

IN THE
SUPREME COURT OF FLORIDA

TIMES PUBLISHING COMPANY,
a Florida corporation,
d/b/a St. Petersburg Times,

Petitioner,

CASE NO. 84,513

vs.

RICHARD AKE, as Clerk
of the Circuit Court
of Hillsborough County,
Florida,

District Court of Appeal,
2nd District - Case No. 93-02436

Fla Bar ID No. 0393517

Respondent.

ON REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

AMENDED BRIEF OF AMICUS CURIAE
FLORIDA ASSOCIATION OF COURT CLERKS, INC.

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STATEMENT OF THE CASE AND FACTS

Intervenor, **FLORIDA ASSOCIATION OF COURT CLERKS, INC.** (hereinafter "FACC"), accepts the Statement of the Case and Facts submitted by Petitioner, **TIMES PUBLISHING COMPANY** (hereinafter "the Times"), and the Statement of the Case and Facts submitted by the Respondent, **RICHARD AKE, as Clerk of the Circuit Court of Hillsborough County, Florida** (hereinafter "the Clerk"), with only one comment. The Second District Court of appeal certified the following question of law, which was accepted by this Court for review:

Are the Court records maintained by the Clerk of the Circuit Court subject to the inspection and copying requirements of Chapter 119 of the Florida Statutes?

Any suggestion or editorializing by the Times that the issue before this Court includes issues other than that which is outlined in the certified question of law, is not proper; any issues other than the specific certified question are not properly before this Court. FACC filed its Motion to Intervene herein on November 1, 1994. This Court granted FACC's motion¹ on December 2, 1994.

¹ The Court treated FACC's Motion to Intervene as a Motion to appear as an amicus curiae.

SUMMARY OF THE ARGUMENT

FACC requested to intervene herein and provides argument herein, as amicus curiae, to address the issue of whether or not the certified question impacts upon or affects the statutorily mandated service charges for photocopies as specified in Section 28.24, Florida Statutes. It does not. The legislature established a fee schedule for photocopies under Section 28.24 which was enacted long before the sweeping origins of Section 119.07, Florida Statutes.

The Times inaccurately states that if this Court answers the certified question in the affirmative, such a holding will "free them [the Clerks] from the "reasonable service charges" provision of Chapter 119 (See 119.07(1)(a), Florida Statutes (1993)), authorizing a fee of not more than \$.15 per one-sided copy of a public record (with some exceptions), and will permit them to charge \$1.00 per page for all records in their custody pursuant to Section 28.24(8)(a), of the Florida Statutes." [Times initial brief, page 21].

First and foremost, Section 28.24, Florida Statutes (1993), requires for the Clerk to charge certain specific charges for services rendered by the Clerk's office, and therein states certain specific fees for photographic copies. Thus, the provision of Section 119.07(1)(a), Florida Statutes [if such provision applies at all], regarding a custodian furnishing a copy of a public record upon payment of the fee prescribed by law, is satisfied.

The \$.15 per one-sided copy fee prescribed by Section 119.07(1)(a), Florida Statutes only applies if no fee is otherwise prescribed by law. Thus, assuming that Chapter 119 applies to the Clerk's office, Section 28.24 provides for the payment of a specific fee for such photocopying, and the provision of Section 119.07 regarding a \$.15 charge or fee for a one-sided copy is inapplicable. The Clerk's service charge provisions under Chapter 28 are legislatively enacted exceptions to Section 119.07, if Chapter 119 applies at all.

Second, assuming that Section 119.07(1)(a) did not contain a provision exempting fees "prescribed by law," clear rules of statutory construction require that Section 28.24 control the cost of copies of documents kept by clerks; Chapter 28 has been more recently amended² and the general presumption is that the legislature passes statutes with full knowledge of prior existing law. Therefore, it must be presumed that the legislature was fully aware of the \$.15 copy fee provision in Section 119.07(1)(a), and intentionally exempted clerk records by enacting Section 28.001, Florida Statutes.

Thus, regardless of this Court's holding regarding the applicability of Chapter 119 to judicial records within the Clerk's control, the statutorily mandated charges for copies of any records as mandated by Section 28.24, Florida Statutes, clearly controls and delineates the proper charges.

² Chapter 94-348, Laws of Florida.

Third, if this Court upholds the decision by the Second District Court of Appeal below that Chapter 119 does not apply to papers filed, stored, or otherwise maintained by the Clerk, Rule 2.051 of the Rules of Judicial Administration provides open public access to judicial records, which, along with the recently adopted Constitutional Amendment embodied in Article I, Section 24, Florida Constitution, verified and confirmed the well established Florida policy of open government and access to the Clerk's records and documents. The question of access to records filed, stored, or otherwise maintained by the Clerk is not in any way hindered or restricted by the payment of a fee for photocopies; any argument otherwise by the Times is misleading.

Finally, the legislature enacted Section 28.24 and the fee schedule therein, and any modifications to such statutorily mandated service fees must be modified, if at all, by the legislature.

ARGUMENT

I. SECTION 28.24, FLORIDA STATUTES, ESTABLISHES A FEE SCHEDULE FOR PHOTOCOPIES OF CLERK RECORDS, AND CHAPTER 119 IS INAPPLICABLE.

Section 28.24, Florida Statutes (1994), provides (in pertinent part) as follows:

28.24. **Service charges by Clerk of the Circuit Court.**

- The Clerk of the Circuit Court shall make the following charges for services rendered by the Clerk's office in recording documents and instruments and in performing the duties enumerated. However, in those Counties where the Clerk's office operates as a fiscal unit of the County pursuant to Section 145.022(1), the Clerk shall not charge the County for such services.

* * *

(8)(a). For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8 1/2 inches, per page . . . \$1.00.

(8)(b). For making copies by photographic process of any instrument in the public records consisting of pages of more than 14 inches by 8 1/2 inches, per page . . . \$5.00.

Section 28.13, Florida Statutes (1993), requires the Clerk of the Circuit Court to keep all papers filed in his office appropriately arranged. The Section provides as follows:

28.13. **To keep papers.** The Clerk of the Circuit Court shall keep all papers filed in his office with the utmost care and security, arranged in appropriate files (endorsing upon each the time when the same was filed), and he shall not permit any attorney or other person to take papers once filed out of the office of the Clerk without leave of the Court, except as hereinafter provided by law.

Section 119.07(1)(a), Florida Statutes, (1993), relied upon by the Times not only for support of public access to Clerk records

and documents, but also in support of a "reasonable fee" for copies of such documents, provides in pertinent part as follows:

119.07. Inspection, Examination and Duplication of Records; Exemptions.

(1)(a). Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 18 1/2 inches, upon payment of not more than \$.15 per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. . . an agency may charge up to \$1.00 per copy for a certified copy of a public record. [emphasis added].

Quite obviously, Section 28.24 provides for specific fees to be charged by a Clerk for photocopies of any instrument in the public records. The provision of Section 119.07(1)(a), Florida Statutes [if such provision applies to the Clerk at all], regarding a custodian furnishing a copy of a public record upon payment of the \$.15 per one-sided copy fee, clearly only applies if no fee is otherwise prescribed by law.

The Florida legislature has seen fit to "otherwise prescribe by law" a service fee by the Clerk for providing photocopies of such documents to the requesting party. Thus, if Chapter 119 applies to the Clerks, the provision of Section 119.07(1)(a) regarding a \$.15 charge or fee for a one-sided copy is inapplicable; the Clerk's service charge provisions under Chapter 28 are legislatively enacted exceptions to Section 119.07, Florida Statutes.

Since Sections 28.24(8) (a) and (8) (b) prescribe the fee to be charged by Clerks for copies from the public records, Section 119.07(1) (a), by its own terms does not apply. Section 28.24(8) (a) is the "fee . . . prescribed by law," excepting Clerk's records from the \$.15 copy fee provision of Section 119.07(1) (a).

Some confusion previously arose regarding the extent of Section 28.24's \$1.00 per photocopy service fee. The confusion centered around the term "instrument" contained within Section 28.24(8) (a) and (8) (b), and also around the definition of "public records" as such term is found in Section 28.24(8) (a) and (b).

(a) THE TERM "INSTRUMENT" BROADLY DEFINES ALL CLERK RECORDS;

By opinion dated July 21, 1994, Attorney General Butterworth concluded in Attorney General Opinion 94-60, that the service charge authorized in Section 28.24(8) (a), Florida Statutes, applies only to such documents as contracts, deeds, wills, bonds or leases, i.e., documents formally expressing a legal act or agreement. Butterworth bases such opinion upon Section 28.24(8) (a) and (8) (b) referencing "any instrument", and he states that while the term "instrument" is not specifically defined for purposes of Chapter 28, his predecessor in office, in Attorney General Opinion 85-80, has provided his opinion of a definition of the term to be:

"[A] formal or legal document in writing, such as a contract, deed, will, bond, or lease . . . [a] document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right . . . [a] writing executed and delivered as the evidence of an act or agreement."

Based upon an acceptance of this definition, Attorney General Opinion 94-60 concludes that the service charge authorized in Section 28.24(8)(a), Florida Statutes, only applies to such documents as contracts, deeds, wills, bonds, or leases, i.e., documents formally expressing a legal act or agreement.

The definition of the word "instrument" used as a foundation for the opinion in Attorney General Opinion 94-60, is in reality a collection of out-of-context excerpts from the complete definition of the term "instrument" as reflected in Black's Law Dictionary. A complete reading of the definition reflected therein, with Attorney General Opinion 94-60's portions being underlined, is as follows:

INSTRUMENT: A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. A negotiable instrument (defined in U. C. C. Sec. 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which in ordinary course of business transferred by delivery with any necessary endorsement or assignment. U. C. C. Sec. 9-105(1).

Anything reduced to writing, a document of a formal or solemn character; a writing given as a means of affording evidence. A document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right. A writing executed and delivered as the evidence of an act or agreement. Moore v. Diamond Dry Goods Company, 47 Ariz. 128, 54 P.2d 553, 554.

Anything which may be presented as evidence to the senses of the adjudicating tribunal.

Black's Law Dictionary; Instrument, 719-720 (5th edition 1979).

In fact, a "document" has been defined as "an instrument on which is recorded, by means of letters, figures, or marks, matter

which may be evidentially used." Black's Law Dictionary; Document, 568 (5th edition 1979).

While the Attorney General might find it convenient to delete such portions of the definition as "a written document" and, "anything reduced to writing, a document of a formal or solemn character", Florida law of statutory interpretation does not allow such selective discrimination. It is a well settled rule of statutory construction in Florida that the use by the Legislature of a comprehensive term ordinarily indicates an intent to include everything embraced within the term. Florida State Racing Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958). Compliance with this basic principal precludes the selective and restrictive interpretation of the definition of "instrument" reflected in Attorney General Opinion 94-60.

Another principal of statutory construction relevant and applicable to this issue, is that words of common usage, when used in a statute, should be construed in their plain and ordinary sense. Priest v. Plus Three, Inc., 447 So.2d 338 (Fla. 4th DCA 1984), rev. den. 453 So.2d 44 (Fla. 1984). The commonly accepted meaning of the word "instrument" is by no means restrictive to the type of documents as reflected in the short list itemized in Attorney General Opinion 94-60, and is not limited to only "documents formally expressing a legal act or agreement".

An expression of the common meaning of the term "instrument" as understood by the courts of Florida is contained in no less authority than a case cited in Attorney General Opinion 94-60. In

Smith v. School Board of Leon County, 390 So.2d 731, (Fla. 1st DCA 1980), a question arose with regard to the charge reflected in Section 28.24(4), Florida Statutes, for preparing, numbering, and indexing an original record of appellate proceedings, which is comprised of the various pleadings, transcripts, orders and other documents contained in the trial court record which are relevant to the appeal. There, the First District recognized the validity of a charge of \$1.00 per "instrument" for each "instrument" that was included in the original record of the tribunal being appealed. These judicial documents clearly include documents which Attorney General Opinion 94-60 would restrictively not classify as "instruments" yet, that is what not only the courts, but specifically Section 28.24, Florida Statutes, include.

Similarly, and within the same statutory section as the charge for making copies of "any instrument in the public records..." (Section 28.24(8)(a)), are additional references to the term "instrument" which defy inclusion in the limited and restrictive definition provided by the Attorney General. Examples of these are as follows:

Section 28.24(5), Florida Statutes, For certifying copies of any instrument in the public records... \$1.00

Section 28.24(6), Florida Statutes, For verifying any instrument presented for certification prepared by someone other than clerk, per page... \$2.00

Section 28.24(10), Florida Statutes, For copying any instrument in the public records by other than photographic process, per page... \$4.00

These provisions all lend themselves to the much broader, more commonly used and understood definition of the term

"instrument" included in Black's Law Dictionary but excluded from Attorney General Opinion 94-60, i.e., a written document filed, maintained or stored by the Clerk.

Given the multiple references to the term "instrument" in Section 28.24, Florida Statutes, and other places within Chapter 28, Florida Statutes, all of which relate to documents received and maintained by the clerk of the court, the long established and often used maxim of statutory construction that provisions which relate to the same person or thing, to the same class of persons or things, or to the same or a closely allied subject or object, are regarded as in pari materia and should be construed together and compared with each other. McClure v. Sullivan, 43 So.2d 438, (Fla. 1949). In this case, where the same section of a chapter of Florida Statutes refers in various places to "instrument" in a broad sense in relating to the duties of the clerk in dealing with documents in his custody throughout his office, the doctrine of in pari materia would preclude the restrictive interpretation reached in Attorney General Opinion 94-60.

Scattered throughout Florida Statutes are definitions of the word "instrument" to be used in certain specified situations and instances. In each of these the term as defined is applied to the subject area of the specific statutory chapter or section in which the definition is located. Some examples are as follows:

Section 116.34, Florida Statutes, which is the Uniform Facsimile Signatures of Public Officials Act, defines an

"instrument of payment" as a "check, draft, warrant, or order for the payment, delivery, or transfer of funds." Id.

The commercial relations portion of Florida Statutes, found in Section 679, defines an "instrument" as a "negotiable instrument (defined in Sec. 673.1041), or a certificated security (defined in Sec. 678.102), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;" Sec. 679.105, Florida Statutes (1993). In the Uniform Commercial Code Comment, 1972 Revision that follows section 679.105, it further states that the definition of instrument includes not only negotiable instruments and certificated securities, "but also any other intangibles evidenced by writings which are in the ordinary course of business transferred by delivery."

Section 673.1041, Florida Statutes, pertaining to negotiable instruments, describes the term "instrument" as meaning a negotiable instrument, the definition of which is provided in that same section.

Finally, in the section regarding conveyances of land trusts, the word "instrument" is also defined.

The words "instrument as used in this section shall be construed to mean and include not only instruments voluntarily executed but also papers filed or issued in or in connection with actions and other proceedings in court and orders, judgments and decrees entered therein and transcripts of such judgments and proceedings in foreclosure of mortgage or other liens.

Section 689.19, Florida Statutes.

Similarly, other jurisdictions have from time to time considered the definition of "instrument" within the context of specific situations.

One of the issues involved in People v. Mayer, 110 Misc.2d 353, 442 N.Y.S.2d 50 (N.Y. Sup.Ct. 1981), was whether a New York state tax return was a "written instrument" as it pertained to a statute which prohibited the filing of a written instrument that contained a false statement or false information with the intent to defraud the state or any political subdivision. New York penal laws defined a "written instrument" as "any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, converging or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being sued to the advantage of disadvantage of some person." N.Y. Penal Law Sec. 170.00.

Generes v. Justice Court for the Redding Judicial District of Shasta County, 106 Cal.App.2d 678, 165 Cal.Rptr. 222 (Cal. Ct. App. 1980) concerned an act of forgery. The court stated that documents such as birth certificates, depositions, homestead declarations, permits to issue securities and voter registration affidavits all fall within the generic definition of "instrument".

In Re: Kirkman, 313 Or. 181, 830 P.2d 206 (1991) involved a criminal provision concerning the crime of forgery and uttering. A "written instrument" was defined as "any paper, document,

instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person." O.R.S. 165.013.

Another definition of instrument is "[a]nything reduced to writing, a document of a formal or solemn character, a writing given as a means of affording evidence." Smith v. Smith, 110 N.E. 1013 (Ind. Ct. App.). As outlined above, a "document" is defined as "an instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used." Black's Law Dictionary, p. 568 (5th Ed.).

With specific regard to judicial records, Vt.Stat.Ann. tit. 12 sec. 1021 (1); defines a "complaint" as "an instrument setting forth in brief and simple language the facts relied upon and the relief demanded."

Other documents that have been held to be encompassed in the definition of "instrument" include resident alien cards, State v. Esquivel, 71 Wash.App. 868, 863 P.2d 113 (Wash. Ct. App. 1993); simplified traffic information as an accusatory instrument, People v. Vierno, 606 N.Y.S.2d 557, 159 Misc.2d 770, (N.Y. Crim. Ct. 1993); escrows, Lusardo v. Broadview Savings and Loan Co., 1991 Westlaw 34856 (Ohio Ct. App. 1991); insurance policies, Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055 (R.I. 1991); power of attorney, Fletcher v. Mathew, 233 Neb. 853, 448 N.W. 576

(Neb 1989); credit card, State v. Standflieger, 110 Wash.2d 90, 750 P.2d 258 (Wash 1988); time slips, Gholson v. United States, 532 A.2d 118 (D.C. 1987); temporary restraining order, People v. Parks, 7 Cal.App.4th 883, 9 Cal.Rptr.2d 450 (Cal. Ct. App. 1992); rental information sheet, State v. Meyer, 17 Kan.App.2d 59, 832 P.2d 357 (Kan. Ct. App. 1992); and falsified invoices used to avoid paying sales tax, People v. DeRue, 179 A.D.2d 1027, 579 N.Y.S.2d 799 (N.Y. App. Div. 1992).

(b) THE TERM "PUBLIC RECORDS" IS NOW DEFINED FOR THE PURPOSES OF SECTION 28.24 SERVICE CHARGES.

Attorney General Opinion 91-76 reviewed Section 119.07(1)(a), Florida Statutes, and stated that the custodian of public records is required to furnish a copy of public records upon payment of the fee prescribed by law. If no fee is prescribed, the statute requires the custodian to furnish copies upon payment of not more than \$.15 per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. The opinion further states that the fee prescribed by Section 28.24(8)(a) applied only to records or documents found in the public records, referring to records recorded in the Official Records, and that since there was no defined provision for a fee for non-recorded documents (i.e. documents maintained in a Court file), that therefore the \$.15 provision of Section 119.07(1)(a), Florida Statutes, must apply.

General Butterworth's opinion in Attorney General Opinion 91-76 expanded upon a limited opinion of one of his predecessors in office, Attorney General Opinion 85-80. In Attorney General

Opinion 85-80, General James Smith concluded that the service charge imposed pursuant to Section 28.24(8)(a), Florida Statutes, referred only to records recorded in the Official Records, and did not apply to any records maintained by the Clerk in his capacity as Ex Officio Clerk of the Board of County Commissioners. According to General Smith, any copies of the minutes of the Board of County Commissioners, therefore, could be obtained upon the payment of the lesser charge of \$.15 per page, found within Section 119.07, Florida Statutes. General Smith's earlier opinion was based upon no clear definition appearing in Section 28.24(8)(a), Florida Statutes of an instrument "in the public records."

The Florida Legislature has now defined what is an instrument "in the public records," by modifying Chapter 28, Florida Statutes. During the 1994 Legislative Session, both Houses of the Legislature passed House Bill 2481, which created a new Section 28.001, Florida Statutes,³ which provides as follows:

28.001 **DEFINITIONS.** As used in this chapter:

1. "Official Records" means each instrument that the Clerk of the Circuit Court is required or authorized to record in the series of books called "Official Records" as provided for in Section 28.222.

2. "Public Records" has the same meaning as in Section 119.011 and includes each Official Record.

The underlying basis for Attorney General Opinion 85-80, and for Attorney General Opinion 91-76, was that the \$1.00 service

³ Chapter 94-348, Laws of Florida.

charge imposed by Section 28.24(8)(a), Florida Statutes, applied only to records which were officially recorded in the Official Records Book. The new definitions contained in Section 28.001, Florida Statutes, however, clearly define "public records," otherwise. Section 28.24(8)(a) states that the \$1.00 charge is for making copies of "any instrument in the public records..."; the definition of "public records" in the new Section 28.001, Florida Statutes, is that "public records" has the same meaning as in Section 119.011 and includes each official record. An official record is now defined by Section 28.001, Florida Statutes, as records recorded in the Official Records Book. Thus, if Section 28.24(8)(a), Florida Statutes, was previously vague, the statute now clearly provides for a \$1.00 service fee to be charged for all copies of documents, whether such document is actually filed in the Official Records Book or otherwise.

The new definitions contained within Section 28.001, Florida Statutes appear to directly address the inaccurate conclusions reached by the two separate Attorneys General, as outlined above. Prior to the passage of House Bill 2481 creating such definitions, [Chapter 94-348, Laws of Florida] the proper reading of Section 28.24(8) resulted in the section applying to all documents filed with the Clerk as Clerk of the Circuit Court. Any of such documents filed with the Clerk are accepted by the Clerk in his/her official capacity, and must be considered to be an "instrument" within the purview of the statute. This was apparent by reading Section 28.24(8) in pari materia with other subsections

of Section 28.24, Florida Statutes, and in particular with subsection (4) thereof which requires a service charge of \$2.00 "for preparing, numbering, and indexing an original record of appellate proceedings, per instrument." (emphasis added). The Attorneys General opinions which limited the definition of "instrument" to only those legal documents filed for record in the Official Records of a County could not be reconciled with the use of the term "instrument" in subsection (4) of Section 28.24, Florida Statutes. To properly reconcile the two statutory provisions, the term "instrument" would necessarily mean all documents filed with the Clerk in his/her official capacity as Clerk of the Circuit Court. See also, Smith v. School Board of Leon County, 390 So.2d 731 (Fla. 1st DCA, 1980), discussing the applicability of Section 28.24(4) to a transcript of proceedings filed with an administrative agency in an administrative proceeding. In Smith, the First District Court of Appeal recognized Section 28.24, Florida Statutes, as applicable to the question before it, and for purposes of Section 28.24(4), considered a transcript of proceedings filed with the Agency to be an instrument subject to the provisions of Section 28.24(4). Rules of Statutory Construction as well as common sense dictates that all documents similarly filed with the Clerk in his/her official capacity as Clerk of the Court are to be considered "instruments" for purposes of Section 28.24(8), Florida Statutes.

Assuming that Chapter 119 is applicable to Court records maintained by the Clerk, and further assuming that Section

119.07(1) (a) did not contain a provision exempting fees "prescribed by law", clear rules of statutory construction require that Section 28.24 control the cost of copies of documents kept by Clerks of the Circuit Court.

Section 28.001, Florida Statutes, the "clarification" amendment to Chapter 28 discussed above, was passed during the 1994 legislative session, long after the passage of Section 119.07(1) (a), which includes the \$.15 photocopy provision. The last expression of the legislature prevails in determining or reconciling conflicting statutes. State v. Dunmann, 427 So.2d 166 (Fla. 1983). The general presumption is that the legislature passes statutes with knowledge of prior existing laws. Id. Therefore, it must be presumed that the legislature was aware of the \$.15 copy fee provision in Section 119.07(1) (a), and intentionally exempted clerk records by enacting Section 28.001, Florida Statutes.

Clear Florida law holds that the more specific statute controls over a general statute covering the same subject matter. Gretz v. Florida Unemployment Appeals Commission, 572 So.2d 1384 (Fla. 1991), [quoting Adams v. Culver, 111 So.2d 665 (Fla. 1959)]; see, also, Moore International Truck, Inc. v. Foothill Capital Corporation, 560 So.2d 1301 (Fla. 2nd DCA 1990) (statute governing motor vehicle liens controls over statute governing liens in general). Here, as in Moore International Truck, a specific statute [governing the clerk's copy fees] controls over a general statute [governing copy fees in general].

CONCLUSION

Regardless of this Court's holding regarding the applicability of Chapter 119 to judicial records within the Clerk's control, the statutorily mandated charges for copies of any public records filed, stored, or otherwise maintained by the Clerk is clearly set forth in Section 28.24, Florida Statutes. Thus, the service charges set forth by Section 28.24 apply to all "public records" as that term is defined in Section 28.001, Florida Statutes. Recently enacted Section 28.001 provides that the definition of "public records" will have the same meaning as in Section 119.011, and includes each official record.

Section 119.011, Florida Statutes (1993) defines the "public records", and therefore defines such term for the purposes of Section 28.24(8)(a), as follows:

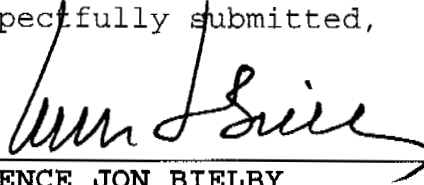
119.011 Definitions.

1. "Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law, or ordinance, or in connection with the transaction of official business. . .

To end the continuing debate regarding the extent of the \$1.00 service fee provision, and the continuing debate regarding whether such fee is limited to photocopying of documents actually "filed" within the "official records," FACC respectfully requests for this Court to address the service fee issue, as outlined above, in its decision herein. Accordingly, the Florida Association of Court Clerks, Inc., respectfully requests for this Court to find that the statutorily mandated service charges for photocopies as

specified in Section 28.24, Florida Statutes controls and requires for the Clerks to charge \$1.00 per page for all records in their custody.

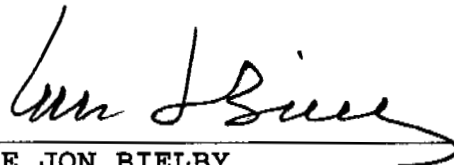
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/~~Hand Delivery~~/~~Telecopy~~ to George K. Rahdert and Alison M. Steele, Rahdert & Anderson, 535 Central Avenue, St. Petersburg, Florida 33701, and by U.S. Mail/~~Hand Delivery~~/~~Telecopy~~ to Leslie E. Joughin, III, McWhirter, Reeves, McGlothlin, Davidson & Bacas, P.A., 100 North Tampa Street, Suite 2800, Post Office Box 3350, Tampa, Florida 33602-5126, this 21ST day of DECEMBER, 1994.



LORENCE JON BIELBY

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