IN THE SUPREME COURT
STATE OF FLORIDA

FILED
SID J. WHITE
APR 17 1985
CLERK, SUPREME COURT
By
Chief Deputy Clerk

FLORIDA SOCIETY OF OPHTHALMOLOGY,

Petitioner,

vs.

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

CASE NO. 66,762 DCA
DCA CASE NO. AX-391

ON DISCRETIONARY REVIEW OF A DECISION
OF THE DISTRICT COURT OF APPEAL OF
FLORIDA, FIRST DISTRICT

INITIAL BRIEF OF THE FLORIDA SOCIETY OF OPHTHALMOLOGY

RICHARD B. COLLINS, ESQ.
PERKINS & COLLINS
Post Office Drawer 5286
Tallahassee, Florida 32314

(904) 224-3511

Counsel for Florida
Society of Ophthalmology

ARTHUR J. ENGLAND, ESQ.
FINE JACOBSON SCHWARTZ
NASH BLOCK & ENGLAND
2401 Douglas Road
Miami, Florida 33134

(305)446-2200

Co-counsel for Florida
Society of Ophthalmology

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF THE CASE AND OF THE FACTS 3

ARGUMENT:

A. REVIEW OF ARTICLE III, SECTION 8(a). 5

B. RULES OF CONSTRUCTION TO BE APPLIED 9

C. DISTRICT COURT'S INTERPRETATION OF SECTION 8(a) 15

D. PROSPECTIVE APPLICATION 19

CONCLUSION 23

CERTIFICATE OF SERVICE 24

APPENDIX

TABLE OF AUTHORITIES

CASES: PAGE(S)

Advisory Opinion To The Governor, Request of June 29, 1979, 374 So.2d 959 (Fla. 1979) 11-13,21

Amos v. Moseley, 74 Fla. 555, 77 So. 619 (1917) 8,9,21

Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975) 19

Boyd v. Deal, 24 Fla. 293, 4 So. 899 (1888) 14

Curry v. Lehman, 55 Fla. 847, 47 So. 18 (1908) 16,17

Edwards v. United States, 286 U.S. 482, 52 S.Ct. 627, 76 L.Ed.1239 (1932) 13,14,17

In re Interrogatories of the Colorado Senate of the Fifty-First General Assembly, Senate Resolution No. 5., 578 P.2d 216 (Co. 1978). 17,19,22

In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P.2d 200 (Co. 1978) 18,19,21

Lee v. Dowda, 19 So.2d 570 (Fla. 1944) 11

Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965) 19,20

Plante v. Smathers, 372 So.2d 933 (Fla. 1979) 9,15

State v. Kaufman,
430 So.2d 904 (Fla. 1983) 8,10,17,22

Vinales v. State,
394 So.2d 993 (Fla. 1981) 8

Witt v. State,
387 So.2d 922 (Fla. 1980) 20

CONSTITUTIONAL PROVISIONS:

Article III, Section 7, Florida Constitution
(1968) 10,11

Article III, Section 8(a), Florida Constitution
(1968) 6-9,12-17
20,22,23

Article III, Section 28, Florida Constitution
(1885) 6

Article IV, Section 18, Florida Constitution
(1885) 6,7

OTHER AUTHORITIES:

Journal of Senate,
July 12, 1983 5

INTRODUCTION

This case involves the single issue of whether the Governor of Florida has seven or fifteen days within which to veto a legislative enactment presented to him <u>after</u> the Legislature has formally adjourned. Florida's Constitution, as adopted in 1968, does not address the issue.

Until the Ides of March of this year when the First District Court of Appeal rendered its decision, public officers in Florida had uniformly and consistently construed the Constitution to give the Governor fifteen days, the same time period allotted him in the Constitution for bills presented to him during the last few days of a legislative session which in fact adjourns before the "in session" seven-day veto period has expired. Those public officers include all three governors who have served since 1968, the Attorney General of Florida, the Florida Senate, the Florida House of Representatives, five Justices of this Court, and Circuit Judge Ben Willis of Tallahassee.

On March 15, however, two out of three judges of the First District Court of Appeal decided that the unbroken construction of the timing for gubernatorial vetoes by these officials was erroneous. They held, instead, that while the Governor has fifteen days to act on bills presented to him

in the last seven days of a legislative session, he has only seven days if legislative leaders do not get around to presenting him with bills until the day after a session has officially adjourned.

The importance of this case was recognized by the District Court's certification of the veto period question. The potential impact of the Court's decision goes far beyond this case and its future implications however. Since the 1968 Constitution became effective, a number of gubernatorial vetoes have been issued within fifteen days of post-session bill presentment but more than seven days after legislative adjournment. As there is no operative statute of limitations in this area, the District Court's decision (if sustained) opens these vetoes to challenge, raising unfathomable complications for criminal and civil jurisprudence, and for other governmental matters.

This is not to suggest that the Constitution of Florida should be construed simply to prevent confusion or to achieve a practical result. Rather, we note the extreme ramifications of the District Court's action because the Constitution should be construed to reflect common sense, and we believe that consistent and contemporaneous constructions of an ambiguous constitutional omission by those who have been affected should be given appropriate weight.

STATEMENT OF THE CASE AND OF THE FACTS

In this proceeding, reference to the Record on Appeal will be made by use of the symbol "R" in parentheses followed by the appropriate page number, (R._). Reference to the Appendix to the Brief will be made by use of the symbols "App." followed by the appropriate page number preceded by the letter "A.".

The 1983 regular legislative session adjourned *sine die* June 13, 1983. (R.148). Senate Bill 168, having been passed by the Legislature, was presented to the Governor on June 14, 1983. (R.148).

On June 15, 1983, the Governor called a special session which lasted through June 24, 1983. (R.90).

On June 29, 1983, fifteen days after the presentation of Senate Bill 168, Governor Graham vetoed that bill. (R.148). The veto message was presented to the Secretary of State. (R.181).

The Governor called another special session of the Legislature, which convened on July 12, 1983. (R.148). Prior to the first day of that session, the Secretary of State transmitted the vetoed Bill and the Governor's veto message to the house of origin. (R.179). On July 13, 1983, Senate Bill 168 was sent back to the Secretary of State

under cover of letter which indicated that "no action was taken" by the Legislature. (R.230).

Having failed to obtain relief in the Legislature, the Optometrists petitioned the circuit court for a writ of mandamus to the Secretary of State. The court issued a show cause order to the Governor, Secretary of State and Opthalmologists, and proceeded to hear the case on its merits. See (R.1-150).

After considering oral argument of counsel and after reviewing the Petition For Mandamus and responses thereto, the circuit court held that Governor Graham's veto of Senate Bill 168 was timely. (R.147-150). That order was appealed to the District Court of Appeal. The Ophthalmologists cross-appealed that portion of the circuit court's order accepting mandamus jurisdiction.

Without oral argument, the District Court of Appeal reversed the Circuit Court and held that a writ of mandamus should issue. Recognizing the significance of its decision, the District Court of Appeal certified the following question to this Court:

> WHETHER ARTICLE III, SECTION 8(a), FLORIDA CONSTITUTION, ALLOWS THE GOVERNOR SEVEN OR FIFTEEN CONSECUTIVE DAYS TO ACT ON A BILL PRESENTED TO HIM AFTER THE LEGISLATURE ADJOURNS SINE DIE, AND, IF HE IS ALLOWED ONLY SEVEN DAYS THEREAFTER, SHOULD THE EFFECT OF AN OPINION SO HOLDING HAVE ONLY PROSPECTIVE APPLICATION?

ARGUMENT

A. REVIEW OF ARTICLE III, SECTION 8(a)

1. Conditions Contemplated:

This case arises from Governor Graham's veto of Senate Bill 168 enacted by both chambers of the 1983 Legislature. A copy of the bill is contained in the Appendix at A.15. Among other things, that bill would have allowed optometrists for the first time to prescribe and apply drugs for therapeutic as well as diagnostic purposes.

Fulfilling his constitutional obligation to review legislation for the benefit of all Floridians, Governor Graham carefully considered Senate Bill 168 and rejected it. A portion of his veto message stated:

> Legislation authorizing optometrists to use diagnostic drugs could be an important step forward in the early detection of eye disease. Senate Bill 168, however, authorizes medical treatment of disease by optometrists which encourages members of the public to seek treatment for eye disease from those who may be underqualified to offer such care.

Journal of Senate, July 12, 1983, 1,2, (R.181-182), (App. at 25.)

The veto message not only reveals a careful analysis by the Governor of the studies that were conducted in support of the bill, but an independent analysis of the effect of

the Bill on the public. *Id.* For instance, the Governor noted that:

> Medical Doctors, dentists and podiatrists follow their pharmacology courses with two years spent treating patients and examining firsthand the physical effects of therapeutic agents. In comparison, Senate Bill 168 requires only 1500 hours of supervised experience in differential diagnosis or 6 months of supervised on-the-job training for board certified optometrists.

Id.

Article III, Section 8(a), provides in relevant part:

> Every bill passed by the Legislature shall be presented to the governor for his approval and shall become a law if he approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the Legislature adjourns sine die, or takes a recess more than thirty days, he shall have fifteen consecutive days from the date of presentation to act on the bill.

This Section in its present form is derived from the 1968 Florida Constitution and was assimilated from Article III, Section 28 and Article IV, Section 18 of the 1885 Constitution. Article III, Section 28 provided that the Governor had five (5) days (Sunday excepted) within which to return a bill to the Legislature with any objections unless the Legislature, by its adjournment, prevented such return. In that event, the Governor had twenty (20) days after the adjournment to file the bill with his objections with the

Secretary of State for presentment to the Legislature at its next session. Article IV, Section 18, Florida Constitution, dealt with the veto of appropriations bills, a matter also treated in Section 8(a), but not relevant in any way to this case.

At the time the 1968 Constitution was presented to the electors of Florida for their votes, it was explained in an official publication of the Florida Legislature that the new Article III, Section 8(a), which Section still appears as it did when the 1968 Constitution became effective in 1970, was a redraft of and a combination of Article III, Section 28 and Article IV, Section 18 of the 1885 Constitution. Attached to this brief in the Appendix is the Draft of the Proposed 1968 Constitution which includes the pages relevant to newly-proposed Article III, Section 8(a). App. at A.34.

Section 8(a) provides certain time periods for action by the Governor in three specific situations:

> (1) "In session" presentation: Within seven consecutive days if the bill is presented during the legislative session and more than seven days prior to adjournment sine die or an extended (30 day) recess.
>
> (2) "Near the end" presentation: Within fifteen consecutive days if the bill is presented during the legislative session but less than seven days prior to adjournment sine die or an extended (30 day) recess.

> (3) "Exactly seven days before the end" presentation: Within fifteen consecutive days if the bill is presented during the legislative session but the Legislature adjourns sine die or takes a recess of more than 30 days on the seventh consecutive day after the bill is presented to the Governor.

2. Presentment after adjournment is not contemplated:

Section 8(a) is silent on the number of days the Governor has to act on a bill if presented to him after the Legislature has adjourned, and, in fact, that Section does not specifically contemplate bills being presented to the Governor after the session is closed. However, the Governor and the Legislature have been interpreting Section 8(a) for years to mean that the Governor has fifteen days to veto bills presented to him after adjournment sine die. App. at A.27-A.31. The Legislature's and Governor's interpretation of Article III, Section 8(a), is, of course, presumptively correct. State v. Kaufman, 430 So.2d 904, 907 (Fla. 1983); Vinales v. State, 394 So.2d 993 (Fla. 1981); Amos v. Moseley, 74 Fla. 555, 77 So. 619,625 (1917). The Supreme Court of Florida in Amos opined:

> Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the Constitution, and by those who had opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention.

> And where this has been given by officers in the discharge of their official duty, and rights have accrued in reliance upon it, which would be diverted by a decision that the construction was erroneous, the argument *ab inconvenient*, is sometimes allowed to have very great weight.

Id. at 625.

B. RULES OF CONSTRUCTION TO BE APPLIED

Since Section 8(a), literally read, does not answer the question certified, we must resort to constitutional rules of construction developed by the Court. The strong presumption referred to in *Amos* is especially important since the intent and objective of the people of Florida in adopting a constitutional amendment is the polestar that should guide this Court's interpretation of any constitutional provision. See *Plante v. Smathers*, 372 So.2d 933 (Fla. 1979) at p. 936. As the Court there explained:

> The spirit of the constitution is as obligatory as the written word. *Amos v. Matthews*, 99 Fla. 1, 126 So. 308 (1930). The objective to be accomplished and the evils to be remedied by the constitutional provision must be constantly kept in view, and the provision must be interpreted to accomplish rather than to defeat them. *State ex rel. Dade County v. Dickinson*, 230 So.2d 130 (Fla. 1970). A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context. *Gray v. Bryant*, 125 So.2d 846 (Fla. 1960).

> We may glean light for discerning the people's intent from historical precedent, from the present facts, from common sense, and from an examination of the purpose the provision was intended to accomplish and the evils sought to be prevented. In re Advisory Opinion to the Governor, 276 So.2d 25 (Fla. 1973). Furthermore, we may look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent. Williams v. Smith, 360 So.2d 417 (Fla. 1978); In re Advisory Opinion to the Governor, 343 So.2d 17 (Fla. 1977). Further, an interpretation of a constitutional provision which will lead to an absurd result will not be adopted when the provision is fairly subject to another construction which will accomplish the manifest intent and purpose of the people. City of Miami v. Romfh, 66 Fla. 280, 63 So. 440 (1913).

372 So.2d at p. 936.

The case of State v. Kaufman, 430 So.2d 904 (Fla. 1983), illustrates the point at issue. Kaufman involved the interpretation of Article III, Section 7, which, in pertinent part, stated that "on each reading, [a bill] shall be read by title only, unless one-third of the members present desire it read in full." Mr. Kaufman complained that a particular statute was not law since its title had not been read in full. After reviewing the objectives of the provision, the Court noted that historically bills had been read by caption title or short title only, and not full titles. Id. at 907. The Court held that "the construction of a constitutional provision is presumptively correct

unless manifestly erroneous," and in view of the fact that the Legislature's interpretation accomplished the objectives of Article III, Section 7, "We cannot say that the Legislature's interpretation of the reading requirement is erroneous." Id.

Not only have the Governor and the Legislature consistently construed the omission in Section 8(a) to grant fifteen days, but this Court assumed that construction when presented with an issue touching on Section 8(a). In Advisory Opinion To The Governor, Request of June 29, 1979, 374 So.2d 959 (Fla. 1979), the Court itself computed the days available for veto and came up with fifteen, not seven. The District Court, of course, was quick to opine that the advisory opinion was not binding on it. App. at A.6. Although not binding, advisory opinions are persuasive and usually followed. Lee v. Dowda, 19 So.2d 570 (Fla. 1944). They are particularly persuasive where this Court entertained briefs and oral argument, and where, contrary to what is said in the opinion below, the time period during which the Governor can veto bills presented after the session has closed was an issue in the case. Indeed, after reading the Governor's request for an advisory opinion, the Court listed the following three issues to be briefed and orally argued:

> "1. Has there been a constitutional creation of judicial vacancies by virtue of CS for SB 268 so as to permit gubernatorial appointments to judicial office and judicial nominating commissions?
>
> "2. If so, what is the effective date of the new law?
>
> "3. If not, is the law defective in whole or in part?

Order of the Supreme Court of Florida, dated June 29, 1979. App. at A.26. Issues "2" and "3" simply could not be answered without an inquiry into when pursuant to Article III, Section 8(a), Florida Constitution, the bill became law, and, given the adversarial nature of that Advisory Opinion proceeding, the assumption that this Court haphazardly construed Article III, Section 8(a) is inconceivable.

Governor Graham's Letter of June 29, 1979, requesting an advisory opinion, of course, assumed, as his predecessors assumed, that the fifteen day provision of Article III, Section 8(a), applied to a bill presented to him after the Session adjourned _sine die_. _Advisory Opinion_, _id_ at 926. However, this Court did not simply take the Governor's word on faith as the District Court below implied. The Attorney General, Speaker of the House and President of the Senate filed a joint brief in the case, which argued that under Article III, Section 8(a), "when a bill is presented to the Governor after the Legislature has adjourned _sine die_, the

> The purpose of the section of the constitution was to require of the governor careful consideration of every bill before it can become a law, and the exercise of his judgment as a public official as to the wisdom of the proposed legislation, in light of public interest;....

Boyd v. Deal, 24 Fla. 293, 4 So. 899,906 (1888). (Emphasis added.).

The United States Supreme Court recognized in Edwards that the concern over safeguarding the executive branch's opportunity to consider all bills increases at the close of a session when bills multiply. 76 L.Ed. at 1244. The same concern has been and remains valid in Florida. As a session comes to a close in this State, a niagra of bills always flows through the Governor's office. Regarding the 1983 regular session, 50 percent of all bills presented to the Governor, including Senate Bill 168, were presented during the last six days of the session and after the session adjourned sine die. In order to comprehend the profound effect that the District Court's reading of Article III, Section 8(a), would have on the Governor's ability to adequately consider legislation, generally, it is important to note that from 1974 through 1983, the number of bills presented to the Governor in the last six days of the session and after the session adjourned was consistently in excess of 60 percent of the total bills presented to him in a given session, except for 1979, when it was 40 percent.

> The purpose of the section of the constitution was to require of the governor careful consideration of every bill before it can become a law, and the exercise of his judgment as a public official as to the wisdom of the proposed legislation, in light of public interest;....

Boyd v. Deal, 24 Fla. 293, 4 So. 899,906 (1888). (Emphasis added.).

The United States Supreme Court recognized in Edwards that the concern over safeguarding the executive branch's opportunity to consider all bills increases at the close of a session when bills multiply. 76 L.Ed. at 1244. The same concern has been and remains valid in Florida. As a session comes to a close in this State, a niagra of bills always flows through the Governor's office. Regarding the 1983 regular session, 50 percent of all bills presented to the Governor, including Senate Bill 168, were presented during the last six days of the session and after the session adjourned sine die. In order to comprehend the profound effect that the District Court's reading of Article III, Section 8(a), would have on the Governor's ability to adequately consider legislation, generally, it is important to note that from 1974 through 1983, the number of bills presented to the Governor in the last six days of the session and after the session adjourned was consistently in excess of 60 percent of the total bills presented to him in a given session, except for 1979, when it was 40 percent.

Further, in a majority of those years, over 55 percent of the bills passed by the Legislature each session were presented to the Governor _after_ it adjourned _sine die_. App. at A.28-A.31; (R.112).

Faced with an onslaught of legislation at the close of session, the Governor's burden of carefully considering the effect of each bill on the general welfare of Floridians is a herculean task, even with the fifteen day period for taking action. To further restrict his ability to carry out his constitutional function is nonsensical. The District Court offered no rationale for its construction; rather its unsupported belief that its draconian interpretation presents no hardship because the Governor's workload is "not so great as the frustrate" his veto power. In short, reading the Constitution as the District Court does would clearly impair the Governor's power and obligation under Article III, Section 8(a); a result not tolerated by this Court's decisions. _See_, _Plante v. Smathers_, 372 So.2d 933,936 (Fla. 1979).

C. DISTRICT COURT'S INTERPREATION OF SECTION 8(a)

It is relevant to consider why the District Court accepted a "plain meaning" construction of Section 8(a) despite the absence of express language covering this situation and despite consistent contrary interpretations by the executive and legislative branches. The reason seems to

be an acceptance of Respondent's assertion below that Section 8(a) has in it a general rule which gives the Governor seven days to act during legislative sessions, and two "exceptions" for the end of the session bill crush.

The premise for this suggested analysis should have been challenged, for the Constitution does not have a general rule with two exceptions. What it states, quite clearly Petitioners believe, is that the times for the Governor's veto have been thought out and identified in three different possible situations. Unfortunately, the drafters of the 1968 Constitution simply failed to deal with the situation at issue here -- post-adjournment presentment. It is untenable and unsupportable to suggest that a "general rule" or "exceptions to the rule" were intended at any stage of the drafting process.

This fact is crucial because, as previously indicated, the purposes for Article III, Section 8(a), are to safequard the Governor's ability to carefully consider each bill presented to him and to protect the Legislature's opportunity to expeditiously reconsider bills vetoed by the Governor. If these purposes are satisfied, the Governor's veto should be upheld, regardless of what strict construction a court may apply to the language of Article III, Section 8(a). After all, the intention of the framers and electors in enacting a provision should always be upheld if one construction favors these objectives. See Curry

v. Lehman, 55 Fla. 847, 47 So. 18 (1908); In re Interrogatories of the Colorado Senate of the Fifty-First General Assembly, Senate Resolution No. 5., 578 P.2d 216 (Co. 1978). That is the situation here.

In the Colorado Senate case, the Court reviewed the purpose of the Colorado Constitution's veto provision, which is substantially similar to Article III, Section 8(a). In that case, it was stipulated that the Governor vetoed some bills untimely. The bills were nevertheless returned to the house of origin shortly after being reviewed by the Governor. No action was taken by the Legislature on some of them. Id. at 218.

Citing Edwards v. United States, the Supreme Court of Colorado determined that the purpose for placing a time limitation on the Governor's veto power was "to insure that the legislative branch has a suitable opportunity to consider the Governor's objections and take appropriate action with respect thereto." Id. at 219. That purpose having been satisfied, the court determined that the vetoed bills had not become law "as though signed." Id. The factual parallel with the situation here is compelling.

Significantly, this Court followed the same reasoning in State v. Kaufman, supra. In Kaufman, this Court clearly considered the purpose for Article III, Section 7, Florida Constitution (1968), and determined that, in spite of the

language of that provision, its purpose had been satisfied and that was sufficient. The court held:

> The obvious purpose of reading a bill's title is to inform the legislators and the public as to what is being voted on. Given the widespread publication of copies of bills, reading a bill's number or short title identified which bill is being considered. We cannot say that the legislature's interpretation of the reading requirement is erroneous.

430 So.2d at 907.

Interestingly, Justice Erickson, concurring in part and dissenting in part in the Colorado Senate case and its companion, In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P.2d 200 (Co.1978), grappled with the fact that for years in Colorado the Governor had vetoed bills untimely and that practice had never been controverted:

> Strict construction of the constitutional provisions would cause doubt not only upon the validity of bills presently before the court, but upon numerous bills considered and acted upon by previous governors and legislators.

Id. at 209. (Emphasis added.).

The same is true in this case. In Florida, between 1970 and 1983, 197 bills were presented after adjournment and vetoed more than seven days after presentment App. at A.28 (R.112). Six of those bills involved appropriations. (R.113). The other bills run the gamut of subjects that can

be affected by legislation.

Recognizing the uncertainty, administrative confusion and burden on the courts that a strict reading of the Colorado Constitution would have, Justice Erickson rejected that approach. Id. at 209. Instead he stated that the most reasonable result would follow from holding that prior vetoes, including those under review by the court, which were carried out in accordance with previously non-controverted, legislative and gubernatorial practices, are valid, while at the same time directing that the Governor prospectively comply with the letter of the Constitution. Colorado Governor at 210; Colorado Senate at 220.

D. PROSPECTIVE APPLICATION

The rationale of the Supreme Court of Colorado is not unique. Federal and state jurisprudence are replete with authority to support a purely prospective application. See, e.g., Linkletter v. Walker, 381 U.S. 618, 628-629, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965); ("While the cases discussed above deal with the invalidity of statutes or the effect of a decision overturning long-established common-law rules there seems to be no impediment -- constitutional or philosophical -- to use the same rule in the constitutional area where the exigencies of the situation require such an application.") Benyard v. Wainwright, 322 So.2d 473, 474-475 (Fla. 1975)("We recognize that retroactive application

is not constitionally required and that the Court here has the sole power to determine whether our decision should be prospective or retroactive in application."); Witt v. State, 387 So.2d 922, 926 (Fla. 1980).

As discussed in Witt, the two most important considerations in determining whether to apply a construction of a provision prospectively are: (1) the extent that persons have relied on a previous construction; and (2) the effect of a retrospective application of the Court's construction on the administration of justice. If there was substantial reliance on a previous construction and the effect of a retrospective application of the new construction would be to throw government into turmoil, then a prospective application is warranted, if not obligatory. Linkletter, id; Witt v. State, 387 So.2d at 926.

Both conditions are met here, and it would appear that any tendency to limit the Governor to seven days in this type of situation should be given prospective effect only -- even as to this case itself. Regarding the first factor, it is clear that, at least since 1970, the Governor has relied on the fact that he had fifteen consecutive days to take action on bills presented to him after the Legislature adjourned sine die. App. A.28-A.31. (R.112). His interpretation of Article III, Section 8(a), has never been controverted and was approved by the Legislature, Attorney

General and Supreme Court of Florida. See App. at A.28-A.31; Advisory Opinion To Governor, 374 So.2d at 963.

Regarding the second factor, given the amount of legislation in this state that has been vetoed in reliance on the applicability of the fifteen day period to bills presented post-adjournment, it is clear that the application of a "seven day construction" to this case would create unlimited chaos. As Justice Erickson in the Colorado Governor case pointed out:

> Prospective application should be afforded to the constitutional principle announced in this case to prevent disruption of what was conceived, and recognized, to be the law, as well as to provide stability to the acts of the executive and legislative branches of government.

Id. at 210.

The purely prospective application of a seven day construction, should the Court be inclined in that direction, is particularly appealing in this case, where this Court has gone so far as to opine that where a particular interpretation of the Constitution

> ... has been given by officers in the discharge of their official duty, and rights have accrued in reliance upon it, which would be diverted by a decision that the construction was erroneous, the argument ab inconvenient, is sometimes allowed to have very great weight.

Amos v. Moseley, 77 So.2d at 625.

Petitioners strongly suggest that a seven day construction makes no sense and has no historical justification. However, in the event that this Court interprets Article III, Section 8(a), as allowing only seven days for the Governor to act on bills presented to him after adjournment *sine die*, the veto of Senate Bill 168 should nevertheless be upheld, either under the rationale of the *Colorado Senate* case and *State v. Kaufman*, because the purposes of Article III, Section 8(a), were satisfied, or under the rationale that anything but a prospective application of Article III, Section 8(a), would destabilize Florida law.

CONCLUSION

For the reasons provided above, the decision of the District Court should be reversed and the Certified Questions should be answered that Section 8(a) affords the Governor fifteen consecutive days to act on a bill presented after legislative adjournment *sine die*.

If the Court interprets Article III, Section 8(a), as only allowing the Governor seven days to consider and act on bills presented to him after the Session has adjourned *sine die*, the Court should nevertheless hold that Senate Bill 168 did not become law, either because the objectives of Article III, Section 8(a), were satisfied, or because the Court's decision should apply only prospectively.

DATED this 16th day of April, 1985.

Respectfully submitted,

RICHARD B. COLLINS, ESQ.
PERKINS & COLLINS
Post Office Drawer 5286
Tallahassee, Florida 32314

(904) 224-3511

Counsel for Florida
Society of Ophthalmology

ARTHUR J. ENGLAND, ESQ.
FINE JACOBSON SCHWARTZ
NASH BLOCK & ENGLAND
2401 Douglas Road
Miami, Florida 33134

(305)446-2200

Co-counsel for Florida
Society of Ophthalmology

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Florida Society of Ophthalmology and the attached Appendix to Initial Brief has been furnished by U. S. Mail to John D. C. Newton, II, CARSON & LINN, Cambridge Centre, 253 East Virginia Street, Tallahassee, Florida 32301, Counsel for Appellants, Thomas G. Tomasello, General Counsel and Chief Cabinet Advisor, Department of State, The Capitol, Tallahassee, Florida 32301, Counsel for Secretary of State, and to Arthur R. Wiedinger, Jr. and Sydney H. McKenzie, III, General Counsel, Office of the Governor, Room 209, The Capitol, Tallahassee, Florida 32301, Counsel for Governor of the State of Florida on this 16th day of April, 1985.

RICHARD B. COLLINS, ESQ.

Counsel for Florida Society
of Ophthalmology