

with reference to question 1 that Ch. 199 is encompassed by the term "these tax laws" contained in §195.085.

Conversely it may be said that the regulatory provisions of Ch. 195, F. S., are not directed at duties and functions performed by various taxing officials pursuant to Ch. 201, F. S., inasmuch as that chapter governs the imposition of excise taxes on documents rather than an area of ad valorem taxation. Ad valorem taxes are generally said to be direct taxes, while excise taxes—such as those imposed by Ch. 201—are said to be indirect taxes, thus constituting an entirely separate category of taxation. [See] 30 Fla. Jur. *Taxation* §13. Question 2 is answered accordingly.

Question 3 calls for an evaluation of the duties imposed upon the department by §195.085, F. S., and a determination of the extent to which the department may or may not delegate such duties to other agencies or individuals. Section 195.085 is clearly indicative of the legislative intent to charge the department with the ultimate responsibility for investigating certain enumerated officers and, when necessary, providing the governor with evidence supporting the recommended removal of such officers. Note in particular the following mandatory language of §195.085: "The department of revenue shall *investigate* . . . and recommend . . . [and] shall furnish the evidence" (Emphasis supplied.)

It is generally held that "[i]n the absence of statutory authority, a public officer cannot delegate his powers." [See] 26 Fla. Jur. *Public Officers* §105; *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955); *see also*, 67 C.J.S. *Officers* §114, at p. 404. No such statutory authority exists with respect to the duties imposed upon the department by §195.085, F. S. It follows that such duties may not be delegated by the department to any other governmental agency, officer, or private individual.

The foregoing construction of §195.085, F. S., does not preclude the department's examination of relevant findings resulting from investigations conducted by other governmental agencies. It would, however, be improper for the department to rely upon such other findings in the execution of its duties under §195.085, without first corroborating such findings by means of an independent investigation.

073-381—October 9, 1973

TAXATION

CONFLICT BETWEEN CH. 73-172, LAWS OF FLORIDA, AND CITY CHARTER

To: T. Edward Austin, General Counsel, Jacksonville

Prepared by: Winifred L. Wentworth, Assistant Attorney General

QUESTIONS:

1. Does Ch. 73-172, Laws of Florida, affect the power of the personnel department of the City of Jacksonville under §7.1001(5) of its charter, Ch. 67-1320, Laws of Florida, to fix salaries of employees in the office of the county tax assessor?
2. Are employees in the office of the county tax assessor removed from their status as "employees of the consolidated government" under Art. 19 of the city's charter and the implementing civil service law by Ch. 73-172?
3. Does Ch. 73-172 relieve the county tax assessor of all duty to use the central services of the city under §7.303 of the charter?

SUMMARY:

Chapter 73-172, Laws of Florida, supersedes provisions of Ch.

67-1320, Laws of Florida, the Consolidated City of Jacksonville Charter, and ordinances relating to civil service, central services, and salary scales, when the tax assessor's budget, as approved by the Department of Revenue, is in conflict therewith.

Question 1 is answered in the affirmative to the extent necessary to implement the provisions of Ch. 73-172, Laws of Florida, detailed below, and questions 2 and 3 in the negative, subject to qualifications hereinafter stated.

Chapter 73-172, *supra*, entitled "[a]n act . . . creating the property tax assessment administration and finance law," contains a general revision of statutes controlling functions of the county assessors' offices, fiscal and otherwise. Provisions material to the questions presented are in part as follows:

Section 6. Section 195.011, Florida Statutes, is transferred to 195.087 and amended to read: . . .

(1)(a) On or before June 1 of each year, every assessor regardless of the form of county government shall submit to the ad valorem tax division of the department of revenue a budget . . . *in the manner and form required by the department of administration for state agencies.* A copy of such budget shall be furnished at the same time to the board of county commissioners. *The division shall, upon proper notice to the county commission and assessor, review the budget request and may, on or before July 15, amend or change the budget request as it deems necessary in order that the budget be neither inadequate nor excessive.* The county commission may present testimony to the ad valorem tax division concerning the whole or any part of the budget request.

(b) The governor and cabinet, sitting as the administration commission, may hear appeals from the final action of the division of ad valorem tax upon a written request being filed by the assessor or the presiding officer of the county commission. The assessment administration review commission *may amend the budget if it finds that any aspect of the budget is unreasonable in light of the work load of the assessor's office in the county under review.*

* * * * *

Section 8 . . . 192.091 . . . (1) The budget of the assessor's office as approved by the department of revenue shall be the basis upon which the several tax authorities of each county . . . shall be billed by the assessor for services rendered. Each such taxing authority shall be billed an amount equal to its proportionate share of the total ad valorem taxes collected for the preceding year . . .

Payments shall be made quarterly by each such taxing authority . . .

* * * * *

Section 22.

(1) Any resolution of a board of county commissioners enacted pursuant to §145.022, Florida Statutes, and *any special act or general act of local application relating to compensation of assessors, the budgeting or expenses of assessors' offices, or the compensation of any employee of an assessor's office* including, but not limited to chapter 14678, Laws of Florida, 1931, chapters 57-1004, 63-676, 65-1044, 65-1185, 65-1224, 69-631, 69-638, 69-652, 69-729, 69-730, 69-731, 69-733, 69-734, 69-735, and 70-966, Laws of Florida, *which are in conflict with any provision of this act are repealed to the extent of such conflict.* (Emphasis supplied.)

The controlling portions of the city's charter, Ch. 67-1320, Laws of Florida, as amended, to which you refer are those requiring in part:

(1) "There shall be a civil service system" which "shall be applicable to all employees of the consolidated government" with stated exceptions not here relevant, the board to certify names of persons qualified for employment. Art. 19, §19.01 and §19.05.

(2) The personnel department shall have the general responsibility for the personnel management . . . including personnel covered by civil service, for the consolidated government and all independent agencies, except when otherwise provided by law The personnel department shall be charged with the responsibility of . . . preparation of a job classification plan; and adoption of a job pay plan which . . . shall be uniform within any job classification . . . and shall not permit a position . . . to be set at a pay grade which is less than a position having a lesser job value or rank where such positions are in the same line of promotion. §7.1001, Ch. 10 of Art. 7, amend. Ch. 70-743, Laws of Florida.

(3) The central services department shall include the purchasing, legal services, motor pool, data processing All of the services provided by the central services department and the personnel department shall be utilized by all offices . . . except when otherwise provided by law Sections 7.301, 7.303, Ch. 3 of Art. 7, amend. Ch. 70-743, *supra*.

It is, of course, impossible to determine in the abstract (and prior to any exercise of the broad administrative regulatory authority under the new law) the precise extent to which the implementation of the property tax administration and finance law, Ch. 73-172, *supra*, may conflict with the exercise of powers above enumerated under your charter and ordinances. But in raising issues as to the scope of authority granted by Ch. 73-172 to the State Department of Revenue, you apparently concede preemption by that chapter, as a comprehensive revision of property tax administration and finance, to the extent of conflict between its provisions and those of the charter, your conclusion being:

. . . those provisions of Chapter 73-172 relating to the procedure for adoption of the budget of the office of the Tax Assessor, and contracts with assessors for assessment services and for the sale of electronic data processing programs and equipment must be complied with and, in the event of any conflict with a local ordinance or Charter provision, must prevail over such charter provisions and ordinances to the extent of any conflict.

That result is consistent with the language of §22 of Ch. 73-172 which does not specifically refer to your charter law but contains a nonexclusive enumeration of other laws, population acts, and special acts including one home rule charter, intended to be "repealed to the extent of such conflict." Most of the laws listed set out procedures for budget review within counties and prohibitions against budget amendment which appear to be superseded for assessors by the new law. General provisions of those laws as to custody of funds seem to me to present no patent conflict, since §192.091(1), F. S., as amended by §8, Ch. 73-172 contains no new provisions as to custody or routine procedures for disbursement of these funds.

I concur also in your conclusion that Ch. 73-172, *supra*, does not on its face create such an irreconcilable conflict with the quoted charter provisions as to repeal entirely their application to the office of the tax assessor. The Assessment Administration and Finance Law apparently contains no provision which either expressly or by necessary inference precludes the assessor's use of the city's central services department, job classification system, and job pay plan, in the absence of a

finding by the Department of Revenue (made independently or upon request of the assessor) that a budget item affected by such use is either inadequate or excessive, or a finding upon review that "any aspect of the budget is unreasonable in light of the work load of the assessor's office." Section 6, Ch. 73-172, *supra* [§195.087(1)(b), F. S.]. The responsibility of the assessor is, therefore, to present to the department a budget incorporating in detail his requests for specific items, including expenses with employees' salaries which he considers adequate, together with such substantiation as may be necessary for the department to determine the propriety of any budget item which does not comply with provisions of the charter or implementing ordinances. In so doing, he is not required to follow the city's charter or ordinances or, specifically, its job classification system and job pay plan or to submit his budget to the city commission for review prior to its submission to the department (although he is obligated to provide the commission with a copy of the budget). To the extent that the budget as approved by the department is in conflict with the charter or ordinances, the budget will prevail.

To the extent required for a full exercise of its discretion by the department, Ch. 73-172, *supra*, necessarily supersedes limitations imposed by the charter and ordinances. From a consideration of the various provisions of Ch. 73-172 in context and in light of its legislative history (p. 143 *et seq.*, *Journal of the Florida House of Representatives*, April 9, 1973), it is clear that the provisions for assessors' fiscal administration and budget review and amendment were framed in conjunction with and intended to make possible the department's compliance with its duty under the statute to achieve uniform statewide assessment practices and standards. Section 2, Ch. 73-172. Without attempting to anticipate all the potential conflicts between authorized departmental directives and charter requirements, it seems clear to me, as an example, that if budget items cover salaries for specific positions then those items may be subject to increase or decrease by the department based on its determination of adequacy to achieve uniform administration of standard assessment procedures, independent of limitations imposed by the city's uniform job pay plan. Sections 195.027 and 195.062, F. S., as amended §2, Ch. 73-172. The applicable principles of statutory construction are discussed at length in the opinion in *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938). In summary, this and other cases cited in the opinion qualify the general rule against repeal of a special act by general law when provisions of the general act "are apparently, from the language used, intended to prescribe an exclusive state rule or policy to govern those particular matters, any and all local or special laws to the contrary notwithstanding." *Ibid.* p. 531.

The manner and form in which budgets are submitted will, under §195.087, F. S., *supra*, be governed by requirements of the Department of Administration for state agencies. Assuming that regulations when prescribed may incorporate the general concepts appearing in Ch. 216, F. S., there is some indication that one of the permissible alternative methods for budgeting salaries is the specification within a budget (or an appropriations act) of the amount appropriated for a particular employee's position. Section 216.251(1)(a). In addition, a consideration of §195.087, the budget review provision of Ch. 73-172, *supra*, in conjunction with the act as a whole would indicate an intent that the authority of the Department of Revenue over assessors' budgets shall not be limited to the determination of their fiscal propriety or mere authorization of expenditures, as may be contemplated by budget procedures generally (McQuillin, *Municipal Corporations*, §39.60), but may extend also to matters of functional sufficiency, including the amendment of specified salaries as well as quantity or quality of allocated positions when necessary to the department's performance of its mandates under the act (McQuillin, §21.34).

While the general repealer clause of §22, Ch. 73-172, *supra*, does not constitute a legislative finding that laws such as those listed contain conflicting provisions on "expenses of assessors' offices, or the compensation of any employee of an

assessor's office," there is at least an inference that such laws—primarily budget laws—involve compensation sufficiently to generate potential conflict with the new act. The inference is also present that Ch. 73-172 relates to "compensation of employees of an assessor's office," which would indicate a legislative intent or expectancy that the new and extensive budget review powers should extend to amendment of compensation items when necessary, since there appears to be no other provision of the new act relating directly to such compensation. The care with which §6 of the new law [§195.087, F. S.] preserves notice and right of appeal by local governing bodies also indicates legislative cognizance of a significant delegation of authority to the department over matters formerly locally controlled.

073-382—October 10, 1973

CAREER SERVICE SYSTEM

SUBPOENA POWERS FOR GRIEVANCE COMMITTEES

To: *Walter Sims, Senator, 15th District, Orlando*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTION:

Does a grievance committee appointed under the present rules and regulations promulgated under the authority of Ch. 110, F. S., pertaining to state career service employees, possess subpoena powers?

SUMMARY:

A grievance committee appointed pursuant to §110.022(1)(g), F. S., may issue subpoenas by rule only when so authorized by the Department of Administration or the Career Service Commission. Such subpoenas must be issued in the name of the Department of Administration or the Career Service Commission.

Chapter 110, F. S., the State Career Service System, was originally enacted by Ch. 67-437, *supra*. Section 110.022(1) provides that the Department of Administration, through the Division of Personnel, shall have the power to adopt rules and regulations necessary to implement the purposes of the State Career Service System. Section 110.022(1)(g) provides that such rules and regulations shall provide for:

The promotion, demotion, reassignment, separation, reinstatement, employee performance evaluations, status, *grievances* and appeals of employees in the career service. (Emphasis supplied.)

Pursuant to §110.022(1)(g), the Department of Administration has adopted, at 22A-10.04, F.A.C., procedures for handling employee grievances. These procedures provide for an initial screening of the grievance by the personnel officer to determine if such grievance is one over which the affected agency head has jurisdiction and control, and, if so, a grievance committee is then appointed to hear the complaint. The grievance committee is composed of either three or five members selected from among the employees of the affected agency. Both the agency head and the aggrieved employee may select an equal number of committee members, either one each in the case of a three-member committee or two each in the case of a five-member committee. The final member of the committee is appointed by the members already selected by the agency and aggrieved employee. Only employees who have attained permanent status in the career service are entitled to have such a grievance committee convened.

The rules and regulations further provide that all meetings and investigations