

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.

:
:
: CLEVER
: By _____ *pl*
: Deputy Clerk
:
:

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL,
FIFTH DISTRICT OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

STEVEN R. BECHTEL
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and

GAYLORD A. WOOD, JR.
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INDEX

INDEX	i
CITATIONS OF AUTHORITY	i
STATEMENT OF THE CASE AND FACTS	1
ISSUE	
DOES THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY CONSTRUE A PROVISION OF THE STATE CONSTITUTION?	
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5

CITATIONS OF AUTHORITY

CASES

<i>Armstrong v. City of Tampa</i> , 106 So.2d 407 (Fla. 1958)	3
<i>Ogle v. Pepin</i> , 273 So.2d 391 (Fla. 1973)	3

STATUTES AND TEXTS

Section 316.03(49), F.S.	2
Sec. 320.01, F.S.	2

STATEMENT OF THE CASE AND FACTS

The Property Appraiser agrees with Petitioner's Statement of the Case.

Crane Rental asserts at page 1 that the cranes are composed of "separable units"; a carrier licensed as a motor vehicle, and the crane or lifting portion of the machine with separate engines, functions and operating controls. Nothing in the District Court of Appeal's opinion supports this statement. To the contrary, the District Court stated at page 2 of the Opinion that the cranes were designed on integral chassis as one tool and are not sold in separate pieces.

SUMMARY OF ARGUMENT

The jurisdiction of this Court has been severely limited by the revision to Article V of the State Constitution. The opinion of the Fifth District Court of Appeal does not *expressly* construe Article VII, Section 1, Const.Fla. 1968. Accordingly, this Court lacks jurisdiction.

DOES THE DECISION OF THE FIFTH DISTRICT COURT OF
APPEAL EXPRESSLY CONSTRUE A PROVISION OF THE STATE
CONSTITUTION?

ARGUMENT

The opinion of the District Court of Appeal did not *expressly* explain or construe a constitutional provision. The Court only mentions the Constitution in passing on pages 1, 2 and 5 of the opinion.

The Constitution does not define motor vehicles. It grants the Legislature the power to enact laws defining them. The District Court held that the Legislature did not intend to define mobile construction equipment as motor vehicles. The District Court did not even apply the Constitution to the facts in this case. Crane Rental argues at page 6 that the District Court of Appeal holds that Article VII, Section 1(b) does not mean what its terms appear to say. It does not point to any specific language of the Opinion in support of this contention.

The District Court did not construe the Constitution. It merely harmonized a number of statutes. The most applicable statute is Section 316.03(49), Florida Statutes, which classifies self-propelled cranes as "special mobile equipment". The statute on which Crane Rental relies at page 4, Section 320.01, contains important language which Petitioner fails to mention:

320.01 Definitions, general. -- As used in the Florida Statutes, *except as otherwise provided*, the term:

(1) "Motor vehicle" means...

The legislature "otherwise provided" in the definition of special

mobile equipment.

The District Court of Appeal's explanation of the various interrelated statutes defining equipment and motor vehicles is insufficient to trigger this Court's jurisdiction.

This Court decided in *Armstrong v. City of Tampa*, 106 So.2d 407 (Fla. 1958), that to construe means "to explain, define or otherwise eliminate existing doubts arising from the language or terms of the Constitution". *Id.* at 409. The opinion of the Fifth District Court of Appeal does not do this.

In *Ogle v. Pepin*, 273 So.2d 391 (Fla. 1973), it was argued that the District Court of Appeal "inherently" construed the Constitution. This Court re-affirmed the rule in *Armstrong*, *op.cit.*, and held that the "inherency" doctrine cannot be applied to claims that a District Court of Appeal has construed the Constitution.

Petitioner argues that since the issue of taxation of mobile construction equipment is of serious statewide concern and importance, this Court should review the decision of the Fifth District. This is not a basis for review. The District Court of Appeal did not certify that any portion of its holding was of great public importance.

CONCLUSION

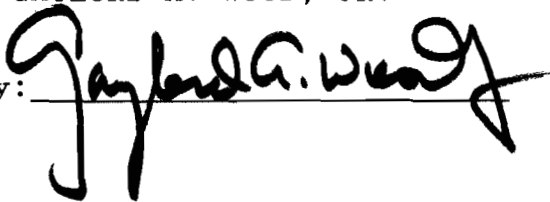
The opinion of the District Court of Appeal, Fifth District, in no way explains, defines or otherwise eliminates existing doubts arising from the language or terms of the State Constitution. Accordingly, this Court lacks jurisdiction to review it.

The Court should deny the petition.

Respectfully submitted,

STEVEN R. BECHTEL and
GAYLORD A. WOOD, JR.

By: _____

A handwritten signature in black ink, appearing to read "Gaylord A. Wood, Jr.", written over a horizontal line. The signature is stylized and cursive.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief on Jurisdiction of Respondent, FORD S. HAUSMAN, as Orange County Property Appraiser, was served by mail this 9th. day of February, 1988, on Charles Evans Davis, Esq., FISHBACK, DAVIS, DOMINICK & BENNETT, 170 East Washington Street, Orlando, Florida 32801, Attorney for Petitioner.

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