

interest in a warehousing corporation not regulated by, nor having substantial business commitments from, any state or local governmental agency; nor is he required to disclose an interest as lessor of premises upon which a restaurant is operated by another.

Section 112.313(2), F. S., requires a public officer or employee to file a sworn statement disclosing an interest as officer, director, agent, or member of, or owner of a controlling interest (10 percent or more) in, a business entity "which is subject to the regulation of, or which has substantial business commitments from any state agency, county, city, or other political subdivision of the state. . . ." You state that the warehousing company of which you are an officer, director, and shareholder is "somewhat under the jurisdiction of the Florida Public Service Commission." However, the fact that you use rail transportation in "transshipping" the products of the local manufacturer which are warehoused and stored by your company would not make you "subject to the regulation of" that commission; and I know of no statute which places warehousemen under its jurisdiction.

The Uniform Commercial Code, §§677.201-677.210, F. S., applies to warehousemen and prescribes statutory regulations concerning a warehouseman's liability, his lien, and other similar matters. However, I have the view that these statutory requirements are not the types of "regulation" contemplated by §112.313(2), *supra*. In AGO SC68-2, my predecessor in office pointed out that §112.313(2), *supra*, requires not only that the operations of a business entity be "subject to regulation" but also that this regulation "be vested in some State agency." (That opinion was rendered when the Standards of Conduct Law applied only to state officers and employees.) I find nothing in the Uniform Commercial Code provisions relating to warehousemen that vests in any state or local agency a regulatory power over warehousemen. Accordingly, pending legislative or judicial clarification—and assuming that the warehousing corporation does not have substantial business commitments from any state or local governmental agency—I am inclined to the view that it is not necessary to file a sworn statement disclosing your interest in the warehousing corporation.

The first part of your question is, therefore, answered in the negative.

The second part of your question must also be answered in the negative. You have no interest as officer, director, agent, or member of, or owner of a controlling interest in, the business entity which operates the restaurant in question. Your only interest—that of lessor of the premises upon which the business is conducted—is not within the purview of the statute.

073-294—August 16, 1973

TAXATION

OPPOSITION TO AGRICULTURAL ASSESSMENT BY MUNICIPALITY

To: David L. Reid, Palm Beach County Tax Assessor, West Palm Beach

Prepared by: William R. Cave, Assistant Attorney General and James D. Beasley, Legal Intern

QUESTION:

Is a municipal government authorized to file a petition with the board of tax adjustment opposing the agricultural classification by the tax assessor of lands situate within said municipality?

SUMMARY:

A municipal government has no authority to appeal to or file a

petition with the board of tax adjustment opposing the agricultural classification by the tax assessor of lands situate within said municipality. The authority to appeal to or petition such board for a review of such lands is conferred by law only upon a landowner whose land is denied agricultural classification by the assessor. Section 193.461, F. S., does not impose any duty upon the board of tax adjustment to review the classification of such lands by the assessor upon the filing of a petition by a municipality in opposition to such agricultural classification, nor does it authorize the board of tax adjustment to act on any such petition.

Your question is answered in the negative, subject to the following discussion.

A board of tax adjustment convenes annually in each county pursuant to the enactment of Ch. 69-140, Laws of Florida. Statutory provisions pertaining to the composition and functions of the board now appear in §194.015, F. S. 1971. In addition, §193.461(2), F. S., specifically provides for the board's review of agricultural classifications. That section reads in pertinent part as follows:

(2) Any landowner whose land is denied agricultural classification by the assessor may appeal to the board of tax adjustment. The board may also review all lands classified by the assessor upon its own motion.

In AGO 071-290, I observed that the board's position as a statutory creature limits its powers to those expressly delineated in the statutes. *Also see* AGO 072-349. I find no language in §193.461, F. S., authorizing a municipality, any other governmental body, or any person other than a landowner whose land is denied agricultural classification, to appeal to or file a petition with the board of tax adjustment in opposition to agricultural classifications. It is further observed that §193.461 imposes no duty upon the board of tax adjustment to review the classification of lands upon any such petition being filed by a municipality, nor does it authorize such board to act on any such petition.

As indicated above, §193.461(2), F. S., confers upon the board of tax adjustment the general authority to ". . . review all lands classified by the assessor upon its own motion. . . ." Such review authority is clearly discretionary and should not be construed to lessen the previously discussed requirements for standing to appeal to the board for a review of agricultural land classifications made by the assessor.

The review of assessments of property situate within a municipality is provided for elsewhere in the statutes. The following pertinent language was enacted in Ch. 69-54, and subsequently became §167.433(5), F. S. (1972 Supp.):

Section 7. The tax assessment roll, prepared as required under the general law, each year shall be reviewed and equalized at the time, in the manner, and by the county officials, as provided under the general laws. *However, as to property lying within any municipality, the county commission shall make up the board of equalization for the review and equalization of taxes assessed by the county tax assessor for property within each municipality.* (Emphasis supplied.)

The following language was added to §167.433, F. S. (1972 Supp.), by Ch. 72-368, Laws of Florida:

(6) The chief executive officer of each municipality which may be affected by a tax adjustment shall receive notice of the time and place of any hearing relating to tax adjustment proceedings, and representatives of such municipality shall be given the opportunity to appear and be heard at such hearing.

Chapter 73-129, Laws of Florida, in part rennumbers [Effective Oct. 1, 1973] as §195.201, F. S., the provisions of former §167.433, F. S.

Under the provisions of §167.433, F. S. (1972 Supp.), the county commission, rather than the board of tax adjustment, is the proper administrative forum for the review and equalization of assessments of property located within a municipality. The language in §167.433(6), providing for notice of, and an opportunity to appear and be heard at, hearings related to tax adjustment proceedings, apparently refers to those hearings relating to municipal tax assessments which are conducted before the board of county commissioners. This does not, of course, authorize any municipality to appeal to, file a petition with, or appear before, the board of tax adjustment opposing land classifications made by a tax assessor pursuant to §193.461, F. S.

073-295—August 16, 1973

STATE OF FLORIDA

FULFILLMENT OF PUBLIC PURPOSE THROUGH CONTRACT WITH PRIVATE CORPORATION

To: *Richard Stone, Secretary of State, Tallahassee*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTION:

May the Board of Trustees of the State Theater of Florida enter into a contract with a private nonprofit corporation in order to provide theater productions for the State Theater of Florida?

SUMMARY:

The Board of Trustees of the State Theater of Florida may enter into contracts with private corporations in order to effectuate the purposes for which the State Theater was created.

The State Theater of Florida was created by Ch. 65-164, Laws of Florida, and placed under the direction and control of the Florida State University. Section 1, *id.* In 1970, the legislature, at §1, Ch. 70-329, Laws of Florida, transferred the State Theater by a type one transfer to the Department of State, which became supervisor of the theater. See §5, *id.* [§241.68(1), and (2), F. S.] A board of trustees was authorized by statute to *directly* supervise the theater, such board to consist of five members, including: the head of the Department of Theatre of Florida State University, the Dean of the College of Arts and Sciences of Florida State University, the Director of the State Theater of Florida, a member of the Board of Trustees of the Ringling Museum of Art and one member of the public at large. The general purposes of the theater are found at §4, *id.*, [§241.68(6), F. S.] and are, in pertinent part, to:

(c) Provide, through workshops, clinics and seminars and *any other means developed by the committee of the state theatre*, a program to enrich and enlarge the artistic capacity of community theatre directors and participants, teachers, artists and citizens thus encouraging and assisting in the expansion of quantity and quality of both amateur and professional theatres throughout the state. (Emphasis supplied.)

The State Theater was given this broad grant of power by the legislature in order to most effectively accomplish the far-reaching purposes contained in §4 [§241.68(6)F. S.], *supra*, of bringing to the people of Florida an expansive theater program while at the same time being mindful of the public fisc. The contract in