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SUPREME COURT OF FLORIDA

LAWTON CHILES, ETC., ET AL.,

Petitioners,

vs.

CASE NO. 78,792

CHILDREN A, B, C, D, E, and
F, ETC.,

Respondents.

AMICI CURIAE BRIEF ON BEHALF OF
THE FLORIDA SCHOOL BOARDS ASSOCIATION,
INC., AND THE FLORIDA ASSOCIATION OF
DISTRICT SCHOOL SUPERINTENDENT'S, INC.

✓
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PRELIMINARY STATEMENT

The Florida School Boards Association, Inc., is a corporate body representing the interests of 66 School Boards in the State of Florida. The Florida Association of District School Superintendents, Inc., is a corporate body representing the interests of all district school superintendents in the State of Florida. These associations appear as amici curiae in this appeal to represent the interests of the county school boards and superintendents who are responsible for adopting and implementing budgets for each district based in part upon state funding.

This brief supports the position of Appellee, Children A, B, C, D, E, & F, etc.

STATEMENT OF CASE AND FACTS

Amici Curiae adopt the Statement of the Case and Facts presented in the brief by Appellee, Children A, B, C, D, E, & F, etc.

SUMMARY OF ARGUMENT

The Administration Commission has acted under the apparent authority of §216.221, Fla. Stat. to reduce the appropriations to state agencies. The action undertaken is unconstitutional.

The Legislature is elected and charged with the duty and responsibility to provide for a balanced budget of appropriations and revenues to all three branches of government. The Legislature cannot abdicate this responsibility. If the budget is not balanced the Legislature has not fulfilled its responsibility and must be called into special session to either increase revenues or make the critical appropriation reduction decisions.

POINTS ON APPEAL

I

WHETHER §216.221, FLA. STAT. IS AN UNCONSTITUTIONAL DELEGATION TO THE EXECUTIVE BRANCH OF THE EXCLUSIVE POWER OF THE LEGISLATIVE BRANCH TO FASHION THE STATE'S BUDGET.

II

WHETHER §216.011(1)(11), FLA. STAT. IS UNCONSTITUTIONAL BY VIRTUE OF INCLUDING SCHOOL BOARDS AND THE JUDICIARY WITHIN THE MEANING OF STATE AGENCY AND EXCLUDING THE LEGISLATIVE BRANCH.

ARGUMENT

I

WHETHER §216.221, FLA. STAT. IS AN UNCONSTITUTIONAL DELEGATION TO THE EXECUTIVE BRANCH OF THE EXCLUSIVE POWER OF THE LEGISLATIVE BRANCH TO FASHION THE STATE'S BUDGET.

The Governor of the State of Florida, after consulting with the Revenue Estimating Conference, determined that a deficit will likely occur in the General Revenue Fund as a result of a revenue shortfall. This opinion was certified to the Governor and Cabinet sitting as the Administration Commission. The Commission by a 5-2 vote reduced the budgets of state agency's by approximately 579 million dollars. The statutory authorization for the Commission to act in this manner is unconstitutional.

The people of the State of Florida in establishing a constitution provided a system of checks and balances. This system, often referred to as separation of powers, provides at Article II, §3, Constitution of Florida, that:

"The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The constitution secures to the Legislature the exclusive power of deciding how, when, and for what purposes public funds shall be applied in carrying on government, except when the constitution expressly provides to the contrary. Article VII, §1(c), Constitution of Florida; State ex rel. Kurz v. Lee, 163 So. 859 (Fla. 1935); and State ex rel. Davis v. Green, 116

So. 66 (Fla. 1928). The Legislature is also required to provide for the raising of sufficient funds to pay for lawful expenses of the state for each budget period. Article VII, §1(d), Constitution of Florida. Thus, the Legislature is under a constitutional mandate to enact a balanced budget for the fiscal period.

The action of the Administration Commission under the apparent authority of §216.221, Fla. Stat. (1989) as amended by Chap. 91-109 transgresses the provision for separation of powers. The Administration Commission is authorized to reduce all approved state agency budgets. §216.221(2), Fla. Stat. (1989) as amended by Ch. 91-109, Laws of Florida. The authorization confers unbridled discretion as to what state agencies are to be affected and to what extent. The Legislature failed to set out adequate standards to guide the Administration Commission in the exercise of powers delegated and failed to define the delegated powers with sufficient clarity to preclude action through whim, favoritism or unbridled discretion. Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla. 1977); Flesch v. Metro Dade Co., 240 So.2d 504 (Fla. 3rd DCA 1970), cert.den. 244 So.2d 432 (Fla. 1971). The Legislature has been elected to perform the budgetary task and cannot abdicate this function or delegate its authority without standards and guidelines. Florida State Board of Architecture v. Wasserman, 344 So.2d 653 (Fla. 1979); Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978).

Section 216.221, Fla. Stat. (1989) as amended by Chap. 91-109, Laws of Florida, contains no provision for the

Administration Commission to increase revenues. This is an integral part of the budgetary process. This Court in State ex rel. Kurz v. Lee, 163 So. 859 (Fla. 1935) stated:

"Presumably, the Legislature does not undertake to make an appropriation of any funds not actually or potentially in hand. This is so since the making of an appropriation without having provided revenues from some source to meet it, or without any right to anticipate the accrual otherwise of funds in the treasury to enable the appropriation to be discharged by an actual disbursement of funds when it is due to be paid, would be the creation of an illegal state debt which would not constitute a current expense of the state inasmuch as it would have to be provided for by subsequent revenue legislation." at pp. 868-869)(e.s.)

Where the revenues are insufficient to meet expenditures the Legislature has failed its constitutional duty to ensure that the budget is balanced for the current fiscal period. The procedure to rectify the imbalance is for the Governor to call the Legislature back into special session. This Court in State ex rel. Kurz v. Lee, 163 So. 859 (Fla. 1935) stated:

"the duties imposed upon the Legislature by those provisions of the Constitution were mandatory, and that where such duties had not been adequately discharged . . . it thereupon became the duty of the Chief Executive in taking "care that the laws be faithfully executed" . . . to exercise his power under . . . the Constitution to call the Legislature into extraordinary Session for the purpose of passing and enacting into law measures calculated to effectuate the requirements of said section 2 of article 9 . . . to make adequate provision by way of appropriations to . . . the current expenses of the state, and to provide for raising revenue sufficient to pay the same." at p. 862.

The alternatives in the event of estimated revenue shortfalls are so broad in spectrum that they require those individuals elected and charged with the duty and responsibility to balance a budget to act. The Governor and Cabinet, regardless of what

hat they may then be wearing, cannot act in the place of the Legislature. The Legislature may determine to cut expenditures on a blanket basis or even a more selective basis. On the other hand, the Legislature may determine to increase revenues by the levying of additional taxes. These are decisions constitutionally reserved to the Legislature.

The Legislature cannot delegate its authority to generate revenues. Connor v. Joe Hatton, Inc., 203 So.2d 154 (Fla. 1967). The Legislature in the enactment of §216.221, Fla. Stat. (1989) has abdicated its responsibility to balance the budget by providing only for reductions in appropriations.

Thousands of school board employees and school children are being divested of an adequate budget by virtue of the action of the Administration Commission. §216.221, Fla. Stat. (1989) as amended by Chap. 91-109, Laws of Florida, should be declared unconstitutional. The Court should determine that only the Legislature in special session can balance the budget either through reducing appropriations or increasing revenues.

II

WHETHER §216.011(1)(11), FLA. STAT. IS UNCONSTITUTIONAL BY VIRTUE OF INCLUDING SCHOOL BOARDS AND THE JUDICIARY WITHIN THE MEANING OF STATE AGENCY AND EXCLUDING THE LEGISLATIVE BRANCH.

The Legislature has created a mechanism for addressing revenue shortfalls which is manifestly unconstitutional. Section 216.221, Fla. Stat. (1989) as amended by Chap. 91-109, does not authorize the Administration Commission to cut the Legislative budget. The three separate branches of government are thus not treated equal. Moreover, due process is denied to separate units of government such as school boards.

Section 216.011(1)(11), Fla. Stat. (1989), as amended by Chap. 91-109, defines a "state agency" to include boards and the judiciary. However, the legislative branch is not included within that definition. It is this definition that is relied upon to amend only the budgets of "agencies" and not the Legislature.

The term "appropriations act" is defined in §216.011(1)(c), Fla. Stat. (1989) to mean:

"...the authorization of the Legislature . . . for the expenditure of amounts of money by an agency and the legislative branch for stated purposes ...".

The term "agency" is defined to include the executive and judicial branches. §216.011(1)(11), Fla. Stat. (1989), as amended by Chap. 91-109, Laws of Florida.

The Legislature has provided that in the event a deficit

will occur in the General Revenue Fund the Administration Commission may reduce "agency" budgets. §216.211(2), Fla. Stat. (1989) as amended by Chap. 91-109, Laws of Florida. The Legislature did not make any provision for the reduction of appropriations to the legislative branch. The Legislature has at the expense of the executive and judicial branches of government insulated itself from reduction of appropriations. The legislative scheme has not treated the three branches of government equally but has shifted the shortfall burden to fall solely on the executive and judicial branches.

The three equal branches of government are treated separately and distinctly in the event of a General Revenue Fund shortfall. Whereas, the Appropriations Act includes all three branches, only the Legislature avoids the axe of the Administration Commission. Thus, the Legislature has limited the taking of approved budgetary funds to only the judicial and executive branches. This constitutes a violation of due process in that all three branches are involved in the appropriations process but the legislature is excluded from the taking of approved budget items in the event of a shortfall in revenue.

To allow the Administration Commission to only reduce agency budgets in the event of a revenue shortfall is an unconstitutional taking without representation. In State ex rel. Kurz v. Lee, 163 So.2d 859 (Fla. 1935) this Court stated:

"...any statutory scheme for the diminution of the appropriation ... amounts to nothing more than an indirect taking and appropriation without due process of law. . ." at p. 873.

School Boards are involved in the budgetary process through the Legislature by virtue of public hearings and budget recommendations. §§216.023, 216.131 and 216.162, Fla. Stat. (1989) as amended by Chap. 91-109, Laws of Florida. They should be similarly involved with the Legislature in all efforts to balance a budget. §216.221, Fla. Stat. (1989) as amended by Chap. 91-109, Laws of Florida, infringes upon the separation of powers doctrine by denial of due process to affected agencies.

A school board is not a "state" agency. A school board is a constitutional body. Article IX, §4, Constitution of Florida. To the extent it is included within the definition of a state agency in §216.011(1)(11), Fla. Stat. (1989) the statute is invalid.

A school board has the power to tax. Article VII, §9, Constitution of Florida; Chap. 236 and 237, Fla. Stat. The Legislature has imposed upon school boards the requirement to "... take steps to assure children adequate educational facilities..." §230.23(10), Fla. Stat. (1989). In order to receive state appropriations there are minimum requirements which are imposed by the Legislature that a school board must meet. §236.02, Fla. Stat. (1989). In order to meet those requirements school boards have now determined the tax to be levied and certified same to the property appraiser. §236.25 and 237.091 Fla. Stat. (1989). The budget must balance. §237.061, Fla. Stat. (1989). The reduction in state appropriations at this time wreaks havoc upon school districts because their taxing power has been fixed.

The Legislature has appropriated funds to the school districts. The school districts have determined their millage rates and certified same to the property appraisers. For the Administration Commission to now effect a "taking" denies the various school boards due process of law.

A special session of the Legislature may avoid the massive effect of a reduction in state appropriations to the school districts. The current timing and statutory framework allows only reduction in spending, not increase in revenue. Only a special session of the legislature can effect revenue and bring a balanced budget.

CONCLUSION

The decision of the Administration Commission to reduce the state appropriations by approximately 579 million dollars should be declared unconstitutional by this Court. This decision to balance the state budget by reducing appropriations or generating additional revenues is exclusively within the province of the Legislature. The Legislature sitting in special session must make the decision they are elected to make and required by the Constitution of Florida to make.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S Mail to Attorney for Appellee, Karen A. Gievers, 750 Courthouse Tower, 44 W. Flagler Street, Suite 750, Miami, FL 33130, and to Attorneys for Appellants, Robert A. Butterworth, Attorney General, and Michael J. Nicemand, Robert E. Doran and Charles A. Finkle, Assistant Attorney General, Department of Legal Affairs, Suite 1501, The Capitol, Tallahassee, FL 32399 this 24 day of October, 1991.

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