

IN THE
SUPREME COURT OF FLORIDA

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CASE NO. 70,533

IN RE:
ADVISORY OPINION OF THE GOVERNOR,
REQUEST OF MAY 12, 1987

REPLY BRIEF OF SENTINEL COMMUNICATIONS
COMPANY AND NEWS AND SUN-SENTINEL COMPANY
CHALLENGING THE CONSTITUTIONALITY OF
CHAPTER 87-6, LAWS OF FLORIDA

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STATEMENT OF THE CASE AND THE FACTS

Following the date on which SENTINEL COMMUNICATIONS COMPANY ("Sentinel") and NEWS AND SUN SENTINEL COMPANY ("Sun-Sentinel"), publishers of The Orlando Sentinel and the Fort Lauderdale News and Sun-Sentinel respectively, filed their Initial Brief in this proceeding, the Florida Legislature on June 6, 1987 passed an amendment to Florida Statute §212.0592 which provides that newspaper delivery services provided to the publisher or printer of a newspaper are exempt from the law imposing a sales tax on services. The amendment was passed as part of Committee Substitute for House Bill 1506, the so-called "glitch bill". A copy of the pertinent section of the Bill is provided in the Appendix hereto. To the best information and belief of Sentinel and Sun-Sentinel, the Governor will soon sign the Bill. By its own terms, the legislation is to take effect on July 1, 1987.

The applicable provisions of the Bill state as follows:

Section 3. Subsections (1), (4), (5), and (6), paragraph (a) of subsection (7), and subsections (11), (16), (17), (18), (21), (22), (23), (26), (27), (31), (35), and (36) of section 212.0592, Florida Statutes, as created by Chapter 87-6, Laws of Florida, are amended, and subsections (42), (43), (44), (45), (46), (47), (48), (49), (50) and (51) are added to said section, to read:

212.0592 Exemptions from sales or use tax on services. --There shall be exempt from the tax on the sale or use of services imposed by §212.059(1) or (2), 212.0594, and 212.0595 the following:

. . .

(51) Newspaper delivery services provided to the publisher or printer of a newspaper.

The Initial Brief of Sentinel and Sun-Sentinel filed in this case was limited to the constitutionality of imposing a sales tax on fees paid by a newspaper publisher to independent contractor delivery agents for the service of delivering newspapers.

SUMMARY OF ARGUMENT

The Florida Legislature recently amended Florida Statute §212.0592 to add a specific exemption from the sales tax on services for newspaper delivery services provided to the publisher of a newspaper. Therefore, all arguments presented to the Justices of this Court regarding the constitutionality of the tax on services imposed by Chapter 87-6, Laws of Florida, as applied to newspaper delivery services, are moot and should not be addressed by the Justices of this Court in their response to Governor Martinez's request for an advisory opinion.

ARGUMENT

THE ISSUE OF WHETHER CHAPTER 87-6 IMPOSES AN UNCONSTITUTIONAL TAX ON FEES PAID BY NEWSPAPER PUBLISHERS TO INDEPENDENT CONTRACTOR DELIVERY AGENTS IS MOOT BECAUSE THE LEGISLATURE HAS PROVIDED AN EXEMPTION FROM THE SALES TAX FOR NEWSPAPER DELIVERY SERVICES

The issue of whether it is unconstitutional for the State to impose a sales tax on fees paid by newspaper publishers to independent contractor delivery agents for delivering newspapers has been rendered moot by the Florida Legislature's enactment of Committee Substitute for House Bill 1506, which provides an exemption from the sales tax for newspaper delivery services.

In their Initial Brief, Sentinel and Sun-Sentinel explained their uncertainty as to whether Chapter 87-6, Laws of Florida, would be construed or interpreted to impose a tax on the consideration paid by publishers to independent contractor newspaper delivery agents; Sentinel and Sun-Sentinel explained that they were filing the Brief to challenge the constitutionality of Chapter 87-6 for the purpose of preserving their arguments regarding the constitutionality of the tax as applied to newspaper delivery services in the event that the law was construed to impose a tax on such services. Subsequent to the filing of Sentinel and Sun-Sentinel's Initial Brief, the Florida Legislature specifically exempted newspaper delivery services provided to the publisher or printer of a newspaper from the sales tax on services which is imposed by Florida Statutes §212.059(1) or (2), §212.0594, and §212.0595. The newspaper delivery services for which Sentinel and Sun-Sentinel pay their independent contractor delivery agents

fall squarely within the exemption provided for in Florida Statute §212.0592(51).

Therefore, any arguments regarding the constitutionality of the sales tax as applied to newspaper delivery services, as raised by Sentinel and Sun-Sentinel in their Initial Brief, and as responded to by any other parties in their Answer Briefs (Brief of Governor Martinez and the Florida Department of Revenue at pp. 35-36), are moot. As the issue is moot, it is not an issue about which the Justices of this Court should render an opinion as part of their response to Governor Martinez's request for advisory opinion.

Concurrently with the filing of this Reply Brief, Sentinel and Sun-Sentinel are filing a withdrawal of their Request for Oral Argument.

CONCLUSION

Sentinel and Sun-Sentinel respectfully request that the Justices of this Court view as moot all issues and arguments raised in this proceeding regarding the constitutionality of a sales tax on newspaper delivery services, and refrain from addressing the issue in their response to Governor Martinez's request for advisory opinion.

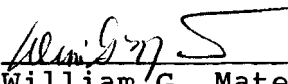
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this 17th day of June, 1987 to JOSEPH C. SPICOLA, JR., OFFICE OF THE GOVERNOR, Suite 209, The Capitol, Tallahassee, Florida 32302, General Counsel to the Governor; CARLTON, FIELDS, WARD, EMMANUEL, SMITH, CUTLER & KENT, P.A., ALAN C. SUNDBERG, SYLVIA H. WALBOLT, CYNTHIA S. TUNNICLIFF, Post Office Drawer 190, Tallahassee, Florida 32302, Special Counsel to the Governor; WILLIAM TOWNSEND, General Counsel, JEFFREY KIELBASA, Deputy General Counsel, FLORIDA DEPARTMENT OF REVENUE, The Carlton Building, Tallahassee, Florida 32301; MORRISON & FOERSTER, STEVEN S. ROSENTHAL, WALTER HELLERSTEIN, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006, Attorneys for the Florida Department of Revenue; TALBOT D'ALEMBERTE, JOSEPH W. JACOBS, Counsel for the Legislature, ADAM J. HIRSCH, of Counsel, College of Law, Florida State University, Tallahassee, Florida 32306-1034; and ROBERT A. BUTTERWORTH, ATTORNEY GENERAL, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050.

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