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IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF BUSINESS REGULATION,

Appellant,

vs.

Case Number 73,119

CLASSIC MILE, INC., a Florida corporation, and ANTHONY ALTMAN,

Appellees.

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THE GALAXY PROJECT, INC., ETC.,

Appellant,

vs.

Case Number 73,121

CLASSIC MILE, INC., a Florida corporation, and ANTHONY ALTMAN,

Appellees.

REPLY BRIEF OF APPELLANT GALAXY PROJECT, INC.

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ARGUMENT

THE CREATION OF A "CLOSED-CLASS" DOES NOT RENDER SECTION 550.355 A SPECIAL LAW.

The creation of a "closed-class" does not, in and of itself, render Section 550.355, a special law. This Court has twice upheld, as a general law, legislation which created a closed-class. See Givens v. Hillsborough County, Florida, 46 FLA. 402, 35 So. 8 (1935), and Bloxham v. Florida Central and Penninsular Railroad Company, 35 FLA. 65, 17 So. 90 (1885). Indeed, this Court in Givens took pains to distinguish the line of authority which upheld legislation where the classification scheme resulted in the inclusion of but one member of the class at the time of passage but left the class open for inclusion of other members in the future. Moreover, the fact that Givens and Bloxham did not involve parimutuel legislation does not render those decisions inapplicable herein.

Simply stated, the existence or not of a closed-class is but one test to determine whether legislation is special or general. This Court found in Givens and Bloxham that the creation of a closed-class did not render the legislation void as a special law. The closed-class parimutuel legislation stricken by this court as a special law in West Flagler Kennel Club, Inc., v. Florida State Racing Commission, 153 So.2d 5 (Fla. 1963), was found to be arbitrary and not uniform or equal in its application among those counties and parimutuel tracks similarly situated. Id. at 9.

Clearly, West Flagler was decided on equal protection grounds and was not predicated solely upon the fact that the legislation created a closed-class.

Likewise, this Court's reversal of the District Court of Appeal in Department of Legal Affairs v. Sanford-Orlando Kennel Club, 434 So.2d 879 (Fla. 1983), was predicated upon the District Court's erroneous finding that the legislation created a closed-class. As this Court noted in Sanford-Orlando Kennel Club, the subject legislation was, in fact, open and was potentially applicable to other parimutuel tracks. Id. at 882. As such, the District Court's finding that the class was closed was erroneous and this Court did not have to address the legal effect of a closed-class as it was not presented with that situation. Instead, this Court decided Sanford-Orlando Kennel Club on the basis of well established judicial precedent upholding open-classed legislation containing a classification scheme rationally related to the subject of the law.

Thus, the issue in the instant case should not be whether the legislation is closed but, instead, whether there is a rational relationship between the subject matter of the legislation (parimutuel wagering on simulcast thoroughbred horse races) and the sole member of the class (Marion County). The trial court found, on an unrebutted record, that the legislature acted reasonably in selecting Marion County as the site of the proposed simulcast facility, there being no other Florida county which has

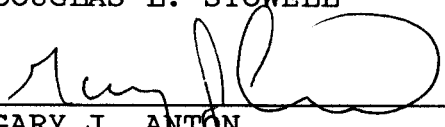
a nexus with the thoroughbred horse racing industry as does Marion County. Additionally, as the State has pointed out in its initial and reply briefs, there are certain important regulatory goals to be achieved by limiting the site of this new parimutuel activity to a single location. Thus, when viewed in the proper context, Section 550.355 should be found by this Court to have been validly enacted as a general law.

CONCLUSION

In all other respects, Appellant Galaxy relies upon the argument presented in its initial brief and the argument presented by the State in its reply brief. For the reasons presented in the briefs, Appellant Galaxy Project, Inc., respectfully requests that this Court reverse the decision of the First District Court of Appeal rendered on September 1, 1988, and hold Section 550.355, Florida Statutes (1987), to be a constitutionally sound general law.

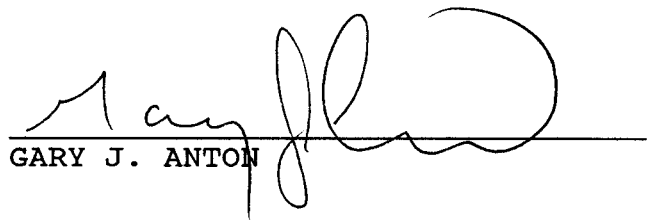
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to John C. Courtney, Esquire, Department of Business Regulation, 725 Bronough Street, The Johns Building, Room 212, Tallahassee, Florida 32399-1000; and to Frederick P. Karl, Thomas J. Maida, and Michael G. Maida of Karl, McConnaughay, Roland & Maida, P.A., 101 North Monroe Street, Monroe Park Tower, Suite 950, Tallahassee, Florida 32302, this 5th day of December, 1988.


GARY J. ANTON