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POPULATION STATUTES UNDER THE
FLORIDA CONSTITUTION*

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Another of the so-called "population" statutes has been declared unconstitutional by the Florida Supreme Court in its recent decision in *Crandon v. Hazlett*.¹ This case is representative of a class deserving of the highest scrutiny. There are today about 1500² Florida statutes pertaining to counties or cities of a particular population and which have been enacted as general laws. In recent years the Supreme Court has held an amazingly high percentage of these laws which have come before it to be unconstitutional, saying they are in reality local laws. As a majority of these statutes have never been tested in the courts and as each succeeding legislature adds a few hundred more similar statutes, it may be well to consider what constitutes a general law classified according to population and what does not.

The 1945 Legislature passed a statute³ authorizing the county commission of each county having a population of more than 260,000 according to the last federal census and having a Juvenile and Domestic Relations Court to create a County Board of Visitors. The act further stated that each Board of Visitors existing in such a county when

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¹ 26 So. 2d 638.

² Based on actual count of county population act in 27 FSA.

³ Ch. 23053, Acts of 1945.

the act became law was abolished, and its powers were vested in the county commission. A prior statute had authorized the appointment of such a board in all of the counties by the Judge of the Juvenile and Domestic Relations Court.⁴ The Probation Officer of the Juvenile Court of Dade County, the only county affected by the 1945 statute, sought to enjoin the Dade County Commission from taking any action in pursuance of the statute, alleging, among other grounds, that it was in reality a local act and that the provisions of the Florida Constitution relative to such statutes had not been complied with.

The Florida Constitution provides that the legislature shall pass no special or local laws pertaining to certain specified subjects, one of which is regulating the duties of any class of officers except municipal officers.⁵ Another section of the Constitution requires publication of notice prior to the introduction of any local legislation. It is further required that an affidavit in proof of such publication must be entered upon the journals of the legislature and also filed with the Secretary of State, or, in the alternative, the act must be submitted to a local referendum.⁶

The Florida Supreme Court held that the act in question was a local law and therefore unconstitutional as the provisions of Sec. 21, Art. III, had not been complied with. While recognizing that population may be a basis for classification and that an act may be general without applying to all of the counties of the State, the Court found the present act to be bad in two respects. By providing that the Board of Visitors in existence at the time the statute became law was thereby abolished the act is forever limited to Dade County as it is the only county of more than 260,000 with such a board in existence at the time the statute became law. Since the power of the County Commission to appoint a new board is based on the abolition of the existing board, the entire act hinges on the validity

⁴ FSA 416.07.

⁵ Art. 3, Sec. 20, Fla. Constitution.

⁶ Art. 3, Sec. 21, Fla. Constitution.

of this provision. The second basis for holding the statute a local law was that there existed no reasonable basis for the classification by population. The Court could not see why the Judge of the Juvenile Court in counties over 260,000 would not be just as capable of appointing a Board of Visitors as the judges in the other counties.

This decision is undoubtedly in line with the prior decisions of the Florida Supreme Court. It will be noted that population statutes passed as general laws but which are actually local laws may be held unconstitutional either because the constitution prohibits local laws on that particular subject,⁷ or because the provisions relative to local laws have not been complied with.⁸ In either event the tests as to whether the statute is in fact a general law are the same. The Court has demanded two main requisites, as it has done in the principal case. First, the act must be potentially applicable to any county. It cannot by its own terms be forever limited to any one, or to any particular group of counties. It must be left open so that other counties attaining that population in the future will also be included.⁹ Therefore, a statute may not be limited to counties having a population of over 130,000 according to the census of 1925.¹⁰ Neither may an act authorizing a special election be called within thirty days after its passage be limited to counties between 145,000 and 155,000.¹¹ Such an act forever limits its application to those counties having such a population at the time the act is passed. The statute in the principal case is quite similar in its effect to this example. In order to satisfy the requirement that the act be potentially applicable throughout the State the statute should apply to all counties in a certain population group according to the last

⁷ Art. 3, Sec. 20, Fla. Constitution.

⁸ Art. 3, Sec. 21, Fla. Constitution.

⁹ *Ex parte Wells*, 21 Fla. 280 (1885); *Sparkman v. County Budget Comm.*, 103 Fla. 242, 137 So. 809 (1931); *Fort v. Dekle*, 138 Fla. 871, 190 So. 542 (1939); *State ex rel. Coleman v. York*, 139 Fla. 300, 190 So. 599 (1939).

¹⁰ *Whitney v. Hillsborough County*, 99 Fla. 628, 127 So. 486 (1930).

¹¹ *Anderson v. Board of Public Instruction*, 102 Fla. 708, 136 So. 334 (1931).

proceeding state or federal census.¹² Such clauses are considered progressive and do not limit their application to the last census prior to the passage of the act. Even the clause "according to the last federal census" has been held to be progressive,¹³ despite Mr. Justice Ellis' dissenting remarks that only those who thought the wording should have been different could reach such a conclusion.

The second main requirement is that there must be some reasonable basis for the classification based on population. Arbitrary classification by population will not be allowed.¹⁴ In determining what is reasonable the Court seems to have taken a stricter approach since the amendment of Sec. 21, Art. III, of the Constitution in 1928. Prior to that amendment the legislature was considered the sole judge as to the question of prior publication of notice before the introduction of a local law.¹⁵ Therefore, even if the act might be void as a general law it would still be operative as a local law since the courts could not inquire into its method of passage.¹⁶ Possibly because of this situation few cases were presented to the court for their determination on the question of the reasonableness of a purported general statute passed prior to 1928. And in those that were presented the Court seemed to find little difficulty in declaring the act reasonable, intimating that the Court would only upset legislative findings of reasonableness if the act was purely arbitrary.¹⁷ At the same time the Court pointed out that even though it were a local law it would still be valid.¹⁸

The question of what is reasonable, therefore, should be answered by the cases based on statutes passed since 1928. In these instances the Court's decision as to the reasonableness is decisive in the determination of the case. A

¹² State ex rel. Buford v. Smith, 88 Fla. 151, 101 So. 350 (1924); Sparkman v. County Budget Comm., *supra*.

¹³ State ex rel. Buford v. Daniels, 87 Fla. 270; 99 So. 804 (1924).

¹⁴ State ex rel. Buford v. Shepard, 84 Fla. 206, 93 So. 667 (1922); Waybright v. Duval County, 142 Fla. 875, 196 So. 430 (1940).

¹⁵ Stockton v. Powell, 29 Fla. 1, 10 So. 638 (1892).

¹⁶ Waybright v. Duval County, *supra*.

¹⁷ State ex rel. Buford v. Smith, *supra*.

¹⁸ State ex rel. Buford v. Smith, *supra*; State ex rel. Buford v. Daniels, *supra*.

statute may no longer be declared inoperative as a general law, yet still be operative as a local one.¹⁹ In recent years the Court has been unable to see the reasonableness of classification based on population in such statutes as those calling for special school district elections in counties of from 145,000 to 155,000;²⁰ setting salaries of county officials different from those prevailing both in counties a little larger and a little smaller;²¹ transferring the jurisdiction of the Juvenile Court to the County Court in counties of 14,000 to 14,200;²² appropriating a share of the county's racing funds to municipal hospitals in counties of from 14,000 to 14,200;²³ setting the hours in which whiskey can be sold in counties over 265,000²⁴ and providing for the nomination of county commissioners by the entire county and not by districts in counties of from 18,500 to 18,800.²⁵

On the other hand, the Court has upheld the reasonableness of statutes setting up budget commissions in counties over 150,000,²⁶ and in counties of from 43,000 to 53,000²⁷ (the latter was upheld by a three to three court.); regulating the showing of movies in towns over 6,000 and imposing certain safety measures for protection against fire;²⁸ and giving the county commission the right to set up water conservation districts in counties over 265,000.²⁹

It appears that three main conclusions may be drawn from the Florida decisions. First, the act must be open for future qualification and potentially applicable throughout the state. In determining this point the court is not

¹⁹ Waybright v. Duval County, *supra*.

²⁰ Anderson v. Board of Public Instruction, *supra*.

²¹ Stripling v. Thomas, 101 Fla. 1015, 132 So. 824 (1921); Barrow v. Smith, 119 Fla. 468, 158 So. 818 (1935); Latham v. Hawkins, 121 Fla. 324, 163 So. 709; State ex rel. Juvenal v. Neville, 163 Fla. 745, 167 So. 650 (1936); Manatee County v. Davidson, 132 Fla. 295, 181 So. 889 (1938).

²² State ex rel. Watson v. Roberts, 156 Fla. —, 25 So. 2d 888 (1946).

²³ State ex rel. Parrish v. Lee, 156 Fla. —, 23 So. 2d 731 (1945).

²⁴ State ex rel. Baldwin v. Coleman, 148 Fla. 155, 3 So. 2d 802 (1941).

²⁵ State ex rel. Levine v. Bailey, 124 Fla. 266, 168 So. 12 (1936).

²⁶ Sparkman v. County Budget Comm. *supra*.

²⁷ State ex rel. Landis v. Williams, 112 Fla. 734, 151 So. 284 (1933).

²⁸ Gandy v. Borrás, 114 Fla. 503, 154 So. 248 (1934).

²⁹ City of Coral Gables v. Crandon, 156 Fla. —, 25 So. 2d 1 (1946).

content to merely see if the act includes words making it subject to any future census but looks into all of its provisions to determine if it is in fact so potentially applicable.³⁰ Second, population must be a reasonable basis for the classification. This test is the biggest pitfall, and because of the variety of acts that are classified according to population no definite standards may be set up. Each act must be considered individually. But it is evident from the decided cases that the courts do not look with favor upon such acts unless there is a real basis for such classification. Artificial classification is not tolerated.³¹ Third, in determining the reasonableness of the classification a more stringent test seems to be applied when the counties affected lie in between two population figures, for example, when the statute applies to counties between 165,000 and 180,000 rather than to all counties above or below a certain population. Where a county is bracketed it must be shown that there is a reasonable basis for applying in those counties a law different from that controlling counties a little larger and a little smaller.³² In the other instances it can be argued that the reasonableness is based on the distinction between large and small counties.³³

As each state's decisions on this point are necessarily based on their own state constitution and as most state constitutions vary, it is evident that no strict analysis can be made between the Florida decisions and those in other states. However, it is possible to point out trends in other jurisdictions which differ from those prevailing in Florida. Since all states differ to some degree Pennsylvania has been selected as a representative of the states adhering to a more liberal view of general laws classified according to population.³⁴

³⁰ Anderson v. Board of Public Instruction, *supra*; Crandon v. Hazlett, *supra*.

³¹ Crandon v. Hazlett, *supra*; Waybright v. Duval County, *supra*; State ex rel. Buford v. Shepard, *supra*.

³² Waybright v. Duval County, *supra*; Latham v. Hawkins, *supra*; Jordan v. State ex rel. Davis, 100 Fla. 494, 129 So. 747 (1930).

³³ Waybright v. Duval County, *supra*.

³⁴ State constitutional provisions relative to special laws may be roughly classified into five groups:

(1) Those imposing no restrictions. Vermont.

Originally, the Pennsylvania Constitution was quite similar to that of Florida's prior to the 1928 amendment. But in 1923 the Pennsylvania Constitution was amended to give the legislature the power to classify according to population, and all laws relating to each class are deemed to be general legislation.³⁵ Although the Pennsylvania Court states that there still must be a valid basis for such classification, they nevertheless point out that cases on unreasonable classification decided prior to 1923 are no longer in point as the purpose was to liberalize statutes classified according to population.³⁶ This amended section of the Constitution was relied upon to declare valid a general law giving cities of the first class (all over 1,000,000)³⁷ the power to appropriate money to pay for services already rendered and materials already used in staging a Sesqui-centennial Exhibition.³⁸ It is evident that such an act could not remain open since only those cities of

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- (2) Those providing for classification and deeming laws passed for each class to be general laws. Pa., Art. III, Sec. 34.
 - (3) Those prohibiting certain special laws only. Idaho, Art. 3, Sec. 19; N.Y., Art. 3, Sec. 17; N.C., Art. 2, Sec. 29; Ore., Art. 3, Sec. 23; Wis., Art. 4, Sec. 31.
 - (4) Those prohibiting certain special laws and also prohibiting special laws where general laws can be made applicable. Ariz., Art. 4, Sec. 19; Colo., Art. 5, Sec. 25; Ill., Art. 4, Sec. 22; Iowa, Art. 3, Sec. 30; Neb., Art. 3, Sec. 18; N. M., Art. 4, Sec. 24; N.D., Sec. 69, 70; S.C., Art. 3, Sec. 34; S.D., Art. 3, Sec. 23; Wyo., Art. 3, Sec. 27; Minn., Art. 4, Sec. 33; Kan., Art. 2, Sec. 17.
 - (5) Those also requiring notice of proposed act to be published and causing proof to be made, or requiring a local referendum. Ala., Sec. 106; Fla., Art. 3, Sec. 21; Mich., Art. 5, Sec. 30; N.J., Art. 7, Sec. 9; Okla., Art. 5, Sec. 46, 32; Texas, Art. 3, Sec. 56, 57.

³⁵ Art. 3, Sec. 34, Pa. Constitution: "The legislature shall have the power to classify counties, cities, burroughs, school districts, and townships according to population and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution; but counties shall not be divided into more than eight classes, cities into not more than seven classes, . . ."

³⁶ Comm. ex. rel. Kelley v. Centrell, 327 Pa. 369, 193 Atl. 635; Haverford Tp. v. Siegle, 346 Pa. 1, 28 A.2d 786.

³⁷ 53 Pa. Stat. 1.

³⁸ Sambor v. Hadley, 291 Pa. 395, 140 Atl. 347.

the first class that had already staged such an exhibition were affected.

So far, Florida has officially chosen a much more conservative road than that taken by Pennsylvania, as evidenced by the Florida constitutional amendment of 1928 and the cases herein cited. But the flood of population acts being passed by the legislature, which the legislators undoubtedly deem necessary, seems to indicate a strong desire on the part of the State's law makers to incorporate into Florida's constitutional framework a more liberal system for the interpretation of population statutes. Certainly the existing situation is far from desirable. The past decisions of the Supreme Court clearly indicate that many of the 1500 odd population acts which have been passed as general laws, and which have not been contested in the courts, are probably unconstitutional. This unhealthy situation can only be remedied in one of two ways.

Under the present system of laws it would be necessary for the legislature to make a more determined attempt to stay within the bounds prescribed by the Constitution and the Court. The practice of enacting population statutes which have not been carefully prepared to meet these standards would have to be curtailed. It would be necessary to stop enacting such laws with only the hope that they will meet with judicial approval, or as is the more probable case, with the hope that no one will ever contest them. However, in the light of past practice the accomplishment of this end appears doubtful. Unless some other method is achieved it is probable that our cities and counties will continue to operate under many statutes which are, at best, of doubtful constitutionality.

The other available remedy calls for a revision of the Constitution and statutes relative to classification by population.³⁹ This is the road taken by Pennsylvania. With the inevitable continuing growth of several large met-

³⁹ A step in this direction was taken in 1934 when Art. 3, Sec. 24 of the Florida Constitution was amended to include the following: "The Legislature shall by general law classify cities and towns according to population, and shall by general law provide for their incorporation, government, jurisdiction, powers, duties and privileges under such classifica-

ropolitan areas, and with the continuing spread among the population of the counties and cities, it might be wise for the state to recognize the need for greater classification by population and permit any law relating to a definite predetermined class to be deemed general legislation.⁴⁰ Although this system undoubtedly leads to a more diversified system of laws among the different cities and counties of the state, it may be that the resulting case in adapting the laws to the local needs will in the long run prove advantageous. Certainly such a system would go far towards eliminating the present undesirable status of many of Florida's population acts.

tions, and no special or local laws incorporating cities or towns, providing for their government, jurisdiction, powers, duties and privileges shall be passed by the Legislature." However, to date, the Legislature has never exercised its power granted by this provision and no classifications have ever been made. The courts have held that until such time as classifications are set up by the Legislature the clause prohibiting certain special or local laws is inoperative. *Bryan v. City of Miami*, 139 Fla. 650, 190 So. 772, and cases cited therein.

⁴⁰ See note 35, *supra*.