

047

D.A. 2-392

IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,850

FLORIDA ASSOCIATION OF COUNTIES, INC.,
a non-profit Florida corporation;
FLORIDA LEAGUE OF CITIES, INC.,
a non-profit Florida corporation; and
SANDRA GLENN and ROBERT ANDERSON,
citizens and taxpayers of the State of
Florida and respectively of Seminole
County and Sarasota County, Florida,

Appellants,

vs.

DEPARTMENT OF ADMINISTRATION, DIVISION
OF RETIREMENT, an agency of the State
of Florida; PROFESSIONAL FIRE FIGHTERS
OF FLORIDA, a labor organization; and
FLORIDA POLICE BENEVOLENT ASSOCIATION,
a labor organization,

Appellees.

FILED

SID J. WHITE

DEC 6 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

ANSWER BRIEF OF APPELLEE, DEPARTMENT OF
ADMINISTRATION, DIVISION OF RETIREMENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

✓ GEORGE L. WAAS
ASSISTANT ATTORNEY GENERAL

LOUIS F. HUBENER
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL - SUITE 1501
TALLAHASSEE, FL 32399-1050
(904) 488-1573

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SUMMARY OF ARGUMENT

The Department of Administration recognizes that laws are presumed valid, and executive officials ordinarily must not challenge the constitutionality of laws they are called upon to administer. The state retirement system, however, now faces a \$14 billion unfunded liability. In view of this unfunded liability, much depends on the outcome of the issue before the Court as to the constitutionality of chapter 88-238, Laws of Florida, in light of Article 10, § 14 of the Florida Constitution, which was approved by the voters in November, 1976. A precedent should not be set which could, at the least, worsen this looming deficit.

In construing a constitutional provision, the goal intended to be accomplished or the evil sought to be prevented or remedied must be examined to ascertain the intent of the people. In making this determination, a constitutional provision should be liberally construed to effect that intent.

In that the purpose of this constitutional provision is to assure that public employer retirement pay or pension increases are adequately funded, it is suggested that this constitutional provision be strictly construed in favor of those who are the intended beneficiaries.

In light of the presumptions accorded statutes, the method by which constitutional provisions are construed, and the importance of the issue before the Court, the Department of Administration suggests that the constitutional provision be construed in favor of the intended beneficiaries.

ARGUMENT

The Department of Administration recognizes that laws are presumed valid, Griffin v. State, 396 So.2d 152 (Fla. 1981), and that executive officials ordinarily must not challenge the constitutionality of laws they are called upon to administer. See State ex rel. Watson v. Kirkman, 158 Fla. 11, 27 So.2d 610 (1946).

However, in view of the state retirement system's \$14 billion unfunded liability¹, much depends on the outcome of the issue before this Court as to the constitutionality of chapter 88-238, Laws of Florida, under Article X, § 14 of the Florida Constitution. This Court should not set a precedent which could work to the detriment of the fund and its beneficiaries.

In construing a constitutional provision, the goal intended to be accomplished, or the evil sought to be prevented or remedied, must be examined in order to

¹ Report of Milliman & Robertson, Inc., 1989, Section I-1, in evidence.

ascertain the intent of the people in initiating enactment of that provision. State, Commission on Ethics v. Sullivan, 449 So.2d 315 (Fla. 1st DCA 1984), rev. denied, Commission on Ethics v. Sullivan, 458 So.2d 271 (Fla. 1984). Consistent with this approach are two fundamental principles of constitutional adjudication: that constitutional provisions should receive a broader and more liberal construction than statutes and that they "should not be construed so as to defeat their underlying objectives." Florida Society of Ophthalmology v. Florida Ophthalmic Association, 489 So.2d 1118 (Fla. 1986).

This Court has not yet addressed what the phrase "sound actuarial basis" means for Florida constitutional purposes. However, the Attorney General of Florida, in AGO 078-34, issued March 2, 1978, stated:

The purpose of this constitutional amendment was to assure that public employer retirement pay or pension increases are adequately funded. . . .

The phrase "sound actuarial basis" appearing in the constitution . . . requires retirement and pension systems to accumulate and administer their reserves in accordance with the principles of the actuarial profession so as to cover probable claims resulting from benefit increases.

Consistent with the principles espoused above and the purpose of the constitutional provision, it is suggested that the provision be construed in favor of those who are the beneficiaries of the language the people placed in their


constitution: that is, those who depend upon a sound fund for their future benefits. The constitutional language should not be construed in any way that would tend to undermine the actuarial soundness of the retirement system.


CONCLUSION

For the above-stated reasons, the Department of Administration submits that Article X, § 14 of the Florida Constitution be construed in favor of its intended beneficiaries.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General


GEORGE L. WAAS
Assistant Attorney General
Florida Bar No. 129967


LOUIS F. HUBENER
Assistant Attorney General
Florida Bar No. 140084

Department of Legal Affairs
The Capitol - Suite 1501
Tallahassee, FL 32399-1050
(904) 488-9935

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing ANSWER BRIEF OF APPELLEE, DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT has been furnished by U.S. Mail to KRAIG A. CONN, Assistant General Counsel, Florida League of Cities, Inc., Post Office Box 1757, 201 West Park Avenue, Tallahassee, Florida 32302; KELLY OVERSTREET JOHNSON, Esquire, Broad & Cassel, Post Office Box 11300, Tallahassee, Florida 32302; RICHARD A. SICKING, Esquire, 2700 S.W. Third Avenue, #1E, Miami, Florida 33129; and TOM R. MOORE, Esquire, 217 South Adams Street, Tallahassee, Florida 32301 this 6th day of December, 1991.



GEORGE L. WAAS
Assistant Attorney General

FACBrief/glw/ds