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Homestead: Duration of Residence for Realty Tax Exemption

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will adopt. The radical change in constitutional law brought about by the *Tidelands* decision may well be corrected by federal legislation;[20] meanwhile the states, unless the Federal Government develops a competence and will to do the job, are perservering in the exercise of their traditional police functions, and rightly expect their taxpayers to meet the cost of these recognized benefits.

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HOMESTEAD: DURATION OF RESIDENCE FOR REALTY TAX EXEMPTION

Sparkman v. State ex rel. *Scott, 58 So.2d 431 (Fla. 1952)*

Relator, eligible for homestead realty tax exemption in accordance with the Florida Constitution,[1] had not been a Florida resident for one year when he filed his application. The tax assessor denied the exemption, basing his denial on a recent statute requiring such one-year residence.[2] The circuit court declared the statute unconstitu-

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[20]By joint resolution in 1946 Congress proposed to quitclaim to the states any title that the United States might have to lands below the waters within their boundaries, H. R. Doc. No. 765, 79th Cong., 2d Sess., but President Truman vetoed the measure. As this issue goes to press the President has again vetoed a similar measure.

[1]Art. X, §7: "Every person who has the legal title to or beneficial title in equity to real property in this State and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of Five Thousand Dollars on the said home and contiguous real property . . . . The Legislature may prescribe appropriate and reasonable laws regulating the manner of establishing the right to said exemption."

[2]FLA. STAT. §192.12(1) (1951), enacted as Fla. Laws 1951, c. 26899: "No person shall be entitled to an exemption from taxation on his or her homestead, as provided in §192.12, Florida Statutes, unless such person at the time of making the application for such exemption shall have been a legal resident of the State of Florida for a period of one year prior thereto."

tional.[3] On appeal by the tax assessor, HELD, the statute violates the provisions of Article X, Section 7, of the Florida Constitution.[4]

The Florida Constitution specifically sets forth the requirements entitling one to homestead realty tax exemption.[5] Although it further authorizes the Legislature to set up the procedure for establishing the right thereto,[6] it does not grant the Legislature power to alter or modify the substantive right to exemption. Whether the 1951 statute was procedural or substantive in its effect accordingly became the major issue confronting the Court, which held the statute an attempt to alter the substantive rights of claimants.

Detailed analysis of the exemption of $5,000 of the assessed valuation of homestead realty from taxation has previously been presented in this publication[7] and is beyond the scope of this comment. Fixing the official assessment date, January 1,[8] as the date on which permanent residence must exist, and prescribing that the right to this exemption is waived unless claim therefor is filed on or before April 1 of each year[9] constitute "reasonable laws regulating the manner of establishing the right to said exemption."[10] Such laws the Legislature was specifically empowered to enact. Under existing law a homesteader taking up his domicil on his Florida property after January 1, 1951, cannot claim the tax exemption for 1951, but under the 1951 statute[11] he could not have claimed it for 1952 either unless he had acquired such domicil by April 1, 1951. The shift in qualifications for the right is obvious, as the Court observed. The manner of es-

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[3]The opinion does not state the nature of the proceeding in the circuit court, but in all probability a declaratory decree was requested; see FLA. STAT. §192.19 (1951).

[4]The *University of Florida Law Review* anticipated this decision when it observed: "By this new requirement the Legislature purports to remove, without the aid of a constitutional amendment, a right previously recognized under the Constitution. Therefore, the statute as amended may well be unconstitutional." 4 U. OF FLA. L. REV. 388 (1951).

[5]See note 1 *supra.*

[6]*Ibid.*

[7]Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption: I'*, 2 U. OF FLA. L. REV. 346 (1949); see especially 365-369.

[8]FLA. STAT. §§192.04, 193.11 (1951).

[9]FLA. STAT. §192.16; see also §§192.14-192.15, 193.12 (1951).

[10]See note 1 *supra.*

[11]See note 2 *supra.*