S/a 8-31-88

IN THE SUPREME COURT OF FLORIDA

CASE NO. 71,826

CRANE RENTAL OF ORLANDO, INC.,

Petitioner,

-vs-

FORD S. HAUSMAN, as Orange County Property Appraiser,

Respondent.

ANSWER BRIEF OF RESPONDENT

FORD S. HAUSMAN, as
Orange County Property Appraiser

APPEAL FROM THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT OF FLORIDA

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STATEMENT OF THE CASE

Petitioner, Crane Rental of Orlando, Inc. owns fifteen self-propelled cranes. Respondent Hausman is the Property Appraiser of Orange County. He assessed the cranes as tangible personal property for the year 1985. Crane Rental petitioned the Property Appraisal Adjustment Board for relief. The Board reduced the assessment of all of Crane Rental's personal property from $635,941 to $532,758. The Board held:

> P.A.A.B. Council [sic] Asst. County Attorney (Joel Primsell) rendered a legal opinion as follows. "The carriers upon which the cranes are affixed are motor vehicles and, as such, are not subject to ad valorem taxation. See Sect. 320.01(1)(A) and 320.08(5)(B) and article 7, sec. 1(B), Florida Constitution 1968. Confer [sic] opinion of Attourney [sic] General 050-144; March 23, 1950. However, the cranes are equipment therefore, are subject to ad valorem taxation. I.E., the cranes are not part of the motor vehicle". Recommended reduction due to deduction for cranes only is $532,758. (Plaintiff's Exhibit 7)

Mr. Hausman filed a civil action under Section 194.036, Florida Statutes (1985) to overturn the decision of the Board. By Section 194.181(2), Florida Statutes (1985), the only proper party Defendant in such an action is the taxpayer. The State of Florida Department of Highway Safety & Motor Vehicles would not be a proper party Defendant to this statutory action. Crane Rental counterclaimed, seeking complete exemption for the equipment. Crane Rental did not object that the the State of Florida Departments of Revenue or Highway Safety and Motor Vehicles were not parties to the lawsuit.

After final hearing before the Court, the Honorable Joseph

P. Baker, Circuit Judge, entered Final Judgment holding that the equipment was taxable as tangible personal property. The Court ruled in favor of the Property Appraiser on Crane Rental's claim for total exemption.

Crane Rental appealed this decision to the District Court of Appeal, Fifth District, which affirmed Judge Baker's Final Judgment. 518 So.2d 395 (Fla. 5th DCA 1988). Petitioner seeks review of this decision, claiming that it interprets the Florida Constitution.

Respondent, Ford S. Hausman, as Orange County Property Appraiser will be referred to as "Mr. Hausman" or "Plaintiff". Mr. Hausman shall refer to Petitioner as "Crane Rental". He will refer to the The Amicii Curiae, United Crane & Equipment Rental, Inc. and Florida Equipment Contractors Association, Inc., collectively as the Amicii.

References to the Record on Appeal shall be "R-(page number)" and to the Initial Brief of Crane Rental, "IB-(page number)". Reference to the Initial Brief of the Amicii Curiae shall be "AB-(page number)".

STATEMENT OF THE FACTS

Respondent Hausman disagrees with Crane Rental's and the Amiciis' Statement of Facts. Their Statements are incomplete. They are incorrect in several instances, and fail to state the facts in the light most favorable to the prevailing party below. Mr. Hausman therefore respectfully submits the following.

The trial Court's Findings of Fact included a specific finding that the fifteen particular cranes were neither designed nor used to transport persons or property. (A copy of the Final Judgment is in the Appendix hereto.) Many witnesses so testified at the trial. Much tangible evidence supported the trial Court's Findings of Fact.

Crane Rental's fifteen self-propelled cranes are of various makes. Some of the cranes have two engines, one for propulsion and one for powering the crane. Some have one which performs both functions. (R-67) The cranes have a cab where a driver can sit, but no passenger seats. There is also a seat for the crane operator in the rear of the equipment. The presence of the crane operator ("oiler") is reasonably required to move the heavier cranes safely over the roads. (R-61, 69, 71) None of the cranes have ever transported passengers. (R-72) The Court's attention is respectfully invited to Plaintiff's Exhibit 9. This is a bulky exhibit with photographs of most of the cranes. It also contains a copy of the manufacturer's brochure about each type. This equipment is uniformly very heavy. Crane

103 has a capacity of 15 tons and Crane 115 has a 75 ton capacity.

The Record does not support Crane Rental's statement at IB-1 that the cranes "are composed of separable units, that is, a carrier which is licensed as a motor vehicle, and the crane or lifting portion of the machine with separate engines, functions and operating controls". Were the cranes licensed as vehicles, it would be as "Truck-Tractors" in Tax Class Codes 40-44. The Amicii misstate the facts at AB-3 when they claim, "The crane or lifting portion and truck or carrier portion of the self propelled cranes are completely integrated, forming the same chassis and sharing the same power source." The Record does not support that statement.

Before 1985, Crane Rental filed timely returns of these cranes to the Orange County Property Appraiser, and paid taxes on them. (R-26, 27, 45, 47) Crane Rental did not return them in the 1985 personal property return. (R-27) H. Neil Hester, Director of Personal Property for Mr. Hausman's office, testified:

> Q: Now, Mr. Hester, did you make any determination whether any of the cranes shown in Plaintiff's 9 were -- let me get the definition right out of the statute here, so we'll be talking about it. Did you make any determination whether any of the items in question were used to transport persons or property over the roads of this state?
>
> A: Yes, I did.
>
> Q: And what was that determination?
>
> A: That determination was that no, they're not used to transport either persons or goods over the highways; that it is specifically prohibited that they do so. (R-45

Mr. Hester received guidance from the Department of Revenue, which

advised him that the cranes were subject to taxation. The Department further advised that they were not exempt as motor vehicles. (R-34, see Pages 207-212 of Plaintiff's Exhibit 9)

Captain J. T. Cooper of the Bureau of Weight and Safety of the Florida Department of Transportation testified for Mr. Hausman. He stated that the State issued overweight and overdimensional permits have been issued to Crane Rental. (R-51) Without these, the cranes could not lawfully travel over state roads. (R-52)

The statement of the Amicii at AB-8 that the cranes may operate over the highways without special permits is directly contrary to the foregoing testimony.

Captain Cooper examined the photographs shown in Plaintiff's Exhibit 9 and testified:

> Q: Now, the question is: Do you have an opinion whether these items shown on tabs 1 through 14 of Plaintiff's 9 could be used to transport persons or property over the roads of Florida?
>
> A: Yes, sir, I have an opinion.
>
> Q: What is that opinion?
>
> A: They would not be used to transport persons or property over the state roads of Florida. (R-57)

He stated that no one could lawfully use cranes licensed in Tax Class Code 94 to transport persons or property on Florida roadways. (R-59) Captain Cooper testified that were the cranes licensed as trucks, it would be as truck tractors in Tax Class Codes 43 through 44. (R-58) The Record does not support Crane Rental's statement at IB-7 that the cranes are designed to carry

persons and property.

Were the cranes licensed as trucks, the cost of the tag would approximate the personal property tax for that crane:

Crane Number	License Fee as Truck	Pers. Prop. Tax	
101-Grove TM180	$410.00	$377.02	
103-Grove TM155	344.00	377.02	
112-Grove TM155	344.00	430.71	
105-Bucyrus	454.00	278.98	
117-Grove TMS185	410.00	970.60	
107-Lorrain MC550A	1,114.00	1,148.86	
109-Clark Lima 500T	1,334.00	637.48	*
111-American 5510	1,389.00	872.97	*
114-American 5520	1,444.00	1,050.05	*
115-American 5530	1,664.00	1,400.70	
104-P & H T300A	784.00	1,223.62	
106-P & H T300A	784.00	1,556.61	
102-P & H T300	674.00	454.51	
108-P & H T250	564.00	588.26	
113-P & H T300	674.00	235.18	

* No tag on this equipment.
(Source: Plaintiff's Exhibit 9)

Each of the cranes except for Nos. 109, 111 and 114 bore an identification plate issued in Tax Class Code 94, for which the charge was $34.75. The three starred cranes had no identification tag at all.

According to Captain Cooper, it would be legal for a crane to carry only the driver and oiler while operating over the roads. The only equipment that could legally be carried would be that which was appurtenant to the crane, such as a sling, bucket or extra ball. (R-60, 62) He stated that he would cite the operator of the crane for unlawful operation if persons were carried who were not necessary for its operation. (R-61)

Grover C. Ashlock testified for Crane Rental, both live

and through Crane Rental's agency deposition. He testified that the cranes in question mainly lift things and put them in place for general contractors in the course of building. (R-65) He stated that in a special situation, the manufacturers of the cranes would price the carriers separately from the cranes. (R-74) Mr. Ashlock provided only conclusory testimony that the carrier costs more than "the upper one". [He was doubtless referring to that portion of the equipment that performs the lifting function]. (R-69) There was no testimony that the "carrier" was routinely priced separately from the "crane". Mr. Ashlock specifically testified by deposition that the three cranes without license tags never travel on the public roads; they are "yard cranes". While Mr. Ashlock testified on direct examination that the cranes spent more time travelling to and from jobsites than lifting on the job (R-67), on cross examination he was unable to produce any records to indicate the respective time spent on the roads versus at job sites. (R-74) He testified that the cranes carry themselves, buckets, slings and extra booms over the highways. (R-68) Mr. Ashlock testified that the crane portion could be unbolted and removed. (R-68) Compare this testimony to the specifications shown in Plaintiff's Exhibit 9. At page 77, it appears that the crane and carrier are joined by a "double row roller bearing swing circle with swing gear integral". Mr. Ashlock agreed there was no reason the crane portion of each piece of equipment was not taxable. (R-77)

Mrs. Betty Griffis of the Orange County Tax Collector's office identified copies of the State of Florida rate sheet and

the registrations issued to Crane Rental. She testified that the Tax Collector routinely issues license tags to items that are not motor vehicles such as mobile homes, golf carts, boat trailers, equipment and the like. She stated that just because her office issues a license tag to something does not mean that it is a motor vehicle. (R-20-21)

The State of Florida prescribes "tax class codes" to the Orange County Tax Collector. (See Page 189 et seq. of Plaintiff's Exhibit 8, A-5 and Plaintiff's Exhibit 3.) The rate sheet for tax class code "94" shows that this classification is for:

> Tractor cranes, power shovels, well drillers and other such vehicles, so constructed and designed as a tool and not a hauling unit, used on the roads and highways incidental to the purpose for which designed. (Plaintiff's Exhibit 3)

The State's instructions provided to Tax Collectors to guide them in issuing tags in Tax Class Code 94 are:

> Such plates must be issued only for vehicles so constructed and designed as tools and not hauling units; such as tractor cranes, power shovels, well drillers, etc. *But a vehicle designed as a combination tool and hauling unit used to haul a load over the highways or streets requires a regular truck classification plate according to the weight of the vehicle.* (e.s.)

Mr. Ashlock forthrightly admitted that he could think of no reason the three cranes without identification tags should be exempt. (R-70, 75) One (Crane No. 108) bore a license tag issued to a 1968 Chevrolet pickup truck registered to a woman in Apopka! (R-14, 42) Mr. Hester photographed Crane 114 at a jobsite in Kissimmee. It bore a tag (EF-1123) not issued to it. (R-41) Mr.

Ashlock testified that Crane 114 did not travel there under its own power since it did not have a license tag, but on a "lowboy". (R-78) He could not explain what Tag No. EF-1123 was doing on that crane. (R-77) None of the cranes had license tags in the tax class code for truck-tractors. (R-74)

SUMMARY OF ARGUMENT

The trial Court found *as a matter of fact* that the cranes of Crane Rental are neither designed nor used to transport persons or property over the highways of Florida. They thus do not fall within the definition of "motor vehicle" found in Section 320.01(1)(a), Florida Statutes (1985). The District Court of Appeal, Fifth District, correctly held there was substantial, competent evidence to support that finding. An appellate court may not overturn a trial court's finding of fact supported by competent record evidence.

The definition of "motor vehicle" in Section 320.01 does not limit "unless otherwise provided" to "unless otherwise provided in Chapter 320, F.S.". The Courts cannot add words to a statute not placed there by the Legislature.

Self-propelled cranes are specifically excluded from the definition of "motor vehicle" by Section 316.003(49), Florida Statutes (1985). That statute defines them as "Special Mobile Equipment". The cranes are not licensed as trucks (Tax Class Codes 40 - 44) but in Tax Class Code 94. That tax class code simply authorizes issuance of an identification tag at nominal charge to tractor cranes constructed and designed as a tool and not a hauling unit, used on the roads and highways incidental to the purpose for which designed.

The decision of the District Court of Appeal, Fifth District, did not expressly construe a provision of the Florida Constitution. This Court should revisit its decision to grant

review, now that it has the full Record on Appeal and benefits of the briefs of the parties and Amicii Curiae.

DISCUSSION

MOTOR CRANES ARE EXEMPT FROM AD VALOREM TAXATION AS MOTOR VEHICLES PURSUANT TO ARTICLE VII, SECTION 1(b) OF THE CONSTITUTION OF THE STATE OF FLORIDA, AND FLA.STAT., SECTION 320.01 AND 320.08.

A. The trial Court correctly found as a matter of fact that the subject cranes are neither designed nor used to transport persons or property. Therefore, they are not "motor vehicles" as defined in Section 320.01(1)(a), Florida Statutes (1985).

All property in Florida is subject to ad valorem taxation, unless specifically exempted by law. Section 196.001, Florida Statutes (1985). This is the legislative authority that imposes the subject tax. This statute refutes Crane Rental's argument at IB-10 that the instant tax lacks legislative authority. Exemptions are to be strictly construed against the party claiming them. *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So.2d 498 (Fla. 1976), appeal dism., 434 U.S. 804, 98 S.Ct. 32, 54 L.Ed.2d 61 (1977). The taxpayer's burden to set aside an assessment is to show the assessment to be unlawful, to the exclusion of every reasonable hypothesis of a lawful assessment. *Bystrom v. Whitman*, 488 So.2d 520 (Fla. 1986).

Personal property is something of a legal chameleon for purposes of taxation. The same riding lawn mower could at various times easily be tax-exempt inventory while at the garden-supply store awaiting its first sale, exempt "household goods" if used to cut the grass around the owner's home, and taxable "tangible personal property" if used to cut grass in a commercial citrus

grove. Sections 192.001(11)(a), (b) and (d), Florida Statutes (1985); see *Adams Construction Equipment Company v. Hausman*, 472 So.2d 467 (Fla. 5th DCA 1985). Crane Rental recognized that its equipment was not exempt in years before 1985. It regularly returned them for taxation and paid the taxes. In 1985, Mr. Ashlock decided that because some of the cranes had a thirty-four dollar per year State identification tag, they suddenly became exempt motor vehicles. Mr. Hausman determined that they were still not motor vehicles. He correctly found that they were neither used nor capable of being used to transport persons or property. The review of that determination is all this case should be about.

> Article VII, Section 1(b), Const.Fla. 1968 provides:
>
> Motor vehicles, boats, airplanes, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

Crane Rental at IB-5 underlines the quoted provision to suggest that the modifying term, "as defined by law", does not apply to the term, "motor vehicles" but only to "mobile homes". This is incorrect. The Constitution does not define a motor vehicle. The people of Florida through the Constitution have granted the Legislature the greatest great freedom in the field of taxation to define what is and is not a motor vehicle. *Eastern Air Lines v. Department of Revenue*, 455 So.2d 311 @ 314 (Fla. 1984).

Miller v. Higgs, 468 So.2d 371 (Fla. 1st.DCA 1985), rev.den. 479 So.2d 117 (Fla. 1985), held:

> Subject only to constitutional restrictions and the will of the people expressed through elections, the legislature's power and discretion in regard to taxation are broad, plenary, unlimited and supreme. ...All questions as to mode, form, character, or extent of taxation, *exemption or nonexemption*, apportionment, means of assessment and collection, and all other incidents of the taxing power, are for the legislature to decide. As long as the legislature does not violate constitutional restrictions, the courts have no concern with the wisdom or policy of the tax, the political or other motives behind it, or the amounts to be raised, since such matters are exclusively for the lawmaking body to decide. *Id* at 375 (e.s.)

The Legislature has implemented the Constitution by defining a motor vehicle in several harmonious sections of the Florida Statutes.

For example, Section 320.01, Florida Statutes (1985) provides:

> 320.01 Definitions, general.-- As used in the Florida Statutes, *except as otherwise provided*, the term
>
> (1) "Motor vehicle" means:
> (a) An automobile, motorcycle, truck, trailer, semi-trailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles or mopeds as defined in s.316.003(2). (e.s.)

This Court can affirm the Opinion of the Fifth District without having to decide whether the Legislature excluded self-propelled cranes from the definition of "motor vehicles" by defining self-propelled cranes as "special mobile equipment" in Section 316.003(49), Florida Statutes (1985).

This is because the Circuit Court found *as a matter of*

fact that the fifteen cranes in question were neither designed nor used to transport persons or property. They thus do not fall within the definition of "motor vehicle" in Section 320.01(1)(a), Florida Statutes (1985). Any discussion of constitutional prohibitions against taxation of these cranes is idle speculation as applied to this property. The District Court of Appeal, Fifth District, held there was substantial, competent evidence to support the Orange County Circuit Court's factual determination that *these* cranes owned by Crane Rental, were neither designed nor used to transport persons or property. Even if one were to agree with Crane Rental's arguments that a motor vehicle is not subject to taxation, the assessment of to Crane Rental's property for the year 1985 must be upheld. The cranes just are not motor vehicles, even as defined in Section 320.01(1)(a), Florida Statutes (1985).

The trial Court noted that the dictionary definition of "vehicle" is derived from the Latin root word meaning "to carry or transport". (R-98) As the trial Court cogently observed:

> And, of course, that's the distinction that's drawn here as to whether these cranes are used to carry or transport something. And I think quite clearly, they are not. They simply transport themselves from one place to another under any construction of the facts in this case. I don't believe they are motor vehicles. And I don't see how they can be classified as motor vehicles; they are not in design and origin and function. They are not motor vehicles and I think they're subject to tax, other than as motor vehicles. (R-98)

As outlined in the Statement of Facts, there is competent, substantial evidence in our record to support the District Court's approval of the trial Court's findings of fact. The purpose of

the cranes' propulsion over the public roads is so they can perform work at construction jobsites. This travel over the highways is incidental to the purpose for which the cranes are designed. The cranes are neither designed nor used to transport persons or property. The cranes in question have never transported persons. They have no passenger seats. The only persons who can lawfully accompany the cranes are those required for their safe operation over the roads.

The cranes do not transport property, but only themselves and parts of themselves such as buckets, slings and jib booms. One could not seriously contend that the primary function of an American 5520 Crane having a gross weight of more than 100,000 pounds, is to carry a bucket to a job site! The function the cranes serve is performed at job sites, not carrying something there. The photographs contained in Plaintiff's Exhibit 9 show that the cranes are not mounted on what would otherwise be trucks. The State of Florida would issue citations to Crane Rental for violation of the licensing laws were Crane Rental to use the cranes for transportation of persons or property while licensed in Tax Code Class 94. They would need truck licenses in Tax Class Codes 40 through 44 to transport persons or property *lawfully* over the roads of Florida. Maybe Crane Rental can obtain truck licensing for its cranes. Perhaps the cranes could then lawfully transport persons and property over the roads. Whether the cranes would be taxable would then be an interesting question. That, however, is not the question in our appeal. Since there is competent, substantial evidence in the record to support the trial

Court's findings of fact, the Final Judgment must be affirmed. *Kuvin v. Kuvin*, 442 So.2d 203 (Fla. 1983), *Deakyne v. Deakyne*, 460 So.2d 582 (Fla. 5th DCA 1984).

Crane Rental claims at IB-7 that Section 320.08(5)(b), Florida Statutes (1985), supports their contention that the cranes are "motor vehicles". This subsection only applies to "motor vehicles equipped with machinery", such as a truck with a well-drilling rig located in the bed. This subsection necessarily refers back to Section 320.01(1)(a) for the definition of "motor vehicle". Section 316.003(49) specifically excludes truck-mounted machinery from the definition of "Special Mobile Equipment". This subsection cannot somehow make a crane a motor vehicle when the Legislature has provided that it clearly is not. Plaintiff's Exhibit "1" showed that none of the cranes were charged $32.50 for their identification tag, as provided in Section 320.08(5)(b). This negates Crane Rental's conclusion that they are "special purpose vehicles" and licensed under that subsection. They were charged $34.75 in Tax Class Code 94, as provided by the rate sheet.

B. The Legislature has "otherwise provided" that self-propelled cranes are "special mobile equipment", and not "motor vehicles".

Section 316.003(49), Florida Statutes (1985), defines 'special mobile equipment' as:

> SPECIAL MOBILE EQUIPMENT.-- Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a

> highway, including, but not limited to, ditchdigging apparatus, well boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, *and self-propelled cranes* and earth moving equipment. The term does not include house trailers, dump trucks, *truck-mounted* transit mixers, *cranes* or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached. (e.s.)

This definition is harmonious and consistent with the definition "otherwise provided" in Section 316.003(49), Florida Statutes (1985). "Self-propelled cranes" are specifically defined as "Special Mobile Equipment". Crane Rental argues at IB-6 that the "otherwise provided" language is limited to Chapter 320, Florida Statutes. Were this contention correct, the statute would necessarily read, "Except as otherwise provided *in this chapter...*". Since it does not, the Courts may not read into statutes language not placed there by the Legislature. This is what Crane Rental is asking this Court to do. *Hialeah, Inc. v. B & G Horse Transportation, Inc.*, 368 So.2d 930 (Fla. 3d DCA 1979), *Devin v. City of Hollywood*, 351 So.2d 1022 (Fla. 4th DCA 1976).

Since the Legislature has not chosen to define "self propelled cranes" such as these fifteen cranes in the category of motor vehicles, and since the cranes are not "truck-mounted cranes", the trial Court and Fifth District Court of Appeal were correct in determining that they were not entitled to exemption as "motor vehicles".

C. Contrary to Crane Rental's assertion at IB-12, no case law authority holds that a self-propelled crane is a motor vehicle.

Other Florida decisions are in harmony with the Fifth District Court of Appeals' opinion. *M.J.S. v. State*, 453 So.2d 870 (Fla. 2d DCA 1984), holds that an item of equipment defined as "Special Mobile Equipment" in Section 316.003(49) is not a "motor vehicle". The item in question there was a construction backhoe, specifically listed as "ditchdigging apparatus/ditchers" and classified as "Special Mobile Equipment". Since "self-propelled cranes" are also so classified, the case is squarely on all fours in support of the District Court of Appeals' decision herein.

Sherman v. Reserve Insurance Company, 350 So.2d 349 (Fla. 4th DCA 1977), holds that all of the tests prescribed in Section 320.01, Florida Statutes (1985), must be met before an item is a "motor vehicle".

In *Forbes v. Bushnell Steel Construction Company*, 76 So.2d 268 (Fla. 1954), the owner of a Mack Trucker Wrecker Crane and a Lorrain Crane, sought exemption from taxation. It contended that the cranes were designed for exclusive use and were used in its construction work, that they were operated and propelled over the public highways of the state by power other than muscular, that they received a "GW Series License Tag", and that they were therefore entitled to exemption as "motor vehicles". The trial Court held that the cranes were "motor vehicles" and granted relief. Reversing, this Court held:

> It seems to us that if we affirm the decree brought here for review the rule will have been established that any

> equipment mounted on wheels equipped with pneumatic tires that is capable of being self-propelled on the highways by means of a gasoline engine is a motor vehicle, and therefore immune from ad valorem taxation under our laws, even though the equipment is designed exclusively for construction work and is used for this purpose.

This Court found that the record in the case was inadequate, because it did not demonstrate the nature of the business or construction work in which the equipment was employed, and that the record did not show whether the operation on the highways was primary, or only incidental to the main and ordinary use of the cranes. The design of the equipment was not shown, so it was left to conjecture whether the cranes were permanently affixed to the chassis of the vehicle or were mounted on separate frames and were hauled from place to place by a trailer coupling. The record did not show the height, length, width and weight of the vehicles. While the Court did not regard this information as "essential", this Court deemed some of it 'salient' as to the determination whether the cranes in question were "motor vehicles". The Court did observe, "The mere fact that the plaintiff has certificates of title and license tags therefor, or that the vehicles operate on the highways, is not decisive of the question". Id at 270.

All of the matters addressed by this Court in *Bushnell, op.cit.*, were fully explored in our case. The nature of the business in which the equipment was employed was shown. Ample evidence showed that the operation over the highways was simply the means by which the cranes travelled to the jobsites where they performed their primary function. It was shown that the cranes

were permanently affixed to the chassis rather than being mounted on separate frames and hauled from place to place by a trailer coupling. The finder of fact knew the height, length, width, weight of the cranes and necessity for special permits to operate over the roads. All of those factors impelled the trial Court to its conclusion that the cranes in question were not motor vehicles.

A later decision of this Court is *Green v. Pederson*, 99 So.2d 292 (Fla. 1957). The State sought to impose a sales tax on a trackless train used off the public roads to transport tourists through Africa, U.S.A., a tourist attraction. This Court held:

> Certainly, if the miniature trackless train had never been and did not expect to go outside the bounds of the appellee's premises, the appellee could not reasonably be compelled to obtain a motor vehicle license and renew it annually; and we have the view that the fact that the vehicle occasionally traversed the public highways and streets on special occasions and, by inference, under special supervision, does not clearly bring it within the purview of the Motor Vehicle License Act. Cf. Forbes v. Bushnell Steel Construction Co., Fla. 1954, 76 So.2d 268 holding that the fact that a motor crane was operated on the highways was not decisive of the question of whether it was a "motor vehicle" within the constitutional exemption from an ad valorem property tax granted by Sec. 13, art. 9, Fla.Const. *Id.* at 296.

This Court can take judicial notice of its own records. The record in the *Green* case, *op.cit.*, shows that the trackless train consisted of a Jeep pulling three open cars equipped with passenger seats. It was identical to the "Land Voyager" that plies the streets of Fort Lauderdale and the popular "Conch Train" in Key West. A Jeep could obviously be licensed as a motor vehicle. When its use was exclusively to take patrons through a

wild animal attraction, it was held not be a "motor vehicle" within the terms of the licensing laws. This is consistent with the Fifth District Court of Appeals' ruling that the same item of personal property (such as heavy construction equipment and self-propelled cranes held for rent) can be "inventory" and exempt, "household goods" and also exempt, or taxable personal property depending on the circumstances. *Adams Construction Equipment Company v. Hausman*, 472 So.2d 467 (Fla. 5th DCA 1985). It also is conclusive as to the taxability of the three "yard cranes".

Attorney General's Opinion OAG 055-113 of May 31, 1955 holds,

> The Supreme Court of Florida has construed the legislative definition of a motor vehicle to mean an instrument designed and used for the purpose of hauling merchandise or persons as a means of transportation over the highways, and excludes machines operated on the highway merely as a means of passage from and to a place where they are intended to be used.

The self-propelled cranes of Crane Rental fall squarely within this Attorney General's Opinion. They are not performing any function while on the roads except moving to the jobsite or to Crane Rental's premises when the job is done.

The Florida Attorney General has held that golf carts were not entitled to registration as motor vehicles, since a motor vehicle must conform to all applicable standards and regulations to traffic on roads. AGO 064-8

See also, *Hart v. Stinson*, 135 Fla. 331, 185 So. 139 (Fla. 1935), holding that farm tractors are not motor vehicles subject

to license taxes.

The old "GW" tag has now become "Tax Class Code 94". This tag does not authorize the object to which it is affixed to transport persons or property over the roads of Florida. "Truck-tractors" are licensed in Tax Class Codes 40-44. This category would authorize transportation of persons and property over the roads. The subject cranes are licensed in "Tax Class Code 94", and Crane Rental pays a modest fee to the Orange County Tax Collector for the tag. The cranes are not licensed as "trucks". Were they licensed as "trucks", the current fee schedule would provide for an annual license fee of $982.50 for weights in excess of 62,000 pounds.

The Constitutional provision relating to exemption of motor vehicles creates both an exemption and a tax. If property is duly licensed as a motor vehicle and pays a license tax, it is exempt from property taxes. However, to gain this exemption, it must in fact pay the truck license tax. Section 193.075, Florida Statutes (1985), specifically directs the Property Appraiser to assess any mobile home that does not bear a current license plate.

One cannot say that self-propelled cranes will always be taxable personal property or always motor vehicles. The case at bar simply involves fifteen specific cranes, used only incidentally to traverse the roads of Florida, and used predominantly to lift heavy objects at construction sites. These cranes are taxable as personal property. They are not motor vehicles.

It is unclear why the Amicii Curiae bring up and then

attempt to distinguish out-of-state cases, when those cases were not cited by the District Court of Appeal nor Crane Rental.

Donahue v. Transport Indemnity Company, 86 Cal.Rptr. 632, 7 C.A.3d 291 (Cal. 1964) involved an insurance claim based on an accident where a crane was unloading pipe from a truck. The real question involved in that case was definitions under a policy of insurance rather than a generic definition of motor vehicle. Crane Rental relied on that case in its Initial Brief to the Fifth District Court of Appeal. Mr. Hausman agrees that this case had no relevance to our situation.

Haveman v. Board of County Road Commissioners, 96 N.W.2d 153, 356 Mich. 11 (Mich. 1959) involved an accident which took place alongside a highway where a "Gradall" was involved in an accident. A "Gradall" is a truck upon which is mounted a crane or boom with a turntable swing. That vehicle is substantially different from Crane Rental's self-propelled cranes. Again, that case was cited by Crane Rental in its brief to the Fifth District Court of Appeal. It has no more relevance in this Court than it did in the Fifth District.

However, a most interesting out-of-state decision is *In Re Ferro Contracting Co.*, 380 F.2d 116 (3d Cir. 1967). The Court of Appeals held, "We therefore believe that the definition of 'motor vehicle' was not intended to embrace machinery which normally operates at construction sites even though literally it perhaps can be used to transport persons on a highway". *Id.* at 119.

Another case is *In Re Ramco Well Service, Inc.*, 32 B.R. 525 (Bkrtcy. 1983). Page 533 from that decision is a drawing of

the "workover rig" involved in that case. That drawing shows that the rig is remarkably similar to the self-propelled cranes involved in ours. The question was whether "workover rigs" are "special mobilized equipment" or "motor vehicles". The Court held:

> The primary function of a rig is to raise and lower tubing and rods in and out of the hole. In order to accomplish this they have a powerful engine, drawworks and a mast. The components are all mounted on a carrier which has rubber tires and can be driven on the highways. The mast telescopes and is carried horizontally atop the other equipment. Upon arriving at the well the mast is elevated to the upright position above the well and telescoped to its full length...
>
> It likewise appears that the ability of workover rigs to travel on the highway is incidental to their primary function of providing services to the well. The only reason they are mobile is to be able to travel to the well site where the work is done. Likewise, their useful revenue producing function is performed off the road at the well.
>
> It thus appears that as a matter of fact the rigs are special mobilized equipment as defined by [statute].

An important out-of-state decision which the Amicii choose to ignore is *Koehring Company v. Adams*, 452 F.Supp. 635 (D.C. Wis. 1978), affirmed 605 F.2d 280 (7th. Cir 1979). Seven manufacturers of self-propelled cranes brought an action against the Secretary of Transportation, to determine that their equipment is not subject to the rulemaking authority of the National Highway Traffic Safety Administration. That is the body which prescribes the rules such as equipping vehicles with seat-belts, the famous bumpers which supposedly withstand a five mile an hour impact, and the like. The Federal definition of "motor vehicle" is "any vehicle driven or drawn by mechanical power manufactured primarily

for use on the public streets, roads and highways, except any vehicle operated exclusively on a rail or rails". The NHTSA had issued opinion letters in which it stated that a "motor vehicle is a vehicle which the manufacturer expects will use the public highway as part of its intended function". It specifically included mobile cranes in its definition. The Court held that the operation on highways is decidedly an incidental activity, and that therefore, mobile cranes are not "motor vehicles".

The Amicii also chose not to discuss *In Re Browning Crane and Shovel Co.*, 133 F.Supp. 653 (D.C. Ohio 1955), which holds that a chassis which would be incorporated into a self-propelled crane was not a "motor vehicle" for purposes of determining priority of liens: "Certainly, by merely looking at these chassis, anyone could see that as they stood and traveled the highway, they were not "designed" nor adapted for nor employed in general highway transportation." *Id.* at 661.

D. Crane Rental and the Amicii Curiae raise issues which were not raised in the trial Court. This Court cannot consider them for the first time here.

Crane Rental argues at IB-13 that the Property Appraisers are "not uniformly attempted throughout the state". The Property Appraiser assumes that Crane Rental is attempting to raise for the first time, an equal protection argument that the Property Appraiser in Orange County is assessing self-propelled cranes

while other property appraisers are not. Nothing in the Record on Appeal supports this contention. In fact, Amicus Curiae United Crane & Equipment Rental, Inc. alleged in its Motion to File Brief as Amicus Curiae that it was involved in litigation with the Palm Beach County property appraiser presenting similar questions of law.

Crane Rental pointed out to this Court by its "Notice of Concurrent Pending Appeal in Lower Court" served April 4, 1988, that the Circuit Court of the Eleventh Circuit (Dade County) had reached a result similar to that of the Fifth District Court of Appeal. The only information before this Court shows that at least two other counties are assessing cranes as tangible personal property. This Court held in *Department of Revenue v. Ford*, 438 So.2d 798 (Fla. 1983), cert.den. 466 U.S. 946, 104 S.Ct. 2149, 80 L.Ed.2d 532 (U.S. 1984), that to show that some property appraisers were not following the law did not authorize relief against a property appraiser who was.

The Amicii suggest at AB-14 that double taxation exists as a result of the Fifth District Court of Appeal's opinion. This issue was not raised in the trial Court and cannot be raised here.

The Amicii argue at AB-6 that the Property Appraiser was somehow required to make the State of Florida Department of Highway Safety and Motor Vehicles a party to this case. The State is not even a proper party in the trial Court. Section 194.181, Florida Statutes (1985). Had Crane Rental wished to contest the constitutionality of any statute or tax, it would have been required to add the Department of Revenue as a party below.

Sec. 194.181, Florida Statutes (1985).

The Amicii argue at AB-5 that Section 320.17, Florida Statutes (1987) conclusively determines that the subject cranes are motor vehicles, hence exempt. Applicability of that section was not raised in the trial Court or the Fifth District Court of Appeal. First, this section only applies to motor vehicles and mobile homes, not to equipment. No "certification of the Department" was presented to the trial Court. The State, through Captain Cooper, testified in support of the Property Appraiser's position. The record shows that the Property Appraiser did not "blithely" disregard the official position of the State. To the contrary, the State's position and the Property Appraiser's are in harmony. Both the Department of Highway Safety and the Property Appraiser agree that the subject cranes are not licensed as truck tractors. They agree that the cranes are not designed nor utilized to transport persons or property over the roads.

E. Art. VII, Sec. 1(b), Const.Fla. 1968, is not self executing.

Crane Rental argues at IB-8-12 that the Constitutional mention of "motor vehicles" is self executing. At IB-12, it contends that if an object has tires and an engine and can transport the driver and itself over the roads, it is a "motor vehicle" and exempt.

Crane Rental overlooks an important element inherent in any generic definition of "vehicle": that it can *lawfully* be used to transport persons and property over the roads of Florida.

Without being licensed as a "Truck Tractor" and paying the rather substantial licensing fees involved, it is against the law for a mobile crane to transport the first passenger or the first pound of property.

Crane Rental relies on this Court's opinion in *Department of Revenue v. Florida Boaters' Association*, 409 So.2d 17 (Fla. 1981). It contends that this Court should find there is a generic definition of "motor vehicle", rather than applying the Legislature's careful definition of the term. The respondent in that case lived aboard a 38-foot sailboat, which the Department of Revenue contended was not an exempt "boat" but a taxable "floating structure" since the owner lived aboard. This Court held that the Legislature had not defined "live aboard vessels" with sufficient clarity. The mesh it wove was coarse enough to allow a 38-foot sailboat to slip through the definition of "floating structure". That holding does not aid Crane Rental here. First, we are not discussing "boats". Second, as a matter of judicially determined fact, the cranes in question are by no means factually or legally capable of transporting persons and property over the roads of Florida. The sailboat in *Florida Boaters, op.cit.*, was capable of transportation on water.

Crane Rental would have this Court hold that any of the large dredges which are constantly at work in Florida's waterways would be exempt as "vessels" since they float while performing their task. A dredge has never been exempt from taxation. See, *Arundel Corporation v. Sproul*, 136 Fla. 167, 186 So. 679 (Fla. 1939).

Since the Constitution does not define the term "motor vehicle", the decision of the Fifth District Court of Appeal only interprets several statutes. This deprives this Court of jurisdiction to review the decision. Crane Rental raised no issues in the trial Court to contend that the Legislature's definition of self-propelled cranes as other than a motor vehicle violates the Constitution.

CONCLUSION

The trial Court found as a matter of fact that the fifteen cranes of Crane Rental were neither designed nor used to transport persons or property over the roads of Florida. This finding of fact has competent evidence in the Record on Appeal to support it. This Court may not review and re-weigh that evidence.

Crane Rental may not lawfully use its cranes to transport persons or property without paying the substantial license fees charged a "Truck Tractor" in Tax Class Codes 40 through 44. The absence of such licensing precludes these cranes from being considered motor vehicles". The minimal fee for an identification plate issued under Tax Class Code 94 takes into consideration that a crane is subject to ad valorem taxation as a tool where the transportation function is incidental to what the tool does.

Self propelled cranes are "Special Mobile Equipment" and thus excepted from the definition of "Motor Vehicles" by specific Florida statutes. Crane Rental has not shown that the cranes in question are even capable of, let alone are actually used for, transportation of persons or property over the roads of Florida. They only move over the roads as an incident to the work performed at construction sites and returning to its premises.

The District Court of Appeal did not expressly pass on a provision of the Florida Constitution. Accordingly, this Court should reconsider whether it has jurisdiction to hear this appeal.

The decision of the Fifth District Court of Appeal should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief and Appendix of Respondent, FORD S. HAUSMAN, as Orange County Property Appraiser, was served by mail this 1st. day of June, 1988, on CHARLES EVANS DAVIS, of FISHBACK, Davis, Dominick & Bennett, 170 East Washington Street, Orlando, Florida 32801, Attorneys for Petitioner, and RUDEN, BARNETT, McCLOSKY, SMITH, SCHUSTER & RUSSELL, P.A., P. O. Box 1900, Fort Lauderdale, Florida 33302, Attorneys for Amicii Curiae.

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