

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

| | | |
|-------------------------------|---|-----------------------------------|
| BAY NEWS COMPANY, INC., |] | |
| a corporation, | : | |
| |] | |
| Plaintiff, | : | |
| |] | |
| vs. | : | |
| |] | |
| FREDA P. ROBERTS, TAX | : | |
| COLLECTOR OF MOBILE COUNTY, |] | CIVIL ACTION NO. CV-79-500307 McR |
| ALABAMA, in both her | : | |
| individual and official ca- |] | |
| pacities, separately and | : | |
| severally, and MOBILE COUNTY, |] | |
| ALABAMA, a body politic, | : | |
| separately and severally, |] | |
| | : | |
| Defendants. |] | |

FINAL ORDER OF COURT

This action was submitted for decision based upon the pleadings, stipulation of facts, exhibits and briefs. Plaintiff's complaint prays that Act 657, passed by the Alabama Legislature and duly signed into law on or about July 18, 1979, having been originally known as House Bill 993, a copy of which is attached to this Order as Exhibit "A", be declared unconstitutional and that the County Tax Collector be permanently enjoined from enforcing it. Having considered all of the evidence, together with the applicable law, it is

CONSIDERED, ORDERED, ADJUDGED and DECREED:

1. That said Act 657 is hereby declared UNCONSTITUTIONAL in that it violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 4, 6, and 22 of the Alabama Constitution.
2. That plaintiff is under no obligation to comply with any part or parts of said Act;
3. That this Order shall be binding upon the defendants, their officers, agents, servants and employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise;


4. That the preliminary injunction issued by this Court on September 21, 1979, is hereby made PERMANENT, and those persons and other entities described in Paragraph 3 of this Order are hereby PERMANENTLY ENJOINED from (a) collecting or attempting to collect the tax sought to be imposed by said Act 657, and (b) otherwise enforcing or attempting to enforce any part of said Act;

5. That plaintiff and its surety, Fidelity and Deposit Company of Maryland, are leased and discharged from their obligations under that certain bond filed herein on or about September 21, 1979;

6. Actual notice of this Order shall be given by personal service or otherwise to the parties and other entities bound hereby;

7. That each party is to bear its or her own costs.

DONE this 25th day of March, 1980.


FERRILL D. MCRAE
CIRCUIT JUDGE

H. 993 By Stewart (With Notice and Proof)
R1 7/10/79
RFD Local Legislation No. 3

A B I L L
T O B E E N T I T L E D
A N A C T

This bill provides that a stamp shall be affixed to each magazine sold in Mobile County which contains pictures or photographs of uncovered female breasts or the uncovered genital organs of a man or woman, providing for a fee to be charged for each stamp and providing for the use of the revenue collected therefrom.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Each magazine sold at retail in Mobile County which contains pictures, photographs or drawings of uncovered female breasts or the uncovered genital organs of any man or woman shall have a stamp affixed to its cover. The tax collector of Mobile County shall provide each wholesaler of such magazines with a stamp to be affixed to the magazines, and the wholesaler shall be responsible for affixing the stamp to each magazine that comes within the meaning of this act. If a magazine that comes within the meaning of

this act is purchased directly from the publisher, then the retailer shall be responsible for affixing the stamp to each magazine. Magazines purchased directly from the publisher by a customer through a subscription that is delivered by mail are expressly excluded from the provisions of this act.

Section 2. Each wholesaler that sells magazines that come within the meaning of this act shall pay to the tax collector of Mobile County on a monthly basis fifty cents (.50¢) for each stamp affixed to a magazine. A wholesaler shall verify their monthly sales by providing the tax collector of Mobile County with a copy of their invoice for each magazine that comes within the meaning of this act. Each wholesaler shall pay the required fee to the tax collector of Mobile County within twenty-one (21) days of the receipt of the invoice. Where a publisher reimburses a wholesaler for unsold copies of magazines that come within the meaning of this act, said wholesaler shall be allowed credit towards their required payment of fee by providing the tax collector of Mobile County with an invoice or other appropriate proof of reimbursement by the publisher. Provided, however, that each wholesaler prior to returning any unsold copies to the publisher shall take care that the stamp affixed to its cover has been destroyed or defaced so that said stamp is no longer useable or valid.

Where retailers purchase magazines directly from the publisher, they shall also pay to the tax collector of Mobile County fifty cents (.50¢) for each magazine that comes within the meaning of this act, shall also provide copies of invoices, and shall pay said fee within twenty-one (21) days of the receipt of said invoice.

Section 3. Within twenty-one (21) days of the receipt of the fees required by this act, the tax

collector of Mobile County shall pay the following amounts as designated for each stamp fee received:

(a) Thirty cents (.30¢) to the University of South Alabama Medical Center to help provide for the costs of medical care.

(b) Three cents (.03¢) to Mobile County to be used for providing emergency ambulance service in the underserved areas of Mobile County.

(c) Three cents (.03¢) to the City of Mobile Paramedic Rescue Squads to be used for providing emergency service in the city of Mobile.

(d) Three cents (.03¢) to Mobile County to be used to provide parks and other recreational facilities in Mobile County.

(e) Three cents (.03¢) to the City of Mobile to be used to provide parks and other recreational facilities in the city of Mobile.

(f) Six cents (.06¢) to be provided jointly to the Sheriff of Mobile County and the Police Commissioner of the City of Mobile to be used to support and encourage community watch patrols in the city of Mobile and Mobile County. The funds shall be used to provide equipment for community watch patrols, including CB mobile and base units, and identification signs, and to provide for equipment, materials and personnel to support and increase local community watch patrols by establishing liaison personnel within the Mobile Police Department and the Sheriff's Department of Mobile County. If a need for equipment as designated in this section exists among any organized community watch patrol, up to one half of the funds provided by this section during any given month shall be spent meeting those equipment needs. Provided, however, that the community watch patrol must provide no less

than twenty percent (20%) of the costs of any equipment purchase. No community watch patrol shall receive more than One Thousand dollars (\$1000.00) of equipment under the provisions of this act until all community watch patrols have received similar amounts or have indicated in writing their willingness to forgo such financial assistance.

For the purpose of encouraging the orderly development of active community watch patrol organizations throughout Mobile County and for encouraging the continued development of existing community watch patrols, the Mobile Police Commissioner and the Sheriff of Mobile County shall receive the recommendations of the "'Crime-in-eyes" advisory council for the Mobile County community watch patrol" as said recommendations shall pertain to providing equipment to community watch patrols. If any disagreements over expenditure of funds shall develop, the Sheriff and the Police Commissioner, acting jointly, shall have final authority over the allocation of funds.

(e) Two cents (.02¢) shall be paid to the tax collector of Mobile County to cover the expenses incident to the implementation of this act.

Section 4. The County of Mobile and the City of Mobile are hereby authorized to pass ordinances providing for the enforcement of this act.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. The provisions of this act are severable. If any part of this act is declared to be invalid or unconstitutional such declaration shall not affect the part which remains.

Section 7. This act shall become effective October 1, 1979 upon its passage and approval by the Governor or upon its otherwise becoming a law.

AMENDMENT TO H.B. 993

BY: Local Legislation #3 Committee

Amend H. B. 993 on page 3, Section 3, line 17 by striking the words and punctuation: ~~Mobile-County.~~

Further amend the bill by inserting in lieu thereof the following: the unincorporated areas of Mobile County and in any municipality, exclusive of the City of Mobile.