047

FILED
SID J. WHITE
OCT 25 1991
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, as Governor of the State of Florida, JIM SMITH, as Secretary of the State of Florida, ROBERT BUTTERWORTH, as Attorney General of the State of Florida, GERALD LEWIS, as Comptroller of the State of Florida, TOM GALLAGHER, as Treasurer of the State of Florida, BOB CRAWFORD, as Commissioner of Agriculture of the State of Florida, BETTY CASTOR, as Commissioner of Education of the State of Florida, and all as members of the Administration Commission,

Appellants,

v. CASE NO. 78,792

CHILDREN A, B, C, D, E and F by and through their next friend and Guardian Ad Litem MICHAEL ROSSMAN,

Appellees.

______________________________/

BRIEF OF APPELLANT LAWTON CHILES
GOVERNOR OF THE STATE OF FLORIDA

J. HARDIN PETERSON, General Counsel
Fla. Bar No. 62968
DEBORAH K. KEARNEY, Deputy General Counsel
Fla. Bar No. 334820
Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399-0001
904-488-3494

TABLE OF CONTENTS

Table of Citations....................................ii

Introduction.. 1

Statement of the Case and Facts.......................1

Summary of the Argument...............................1

Argument..2

I. Section 216.221, Florida Statutes, represents a lawful delegation of the Legislature's power and duty to maintain a balanced budget.............. 2

II. Section 216.011(11), Florida Statutes, does not violate Article II, s. 3, Florida Constitution, as an intrusion on the separation of powers of state government....8

Conclusion...10

Certificate of Service...............................11

TABLE OF CITATIONS

Cases — Page

Petition of Florida State Bar Assoc., Etc.,

155 Fla. 710, 21 So.2d 605(Fla.,(1945).......... 3

Martinez v. Ward,

19 Fla. 175 (1882)............................. 3

McMullen v. Newmar Corp.,

100 Fla. 566, 129 So. 870 (1930)............... 3

Richardson v. Baldwin,

124 Fla. 233, 168 So.255 (1936)................ 2

State v. Lee,

157 Fla. 773, 27 So.2d. 84 (1946)............... 3,7

Other Authorities

Art. II, s. 3, Fla. Const............................ 8

Art. III, s. 3, Fla. Const........................... 7

Art. III, s. 8, Fla. Const........................... 3

Art. IV, s. 1(a), Fla. Const......................... 3

Art. IV, s. 4(a), Fla. Const......................... 3,4

Art. VII, s. 1(c), Fla. Const........................ 2

Ch. 216, Fla. Stat................................... 4,5,7,8

Ch. 8426, Laws of Fla. (1921)........................ 10

Managing Public Policy, Lawrence E. Lynn, Jr.(1987)... 9

Sec. 216.011(1)(11), Fla. Stat....................... 2,8

Sec. 216.181, Fla. Stat.............................. 4

Sec. 216.221, Fla. Stat.............................. 2,4,5,7

INTRODUCTION

Appellant, Lawton Chiles, Governor of Florida, adopts in whole, the brief of Attorney General Butterworth. In addition thereto, Appellant Chiles in this separate brief, sets forth policy considerations important to this Court's deliberations.

STATEMENT OF THE CASE AND FACTS

Appellant, Lawton Chiles, adopts the Statement of the Case and Facts as set out in the brief of Attorney General Bob Butterworth.

SUMMARY OF THE ARGUMENT

The powers of the three separate branches of government must necessarily be integrated in many instances for the efficient operation of government. It has been long- and well-accepted in Florida that the Legislature may delegate lawmaking functions to both the executive and judicial branches of government, as long as such delegation is accompanied by sufficient standards.

The executive branch plays an integral part in the budgeting procedures of the state, pursuant to both the Florida Constitution and statutes adopted thereunder. Maintaining a balanced budget throughout the fiscal year requires action by the executive branch in pursuance of its duty to faithfully enforce the laws. Almost every other state, all embracing the separation of powers among branches of government, allow for executive adjustment of expenditures upon realization of budget deficits. With an annual 60-day session, an interpretation that only the Legislature may

adjust the budget would create an inefficient and unworkable fiscal policy.

Presuming that the Legislature may lawfully delegate quasi-legislative powers in order for the executive to faithfully enforce the budget laws of the state, there is no reason why it cannot delegate this authority with respect to any or all branches.

ARGUMENT

The practical ebb and flow of powers between the coordinate branches of government supports the legal arguments made by the Attorney General, which demonstrate the constitutionality of Sections 216.221 and 216.011(1)(11) of the Florida Statutes.

I. Section 216.221 of the Florida Statutes, represents a lawful delegation of the Legislature's power and duty to maintain a balanced budget.

In holding Section 216.221 of the Florida Statutes unconstitutional, the court below found that the Legislature has the "exclusive power to fashion the budget." (Final Order of Eleventh Circuit, Findings and Conclusions #6). This is not the case. The Legislature has the power to state what the law is; and, appropriations must be set forth by law, (Art. VII, s. 1(c), Fla. Const.). However, administrative agencies have the constitutional authority to set policy which has the effect of law pursuant to lawful delegation from the Legislature. An agency may lawfully exercise such authority if there are standards sufficient that it can be said the policy is quasi-legislative and the delegation is not granted with unbridled discretion. Richardson v. Baldwin, 124

Fla. 233, 168 So. 255 (1936). The judicial branch has also been delegated powers of lawmaking which have sustained similar attack. See, e.g., Petition of Florida State Bar Assoc., Etc., 155 Fla. 710, 21 So.2d 605 (Fla. 1945); Martinez v. Ward, 19 Fla. 175 (1882); McMullen v. Newmar Corp., 100 Fla. 566, 129 So. 870 (1930).

The issue before this Court is the entire budget process, not just the mere appropriation of funds. That budget process intricately and continually involves the executive branch of government. The Governor prepares the proposed budget for submission to the Legislature; he has the executive line-item veto, (Art. III, s. 8, Fla. Const.), which interjects executive power into the heart of this lawmaking, and the executive duty to see that the laws are faithfully executed, (Art. IV, s. 1(a), Fla. Const.). The executive's cabinet is constitutionally empowered to exercise powers prescribed by law, (Art. IV, s. 4(a), Fla. Const.), and these constitutionally supported duties include a myriad of budgeting procedures.

The Court has long found budget matters among those governmental powers where the line separating executive and legislative functions overlaps. State v. Lee, 157 Fla. 773, 27 So.2d 84 (1946). In Lee, the Court found that a law allowing for the transfer of funds among budget entities was not an unlawful exercise of legislative power by the executive.

The long-recognized and deeply ingrained principle that in Florida the budget must remain balanced, places a burden on executive officers as well as the Legislature. If the laws are to

be faithfully executed, with or without the requirements of Chapter 216, the executive branch must necessarily comport its actions with the laws, both constitutional and statutory, that so wisely disallow the deficit expenditures such as those that have strapped the federal government. The Governor, as chief budget officer and as the officer responsible for the faithful execution of the laws must take actions to preclude an unlawful deficit. The Comptroller must likewise refrain from executing warrants that would cause a deficit, and the Treasurer must refrain from approving such warrants. Individually, as cabinet members, and collectively as the Administration Commission, these officers have duties prescribed by law, and as authorized by Article IV, Section 4(a) of the Florida Constitution, to maintain a balanced budget. Constitutionally-derived statutory duties include certifying and reconciling budget deficits (Art. IV, s. 4(a), Fla. Const.; Section 216.221, Fla. Stat.), and processing and approving budget amendments, (Section 216.181, F.S.), unless or until the Legislature opts to address such adjustments itself.

It should not go unheeded that the vast majority of states have constructed their budgeting procedures to allow the executive, charged with the day-to-day administration of government, to make budget cuts and adjustments, (Appendix A). Only nine states reflect that the Governor may not reduce the budget without legislative approval (Table D, Appendix A). Of these nine, Arkansas and Kentucky answered in the negative as to whether the Governor could reduce the budget without legislative approval

because the authority must be delegated by the Legislature. Another state, New Hampshire does have a statutory procedure allowing the Governor to make budget reductions upon the approval of a committee of five senators and five representatives. For this analysis, these states should be considered to have answered affirmatively, since most states answering in the affirmative received such authority by legislative delegation rather than by constitutional provision. Maine allows for executive curtailment of allotments upon notification of both houses of their Legislature. Exceptions from the rule are found in states having full-time legislatures that are ever-present to make needed adjustments. (Wisconsin, if a deficit is more than one-half of one percent; California, which in addition does not require maintenance of a balanced budget; Illinois, which can first use reserves and voluntary requests to agencies to curtail spending; and Michigan, which does not truly require maintenance of a balanced budget and which provides in its Constitution, a specific procedure for addressing deficits, which process involves both the executive and legislative branch). Only one state, Nebraska, appears to require a special session of the Legislature to reconstruct the appropriations act upon the occurrence of a deficit.

Chapter 216 includes a complete legislative procedure for rectifying a deficit in revenues to maintain a balanced budget. Section 216.221, Florida Statutes. The law does not represent a delegation with unbridled discretion, but rather provides for an independent revenue estimating conference to determine whether

revenue collections are keeping pace with revenue projections; it provides that the Governor has the duty to certify a deficit to the Administration Commission and upon his failure to do so, for the Comptroller to make such a certification. The statute provides that a shortfall may be contained in only one of two ways: use of working capital fund moneys, or by the imposition of budget reductions on general revenue funds. The cutbacks can be made only to the extent of the deficit; and the law specifies that education funds may not suffer a greater degree of reduction than other funds. Finally, notice and the opportunity to make objections is provided to both houses of the Legislature.

It should be further noted that the present controversy is <u>not</u> one involving the unwelcome intrusion of one branch upon the other. Both houses of the Florida Legislature have joined in argument as amicus on behalf of appellants. It is evident that any quasi-legislative powers granted to the executive by Chapter 216 are for the purpose of the effective and efficient operation of the daily ongoing enforcement of the state's budget. At any time that the Legislature disapproves of the manner in which budget cuts or adjustments are made, it has ample inclusion in the process to remedy the objectionable acts. The Chairmen of the appropriations committees or the President or the Speaker may file an objection to an Administration Commission action. The Governor may concur and void the action; otherwise the action requires a two-thirds vote of the Commission. The Legislature has provided for judicial review of the Commission's actions. Finally, the Legislature need

only call itself into special session to supercede any Administration Commission action in this regard. Hence, the Legislature has not entirely delegated or abrogated its duty since the lawmaking body at least tacitly approves the actions of the executive branch. This fail-safe enacted by Section 216.221 of the Florida Statutes, allows for maintenance of a balanced budget where the Legislature either has no objection to the reductions, or is itself deadlocked and unable to effectuate its duty to maintain a balanced budget. Each and every day that projected deficits are allowed to remain unaddressed makes the prospective correction all the more severe.

As stated above, State v. Lee, supra, holds that laws providing for budget transfers by the executive are constitutional. A transfer from fund to fund or program to program is certainly more a matter of quasi-legislation than is the reduction of an appropriation which, by law is a maximum appropriation. Section 216.221(1), Florida Statutes.

In the past fiscal year, the executive branch approved 1,476 budget amendments, among this number 66 requested by the judicial branch through the Chapter 216 statutory procedures. In addition, there were 757 agency transfers allowed by the Chapter, 241 by the judiciary. Only a full-time legislature could in any practical sense handle the volume of necessary budget adjustments. Florida does not have such a legislature. Our Constitution provides for an annual 60-day legislative session. Otherwise, a special session must be called by the presiding officers of the Legislature or by

the Governor. Art. III, s. 3, Fla. Const.

II. Section 216.011(1)(11) of the Florida Statutes, does not violate Article II, Section 3 of the Florida Constitution, as an intrusion on the separation of powers of state government.

The fiscal procedures of the State of Florida establish that the Legislature appropriates and the executive acts as the budgeting entity. The Governor is the chief budget officer of the State and the Administration Commission, composed of the Governor and Cabinet, has certain specified budgeting duties.

The Legislature appropriates funds for all three branches of government. As to the execution of the laws, this is the job of the executive branch. Where the Governor's and executive's authority with respect to reductions and other adjustments to the budget stems from a delegation from the Legislature, the Legislature may delegate none, all or a part of that authority. The Legislature may provide for the authority of the executive, within appropriate guidelines, to make reductions and adjustments with regard to any or all of the branches.

The lower court held that Section 216.011(1)(11) of the Florida Statutes, by defining the judiciary as an agency for purposes of Chapter 216, unconstitutionally intruded upon the separate and exclusive powers of the judiciary. The court stated in its order that the judiciary is "not just a state agency that is part of the executive branch." Nothing within the definition would lead one to the conclusion that the Legislature characterized the judiciary are "just" a mere executive agency. The definition

includes not only executive agencies, but statewide constitutional officers acting within the scope of their constitutional duties. On the other hand, the Legislature clarified by this definition that, for the purposes of budget reductions, amendments and the like, it intended to include the executive branch and the judicial branch and intended to exclude itself.

In any event, this Court should allow great deference to the coordinate branches of government acting within the sphere of their charges. All three branches of government must cooperate to allow the flexibility required to manage the daily fiscal affairs of the state. A case of this nature, involving all three branches of state government and their relations to one another is a difficult case. The separation of powers is not a static concept and, as here, it is often not a matter that is susceptible of clear line-drawing. Lawrence E. Lynn, Jr., in his book Managing Public Policy, (1987), makes a poignant observation regarding the separation of powers:

> By vesting "the executive power" in the president and empowering the Congress "to make all laws which shall be necessary and proper," the United States Constitution might seem to have created a neat separation of powers. It does no such thing. The courts have construed the Constitution to permit the conferring of substantial legislative authority on the executive branch; regulations issued by the executive, for example, have the force of law. At the same time, by ensuring that executive actions are in accordance with law, that expenditures are in accordance with lawful appropriations, and that the United States Senate authorizes and consents to the appointment of key presidential subordinates,

> the Constitution places Congress at the center of departmental administration. <u>This integration of powers</u> is characteristic of all levels of government. (e.s.)

The application of the doctrine of the separation of powers is, in a practical sense, as much the recognition of the integration of governmental powers. In the instant case, this integration is a necessary component of a system of executive budgeting that has evolved from the initial enactment of the Budget and Accounting Act of 1921 (Chapter 8426, Laws of Florida, 1921).

CONCLUSION

For the reasons stated herein and in the brief of the Attorney General, Appellant Lawton Chiles, would assert that the challenged statutes are not unconstitutional.

Respectfully submitted,

J. HARDIN PETERSON, General Counsel
DEBORAH K. KEARNEY, Deputy General Counsel
Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399-0001

By:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 25th day of October, 1991, to Karen A. Gievers, Esq., 750 Courthouse Tower 44 West Flagler Street, Suite 750, Miami, FL 33130, and by hand delivery to Charles A. Finkel, Suite #1501, The Capitol, Tallahassee, FL 32399-1050, Sydney H. McKenzie, Department of Education, PL 08, The Capitol, Tallahassee, Fl 32399-0400, Mallory Horne, The Florida Senate, 409 Capitol, Tallahassee, FL 32399-1100, and Thomas Tedcastle, The Florida House of Representatives, 420 Capitol, Tallahassee, FL 32399-1100.

BY: ______________________