THE SUPREME COURT OF FLORIDA

ALACHUA COUNTY, FLORIDA,

Appellant,

v. CASE NO. 75,207

FLORIDA PETROLEUM MARKETERS ASSOCIATION, INC.; ALSAX CORPORATION; UNITED FUELS CORPORATION; MILLER ENTERPRISES, INC.; HUNTLEY'S JIFFY STORES, INC.; MUNFORD, INC.; CLARDY OIL COMPANY; MCB OIL COMPANY; DIXON OIL CORPORATION; THOMAS OIL COMPANY, INC.; RALLY FOOD STORES, INC.; RICHARDSON OIL COMPANY, INC.; COTTON'S MIN-A-MART; LEWIS OIL COMPANY, INC.; GATE PETROLEUM COMPANY; SUWANNEE SWIFTY STORES, INC.; LIL' CHAMP FOOD STORES, INC.; DIXIE OIL COMPANY, INC.; and FLORIDA WELCOME STATION, INC.,

Appellees.

INITIAL BRIEF OF APPELLANT ALACHUA COUNTY, FLORIDA

GREGORY T. STEWART
FLORIDA BAR NO. 203718
ARTHUR R. WIEDINGER, JR.
FLORIDA BAR NO. 242144
NABORS, GIBLIN & NICKERSON, P.A.
315 SOUTH CALHOUN STREET
BARNETT BANK BUILDING, SUITE 800
POST OFFICE BOX 11008
TALLAHASSEE, FLORIDA 32302
(904) 224-4070

THOMAS BUSTIN
ALACHUA COUNTY ATTORNEY
POST OFFICE DRAWER "CC"
GAINESVILLE, FLORIDA 32602
(904) 374-5218

ATTORNEYS FOR APPELLANT

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EXPLANATION OF ABBREVIATIONS AND SYMBOLS

Appellant shall be referred to as "Alachua County" or the "County".

The following abbreviations shall be used to reference the Record on Appeal and the Appendix of Appellant:

1. "T" shall refer to the Transcript of Hearing.
2. "A" shall refer to the Appendix.

POINTS ON APPEAL

POINT I

CHAPTER 88-156 DOES NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

POINT II

CHAPTER 88-156 IS A GENERAL LAW NOT A SPECIAL LAW.

STATEMENT OF THE CASE AND FACTS

This is an appeal pursuant to Rule 9.030(a)(1)(A)(ii), Florida Rules of Appellate Procedure, from a decision of the First District Court of Appeal declaring Chapter 88-156, Laws of Florida, invalid under Article III, Section 6 and Article III, Section 10 of the Florida Constitution.

On June 22, 1987, ALACHUA COUNTY, FLORIDA (the "County") adopted Ordinance 87-10 and filed it with the Secretary of State on June 24, 1987. This Ordinance provided for more stringent regulation of underground storage tanks. Pursuant to the provisions of Section 376.317, Florida Statutes (1987), the County submitted Ordinance 87-10 to the Florida Department of Environmental Regulation ("DER") for its review and approval. On July 7, 1987, DER issued its Intent to Approve Ordinance 87-10.

Thereafter, FLORIDA PETROLEUM MARKETERS ASSOCIATION, INC. ("FPMA"), and others not a party to this action, filed Petitions pursuant to Section 120.57, Florida Statutes, requesting a Formal Administrative Hearing on the Intent to Approve issued by DER.

Prior to the administrative hearing on FPMA's Petition, the Florida Legislature substantially amended the provisions of Section 376.317, Florida Statutes, in two separate Acts. Prior to these amendments, Section 376.317, Florida Statutes, permitted a county to adopt standards for underground storage tanks which were more stringent than state rules, provided that such standards were

in force prior to September 1, 1984, or that they were approved by DER.

The first amendment to Section 376.317, Florida Statutes, was contained in Section 6 of Chapter 88-331, Laws of Florida (A-40), and required that prior to seeking approval from DER for an ordinance establishing more stringent or extensive standards for underground storage tanks, a county must effectively administer the state law or rule for a period of two years. The two exceptions to this requirement were that those ordinances in force prior to September 1, 1984 need not obtain DER approval, and those counties which had sought approval from DER prior to January 1, 1988 need not administer state laws or rules for any minimum period of time prior to seeking DER approval.

The second amendment to Section 376.317, Florida Statutes, was contained in Section 18 of Chapter 88-156, Laws of Florida (A-30). That amendment expanded the previously existing exception and provided that all ordinances adopted by a county and filed with the Secretary of State prior to July 1, 1987, rather than September 1, 1984, need not be approved by DER. This amendment had the effect of permitting Alachua and any other county which had adopted an underground storage tank ordinance prior to July 1, 1987, to have such ordinance become effective without DER approval.

Appellees, the FPMA, a trade association, and certain individual petroleum retailers in Alachua County filed suit in circuit court alleging that Chapter 88-156, Laws of Florida, and

specifically that "Amendment 1 to Amendment 1 to CS/SB 155 (1988)" was in violation of the Florida Constitution. The matter was heard in the Eighth Judicial Circuit on January 11, 1989 (T 1-79). Subsequently, the trial court entered a Final Judgment on February 21, 1989 (A-1), finding that Chapter 88-156 violated Article III, Section 6 of the Florida Constitution, in that it embraced more than one subject and that Section 18 of Chapter 88-156, Laws of Florida, was a special law for which notice was not published and, therefore, the law was in violation of Article III, Sections 10 and 11(b) of the Florida Constitution. The trial court struck Section 18 of Chapter 88-156.

The County filed a Notice of Appeal to the First District Court of Appeal. On December 4, 1989, the First District filed an opinion affirming the trial court finding that Chapter 88-156, Laws of Florida, was unconstitutional as in violation of Article III, Section 6 of the Florida Constitution, the single subject rule, and in violation of Article III, Section 10 of the Florida Constitution, as a local law, notice of which was not published in accordance with general law.

Timely notice of appeal was filed to this Court on December 19, 1989.

SUMMARY OF ARGUMENT

Section 18 of Chapter 88-156, Laws of Florida, does not violate the single subject requirement of Article III, Section 6 of the Florida Constitution, since its provisions have a natural and logical connection with the subject of the Act. The subject of Chapter 88-156, in general, is the construction industry, which includes the regulation of contractors, the standards for the products and services they provide and the regulatory responsibility of state and local government. Section 18 amends Section 376.317, Florida Statutes, dealing with the standards required for underground storage tanks, which are within the purview of the construction industry. Numerous other sections throughout the Act deal with pollutant storage tanks (which definition includes the same underground storage tanks referenced by Section 18 of Chapter 88-156, Laws of Florida), the contractors who install them, and the interrelationship between local and state governments for the regulation and inspection of such tanks.

In addition, Section 18 of Chapter 88-156, Laws of Florida, is a general law not a special law and is, therefore, not in violation of Article III, Section 10 or Article III, Section 11(b) of the Florida Constitution. Section 376.317, Florida Statutes, which was amended by Section 18 of Chapter 88-156, Laws of Florida, governs those circumstances whereby a county may adopt more stringent standards for the regulation of underground storage tanks. The amendment in question does no more than recognize

those counties which have previously adopted more stringent standards. Section 18 of Chapter 88-156, Laws of Florida, amends the date before which existing local underground storage tanks are "grandfathered", providing that any local ordinance adopted by a county and filed with the Secretary of State before July 1, 1987, need not be approved by DER. It extends the class of local governments which are exempted from approval by DER. Any classification which does exist under Section 18 of Chapter 88-156, Laws of Florida, is a valid classification since it recognizes local efforts in the adoption of more stringent standards for the regulation of underground storage tanks and is reasonably related to the subject of the law.

ARGUMENT

POINT I

CHAPTER 88-156 DOES NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

Article III, Section 6 of the Florida Constitution provides as follows:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: 'Be It Enacted by the Legislature of the State of Florida:'.

The Florida Supreme Court has consistently held that the scope of an enactment may be as broad and comprehensive as the Legislature chooses and not be in violation of the single subject rule, provided the matters included in the law have a natural and logical connection. In Re: Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987); State v. Lee, 356 So.2d 276 (Fla. 1978). Furthermore, wide latitude must be afforded the Legislature in the enactment of laws and a statute will be stricken only if it is in plain violation of the single subject rule. State v. Lee, Id.

The general test under the single subject requirement is whether the matters within the act "have a natural or logical connection." Board of Public Instruction v. Doran, 224 So.2d 693

(Fla. 1969). In Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987), the Court stated:

> The test to determine whether legislation meets the single-subject requirement is based on common sense. It requires examining the act to determine if the provisions are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject.

The district court below stated as follows concerning Chapter 88-156, Laws of Florida:

> During the 1988 legislative session an amendment was made to Chapter 88-156, Laws of Florida, a pending bill which amended Chapter 489 relating to the regulation of the construction industry. The amendment added Section 18 amending Chapter 376, relating to pollutant discharge prevention and removal, a subject totally distinct and different from regulation of the construction industry. Alachua County v. Florida Petroleum Marketers Association, Case No. 89-511 (Fla. 1st DCA, December 4, 1989) (A-45).

A review of Chapter 88-156, Laws of Florida, and Section 18 of the Act demonstrates that the provisions of Section 18 are not distinct and different, but are "fairly and naturally germane to the subject of the act" under the common sense test stated in Smith v. Department of Insurance, Id. Contrary to the holding of the district court below, the provisions of Section 18 are not "totally distinct and different from regulation of the construction industry."

The specific section of the Act which the district court held related to a different subject from the remainder of the act is contained in Section 18 of Chapter 88-156 and states in part:

> Section 18. Subsection (3) of section 376.317, Florida Statutes, is amended to read:
>
> > 376.317. Superseded laws; state preemption
> >
> > (3) A county government is authorized to adopt countywide ordinances that regulate underground storage tanks, as described herein, which ordinances are the same as or more stringent or extensive than any state law or rule regulating such tanks, provided:
> >
> > (a) The original ordinance was ~~legally~~ adopted by the county and filed with the Secretary of State before July 1, 1987 ~~and in force before September 1, 1984~~; or

The underground storage tanks referenced in this section relate to tanks which contain petroleum products and are by definition pollutant storage tanks.[1]

---

[1] Section 489.133(1)(b) as created by Section 16 of Chapter 88-156 (1988), defines "pollutant storage tank" as follows:

> (b) "Pollutant storage tank" means a tank, together with associated piping or dispensing facilities, which is or could be used for the storage or supply of pollutants as defined in s. 376.301 and which is required to be registered under chapter 17-61 of the Florida Administrative Code or for which notification must be submitted under Subtitle I of the Resource Conservation and Recovery Act.

Section 376.301(12), Florida Statutes, in turn, defines "pollutants" as including any product defined in Section 377.19(11). Section 377.19(11) defines the term "product" as including any petroleum product. Therefore, underground storage tanks referred to in Section 18 are included within "pollutant storage tanks", which are referred to throughout the Act.

A review of Chapter 88-156 demonstrates that the regulation of the installation and the standards required for underground storage tanks are interwoven throughout the provisions of Chapter 88-156 and are not confined to Section 18. The Act deals not only with the persons who install underground storage tanks, but also the standards that are required for such tanks and the delegation of responsibility for enforcement. The following sections relating to the regulation of pollutant storage tanks or pollutant storage tank contractors can be found in Chapter 88-156.

(a) Section 1: Amends Section 489.101, Florida Statutes, defining the "purpose" of Chapter 489, to recognize that the construction and home improvement industries may pose "a danger of" significant harm to the public when incompetent or dishonest contractors provide unsafe, unstable or short-lived products or services. Clearly, the amended statute deals with much more than contractor's licensing but relates also to the products and services they provide (A-7).

(b) Section 3:

(i) Amends Section 489.105, Florida Statutes, in several aspects relating to underground storage tanks. First, it deletes the definitions of "pollutant storage systems specialty contractor," "pollutant storage tank," "tank" and "registered precision tank tester" from Section 489.105 (A-12). Such definitions are readopted in Section 16 of the Act as Section 489.133, Florida Statutes (A-27), and each of these definitions are directly related to the subject of Section 18 (A-30).

(ii) Amends the definition of "Plumbing contractor," in Section 489.105(3)(m) which definition includes a contractor who installs, maintains or repairs ". . . fuel oil and gasoline piping and tank and pump installation . . ." (A-10).

(iii) Amends the definition of "Mechanical contractor" in Section 489.105(3)(i), Florida Statutes, which definition includes a person who installs, maintains, repairs, fabricates, alters, extends, or designs gasoline tanks and related pump installations and piping. These are the same underground storage tanks referred to in Section 18, the challenged section (A-9).

(c) Section 7: Amends Section 489.113, Florida Statutes, by allowing a county or municipality to prevent any contractor that is not certified from engaging in the business of contracting, thereby authorizing regulation of the construction industry by local government including those contractors who install underground storage tanks (A-16). It further deletes subsection (7)-(12) from Section 489.113, Florida Statutes, which relate to the following:

(i) Requiring certification by pollutant storage systems specialty contractors that installation of a pollutant storage tank complies with the requirements of Section 376.303, Florida Statutes (A-18);[2]

---

[2] Section 376.303, Florida Statutes, establishes the state regulations and standards for underground storage tanks for which a local government may adopt a more stringent standard under the provisions of Section 18 of Chapter 88-156 (Section 376.317, Florida Statutes).

(ii) Requiring the adoption of rules relating to the certification of pollutant storage systems specialty contractors (A-17);

(iii) Restricting local governments from issuing any building permits or other related permits for the installation of pollutant storage tanks (A-18);

(iv) Requiring the certification of pollutant storage systems specialty contractors (A-17);

(v) Authorizing DER to inspect pollutant storage tank installation to determine compliance with required standards (A-18);

(vi) Authorizing DER to the greatest extent possible to contract with local governments to administer the responsibilities under this section, including the inspection and certification of pollutant storage tanks to determine that they are installed in accordance with required standards (A-18);

(vii) Establishing a pilot inspection program in counties for the inspection of the installation of pollutant storage tanks to determine compliance with the required standards and authorizing DER to contract with counties for the administration of the program (A-19).

All of the above deletions are readopted in their entirety in Section 17 of Chapter 88-156 as Section 376.303, Florida Statutes.

(f) Section 13: Authorizing a county or municipality to designate a code inspector to enforce the provisions relating to

certification and registration, including those related to underground storage tanks (A-23).

(g) Section 15: Amends portions of Section 489.131, Florida Statutes, which provides that a municipality or a county may regulate the quality and the character of the work performed by contractors and may adopt a permit system requiring approval of plans before work is performed by the contractor (A-26-27). Therefore, the scope of the subject matter of Chapter 88-156 exceeds merely the regulation of contractors but extends to the standards required of the product and the responsibility for administration.

(h) Section 16: As previously stated, readopts as Section 489.133, Florida Statutes, those provisions deleted by Section 3 of Chapter 88-156 above, including the definitions of "pollutant storage tank," "pollutant storage systems specialty contractor," "tank" and "registered precision tank tester." The section also requires that all installations of underground pollutant storage tanks must meet the criteria of Section 376.303, Florida Statutes, the state standards for installation and regulation of underground storage tanks (A-27-29). These are the state standards addressed in Section 18, the challenged portion of Chapter 88-156.

(i) Section 17: Readopts as Section 376.303, Florida Statutes, those provisions deleted by Section 7 of Chapter 88-156 above (A-29). These provisions require DER to adopt rules for pollutant storage tank inspection programs; restrict local governments from issuing permits for installation of pollutant

storage tanks; requires the certification for pollutant storage systems specialty contractors; authorizes DER to inspect pollutant storage tanks prior to the tank being put in operation; authorizes DER to the greatest extent possible to contract with local governments to administer the responsibilities for the inspection of pollutant storage tanks to establish a pilot program for the inspection of pollutant storage tanks; and authorizes DER to contract with counties for the administration of these programs. Thus, Section 17 addresses the responsibilities of local government and DER in the regulation of pollutant storage tanks and complements the other provisions of Chapter 88-156, Laws of Florida, including the contested section, Section 18, dealing with contractors and the products they install.

In reviewing the other sections of Chapter 88-156, it becomes clear that Section 18 is properly connected to and has a natural and logical relationship with the other provisions. State v. Lee, 356 So.2d 276 (Fla. 1978). Moreover, the provisions of Section 18 "tend to make effective or promote the objects and purposes" of legislation included in the subject," Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987), namely the regulation of the construction industry, including pollutant storage tank contractors, the standards required for the products and services they provide and the assignment of responsibility for the enforcement of regulations between state and local government. Therefore, Chapter 88-156 does not violate the single subject

requirement contained in the Florida Constitution as that provision has been construed by the court.

Particularly analogous is the Florida Supreme Court decision in State v. Canova, 94 So.2d 181 (Fla. 1957). In Canova, an amendment to the law regulating pharmacists was challenged as violating the single subject requirement on the grounds that it regulated both pharmacists and sale of medicines administered by pharmacists. Finding the challenged law not in violation of the single subject requirement, the Court stated:

> In our opinion, the regulation of the sales of medicines prepared by pharmacists is a subject closely related to the broad, inclusive subject of 'Pharmacy'. Provisions concerning places in which such sales are made are provisions necessarily incident to, or tend to make effective or to promote the object and purpose of the legislation included in the subject expressed in the title of the act. In fact we do not see how the practice of pharmacy could be adequately regulated without regulation of the sales of the work product of pharmacists and regulation of the places where such work is performed and the work product sold. Such provisions may be regarded as matters properly connected with the expressed subject: 'An Act Relating to Pharmacy'. Such provisions are fairly and naturally germane to the subject of the act. Canova, supra, at 185-186. (emphasis added)

As in Canova, the regulation of the standards and requirements for the installation of underground storage tanks is so necessarily interrelated to the regulation of the installers of such tanks that they cannot be separated. Furthermore, as stated in Canova:

> Should any doubt exist that an act is in violation of art. III, sec. 16 of the Constitution [the predecessor single subject requirement], or of any constitutional provision, the presumption is in favor of

> constitutionality. To overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law. Canova, Id., at 184.

The purpose of the single subject rule is stated as follows in In Re: Advisory Opinion to the Governor, 509 So.2d 292, 313 (Fla. 1987):

> The single subject rule has a two-fold purpose. First, it attempts to avoid surprise or fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. (citations omitted)

As further stated in State v. Lee, 356 So.2d 276, 282 (Fla. 1978):

> The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter.

There was no "surprise or fraud" since the title of Chapter 88-156 clearly indicates the bill includes matters relating to local regulation (A-6).

A review of previous Supreme Court decisions relating to single subject supports, by analogy, the conclusion that Chapter 88-156 does not violate the single subject requirement, in that legislation encompassing a broad range of topics has been upheld.

In Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987), the Supreme Court upheld legislation which had been attacked

on the ground that it violated the single subject rule. The scope of the particular act ranged from broad insurance reform to revision of the judicial system and included such topics as (a) enactment of an excess profits law for commercial property and casualty insurance; (b) authorized banks to own and control insurance companies; (c) required courts to reduce judgments by amounts contributed from collateral sources; (d) authorized judges to require settlement conference; and (e) limited non-economic damages.

In State v. Lee, Id., legislation relating to both automobile insurance rates and tort reform was upheld as not being in violation of the single subject rule. Though portions were found invalid on other grounds, the Court stated:

> This constitutional provision [the single subject rule], however, is not designed to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation.

Lee, at 282.

In Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981), the Court upheld legislation which broadly addressed three areas. The first related to the establishment of a procedure for the handling of medical malpractice claims. The second related to unfair methods of competition and deceptive acts and practices within the insurance industry as a whole, and the third related to tort reform. The Court found that the legislation, though broad, included matters which have a natural and logical connection.

Similarly, the Supreme Court has stated that a provision in law imposing a sales tax on services which related to the allocation of receipts in the state treasury was "wholly instructional and necessarily incidental to the tax itself" and was not in violation of the single subject rule. In Re: Advisory Opinion to the Governor, supra.

In Board of Public Instruction v. Doran, 224 So.2d 693 (Fla. 1969), the Supreme Court found that a law providing for public meetings which also imposed criminal sanctions and allowed injunctive relief encompassed a single subject. Clearly, then, a bill may amend different chapters of the Florida Statutes without violating the single subject rule as long as there is some natural and logical connection between the provisions in the bill.

The few instances where the court has found a violation of the single subject rule are cases where a common sense analysis demonstrates that the matters dealt with are completely unconnected. In Pilot Equipment Company, Inc. v. Miller, 470 So.2d 40 (Fla. 1st DCA 1985), a bill amending sections of the Water Quality Assurance Act also included provisions for the estimation and payment of sales tax. The Court concluded that the record failed to establish that estimation of the sales tax had any connection to water quality and remanded the cause to the trial court. The Court, however, indicated that if the use of such sales tax funds would be earmarked for water quality control or any related matter, that the act would not violate the single subject requirement and would be valid.

In Bunnell v. State, 453 So.2d 808 (Fla. 1984), the Court reviewed a bill which contained three sections, two of which involved the Florida Council on Criminal Justice, an advisory body, and a third section which created a substantive criminal offense, obstruction by false information. The Court concluded there was no natural or logical relationship between this third section and the creation of an advisory body.

In City of North Miami v. Florida Defenders of the Environment, 481 So.2d 1196 (Fla. 1985), an appropriations bill unrelated to parks contained a provision which altered the statutory review process for acquiring state park land. The Court held this violated the single subject rule.

The Court has also stated that the subject matter of a law is that which is expressed in the title. Rouleau v. Avrach, 233 So.2d 1 (Fla. 1970). As expressed in the title, the subject of Chapter 88-156 is the construction industry and not merely contractor licensing (A-6). The scope of the Act, therefore, encompasses not only contractors but all aspects of the construction industry, including standards of performance, the regulation of the products and services provided by them, and regulatory responsibility.

The title of Chapter 88-156 specifically refers to local government authority in stating:

> . . . amending s. 489.127, F.S.; prohibiting certain acts and prescribing civil penalties; allowing counties and municipalities to issue noncriminal citations to unlicensed persons; prescribing procedures; . . . amending s. 489.131, F.S.; relating to government bids; prescribing powers and duties of municipalities and counties; limiting the

> construction of structural components; . . .
> (emphasis added)

Therefore, based upon the title, the local regulation of underground storage tanks is included within the subject of Chapter 88-156.

A common sense analysis of Chapter 88-156, Laws of Florida (the "Act"), based upon the decisions of this Court, leads to the conclusion that matters contained within it have a natural and logical connection and, therefore, that it deals with one subject.

POINT II

CHAPTER 88-156 IS A GENERAL LAW NOT A SPECIAL LAW.

The district court below found that Section 18 of Chapter 88-156, Laws of Florida, is a special law enacted without the required local notice and, therefore, in violation of Article III, Sections 10 and 11(b) of the Florida Constitution. The district court stated in part:

> Prior to the enactment of Section 18 of Chapter 88-156, Section 376.317 applied only to Broward and Dade Counties. After the enactment of Section 18 of Chapter 88-156, Section 376.317 applies only to Broward, Dade and Alachua Counties.
>
> Section 18, Chapter 88-156 is clearly a special law because it affects only Alachua County and there is no possibility that it will ever affect or apply to any other county since no other county meets the statutory criteria nor can any other county meet it in the future. Alachua County v. Florida Petroleum Marketers Association, Case No. 89-511 (Fla. 1st DCA, December 4, 1989) (A-46).

Contrary to the First District opinion, the fact that Chapter 88-156 can never apply to any counties but Broward, Dade and Alachua is not determinative.

Article III, Section 10 of the Florida Constitution provides in part:

> No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.

It is undisputed that no statutory notice of Chapter 88-156 as a local act was filed. The County maintains, however, that Chapter 88-156 is a general law as that term is construed by the Courts.

A general law is defined as a statute relating to subdivisions of the state or subjects, persons or things of a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class. Carter v. Norman, 38 So.2d 30 (Fla. 1948). As stated in Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983):

> It is well established that a general law does not lose its general law status so long as it operates uniformly upon subjects as they may exist in the state, applies uniformly within permissible classifications, operates universally throughout the state or so long as it relates to a state function or instrumentality. Furthermore, we have held that a law pertaining to subdivisions of the state or to subjects, persons or things of a class is valid if the classification is based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class. (citations omitted)

Special or local laws have been defined as follows:

> . . . [a] statute relating to particular subdivisions or portions of the state, or to particular places of classified locality is a local law. A statute relating to particular persons or things or other particular subjects of a class is a special law.

Carter v. Norman, Id., at 32.

A review of the law regarding regulation of underground storage tanks demonstrates that the provisions contained within Section 18 of Chapter 88-156, Laws of Florida, is a classification "based upon proper distinctions and differences that inhere in or

are peculiar or appropriate to the class." Sanford-Orlando Kennel Club, Id., at 881.

The 1988 Legislature amended Section 376.317, Florida Statutes, in two separate bills which became Chapters 88-156 and 88-331. These changes significantly altered the previously existing requirements of that section. Taken together, these changes provided three categories of counties with respect to adoption of local underground storage tank ordinances: (1) those counties which had adopted ordinances regulating underground storage tanks and filed them with the Secretary of State prior to July 1, 1987; (2) those counties which had sought DER approval prior to January 1, 1988; and (3) those counties which would begin the approval process after January 1, 1988.

The staggered application under Section 376.317, Florida Statutes, is eminently rational and clearly "rests on some reasonable relation to the subject matter in respect of which the classification is proposed." Sanford-Orlando Kennel Club, Id., at 881. It rests on the fact that various counties are at different levels in the adoption process of local ordinances regulating underground storage tanks and that such pre-existing efforts must be recognized.

This is particularly so for those counties which had adopted more stringent standards prior to the last amendment to Section 376.317, Florida Statutes. It is noteworthy that the last significant change in Section 376.317, Florida Statutes, was contained in Section 5 of Chapter 87-374, Laws of Florida. That

amendment to Section 376.317(3)(b), Florida Statutes, provided that the approval process to be used by DER for any county seeking to adopt more stringent standards should be as contained in Section 120.60, Florida Statutes, the section of the Administrative Procedures Act relating to licensing. This significant change in procedure became effective July 1, 1987. It would, thus, be reasonable to exclude from the DER approval process any county which had adopted a more stringent ordinance regulating underground storage tanks prior to July 1, 1987. Significantly, Section 18 of Chapter 88-156 provides that any local ordinance adopted prior to July 1, 1987 is excluded from the DER approval process.

As stated in Lewis v. Mathis, 345 So.2d 1066, 1068 (Fla. 1977):

> The Legislature has wide discretion in choosing a classification, and therefore the presumption is in favor of the validity of the statute. When a classification of counties for governmental purposes based upon population or otherwise is made by the Legislature in the enactment of general laws for governmental purposes in regard to the counties classified, if any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. (emphasis added)

The prior amendment to Section 376.317, Florida Statutes, is certainly a state of facts which can reasonably be conceived to sustain the classification.

Moreover, it is significant that Section 18 of Chapter 88-156, Laws of Florida, broadened an existing class.

In Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983), the Legislature had enacted a law allowing conversion of any harness racing track to dog racing if the "handle" or average daily take fell below a certain minimum. A subsequent amendment of this law broadened the requirements for conversion but actually only allowed two facilities to convert. One of these, Seminole, did convert and the amendment was subsequently challenged as, in actuality, a special law not adopted after proper notice. The Supreme Court disagreed and found the classification reasonably related to the subject matter in light of the State's pecuniary interest in the financial health of racing facilities. The Court further stated:

> It is also significant to note that this statute amended an existing one and in fact made the class broader than it had been, by increasing the ceiling of the daily earnings and the yearly revenue. Sanford-Orlando Kennel Club, Id., at pages 882-883.

The district court opinion below held:

> Section 18, Chapter 88-156 is clearly a special law because it affects only Alachua County and there is no possibility that it will ever affect or apply to any other county since no other county meets the statutory criteria nor can any other county meet it in the future. (A-46)

This is clearly a misstatement of the applicable law. Even if Chapter 88-156 was viewed as creating a class of one, which it does not, legislation creating a class of one is not per se a special act.

In Givens v. Hillsborough County, 46 Fla. 502, 35 So. 88 (1903), the Supreme Court considered the validity of a curative act relating to the issuance of certain bonds by Hillsborough County. The Court's analysis was based upon the allegations that the curative act:

> . . . applies only to past transactions, and that it affects only Hillsborough County and these particular bonds; that Hillsborough County was the only county in the state attempting to issue bonds for the purposes mentioned, and that this was known to the Legislature in passing the act; and that no other county in the state can at any time bring itself within the provisions of the act. Givens at 90. (emphasis supplied)

For purposes of the case, the foregoing allegations were taken as true.

The Court held that:

> 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. Givens at 91. (emphasis supplied)

The Court below failed to analyze the reasonableness of the classification system embodied in Section 18 of Chapter 88-156, as required by Givens.

Givens was recently applied by the Supreme Court in County of Orange v. Webster, 546 So.2d 1033 (Fla. 1989), in which it was again held that a statute may be a general law even if it only affects one county.

In Webster, the Supreme Court held that a curative act which ratified existing county charters adopted by the electors and properly noticed was not a special act in that it applied to all counties which had previously adopted a charter pursuant to that section. As in Webster, Section 18 of Chapter 88-156 applied not only to Alachua County, but to all other counties which had previously adopted more stringent standards.

A review of other decisions of this Court and the District Courts of Appeal further supports the validity of the classification contained in Chapter 88-156.

In Lewis v. Mathis, 345 So.2d 1066 (Fla. 1977), the challenged law set higher salaries for county judges in counties of over 40,000 population. The Supreme Court held this was not a special act because the classification was reasonable based upon the higher crime rate, greater responsibilities of county officers and a higher divorce rate in larger counties. Similarly, the classification in Chapter 88-156 recognizes the local efforts to enact an ordinance under the provision of Section 376.317, Florida Statutes.

In Metropolitan Dade County v. Golden Nugget Group, 448 So.2d 515 (Fla. 3d DCA 1984), the Legislature passed a bill which authorized a Convention Development Tax in counties defined by

Section 125.011(1), Florida Statutes. This section applied only to counties which had adopted home rule under three sections of the Constitution which respectively apply only to Dade, Hillsborough and Monroe Counties. Therefore, only three counties could even potentially be affected by the Act and, at the time of adoption, only Dade County had in fact adopted a home rule charter. Thus, only Dade County could enact a Convention Development Tax. Nonetheless, the Court found the classification reasonable because each of the affected counties had substantial tourist-oriented economies. Similarly, Chapter 88-156 may only affect a limited number of counties, but each affected county has adopted a local ordinance relating to the subject of the Act. The fact that these counties have completed the process of recognizing, investigating and addressing the underground storage tank problem places them apart from the remaining counties within the State.

By contrast, a review of the types of classifications which have been found unreasonable further emphasizes the reasonableness of any classification contained in Chapter 88-156, Laws of Florida.

In Carter v. Norman, 38 So.2d 30 (Fla. 1948), the Legislature passed a statute which provided an exemption from the minimum distance requirements between a church and an establishment selling liquor. The exemption contained a detailed list of population requirements. The Court struck down the exemption because, in fact, it applied only to the City of Tampa and, furthermore, only to a particular restaurant in the City of Tampa. The Court ruled that it could not be a "valid general law based upon proper

distinctions and differences peculiar or appropriate to the affected class" and found it to be a local law.

In State ex rel. Baldwin v. Coleman, 3 So.2d 802 (Fla. 1941), the Legislature passed a law providing for different and more restrictive hours for the sale of liquor in counties having a population of more than 265,000 which, in application, only affected Dade County. Baldwin was charged with violating this law for selling a pint of wine in Dade County at an hour which would not be illegal in any other part of the State. The Court could find no logical reason for such a distinction and found the amendment to be a local law.

In State ex rel. Blalock v. Lee, 1 So.2d 193 (Fla. 1941), the Legislature passed an act providing that in counties having a population of not less than 16,000, nor greater than 18,400, certain taxes collected by the State for the benefit of the County could only be used for teacher salaries. The Court held there was "no foundation in reason" for such a classification and, therefore, it was a special act.

In Waybright v. Duval County, 196 So. 430 (Fla. 1940), the Legislature provided for the creation and operation of a civil service commission in counties with a population between 165,000 and 180,000. The Court noted that it could not determine why a civil service system would be adaptable or practical in a county of 170,000 or 175,000 population but of lesser value in a county of 160,000 or 190,000. The Court concluded there was no "just relationship between the government plan and the population of the

counties where it may be employed" and found it to be a special act.

In Shelton v. Reeder, 121 So.2d 145 (Fla. 1960), a salary scale for county sheriffs was adopted by the Legislature based on population. The scale exempted 18 of the 67 counties and, furthermore, provided a totally haphazard and arbitrary assignment of salaries which might increase or decrease as one moved up the narrow population categories provided by the bill. Thus, counties with greater population might pay a lower salary to their Sheriff than counties of lesser population. The Court noted that the classification of counties providing for increased salaries with increasing population could be upheld as having a reasonable relation to the classification but that this particular inconsistent classification was not reasonable.

In State ex rel. Coleman v. York, 190 So. 599 (Fla. 1939), the Legislature passed a bill exempting counties with a population between 4,115 and 4,130 and between 4,060 and 4,070 from the regulation of the practice of dentistry. Recognizing that there might be value in relaxing the regulations governing the practice of dentistry in sparsely populated counties, the Court noted that this law did not accomplish that goal since only a county within the narrow population ranges and not one with fewer residents would be affected. Thus, the classification was simply unreasonable and the Court found the law to be a special law.

Similarly, in the recent decision in Department of Business Regulation v. Classic Mile, Inc., 541 So.2d 1155 (Fla. 1989), the

Legislature passed a law permitting the broadcasting of thoroughbred horse races and parimutuel wagering at licensed facilities. The statute provided the only facilities permitted to broadcast thoroughbred horse races and have parimutuel wagering are those facilities in counties which, as of January 1, 1987, had two quarterhorse racing permits which were not used and one jai-alai permit. The law was challenged as an invalid local act. The Court noted that a statute classifying counties is a valid general law if there is a reasonable relationship between the classification and the purpose of the statute. The Court further stated that:

> . . . appellants in this case make no attempt to demonstrate a reasonable relationship between the statutory classification scheme and the subject of the statute, and we find nothing in the record to support the existence of such a reasonable relationship. Classic Mile, Id., at 1158 (emphasis added).

The Court concluded in Classic Mile, supra:

> Because the statutory classification scheme is wholly arbitrary, having no reasonable relationship to the subject of the statute, the statute is not a valid general law.

Clearly, there is no reasonable relationship between the broadcasting of thoroughbred racing and whether a county had two quarter horse racing permits which had not been used.

By contrast, the amendments to Section 376.317, Florida Statutes, do bear a reasonable relationship to the overall purpose of the statute. The purpose of Section 376.317 is to establish the procedures whereby a county may regulate underground storage tanks in a manner more stringent or extensive than state law. The

classification contained in Section 18 of 88-156 is based upon the timing of the adoption of a local ordinance. The statute does no more than recognize and classify those counties which had already taken that step and adopted such an ordinance.

In each of the cited cases striking a particular act as a special law, the classification contained within the law was both notably strained and clearly without any reasonable relationship to the purposes of the legislation. These cases differ markedly from the circumstances here, as the respective categories of counties are part of a comprehensive framework for the regulation of underground storage tanks and a recognition of the distinctions which exist between the varying stages of local adoption.

The regulation of underground storage tanks by a county is restricted, except to the extent that county regulation is allowed pursuant to Section 376.317(3), Florida Statutes. Section 18 of Chapter 88-156, which amended Section 376.317(3), merely expanded the previously existing exception to include any ordinance which was adopted by a county and filed with the Secretary of State prior to July 1, 1987. The challenged amendment was, thus, nothing more than a "grandfather" provision which expanded the prior "grandfather" provisions of the law to include Alachua County and any other county which may have adopted a local ordinance prior to July 1, 1987. To accept the district court's holding would effectively prohibit the Legislature from ever providing for the grandfathering of an existing ordinance, since such grandfathering provision would necessarily affect less than the whole.

Even where there is a classification made by law, the mere fact that a law makes a classification which applies to fewer than all the counties in the state does not make it a special law. It is the particular method of classification and whether there is some reasonable basis for such classification which determines whether a law is a general law. The County maintains that the classification employed by the Legislature in Chapter 88-156 does rest on some reasonable relation to the subject matter of the Act and that, therefore, the Act is a general law.

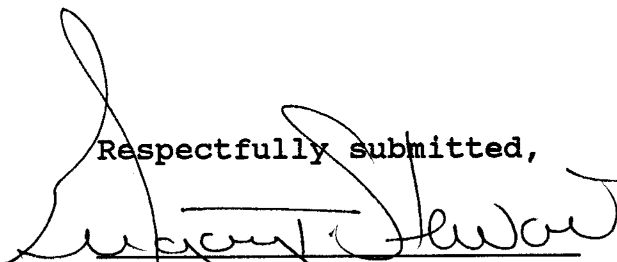
CONCLUSION

Provisions relating to the regulation of the persons who install underground pollutant storage tanks and related facilities, the standards required and the responsibility for enforcement are contained throughout Chapter 88-156, Laws of Florida, and are not confined to Section 18. The provisions of Section 18 have a natural and logical connection with other provisions contained within the Act and, therefore, there is no violation of the single subject provision of Article III, Section 6 of the Florida Constitution.

Furthermore, the classification scheme contained within Section 18 of the Act bears a reasonable relationship with the subject of the statute in that it recognizes pre-existing local efforts in the adoption of underground storage tank ordinances. It does not create a class of one but, instead, expands an existing class and affects all counties with preexisting ordinances. Therefore, Chapter 88-156 is a general law not a special law.

The County requests this Court to reverse the decision of the district court.

Respectfully submitted,



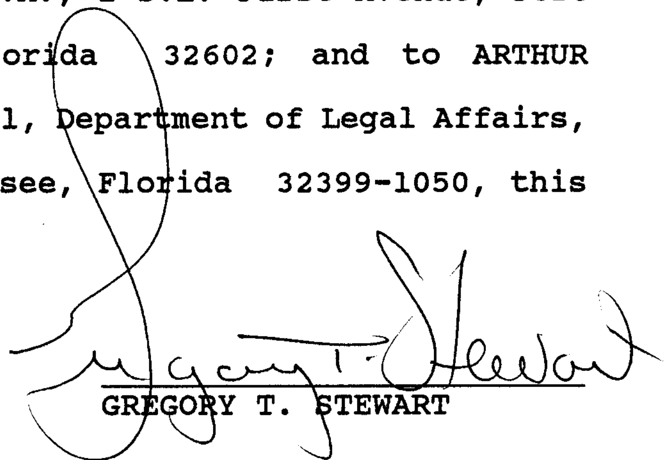
GREGORY T. STEWART
Florida Bar No. 203718
ARTHUR R. WIEDINGER, JR.
Florida Bar No. 242144
Nabors, Giblin & Nickerson, P.A.
315 South Calhoun Street
Barnett Bank Building
Suite 800
Post Office Box 11008
Tallahassee, FL 32302
(904) 224-4070

THOMAS BUSTIN
Alachua County Attorney
Post Office Drawer CC
Gainesville, FL 32602
(904) 374-5218

ATTORNEYS FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Appellant Alachua County, Florida, has been furnished by U.S. Mail to J. MICHAEL HUEY, ESQUIRE and ROBERT D. FINGAR, ESQUIRE, Huey, Guilday, Kuersteiner & Tucker, P.A., Post Office Box 1794, Tallahassee, Florida 32302; WILLIAM C. ANDREWS, ESQUIRE, Scruggs and Carmichael, P.A., 1 S.E. First Avenue, Post Office Drawer C, Gainesville, Florida 32602; and to ARTHUR WALLBERG, Assistant Attorney General, Department of Legal Affairs, The Capitol - Suite 1501, Tallahassee, Florida 32399-1050, this 18 day of January, 1990.



GREGORY T. STEWART