

IN THE SUPREME COURT OF FLORIDA

FLORIDA POLICE BENEVOLENT,  
ASSOCIATION, INC.,

Petitioner,

vs.

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES,

Respondent.

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CASE NO. 75,621

FIRST DISTRICT  
89-11239

On Review from the District  
Court of Appeal, First District  
State of Florida

PETITIONER'S INITIAL BRIEF ON THE MERITS

Gene "Hal" Johnson  
300 East Brevard Street  
Tallahassee, Florida 32301  
(904) 222-3329 Extension 406  
Florida Bar No. 200141

Counsel for Petitioner

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**Preliminary Statement**

The following designations and abbreviations will be used throughout this brief:

Petitioner, Florida Police Benevolent Association, Inc.: "Petitioner" or "Florida P.B.A."

Respondent, Department of Agriculture and Consumer Services: "Department."

All references to the Florida Statutes will be to the 1989 version unless otherwise noted.

### Statement of the Facts and the Case

In 1975, the legislature created the classification of road guard inspection special officer within the Florida Department of Agriculture and Consumer Services. See Ch. 75-215, Section 2, Laws of Florida. As originally enacted, such officers were granted

...power and authority to make arrests, with or without warrants as provided in s. 570.15, for the violations of law committed within the jurisdiction of s. 570.15, to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901, and all such special officers shall have the right and authority to carry arms while on duty, provided such officers shall meet the requirements of the Police Standards and Training Commission, established under s. 943.11.

Section 570.151(2), Florida Statutes (1975).

In 1988, the legislature amended Section 570.151(2) to provide greater specificity concerning the agriculture and other laws to which the arrest authority of road guard inspection special officers applies. See Ch. 88-341, Section 3, Laws of Florida.<sup>1</sup> The amendatory language provides:

All such special officers shall have power and authority to make arrests, with or without warrants as provided in s. 570.15 and all other laws relatina to livestock, citrus and citrus products, tomatoes, limes, avocados, plants and other horticultural products and any section with respect to

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<sup>1</sup> The text of Ch. 88-341, Laws of Florida can be found in the Appendix at page A1.

which any authority is conferred by law on the department to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901

. . . .

Section 570.15L (2), Florida Statutes (1989) (emphasis supplied).

Also during the 1988 session, the legislature amended Section 901.15, Florida Statutes, which defines situations when a law enforcement officer may arrest a person without a warrant. See Chapter 88-381, Section 53, Laws of Florida.<sup>2</sup> The amendment created Section 901.15(11), Florida Statutes (1989), which deals with the authority of state law enforcement officers to make warrantless felony arrests. This new subsection provides:

A law enforcement officer may arrest a person without a warrant when:

. . . .

(11) He is employed by the State of Florida as a law enforcement officer as defined in s. 943.10(1), or part-time law enforcement officer as defined in s. 943.10(6), and:

(a) He reasonably believes that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony;

(b) While engaged in the exercise of his state law enforcement duties, he

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<sup>2</sup> The text of Chapter 88-381, Laws of Florida can be found in the Appendix at page A4.

reasonably believes that a felony has been or is being committed; or

(c) A felony warrant for the arrest has been issued and is being held for execution by another peace officer.

Subsequent to the enactment of Chapter 88-381, creating Section 901.15(11), the Florida P.B.A. petitioned the Department for a declaratory statement to determine whether, in the view of the Department, road guard inspection special officers possess the warrantless felony arrest authority provided in Section 901.15(11) since the special officers are employed by the State as law enforcement officers. While acknowledging its special officers are State law enforcement officers within the meaning of Section 901.15(11), the Department's declaratory statement expressed the view that its special officers do not possess the warrantless arrest authority delineated in the section because Section 570.151(2) confines the arrest authority of the special officer to violations of laws within the jurisdiction of the Department.

The Florida P.B.A. appealed the Department's declaratory statement to the district court. It contended before the court that Section 901.15(11) is clear on its face. The section broadens the warrantless arrest authority of all State law enforcement officers, including the Department's special officers.

The district court rejected the Florida P.B.A.'s construction of Section 901.15(11) and approved the Department's determination that the section does not confer authority upon its special officers to effect felony arrests outside of the

authority granted by Section 570.151(2). Due to the importance attendant upon a construction of a felony arrest statute, the district court certified the following question to the Florida Supreme Court as a question of great public importance:

DOES THE WARRANTLESS FELONY  
ARREST AUTHORITY CONFERRED UPON  
LAW ENFORCEMENT OFFICERS, BY  
SECTION 901.15(11), FLORIDA STATUTES  
(SUPP. 1988), APPLY TO THE ROAD  
GUARD INSPECTION SPECIAL OFFICERS  
EMPLOYED BY THE DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES?

This case comes before the Court based on the question certified by the district court.

### Summary of Argument

The rules of statutory interpretation and construction are to be utilized to discern legislative intent from ambiguously worded statutes. Holly v. Auld, 450 So.2d 217 (Fla. 1984). In the present case, the language and meaning of Section 901.15(11), Florida Statutes are clear and unambiguous: all law enforcement officers employed by the State possess authority to make a warrantless arrest in any of the three situations outlined in subsections (a)-(c) of the provision. The Department's road guard inspection special officers possess the authority conferred by the section.

Assuming Section 901.15(11) is "arguably" ambiguous, the polestar for the construction of a legislative enactment is the legislature's intent. Deltona Corporation v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969). This intent is drawn from the enactment as a whole including the evil to be corrected, the language of the act, including its title, and the history of the enactment. Certain lands v. City of Alachua, 518 So.2d 386 (Fla. 1st DCA 1987).

The Florida P.B.A. will demonstrate to the Court the legislature intended to confer on the special officer the warrantless felony arrest authority provided in Section 901.15(11). Furthermore, it will demonstrate Section 570.15(11), Florida Statutes and Section 901.15(11) are not in direct conflict. If the two provisions are given their plain meaning, they can be effectively harmonized so that each has a reasonable field of operation. City of Boca Raton v. Gidman, 440 So.2d 1277, 1282 (Fla. 1983).

Thus, the Court should reverse the construction of Section 901.15(11) reached by the Department and the district court and find that the section does confer warrantless felony arrest authority on the road guard inspection special officers under the circumstances outlined in Section 901.15(11)(a)-(c), Florida Statutes.

### Araument

THE WARRANTLESS FELONY ARREST AUTHORITY CONFERRED UPON STATE LAW ENFORCEMENT OFFICERS BY SECTION 901.15(11), FLORIDA STATUTES (1989) APPLIES TO ROAD GUARD INSPECTION SPECIAL OFFICERS EMPLOYED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The question presented to the Court in this matter involves the construction of a felony arrest statute, Section 901.15(11), Florida Statutes. The position of the Florida P.B.A. is Section 901.15(11) confers upon all State law enforcement officers warrantless felony arrest authority under certain limited circumstances. Since the road guard inspection special officers employed by the Department of Agriculture and Consumer Services are State law enforcement officers, it follows that the special officers possess the warrantless felony arrest authority conferred by Section 901.15(11).

The position of the Florida P.B.A. is not premised on any specific rule of statutory construction. In fact, it is and remains the Association's viewpoint that use of the rules of statutory construction is inappropriate in construing Section 901.15(11). As this Court recognized in Holly v. Auld, 450 So.2d 217 (Fla. 1984):

[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

450 So.2d at 219, quoting A. R. Doualas. Inc. v. McRaney, 137 So. 157, 159 (Fla. 1931). Section 901.15(11) meets this standard. It is "clear and unambiguous and conveys a clear and definite meaning."

Given the fact the Department's special officers are law enforcement officers employed by the State, is there any question as to the officers' warrantless felony arrest authority pursuant to Section 901.15(11)? The answer is no, not if the statute is given its plain and obvious meaning. The special officers possess the warrantless felony arrest authority conferred by the section.

The Department and the district court reject this construction of Section 901.15(11) on the basis that it would "abrogate the express limitations on the warrantless arrest authority of road guard inspection special officers, as those limitations are delineated in Section 570.151(2), Florida Statutes, and adopted at the same legislative session." Opinion at 10.<sup>3</sup> The Department and district court find Section 901.15(11) to be clear, but in direct conflict with Section 570.151(2), Florida Statutes. Opinion at 8.

The Florida P.B.A. would respectfully assert Section 901.15(11) and Section 570.151(2) are not in direct conflict, and Section 901.15(11) does not "abrogate the express limitations" on the special officers' warrantless arrest authority found in Section 570.151(2). A reasoned application of the rules of statutory construction support these assertions.

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<sup>3</sup> The opinion of the district court can be found in the Appendix at page A11.

It is the most fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided. Deltona Corporation v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969). To determine legislative intent, a court must consider the act as a whole--"the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already bearing on the subject." Certain Lands v. City Alachua, 518 So.2d 386, 388 (Fla. 1st DCA 1987), quoting State v. Webb, 398 So.2d 820, 824 (Fla. 1981) (emphasis in the original).

Utilizing the aforementioned criteria to ascertain the legislative intent of Section 901.15(11) reveals the new section is clearly intended to extend statewide warrantless arrest authority to all State law enforcement officers, including the Department's special officers. The title for the legislation, as proposed and adopted by the legislature, makes clear its purpose: to provide "statewide jurisdictional warrantless arrest powers to all state law enforcement officers under certain circumstances." See Ch. 88-381, Section 53, Laws of Florida. More compelling than the title of the legislation, is its purpose. As outlined in the Senate Staff Analysis of the legislation, the intended purpose of the legislation is to broaden the warrantless arrest authority of State law enforcement officers including specifically "agriculture road guard inspectors." See Florida Senate Bills, 1988 Session, SB 794, Senate Staff Analysis.<sup>4</sup> In fact, "the evil to be corrected" by the legislation, limited warrantless authority of certain law enforcement officers, was based, in part, on

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<sup>4</sup> The text of Senate Staff Analysis is found in the Appendix at pages A25.

examples of the inability of road guard inspection special officers to take effective and timely law enforcement action by making a warrantless felony arrest. See Florida Senate Bill, 1988 Session, SB 794, Senate Staff Analysis.

Turning to the legislative history surrounding the amendment of Section 570.151(2), it appears intended to modify the duties of road guard inspection special officer. The amendatory language specifies the agriculture laws to which the arrest authority of the special officers applies. Ch. 88-341, Section 3, Laws of Florida. Significantly, whereas the arrest authority of the special officers was previously limited to "violations of law committed within the jurisdiction of s. 570.15," the amendatory language broadens the special officers' arrest authority to encompass "any section to which any authority is conferred by law on the department... ." The special officers continue to be able to exercise their arrest authority "to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901." Ch. 88-341, Section 3, Laws of Florida.

Thus, it appears Section 570.15 (2) operates to prescribe the primary duties and functions of the road guard inspection special officers in the area of agriculture law and those other areas conferred by law on the Department. Section 901.15(11) operates to ensure the special officers, and all State law enforcement officers, are just as fully and legally equipped to perform, not only the duties unique to their primary "field of operation," but also, those duties which inherently flow to them as law enforcement officers where the variety of serious criminal conduct dictates a broader "field of operation." Simply stated, Section 901.15(11) is

a logical extension of a State law enforcement officer's primary duties in the limited set of circumstances recognized by the legislature as requiring immediate law enforcement action.

Such a construction of Section 570.151(2) and Section 901.15(11) serves to harmonize the two provisions and still allow each a reasonable field of operation. While this is consistent with the rules of statutory construction, City of Boca Raton v. Gidman, 440 So.2d 1277, 1282 (Fla. 1983), the Department and the district court reject the construction because of a direct conflict between the two provisions. Opinion at 6-7.

The direct conflict noted by the Department and the district court is not evident from a facial examination of the two statutes. As noted, each appears to have a reasonable field of operation. Rather, the conflict results from the "implicit exclusion" of general felony arrest power from the powers enumerated in Section 570.151(2). Opinion at 8.

The district court utilizes the case of State v. Parsons, 549 So.2d 761 (Fla. 3d DCA 1989) to support its construction of Section 570.151(2) and the conclusion that its general felony arrest power is implicitly excluded by the section. While concededly the cases are similar, the Parsons decision is readily distinguishable on its facts.

In the Parsons case, the district court determined that marine patrol officers did not have the authority to stop and cite drivers for noncriminal traffic

infractions. 549 So.2d at 763. The court based its decision, in part, on the fact that Section 316.640, Florida Statutes (1987), did not list marine patrol officers among those law enforcement officers specifically authorized to enforce traffic law. 549 So.2d at 764. The court further rejected the State's argument based upon Section 370.021(5), Florida Statutes, that marine patrol officers have "powers to investigate and arrest for any violation." As the Court correctly noted, the statutory language of Section 370.021(5) clearly confined the officers' arrest authority to the laws and rules which "came under their jurisdiction." 549 So.2d at 764.

In distinguishing Parsons for the instant case, two facts are significant. First, unlike the Parsons case, the operative limiting language relating to special officers, i.e. "violation of law committed within the jurisdiction of s.570.15," was stricken from the section by the 1988 amendment to Section 570.151(2). Second, unlike the Parsons case, the warrantless felony arrest authority language of Section 901.15(11) encompasses all State law enforcement officers and road guard inspection special officers are State law enforcement officers.

Thus, unlike the Parsons case, the legislature affirmatively removed the potentially limiting language concerning the special officer's arrest authority from Section 570.151(2) and in the same legislative session broaden the warrantless felony arrest authority of all State law enforcement officers. Logic dictates that had the legislature desired to limit the warrantless felony arrest authority of the special officers it would have done so explicitly, not implicitly.

Finally, even assuming, arguendo, that a direct conflict between the two statutes can be discerned by the Court, the result urged by the Department and the district court does not necessarily obtain. See Sparkman v. State ex rel Bank for Ybor City, 71 So. 34, 39 (Fla. 1916).

In Sparkman, the Supreme Court of Florida found that "[i]n the absence of express repeals or irreconcilable repugnancy, the effect of the latter statute upon a former one affecting the same subject depends upon the intent of the lawmaking power; and this is true whether the two statutes are passed in the same session or at different sessions for the legislature." 71 So. at 39 (emphasis supplied). More significantly, this Court concluded:

Where there is a material repugnance in the statutory regulations, or where there is anything from which an intent that a latter act [or one occurring in the same legislative session] shall supersede a prior act may be fairly inferred, it will be given that effect, particularly when the latter act covers a broader general subject and contains a portion of the particular provisions of the former act, and adds to some portions and omits other portions of such particular provisions so as make such particular regulations contained in the prior act to conform to the purpose and policy of the later act, covering a broader subject, including the latter.

71 So. at 39. (emphasis added).

In the present case, the legislature's intent to broaden the warrantless felony arrest authority of the State's law enforcement officers, and specifically the special

officers, is clear. Since Section 901.15(11) covers a broader general subject and adds to the arrest authority *of* the special officers, it should be given effect.

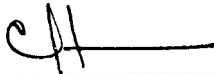
**Conclusion**

As this case demonstrates the rules of statutory construction can be used to support various construction of almost any statute. For this very reason, the Court had repeatedly counseled against using the rules when the language for a statute is clear and conveys a clear meaning. Section 901.15(11) is clear and conveys a clear meaning. Section 570.151(2) is clear and conveys a clear meaning. Each has its own field of operation.

This Court should construe Section 901.15(11) as it was intended by the legislature: as conferring on all State law enforcement officers, including road guard inspection special officers, warrantless felony arrest authority. The construction of Section 901.15(11) reached by the Department and the district court should be reversed.

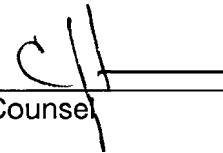
DATED this 30th day of March, 1990.

Respectfully,

  
\_\_\_\_\_  
GENE "HAL" JOHNSON  
Counsel for Petitioner

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Initial Brief on the Merits has been furnished, by mail, to MALLORY HORNE, General Counsel, Department of Agriculture and Consumer Services, Mayo Building, Tallahassee, Florida 32301 this 30th day of March, 1990.

  
\_\_\_\_\_  
Of Counsel