Supreme Court of Florida

No. 74,280

IN RE: The Recall of BARNEY KORETSKY, as Mayor of Pembroke Park, Florida.

[February 15, 19901

McDONALD, J.

We accepted In re Koretsky, 541 So.2d 1362 (Fla. 4th DCA 1989), for review because the court certified a question of great public importance:*

> Do the provisions of section 100.361 [Florida Statutes (1987)] apply to a municipality which has adopted no provisions for recall elections?

Id. at 1363. We conclude, as did the Fourth District Court of Appeal, that it does not and quote the pertinent portion of that court's opinion:

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* Art. V, § 3(b)(4), Fla. Const.

Section 100.361 contains a comprehensive scheme for the recall of municipal and charter county governing officials. Three (3) provisions of section 100.361 concern us here. Section 100.361(1) sets out the provisions governing a recall petition and provides that any member of the governing body of a municipality may be removed by recall. Section 100.361(8) states that it is the intent of the legislature that recall procedures be uniform statewide and that any municipal laws to the contrary stand repealed. Section 100.361(9)[1] is entitled "PROVISIONS APPLICABLE" and provides:

> The provisions of this act shall apply to cities and charter counties which have adopted recall provisions.

We believe the plain meaning of subsection (9) is to limit the application of section 100.361 to cities and charter counties which have adopted recall provisions. Since it is undisputed in this case that the city of Pembroke Park has not adopted the provisions of section 100.361, we hold that there is no legal authority for a recall election in the city of Pembroke Park.[2]

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[1] The provisions of section 100.361 were originally enacted into law in three (3) separate sections, section 1. providing the substance of the recall procedure, section 2. providing that the provisions shall apply to cities and charter counties which have adopted recall provisions, and section 3. providing the effective date of the law.

[2] The parties have not cited, and, we are unaware of any caselaw directly on point. Cf. City of Laurel Hill v. Sanders, 392 So.2d 33 (Fla. 1st DCA 1980) (municipal provisions adopting election laws set out in chapter 100 include section 100.361). There are four (4) opinions of the attorney general and the division of elections on this issue, three opinions that section 100.361 applies to all cities, and one taking the view we adopt here. See 1979 Op.Atty.Gen.Fla. 79-38 (Apr. 18, 1979); 1975 Op.Atty.Gen.Fla. 075-242 (Aug. 28, 1975); 1978 Op.Div.Elec.Fla. 78-48-(Nov. 6, 1978); 1977 Op.Div.Elec.Fla. 077-10-(Mar. 22, 1977).

Id. (emphasis in original).

Each part of a legislative enactment is presumed to be included for a reason. Admittedly, on some occasions, the significance of a provision is not patently clear. The genesis of section 100.361 was chapter 74-130, Laws of Florida. This bill was a "Committee Substitute for House Bill No. 1739(CS)." Section 1 of that bill stated:

> Any member of the governing body of a municipality which has at least 500 registered electors, or charter county, hereinafter referred to as municipality, may be removed from office by the electors of the municipality by the following procedures:

The bill then recited the mandate recall procedures. It thus would appear that, as originally conceived, an authorization for recall of officers of all municipalities exceeding 500 persons was intended and the act set the procedure therefor. Section 2 of the act, however, explicitly states: "The provisions of this act shall apply to cities and charter counties which have adopted recall provisions." The only conclusion we can draw from this inclusion is that the legislature was limiting the recall procedure to those governing bodies that provided for recall and declined to impose it on such bodies which had no such provisions.

We therefore approve the decision under review.

It is so ordered.

EHRLICH, C.J., OVERTON, BARKETT and KOGAN, JJ., concur
GRIMES, J., Dissents with an opinion in which SHAW, J., concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

GRIMES, J., dissenting.

Subsection (1) of section 100.361, Florida Statutes (1987), provides that "[a]ny member of the governing body of a municipality . . . may be removed from office by the electors of the municipality." The balance of the statute sets forth the requirements and the procedures for recall. Subsection (9) states that "[t]he provisions of this act shall apply to cities . . . which have adopted recall provisions."

Subsection (9) does not limit the all-inclusive scope of subsection (1). Had the legislature wanted to restrict the application of section 100.361 in the manner interpreted by the majority opinion, it would have stated that the provisions of this act shall apply only to cities which have adopted recall provisions or, even more logically, it would have made this clear in the introductory provisions of the statute. To the contrary, subsection (8) of the statute states that "[i]t is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide."

The title to chapter 74-130 later codified as section 100.361 provided, in part, that it was an act "authorizing and providing procedures for the recall of any member of the governing body of a municipality . . . by the municipal . . . electors . . . ." (Emphasis supplied.) This language reflects a clear legislative intent that the statute operate in and of itself as authorization for the removal of members of the governing bodies of municipalities, which intent is clearly implemented by the language of subsection (1) of the statute.

At the very least, the statute is ambiguous, in which event it is proper to look to the purpose for which the statute was passed. Sunshine State News co. v. State, 121 So.2d 705 (Fla. 3d DCA 1960). From a reading of the entire act, I believe it is evident that the legislature wished to adopt uniform recall procedures for all cities rather than simply for those cities which already had some kind of recall procedure. As the statute is interpreted by the majority, in those cities in which the recall procedures are contained in an ordinance, a city commission faced with the potential of a recall could simply repeal the ordinance and escape the recall. An ambiguity in a statute should be resolved by an interpretation that best serves the public interest. In re Ruff's Estate, 159 Fla. 777, 32 So.2d 840 (1947). It is my belief that subsection (9) was simply added to the statute to make it doubly clear that statewide procedures applied even to those cities which already had recall provisions.

The views I express have prevailed in state government since the enactment of this statute. In opinion 075-242,[1] Attorney General Shevin addressed the effect of subsection (9), then subsection (11), as follows:

> However, your letter questions whether a different conclusion is required by reason of subsection (11) of s. 100.361, F.S. (1974 Supp.) [s. 2 of

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[1] 1975 Op. Att'y Gen. Fla. 075-242 (Aug. 28, 1975).

> Ch. 74-130, supra], which reads, in pertinent part: "The provisions of this act shall apply to cities . . . which have adopted recall provisions." It is my view that this last-quoted language does not change the conclusions hereinabove expressed respecting the intent and effect of subsection (1) of the statute. First it should be noted that the literal wording of subsection (11) does not conflict with the language of subsection (1). And while the language of subsection (11) encompasses a smaller universe than that engulfed by subsection (1), it does not do so in a restrictive manner, but rather in what appears to be an effort at further clarification of the broad scope included within subsection (1). The language of subsection (11) would become restrictive only if the word "only"--or a word of similar restrictive import--were to be inserted between "shall" and "apply," but, as noted in In re Estate of Jeffcott, 186 So.2d 80 (2 D.C.A. Fla., 1966), ". . . a court will refuse to tack additional words on a statute in a situation where uncertainty prevails as to the legislature's intent," and a court may not "invoke a limitation or . . . add words to the statute not placed there by the Legislature." Chaffee v. Miami Transfer Company, Inc., 288 So.2d 209 (Fla. 1974).

Opinion 077-09[2] of the Division of Elections is consistent with the majority opinion in this case. However, the following year, in opinion 78-48,[3] the Division of Elections expressly overruled and revoked its prior opinion, reasoning as follows:

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2 077-09 Fla. Op. Div. of Elections (Mar. 8, 1977).

3 78-48 Fla. Op. Div. of Elections (Nov. 6, 1978).

> [T]he better view is that this later provision supplements the intent language and makes it abundantly clear that even such cities and counties are governed by this statute's provisions and not the charter provisions. To hold otherwise would reduce the statute's use to just those cities and counties adopting recall procedures to the exclusion of all other municipalities. It seems unreasonable to assume that the legislature intended to overrule provisions previously adopted, but not subject other municipalities to recall procedures.

Thereafter, in opinion 079-38,[4] Attorney General Smith reiterated the view of his predecessor in analyzing the effect of subsection (9), then subsection (10), and stated:

> Your letter suggests, however, that the terms of s. 100.361(10), F.S., compel a different conclusion. This subsection states: "The provisions of this act shall apply to cities and charter counties which have adopted recall provisions." I do not believe that this subsection operates to negate the clear terms of subsection (1). The language of subsection (10) is not on its face inconsistent with that of subsection (1); even if such a conflict did exist, the rule of construction is to interpret a statute to effectuate rather than defeat the clear purpose of the Legislature. This principle is amplified by the well established rule providing that when the last sentence in one section of a statute is plainly inconsistent with preceding sentences of

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[4] 1979 Op. Att'y Gen. Fla. 079-38 (Apr. 18, 1979).

> the same section and preceding sections, which conform to the Legislature's obvious policy and intent, such last sentence, if operative at all, must be so construed as to give it effect consistent with such other sections and parts of sections and with the policy they indicate. Sharer v. Hotel Corp. of America, 144 So.2d 813 (Fla. 1962); State ex rel. Johnston v. Bessenger, 21 So.2d 343 (Fla. 1945); and Hall v. State, 23 So. 119 (Fla. 1897). This rule constitutes an exception to the general rule that the last expression of the legislative will is the law, and, in the case of conflicting provisions in the same statute or different statutes, the last in point of time or order of arrangement prevails. Compare State v. City of Boca Raton, 172 So.2d 230 (Fla. 1965), and State v. City of Hialeah, 109 So.2d 368 (Fla. 1959), with Johnson v. State, 27 So.2d 276 (Fla. 1946), cert. denied, 329 U.S. 799 (1947).

The administrative construction of a statute by an agency or body charged with its administration "is entitled to great weight and will not be overturned unless clearly erroneous." State ex rel. Biscayne Kennel Club v. Board of Business Regulation, 276 So.2d 823, 828 (Fla. 1973). Moreover, section 100.361 has been amended five times, yet there has been no change in those portions of the statute relating to its applicability. Had the legislature disagreed with the official interpretation of the attorney general and Division of Elections, it would have been a simple matter to amend the statute.

I respectfully dissent.

SHAW, J., Concurs

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

Fourth District - Case No. 89-0488
(Broward County)

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