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.
_____/

REPLY BRIEF OF APPELLANT ALACHUA COUNTY, FLORIDA

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ARGUMENT

POINT I

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

The FLORIDA PETROLEUM MARKETERS ASSOCIATION's ("FPMA") argument ignores two key issues. First, the challenged portions of Chapter 88-156 do not contain matters totally distinct and different from the remainder of the act. On the contrary, Chapter 88-156 encompasses more than just contractor licensing. The subjects within the act have a natural and logical connection and 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. Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987).

Contrary to FPMA's argument, the regulation of contractors includes the products and services they provide. That very purpose is stated in Section 1 of Chapter 88-156 as follows:

> 489.101. Purpose.
> The Legislature recognizes that the construction and home improvement industries ~~are significant industries. Such 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. Therefore, it is necessary in the interest of the public health, safety, and welfare to regulate the construction industry.

Certainly, both services and products are within the purview of Chapter 88-156. The purpose as stated recognizes that the regulation of the installation of underground petroleum storage systems necessarily includes the systems themselves. FPMA maintains that Chapter 88-156 only deals with licensing of the people who perform the installation of tanks. Under this narrow view, the bill could only properly deal with licenses of individuals but could not address the products used, the manner of installation or inspection of the final work product. Regulation of the contractors is inextricably related to the regulation of the tanks themselves, the inspection and monitoring of the installation of the tank system and the maintenance of the tank system once it is in the ground.

Since the bill specifically includes within its reach those contractors who install, maintain or repair underground tank systems, the bill goes far beyond simple installation. A review of specific provisions of Chapter 88-156 further strengthens this position. For example, Section 17 of the bill amends Section 376.303, Florida Statutes, readopting and amending provisions deleted in Section 7. Section 376.303, Florida Statutes, is the same statutory section which authorized the Department of Environmental Regulation ("DER") to adopt Chapter 17-61, Florida Administrative Code, which establishes the state standards which may only be exceeded by a county pursuant to Section 376.317, Florida Statutes. Furthermore, Section 7 of Chapter 88-156 requires certification that installation of underground petroleum

storage tanks complies with the requirements of Section 376.303, Florida Statutes.

In addition, Chapter 88-156 addresses the respective enforcement responsibilities of local and state government. Section 7 encourages DER to contract with local governments for inspection and certification of underground petroleum storage tanks. Section 13 authorizes local governments to designate a code inspector for such enforcement. Section 15 authorizes local governments to inspect the quality of work performed and to adopt a permit system. Other sections of Chapter 88-156 addressing underground petroleum storage tanks are outlined in detail in the County's Initial Brief. Application of the "common sense" test referenced in Smith to the provisions of Chapter 88-156 as a whole demonstrates there is a very real "natural and logical connection" between its various sections.

FPMA also incorrectly attempts to broaden the constitutional review of Chapter 88-156 by referencing provisions of Chapter 17-61, Florida Administrative Code, and Alachua County Ordinance 87-10 to establish that Section 18 of Chapter 88-156 regulates "owners and operators." (Answer Brief at pp. 16-18) Clearly, this is improper. In determining whether a legislative act complies with the single subject requirement of the Florida Constitution, the act itself is the focus of examination, not the local ordinance or administrative rule which may be authorized by the act. If FPMA's analysis prevailed, the constitutionality of a legislative act could never be determined with any finality. Instead, the

constitutionality of a legislative act would depend on the substance of the subsequently enacted state agency rules or local ordinances. Furthermore, the subject matter of the Act is not the regulation of "owners and operators." (Answer Brief at pp. 16-18) The fact that an act may have some impact upon persons who own and operate underground storage tank systems does not mean that the subject of the act is "the regulation of owners and operators." Such an interpretation would necessarily lead to a shifting of the analysis from the subject of an act to an examination of the various parties who may be affected.

FPMA suggests that, under the County's argument, anything related to construction could be included within Chapter 88-156, even regulation of members of the public who use equipment installed by contractors. This totally misrepresents the County's argument. In furtherance of this misrepresentation, FPMA cites several hypothetical examples on pages 18 and 19 of the Answer Brief of matters which would violate the single subject rule if they had been included in Chapter 88-156. On the contrary, the correct test under the single subject rule is whether the provisions of an act as they exist, have a natural and logical connection, not whether some other hypothetical provisions would violate the single subject rule if they had been included. As outlined above, the provisions of Chapter 88-156 do have such a connection.

FPMA's Answer Brief relies on a number of court decisions which have been fully addressed in the County's Initial Brief and need only brief discussion here.

The recent decision in Burch v. State of Florida, 15 FLW S64 (Fla., February 16, 1990), bears discussion. In Burch, the provisions of the Florida Comprehensive Drug Abuse Prevention and Control Act, Chapter 87-243, Laws of Florida, were challenged as violating the single subject requirement under Article III, Section 6 of the Florida Constitution. That act is a broad act defining a wide variety of crimes, including money laundering, establishing drug abuse education and crime prevention studies, providing procedures for abating drug-related nuisances, requiring courts to address issues in a state cross-appeal, creating a Risk Assessment Information System Coordinating Council and creating the Safe Neighborhoods Act. The act also provides for creation of safe neighborhood improvement districts including procedures for ad valorem tax referenda. It further provides that the discontinuance of rights-of-way caused by installation of cul-de-sacs shall not operate as an abandonment of such rights-of-way. In Burch, this Court upheld Chapter 87-243 as not violating the single subject requirement of the Constitution despite its obvious breadth. In so doing, this Court notes that the general purpose of the act relates to crime and concludes:

> To accomplish this purpose, chapter 87-243 deals with three basic areas: (1) comprehensive criminal regulations and procedures, (2) money laundering, and (3) safe neighborhoods. Each of these areas bear a logical relationship to the single subject of

> controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods. The fact that several different statutes are amended does not mean that more than one subject is involved. Burch, 15 FLW at S65. (emphasis added)

Furthermore, the Court reiterates the strong presumption of correctness in favor of the constitutionality of statutes and concludes:

> Despite its breadth, when Chapter 87-243 is tested by this standard, we cannot say that it violates the single-subject provision of our constitution. Burch, 15 FLW at S66.

By comparison, Chapter 88-156 deals with one basic area, the construction industry and the products and services provided. Chapter 88-156 is far narrower in scope than Chapter 87-243.

Several other decisions raised in FPMA's Answer Brief require additional discussion. In Bunnell v. State, 453 So.2d 808 (Fla. 1984), Chapter 82-150 fell to a single-subject challenge. That law created a substantive crime and also related to the "sunset" of the Florida Council on Criminal Justice which was held to involve two subjects. In discussing Bunnell, this Court in Burch stated:

> We do not believe that Bunnell v. State, 453 So.2d 808 (Fla. 1984), dictates a contrary conclusion. In Bunnell this Court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of the Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this Court concluded that the single-subject provision of the constitution had been violated. Unlike Bunnell, chapter 87-243 is a comprehensive law in which all of its parts

> are directed toward meeting the crisis of increased crime.

Clearly, in light of Burch, Bunnell is not persuasive relative to Chapter 88-156. The relationship between the parts of Chapter 88-156 are not "tenuous" as in Bunnell, but are part of a comprehensive enactment as in Burch.

Similarly, in Pilot Equipment Company, Inc. v. Miller, 470 So.2d 40 (Fla. 1st DCA 1985), the court held that an act regulating water quality and amending the state sales tax collection law did not satisfy single subject requirements. The court held the provisions relating to sales tax collection not "remotely germane" to the remainder of the chapter and that there was nothing in common between the two. Once again, it is clear that Pilot Equipment is distinguishable since a common sense test can find no natural and logical connection between tax collection procedures and water quality while there is a logical and natural connection between contractor's services, the regulation of products installed with such services and the regulation of ongoing maintenance and handling of such products.

State ex. rel. Flink v. Canova, 94 So.2d 181 (Fla. 1957), cited by FPMA, is perhaps the most persuasive case for upholding Chapter 88-156 in the face of a single subject challenge. There, an act dealt with both regulation of pharmacists and regulation of drug stores and sales of medicines. The court held:

> [W]e 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 is sold. Canova, 94 So.2d at 186.

By analogy, Chapter 88-156 should be upheld since installation of certain products cannot be adequately regulated without regulating the products themselves.

Chapter 88-156 does not violate the single-subject requirement.

POINT II

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

Without repeating all arguments contained in the County's Initial Brief, one statement from this Court's decision in Lewis v. Mathis, 345 So.2d 1066, 1068 (Fla. 1977), should be emphasized:

> [I]f 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.

Furthermore, in finding an act not to be a general law, this Court stated in Department of Business Regulation v. Classic Mile, Inc., 541 So.2d 1155, 1158 (Fla. 1989):

> [A]ppellants 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.

Section 18 of Chapter 88-156 is not a special or local act because a reasonable relationship exists between the statutory classification scheme and the subject of the statute. Further, the classification is based upon a valid "grandfathering" provision which expands an existing classification.

FPMA relies upon the principle that creation of any closed class or a class of one necessarily results in a violation of Article III, Section 10 of the Florida Constitution, therefore, Chapter 88-156 violates Article III, Section 10. This is not correct for several reasons. First, Section 18 of Chapter 88-156

expands an existing class including Dade and Broward Counties to include Alachua County. As noted in Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 882 (Fla. 1983):

> 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.

In that case, this Court upheld the challenged statute as not in violation of Article III, Section 10 of the Florida Constitution. Similarly, Chapter 88-156 expanded an existing class.

Furthermore, contrary to the assertions of FPMA a closed class does not, in and of itself, offend the provisions of Article III, Section 10. Where a closed class is created, it must still be determined whether the classification is reasonable. In County of Orange v. Webster, 546 So.2d 1033 (Fla. 1989), a curative act was challenged as a special act passed in the guise of a general act. This Court noted that the House and Senate Committee staffs' reports demonstrated that the bill was passed to benefit Orange County. Furthermore, the effect of the challenged provisions was to ratify existing charters which had been adopted by vote of the electors at an election conducted and noticed in conformance with the requirements of Sections 101.161(1) and 100.342, Florida Statutes. Clearly, this creates a closed class. Nonetheless, this Court found the provision to be a general law, not a special law. Furthermore, Webster cites to Givens v. Hillsborough County, 46 Fla. 502, 35 So. 88 (1903), for the proposition that a statute can

be a general statute even if it does affect only one county. In Givens, it was stated at page 91:

> [T]he 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.

Under FPMA's theory, the Legislature cannot "grandfather" existing entities affected by a law when that law is amended. FPMA admits that Alachua County could properly be "grandfathered" from the provisions of Chapter 88-331, Laws of Florida, but insists there can be no such grandfathering under Chapter 88-156 because the two "grandfathers" are not of the "same degree". (Answer Brief at p. 35) The County is not aware of any existing law supporting an analysis based on the achievement of "degrees" necessary for the grandfathering of a provision. The real test is whether there is a reasonable relationship between the classification scheme and the subject of the statute. Classic Mile, 541 So.2d at 1158. Furthermore, FPMA admits that Broward and Dade Counties could be properly "grandfathered" or exempted but that this is only because those counties had some "vested rights." Dade and Broward Counties, as with Alachua, each have ordinances regulating underground storage tanks in a manner more stringent than state regulation. If a reasonable relationship exists between the Dade and Broward ordinances and the subject of the legislation, then it must also exist for Alachua. If Dade and Broward may be exempted from DER review, so can Alachua!

Furthermore, the County has demonstrated that a reasonable basis exists for any classification which is accomplished by Chapter 88-156 since the Legislature made significant changes to Section 376.317, Florida Statutes, in Chapters 88-156 and 88-331. It is reasonable, therefore, to exempt those counties which have adopted more stringent local ordinances from the requirement that DER approve such ordinances. Certainly, it cannot be said that any classification contained in Chapter 88-156 is "wholly arbitrary, having no reasonable relationship to the subject of the statute." Classic Mile, 541 So.2d at 1158.

As outlined in the County's Initial Brief and above, Chapter 88-156 meets the test required of a valid classification, therefore, the requirements of Article III, Section 10 have not been violated.

CONCLUSION

A review of Chapter 88-156 demonstrates that the subject of the act is not confined to issuing licenses to contractors. The law includes matters related to products, inspections and ongoing repair and maintenance of these products. The single subject requirement is not violated.

Furthermore, Chapter 88-156 is not a special act since there is a reasonable basis for any classification based upon changes in the relevant law, because it expands an existing class and because it is a valid "grandfathering" provision.

The district court decision should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply 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 8th day of March, 1990.

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