

IN THE SUPREME COURT OF FLORIDA

CASE NO. 71,826

CRANE RENTAL OF ORLANDO, INC.,

Petitioner,

vs.

FORD S. HAUSMAN, as Orange  
County Property Appraiser,

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

IN RE: NOTICE TO INVOKE DISCRETIONARY JURISDICTION  
TO REVIEW THE DECISION OF THE FLORIDA FIFTH  
DISTRICT COURT OF APPEAL IN APPEAL NO. 86-1327

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STATEMENT OF THE CASE AND OF THE FACTS

The Defendant below, Petitioner here, owns and operates several mobile cranes used in the construction business in lifting and placing construction materials and components. The Plaintiff, Orange County Property Appraiser, in 1985, attempted to assess, for ad valorem tax purposes, the said cranes as tangible personal property. The Defendant appealed to the Property Appraisal Adjustment Board pursuant to Fla. Stat. §194.011, asserting that the said cranes were motor vehicles and prohibited from being taxed as tangible personal property by the provisions of Article VII, Section 1(b) of the Florida Constitution. The Board ruled that the motor carriers, which constitute a portion of the mobile cranes, were exempt from ad valorem taxation as licensed motor vehicles but allowed the taxation of the crane or lifting portion of the machines as tangible personal property for such taxation purposes and apportioned the appraised value between the exempt and taxable categories.

The cranes involved here are composed of separable units, that is, a carrier which is licensed as a motor vehicle, and the crane or lifting portion of the machine with separate engines, functions and operating controls.

The Plaintiff brought this action below under Fla. Stat. §194.036, seeking to overturn that portion of the Board's ruling which exempted the motor carrier portion of the machines from taxation as tangible personal property. The trial court, in the Final Judgment entered herein, held that no portion

of the machines was exempt and that these motor cranes were not motor vehicles and were, therefore, entirely taxable as tangible personal property.

The Petitioner, as Defendant below, had counterclaimed in the action, asserting that the entire machines were exempt as motor vehicles, and the trial court ruled against the Defendant on that issue.

The Final Judgment was appealed to the Florida Fifth District Court of Appeal, which, on December 31, 1987, sustained the trial court's decision in the opinion (A 1) sought to be reviewed herein.

SUMMARY OF ARGUMENT

The decision and opinion of the Fifth District Court of Appeal expressly construes a provision of the State Constitution, to wit: Article VII, Section 1(b), vesting in this Court discretionary jurisdiction to review the same. The issue of taxation involved herein is of serious statewide concern and importance and should be reviewed by this Court.

ARGUMENT

The proceedings in the trial court and on appeal to the Fifth District Court of Appeal involved the question, whether motor cranes are exempt from ad valorem taxation as motor vehicles, pursuant to Article VII, Section 1(b) of the Constitution of Florida and Florida Statutes, §§320.01 and 320.08. This petition to invoke discretionary jurisdiction of the Supreme Court of Florida is based upon Rule 9.030(a)(2)(A)(ii), Rules of Appellate Procedure, as the decision below expressly construes a provision of the State Constitution. The point on appeal below was stated as:

MOTOR CRANES ARE EXEMPT FROM AD VALOREM  
TAXATION AS MOTOR VEHICLES PURSUANT TO  
ARTICLE VII, SECTION 1(b) OF THE CONSTITUTION  
OF THE STATE OF FLORIDA, AND FLA. STAT.,  
§320.01 AND §320.08.

The constitutional provisions applicable hereto provide as follows. In Article VII, Section 1(b):

Motor vehicles, boats, airplanes, trailers,  
trailer coaches and mobile homes, as defined  
by law, shall be subject to a license  
tax for their operation in the amounts  
and for the purposes prescribed by law,  
but shall not be subject to ad valorem  
taxes.

(Emphasis supplied) Fla. Stat., §320.01, defines motor vehicles as follows:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor, and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction

engines, road rollers, such vehicles as run only upon a track, bicycles or mopeds as defined in s. 316.003(2).

(Emphasis supplied)

Fla. Stat., §320.17, authorizes the Department of Motor Vehicles to:

[D]etermine the classification of, and the amount of license tax due on, any motor vehicle or mobile home required to be registered under the laws of this state and may, in accordance with the provisions of this chapter, fix, determine and assess the amount of license tax and fees to be paid for registration or renewal of registration....

Fla. Stat., §320.08, classifies and fixes the license fee for motor cranes in the following language:

**License taxes.** -- Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles ... which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

....

(5) ... SPECIAL PURPOSE VEHICLES. --

....

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity: \$32.50 flat.

(Emphasis supplied)

CONCLUSION

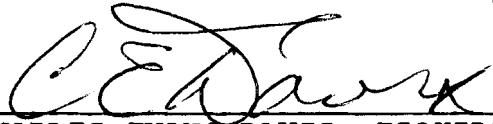
The opinion sought to be reviewed herein (A 1) holds that Article VII, Section 1(b) does not mean what its terms appear to say and therefore clearly and expressly construes a provision of the State Constitution. This Court, therefore, has jurisdiction to review the same. There are thousands of such motor cranes throughout the state and their taxation involves issues of statewide application and concern and should be resolved by this the highest court in the state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and authentic copy of the foregoing has been furnished by mail to STEVEN R. BECHTEL, ESQUIRE, 100 East Robinson Street, Orlando, FL 32801; and to GAYLORD A. WOOD, JR., ESQUIRE, 304 S.W. 12th Street, Ft. Lauderdale, FL 33315, this 29<sup>th</sup> day of January, 1988. ↗



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