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IN THE SUPREME COURT OF FLORIDA

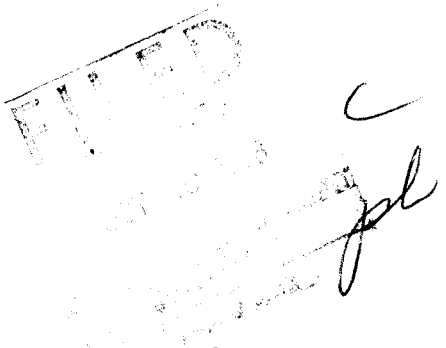
DEPARTMENT OF BUSINESS REGULATION,

Appellant,

vs. Case Number 73,119

CLASSIC MILE, INC., ETC., ET AL.,

Appellees.



THE GALAXY PROJECT, INC., ETC.,

Appellant,

vs. Case Number 73,121

CLASSIC MILE, INC., ETC., ET. AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF APPEAL FOR THE FIRST DISTRICT OF FLORIDA

APPELLANT GALAXY PROJECT, INC'S INITIAL BRIEF

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PRELIMINARY STATEMENT

In this brief, Appellant Galaxy Project, Inc., a Florida corporation, will be referred to as "Galaxy". Appellant State of Florida, Department of Business Regulation will be referred to as "State". Appellees Classic Mile, Inc., a Florida corporation, and Anthony Altman will be referred to as "Classic Mile" or "Altman", respectively.

References to the record on appeal will be designated by the prefix "R", followed by the appropriate page number. References to the trial transcript will be by reference to both the transcript (designated by the prefix "T", followed by the appropriate page number) and to the record on appeal (designated by the prefix "R", followed by the appropriate page number); e.g., (T 1/R 624).

STATEMENT OF THE CASE AND FACTS

During the 1987 legislative session, the Florida Legislature passed Chapter 87-38, Laws of Florida. Section 13 of the Chapter, which is codified in Section 550.355, Florida Statutes (1987), authorizes simulcasting of live thoroughbred horse races and the acceptance of pari-mutuel wagering on such races at an authorized licensed facility. Chapter 87-38 became law without the Governor's signature on May 22, 1987.

Section 13 of Chapter 87-38, authorizes the Division of Pari-Mutuel Wagering within the Department of Business Regulation, to issue a license for the receipt and display of live thoroughbred horse races which are simultaneously being broadcast from or through a Florida thoroughbred race track. The statute authorizes the issuance of such a license:

> In any county in which there has been issued by the Division of Pari-Mutuel Wagering of the Department of Business Regulation, as of January 1, 1987, two quarter horse racing permits, neither of which was utilized for racing prior to January 1, 1987, and only one jai alai permit, the Division of Pari-Mutuel Wagering shall issue not more than one license in any qualifying county for the receipt and display of live thoroughbred horse races by simulcasting and for the acceptance of all legally authorized forms of pari-mutuel wagering on such races, which facility may not be located at the premises of any other pari-mutuel wagering permit holder licensed under this Chapter and Chapter 551.

Section 550.355(2), Florida Statutes (1987).

Section 550.355(5)(a), Florida Statutes, requires that any wagers placed at the simulcasting facility be combined with the pari-mutuel pools of the transmitting Florida thoroughbred race track. The distribution of the combined pools is subject to the

provisions of Chapter 550, pursuant to Section 550.355(5). The simulcast facility will not actually be a race track and the facility will not operate its own pari-mutuel pools. Instead, the simulcasting licensee must contract with the existing Florida thoroughbred race tracks (Section 550.355(9)), presently located in Dade, Broward and Hillsborough Counties (T 86/R 710), and combine the simulcast wagering pool with the pool of the transmitting race track. The pool will then be distributed to the State (for taxes), persons placing the winning bets, the race track itself, purses for the winning horses, and to breeders' awards (T 57-59/R 681-683).

On June 30, 1987, Classic Mile and Altman filed suit in the Circuit Court of Leon County, Florida, challenging the facial constitutionality of Section 13 of Chapter Law 87-38. The complaint alleged that (1) the challenged statute is a local or special law, passed under the guise of a general law, without the benefit of the public notice or county-wide referendum as required by the Florida Constitution; (2) if the statute is a general law, it nevertheless classifies counties on bases not reasonably related to the subject of the law; and (3) the statute impermissibly regulated occupations in violation of Article III, Section 11(a)(20), Florida Constitution (R 1-6). The complaint further alleged that Marion County was the only county falling within the classification scheme specified in the statute (R 2).

In its answer to the complaint, the State admitted that (1) Marion County was the only county falling within the statute's classification scheme; (2) no notice of intention to seek enactment of the statute had been published; and, (3) the statute was not conditioned to become effective only upon approval by a vote of the electors of the affected area (R 23-24). On September 11, 1987, Galaxy filed a petition for leave to intervene (R 35). On October 22, 1987, the court entered an order permitting intervention (R 137).

At the beginning of the trial, the following stipulation, entered into among the parties, was published in the record:

> 1. Classic Mile, Inc., is a for-profit corporation organized and existing under the laws of the State of Florida;
>
> 2. Classic Mile is a permit holder of a quarter horse racing permit in Marion County;
>
> 3. Classic Mile's permit was not utilized for racing prior to January 1, 1987;
>
> 4. Anthony Altman, who is a Plaintiff, is a resident of Marion County, and at all times material to the case he was a duly qualified elector and a taxpayer in Marion County. Anthony Altman is also an employee of Classic Mile, Inc.;
>
> 5. Marion County is the county in which there has been issued by the Division of Pari-Mutuel Wagering of the Department of Business Regulation as of January 1, 1987, two quarter horse racing permits, neither of which was utilized for racing prior to January 1, 1987, and only one jai alai permit;
>
> 6. Marion County is the only county in Florida which meets the above description;
>
> 7. Marion County is the only county in Florida which can ever meet that description;

8. No notice of intention to seek the enactment of Section 13, Chapter 87-38 (Section 550.355, (Florida Statutes, 1987)) was ever published in the manner provided by general law; and,

9. No referendum to approve Section 13 was ever conducted in Marion County (T 20-21/R 644-645).

Following a one day trial held on November 5, 1987, the trial court entered its Final Judgment upholding the validity of Section 13 of Chapter 87-38 (R 617-619). In its Final Judgment, the trial court held that Section 13 is at least a general law of local application and is not a local or special law. In support thereof, the trial court found that Section 13 is a part of the state government's comprehensive overall scheme for the regulation of pari-mutuel wagering in its many forms, formats and locations within the State of Florida, and that the provisions of Section 13 materially affect counties and citizens of Florida that are not touched directly by Section 13 because:

a. Broadcasts of races to be displayed at the simulcast facility come from areas around the state and are not restricted to Marion County;

b. Proceeds from the pari-mutuel wagering which are generated from the wagering at the simulcast facility will be distributed to all counties in Florida under Florida's constitutional and statutory distribution formulas; and,

c. The financial aspects of the pari-mutuel wagering activity actually occur in, and have impact in, areas other than Marion County in that simulcast wagering affects the odds, the size of the pari-mutuel pools, and the handle of the transmitting tracks, all of which occurs outside of Marion County and all of which occurs by virtue of the language contained in Section 13 (R 617-618).

The trial court further found that the selection of Marion County by the legislature was a reasonable exercise of the legislative power and that the selection was not arbitrary, unreasonable, or capricious in that:

> a. Marion County has a nexus with the horse racing industry;
>
> b. Marion County has already voted by referendum to allow pari-mutuel activities to be conducted in the county; and,
>
> c. Marion County is a national and state-wide center for the business activities of the horse racing industry (R 617-619).

On December 7, 1987, Classic Mile and Altman filed their notice appealing the Final Judgment to the First District Court of Appeal (R 620).

On September 1, 1988, the First District Court of Appeal rendered its decision finding Section 13 of Chapter 87-38 to be unconstitutional in that it is a special act in the guise of a general law and was enacted in violation of Article III, Section 10, Florida Constitution. Furthermore, the District Court found that Section 13 was not constitutionally sound as a general law under Article III, Section 11(b), Florida Constitution, in that the Court did not find any reasonable relationship between the express class characteristics enumerated in the statute and the purpose of the legislation. See, Classic Mile, Inc., et. al. v. State of Florida, Department of Business Regulation, et. al., 13 FLW 2036 (Fla. 1st DCA September 1, 1988).

On September 29, 1988, both the State and Galaxy timely filed their notice of appeal to this Court. By Order dated October 6, 1988, the two appeals were consolidated.

SUMMARY OF ARGUMENT

The District Court erred in finding that Section 550.355, Florida Statutes (1987) is a special law in violation of Article III, Section 10 of the Florida Constitution (1968). The District Court's approach that a closed-class, per se, constitutes a special law is not supported by case law. This Court in Givens v. Hillsborough County, 46 Fla. 502, 35 So. 88 (1903), held that legislation which is limited to one county and not subject to inclusion of other counties in the future, is not, in and of itself, a special law.

The key in assessing whether closed-class legislation is a special or general law, is the determination as to whether there are proper distinctions and differences that are peculiar or appropriate to the particular entity, and the subject matter and purposes of the legislation. Thus, the proper focus is not on exclusion of other entities from the class, per se, but whether there is a distinction with a difference in the county included within the class. In the instant case, the trial court found on a unrebutted record that there was, in fact, a manifest relationship between Marion County, Florida, and the subject of the proposed legislation. The parties have stipulated in this case that Marion County is the county that fits the classification scheme in Section 550.355(2), Florida Statutes.

Additionally, the District Court's focus on subsection (2) of 550.355, unnecessarily restricts the scope of the legislation. A review of all provisions within Section 550.355 reveals that the

legislation has a direct and indirect impact throughout the entire state and counties other than Marion. When viewed in its proper context, Section 550.355 directly and indirectly affects every citizen of the state and, consequently, must be deemed a valid general law.

Finally, the District Court's focus on the express class characteristics in declaring Section 550.355 violative of Article III, Section 11(b), of the Florida Constitution, is too myopic and ignores well established principles of statutory construction. This Court has repeatedly held that a statute must be construed to give effect to evident legislative intent which intent should be gleaned from the statute, subject to be regulated, the purpose to be accomplished, and the means adopted for accomplishing the purpose. This is so even if such is contradicted by or inconsistent with the strict letter of the statute.

The classification scheme employed by the legislature describes Marion County, not by name but by a descriptive technique. This descriptive technique permeates the provisions of Chapters 550 and 551, Florida Statutes, as well as the remaining sections of Chapter 87-38, Laws of Florida. The legislative intent behind the use of these descriptive techniques is to identify a particular pari-mutuel permittee or county. The appropriate legislative intent in the instant challenged statute is to identify Marion County as the county qualifying as the site for a simulcast license. There is a manifest relationship which is well documented in the record between Marion County and the

purpose of the legislation. Consequently, Section 550.355 is constitutionally sound as a general law under Article III, Section 11(b), Florida Constitution (1968).

Accordingly, the decision of the District Court of Appeal rendered on September 1, 1988 should be reversed and the final judgment of the trial court entered on November 20, 1987, should be affirmed.

ARGUMENT

I. THE DISTRICT COURT OF APPEAL ERRED IN REVERSING THE TRIAL COURT AND FINDING SECTION 13 OF CHAPTER 87-38 (SECTION 550.355) A SPECIAL LAW IN VIOLATION OF ARTICLE III, SECTION 10, FLORIDA CONSTITUTION, WHERE THE ACT SHOULD HAVE BEEN CONSTRUED AS A VALID GENERAL LAW.

The District Court of Appeal erred in finding Section 13 of Chapter 87-38 unconstitutional as a special act in violation of Article III, Section 10, Florida Constitution, particularly in light of the strong presumption of constitutionality which clothes any legislation facing constitutional attack. As this Court held in Florida Jai Alai, Inc., v. Lake Howell Water and Reclamation District, 274 So.2d 522, 524-525 (Fla. 1973):

> It is a cardinal rule of statutory construction that an act of the Legislature is presumed valid and will not be declared unconstitutional unless it is patently invalid. Knight & Wall Co. v. Bryant, 178 So.2d 5 (Fla. 1965). We have also adopted the view that a statute should be construed and applied so as to give effect to the evident legislative intent, even if it varies from the literal meaning of the statute. Deltona Corporation v. Florida Public Service Com'n, 220 So.2d 905 (Fla. 1969). Legislative intent should be gathered from consideration of the statute as a whole rather than any one part thereof. State v. Hayles, 240 So.2d 1 (Fla. 1970). A law should be construed together with any other statute relating to the same subject matter or having the same purpose if they are compatible. Garner v. Ward, 251 So.2d 252 (Fla. 1971).

This Court has consistently recognized that the legislature has broader discretion and latitude and may exercise greater control and its police power in a more arbitrary manner when dealing with pari-mutuel legislation. Hialeah Race Course v. Gulfstream Park Racing Association, Inc., 37 So.2d 692, 694 (Fla.

1948); Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983); Biscayne Kennel Club v. Florida State Racing Commission, 165 So.2d 762, 764 (Fla. 1964). Indeed, this Court has noted that geographical preemption and the creation of monopoly franchises, at least temporarily, are consistent with the legislative powers in the pari-mutuel area. Biscayne Kennel Club, Inc., v. Florida State Racing Commission, supra, 165 So.2d at 764.

The above presumptions and latitude, when considered in conjunction with well established legal principles set forth, infra, underscore the validity of Section 550.355, Florida Statutes, as a valid general law, and not a special act as found by the District Court of Appeal.

A. SECTION 550.355, FLORIDA STATUTES, IS A GENERAL LAW NOT REQUIRING COMPLIANCE WITH ARTICLE III, SECTION 10 OF THE FLORIDA CONSTITUTION, BECAUSE IT RELATES TO A STATE FUNCTION HAVING STATEWIDE IMPACT.

Appellant Galaxy hereby adopts Point I of the Argument of Appellant State of Florida, Department of Business Regulation in its Initial Brief filed herein.

B. ASSUMING SECTION 550.355, FLORIDA STATUTES, DOES NOT RELATE TO A STATE FUNCTION, THE DISTRICT COURT ERRED IN HOLDING THAT SAID SECTION IS A SPECIAL LAW BY VIRTUE OF THE CREATION OF A "CLOSED-CLASS" CONSISTING ONLY OF MARION COUNTY.

The District Court of Appeal erred in holding Section 550.355 a special law simply because the use of the descriptive technique in Section 550.355(2), created a completely "closed-class". It is

undisputed that the classification technique identifies Marion County and that due to the conditions of the classification, only Marion County could ever be included within the class. Such limitation to Marion County only, however, does not automatically render the legislation a special or local act.

This Court in Givens v. Hillsborough County, 46 Fla. 502, 35 So. 88 (1903), considered the precise circumstance where legislation affected only one county and, because of the limitations within the classification, no other county in the future could ever fall within its provisions. The issue therein, as framed by this Court, was whether the subject legislation was special legislation for one county, or general legislation founded upon a reasonable and legitimate basis of classification and, if the latter, whether the legislation would retain its character, though but one county was included within the class to which the act applied. Givens, supra, 35 So. at 90. This Court concluded that the subject legislation was, in fact, general legislation holding:

> The basis of the division into classes must be one founded in reason, and not an arbitrary selection of individuals; but where the classification is well founded and the legislation general in terms, the mere incident that but one of the class exists should not defeat the right of the Legislature to deal with the subject, nor tie its hands until a second individual shall be added to the class.

Id. at 91.

The Givens decision is not inconsistent with the decisions of this Court in Department of Legal Affairs v. Sanford-Orlando Kennel Club, supra, and West Flagler Kennel Club v. Florida

State Racing Commission, supra, cited by the District Court in holding that the instant legislation was a special act and not a general act. This Court held in Department of Legal Affairs v. Sanford-Orlando Kennel Club, that a law pertaining to a subdivision of the state is valid if the classification is based upon proper distinctions and differences that adhere in or are appropriate to the class. The key is whether there is a reasonable and distinctive relationship between that particular entity and the purpose of the law. West Flagler Kennel Club, Inc., supra, 153 So.2d at 9; Shelton v. Reeder, 121 So.2d 145, 151 (Fla. 1960).

Thus, neither Department of Legal Affairs v. Sanford-Orlando Kennel Club nor West Flagler Kennel Club, Inc., v. Florida State Racing Commission, support the proposition that a classification scheme that creates a closed-class is, per se, a special or local act.

This Court's focus on the open versus closed-class dichotomy in Department of Legal Affiars v. Sanford-Orlando Kennel Club, is not determinative of the issues in this case. The District Court in Sanford-Orlando held that the challenged legislation therein was a special act because it was intended for, and could apply only to, Seminole Park, to the exclusion of all other pari-mutuel permittees. See, State of Florida, Department of Legal Affairs v. Sanford-Orlando Kennel Club, 411 So.2d 1012, 1016-17 (Fla. 5th DCA 1982). The District Court rejected the argument that the challenged legislation was potentially applicable to existing and

future pari-mutuel permittees. On review, this Court rejected the District Court's factual finding by noting that the classification scheme was open and had the potential of applying to other race tracks. Department of Legal Affairs v. Sanford-Orlando Kennel Club, supra, 434 So.2d at 882. Thus, the issue was whether the District Court was correct in its factual determination that the class was closed, and not the legal ramifications of a closed-class.

Likewise, the West Flagler Kennel Club legislation was stricken as a special act because the parties could not demonstrate a reasonable relationship between the classification scheme and the primary purpose of the act. West Flagler Kennel Club, Inc., v. Florida State Racing Commission, supra, 153 So.2d at 8. Indeed, this Court therein found that the classification scheme was so arbitrary and capricious that it denied similarly situated permit holders equal protection and the legislation could not have been sustained as a special act even if the notice or referendum provisions of the Florida Constitution were complied with. Id. at 9. Consequently, the issue in West Flagler was not the legal effect of a closed-class, per se, but whether there was a reasonable and distinctive relationship between the particular entity being affected and the purpose of the legislation. This Court clearly found that no such relationship existed.

The trial court herein, on an unrebutted record, found that there was a reasonable relationship between Marion County and the subject matter of the legislation (pari-mutuel wagering on

thoroughbred horse races in a simulcast facility), in that Marion County has a nexus with the horse racing industry, that Marion County is a national and statewide center for the business activities of that industry, and that Marion County has already voted by referendum to allow pari-mutuel activities in the county (R 618-619). Marion County is the center of the thoroughbred industry in Florida and the second largest breeder of thoroughbred horses in the country. Over two-thirds of the thoroughbred farms in Florida are located in Marion County, and all of the major farms are located there. See, Testimony of Billy Vessels (T 87-86/R 708-710); Gary Wolfson (T 99-102/R 723-726); and Dennis Diaz (T 131/R 755). The Florida Thoroughbred Breeders Association, which is statutorily designated in Section 550.262, Fla. Stat., to receive and make payments of the breeders' and owners' awards, is located in Marion County (T 80/R 204).

Consequently, the trial court's finding that the legislature acted reasonably, and not arbitrarily or capriciously, in selecting Marion County as the site for the proposed simulcast facility (R 618-619), is abundantly supported and unchallenged in the record. The reasonableness of selecting only Marion County for the site of the simulcasting facility is also well supported. First, Marion County is singularly unique among Florida counties in its relationship with the thoroughbred racing industry. There are no similarly situated counties in Florida. Second, Marion County is also geographically situated so that the simulcasting facility will not directly compete with the thoroughbred race

tracks for attendance (T 84/R 708). More importantly, however, the legislature's decision to limit simulcasting to one site and one county serves significant regulatory goals. This point has been briefed by Appellant State at Point II of its Initial Brief filed herein, and Galaxy adopts and incorporates herein by reference that portion of the State's brief.

In sum, the classification of Marion County as the site for the proposed simulcasting facility is clearly based upon proper distinctions and differences that are peculiar to Marion County, which distinctions are directly related to the purpose of Section 550.355. This is not a case where legislation gave a special privilege or benefit to a particular person or pari-mutuel permittee, as was the case in both Department of Legal Affairs v. Sanford-Orlando Kennel Club, and West Flagler Kennel Club, Inc., v. Florida State Racing Commission. Instead, this legislation classifies a particular county for a legitimate governmental purpose with the classification of that county firmly supported in fact.

The District Court's decision in this regard should be reversed and the trial court's opinion affirmed.

C. SECTION 550.355, FLORIDA STATUTES, SHOULD BE REGARDED AS A GENERAL LAW AS IT IS LOCAL IN CHARACTER BUT GENERAL IN APPLICATION.

The District Court's focus on Marion County as the site for the proposed simulcast facility in determining that Section 550.355, Florida Statutes, is a special law is too myopic and ignores the general impact and application of the provisions of

that section. As the trial court found on an unrebutted record, the provisions of Section 550.355 materially affect counties and citizens of the state that are not directly touched by that section, in at least the following respects:

> a. Broadcasts of races to be displayed at the simulcast facility come from areas around the state and are not restricted to Marion County;
>
> b. Proceeds from the pari-mutuel wagering which will take place through the simulcast facility will contribute to the distribution of pari-mutuel tax proceeds to all counties in the State under the State's constitutional and statutory distribution formulas; and,
>
> c. The financial aspect of administering the simulcast pari-mutuel activity actually occurs in, and has impact in, areas other than Marion County and on citizens other than those of Marion County in that the wagering conducted through the simulcast facility affects the odds at the track which is transmitting the race, the size of the pari-mutuel pools of the transmitting track, and the handle of the transmitting track, all of which occurs outside of Marion County and which occurs by virtue of the language contained in Section 550.355 (R 617-618).

Thus, the affects of Section 550.355 may be local in character in terms of the site of the simulcast facility (i.e., Marion County), but the impacts have general application statewide. Such facts amplify the general character of the legislation and support a finding that the legislation is constitutionally valid as a general law. Cantwell v. St. Petersburg Port Authority, 155 Fla. 651, 21 So.2d 139, 140 (1945); Accord, St. Johns River Water Management District v. Deseret Ranches of Florida, Inc., 421 So.2d 1067, 1069 (Fla. 1982)(legislation does not have to be universal in application to be a general law if it materially affects the people of the

state); State of Florida v. Florida State Turnpike Authority, 80 So.2d 337, 343-44 (Fla. 1955)(following Cantwell; direct and indirect benefits to the entire state precludes challenged legislation from being a local or special law).

In sum, a review of all of the provisions within Section 550.355, reveals the general applicability of that entire section to the State of Florida as a whole, both directly and indirectly. The District Court's focus on Subsection (2) of Section 550.355, ignores well established principles of statutory construction that a law should be construed together, and in harmony, with any other statute relating to the same subject matter or having the same purpose. Garner v. Ward, 251 So.2d 252, 255 (Fla. 1971); Tamiami Trail Tours v. City of Tampa, 159 Fla. 287, 31 So.2d 468, 471 (1947)(construe in pari materia with legislation on the same subject passed in the same session). When viewed in context with Section 550.355, as well as the remaining sections within Chapter 87-38, Laws of Florida, it is clear that the challenged provisions are not local or special but have both direct and indirect impact statewide as part of the state's comprehensive regulatory scheme over pari-mutuel wagering and the 1987 Florida Legislature's attempt to assist the pari-mutuel industry and the State of Florida as a whole. The District Court's focus is too narrow and must be reversed.

II. THE DISTRICT COURT ERRED IN REVERSING THE TRIAL COURT AND FINDING THAT SECTION 550.355(2), FLORIDA STATUTES, VIOLATES ARTICLE III, SECTION 11(b), FLORIDA CONSTITUTION, WHERE THE SELECTION OF MARION COUNTY IS REASONABLY RELATED TO THE PURPOSE OF THE CHALLENGED LEGISLATION.

As a separate basis for reversing the trial court, the District Court found that there was no reasonable relationship between the express class characteristics enumerated in Section 550.355(2), and the purpose of the legislation. The District Court found the absence of such a relationship to be patent on the record and held that the statute was not constitutionally sound as a general law in violation of Article III, Section 11(b), Florida Constitution. The District Court's extremely narrow approach of strictly reviewing the literal language of Section 550.355(2), does not comport with well established judicial precedent from this Court.

Article III, Section 11(b) of the Florida Constitution (1968), provides:

> In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.

This provision establishes a reasonableness standard for the classification of political subdivisions and governmental entities in general laws covering subjects not listed in subsection (a) of this Section 11. This provision was added to the Florida Constitution in 1968. See, Commentary, Art. III, Section 11, Fla. Const. (1968), 25A F.S.A.

The challenged legislation identified Marion County through the classification scheme set forth in Section 550.355(2), not by name, but by description. The District Court, however, focused solely on the "express class characteristics enumerated in the statute" in analyzing the classification scheme. Not unsurprisingly, the District Court did not find a reasonable relationship between the classification scheme and the purpose of the legislation. The District Court's focus is far too narrow.

It is a well established rule of statutory construction that a statute should be so construed and applied to give effect to the evident legislative intent, even if the result appears to be contradictory to rules of construction and the strict letter of the statute. Beebe v. Richardson, 156 Fla. 559, 23 So.2d 718, 719 (1945). Moreover, where the context of a statute taken literally conflicts with legislative intent, the legislative intent and not the context will control. Id. The intent prevails where strict application of the letter of the law will defeat its purpose, would be absurd, and even though the intent as gleaned through statutory construction is not within the literal, strict application of the language. Garner v. Ward, 251 So.2d 252, 256 (Fla. 1971). It is equally well established that the court must construe the challenged statutory provisions together with any other statute relating to the same subject matter or having the same purpose, whether or not the statutes were enacted at the same time. Garner v. Ward, supra, 251 So.2d at 255; Tamiami Trail

Tours v. City of Tampa, supra, 31 So.2d at 471; Florida Jai Alai, Inc., v. Lake Howell Water and Reclamation District, supra, 274 So.2d at 524-525.

A literal interpretation of the descriptive technique found in Section 550.355(2), supports the District Court's conclusion that there is no relationship between that descriptive technique and the subject of the legislation. However, it is clear from a review of the various provisions within Chapters 550 and 551, Florida Statutes, and the other sections within Chapter 87-38, Laws of Florida, that this type of descriptive technique has been consistently used by the legislature throughout pari-mutuel legislation. See, e.g. Sections 550.08(3), 550.082(3), 550.083(2), 550.0831(2), 550.39(1), 551.031(3), 551.152, 551.153, and 551.155, Florida Statutes (1987), and Sections 2, 3 and 7 of Chapter 87-38.

The site specific classifications use a combination of geographical, revenue based, and chronological factors to identify certain permit holders or counties as surely as they were specifically named in the statutes. The unrebutted testimony of persons familiar with the pari-mutuel statutory schemes established that the legislation in Chapters 550 and 551, Florida Statutes, identifies specific permittees or counties by descriptive technique--not by name. See, Testimony of Gary Rutledge (T 43-44/R 667-668), and John Cochoran (T 28-29/R 652-653). Indeed, it was not until the enactment of Section 21 of Chapter 88-346, Laws of Florida, that the legislature identified specific pari-mutuel permittees and counties by name.

Thus, there can be little question that legislative intent is not going to be gleaned from the literal interpretation of the descriptive language used but through an understanding of what counties would fit within the parameters of the descriptive technique. In this case, the parties stipulated that Marion County is the county that fits the descriptive technique, i.e., a county in which there has been issued as of January 1, 1987, two quarter horse racing permits, neither of which was utilized for racing prior to January 1, 1987 and only one jai alai permit.

When the descriptive technique is reviewed in its proper context, there is little question that a reasonable relationship exists between the classification (i.e., Marion County) and the purpose of the legislation. The reasonableness of the relationship between Marion County and pari-mutuel wagering of simulcast thoroughbred horse racing is abundantly clear and unrebutted in the record. The trial court correctly found such in its final judgment. This Court, too, should so find and should reverse the decision of the District Court and affirm the final judgment of the trial court declaring that Section 550.355, Florida Statutes (1987), is a valid and constitutionally sound general law.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Appellant The Galaxy Project, Inc., requests that this Court reverse the decision of the First District Court of Appeal rendered on September 1, 1988, affirm the final judgment of the trial court rendered on November 20, 1987, and hold Section 550.355, Florida Statutes, (1987) to be a constitutionally sound general law.

Respectfully Submitted,

STOWELL, ANTON & KRAEMER

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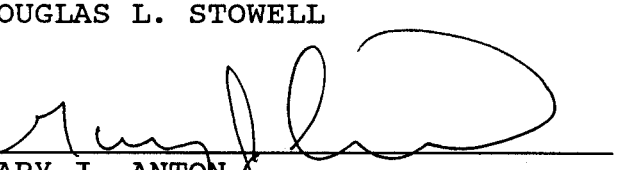
And: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Hand Delivery** to John C. Courtney, Esquire, Department of Business Regulation, 725 Bronough Street, The Johns Building, Room 212, Tallahassee, Florida 32399-1000 and to Frederick P. Karl, Thomas J. Maida, and Michael G. Maida of Karl, McConnaughhay, Roland & Maida, P.A., 101 North Monroe Street, Monroe Park Tower, Suite 950, Tallahassee, Florida, 32302, this 19th day of October, 1988.

GARY J. ANTON