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An Agricultural Law Research Article

**The Florida Citrus Code:  
The Root of Florida's Sunshine Tree**

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## COMMENTS

### THE FLORIDA CITRUS CODE: THE ROOT OF FLORIDA'S SUNSHINE TREE

The Florida Citrus Code of 1949<sup>1</sup> is a comprehensive<sup>2</sup> codification of state law pertaining to Florida's citrus industry. This Comment and the next contain an overview of legal issues in the Florida citrus industry and analyze selected issues presented or affected by the Code. This comment will review the development of the Citrus Code and provide the reader with a general working knowledge of its provisions.

#### *THE FLORIDA CITRUS INDUSTRY — DEVELOPMENT AND ECONOMIC IMPACT*

Citrus fruits<sup>3</sup> are not indigenous to Florida.<sup>4</sup> First introduced by Spanish explorers,<sup>5</sup> citrus has grown to be one of Florida's most important industries,<sup>6</sup> generating over two billion dollars per year<sup>7</sup> in the retail market. A few facts and figures will demonstrate the impact of the industry on the state's economy. Citrus groves occupy more than 845,000<sup>8</sup>

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1. FLA. STAT. §§ 601.01-.9917 (1979 & Supp. 1980).

2. The Florida Citrus Code of 1949 [hereinafter cited as the Code] spans 67 pages and contains 131 individually numbered sections.

3. Citrus fruits are defined as "all varieties and regulated hybrids of citrus fruit and also . . . processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice, but . . . not . . . limes, lemons, marmalade, jellies, preserves, candies or citrus hybrids for which no specific standards have been established by the Department of Citrus." FLA. STAT. § 601.03(7)(1979). The Code specifically defines grapefruit, *id.* § 601.03(22), oranges, *id.* § 601.03(25) lemons, *id.* § 601.03(35), sour oranges, *id.* § 601.03(36), and citrus hybrids, which include hybrids between sour orange, pummelo, lemon, lime, citron, grapefruit, tangerine, mandarin orange, sweet orange, tangelo, tangor, kumquat, and trifoliolate orange, *Id.* § 601.03(37).

4. Citrus fruits may have been introduced as early as 1513 by Ponce de Leon. J. MCPHEE, ORANGES 89 (1979) [hereinafter cited as ORANGES]. It has, however, been established that citrus was planted in the Americas in 1518 by a Spanish explorer, Juan de Grijalva. THE FLORIDA ALAMANAC 1980-81, 303 (4th ed. 1980-81) [hereinafter cited ALAMANAC].

5. See note 4 *supra*.

6. "[T]he citrus industry of Florida is one of its greatest assets." L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 569, 139 So. 121, 128 (1932).

7. The orange juice market alone generates two billion dollars a year. FLORIDA TREND, Aug., 1981, at 33.

8. FLORIDA CROP AND LIVESTOCK REPORTING SERVICE, FLORIDA AGRICULTURAL STATISTICS - CITRUS SUMMARY 1980 2 (1981) [hereinafter cited as SUMMARY].

acres, spreading across more than thirty-one Florida counties.<sup>9</sup> Compared to California's 283,000<sup>10</sup> acres under citrus cultivation and Texas' 76,000,<sup>11</sup> Florida is the unchallenged leader in the United States citrus industry. Production has increased phenomenally since the end of the nineteenth century. During the season<sup>12</sup> of 1886-87, Florida produced 1,260,000<sup>13</sup> boxes<sup>14</sup> of citrus fruits. In seven years the number of boxes produced more than quadrupled.<sup>15</sup> Production plummeted to only 147,000<sup>16</sup> boxes in 1895-96 due to the freeze of February 8, 1895.<sup>17</sup> Production remained below one million boxes until 1902-03<sup>18</sup> but since then has steadily climbed, reaching the 105,380,000<sup>19</sup> box level in 1950-51 and the 283,550,000<sup>20</sup> milestone in the 1979-80 season. The 1980-81 season production of oranges alone was expected to reach 207,000,000 boxes, but a frost reduced that production to approximately 165,000,000 boxes.<sup>21</sup>

Figures reflecting the rise in citrus prices are as staggering as those relating to the quantity of fruit produced. In 1938-39 grapefruit sold for twenty-two cents a box on the tree. By the 1949-50 season the price had jumped to \$1.79.<sup>22</sup> Florida grapefruit today commands the price of \$3.26 a box.<sup>23</sup> The 1979-80 value of grapefruit production alone exceeded 217 million dollars. Orange prices have shown an equally dramatic increase. The 1939-40 price for an on-the-tree box of oranges

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9. *Id.* at 28. The 31 citrus producing counties (of Florida's 67 total counties) are Brevard, Broward, Indian River, Martin, Palm Beach, St. Lucie, Lake, Marion, Orange, Osceola, Putnam, Seminole, Sumter, Volusia, Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Lee, Okeechobee, Polk, Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas and Sarasota. ALMANAC, *supra* note 4, at 136.

10. SUMMARY, *supra* note 8, at 30.

11. *Id.*

12. A shipping season is from August 1 of one year to July 31 of the next. FLA. STAT. § 601.03(32) (1979).

13. SUMMARY, *supra* note 8, at 4.

14. A box is defined as 1-3/5 bushels of citrus fruit. FLA. STAT. § 601.03(33) (1979).

15. In 1893-94 production was 5,055,000 boxes. SUMMARY, *supra* note 8, at 4.

16. *Id.*

17. ORANGES, *supra* note 4, at 101. During an earlier freeze, the Great Freeze of 1835, temperatures dropped to 11 degrees and killed almost all the orange trees in Florida. The growers, however, dismissed this severe weather as a fluke. *Id.* at 90, 95.

18. SUMMARY, *supra* note 8, at 4.

19. *Id.*

20. *Id.*

21. FLORIDA TREND, Aug., 1981, at 33. See text at note 7 *supra*.

22. 4 FLORIDA LAW AND PRACTICE 11 [hereinafter cited as FLORIDA LAW].

23. SUMMARY, *supra* note 8, at 16. This price should be compared with California grapefruit selling for \$1.82 and Texas grapefruit selling for \$2.59 a box. *Id.*

was fifty-two cents;<sup>24</sup> today that price is \$3.63.<sup>25</sup> The present total value of orange production is approximately 750 million dollars.<sup>26</sup>

In a recent year, the payroll of the agricultural section of the citrus industry was almost 115 million dollars annually; the citrus producer payroll was 79 million dollars, and the citrus packing payroll was close to 43 million dollars.<sup>27</sup> Nearly seventy-five percent of the work force included in the above figures were Florida residents.<sup>28</sup>

Florida boasts several prime citrus growing areas. The leading area, running from Leesburg to Sebring, produces more citrus than any other area in the world.<sup>29</sup> A second important citrus region, the Indian River production area,<sup>30</sup> produces such distinctively flavored fruits that its boundaries are defined by statute.<sup>31</sup> Only fruit grown in this area may carry the Indian River Fruit designation.<sup>32</sup>

Much of the Florida citrus industry's incredible growth in the past thirty years can be attributed to the development of frozen citrus concentrate. Created by a Department of Citrus Research team during the 1943-45 seasons, the process has generated a 700 million dollar per year industry. In 1948 a patent was granted and assigned to the United States of America.<sup>33</sup>

### HISTORICAL OVERVIEW OF LEGISLATIVE REGULATION OF THE FLORIDA CITRUS INDUSTRY

Both the state<sup>34</sup> and federal<sup>35</sup> governments have long rec-

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24. FLORIDA LAW, *supra* note 22, at 11.

25. SUMMARY, *supra* note 8, at 14.

26. *Id.*

27. FLORIDA TREND, Mar., 1974, at 46.

28. *Id.*

29. ORANGES, *supra* note 4, at 18.

30. *Id.* at 19.

31. FLA. STAT. § 601.091(2)(1979).

32. FLORIDA CITRUS COMM'N REG. 105-1.03 §§ (6)(a),(6)(b) (1966), *Id.* 105-1.09 § (1)(h) (1966). See also Florida Citrus Comm'n v. Owens, 239 So. 2d 840 (Fla. 4th DCA 1969).

33. FLORIDA DEPARTMENT OF CITRUS, THE DEVELOPMENT OF FROZEN CONCENTRATED ORANGE JUICE 2.

34. "[The citrus industry's] promotion and protection is of the greatest value to the state and its advancement redounds greatly to the general welfare of the commonwealth." L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 569, 139 So. 121, 128 (1932). "The citrus fruit industry is one of the dominant businesses of the state . . ." Mayo v. Polk Co., 124 Fla. 534, 546, 169 So. 41, 44 (1936).

35. "We may take judicial notice of the fact that the raising of citrus fruits is one

ognized the importance of the citrus industry to the public interest of Florida. As early as 1846<sup>36</sup> the state legislature recognized the industry's importance and today continues close supervision of the industry.<sup>37</sup> Beginning in 1868, the legislature enacted laws to protect the infant industry from harm.<sup>38</sup> The legislature broadened its protection of the citrus industry in 1911 when it declared unlawful the sale or shipment of any green or immature citrus fruits.<sup>39</sup> Although devoid of standards by which to judge the fruits' maturity,<sup>40</sup> the statute withstood constitutional attacks in both state<sup>41</sup> and federal<sup>42</sup> courts. State lawmakers recognized the inadequacies of the 1911 law<sup>43</sup> and in 1913 enacted a law that attempted to state meaningful standards by which to judge maturity.<sup>44</sup> Although

of the great industries of the state of Florida." *Sligh v. Kirkwood*, 237 U.S. 52, 61 (1915).

36. 1846 Fla. Laws, Resolution No. 33.

"Resolved by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the Governor be, and he is hereby authorized to procure, to be placed in the Library of this State, the following works: "Historire Naturelle des Oranges," by Rizzo, published at Paris, in 1818; and also, "Traite de Citras," by Gallesio, published at Paris, in 1811, and that the cost thereof be paid out of the Contingent Fund.

*Be it further resolved*, That the Governor be respectfully requested to address a letter of enquiry on the subject of the "Coccus Hesperidum," and its ravages upon the Orange Trees, to the United States Consul at Nice, in the Kingdom of Sardinia, and obtain through him, all the information possible, relative to the ravages of the "Coccus Hesperidum" upon the Orange in that country, subsequent to the year 1806, and the means used in eradicating and preventing the infection, with a view of applying those remedies to the prevention and cure of the diseases of the orange tree in Florida.

*Be it further resolved*, That the Governor communicate the result of his enquiries to the next General Assembly.

37. See FLA. STAT. ch. 601 (1979 & Supp. 1980).

38. Ch. 1637, ch. IV, §§ 76, 1868 Fla. Laws 61. This law protected fruit trees from being cut down or destroyed.

39. Immature Citrus Fruit Law, Ch. 6236, 1911 Fla. Laws 205.

40. The Immature Citrus Fruit Laws, *supra* note 39, provided as follows:

*Be it Enacted by the Legislature of the State of Florida:*

Section 1. That it shall be unlawful for any one to sell, offer for sale, ship or deliver for shipment any citrus fruits which are immature or otherwise unfit for consumption, and for any one to receive any such fruits under a contract of sale, or for the purpose of sale, or of offering for sale, or for shipment or delivery for shipment. This section shall not apply to sales or contracts for sale of citrus fruits on the trees under this section; nor shall it apply to common carriers or their agents who are not interested in such fruits and who are merely receiving the same for transportation.

41. *Sligh v. Kirkwood*, 65 Fla. 123, 61 So. 185 (1913), *aff'd*, 237 U.S. 52 (1915).

42. *Sligh v. Kirkwood*, 237 U.S. 52 (1915).

43. The question of the statute's vagueness was not raised by the parties or either court in the *Sligh* case.

44. Ch. 6515, 1913 Fla. Laws 375.

those maturity standards were quite crude compared to today's,<sup>45</sup> this statute provided, for the first time, that state citrus inspectors be appointed.<sup>46</sup>

For more than twelve years the 1913 act was the sole statute dealing with standards for citrus.<sup>47</sup> In 1925, the Florida legislature again addressed the need for a comprehensive statute setting maturity standards for the citrus industry.<sup>48</sup> This 1925 act provided more specific guidelines for state inspection of the citrus crop.<sup>49</sup> This statute also was the first to set out a scientific test to determine citrus fruits' maturity.<sup>50</sup>

45. Ch. 6515, § 1, 1913 Fla. Laws 375, 375 provided:

That from the first day of September, until the fifth day of November of each year, all oranges, the juice of which contains 1.30% or more by weight of acid, calculated as crystallized citric acid, shall be considered immature and unfit for consumption; that all grapefruit, the juice of which shall contain more than 1.75% by weight of acid, calculated as crystallized citric acid, shall be considered as immature and unfit for consumption. . . .

In *Morgan v. Le Jeune*, 78 Fla. 643, 83 So. 668 (1919), the Florida Supreme Court found that the primary test of maturity of oranges and grapefruit provided by the statute was color; the acid test was secondary.

46. The inspectors were not full time employees but were to be hired at the discretion of the Governor. The inspectors were to be hired from Sept. 1 to Nov. 5 of each year. Ch. 6515, § 2, 1913 Fla. Laws 375, 376. The statute also provided that up to \$2,500 could be spent on inspection each year, the money to come from fertilizer and feed stuff inspection fees. *Id.*, § 4, 1913 Fla. Laws at 376.

47. Statutes dealing with other aspects of the industry were passed. Ch. 7281, 1917 Fla. Laws 62, for instance, appropriated funds to eradicate citrus canker.

48. Ch. 10103, 1925 Fla. Laws 162.

49. *Id.*, § 2, 1925 Fla. Laws at 162 states:

It shall be unlawful for any person to sell or offer for sale, transport, prepare, receive, or deliver for transportation or market any citrus fruit between the 31st day of August and the 26th day of November in any year, unless such fruit is accompanied by a certificate of inspection and maturity thereof as defined by this Act, issued by a duly authorized Citrus Fruit Inspector. . . .

Provided, that it shall be unlawful during the remaining period from November 26th to August 31st following in each year, when inspection is not required by this Act for any person to sell, offer for sale, transport, deliver or prepare for sale or transportation any citrus fruit which is immature or otherwise unfit for consumption, or for any person to receive any such fruits under a contract of sale, or for the purpose of sale, offering for sale, transportation, or delivery for transportation thereof.

50. In determining the total soluble solids the Brix Hydrometer shall be used, and the reading of the Hydrometer corrected for temperature shall be considered as the percentum of total soluble solids. Anhydrous citric acid to be determined by titration of the juice, using standard alkali and Phenolphthlein as the indicator, the total acidity being calculated as anhydrous citric acid.

*Id.*, § 3B, 1925 Fla. Laws at 163. The scale for determining citrus sugar solutions was developed by Adolf F.W. Brix in the nineteenth century. ORANGES, *supra* note 4, at

The 1925 statute is particularly noteworthy because it required each vendor or shipper of citrus to pay the Commissioner of Agriculture<sup>51</sup> a fee of one and one-half cents per box<sup>52</sup> sold or delivered.<sup>53</sup> Also, the Commissioner was empowered to promulgate rules and regulations necessary to carry out the act.<sup>54</sup> Violation of any rule could bring a fine or imprisonment to the malefactor.<sup>55</sup> Thus, the 1925 statute was the first true ancestor of today's comprehensive Citrus Code.

During the following ten years the legislature passed various citrus statutes,<sup>56</sup> but no major changes in the regulatory scheme occurred until 1935. In addition to amending further the maturity standards,<sup>57</sup> the series of acts passed in 1935 addressed a broad range of issues vital to the citrus industry.<sup>58</sup> The law required registration of citrus field boxes,<sup>59</sup> protected citrus producers against fraud or unfair practice,<sup>60</sup> and controlled the use of artificial coloring.<sup>61</sup>

The most important aspect of the 1935 Act was the creation of the Florida Citrus Commission<sup>62</sup> to stabilize and protect the citrus industry.<sup>63</sup> The legislature also gave the Com-

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51. The Florida Citrus Commission did not come into being until 1935. See Ch. 16854, 1935 Fla. Laws 213.

52. The standard size box was found to be equal to two cubic feet or eighty pounds. Ch. 10103, § 5, 1925 Fla. Laws. See note 14 *supra*.

53. *Id.*, § 5, 1925 Fla. Laws at 164.

54. *Id.*, § 11, 1925 Fla. Laws at 166.

55. *Id.*, § 13, 1925 Fla. Laws at 167 provided for fines ranging from \$50 to \$1,000 and imprisonment from 30 to 365 days or both.

56. Ch. 11844, 1927 Fla. Laws 172 banned the use of arsenic as a spray for citrus fruit. This ban was later lifted by Ch. 14485, 1929 Fla. Laws 937 to allow arsenic use in a fight against an infestation of the Mediterranean fruit fly. Ch. 11876, 1927 Fla. Laws 374 permitted the Commissioner of Agriculture, in conjunction with the Governor, to declare a citrus state of emergency in case of a freeze. Ch. 13584, 1929 Fla. Laws 70 and Ch. 14662, 1931 Fla. Laws 78 amended Ch. 10103, 1925 Fla. Laws 162 as to packinghouse regulations, maturity standards, and inspection fee payments.

57. Ch. 16855, 1935 Fla. Laws 213. See note 56 *supra*.

58. These 1935 acts were described in *C.V. Floyd Fruit Co. v. Florida Citrus Comm'n*, 128 Fla. 565, —, 175 So. 248, 250 (1937), as being "passed for the benefit of the citrus fruit industry."

59. Ch. 16859, § 1, 1935 Fla. Laws 252. The boxes' owners were allowed to adopt a symbol, name, or initial to be placed on each box. The symbol could be registered with the Secretary of State for a fee of \$2.00.

60. Ch. 16860, § 4, 1935 Fla. Laws 256 provided that it was unlawful for a citrus fruit dealer: (1) to make any fraudulent charge; (2) to break a contract without reasonable cause; (3) to destroy fruit received from any dealer; and (4) to make any false statements concerning the citrus.

61. Ch. 16861, 1935 Fla. Laws 263.

62. Ch. 16854, 1935 Fla. Laws 213.

63. Ch. 16854, § 1.a, 1935 Fla. Laws 213 states "that this Act is passed in the

mission taxing powers to finance promotion and advertisement of the industry.<sup>64</sup> The Citrus Commission, now known as the Department of Citrus,<sup>65</sup> today spends more than 85% of its revenues on advertising.<sup>66</sup>

The statutes enacted in 1935<sup>67</sup> remained in effect until 1949 when all existing citrus laws were repealed<sup>68</sup> and the Florida Citrus Code of 1949<sup>69</sup> was enacted. The Code continues to be known by this title.<sup>70</sup> The original version of the Florida Citrus Code of 1949 reenacted many of the provisions of the 1935 statutes with only superficial changes.<sup>71</sup> The Code, heading into the 1980's, is comprehensive legislation that establishes administrative machinery<sup>72</sup> to protect,<sup>73</sup> advance,<sup>74</sup> monitor,<sup>75</sup> and regulate<sup>76</sup> the state's citrus industry. To carry out this broad mandate the Code empowers administering agencies<sup>77</sup> to collect excise taxes from citrus handlers<sup>78</sup> and inspection fees for certification of citrus fruit or processed citrus products.<sup>79</sup> Penalties for violations of the Code include fines,<sup>80</sup> criminal prosecution,<sup>81</sup> loss of any required license,<sup>82</sup> and the equitable remedies of injunction and restraint through the courts.<sup>83</sup> These penalties enable the Department of Citrus and

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exercise of the police power of the State to protect the public health and welfare and to stabilize and protect the citrus industry of the State of Florida."

64. Ch. 16856-58, 1935 Fla. Laws 234.

65. FLA. STAT. § 601.04 (1979).

66. CITRUS INDUSTRY, Jan., 1980, at 20-21.

67. See text at notes 57-64 *supra*.

68. The Florida Citrus Code of 1949, Ch. 25149, § 110, 1949 Fla. Laws 280, "Chapters 594, 595, . . . 596, 597, 598, 599 and 600, Florida Statutes, 1941, as amended, and all other laws in conflict herewith, shall be and the same are hereby repealed." See also *Florida Cannery Ass'n v. State Dept. of Citrus*, 371 So. 2d 503, 509 (Fla. 2d DCA 1979).

69. Ch. 25149, § 1, 1949 Fla. Laws at 281.

70. FLA. STAT. § 601.01 (1979).

71. Compare Ch. 25149, § 4, 1949 Fla. Laws at 286 with Ch. 16854, § 3, 1935 Fla. Laws at 215.

72. FLA. STAT. §§ 601.04(1)(a)-.05 (1979).

73. *Id.* at § 601.1515 (1).

74. *Id.* at § 601.13.

75. *Id.* at §§ 601.27-.28, .31, .34.

76. *Id.* at §§ 601.16-.22, .40, .55 (1979 & Supp. 1980).

77. The Code is administered by the Department of Citrus and the Department of Agriculture.

78. FLA. STAT. §§ 601.15, .155-.158 (1979 & Supp. 1980).

79. *Id.* at § 601.28 (1979).

80. *Id.* at § 601.67.

81. *Id.* at §§ 601.461, .641, .67.

82. *Id.* at §§ 601.42, .641(5), .67; see text at note 127 *infra*.

83. *Id.* at § 601.73.



the Department of Agriculture to implement effectively the Code's provisions.

The Code provisions fall into three general categories: establishing provisions, enabling provisions for the Department of Citrus, and enabling provisions for the Department of Agriculture. The establishing provisions<sup>84</sup> furnish a title for the act<sup>85</sup> and state its purposes.<sup>86</sup> The most important initial sections establish and provide for the composition of the Florida Citrus Commission<sup>87</sup> and the Department of Citrus.<sup>88</sup> Substantive portions of the Code empower the Department of Citrus and the Department of Agriculture to oversee and regulate the citrus industry.

### CODE PROVISIONS RELATING TO THE DEPARTMENT OF CITRUS

The Code creates the Department of Citrus as a corporate body with all powers necessary to carry out the provisions and requirements of the Code.<sup>89</sup> The Department of Citrus is headed by a board known as the Citrus Commission.<sup>90</sup> The Commission must be composed of twelve persons in the citrus fruit industry;<sup>91</sup> seven members are to be growers and five members are to be grower-handlers.<sup>92</sup> These members supervise four broad areas of department authority: enforcement of maturity standards, research and development, advertisement and promotion, and taxation.

The first major area of Department of Citrus authority is

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84. *Id.* at §§ 601.01-.091.

85. *Id.* at § 601.01.

86. *Id.* at § 601.02.

87. *Id.* at § 601.04.

88. *Id.* at § 601.05. The Code makes no provision for the standing of the Department of Citrus in relation to the other administrative agencies in the executive branch of the government.

89. *Id.* at § 601.05. Although the Code provides that the Department of Citrus is a corporate body, the court of appeals for the second district determined in *State Dept. of Citrus v. O.D. Huff*, 290 So. 2d 130, 132 (Fla. 2d DCA 1974), that the Department's corporate power extends only as far as is necessary to carry out the provisions of the Code. This decision limited the Department's corporate powers and prevented the Department from being a corporation as defined in FLA. STAT. ch. 608 (1979).

90. The Department of Citrus was originally known as the "Citrus Commission" until 1969 when the Florida legislature changed the name. The head of the Department of Citrus was designated the Citrus Commissioner. Governmental Reorganization Act of 1969, Ch. 69-106, § 29(1), 1969 Fla. Laws 490.

91. FLA. STAT. § 601.04(1)(a) (1979).

92. *Id.* at § 601.04(1)(b).

enforcement of the Code's explicit and detailed fruit maturity standards.<sup>93</sup> The Code divides the production period for each type of citrus into seasons and then establishes maturity standards for those seasons. The standards are based on minimum allowable color changes in the fruit, called color breaks,<sup>94</sup> in conjunction with juice content and the ratio of soluble solids to anhydrous citrus acid.<sup>95</sup> Additionally, the Department of Citrus can devise testing procedures, including those covering the method and amount of juice extraction,<sup>96</sup> as well as methods for testing acidity and the percentage of soluble solids.<sup>97</sup> The Code specifies which color chart must be used to establish the color break test.<sup>98</sup>

In the event of abnormal weather conditions affecting citrus production, the Code permits the Department of Citrus, upon the order or the Citrus Commission, to lower the maturity standards of grapefruit and tangerines, again within Code limits.<sup>99</sup> In the event of citrus freeze damage the Department of Citrus can issue an order prohibiting the sale of any citrus fruit for up to ten days following the issuance of the order.<sup>100</sup> Upon expiration of the order the Department can prohibit the sale of any fruit showing freeze damage for up to fourteen additional days.<sup>101</sup> The Commission may then issue a subsequent order establishing the degree of freeze damage that will be permitted in citrus to be used in concentrate or concentrate products.<sup>102</sup>

In addition to enforcement of a broad spectrum of citrus standards, a second Department of Citrus area of authority is research. The research focuses on increasing the quality of the fruit; finding new uses for the fruit, its juices, and by-products; establishing new distribution methods; and improving marketing of citrus and its by-products.<sup>103</sup> Additionally, the Department has researched improved methods of mechanical

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93. *Id.* at §§ 601.16-.22.

94. *Id.* at §§ 601.16(1)(a), .19(1)-.19(3), .21.

95. *Id.* at §§ 601.17, .20, .22. These sections provide tables of allowable minimum ratios of solids to acids for grapefruit, oranges, and tangerines respectively.

96. *Id.* at § 601.24.

97. *Id.* at § 601.25.

98. *Id.* at § 601.26.

99. *Id.* at § 601.111(1)-.111(2).

100. *Id.* at § 601.90(2)(a).

101. *Id.* at § 601.90(2)(b).

102. *Id.* at § 601.901.

103. *Id.* at § 601.13.

harvesting and juice processing.<sup>104</sup>

The Department is most active and devotes most of its budget to a third area of authority— advertising.<sup>105</sup> The Code authorizes the Department to plan and conduct advertising campaigns designed to increase the sale and consumption of Florida citrus.<sup>106</sup> The Department is charged with publicizing the health benefits of citrus fruits and with promoting the use of Florida citrus, particularly through the adoption of a distinctive trade name.<sup>107</sup> The Department's advertising function is justified by the importance of the citrus industry to the state, established in a line of cases.<sup>108</sup> Upholding a tax levied to pay for advertising, the Florida Supreme Court stated, "We are committed to the theory that advertising is a proper method for promoting the public welfare."<sup>109</sup>

The Department conducts national advertising campaigns, using New York-based advertising and public relations agencies.<sup>110</sup> The size of the advertising budget depends on the amount of citrus entering commercial channels in any given year. This is because the advertising budget, indeed all Department of Citrus revenue, comes from the tax imposed on each box of citrus.<sup>111</sup> The Department also advertises and conducts promotional campaigns to attract foreign markets, especially in Japan, Canada, and Western Europe.<sup>112</sup>

The Code authorizes the Department to conduct specialized marketing research and advertising based on special marketing orders. Special marketing orders are special advertising campaigns designed to increase the acceptance of any type of Florida citrus fruit or processed citrus products.<sup>113</sup> The statute providing for marketing orders, unlike the routine advertising programs conducted by the Department, requires that a

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104. FLA. STAT. § 601.158 (1979); [1979-1980] FLA. DEPT. OF CITRUS ANN. REP. 1.

105. See note 66 *supra*.

106. FLA. STAT. § 601.15(2) (Supp. 1980).

107. *Id.* at § 601.15(2)(b) (Supp. 1980). The Department of Citrus has developed the Florida Sunshine Tree trade name. In *Florida Dept. of Citrus v. Real Juices, Inc.*, 330 F. Supp. 428, 431 (M.D. Fla. 1971), the Department successfully prosecuted a suit to protect the use of the "Sunshine Tree" as a certification mark.

108. See note 6 *supra*.

109. *C.V. Floyd Fruit Co. v. Florida Citrus Comm'n*, 128 Fla. 565, —, 175 So. 248, 253 (1937). See text at note 65 *supra*.

110. THE CITRUS INDUSTRY, Jan., 1980, at 30.

111. *Id.* at 20. The Department of Citrus does not receive any general revenue funds from the state. The Department's budget for 1979-80 was over twenty million dollars. [1979-1980] FLA. DEPT. OF CITRUS ANN. REP. 24.

112. [1979-1980] FLA. DEPT. OF CITRUS ANN. REP. 17.

113. FLA. STAT. § 601.152 (1979).

public hearing be held and a referendum be conducted among the handlers to be affected by the marketing order. The order can be implemented only after approval of 67% of the handlers who handled 51% of the type of citrus to come under the marketing order.<sup>114</sup>

The most important area of Department of Citrus authority is its power to levy an excise tax on boxes of citrus as they enter the stream of commerce. Under this authority the Department may also issue special marketing orders and assess an additional tax to carry out the marketing order.<sup>115</sup> The Department's taxation powers have sparked much of the litigation involving the Code and the Department. Three lines of attack have been raised against the Department's taxing powers; none was successful. The first was that the tax imposed was a property rather than an excise tax, and the imposition of such a tax denied due process rights.<sup>116</sup> The second line of attack was that the tax was not imposed for a valid public purpose.<sup>117</sup> The third line of attack, specifically attacking the taxing powers granted under the Code provisions concerning marketing orders, was that the powers granted constituted an invalid delegation of legislative power.<sup>118</sup>

### CODE PROVISIONS RELATING TO THE DEPARTMENT OF AGRICULTURE

The Florida Department of Agriculture is charged under the Code with inspecting citrus to ascertain whether it meets Code maturity standards. To carry out this responsibility the Code authorizes the Department of Agriculture to employ persons who have been certified by the United States Department of Agriculture as citrus inspectors.<sup>119</sup> The Department is ordered to collect inspection fees mandated by the Code. The fees are based on an estimate of the size of the citrus crop combined with the expected cost of inspecting that crop.<sup>120</sup>

The Department of Agriculture conducts two broad categories of inspections. Its Fresh Citrus Inspection Bureau is re-

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114. *Id.* at § 601.152(3).

115. *Id.* at §§ 601.15(1)-.152 (1979 & Supp. 1980).

116. *C.V. Floyd Fruit Co. v. Florida Citrus Comm'n*, 128 Fla. 565, 568, 175 So. 248, 249 (1937).

117. *Id.* at —, 125 So. at 253.

118. *State Dept. of Citrus v. C.V. Griffin, Sr.*, 239 So. 2d 577, 580 (Fla. 1970).

119. *FLA. STAT.* §§ 601.27, .31 (1979).

120. *Id.* at § 601.28.

sponsible for inspecting and certifying as mature fruit that is to be shipped in fresh fruit form,<sup>121</sup> shipped as gift fruit, or sold at roadside stands.<sup>122</sup> The Processed Citrus Inspection Bureau inspects and certifies as mature each standard box of citrus used in processing<sup>123</sup> and inspects and certifies each standard case of canned processed citrus products.<sup>124</sup>

The Department of Agriculture is responsible for issuing certificates of registration to citrus fruit packing houses and processing plants. The Code requires operators of these plants to register the plant, its location, and its post office with the Department of Agriculture not less than ten days before processing any citrus through the plant.<sup>125</sup> The operator also must give the Department of Agriculture seven days written notice of when processing is to begin.<sup>126</sup> The Department of Agriculture will then issue a certificate of registration, provided that the plant operator has been licensed as a citrus dealer and has secured a citrus dealer's bond.

Even though the Department of Agriculture is responsible for issuing licenses to citrus fruit dealers, the Code assigns most of this responsibility to the Department of Citrus.<sup>127</sup> The Department of Citrus is entitled to request certain information in the application. But the statute mandates that certain information be included, such as the name and address of the unit applying for a license, its length of any experience in Florida in citrus, a statement of delinquent accounts, a financial statement, previous citrus licenses held, and the number of standard boxes the dealer expects to handle in the current shipping season.<sup>128</sup> After the Department of Citrus reviews the application, the Florida Citrus Commission votes on whether to grant the license.<sup>129</sup> Once approved by a majority vote of the Citrus Commission, the application is forwarded to the Department of Agriculture, which issues a license to the dealer.<sup>130</sup> In addition to establishing a license fee,<sup>131</sup> the Code requires that before a dealer can receive a license he must se-

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121. *Id.* at § 601.28(1)(a)1.

122. *Id.* at § 601.28(1)(b)1.

123. *Id.* at § 601.28(1)(c).

124. *Id.* at § 601.28(1)(d).

125. *Id.* at § 601.40.

126. *Id.*

127. *Id.* at §§ 601.56-.57.

128. *Id.* at § 601.56(1)(a)-(g).

129. *Id.* at § 601.57(1)-(2).

130. *Id.* at § 601.58.

131. *Id.* at § 601.59.

cure a bond for the benefit of every other dealer with whom the first dealer does business.<sup>132</sup> The amount of the bond is based upon an estimate of the amount of fruit to be handled in the current season, the amount handled in the previous season, or the highest volume month of the previous season.<sup>133</sup>

The Code also assigns to the Department of Agriculture the responsibility of analyzing any gas, oil, waxes, soaps, or dyes to be used in the processing of citrus fruits.<sup>134</sup> The manufacturers of such material are required to give samples of the materials to the Department for testing to ascertain whether their use makes the fruit unfit for human consumption. The Code prohibits the use of dyes on grapefruit and tangerines<sup>135</sup> and restricts coloring of oranges unless minimum juice standards and sweetness ratios are met.<sup>136</sup>

The Code provides the Department of Agriculture with several enforcement provisions to enable the Department to carry out its duties.<sup>137</sup> Several sections of the Code provide for seizure of citrus by inspectors. In the event that an inspector finds unwholesome or decomposed fruit, the Code authorizes him to seize and destroy the fruit.<sup>138</sup> The Code also provides that Department of Agriculture inspectors looking for freeze damage can seize and destroy all seriously freeze-damaged fruit.<sup>139</sup> Additionally, the Code authorizes inspectors to seize<sup>140</sup> and, after testing, to destroy all citrus, except grapefruit, that contains arsenic.<sup>141</sup> The Code also calls for the seizure and destruction of all immature citrus that has been prepared for sale or transportation.<sup>142</sup>

Other enforcement methods available to the Department include administrative procedures through which fines and penalties may be imposed. The Code authorizes imposition of fines up to \$50,000 for violations of any provision in the Code.<sup>143</sup> The Department is also empowered to revoke or suspend the license of any dealer who violates a Code provision

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132. *Id.* at § 601.61(1)(2).

133. *Id.* at § 601.61(1).

134. *Id.* at §§ 601.74-.75.

135. *Id.* at § 601.79.

136. *Id.* at § 601.81.

137. *See also* text at note 55 *supra*.

138. FLA. STAT. § 601.54 (1979).

139. *Id.* at § 601.91(3).

140. *Id.* at § 601.95.

141. *Id.* at § 601.97.

142. *Id.* at § 601.44.

143. *Id.* at § 601.67(1).

or engages in any of a number of specifically prohibited activities.<sup>144</sup>

Finally, the Code provides in two sections that violation of any of its provisions will constitute a misdemeanor in the first degree and will subject the violator to criminal prosecution.<sup>145</sup> The Code specifically grants the circuit courts, sitting in chancery, the power to enforce, enjoin, or restrain any citrus fruit dealer from violating the Code or any rule or order made by the Department of Agriculture under the Code.<sup>146</sup>

### CONCLUSION

The Florida Citrus Code, highly complex and technical in both its legal and scientific language, regulates diverse areas in the chain of citrus production. Today's Code is the product of an evolutionary process that spans almost 150 years.<sup>147</sup> As citrus production increased and generated greater revenue, the Florida legislature responded by enactment of more and more complex regulatory schemes to protect and control an industry at the very heart of Florida's economic well-being. Through the Code's protective regulation, Florida's citrus industry unquestionably will remain at the hub of the State's economic structure for many years to come.

BARBARA R. DRAEGER  
NEIL J. HAYES

## THE FLORIDA CITRUS CODE: FREE ENTERPRISE AND PROTECTED INDUSTRY: CONSTITUTIONALITY OF CITRUS REGULATION IN FLORIDA

Government regulation of Florida's citrus industry and of the thousands of people who depend on it for their livelihood provides a cogent example of the classic tension between individual freedom guaranteed by fundamental law and the

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144. *Id.* at § 601.67(1)(a)-(g). A dealer may lose his license if he obtained a license by fraud, has been guilty of a crime involving moral turpitude, or has made false statements that induced another to act to the other's detriment.

145. Compare FLA. STAT. §§ 601.72, .9912 (1979) with text at note 55 *supra*.

146. FLA. STAT. § 601.73 (1979).

147. See text at note 36 *supra*.