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.
_____/

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

APPELLANTS' INITIAL BRIEF

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EXPLANATORY NOTE

Citations to the Record-on-Appeal are designated (R-__). Citations to the separately paginated Transcript of the Final Hearing in the lower tribunal are designated (T-__). The decision of the Third District Court of Appeal certifying this cause to this Honorable Court is not presently indexed in the Record-on-Appeal and has been included as page 1 of the Appendix to Appellants' brief and designated in the text as (A-1).

It should be noted that the Index to the Record-on-Appeal contained omissions which are to be supplemented by the parties. Portions of the Record and Transcript referenced in this brief are contained in the Appendix in the order in which they are cited in the text and may be reviewed pending supplementation of the Record-on-Appeal.

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STATEMENT OF THE CASE

Plaintiff/Appellee David Trask (Trask) was recommended for reappointment as a District K deputy commissioner of workers' compensation by the Third District Judicial Nominating Commission and reappointed by the Governor to that position in January, 1982. (T-18) Trask's commission was due to expire January 26, 1986 (R-7A), pursuant to §440.45(2), Fla. Stat., providing in pertinent part that "[e]ach full-time deputy commissioner shall be appointed for a term of 4 years, ..." Section 440.45(4), Fla. Stat., sets the salary of deputy commissioners and provides that the salary is to be paid out of the Workers' Compensation Administration Trust Fund established in the State Treasury by §440.50, Fla. Stat.

Since Art. VII, §1(c), Fla. Const., prohibits the drawing of any money from the treasury except in pursuance of appropriations made by law, the Legislature annually appropriates funds from the Workers' Compensation Administration Trust Fund. Such appropriated funds are to be used for various purposes as specified in the General Appropriations Act, including payment of salaries to deputy commissioners. The 1983 General Appropriations Act, Ch. 83-300, Laws of Florida, reduced the appropriation to the Office of the Chief Commissioner, Department of Labor and Employment Security, from which deputy commissioners are paid their salaries. Item 1203 of Ch. 83-300 stated as follows:

Office of the Chief Commissioner of Workers' Compensation

1203 Salaries and Benefits
POSITIONS 78
From Workers' Compensation Administration 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.

Although the Legislature was urged to provide that elimination of the positions[1] be accomplished by attrition, resignation or retirement (R-133), the Legislature rejected that recommendation in enacting Item 1203 of Ch. 83-300, Laws of Florida, containing Item 1203. (R-130) In light of the legislative history, Defendant Orr, Secretary of the Department of Labor and Employment Security (Orr), determined that Item 1203 expressed the legislative intent to abolish the positions of three deputy commissioners in District K by December 31, 1983. (T-39) In a good faith effort to implement Item 1203 of Ch. 83-300 pursuant to §216.262, Fla. Stat., Orr notified Trask on August 22, 1983,

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[1] The terms "office" and "position" are used interchangably throughout appellant's brief in light of §216.011(1)(bb), Fla. Stat., which provides

> (bb) Position means the work, consisting of duties and responsibilities, assigned to be performed by an officer or employee. (Emphasis supplied)

more than four months in advance, that his position would be eliminated as of December 31, 1983. (R-135) Orr offered to accomodate Trask's need to accumulate sufficient creditable service to vest certain pension rights by a 60-day pro hac vice appointment. (R-5)

Pursuant to the provisions of §216.262, Fla. Stat., the Department of Labor and Employment Security on December 16, 1983, formally began the administrative process of implementing the legislative directive to eliminate three deputy commissioner positions in District K. On that date, the department requested approval to delete, among others, Trask's position. (R-134) That approval was granted on December 27, 1983, and on that date Trask's position was deleted in accordance with Ch. 216, Fla. Stat., effective December 31, 1983.

Trask filed the instant action on December 15, 1983, seeking temporary and permanent relief enjoining the defendants/-appellants from "aborting" his term of office and declaring his entitlement to the position of deputy commissioner notwithstanding Item 1203 of Ch. 83-300, Laws of Florida. (R-1-7) By oral ruling on December 28, 1983, the lower tribunal granted a temporary restraining order in favor of Trask, pursuant to which Orr directed that the Comptroller not be notified to remove Trask from the state payroll. (T-37) But for the lower tribunal's order ~~other~~ Trask would not have received a salary after December 31, 1983. (T-37)

In the ten weeks between the temporary order and the final hearing in the lower tribunal, Deputy Commissioner Esquiroz from District K was appointed to the Circuit Court for the 11th Judicial Circuit. (R-126) Trask attempted to amend his complaint to request the lower tribunal to enjoin defendant D. Robert Graham, Governor, (Graham) from appointing a new deputy commissioner and to require the defendants to assign the vacant position to Trask without following the procedure specified in §440.45(1), Fla. Stat., for the appointment of new deputy commissioners. (R-77-79) Although the lower tribunal did not expressly rule on the purported amendment, the final judgment from which defendants appeal granted the requested relief. The judgment also made permanent the temporary order. (R-119)

Defendants appealed to the Third District Court of Appeal (R-117), which certified to this Honorable Court that the judgment below is of great public importance inasmuch as it purports to determine the power of the Legislature to abolish offices which the Legislature itself creates. (A-1)

ARGUMENT

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 RIGHTS.

The legislative power of the state is vested in the Legislature. Art. III, §1, Fla. Const. So long as it is for a lawful purpose, the Legislature has absolute power over the public purse. State ex rel. Caldwell v. Lee, 27 So.2d 84 (Fla. 1946). Clearly, the Legislature is empowered to enact appropriations bills and provide therein for the payment of salaries of public officers, subject only to applicable constitutional limitations. See, Art. III, §12, Fla. Const. Similarly, the Legislature is empowered to create public offices by statute in the exercise of its plenary lawmaking powers.

To the extent that the judgment of the lower tribunal limits and restricts the power of the Legislature to abolish an office which it has created by statute, the judgment has no basis in law. See, City of Jacksonville v. Smoot, 83 Fla. 575, 92 So. 617 (Fla. 1922). In that case, the Legislature enacted an amendment to the city charter which abolished a number of municipal offices, including Smoot's, prior to the expiration of the terms of the office-holders. Smoot recovered a judgment from the City of Jacksonville as and for his salary to the end of his otherwise

unabridged term of office. This Court reversed the judgment and held that:

> [i]t was within the power of the Legislature, therefore, to alter or amend the government of the City of Jacksonville, and if in doing so an office which existed under the old government was expressly or impliedly abolished, the incumbent cannot complain; because the power of removal from office is incident to the power of appointment, and an office created by the Legislature may be abolished by the Legislature, even during the term for which the incumbent was elected or appointed, without violating any of his constitutional rights, in the absence of any constitutional limitation on the subject. Even when an officer, by reason of having been appointed for a definite term or by special statutory provision, cannot be lawfully removed except for cause after a full hearing, his office may be summarily abolished when the proper municipal authorities deem it advisable.

92 So. at 620.

Except for the fact that the Smoot case involved a municipal office-holder (a distinction without a difference as to the instant cause), the holding is as precisely on point as possible. Smoot's office was created by act of the Legislature (the city charter), and no provision was made for continuation of the office when the Legislature amended the charter. Similarly, the three deputy commissioner positions to be deleted in District K were created by act of the Legislature, and the Legislature mandated abolishment of those positions in enacting Ch. 83-300, Laws

of Florida, containing Item 1203. To uphold the lower tribunal judgment in the instant cause is to overrule the express holding of City of Jacksonville v. Smoot, supra.

The Smoot holding has been followed repeatedly by Florida courts. See Hall v. Strickland, 170 So.2d 827 (Fla. 1965); City of Miami Beach v. Smith, 251 So.2d 290 (Fla. 3d DCA, 1971); City of Miami v. Rodriguez-Quesada, 388 So.2d 258 (Fla. 3d DCA, 1980). See also, State ex rel. Lamar v. Johnson, 30 Fla. 433, 11 So. 845 (Fla. 1892) (public official has no such title to office as prevents the power which gave it from terminating it or changing it); DuBose v. Kelly, 132 Fla. 548, 181 So. 11, 17 (Fla. 1938) ("person who is elected or appointed to office is presumed to accept the same with the condition annexed that his tenure of the office may be terminated at any time in the manner prescribed"); State ex rel. Gibbs v. Couch, 139 Fla. 353, 190 So. 723 (Fla. 1939) (no vested right in municipal office holders to continue in office when Legislature has acted to cut off the term of office); and Graham v. Board of Public Instruction of Dade County, 76 So.2d 874 (Fla. 1955) (distinguishing between constitutional and statutory officers).

Florida law is consistent with the generally accepted principle that a legislatively created office or position may be controlled, modified or abolished by the Legislature (unless prohibited by the constitution) whenever such course may seem necessary,

expedient or conducive to the public good. 63 Am.Jur.2d, Public Officers and Employees, §33. If such is not the case, then no legislative enactment is secure from judicial instrusion wherever such enactment purports to affect a litigant's rights. No state or federal judicial precedent expressly or impliedly requires such a far-reaching result with untold impact on the separation of powers doctrine. See Neal v. Bryant, 149 So.2d 529 (Fla. 1962), holding that it was not the province of the court to weigh the wisdom of a legislative enactment. Neither should this Court intervene in the administrative process of implementing the legislative directive in Item 1203 of Ch. 83-300. See Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Improvement Trust Fund, 427 So.2d 153 (Fla. 1982), holding that judicial intervention in executive-branch decision-making functions must be restrained to allow the executive branch to carry out its responsibilities as a coequal branch of government. See also, Art. V, §14, Fla. Const., providing in pertinent part that "[t]he judiciary shall have no power to fix appropriations."

In summary, appellants submit that legislative abolition of Trask's position or statutory office deprives him of no vested property rights or constitutional rights under long-standing Florida judicial precedent. A contrary holding, overruling precedent, necessarily requires unwarranted intervention by the judiciary into the Legislature's lawmaking function and the executive branch's administrative responsibilities in violation

of the separation of powers doctrine. Therefore, the judgment below that Trask had and has a vested right and title to his office is erroneous as a matter of law and must be reversed.

II

WHETHER THE APPELLEE'S OFFICE HAS BEEN LAWFULLY ABOLISHED.

A

WHETHER ITEM 1203 OF CH. 83-300, LAWS OF FLORIDA, AND PROVISO LANGUAGE THEREIN, EVINCES A LEGISLATIVE INTENT TO ABOLISH THE OFFICE OF ANY INCUMBENT DEPUTY COMMISSIONERS.

The intent of the Legislature as gleaned from the plain meaning of statutory language is the law. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983); St Petersburg Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1981). Legislative intent is the polestar by which a court must be guided in interpreting statutory provisions. Parker v. State, 406 So.2d 1089 (Fla. 1981). The statutory provision at issue here is found at Item 1203 of Ch. 83-300, Laws of Florida.

> Office of the Chief Commissioner of Workers' Compensation
>
> **1203** Salaries and Benefits
> POSITIONS 78
> From Workers' Compensation
> Administration 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.

In enacting Ch. 83-300, Laws of Florida, the Legislature could have chosen to appropriate an amount of money for salaries and expenses for the Office of the Chief Commissioner without further clarification or qualification. See, e.g., Ch. 83-300, Item 1207 (appropriating moneys for salaries and benefits for 520 positions within the Division of Workers' Compensation). However, the Legislature, for whatever reason, specified in a proviso to Item 1203 that the appropriations of moneys for salaries and benefits for authorized positions within the Office of the Chief Commissioner "contemplate[d] the elimination" of three deputy commissioner positions from District K by December 31, 1983. It appears that the purpose of the proviso and the intent of the Legislature thereby was to qualify the generality of the appropriation in Item 1203 and to exclude any possible misinterpretation. See State ex rel. Florida Jai Alai, Inc. v. State Racing Comm'n, 112 So.2d 825, 829 (Fla. 1959).

The Legislature must be assumed to know the meaning of words and to have expressed its intent by the use of the words found in a statute. Thayer v. State, 335 So.2d 815 (Fla. 1976). Webster's New Collegiate Dictionary (1977) defines "eliminate" as meaning "to cast out or get rid of" and lists as a synonym "remove." Since the language of the proviso to Item 1203 calls for the elimination of authorized deputy commissioner

positions by a particular date without regard to how those positions were to be eliminated, the plain meaning of the proviso establishes a legislative intent to abolish the offices of three deputy commissioners in District K as of the date specified, December 31, 1983.

Even if it could be argued that the language of the proviso is somehow ambiguous and requires the application of rules of statutory construction, those rules still compel the conclusion that the Legislature intended to abolish the offices of three deputy commissioners in District K by December 31, 1983. In attempting to resolve ambiguity in statutory language, courts will look to legislative history. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., supra. The legislative history as to Item 1203 indicates clearly that the Governor recommended that the deputy commissioner positions be eliminated by attrition, retirement or resignation. (R-133) That recommendation was rejected by the enactment of Ch. 83-300, Laws of Florida, inasmuch as Item 1203 fails to incorporate the recommended method of eliminating positions. It is axiomatic that a court has no authority to add to or to further qualify the statutory language so as to circumscribe the expressed intent of the Legislature whether the proviso in Item 1203 is in any way ambiguous or not. See Devin v. City of Hollywood, 351 So.2d 1022 (Fla. 1976). Yet this is exactly what the lower tribunal has done in determining that the Legislature could not abolish Trask's office.

Finally, pursuant to the provisions of §216.181(1), Fla. Stat., and particularly pursuant to a request by the Executive Office of the Governor through the Office of Planning and Budgeting, the chairmen of the legislative appropriations committees jointly transmitted additional explanation and direction regarding executive administration of Item 1203 of Ch. 83-300, Laws of Florida, by letter dated Febraury 7, 1984 (R-142-145). That document, as certified to by the appropriate official of the Governor's office, clearly establishes that the actions of the appellants have at all times been in furtherance of the legislative intent expressed in the unambiguous language of Item 1203.[2]

Therefore, appellants submit that Item 1203 of Ch. 83-300, Laws of Florida, evinces a legislative intent to abolish the offices of three deputy commissioners by December 31, 1983, without regard to whether those offices were vacated by attrition or by administrative implementation of the legislative mandate truncating the term of office of any incumbent deputy commissioners.

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[2] Although it appears that the lower tribunal sustained an objection to the admissibility of the document for the truth therein, that ruling was erroneous under the provisions of §§90.803(8) (hearsay exception) and 90.902(2) (self-authentication), Fla. Stat., since the chairmen of the legislative committees were under a statutory duty to prepare it, see, Sikes v. Seaboard Coast Line R. Co., 429 So.2d 1216 (Fla. 1st DCA 1983), and since the original of the letter is maintained as a public record in the office of the custodian so certifying, see White v. State, 82 So. 602 (Fla. 1919).

B

WHETHER THE LEGISLATURE MAY TRUNCATE THE TERM OF AN INCUMBENT OFFICER BY SPECIFYING IN THE GENERAL APPROPRIATIONS ACT THAT DIMINISHED FUNDING FOR THE OFFICER'S AGENCY CONTEMPLATES ELIMINATION OF THE OFFICER'S POSITION.

Nothing in §440.45(2), Fla. Stat., circumscribes in any way the absolute and plenary power to abolish a statutory office which are inherent in the Legislature and limited only by the constitution. Rather, the provision for removal of deputy commissioners contained in that section circumscribes the power of the Governor to remove a particular deputy commissioner from office before the expiration of his term of office.[3] As this Court has repeatedly held, an office created by the Legislature can be abolished by the Legislature at any time, even when the office is occupied by an incumbent. Hall v. Strickland, 170 So.2d 827 (Fla. 1965); City of Jacksonville v. Smoot, 83 Fla. 575, 92 So. 617 (Fla. 1922).

It should also be clearly noted that the Legislature by way of the proviso language to Item 1203 in Ch. 83-300, Laws of Florida, has in no way effected any amendment to any provision of

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[3] Section 440.45(2), Fla. Stat., provides that a full-time deputy commissioner serves a term of four years but "may be removed by the Governor for cause." Appellants concede that the statutory provision requires that a deputy commissioner be accorded "due process of law" (notice and hearing, see Arnett v. Kennedy, 416 U.S. 132, 94 S.Ct. 1633, 40 L.Ed.2d 15 [1974]) before removal by the Governor for cause. However, that is not the present case.

Ch. 440, Fla. Stat. That chapter makes no reference to any particular number of deputy commissioners and impliedly leaves for legislative determination the number of such commissioners in any given budget year.[4] Such a determination is therefore logically expressed in the General Appropriations Act in terms of the number of authorized positions for which salaries and benefits appropriated to the Office of the Chief Commissioner are adequate and sufficient. Such determination is then subject to statutory administration and implementation by the Department of Labor and Employment Security (to be argued infra, at "C").

The only limitations on the power of the Legislature to make such a determination must be gleaned from any applicable constitutional provisions. The only relevant limitation on the power of the Legislature with respect to enactment of appropriation bills is Art. III, §12 Fla. Const., providing that:

> Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

The purpose of this provision is to prevent logrolling and to ensure the integrity of the legislative process in substantive lawmaking. Brown v. Firestone, 382 So.2d 654 (Fla. 1980). The

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[4] Compare §440.45(1), Fla. Stat. (1973), specifying a maximum number of judges of industrial claims. Cf., §26.031, Fla. Stat., specifying the number of circuit judges in each judicial circuit. These statutory provisions are the exception rather than the rule. In fact, the pervasive practice is to determine the number of positions and accompanying salaries by the General Appropriations Act rather than by specific statute.

opinion in Brown set out two principles which logically follow from analysis of the purpose of the constitutional provision.

> First, an appropriations bill must not change or amend existing law on subjects other than appropriations. This is, of course, subject to our statement in In re Advisory Opinion to the Governor, 239 So.2d at 10, that a general appropriations bill may make "allocations of state funds for a previously authorized purpose in amounts different from those previously allocated or [substitute] adequate specific appropriations for prior continuing appropriations."
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> * * *
>
> Second, article III, section 12, will countenance a qualification or restriction only if it directly and rationally relates to the purpose of an appropriation and, indeed, if the qualification or restriction is a major motivating factor behind enactment of the appropriation.

382 So.2d at 684.

This Court in Brown suggested that the relevant question to ask is whether the qualification or restriction is directly and rationally related to the fund appropriated, or whether the qualification or restriction is being used merely as a device to further a legislative objective unrelated to the specific fund. One of the challenged provisos to which the question was applied in Brown involved a qualification on an appropriation to the Division of Corporations. That qualification authorized the use of additional funds to pay salaries for new positions within that

division if a certain bill was enacted which could reasonably be expected to generate an increased workload for employees of the division. This Court found that the proviso funding salaries for additional personnel "enjoy[ed] a direct and rational relationship to the appropriation . . . for the positions and salaries in the Division" (although the proviso was held invalid on other grounds). 382 So.2d at 669. The logical corollary is that a proviso to funding for salaries for fewer personnel also enjoys a direct and rational relationship to the appropriation for the positions and salaries in the agency funded.

Clearly, there can be no doubt that, just as the Legislature may specify generally the number of positions funded by an item in the appropriations act for salaries and benefits, so also may the Legislature specifically qualify and restrict such an appropriation. The Legislature may delineate how and where the executive agency administering the appropriation shall make necessary deletions of positions so as to comply with a reduced level of funding for any particular agency, such as the Office of the Chief Commissioner. See Green v. Rawls, 122 So.2d 10 (Fla. 1960), holding that the Legislature may determine the detail or lack thereof within the appropriations act. Such a proviso directly and rationally relates to the appropriation of moneys for salaries and benefits and is necessary, proper and incidental to the appropriation itself. See Amos v. Mosely, 74 Fla. 555, 77 So. 619, 623 (Fla. 1917).

Furthermore, the constitution expressly recognizes the power of the Legislature to make appropriations subject to qualifications and restrictions which may limit or qualify the use to which the moneys appropriated may be put and may specify reasonable conditions precedent to their use, even though this may leave some governmental activities underfinanced in the opinion of officers of departments other than the Legislature. In re Advisory Opinion to the Governor, 239 So.2d 1 (Fla. 1970). See Art. III, §8, Fla. Const. Cf., Dept. of Education v. School Board of Collier County, 394 So.2d 1010 (Fla. 1981), holding that a proviso to an appropriations measure which excepted certain districts from an increase in funding pursuant to a statutory school funding formula was a supplement to the formula and did not effect an unconstitutional amendment to existing general law.

In summary, then, appellants submit that the proviso to Item 1203 of Ch. 83-300, Laws of Florida, makes no change or amendment to any existing law, since nothing in §440.45, Fla. Stat., specifies any particular number of deputy commissioner positions; the proviso is directly and rationally related to the appropriation of moneys in Item 1203, since it specifies how and where the diminished appropriation of funds to the Office of the Chief Commissioner for salaries and benefits is to be administered. The two-part test of Brown v. Firestone, supra, is therefore met, and the proviso is constitutionally valid.

Since Trask can point to no other constitutional limitation on the power of the Legislature to abolish a statutory office, and since the constitutionally valid proviso to Item 1203 in the General Appropriations Act evinces the Legislative intent to so abolish or "eliminate" the offices of three deputy commissioners in District K, the judgment below that the legislature cannot terminate the offices of the three deputy commissioners by the appropriations act must be reversed as having no basis in law.

C

WHETHER THE DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY LAWFULLY IMPLEMENTED THE LEGISLATIVE MANDATE IN ITEM 1203 OF CH. 83-300, LAWS OF FLORIDA.

Because 440.45, Fla. Stat., does not prescribe a fixed number of deputy commissioner positions, the "authorized" number of those positions is determined solely in accordance with the provisions of Ch. 216, Fla. Stat., and the legislative appropriations process. Chapter 216, Fla. Stat., is also important in this case because it is under its authority that appellants "deleted" Trask's deputy commissioner position in order to implement the legislatively mandated reduction in the number of deputy commissioner positions.

It is fundamental that every employee or officer of a state agency must be in a position. Indeed, the definition of the term "position" is merely the broad sum total of the employee's or

officer's duties and responsibilities. However, the number of positions which an agency may have is controlled by the Legislature through the appropriations process. This statutory scheme is found in §§216.011(1) and 216.262(1)(a), Fla. Stat., as amended by Ch. 83-49, Laws of Florida, which provide in part:

> **216.011 Definitions.--**
> (1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, the following terms shall have the following meanings indicated:
>
> (d) 'Authorized position' means a position included in an approved budget . . . . (Emphasis supplied)
>
> (bb) 'Position' means the work, consisting of duties and responsibilities, assigned to be performed by an officer or employee.
>
> **216.262 Authorized positions.--**
> (1)(a) That unless otherwise expressly provided by law, the total number of authorized positions shall not exceed the total provided in the appropriations act . . . . (Emphasis supplied)

The significance of the above-cited provisions in Ch. 216, Fla. Stat., is that:

A. The sum total of each employee's or officer's duties and responsibilities constitute his "position".

B. The total number of (authorized) positions cannot exceed the total number included in an agency's approved budget.

C. The total number of (authorized) positions cannot (except in situations not involved in this case) exceed the total provided in the appropriations act.

It is because of and in accordance with §216.262(1)(a), Fla. Stat., that the Legislature appropriates both dollars and a specific number of positions in the salary category of the General Appropriations Act. By limiting the number of "authorized" positions in the appropriations act, the Legislature exercises its prerogative of limiting how the funds are to be expended. For a state agency to employ a person in a "position" not included or "authorized" in an appropriations act (assuming the agency had a sufficient salary dollar appropriation) would constitute an expenditure for a purpose for which there was no appropriation. Such an expenditure would clearly be a violation of Art. VII, §1(c), Fla. Const. (<u>See</u>, <u>infra</u>, at V.B.)

It is submitted that in enacting Ch. 83-300, Laws of Florida, the General Appropriations Act, the Legislature did, in fact, reduce the number of authorized deputy commissioner positions. The actual dollar appropriation for salaries in the General Appropriations Act is based upon the elimination of these positions. The Legislature reduced the number of authorized deputy commissioner positions and left appellants with no alternative but to implement that reduction in the ranks of deputy commissioners in District K.

In implementing this provision of the General Appropriations Act, the Department of Labor and Employment Security has, pursuant to §216.262(1)(b), Fla. Stat., "deleted" Trask's position from its approved operating budget. (R-134) That action was given the necessary approval by the Executive Office of the Governor. (R-135) Trask's position no longer exists in the approved operating budget of his department. The statutory authority under which appellants deleted Trask's position is clear and unambiguous.

> **216.262 Authorized positions.--**
> (1)(b) The Executive Office of the Governor, under such procedures and qualifications as it deems appropriate, shall, upon agency request, delegate to any state agency or department authority to add and delete authorized positions or transfer authorized positions from one budget entity to another budget entity within the same division, and may approve additions and deletions of authorized positions or transfers of authorized positions within the state agency when such changes would enable the agency to administer more effectively its authorized and approved programs.

Because of the lower tribunal's Temporary Restraining Order, entered after Trask's position was deleted in accordance with §216.262(1)(b), Fla. Stat., the State Comptroller has not been notified of this deletion, and Trask remains on the state's payroll. As a result of that Order, moneys are, in fact, being disbursed from the State Treasury in violation of Art. VII, §1(c), Fla. Const. A constitutional prerogative of the

legislative branch of government is being frustrated in this regard.

In conclusion, appellants submit that inherent in the power of the Legislature to appropriate funds for specific purposes is the power to limit the expenditure of those moneys to those specific purposes. The Legislature, in its wisdom, saw fit not to provide funding for several deputy commissioner positions. Principles of law, as well as public policy, require this Court to give force to that action. The acts of the appellants in implementing that legislative mandate are specifically authorized by §216.262(1)(b), Fla. Stat. Under that authority, appellants carried out that legislative directive and amended the agency's approved operating budget in line with Item 1203 of Ch. 83-300, Laws of Florida, by deleting Trask's position.

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.

In its final judgment, the tribunal below ruled as follows:

> 4. The Department of Labor & Employment Security arbitrarily selected a 'position' with the Office of Chief Commissioner to eliminate, which conduct cannot as a matter of law and did not abolish the office of Deputy Commissioner held by plaintiff or oust plaintiff from title thereto.

Appellants submit that there was neither pleading nor proof by Trask on this issue.

A careful reading of the transcript of the final hearing in the lower tribunal fails to disclose any evidentiary basis for the finding that Trask's position was "arbitrarily selected" for elimination. In fact, there appears to be no testimony whatsoever as to how Trask's budget number came to be referred to the Comptroller's office for deletion from the state payroll, other than the inference that officials in the Department of Labor and Employment Security with the concurrence of the Office of Planning and Budgeting within the Governor's office "approved" the deletion as required by Ch. 216, Fla. Stat. (T-76, 77) Although it is axiomatic that the findings of a trial court should not be disturbed on appeal where there is sufficient competent evidence to support those findings, an appellate court will reverse when the court is convinced that the trial court's finding is without support of any substantial evidence or that the trial court has misapplied the law to the established facts. Holland v. Gross, 89 So.2d 255 (Fla. 1956).

Furthermore, no pleading, motion, memorandum of law or argument of counsel before the lower tribunal alleged in any way that the selection of Trask's position for elimination was in any manner arbitrary or otherwise improper. As shown by the evidence, the only supportable finding is that budget administrators

in the Governor's Office of Planning and Budgeting and in the Department of Labor and Employment Security analyzed Item 1203 of Ch. 83-300, Laws of Florida, and determined that a deputy commissioner in the District K office would have to be "eliminated." (T-67-8) The evidence shows that the determination was made in order to comply with the legislative intent reflected in the General Appropriations Act and to ensure agency compliance with statutory and constitutional requirements as to procedures for drawing money from the State Treasury for the payment of salaries to employees or officers within the Office of the Chief Commissioner. (T-37)

Because there was no competent evidence before the trial court to support the finding that Trask's position was "arbitrarily selected" for elimination, appellants submit that the finding and the conclusion of law based on that finding must be reversed, as a matter of fact and of law.

IV

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

The final judgment appealed here reads in part:

> 5. Less than sixty days lapsed from the date that plaintiff's position was to be deleted by the defendants and an alternative District K position was open and available.

* * *

> [B]ecause the court in the exercise of its equity jurisdiction cannot allow to occur by indirection that which is prohibited by law, this court enjoins defendant Graham from effectuating or purporting to effectuate the ouster of plaintiff by appointment of a new District K Deputy Commissioner.

The lower tribunal in the exercise of its equitable powers may of course fashion its relief so as to do equity. However, that maxim is subject to several countervailing principles in the instant case.

First, courts of equity have no right or power to issue such orders as they consider to be in the best interest of "social justice" at the particular moment without regard to established law. Flagler v. Flagler, 94 So.2d 592 (Fla. 1957). The "established law" in the context of this case has been rejected or ignored in two respects by the lower tribunal's attempted exercise of equitable jurisdiction to afford relief. The final judgment rejects the inherent power of the Legislature to determine the use of and to appropriate moneys deposited in and disbursed from the State Treasury by ordering the disbursement of public trust funds contrary to the specified intent and contemplation of the Legislature. Moreover, the lower tribunal's injunction ignores the requirements of §440.45, Fla. Stat., which provides in pertinent part:

> (1) The Governor shall appoint as many full-time deputy commissioners as may be necessary to effectually perform

> the duties prescribed for them under this chapter. The Governor shall initially appoint a deputy commissioner from a list of at least three persons nominated by the appellate district judicial nominating commission for the appellate district in which the deputy commissioner will principally conduct hearings. The meetings and determinations of the judicial nominating commission as to the deputy commissioners shall be open to the general public. No person shall be nominated or appointed as a full-time deputy commissioner who has not had 3 years' experience in the practice of law in this state; and no deputy commissioner shall engage in the private practice of law during a term of office. . . .

This provision must be totally disregarded by appellants now that the final judgment herein in effect "appoints" Trask to a vacant position in the District K office. Appellants submit that they are wholly without statutory authority to effectuate the order of the lower tribunal, since §440.45 specifies that vacant deputy commissioner positions must be filled by the process of nomination, recommendation to the Governor, and appointment by the Governor. See, Alsop v. Pierce, 19 So.2d 799 (Fla. 1944), holding that a legislative direction as to how a thing should be done is, in effect, a prohibition against its being done in any other way.

The final judgment appears to assume erroneously that appellants have some right or power to transfer a "position number" or "budget number" within the Office of the Chief Commissioner to accomodate Trask, while the fact is that Trask's

office ceased to exist on December 31, 1983, pursuant to implementation of Ch. 83-300, Laws of Florida; and that it was not until more than seven weeks after that date that a position became vacant in the District K office through the resignation of Deputy Commissioner Esquiroz.

Second, courts of equity are not authorized to adjudicate questions of public policy. See, Miami Laundry Co. v. Florida Dry Cleaning and Laundry Board, 134 Fla. 1, 183 So. 759 (Fla. 1938), holding that the equitable power to grant injunctions is subject to the paramount power of the Legislature to set public policy through the enactment of laws. See also, Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449 (Fla. 1928), app. dismissed, 278 U.S. 560, 49 S.Ct. 25, 73 L.Ed. 505 (1928). Neither may courts of equity exercise jurisdiction over cases involving purely political rights. Markert v. Sumter County, 60 Fla. 328, 53 So. 613 (Fla. 1910). Appellants submit that the lower tribunal's asserted equitable jurisdiction adjudicates questions of public policy and purely political rights in contravention of established law and judicial precedent. See also, Schwartz v. Zaconick, 68 So.2d 173 (Fla. 1953), holding that courts of equity must follow the law unless some recognized principle permits otherwise.

In summary, appellants submit that the lower tribunal erred in exercising equitable jurisdiction to judicially "appoint"

Trask to a vacant deputy commissioner position in District K, where the vacancy occurred more than seven weeks after the date Trask's office was effectively abolished by the Legislature pursuant to its constitutional power to enact laws and appropriate moneys for the salaries of public officers and employees, and where the exercise of equitable jurisdiction was without regard to the statutory procedure for filling such vacancies.

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 ART. V, §14, FLA. CONST., OR ART. VII, §1(c), FLA. CONST.

A

WHETHER THE LOWER TRIBUNAL'S INJUNCTION VIOLATED ART. V, §14, FLA. CONST.

By its oral ruling from the bench on December 28, 1983, the lower tribunal enjoined appellants from denying to Trask the rights and perquisites of his office, including his salary and benefits, to preserve the status quo pending a resolution of the merits of the cause. Appellants submit preliminarily that the temporary order requiring continued payment of Trask's salary and benefits after December 31, 1983, was in essence an unconstitutional appropriation of public funds by the judiciary in contravention of the requirement of Art. V, §14, Fla. Const., that "[t]he judiciary shall have no power to fix appropriations." It

is clear that the effect of the trial court's temporary injunction was to require the payment of salaries and benefits to five deputy commissioners in the District K office between December 31, 1983 (the date specified by the Legislature in its proviso to Item 1203 for the elimination of three positions in the District K office), and February 20, 1984 (the effective date of the resignation of Deputy Commissioner Esquiroz) (T-22, 24-25) even though the Legislature appropriated salaries and benefits for only four commissioners on and after December 31, 1983. Therefore, the effect of the temporary order was to appropriate money from the Workers' Compensation Administration Trust Fund in the State Treasury in direct conflict with the expressed intent of the Legislature in appropriating those funds pursuant to Item 1203 of Ch. 83-300, Laws of Florida.

Appellants submit that the lower tribunal's temporary and permanent injunction, requiring payment of salary and benefits to a deputy commissioner in the absence of a lawful appropriation by the Legislature for such, constitutes a violation of Art. V, §14, Fla. Const., which cannot be approved by this honorable Court without rendering that constitutional provision nugatory and of no force and effect.

B

WHETHER EXPENDITURES FROM THE WORKERS' COMPENSATION ADMINISTRATION TRUST FUND ARE SUBJECT TO THE REQUIREMENTS OF ART. VII, §1(c), FLA. CONST.

Section 440.50, Fla. stat., provides in pertinent part:

> (1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(e). Such fund shall be administered by the division. The 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.
>
> (2) The State Treasurer is authorized to disburse moneys from such fund only when approved by the division and upon the order of the Comptroller, countersigned by the Governor. He shall be required to give bond in an amount to be approved by the division conditioned upon the faithful performance of his duty as custodian of such fund.
>
> (3) The State Treasurer shall deposit any moneys paid into such fund into such depository banks as the division may designate and is authorized to invest any portion of the fund which, in the opinion of the division, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposi of state funds by such

> Treasurer. All interest earned by such portion of the fund as may be invested by the State Treasurer shall be collected by him and placed to the credit of such. (Emphasis supplied)

Art. VII, §1(c), Fla. Const., states without qualification that:

> [n]o money shall be drawn from the treasury except in pursuance of appropriation made by law. (Emphasis supplied)

Although the funds in the Workers' Compensation Administration Trust Fund are "not the money or property of the state," these funds are statutorily placed in the State Treasury and are therefore subject to the mandatory requirement of Art. VII, §1(c), Fla. Const.

In requiring an appropriation made by law as authority to withdraw money from the State Treasury, Art. VII, §1(c), Fla. Const., secures to the Legislature, except where the constitution controls to the contrary, the exclusive power of deciding how, when, and for what purpose public funds shall be applied in carrying on the government. See State ex rel. Kurz v. Lee, 163 So. 859, 868 (Fla. 1935), interpreting Art. IX, §4, Fla. Const. 1885 (now Art. VII, §1(c)). In light of the facts of the instant cause, it is interesting to note that the Court in Kurz also observed:

> This is not to say that the Legislature is without constitutional power to substantially reduce, or even abolish,

> its optional appropriations to any state office, institution, or agency that may have been created by statute and provided to be carried on as a state activity for a public state purpose. Neither is this to say that the state Legislature may not by an appropriate state statute conserve its financial resources by appropriately amending any provision of law that has been enacted by it, fixing or providing for a stipulated compensation to be paid state officers or employees or authorizing expenditures to be made on the part of the same.

163 So. at 869.

Appellants further submit that the designation of the particular fund from which deputy commissioners' salaries and benefits are paid (see §440.45(4), Fla. Stat.) as a "trust fund" in the State Treasury necessarily implicates the statutory scheme reflected in Chs. 215 and 216, Fla. Stat., with respect to maintenance and disbursement of trust funds in the State Treasury. See §215.32, Fla. Stat., providing in pertinent part:

> (1) All moneys received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law . . .
>
> (b)1. The trust funds shall consist of moneys received by the state which under law or trust agreement are segregated for a purpose authorized by law.
>
> 3. All such moneys are hereby appropriated to be expended in accordance with the law or trust agreement under which they were received, subject always to the provisions of chapter 216 relating to the appropriation of funds and to

> the applicable laws relating to the deposit or expenditure of moneys in the State Treasury. (Emphasis supplied)

The following provisions of Ch. 216, Fla. stat., are also pertinent:

> **216.011 Definitions.--**
>
> * * *
>
> (1)(b) "Appropriation" means a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act.
>
> * * *
>
> **216.251 Salary appropriations; limitations.--**
>
> * * *
>
> (2)(b) Salary payments shall be made only to employees filling established positions included in the agency's approved budgets and amendments thereto as may be provided by law.
>
> * * *
>
> **216.262 Authorized positions.--**
>
> (1)(a) Unless otherwise expressly provided by law, the total number of authorized positions may not exceed the total provided in the appropriations acts. (Emphasis supplied)

The argument that the moneys in the Workers' Compensation Administration Trust Fund are not subject to the routine budgetary constraints on disbursement of trust funds held in the State Treasury generally is effectively met by the requirement of §440.50(2), Fla. Stat., that the State Treasurer is authorized to

disburse money from the fund only when approved by the division and upon the order of the Comptroller, countersigned by the Governor. When that section is read with Art. IV, §4(e), Fla. Const., authorizing the treasurer to "disburse state funds only upon the order of the comptroller, countersigned by the governor . . ." (emphasis supplied), it is apparent that the Legislature intended to subject disbursement of the Workers' Compensation Administration Trust fund to the same constitutional and statutory limitations which are applicable to state funds generally.

The pervasive statutory scheme envisions a trust fund in the State Treasury with all the concomitant safeguards to protect it from being used for any purpose other than as specifically authorized by the Legislature through enactment of laws. This is the only reason for giving the Division of Workers' Compensation the statutory responsibility for approving all expenditures out of the subject trust fund. In so directing the division to approve disbursements, the Legislature certainly did not intend to grant the division the authority to make expenditures outside of an appropriations act. Moreover, there is nothing in Ch. 440, Fla. Stat., that expressly or impliedly grants to the division, the Department of Labor and Employment Security, or the Office of the Governor authority to expend funds from the Workers' Compensation Administration Trust Fund without an appropriation. Had the Legislature intended to grant such authority, it certainly could have so specified in §440.50, Fla. Stat., or

omitted the requirement that disbursements be approved by the Comptroller and countersigned by the Governor in accordance with constitutional and statutory requirements pertaining to public trust funds generally.

Appellants submit that the Legislature enacted Item 1203 of Ch. 83-300. Laws of Florida, because salaries and benefits payable from the Workers' Compensation Administration Trust Fund could not be paid constitutionally without an appropriation of such funds deposited in the State Treasury pursuant to Ch. 215, Fla. Stat., and because the legislative intent as reflected in §440.50, Fla. Stat., was that the appellants were without authority in law to expend such funds without benefit of an appropriation.

C

WHETHER THERE IS A CONTINUING APPROPRIATION MADE BY LAW FOR PAYMENT OF DEPUTY COMMISSIONERS' SALARIES.

Section 440.45, Fla. Stat., creates the class of state officers known as deputy commissioner. It does not create any specific number of deputy commissioners nor does it specifically "appropriate" funds for the payment of their salaries. Likewise, 440.50, Fla. Stat., creates a trust fund out of which the cost of administering the Workers' Compensation program is to be paid, without fixing any "appropriations."

Section 216.011(1), Fla. Stat., provides in part:

216.011 Definitions.--

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, the following terms shall have the meaning indicated:

(b) 'Appropriations act' means the Legislature's authorization . . . for the expenditure of amounts of money by an agency and the legislative branch for stated purposes in the performance of the functions it is authorized by law to perform.

(j) 'Appropriation' means a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act.

(k) 'Continuing appropriation' means an appropriation automatically renewed without further legislative action, period after period, until altered or revoked by the Legislature. (Emphasis supplied)

A reading of §§440.45 and 440.50, Fla. Stat., reveals no continuing appropriation. Although the Legislature could have fixed a continuing amount of money to be available to pay deputy commissioners in either of these sections, it did not do so.

By definition, an "appropriation" is an expressed legislative ". . . authorization to make expenditures for specific purposes within the amounts authorized." The language in §440.50, Fla. Stat., does not authorize the expenditure of any moneys within the trust fund. That section merely creates the trust fund, limits the purposes for which the funds within the trust fund may be expended, provides the method for expending and

disbursing those funds and provides for the administration of the trust fund. Likewise, §440.45, Fla. Stat., does not create any specific number of deputy commissioner positions. It does set the salary of the deputy commissioners and it does provide that such salaries are payable out of the Workers' Compensation Administration Trust Fund. The fact that the Legislature by law has provided that the trust fund be the funding source for deputy commissioners' salaries, does not constitute a continuing appropriation.

Even assuming that these sections could have been construed as a "continuing appropriation," the enactment of Ch. 83-300, Laws of Florida, the General Appropriations Act, would have certainly altered that "appropriation." By the very definition of "continuing appropriation," it is an appropriation which is automatically renewed without further legislative action until altered by the Legislature. Item 1203 of Ch. 83-300 specifically reduces the number of deputy commissioner positions which the Legislature saw fit to fund.

In summary, nothing in §440.45 and 440.50, Fla. Stat., can be construed as a continuing appropriation. Even had the Legislature authorized the division to expend such funds as a continuing appropriation when they enacted these sections, that authorization has now been altered by Ch. 83-300, Laws of Florida.

Summarizing the arguments under Point V, therefore, appellants submit: (a) the lower tribunal's temporary injunction appropriated funds from the Workers' Compensation Administration Trust Fund to pay Trask's salary and benefits in violation of Art. V, §14, Fla. Const., as to all such payments between December 31, 1983, and February 20, 1984; (b) expenditures from the Workers' Compensation Administration Trust Fund are subject to the requirements of Art. VII, §1(c), Fla. Const., and are prohibited from disbursement except as subject to "appropriation made by law;" (c) there is no continuing appropriation made by law for payment of deputy commissioners' salaries, and even assuming that §440.45(4) and 440.50, Fla. Stat., constitute a continuing appropriation made by law for payment of deputy commissioners' salaries, any such continuing appropriation has been expressly "altered or revoked" by enactment of Item 1203 of Ch. 83-300, Laws of Florida.

CONCLUSION

For all of the reasons and by virtue of the statutes and authorities cited herein, appellants urge this Honorable Court to hold that the judgment of the lower tribunal was erroneous as a matter of law and must be reversed. Appellants further urge this Court to enter judgment for appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief and appendix thereto has been furnished by U.S. Mail to ARTHUR J. ENGLAND, Esquire, 1400 Southeast First Naitonal Bank Building, 100 S. Biscayne Boulevard, Miami, Florida 33131, and to STEPHEN MARC SLEPIN, Esquire, Slepin, Slepin, Lambert & Waas, 1114 East Park Avenue, Tallahassee, Flroida 32301, Attorneys for Plaintiff/Appellee Davis L. Trask, this 26 day of June, 1984.

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