

IN THE SUPREME COURT OF FLORIDA

DAVID JONES and JOE SQUARE,

Petitioners,

v.

GOVERNOR LAWTON CHILES, et  
al., and FRANKLIN COUNTY,  
FLORIDA,

Respondents.

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CASE NO.: 85,932  
DCA-1: NO. 93-2590

46,609  
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29p.  
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(29pp.)

PETITIONERS' JURISDICTIONAL BRIEF

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

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TABLE OF CONTENTS

	PAGE NO.	
TABLE OF CITATIONS . . . . .	ii-iii	
STATEMENT OF THE CASE AND FACTS . . . . .	1	
SUMMARY OF THE ARGUMENT . . . . .	4	
JURISDICTIONAL STATEMENT . . . . .	4	
ARGUMENT . . . . .	5	
UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY PROHIBITS A LEGISLATIVE GRANT OF UNFETTERED POWER TO NONCHARTER COUNTIES TO DENY ACCESS TO THE STATE'S NATURAL RESOURCES NOTWITHSTANDING CONSTITUTIONAL AND STATUTORY HOME RULE PROVISIONS . . . . .		5
CONCLUSION . . . . .	9	
CERTIFICATE OF SERVICE . . . . .	9	

TABLE OF CITATIONS

TABLE OF AUTHORITIES

PAGE NO.

**CITATIONS**

<u>Amara v. Town of Daytona Beach Shores</u> , 181 So.2d 722 (Fla. 1st DCA 1966) . . . . .	8
<u>Askew v. Cross Keys Waterways</u> , 372 So.2d 913 (Fla. 1978) . . . . .	7
<u>Board of County Commissioners of Brevard v. Snyder</u> , 627 So.2d 469, 474 (Fla. 1993) . . . . .	7
<u>Chiles v. Children A, B, C, D, E, &amp; F</u> , 589 So.2d 260 (Fla. 1991) . . . . .	7
<u>Dickinson v. State</u> , 227 So.2d 36, 38 (Fla. 1969) . . . . .	8
<u>Florida Gas Transmission Company v. PSC</u> , 635 So.2d 941 (Fla. 1994) . . . . .	7
<u>Harrington &amp; Company, Inc. v. Tampa Port Authority</u> , 358 So.2d 168 (Fla. 1978) . . . . .	7
<u>High Ridge Management Corporation v. State</u> , 354 So.2d 377 (Fla. 1977) . . . . .	7
<u>Pridgen v. State</u> , 125 Fla. 598, 170 So. 653 (Fla. 1936) . . . . .	7-8
<u>Speer v. Olson</u> , 367 So.2d 207,210 (Fla. 1978) . . . . .	5
<u>State ex rel. Davis v. Fowler</u> , 94 Fla. 752, 114 So. 435 (Fla. 1927) . . . . .	8

**FLORIDA STATUTES**

Ch. 125, Fla. Stat. (1993) . . . . .	3, 5
Ch. 253, Fla. Stat. (1993) . . . . .	3
Fla. Stat. §125.01(4) (1993) . . . . .	6
Fla. Stat. §253.68 (1993) . . . . .	1-8
Fla. Stat. §253.69 (1993) . . . . .	2

**TABLE OF AUTHORTIES**

**PAGE NO.**

**FLORIDA CONSTITUTION**

Art. II, §7, Fla. Const. . . . . 7  
Art. V, §3(b)(3), Fla. Const. . . . . 4  
Art. VIII, §1, Fla. Const. . . . . 3  
Art. X, §11, Fla. Const. . . . . 7

**COURT RULES**

Fla. R. App. P. 9.030(a)(2)(A)(i). . . . . 4

**FLORIDA JURISPRUDENCE**

Fla. Jur. 2d, Words and Phrases . . . . . 7

STATEMENT OF THE CASE AND FACTS<sup>1</sup>

The Petitioners brought an action in circuit court for declaratory relief and to enjoin the enforcement of certain provisions contained within Section 253.68, Florida Statutes (1993). (R. 73).

The Petitioners were participants in a Job Training Partnership Act program created to retrain and employ displaced and unemployed oyster workers. The program was instituted due to the hardships which had befallen the Apalachicola Bay area and the designation of Franklin County as a disaster area. (R. 84-85, 395).

The program's purpose was to retrain and employ the oyster workers in Franklin County in aquaculture. (R. 86, 396). The Florida Panhandle Private Industry Council and the Harbor Branch Oceanographic Institute, with the support of Franklin County, sought funding from the State's Department of Labor and Employment Security. (R. 86, 141, 396). The Department of Labor and Employment Security granted \$2,110,227 in federal funds for the jobs program. (R. 86). These funds were allocated in an effort to create permanent jobs for the County. One hundred and eighty-eight (188) participants entered the retraining program, and of this, ninety (90) persons were certified to engage in aquaculture farming. The Petitioners were among those certified. (R. 86-87).

After successfully completing the jobs program, the

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<sup>1</sup> References are to the record below (which will be subsequently forwarded upon order of this Court). In addition to the decision of the district court of appeal, another document also contained in the record below is attached as part of the Appendix.

Petitioners (and other certified participants) filed applications for one-acre leases of submerged lands in Apalachicola Bay from the Internal Improvement Trust Fund, which owned the land on behalf of the State. (R. 75, 83, 391, 394). The applications were filed with the Department of Natural Resources pursuant to Section 253.69, Florida Statutes (1993).

Respondent, Franklin County Board of County Commissioners, filed a timely objection to each of the lease applications pursuant to Section 253.68, Florida Statutes (1993), thwarting the efforts of the Petitioners to obtain leases. (R. 83, 394).

Petitioners' Petition for Declaratory and Injunctive Relief was filed on February 27, 1991. (R. 1-18) The petition was subsequently amended on May 31, 1991. (R. 73-305) The Petitioners' petition raised several issues including the unlawful delegation of power granted to the county.

Although the original action was brought against several defendants, all parties except the Respondent Franklin County Board of County Commissioners were subsequently dismissed. (R. 412-413) The dismissal of the Department of Natural Resources and its Executive Director, along with the Board of Trustees of the Internal Improvement Trust Fund (Governor and Cabinet) resulted from a Stipulation and Settlement Agreement of July 1, 1992. (R. 430-431) Of the certified participants who filed applications, 13 (including Petitioners) were subsequently approved by the Board of Trustees in the face of the county's objection (though the approval is conditioned on a favorable outcome of this action or a

withdrawal of the resolution of objection by the county). (R. 494-496) Thus, 13 participants have satisfied all of the state requirements but are being denied leases based solely on the county's objections. (R. 494-496)

A Final Summary Judgment was issued on July 19, 1993, by the circuit court which granted the Respondents' Motion for Summary Judgment (holding the statute valid) and denied the Petitioners' Motion for Summary Judgment. (R. 508-517)

An appeal solely on the issue of the constitutionality of Section 253.68, Florida Statutes (1993), was made to the First District Court of Appeal to review the trial court's order and on May 22, 1995, the District Court affirmed the order of the trial court. The District Court held that Section 253.68, Florida Statutes (1993), was valid reasoning that (1) the submerged lands in question were in Franklin County; (2) non-charter counties like Franklin County had broad legislative powers apart from Chapter 253 under Chapter 125, Florida Statutes (1993), implementing Article VIII, Section 1(f) of the Florida Constitution; and (3) counties were free to exercise legislative powers the Legislature had delegated to them.

The Petitioners' notice to invoke the discretionary jurisdiction of this Court was timely filed on June 21, 1995.

### SUMMARY OF THE ARGUMENT

In this case, the District Court of Appeal found Section 253.68, Florida Statutes (1993), constitutional, giving counties an unfettered veto power over solely state owned property with no policy or guidelines issued by the state to guide the counties. The issue raised is: do constitutional and statutory home rule provisions relating to noncharter counties permit a legislative grant of unfettered power to a county to deny access to the state's natural resources in derogation of well defined and delineated decisions of this court? This case presents important policy and legal questions to this Court regarding:

(1) Existence of a county's home rule powers over state owned property;

(2) Whether the Legislature can delegate to a county a power which exceeds the home rule power of self governance in the absence of any substantive policy, statement or guidelines; and

(3) Whether a county may be delegated the authority to interfere in an arbitrary and capricious manner in the individual livelihoods of members of the community.

### JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that declares a state statute valid. Art. V, §3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(i).

## ARGUMENT

UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY PROHIBITS A LEGISLATIVE GRANT OF UNFETTERED POWER TO NONCHARTER COUNTIES TO DENY ACCESS TO THE STATE'S NATURAL RESOURCES NOTWITHSTANDING CONSTITUTIONAL AND STATUTORY HOME RULE PROVISIONS.

The issue raised by this case is one of first impression--in light of constitutional and statutory home rule provisions, does a legislative grant of veto power to counties over individual lease applications on state-owned property violate constitutional provisions prohibiting unlawful delegation of legislative authority? Petitioners found no cases interpreting home rule powers granted constitutionally and statutorily to noncharter counties in relation to decisions of this court concerning unlawful delegation of legislative authority.

In the instant case, in determining the county's authority, the First District Court of Appeal analyzed the legislative powers of noncharter counties that are conferred through home rule provisions, pursuant to Chapter 125, Florida Statutes (1993).<sup>2</sup> As further support, the court cited Speer v. Olson, 367 So.2d 207,210 (Fla. 1978) for the proposition that "the legislative intent 'in enacting the [then] recent amendments to Chapter 125, Florida Statutes (1993), was to enlarge the powers of counties through home rule to govern themselves.'" What is basic to the application of

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<sup>2</sup> Although the court relied on Chapter 125 powers, the parties never briefed this issue. Petitioners failed to brief the issue because they were, as they are now, operating under the belief that the grant of authority given the County under Section 253.68, Florida Statutes, is a narrow grant of authority, unrelated to home rule powers of self governance.

home rule powers is the concept of counties governing themselves. Or, stated another way in the Commentary to the 1968 Revision of Article VIII, Section 1(f), Florida Constitution, county governments may be delegated all powers of self government. In this case, the power is not one relating to property owned by the county. Indeed, although the court specifically relies on Section 125.01(4), Florida Statutes (1993), which provides that a county may prohibit for specified reasons "saltwater fishing from real property owned by that county" (emphasis added) it acknowledges on Page 6 of its opinion that title to the lands in question is held by the state, which (through the Board of Trustees of the Internal Improvement Trust Fund) has responsibility for leasing.<sup>3</sup> It is exactly because of the state's ownership and responsibility to lease state submerged lands that the veto provision in Section 253.68, Florida Statutes (1993), is not a power of self government and cannot be based on home rule authority.

Without a basis in home rule authority, can a Legislature delegate power to the county without appropriate guidelines? Although the First District Court of Appeal relies heavily on the characterization of the county as a legislative body in its own right, the power conferred by Section 253.68, Florida Statutes (1993) is not legislative in nature. A legislative power is one

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<sup>3</sup> Indeed the affected statute itself, Section 253.68, Florida Statutes, acknowledges the county does not own the land. It states in pertinent part: "...of a county within whose boundaries, if the same were extended to the extent of the interest of the state, the proposed leased area would lie... ."

State, 125 Fla. 598, 170 So. 353 (Fla. 1936) (inadequate standards in examining prospective dentists); State ex rel. Davis v. Fowler, 94 Fla. 752, 114 So. 435 (Fla. 1927) (inadequate standards in certifying classifications of plumbers); and Amara v. Town of Daytona Beach Shores, 181 So.2d 722 (Fla. 1st DCA 1966) (court found that a city ordinance set forth no criteria for determining the fitness of concessionaires). In fact, in Dickinson v. State, 227 So.2d 36, at 38 (Fla. 1969), this Court in determining that the Comptroller had inadequate standards to approve applications for cemeteries, specifically stated that the "right to engage in a lawful business is an integral part of our free enterprise system which should not be shackled or deterred unless by due process of law."

CONCLUSION

This Court has discretionary jurisdiction to review the decision below. Due to the need for reconciliation of the constitutional provisions at issue in this case, the conflict with previous opinions of this court, and the impact on citizens' ability to work in coastal counties throughout this state, this Court should exercise its discretionary jurisdiction to consider the merits of the Petitioners' argument.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Alfred O. Shuler, Post Office Drawer 850, Apalachicola, Florida, 32320, this 5<sup>th</sup> day of July, 1995.

*Kristine E. Knab*

Kristine E. Knab

JH:cd

IN THE SUPREME COURT OF FLORIDA

DAVID JONES and JOE SQUARE,

Petitioners,

v.

CASE NO.: 85,932  
DCA-1: NO. 93-2590

GOVERNOR LAWTON CHILES, et  
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Respondents.

---

APPENDIX

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INDEX

	PAGE NO.
District Court of Appeal's Opinion . . . . .	1
Certification of Minutes of Meeting of Board of Trustees Approving Lease Applications . . . . .	12
Certificate of Service . . . . .	15

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

DAVID JONES and JOE SQUARE,  
Appellants,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

GOVERNOR LAWTON CHILES, et  
al., and FRANKLIN COUNTY,  
FLORIDA,

CASE NO. 93-2590

Appellees.

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Opinion filed May 22, 1995.

An appeal from the Circuit Court for Leon County.  
P. Kevin Davey, Judge.

Cynthia Denise Johnson, Kristine Knab, Ann Perko, and Jack L.  
McLean, Jr., of Legal Services of North Florida, Inc., for  
Appellants.

Alfred O. Shuler of Shuler and Shuler, Apalachicola, for Appellee  
Franklin County, Florida.

BENTON, J.

This is an appeal from a declaratory judgment entered after disappointed applicants for submerged land leases had exhausted possibilities for administrative remedies. The submerged lands sought to be leased lie in Franklin County. The Board of Trustees of the Internal Improvement Trust Fund agreed to grant appellants leases on condition that Franklin County withdraw its objection or in the event a court determined Franklin County's objection not to be a legal impediment. The County has not

withdrawn its objection. In entering the summary judgment now under review, the circuit court rejected the contention that section 253.68, Florida Statutes, is unconstitutional to the extent it gives counties "veto power" over submerged land leases. We affirm.

Appellants are alumni of a Job Training Partnership Act program designed to train unemployed oyster harvesters in aquaculture. At a cost exceeding \$2,000,000.00, the program was part of an effort, authorized under state and federal law, § 446.20, Fla. Stat. (1989); 29 U.S.C. § 1651 et seq., to provide gainful employment in Franklin County. After being "certified to engage in aquaculture farming," each appellant filed with the Department of Natural Resources an application to lease one acre of the submerged bottom of Apalachicola Bay for oyster aquaculture. The County's objection applies to all applications.

At one time oyster leases were flatly prohibited in Franklin County. § 370.16(9), Fla. Stat. (1987). The lifting of the ban took place after section 253.68 was already in place. Ch. 89-175, § 19, at 703-04, Laws of Florida. On the basis of this sequence, appellants argue that removing the prohibition evinced legislative intent to foreclose objection by Franklin County (alone among the sixty-seven) to submerged land leases. We find this argument unpersuasive. Nor do we perceive any basis for disturbing the trial court's decision that neither remarks by a chairman of the county commission nor the County's cooperation

with the training program afford a basis for setting aside the County's objection.

We therefore reach appellants' constitutional claims. Current law authorizes the Board of Trustees of the Internal Improvement Trust Fund to lease submerged lands for aquaculture on stated conditions, in accordance with criteria unchallenged here except for that portion of section 253.68, Florida Statutes (1993), which provides:

However, no lease shall be granted by the board when there is filed with it a resolution of objection adopted by a majority of the county commission . . . .

Appellants argue that this provision, unchanged from the 1991 version in effect when suit was brought, runs afoul of article III, section 1 of the Florida Constitution because "it grants the power to the county to determine what the law should be by authorizing it to decide if and when to ban the aquaculture activities of a particular lease applicant."

#### County's Legislative Powers

Non-charter counties like Franklin County have broad legislative powers quite apart from chapter 253, Florida Statutes (1993). County governments have legislative competence within the realm delineated by constitution and statute. E.g., Gessner v. Del-Air Corp., 154 Fla. 829, 17 So. 2d 522 (1944); State v. Special Road and Bridge Dist., 153 Fla. 44, 13 So. 2d 801 (1943). Within their area of competence, county commissions enjoy full

legislative autonomy. E.g., Isleworth Grove Co. v. Orange County, 79 Fla. 208, 84 So. 83 (1920); Bowden v. Ricker, 70 Fla. 154, 69 So. 694 (1915).

Implementing article VIII, section 1(f) of the Florida Constitution, chapter 125, Florida Statutes (1993), confers on counties authority to

(f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

(g) Prepare and enforce comprehensive plans for the development of the county.

(h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.

(j) Establish and administer programs of . . . conservation . . . and navigation . . . and cooperate with governmental agencies . . . in the development and operation of such programs.

(p) Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.

(w) Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

§ 125.01(1), Fla. Stat. (1993). With reference to "saltwater fish," defined to include oysters, § 370.01, Fla. Stat. (1993), section 125.01(4), Florida Statutes (1993), provides:

(4) The legislative and governing body of a county shall not have the power to regulate

the taking or possession of saltwater fish . . . with respect to the method of taking, size, number, season, or species. However, this subsection does not prohibit a county from prohibiting, for reasons of protecting the public health, safety, or welfare, saltwater fishing from real property owned by that county . . . .

These "provisions . . . shall be liberally construed in order to . . . secure for the counties the broad exercise of home rule powers authorized by the State Constitution." § 125.01(3), Fla. Stat. (1993).

The Florida Supreme Court has concluded that the legislative intent "in enacting the [then] recent amendments to Chapter 125, Florida Statutes, was to enlarge the powers of counties through home rule to govern themselves." Speer v. Olson, 367 So. 2d 207, 210 (Fla. 1978). Construing chapter 125, Florida Statutes, in light of article VIII, section 1(f), Florida Constitution (1968), our supreme court explained that "the county governing body . . . has full authority to act through the exercise of home rule power," Speer, 367 So. 2d at 211, "[u]nless the Legislature has pre-empted a particular subject relating to county government by either general or special law." Id. Accord, Santa Rosa County v. Gulf Power Co., 635 So. 2d 96, 99-100 (Fla. 1st DCA 1994) ("The only limitation on a county's implied power to act occurs if there is a general or special law clearly inconsistent with the powers delegated.") In the present case, of course, section 253.68, Florida Statutes, specifically authorizes each county to

make a local (essentially legislative) decision with reference to a local natural resource.

It is no objection to a statute that it may apply in some counties but not in others on account of action or inaction by the county commissions in the various counties. With respect to a general law creating positions for probation officers in counties whose county commissions determined probation officers were needed, the court, in State ex rel. Crim v. Juvenal, 121 Fla. 69, 73, 163 So. 569, 571 (1935), found a general law

sustainable as an appropriate legislative act designed to accomplish a general public purpose in the state at large, the act to become effective pari passu in the several counties of the state according to a factual determination to be made by the Governor and by the county commissioners of the local circumstances evidencing the need of the several counties from time to time for the services of a county probation officer in such counties as may seek the appointment of such officer at the hands of the chief executive of the state.

Section 253.68, Florida Statutes (1993) similarly authorizes action by the executive branch of state government "in such counties as may seek" it. Cf. State ex rel. McLeod v. Harvey, 125 Fla. 742, 170 So. 153 (1936) (statute allowing slot machines except in counties where voters disapprove upheld).

#### No Unlawful Delegation

The Board of Trustees of the Internal Improvement Trust Fund within the Department of Natural Resources holds title to sovereignty lands "for the use and benefit of the people of the

state pursuant to s. 7, Art. II, and s. 11, Art. X of the state constitution." § 253.001, Fla. Stat. (1993). The Board of Trustees of the Internal Improvement Trust Fund, not the counties, has executive responsibility for leasing submerged sovereignty lands. In discharging its responsibilities, the Board of Trustees of the Internal Improvement Trust Fund must act in conformity with legislative directives, just as every other agency of the executive branch must.

By acknowledging the counties' legislative prerogatives, we do not in any way "relax the doctrine of unlawful delegation of legislative power," Askew v. Cross Key Waterways, 372 So. 2d 913, 918 (Fla. 1978) (reh'g denied 1979), which forbids "assigning to the executive branch . . . broad discretionary authority," Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260, 263 (Fla. 1991), that our constitution has vested in the Legislature, Art. II, § 3, Art. III § 1, Fla. Const. (1968), or allowed the Legislature to delegate to city or county commissions. Art. VIII, §§ 1 and 2, Fla. Const. (1968).

Appellants rely heavily on certain language in Ex parte Lewis, 101 Fla. 624, 135 So. 147 (1931), a case decided before our current constitution was adopted. At issue there was the constitutionality of a statute that required, as a condition for a 60-day "closed season on the taking of fresh-water fish . . . in waters lying in two or more counties" the concurrence of each county. Our supreme court upheld the statute saying

the power to enact a law closing fresh waters in the county for a certain season is not delegated to the county commissioners, because the declaration of the policy of a closed season is found in the terms of the statute itself.

101 Fla. at 632, 135 So. at 151. See also Stewart v. Stone, 130 So. 2d 577, 579 (Fla. 1961). Appellants point out that, in enacting section 253.68, Florida Statutes (1993), the Legislature has left important policy questions to the county commissioners of the respective counties. But this does not run afoul of the 1968 constitution, as implemented by chapter 125, Florida Statutes (1993).

The appellants also rely on Harrington and Co., Inc. v. Tampa Port Auth., 358 So. 2d 168 (Fla. 1978); High Ridge Management, Corp. v. State, 354 So. 2d 377 (Fla. 1977); Prigden v. Sweat, 125 Fla. 598, 170 So. 653 (Fla. 1936); and Amara v. Town of Daytona Beach Shores, 181 So. 2d 722 (Fla. 1st DCA 1966). The statute authorizing Tampa's port authority to license stevedores, which the court struck down in the Tampa Port Authority case, "nowhere provided the clear and specific guidelines necessary to ensure," 358 So. 2d at 170, against the "delegation of undefined power by the Legislature," id., to a local executive agency, which our supreme court condemned as "tantamount to an abdication of [the Legislature's] lawmaking responsibility." Id. Apart from the "county veto" provision, the clarity and specificity of the pertinent guidelines governing

the Board of Trustees of the Internal Improvement Trust Fund, the executive agency in the present case, are not at issue.

High Ridge Management, Corp. and Prigden are similarly distinguishable because they involved delegation of legislative authority to executive agencies without adequate guidance, channeling, or restrictions. Town of Daytona Beach Shores is inapposite because the ordinance at issue there, in providing that beach concessionaires' licenses could be issued only with the approval of certain property owners, was held to be an impermissible delegation of the town's legislative authority to private individuals. 181 So. 2d at 724. Section 253.68 makes no delegation either to a local executive agency or to private persons. As a legislative body in its own right, the county commission is free to exercise legislative power the Legislature has delegated to it.

#### No Invidious Discrimination

Appellants also contend that section 253.68, Florida Statutes (1993), is unconstitutional because it fails to prohibit county commissions' discriminating unlawfully against individual applicants. They maintain that the challenged statute permits the County to pick and choose among lease applicants for improper reasons or to act arbitrarily in deciding to which proposed leases to object. At bottom, this is an argument against the exercise of discretionary authority of any kind by local government, an argument which ignores the Florida Constitution's

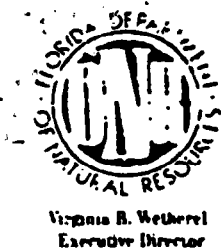
allocation of powers and responsibilities among state and local governmental institutions.

Lease applicants like all citizens are, of course, entitled to equal treatment under the law. Appellants' challenge, which is principally to the facial validity of the statute, entails neither allegation nor proof of unequal treatment, however. The amended petition for declaratory and injunctive relief makes no allegation that the County discriminated among individual applicants in lodging its objection under section 253.68, Florida Statutes (1991). The county commission's resolution made blanket objection to any and all leases of submerged land for which applications were pending, treating all citizens equally. Cf. Marine Fisheries Comm'n v. Organized Fishermen of Florida, 503 So. 2d 935 (Fla. 1st DCA 1987).

State action, whether taken by a county commission or by any other organ of state government is subject to the strictures imposed by the Florida and federal constitutions. We do not hold, however, that a county's particular geography may not dictate distinctions that the county commission should be free to explicate in a resolution filed under section 253.68, Florida Statutes (1993). Cf. Stewart v. Stone, supra. While lease applicants enjoy the same constitutional rights as other citizens dealing with government, we reject the contention that these rights include an automatic right to the grant of an application

for a lease of submerged lands, even in the face of a lawful objection by the county involved.

JOANOS and WOLF, JJ., CONCUR.



# FLORIDA DEPARTMENT OF NATURAL RESOURCES

Marjory Stueeman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399

Lawton Chiles  
Governor  
Jim Smith  
Secretary of State  
Ron Butterworth  
Attorney General  
Gerald Lewis  
State Comptroller  
Tom Gallagher  
State Treasurer  
Bob Crawford  
Commissioner of Agriculture  
Betty Castor  
Commissioner of Education

STATE OF FLORIDA  
COUNTY OF LEON

## CERTIFICATION

I, Judy A. Brooks, do hereby certify that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, met on December 1, 1992, and approved the following Item 9 on the agenda for that date.

### Item 9

REQUEST: Conditional approval of sovereignty submerged land leases/ state-owned submerged aquaculture leases pursuant to the settlement agreement in David Jones, et al. v. Governor Lawton Chiles, et al., Case No. 91-800, 2d Judicial Circuit.

COUNTY: Franklin

APPLICANTS: Joseph P. Square - Lease No. 19-AQ-039  
David N. Jones - Lease No. 19-AQ-040  
Helene A. Square - Lease No. 19-AQ-146  
Howard R. Garrett - Lease No. 19-AQ-147  
Harvey C. Whitehead - Lease No. 19-AQ-148  
Catherine A. Coulter - Lease No. 19-AQ-149  
Dwayne Forrest Reeder - Lease No. 19-AQ-150  
John R. Winfield - Lease No. 19-AQ-151  
M. Vernon Marshall - Lease No. 19-AQ-152  
Ronald H. Page - Lease No. 19-AQ-153  
Arthur Anthony Coulter, Jr. - Lease No. 19-AQ-154  
Chris J. Leckinger - Lease No. 19-AQ-155  
Grace M. Page - Lease No. 19-AQ-156

LOCATION: St. George Island, Unit 4 Parcel

CONSIDERATION: (1) Settlement of litigation in David Jones et al v. Governor Lawton Chiles, et al., Case No. 91-800, 2d Circuit Court; (2) initial \$200 application fee paid by Department of Labor and Employment Security under the Job Training and Partnership Act; and (3) subsequent renewal lease fees as appropriate.

ATTACHMENT

**STAFF REMARKS:** The Oyster Aquaculture Job Training Program was created to provide employment opportunities and relief for persons in the 1985 storm disaster area in Franklin County. The Program, funded through the Federal Job Training Partnership Act and the Florida Department of Labor and Employment Security, provided participants with a phased training program in oyster aquaculture, and assisted certified program participants in entering the local market. Because oyster aquaculture requires the use of submerged lands for the production part of the program, approval from the Board of Trustees for use of that land is required.

Section 253.68, F.S., provides, in part:

. . .the board of trustees may lease submerged lands to which it has title for the conduct of aquaculture activities. . . . However, no lease shall be granted by the board when there is filed with it a resolution of objection adopted by a majority of the county commission of a county within whose boundaries. . . the proposed leased area would lie.

On October 16, 1990, Franklin County adopted a resolution prohibiting the issuance of leases in the Apalachicola Bay to program participants. This action resulted in a lawsuit by the program participants against the Board of Trustees, the Department of Natural Resources and Franklin County. Pursuant to the settlement agreement entered into between the department and the participants on July 1, 1992, the department agreed to process the lease applications of certain participants and, subject to certain requirements being met, recommend conditional approval of the lease applications. Pursuant to the settlement agreement, approval of the leases is conditioned upon two events: (a) either the withdrawal of the resolution of objection by Franklin County or a determination by a court of competent jurisdiction that the resolution of objection is invalid; and (b) approval by the U.S. Army Corps of Engineers for use of a maximum of 18 inches of the water column overlying the submerged land that is the subject of the lease applications.


While the litigation between the program participants and Franklin County is still ongoing, conditional approval of the submerged lands leases for the listed applicants settles the lawsuit as between the Petitioners therein, the DNR, and the Governor and Cabinet in their capacity as the Board of Trustees of the Internal Improvement Trust Fund.

If the contingency conditions are satisfied, the program participants, who are the lease applicants shown above, may proceed without further action by the DNR or Board of Trustees to use the submerged lands in accordance with the lease conditions as detailed in the attached applications. If the contingency conditions are not satisfied, then the leases will not go into effect.

**RECOMMEND APPROVAL**

Certification December 1, 1992  
for Agenda Item 9  
Page Three

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board of Trustees of the Internal Improvement Trust Fund this 1st day of December, A.D. 1992.

  
\_\_\_\_\_  
Judy A. Brooks  
Division of State Lands  
Department of Natural Resources

SEAL

RESPECTFULLY SUBMITTED,

*Kristine E. Knab*

Kristine E. Knab

FBID: 0257125

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Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Alfred O. Shuler, Post Office Drawer 850, Apalachicola, Florida, 32320, this 5<sup>th</sup> day of July, 1995.

*Kristine E. Knab*

Kristine E. Knab

JH:cd