at 86.

CHRONOLOGY

August 22, 1983 - District K Officers -

Alan M. Kuker	Began:	2/14/73	Current Term Expires:	2/13/85
David L. Trask		1/10/74		1/09/86
William Johnson		3/21/77		3/20/85
Margarita Esquiroz		6/04/79		6/03/87
John G. Tomlinson		11/05/79		11/04/83

(W. Orr letter to Governor Graham, 8/22/83: Appellate Proffer A-1)

August 22, 1983

Wallace Orr writes DAVID L. TRASK that his "position" will be deleted December 31, 1983.
(Stipulation of Parties, Pl. Exhibit 1; Complaint Exhibit A)

August 22, 1983

Wallace Orr's objective was to reduce District K to 4 Deputy Commissioners.
(Transcript of Cir. Ct. proceedings at T-91, 92; Appellate Proffer A-1)

November 5, 1983 - District K Officers -

Alan M. Kuker	Current Term Expires:	2/13/85
DAVID L. TRASK		1/09/86
William Johnson		3/20/85
Margarita Esquiroz		6/03/87

November 1983 or Thereafter

John G. Tomlinson re-appointed by D. Robert Graham for four-year term in District K.
(Transcript of Cir. Ct. proceedings at T-92; Appellate Proffer A-1)

February 1984

Margarita Esquiroz resigns as District K Deputy Commissioner and becomes Circuit Judge per gubernatorial appointment.
(Pl. Exhibit 3; Transcript of Cir. Ct. proceedings at T-22)

March 13, 1984 - District K Officers -

Alan M. Kuker	Current Term Expires:	2/13/85
DAVID L. TRASK		1/09/86
William Johnson		3/20/85
John G. Tomlinson		/ /87

(Transcript of Cir. Ct. proceedings at T-22, 24)

Q.E.D.:

1. Before David L. Trask's "position" was to be "deleted" on 12/31/83 in order to have only 4 Deputy Commissioners in District K, there were 4 Deputy Commissioners in District K (including Judge Trask) in November 1983.
2. Afterward, but before trial, there were again only 4 Deputy Commissioners in District K (including Judge Trask).
3. And it would have been, then, accepted procedure to assign Trask the Esquiroz position number. Transcript at 64.

STATEMENT OF THE CASE

The Circuit Court entered Final Judgment and permanent injunction predicated of the parties' stipulations and proofs at trial. Defendants appealed.

The District Court of Appeal (Chief Judge Schwartz dissenting) certified the Final Judgment for disposition prior to adjournment of the 1984 Legislature.

ISSUE I

WHETHER THE LEGISLATURE IN ABOLISHING A STATUTORY OFFICE DEPRIVES THE INCUMBENT OF ANY VESTED RIGHT AND TITLE TO THE OFFICE OR DEPRIVES THE INCUMBENT OF ANY CONSTITUTIONAL RIGHT.

This "issue" is, in the most obvious sense, a strawman.

This "issue" assumes that the 1983 Appropriations Act did indeed abolish the office of Judge David Trask (in derogation of §440.45, Fla. Stat., and Judge Trask's commission of office) and further assumes that the Appropriations Act or a proviso thereof may lawfully accomplish such end . . . and then argues the academic, and extraneous "issue" that the Legislature may abolish an office.

The 1983 Appropriations Act, by its very terms, did not purport to abolish Judge Trask's office or to oust him from office.

The 1983 Appropriations Act, at §1203, addressed the Office of Chief Commissioner and, by its very words, appropriated monies in contemplation of the elimination of certain commissioners. It was, explicitly, a contingent money proviso.

Obviously, the Legislature did not "abolish David Trask's office," nor "oust David Trask," nor "eliminate David Trask."

Nor would such a Bill of Attainder have been constitutionally permissible. Art. I, §10, Declaration of Rights, Fla. Const.

Nor would a substantively legislative provision of an appropriations act have been constitutional. Art. III, §12, Fla. Const.

This Court, of course, should and does read legislative enactments to be constitutional where and if possible. Brown v. Firestone, 382 So.2d 654 (Fla. 1980); Dickinson v. Stone, 251 So.2d 268 (Fla. 1971).

In fine, Appellants' thesis -- i.e., that the Legislature of the State of Florida may create and abolish certain offices (presumably by lawful means, only) -- is quite beside the point of the instant cause.

The evidence of record demonstrates conclusively that it was Wallace Orr (not the Legislature of the State of Florida) who wanted Judge Trask out of office. It was Wallace Orr (not the Legislature) who undertook to get Judge Trask out of office, but who mistakenly went after someone else's budgetary position number. It was D. Robert Graham who, after November 4, 1983 -- almost two months before the time that Judge Trask was to be eliminated or abolished or ousted on December 31, 1983 per Wallace Orr's threat -- created a fifth Deputy Commissioner in Miami, by appointing Judge Tomlinson after his term had expired on November 4, 1983. It was, then, Wallace Orr and D. Robert Graham who continued to seek the ouster of Judge Trask on the ersatz principle that the Legislature required such abolition

or ouster (or had actually effectuated same) in order to reduce the Miami cadre of Deputy Commissioners to four (4).

Governor Graham always had the power to remove or suspend Judge Trask from office "for cause" pursuant to §440.45, Fla. Stat., but has never done so. Transcript of Circuit Court proceedings at 19. Instead, Orr and Graham targeted Judge Trask, notwithstanding his fixed four-year term of office, rationalized their targeting of Judge Trask on the alleged need to reduce the Miami office to four Commissioners, thereupon increased the Miami office to five Commissioners (by appointing Judge Tomlinson before December 31, 1983) and persisted in their assault upon Judge Trask.

The Legislature may have been less than immaculate in its drafting of the Appropriations Act proviso; but as to this case on this record, the Legislature's policies and powers are clearly irrelevant. 1/

1/ The Legislature's amicus brief argues, without a single supporting citation, that an Appropriations Act proviso, presumably even one, such as this, silent as to abolition or termination of any office -- is lawfully effective to abolish an office simply by dint of appropriations' diminution. The Constitution of Florida argues to the contrary. See, Art. III, §12, Fla. Const. But such ex cathedra pronouncement by the amicus, which begs to engorge appropriations chairpersons with the most awesome of powers over every statutory office holder in Florida (a power exercisable surreptitiously in the appropriations context and seemingly delegable without standards to otherwise unauthorized officials such as Wallace Orr) is no more than an entreaty to this Court to create such extra-constitutional power. Appropriations (con't)

Even so -- even though the "issue" tried and adjudicated below was not whether the Legislature of Florida could create and abolish offices (lawfully) -- the Initial Brief of Appellants is curious in its argumentation.

It would seem to be clear beyond cavil that Judge Trask, as a state officer, has a right, title and interest in and to his office, including a property interest. Hatton v. Joughin, 138 So. 392 (Fla. 1931); DuBose v. Kelly, 181 So. 11 (Fla. 1938); Gilbert v. Morrow, 277 So.2d 812 (Fla. 1st DCA 1973), inter alia.

As declared in Gilbert v. Morrow, op. cit. at 813-814:

> An office holder has a property right in his office and this right may not be unlawfully taken away or illegally infringed upon. State ex rel. Landis v. Tedder, 106 Fla. 140, 143 So. 148 (1932).
> . . .

Or, as this Court observed in DuBose v. Kelly: The Court has held that a public office is a public trust, that the incumbent has property rights therein, that the right to possess and enjoy the emoluments or proceeds of an office is one clearly subject "to judicial protection," and that the Supreme Court of Florida has been committed to the doctrine that "a public officer has a

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1/ (con't) acts, as shall be hereinafter demonstrated, are by constitutional law to be free of "log rolling" and may not smuggle such contraband into the law of the State of Florida.

property right in his office" and that such public officer cannot be deprived thereof without due process of law. At 17. One who is elected or appointed to an office is presumed to accept such office with the condition annexed that his tenure of office may be terminated in the manner prescribed by law. (That is, the Legislature of the State of Florida could have amended §440.45, Fla. Stat., or if grounds in fact existed for the removal of Judge Trask "for cause" then the Governor could have accomplished same pursuant to §440.45, Fla. Stat., subject to Article IV, §7, of the Florida Constitution. Neither event occurred herein.)

Reliance by Appellants upon City of Jacksonville v. Smoot, 83 Fla. 575, 92 So. 617 (Fla. 1922) is misplaced inasmuch as there was a specific legislative enactment altering the government, not an appropriations act proviso. City of Miami v. Rodriguez-Quesada, 388 So.2d 258 (Fla. 3d DCA 1980) is on its face even less persuasive, the "office" being incomparable to Judge Trask's. But the essence of Appellants' error is clear: The defendants below and Appellants herein assume that the Legislature has lawfully abolished Judge Trask's office (and that the Legislature may lawfully abolish an office of a sitting state officer by an appropriations proviso which contemplates certain reductions) and then argues the premise as conclusion.

ISSUE II

WHETHER THE APPELLEE'S OFFICE HAS BEEN LAWFULLY ABOLISHED.

It is instructive that the Appellants, Orr and Graham, have not stated the issue as being whether they have the power to oust Judge Trask from office some two years before the expiration of his fixed term, but rather "whether the Appellee's office has been lawfully abolished [by someone lawfully empowered to do it, and by the means lawfully prescribed to do it]."

First, what is a Deputy Commissioner (formerly, Judge of Industrial Claims)?

Clearly:

> . . . Judges of Industrial Claims are state officers, performing judicial functions in a judicial climate independent of outside forces not in harmony with that climate,
> . . .
> McBride v. Clark Roofing Co., 9 FCR 131 (1974), per E. Friday, L. Carson, B. Coleman, cert. den. 312 So.2d 197 (Fla. 1975)

This Court, in U.S. Casualty Co. v. Maryland Casualty Co., 55 So.2d 741 (Fla. 1951), held that the workmen's compensation adjudicators were analogous to chancellors in equity. Then, in 1961, §440.45, Fla. Stat., was amended to provide for full-time, salaried Judges of Industrial Claims.

By 1972, after Industrial Commission Chairman Johnson left office and the Industrial Commission had been judicially disqualified, and after the Askew administration recreated the workmen's compensation judiciary, Chief Justice Roberts' "State of the Judiciary Address," 46 Fla. Bar Journal 457, 459 (1972), applauded the new judicial integrity of the workmen's compensation adjudicatory enterprise; and in Pierce v. Piper Aircraft Corporation, 279 So.2d 281 (Fla. 1973), reh. den., this Court observed, at 284, the "new era" wherein "Judges of Industrial Claims (formerly Deputy Commissioners) have . . . been elevated in the sphere of workmen's compensation to a status somewhat akin to circuit judges," by virtue of the adjudicatory process having become "more judicial in nature" since 1971.

The Supreme Court of Florida, In re. Florida Workmen's Compensation Rules of Procedure, 285 So.2d 601 (Fla. 1973), broke new ground, accordingly, by approving the workmen's compensation trial and appellate rules by virtue of the Court having a direct interest in same, and these compensation proceedings -- operative in lieu of the Article V judicial proceedings promised by Art. I, §21, Declaration of Rights, Fla. Const. -- being "more judicial than quasi-judicial. . . ." (Emphasis in original)

In Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166

(Fla. 1974), reh. den., this Court recognized that the [since-abolished] Industrial Relations Commission and the Judges of Industrial Claims were not administrative in character or function, but that their adjudications are judicial in nature. The stature of those officers was further enhanced by this Court's decision in Colvin v. State, Department of Transportation, 311 So.2d 366 (Fla. 1975), reh. den. Accord: John Caves Land Development Company v. Suggs, 352 So.2d 44 (Fla. 1977), reh. den.; Tatum v. Leon Moss Dairy, 339 So.2d 639 (Fla. 1976).

In Myers v. Hawkins, 362 So.2d 926 (Fla. 1978), the Supreme Court of Florida was called upon to construe the term "judicial tribunal" as employed in Art. II, §8(e), Fla. Const. This Court adverted to the "flyer" circularized by the sponsor of the Sunshine Amendment, wherein "'judicial tribunals would include the courts, the Industrial Relations Commission and judges of industrial claims.'" At 929-930. And, at page 932, the Court found that "the term 'judicial tribunals' in this provision of the Florida Constitution includes judges of industrial claims, . . ."

At all times pertinent hereto, §440.45, Fla. Stat., provided and provides that:

> A. The Governor shall appoint each Deputy Commissioner (Judge of Industrial Claims),

B. The Governor must appoint from those recommended by the appropriate appellate district court judicial nominating commission,

C. Each such Deputy Commissioner (Judge of Industrial Claims) must have had three years' experience in the practice of law in this state and may not practice during his term of office,

D. Each full-time Deputy Commissioner (Judge of Industrial Claims) "shall be appointed for a term of 4 years, . . .",

E. Each such Deputy Commissioner (Judge of Industrial Claims) "may be removed by the Governor for cause. . . ."

Respecting gubernatorial removal, see Art. IV, §7, Fla. Const.

Each Deputy Commissioner is bound by the Code of Judicial Conduct, and is subject to removal for violation thereof. §440.42, Fla. Stat.

As the Honorable Stuart Simon, then County Attorney of Dade County, put it in his opinion, number 77-58 (October 31, 1977), to the Metropolitan Dade County Commission:

> There can be little doubt that a judgeship on the Industrial Claims Court constitutes a judicial office under the government of the state. . . .
> Appellate Proffer A-2.

Second, how do Deputy Commissioners (formerly, Judges of Industrial Claims) relate to Executive Branch functionaries?

As the Attorney General of Florida opined in 1973, the "Industrial Claims Judges" -- now Deputy Commissioners -- hold state office, 1973 Op. Att'y Gen. Fla., 073-37 (March 3, 1973), exercising some portion of the sovereign power conferred or defined by law.

In Villanova v. Castlewood International Corporation, 8 FCR 325 (1974), a "short transitional history" illuminative of the Judges of Industrial Claims' structural relationships was provided. At that time, of course, the Department of Commerce was the umbrella administrative agency that the Department of Labor and Employment Security (in 1974 a division of the Department of Commerce) later became. The Department, it was noted, "has a statutory obligation to supply . . . financial, personnel and other resources, but has no supervisory control over the functions" of the adjudicators. See, "Florida Labor Law: Administrative Law Paradigm . . . And Problem," 48 Fla. Bar Journal 526-528 (July 1974): One of the signal problems of the Askew reforms, facilitated by decisions of the Supreme Court of Florida, had been to free-up Judges of Industrial Claims from political control through the executive-administrative agency, and thereby to immunize them against political manipulation.

In Special Disability Trust Fund v. McConnell Wetenhall Citrus Properties, IRC Order 2-2594 (1973), a unanimous Industrial Relations Commission was at pains once again to assert the independence of Judges of Industrial Claims from the political department of government, and declared that:

> The Judge of Industrial Claims is an officer of the State of Florida, . . . territorially located within but not an employee of [the Department of Commerce or its divisions].

This Court discharged the writ of certiorari in McConnell Wetenhall Citrus Properties v. Special Disability Trust Fund, _____ So.2d _____ (Fla. 1974), Case No. 44,900.

Similarly, in Special Disability Trust Fund v. Nelson's Florist, 9 FCR 83 (1975), IRC Commissioners E. Friday, L. Carson and L. Shaw, Jr., were required to address a direct expression (by a party) of apprenhension that the emplacement of Judges of Industrial Claims within the political department compromised fairness of adjudication. The Industrial Relations Commission acknowleged that "such a structure reasonably might raise such anxieties," but declared that the Judges of Industrial Claims "exercise independent judicial discretion in the conduct of and decision making in such proceedings. . . ." The Commission observed that the 1974 Legislature removed from the political department or administrative agency the appointment of the

Judges, vesting it "exclusively within the Governor," and concluded:

> This, then, completely placed Judges of Industrial Claims within the Department of Commerce much as this Commission is placed -- for logistical support, and without any employer-employee relationship insofar as same relates to hiring, firing, discipline, direction, and the like. . . .

Adverting to the protections further offered by the limitations upon gubernatorial re-appointment (whereby the Judicial Nominating Commission evaluates judges' performance and constrains gubernatorial power with respect to such re-appointment), the Commission sanguinely or normatively held:

> . . . There is, then, no such relationship between the Department of Commerce and this Commission, or Judges of Industrial Claims as to sustain even a spark of undue influence or improper relationship within these structures. In this regard, Florida is in a unique and most enviable position. (Commissioners Friday, Carson and Shaw)

Again, in Special Disability Trust Fund v. Brevard County Board of Public Instruction, 9 FCR 164 (1975), cert. den., 320 So.2d 392 (Fla. 1975), Commissioners E. Friday, L. Carson and L. Shaw, Jr., were required to define "the status of the office of Judge of Industrial Claims" pursuant to heretofore cited Supreme Court decisions, and they attempted to distinguish the

Judges of Industrial Claims from the departmental parties -- i.e., the special disability trust fund, workmen's compensation agency, inter alia -- which were parties litigant. The Commission held:

> . . . The Judges of Industrial Claims are not "employees" of the Department of Commerce -- they are state officers, logistically situate within the Department, but not <u>of</u> it. . . .
> (Emphasis in original)

Examination of §20.171, Fla. Stat., formerly known as the Governmental Organization Act, discloses no reference to Deputy Commissioners.

Reference to §440.45, Fla. Stat., at subsection (3), discloses that these state officers remain "within" the Department -- now the Department of Labor and Employment Security rather than the Department of Commerce. And, unless the Deputy Commissioners' continued logistical emplacement therein under the Secretary vitiates all prior rulings and extinguishes their officership, or subjects them to manipulation or removal in derogation of all decisional and statutory law, then the Deputy Commissioners remain gubernatorial appointees for a fixed term and are removable only "for cause" by the Governor; and they remain <u>not</u> employees of the department.

Firm legal authority and sound, indeed commanding, policy

reasons require that the "relationship within these structures," as the Industrial Relations Commission put it in Special Disability Trust Fund v. Nelson's Florist, op. cit., not be allowed to suggest "even a spark of undue influence" by the political officers of the department or government, upon the independence of the Deputy Commissioners "logistically situate within the Department" and who are "not of it. . . ." Special Disability Trust Fund v. Brevard County Board of Public Instruction, op. cit.

Third, what is the source of funding for the Deputy Commissioners (formerly, Judges of Industrial Claims)?

The Deputy Commissioners are funded by the Workers' Compensation Administration Trust Fund, established at and by §440.50, Fla. Stat., in respect of which the state treasurer "shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state." (Emphasis supplied)

All expenditures in the administration of Chapter 440, Fla. Stat., are to be paid as provided in §440.50, Fla. Stat. §440.44(3), Fla. Stat. Sections 440.50 and 440.51, Fla. Stat., provide a comprehensive scheme for the disbursement of these non-state monies, the rationale for which is suggested in and by §440.44(1) and (2), Fla. Stat., inasmuch as federal laws and requirements had to be honored irrespective of legislative

inclinations or propensities.

Thus, although the Supreme Court of Florida need not herein ever reach the issue of the Legislature's authority vel non respecting the Workers' Compensation Administration Trust Fund -- and the circuit court below expressly declined to reach that issue -- there is some reason to believe that the Legislature does not have control of said monies (and, historically, did not exercise such control until former Industrial Commissioner Vocelle and the Governor whom he was serving effectuated a compromise with the Legislature and allowed such matters to be comprehended within the apppropriations acts).

In State v. Florida State Improvement Commission, 30 So.2d 97 (Fla. 1947), Justice Terrell wrote for a unanimous Supreme Court sitting en banc, with respect to §440.50, Fla. Stat., establishment "in the state treasury" of a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this chapter," which fund "shall not be the money or property of the state."

This Honorable Court ruled, at 99:

> Here we have a clear declaration that these funds are not the property of the state but that they shall be administered by the Commission, the State Treasurer being the mere custodian of them for that purpose.

These trust funds were similarly treated in Lainhart v. Catts, 73 Fla. 735, 75 So. 47. The Court continued, with respect to the Workmen's Compensation Administration Trust Fund:

> These funds never reach the state treasury as state funds; are never available for the general purposes of the state, but are solely for the use of the Florida Industrial Commission.

The Court further relied upon State ex rel. Watson v. Caldwell, 156 Fla. 618, 23 So.2d 855 (Fla. 1945). The Court concluded:

> Under such a state of facts we can conceive of no theory by which these funds could be called state funds, . . . At 99.

The expenditure of Workmen's Compensation Administration Trust Fund monies for the funding of Deputy Commissioners is prescribed in and by §440.50, Fla. Stat., and because these "funds never reach the state treasury as state funds," State v. Florida State Improvement Commission, op. cit.,they are never expended (in accordance with §440.50, Fla. Stat.) in violation of any provision of law or the Florida Constitution.

Judge David L. Trask was by law required to perform his duties as a Deputy Commissioner, with a term expiring sometime in January 1986, State ex rel. Peacock v. Latham, 170 So. 475

(Fla. 1936), where the Legislature of the State of Florida had not even legislated on §440.45, Fla. Stat., to abolish the offices of Deputy Commissioners and where the Governor of the State of Florida had not even purported to remove Judge Trask pursuant to §440.45, Fla. Stat.

Thus, by the case law hereinbefore cited, Judge Trask was, so far forth, entitled as a matter of law to exercise his right, title and interest in his office, and to enjoy the emoluments thereof as a constitutional property interest.

Another aspect of this is disclosed by 1972 Op. Att'y Gen. Fla., 072-28 (January 24, 1972), wherein the Attorney General ruled that the monies and securities of the Workmen's Compensation Administration Trust Fund under §440.50, Fla. Stat., "are not the property of the state" and are similar to the Unemployment Compensation Trust Fund under §443.10, Fla. Stat., regarding the responsibility imposed upon the Treasurer. The Treasurer is the custodian, but the expenditure of the funds is controlled by the agency. The State Treasurer as custodian of these funds merely holds the monies and securities of the fund in trust, but such funds and securities are not the money or property of the state. The Attorney General then concluded by relying upon this Court's opinion in State v. Florida State Improvement Commission, 30 So.2d 97 (Fla. 1947) at 99, and declared that the Workmen's Compensation Administration Trust

Fund is not the money or property of the state but constitutes a special fund in the custody of the Treasurer.

Although the Supreme Court of Florida need not herein reach this particular issue -- and the circuit court below declined to address this issue -- it would therefore appear that Judge Trask's emoluments of office, including his pencils and his desk and his salary, are virtually a continuing appropriation so long as the Legislature of the State of Florida does not lawfully abolish the office of Deputy Commissioner of the State of Florida or the Governor does not remove Judge Trask "for cause" pursuant to §440.45, Fla. Stat.

In Lainhart v. Catts, 73 Fla. 735, 75 So. 47 (Fla. 1917), it was urged to the Supreme Court that the provision of the Everglades Drainage District Act authorizing the drainage commissioners to expend the proceeds derived from special assessments "without a special appropriation by the Legislature, is in violation of section 4 of Article 9 of the Constitution, providing that 'no money shall be drawn from the treasury except in pursuance of appropriations made by law.'"

A unanimous Supreme Court of Florida held that the money raised by the Drainage District's special assessment "is not paid into the general treasury of the state, but is a special fund, placed in the custody of the state treasurer to be expended for certain specified purposes designated by the act, . . ."

At 54. The Court held that the object of the constitutional prohibition upon money being drawn from the treasury only pursuant to appropriations made by law "is to prevent the expenditure of the public funds without the consent of the people, by their representatives in legislative acts, . . ." Ibid.

The Court then concluded, at 54:

> An appropriation may be made by setting apart and specially appropriating the money derived from a particular source of revenue to a particular use. . . .
> It seems clear from the acts under consideration that the Legislature intended to, and did, appropriate the revenues derived from the special assessments to carry out the very purposes of the acts.

In Amos v. Moseley, 77 So. 619 (Fla. 1917), the Court considered a suit to enjoin the Comptroller of the State of Florida from issuing warrants to the members of the Tax Commission in payment of their salaries. There the situation was a bit different from that which confronted the circuit court sub judice, but leads to the same conclusion as that stated by the Court in Lainhart v. Catts, op. cit. In Amos the Court reiterated that general appropriations bills must constitutionally not contain provisions on other subjects, but that non-appropriations acts may make provision for the payment of expenses necessary, proper, incidental or growing out of the law itself "including

payment of the persons employed." At 64.

Herein, Judge Trask was serving in an office created by the Legislature, required to perform duties imposed upon him by the Legislature (under a constitutional mandate to provide a reasonable alternative to an Article V right of access to the courts), and was to be paid from a special trust fund which by law is not state funds, and the monies of which never pass as state funds into the treasury of the State of Florida.

This Court clearly contemplated such a situation in its decision of 1940, In re. Opinion of the Justices, 199 So. 350 (Fla. 1940). Judge Trask and his colleagues, although statutory state officers, were clearly required to perform the duties encumbent upon them pursuant to their titles to office -- Judge Trask's title being fixed by statute and his commission issuing pursuant thereto -- and it must be intended that they are to be paid for such duties, for indeed there is a property right to such established at law. Indeed, Judge Trask's salary is by law to be paid from monies which are not state monies and which never pass as state monies into the custody of the state treasurer.

Yet, notwithstanding the validity of this Court's decisions directly on point (and which herein inure to the benefit of your Appellee, David L. Trask), this Honorable Court need never reach these issues, as indeed the circuit court below declined to

reach these issues.

Fourth, what did the 1983 Appropriations Act proviso, §1203, purport to do?

The 1983 Appropriations Act proviso, mainfestly, never mentions David L. Trask.

The 1983 Appropriations Act proviso never mentions abolition of an office nor ouster of an officer.

The Legislature cannot work Bills of Attainder, Art. I, §10, Declaration of Rights, Fla. Const., and cannot legislate substantively in or by its appropriations acts, Art. III, §12, Fla. Const., and this Court should therefore read the 1983 legislative enactment to be constitutional. Brown v. Firestone, 382 So.2d 654 (Fla. 1980); Dickinson v. Stone, 251 So.2d 268 (Fla. 1971).

The 1983 Appropriations Act, Chapter 83-300, Laws of Florida, at page 1708, proviso 1203, predicts a condition subsequent: contemplation of the elimination of certain officers. Absent the lawful eventuation of which contemplated condition subsequent, the special appropriations proviso does not come into effect at all, as a matter of law. In re. Advisory Opinion to the Governor, 239 So.2d 1 (Fla. 1970); Brown v. Firestone, op. cit.

In Brown v. Firestone, this Court held constitutionally invalid an appropriations act proviso concerning the phasing

down of inmate population at Glades Correctional Institution, and held it to be not rationally related to salaries or expenses or capital outlay for the major penal institutions in the State of Florida, but to have been instead designed to further a legislative objective unrelated to the funding of all the major institutions. At 669.

This Court further held that where the Governor rightly vetoed a qualification, the smallest identifiable fund to which the qualification logically and directly related thereby failed of appropriation (being rendered invalid as a contemplated expenditure of public money). Ibid.

This Court's In re. Advisory Opinion to the Governor, 239 So.2d 1 (Fla. 1970), held that provisions in the general appropriations act on any subject other than appropriations and matters reasonably related thereto are invalid and are not law, and held that where an appropriation was made contingent upon another bill and such contingency failed, then the appropriation itself fails. Obviously, that is not an attractive prospect herein, although the situation is rescuable under the established law that the Deputy Commissioners are funded by non-state monies appropriated as a matter of law.

The point to be made, however, is that the defendants in the trial court below, here the Appellants, may not unlawfully create a condition -- nor create an unlawful condition -- subse-

quent in order retroactively to vivify legislation. That is, Wallace Orr, who lacks any power to appoint or remove Deputy Commissioners, cannot create the subsequent condition contemplated by the Legislature (and create it illegally) in order to give legal force to proviso 1203 of the 1983 Appropriations Act.

The Legislature may indeed contemplate the reduction or elimination of Deputy Commissioners, but may not by such omphaloskepsis give legal validity to an unlawful execution of what the Legislature has contemplated: Wallace Orr is not by Chapter 83-300, Laws of Florida, empowered to garrote or liquidate any Deputy Commissioner in order to bring into effect the intent (whether legal or not) of the Appropriations Act proviso. The Legislature contemplated reductions, and if the subject proviso has any status in law then it must entail a requirement that contemplated reductions occur in accordance with law.

Fifth, what was the lawful legislative mandate, if any?

Wallace Orr, according to the trial record, looked at Chapter 83-300, Laws of Florida, believed that the Miami office (District K) could fund no more than four Deputy Commissioners by the Workmen's Compensation Administration Trust Fund, and in August 1983 selected senior Deputy Commissioner David L. Trask to be "deleted" (as to his position number) effective December 31, 1983, whereupon D. Robert Graham -- almost two months before December 31, 1983 -- appointed to the Miami office

(District K) a fifth Deputy Commissioner in violation of what these Appellants argued and argue was their rationale for hounding Judge Trask to this very date.

Since the Legislature did not designate Judge Trask as victim, and could not for the prohibition against bills of attainder, how did Wallace Orr know that he was to select a senior Deputy Commissioner with two years remaining in his statutorily fixed term of office to eliminate (thereby reducing the District K cadre of Deputy Commissioners to three) or how did Wallace Orr know that he was to "delete" the "position number" of David L. Trask? (These questions assume, arguendo, that Wallace Orr had any power to interfere in the affairs of Deputy Commissioners, contrary to the controlling decisional law hereinbefore cited.)

The answer is clear, and requires no extensive citation of authority: The Legislature cannot issue a carte blanche or delegate unbridled discretion to a single individual to execute legislative intent. State ex rel. Taylor v. City of Tallahassee, 177 So. 719 (Fla. 1937); State ex rel. McLeod v. Harvey, 125 Fla. 742, 170 So. 153, inter alia.

The law of the State of Florida unblinkably requires that legislative delegation of power to Executive Branch officials or agencies must entail, in and by said legislation, standards and guidelines. Askew v. Cross Key Waterways, 372

So.2d 913 (Fla. 1978).

Thus, although this Honorable Court need not reach even this issue, it is clear that Chapter 83-300, Laws of Florida, proviso 1203, at page 1708, cannot be validly read to vest in some Executive Branch functionary the unbridled discretion to target at will a state officer for elimination. Nor should it be so read. The Legislature did not abolish Judge Trask's office nor oust Judge Trask; nor could an appropriations act do so; the Legislature merely contemplated certain events (lawfully) eventuating. It was Wallace Orr, according to the trial record herein, who wanted Judge Trask out of his office and undertook to do so even as these Appellants acted to thwart their purported understanding of the 1983 Appropriations Act (by appointing a fifth Miami Deputy Commissioner) and who have continued their assault upon Judge Trask's office.

It is bedrock law that "a public official cannot do indirectly that which he is prohibited from doing directly." Green v. Galvin, 114 So.2d 187 (Fla. 1st DCA 1959), reh. den. at 189.

Wallace Orr -- who may not interfere with Deputy Commissioners, who may not politically manipulate them, who may not seek to punish them for decisions distasteful to him or given special interest groups or litigants -- cannot attempt to utilize the procedural "how-to" provisions of Chapter 216, Fla. Stat.,

to accomplish an unlawful end. Nor can his boss, Governor Graham, do so (as he has apparently sought to do by his 1983 appointment of a fifth Miami Deputy Commissioner).

It ill behooves Appellants to argue that pursuant to Thayer v. State, 335 So.2d 815 (Fla. 1976) and Noah Webster, the Legislature of the State of Florida effectively intended "elimination" of David Trask "by a particular date without regard to how [Trask was] . . . to be eliminated, . . ." Appellants' Initial Brief at 10-11. Nor have Appellants, on appeal or at trial, demonstrated that the multi-million-dollar Workmen's Compensation Administration Trust Fund is unable to fund David L. Trask's office. Nor have Appellants demonstrated that the prohibition against "log rolling" in and by Article III, §12, Fla. Const., is overcome or avoided by an Executive Branch functionary's intrusion into the sphere of the Deputy Commissioners, or by a given senator's intrusion, etc. Nor do Appellants demonstrate that Wallace Orr's invocation of Chapter 216, Fla. Stat., which prescribes the procedures whereby lawful additions and deletions shall lawfully be effectuated, engorges Mr. Orr with the legal authority to select David Trask as a state officer for elimination from office (or abolition of his office).

Finally, as hereinbefore argued, there is no basis upon which to believe that even David L. Trask's "position number" was ever deleted. Appellants' own witness suggested that it

was a budget position rather than a position number about which he was speaking, and even he did not effectuate what he thought ought to have been accomplished under his supervision.

Thus, although Appellants' "issue" is again somewhat oblique to the actual case in controversy sub judice, it is clear on the settled law that David L. Trask's office -- or the generic office, Deputy Commissioner of the State of Florida -- has not been lawfully abolished.

ISSUE III

WHETHER THERE IS ANY COMPETENT EVIDENCE TO SUPPORT THE JUDGMENT THAT THE DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY ARBITRARILY SELECTED APPELLEE'S POSITION FOR ELIMINATION.

Lord Bertrand Russell, somewhere in his very popular UNPOPULAR ESSAYS, remarks that there are some propositions which it is embarrassing to attempt to refute.

If Appellants third "issue" is meant to imply that Wallace Orr did not arbitrarily select David L. Trask's "position number" for deletion (although the evidence shows that it was not Trask's position number, and may not even have been a budgetary signature) then it must be suspected that, Mr. Orr -- like Lewis Carroll's Humpty-Dumpty, in ALICE IN WONDERLAND -- retains the right to use words to mean just what he chooses them to mean.

The Legislature of the State of Florida did not make any observable effort to oust David L. Trask or to abolish his office, as the trained eye can see upon inspection of the 1983 Appropriations Act.

The Legislature of the State of Florida did not make any observable effort to provide any standard or any guideline to anyone respecting the ouster from office or the abolition

of an office or the elimination (?) of a state officer, as a reading of the 1983 Appropriations Act conclusively demonstrates.

Appellate Proffer A-1, hereto, demonstrates what the trial court knew and this Court knows: There is a controversy between the parties precisely because Appellants threatened to oust David Trask from office effective December 31, 1983 (or to abolish his office, as the Appellants now argue to the Supreme Court of Florida).

Why?

By the exercise of an unbridled discretion, prohibited by the case law heretofore cited, Wallace Orr made that decision, and D. Robert Graham attempted to enforce it by appointing to the Miami office (before David Trask was to be somehow eliminated) a fifth Deputy Commissioner, and by attempting to appoint yet another Commissioner as evidenced by Plaintiff's Exhibit 4 herein.

Graham or Orr, or somebody governmentally related to them, could have simply re-assigned Trask a position number or a budget spot (depending upon which view Appellants' witness Larson wishes to assert) by the most accepted and standard means. Transcript of Circuit Court proceedings at 64. (Had the Governor not appointed a fifth Deputy Commissioner to the Miami office in 1983, after the threat to expel Judge Trask but before the projected date of expulsion, even this standard and accepted procedure would

not have been required.)

But the fact is that Orr and Graham have kept after Judge Trask, for reasons not articulated save and except in and by Appellate Proffer A-1, if those be the true reasons.

Whatever the thought processes of Wallace Orr or D. Robert Graham, it is inconceivable that the circuit court would not have found "arbitrary" selection (or targeting, if you will) of Judge David L. Trask. That said, it is nevertheless clear that the lower court's process of reasoning or expression of rationale is in no way controlling, inasmuch as this Court will look only to the correctness of the adjudication per se. Knight v. Miami, 173 So. 801 (Fla. 1937); Zirin v. Charles Pfizer & Co., 128 So.2d 594 (Fla. 1961); Stuart v. State, 360 So.2d 406 (Fla. 1978), on remand, 360 So.2d 498 (Fla. 3d DCA 1978); Stone v. Rosen, 348 So.2d 387 (Fla. 3d DCA 1977).

The only point to Appellants' third "issue" is, seemingly, that their feelings are hurt in some way by the circuit court's eminently reasonable and unavoidable characterization of Mr. Orr's unbridled discretionary selection of Judge Trask for elimination. Needless to say, Judge Trask's feelings haven't been balmed by Appellants' conduct. Noah Webster's dictionary defines "arbitrary" as entailing "discretion or will." Webster's New International Dictionary (2d ed.)

Not by any test is Appellants' "third" issue suggestive of error below.

ISSUE IV

WHETHER THE LOWER TRIBUNAL MAY EXERCISE EQUITABLE JURISDICTION TO GRANT RELIEF WHICH CONTRAVENES LEGISLATIVE ENACTMENTS.

Appellants fourth "issue" is no less argumentative nor free of self-certifying conclusion than was their first "issue" herein.

The lower court's final judgment, i.e., the lower court's adjudication, is foundationed by the Constitution of the State of Florida, the appropriate statutes, and an uninterrupted train of Supreme Court decisions.

ISSUE V

WHETHER THE LOWER TRIBUNAL'S INJUNCTION REQUIRING PAYMENT OF SALARIES TO FIVE DEPUTY COMMISSIONERS IN DISTRICT K BETWEEN DECEMBER 31, 1983 AND FEBRUARY 20, 1984 VIOLATED ARTICLE V, SECTION 14, FLORIDA CONSTITUTION, OR ARTICLE VII, SECTION 1(c), FLORIDA CONSTITUTION.

The answer to Issue V is, and by law must be, in the negative for reasons hereinbefore argued. See, response to Appellants' Issue II, supra herein.

Taking Appellants' argument under subsection (a) in the abstract, the monies of the Workmen's Compensation

Administration Trust Fund never reached the state treasury as state monies, and were not unlawfully the subject of the circuit court's exercise of equitable powers. (Moreover, the clean hands of the defendants below, Appellants herein, must be questioned when they insisted to the circuit court, as to this Court, that by December 31, 1983 there had to be only four Deputy Commissioners in Miami; yet when such a state of affairs did exist, Appellants created a fifth Deputy Commissioner in the Miami office and sought to complain of Judge Trask's funding.)

The same argument or rebuttal attends Appellants' thesis at (b). The Appellants assume that the monies for Judge Trask or Judge Kuker or Judge Tomlinson, inter alia, must be state monies or must be appropriated by the Legislature out of the treasury, and erroneously ignore the decisional law (not to mention the statute) directly on point and contradictory of their thesis. See, Appellee's reply to Appellants' Issue II, supra herein.

In fact, the circuit court below merely exercised its established legal and equitable powers, and declined to reach the issues now asserted by Appellants. Nevertheless, Appellants obviously err in their assertion of applicable law, seeking thereby to induce this Court to rule on unnecessary issues and to reverse extant law.

Appellants thesis at (c) is apparently cut from whole cloth, disclosing no authoritative basis upon a reading of pages 35-38 of the Initial Brief of Appellants. As indicated in and by this Appellee's reply to Issue II, supra herein, the law is flatly contradictory of the Appellants' thesis. This issue, also, was declined by the circuit court and need not be addressed by this Honorable Court.

Indeed, there is a strong implication, upon a careful reading of the Appellants' Initial Brief, that the defendants below (here the Appellants) are profoundly concerned to induce the Supreme Court of Florida to address issues unnecessary to the disposition of this cause -- and not addressed by the circuit court below -- and pursuant to such inducment, to argue:

> 1. General propositions of law not controlling of the case on appeal (e.g., that the Legislature may create and abolish offices, that circuit courts may not contravene legislative enactments), and
>
> 2. Infer therefrom, without any legal warrant for such inferences, that Wallace Orr is empowered to go about eliminating state officers of his choice (i.e., Deputy Commissioners), or that the Legislature may by an appropriations act contingent

proviso, and "without regard to how" state offices are "to be eliminated," banish state officers or their offices or delegate unfettered and unbridled discretion to some state functionary to accomplish that end.

The Supreme Court of Florida should not accept an invitation to navigate upon the rocks, as it were, of our settled jurisprudence. As the lines of the Odyssey warn: "Saxibus uluant harpyiae!" (The harpies are waiting by the rocks.)

CONCLUSION

This appeal -- if not dismissed in virtue of its obvious mootness -- tests:

> Whether the 390,701 industrially-injured employees of Florida, yearly, shall have their claims or entitlements adjudicated by judicial officers protected (from political manipulation) by fixed-terms-of-office and removable only "for cause" by the Governor, or
>
> Whether these Deputy Commissioners shall be, and shall be treated as, un-protected employees removable (or subject to ouster or abolition) by and at the political whim of an Executive Branch functionary or legislative committee chairman.

Chief Justice Roberts' "State of the Judiciary Address," 46 Fla. Bar Journal 457, 459 (1972), applauded the new era of judicial integrity in the workmen's/workers' compensation enterprise. See also, Alpert, Florida Workmen's Compensation Law, 141-142, §25.33, 1973 Supp.; 1973 Op. Att'y Gen. Fla., 073-37 (March 3, 1973); Schroll, "Workmen's Compensation," 26 U. Miami L. Rev. 417, Winter 1972, No. 2.

The Supreme Court of Florida systematically celebrated, and thereby materially conduced to the establishment of, the judicialization of this theretofore suspect adjudicatory

enterprise. See, In re Florida Workmen's Compensation Rules of Procedure, 285 So.2d 601 (Fla. 1973); Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 (Fla. 1974), reh. den.; Colvin v. State, Department of Transportation, 311 So.2d 366 (Fla. 1975); John Caves Land Development Company v. Suggs, 352 So.2d 44 (Fla. 1977), reh. den.; Tatum v. Leon Moss Dairy, 339 So.2d 639 (Fla. 1976); Myers v. Hawkins, 362 So.2d 926 (Fla. 1978).

Yet, all of this would seem to be for naught -- and the substitute for, or alternative to, the promise made by Article I, §21, Fla. Const. (that the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay), established by the Legislature of Florida in Chapter 440, Fla. Stat., shall be indelibly clouded -- if state adjudicative officers can be peremptorily "deleted" by political functionaries.

If Judge Trask (Appellee) had been told by Wallace Orr or Robert Graham or Committee Chairmen Johnson or Morgan (or anyone of their colleagues): "You're gone because I didn't like your final order in Doe v. Roe Contractors," this Court would and should react with lightening speed to remedy such a patent obstruction of, and interference with, the administration of justice.

Herein, no reason was declared by the Appellants (other than that they felt the need to "delete" the position number of

some Deputy Commissioner, and just happened to choose a senior Deputy Commissioner whose term had years to run, although in fact they failed to delete his position). Yet, that very same and obnoxious end which this Court would and ought to despise, has been by these Appellants sought.

The Supreme Court of Florida ought to affirm, per curiam, the circuit court's order and award to this Appellee the costs of this action, remanding to the lower tribunal for the assessment of trial costs and fees and for the adjudication of the pending "civil rights" action. Alternatively, this Court should author a ringing defense of the integrity of Florida's workers' compensation adjudicatory system and the officers who effectuate that system, realistically vouchsafing their independence of political intermeddlers.

To do otherwise, to allow political personages and functionaries to oust workers' compensation adjudicative officers at will (giving no reason, or claiming the need to do so) in derogation of §440.45, Fla. Stat., would be, sadly, to emulate the travail of the legendary Sinbad:

> And, lo, the master of the ship vociferated and called out, threw down his turban, slapped his face, plucked his beard, and fell down in the hold of the ship by reason of the violence of his grief and rage. So all the merchants and other passengers came together to him and said to him, "Oh, Master, what is

the matter?" And he answered them: "Know Oh Company, that we have wandered from our course, having passed forth from the sea in which we were, and entered a sea of which we know not the routes." Pacheco v. Orchids of Hawaii, 502 P.2d 1399 (Hawaii 1972), Justice Levinson, dissenting.

Respectfully submitted this 6th day of August, 1984.

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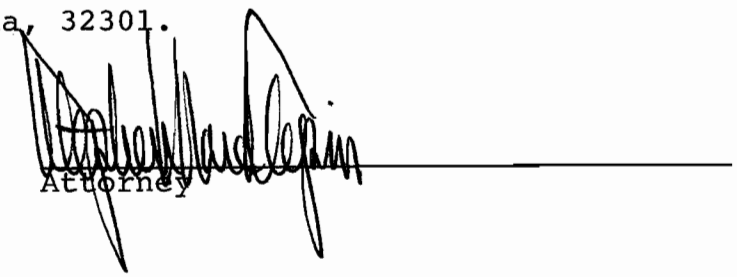
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the ANSWER BRIEF OF APPELLEE has been mailed this 6th day of August, 1984 to DAN F. TURNBULL, JR., Esquire, Assistant General Counsel, Department of Labor and Employment Security, 131 Montgomery Building, 2562 Executive Center Circle East, Tallahassee, Florida, 32301; KENT WEISSINGER, Esquire, and GERALD B. CURINGTON, Esquire, Department of Legal Affairs, The Capitol, Tallahassee, Florida, 32301-8048; D. STEPHEN KAHN, Esquire, 227 East Virginia Street, Tallahassee, Florida, 32301; and MARK HERRON, Esquire, and CHRIS HAUGHEE, Esquire, The Florida House of Representatives, Office of the Speaker, 420 - The Capitol, Tallahassee, Florida, 32301.



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