

amendment to its charter, which amendment may be to any part or to all of said charter, except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

According to §166.021(4), any change in the laws enumerated therein requires a referendum of the electors of the municipality. The referendum is to take place "as provided in section 166.031, Florida Statutes." The purpose, therefore, of §166.031(1) is to describe the procedure under which such referendum may be held. Section 166.031(1) does not limit or prohibit the governing body of a city from amending or repealing by ordinance provisions of an existing charter which by §166.021(5) are deemed to be ordinances. The provisions of the charter which will automatically become ordinances do not include the areas which are specifically excluded by §166.021(4). The provisions enumerated in §166.021(4) remain, in effect, as part of the charter; and §166.031(1) provides the methods for amending these provisions of the city charter. It does not pertain to or affect the provisions which will become ordinances.

Your question is, therefore, answered in the negative.

073-303—August 31, 1973

#### STATUTES

##### RETROACTIVE EFFECT—PROPERTY ASSESSMENT ADMINISTRATION AND FINANCE LAW

To: Robert Grafton, Counsel, Central and Southern Florida Flood Control District,  
West Palm Beach

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

#### QUESTION:

Does Section 13 of Ch. 73-172, Laws of Florida [§200.065, F. S.], apply for fiscal year 1973-1974 (July 1, 1973 to June 30, 1974) to flood control and water management districts operating under the provisions of §378.28, F. S. 1971?

#### SUMMARY:

When the uniform property assessment and finance law indicates that it shall take effect on a specified date, the requirements set out in that act as to budget procedure are not applicable to the 1973-1974 fiscal year of special districts such as a special flood control and water management district which has fully complied with statutory budget procedures *mandated* for it and expressly requiring completion of a *final* budget prior to the effective date of the uniform property assessment and finance law.

Your question is answered in the negative.

The Central and Southern Florida Flood Control District was established by Ch. 25270, 1949, Laws of Florida, which provides, *inter alia*:

Section 3. . . . [T]he governing board of said district is hereby authorized to levy annually a uniform ad valorem tax on all property in the district as determined for county taxing purposes, not to exceed the amount necessary to provide the money determined to be necessary for

the purpose of maintaining and operating and administering such district and obtaining the necessary rights-of-way for such district, provided such tax shall not exceed an annual rate of one (1) mill on the dollar on the assessed value of such property.

Section 4. Other than as herein provided, Central and Southern Florida Flood Control District shall operate under and be governed by the provisions of Chapter [25209] (House Bill No. 407), Laws of Florida, Acts of 1949 . . . .

Section 378.28, F. S. 1971 [derived from Ch. 25209, 1949, Laws of Florida (;transferred to §373.536 by Ch. 73-190) Laws of Florida], provides in relevant part:

**378.28 District budget and hearing thereon.—**

(1) Commencing July 1, 1956, the fiscal year of districts created under the provisions of this chapter shall extend from July 1 of one year through June 30 of the following year. The governing board of the district, shall between April 1 and 10 of each year complete the preparation of a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year.

(3) On a date to be fixed by the governing board, *between April 10 and 20* of each year the board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the tentative budget in full, and shall be notice to all owners of property subject to the district taxes that on a date and at a place appearing in the notice, opportunity will be afforded to such owners, their attorneys or agents, to appear before the board and show their objections to the budget. The notice shall be published for two consecutive weeks, in any newspaper qualified to accept legal advertisements, in each county having land in the district, the last insertion of which shall appear not less than one nor more than three weeks prior to the date set by the board for the hearing on the budget, or if there be no such newspaper then by posting the notice as provided by §50.021.

(4) The hearing will be by and before the governing board of the district on a date to be fixed by the board not sooner than one week and not later than three weeks after the date of the last publication of notice of intention to adopt the budget and may be continued from day to day until terminated by the board. . . . [T]he governing board shall . . . by *June 10* following *adopt a final budget* for the district which shall thereupon be the operating and fiscal guide for the district for the ensuing year . . . . (Emphasis supplied.)

Section 200.065(2), F. S., created by §13, Ch. 73-172, Laws of Florida, by contrast, reads in part as follows:

(2) *No taxing authority shall budget an increased amount of ad valorem tax revenue* exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to fix its budget for the forthcoming fiscal year . . . . (Emphasis supplied.)

Subsection (2) then goes on to require a specific form entitled Notice of Ad Valorem Tax Levy to be published; it requires public hearings which may coincide with a meeting on the tentative budget, passage of an ordinance or resolution by the

board of governors of the district approving the increased millage, and submission of the ordinance or resolution to the assessor and the Department of Revenue.

Section 24 of Ch. 73-172, *supra*, in pertinent part provides that "[e]xcept as otherwise provided in this section, this act shall take effect on July 1, 1973

Section 13 of Ch. 73-172 [§200.065, F. S.], *supra*, not otherwise being provided for in §24, *supra*, took effect as an operative law on July 1, 1973.

You indicate that all of the procedural steps set out in §378.28, F. S. 1971 [§373.536, F. S. 1973], were followed and that the district adopted its budget for fiscal year 1973-1974 on June 8, 1973. Thus, when the Central and Southern Florida Flood Control District had complied with the mandated budget procedures of §378.28, it would come in conflict with the procedural budget requirements of §200.065(2), F. S., with regard to any increase in the budget revenues resulting from a source other than new ratables in the district.

Under Florida law, a complete revision of a subject is an implied repeal of earlier conflicting acts, whether general or special, unless a contrary intent is clearly shown. *Orange City Water Company v. Town of Orange City*, 255 So.2d 257 (Fla. 1971); *City of Miami v. Kichinko*, 22 So.2d 627 (Fla. 1945) *Reh. Den.* July 17, 1945. Since Ch. 73-172, *supra*, revises the law pertaining to property assessment administration, it would seem that it would supersede any conflicting provisions of §378.28, F. S. 1971, at least as far as future application is concerned.

Under the law of Florida, however, a statute does not have any force until such time as it takes effect. *Neisel v. Moran*, 85 So. 346 (Fla. 1920); *Sammis v. Bennett*, 14 So. 90 (Fla. 1893). And, a person cannot be charged with knowledge of the law until it becomes effective. *State ex rel. Stuart Daily News, Inc. v. Lee*, 163 So. 135 (Fla. 1935). Nor should a statute be given retroactive effect unless its terms clearly show that such a result was intended. *Indemnity Ins. Co. v. Brooks-Fisher Insulating Co.*, 140 So.2d 613 (2 D.C.A. Fla., 1962). *See also* AGO 067-49.

Article III, §9, State Const. provides, *inter alia*, that a law shall take effect on the date "provided therein." This is merely a rephrasing of Art. III, §18, State Const. 1885, and the substance of the old provision does not appear to have been affected. *See* Commentary, 25A. F.S.A. at p. 684; Analysis of Legislative Reference Bureau, Draft of Proposed 1968 Constitution, at p. 7. Former Art. III, §18, was construed by the Florida Court to mean that the Constitution not only *authorizes* statutes to take effect on the date provided therein, but *mandates* the time when the law is to take effect or become operative—that is, a statute is not effective as a law until it becomes operative. Until such time the act has no legal efficacy or potency for any purpose whatsoever. *Neisel v. Moran*, 85 So. 346 (Fla. 1920); *see also* AGO 061-91.

In the situation here, the requirements of former §378.28, F. S., *mandated* that certain procedures be followed and that the final budget be adopted by June 10. All this was properly done prior to the effective date of Ch. 73-172, Laws of Florida, which was approved by the governor on June 13, 1973. I find nothing in that act to indicate that the legislature intended to affect the validity or finality of that procedure by retroactive application. On the contrary, it is clear that the relevant portion of the act was to have effect only "upon becoming law," and has no legal efficacy prior to that date, which was July 1, 1973. A contrary decision, it should be noted, would create considerable hardship on the district. It would be impractical, if not nearly impossible, for the district to comply, at this time, with the procedural requirements of §13 of Ch. 73-172 for advertisements and public meetings in the numerous counties which are included within the district.

In examining this problem, I have been cognizant of the language of §2, Ch. 73-349, Laws of Florida, which provides in part for uniform fiscal years for units of local government:

218.33 Units of local government; establishment of uniform fiscal years and accounting practices and procedures.—(1) Every unit of local

government shall begin its fiscal year on October 1 of each year and end on September 30.

(3) The provision contained in subsection (1) shall apply to all fiscal years beginning after September 30, 1973. The department may, upon the request of a local governmental unit and a showing of inability to conform by September 30, 1973, extend the time of compliance to September 30, 1974.

Section 11. This act shall take effect July 1, 1973; and section 1 of this act shall be repealed on June 30, 1974.

Current informal administrative construction of §218.33(3), F. S., by the Department of Banking and Finance, adopts the apparently reasonable position that units of local government having fiscal years beginning before September 30, 1973, can have until September 30, 1974, to conform to the mandate of the act, upon proper notification to the department. Clearly, to interrupt an ongoing fiscal period such as began on July 1, 1973, for the subject district at this time would create considerable inconvenience and disruption in the fiscal planning of the district. The legislature could not have intended to interrupt an ongoing fiscal period in such a manner, and the extension provision shows a recognition of this situation and a desire on the part of the legislature for an orderly and prospective transition.

Assuming that the millage certification procedure of Ch. 73-172, *supra*, applies to the district, it is my opinion that, although the prospective effect of Ch. 73-172 is to revise the administration of ad valorem taxation and certain budgeting practices with regard thereto, and therefore to supersede conflicting prior statutes, the requirements of §378.28, F. S., and not the requirements of §13(2) of Ch. 73-172 (prohibiting the budgeting of certain increased taxes without a specific form of advertised notice) are controlling for fiscal year 1973-1974 (July 1, 1973 to June 30, 1974) for the Central and Southern Florida Flood Control District.

073-304—August 31, 1973  
(See also 073-304A)

#### COUNTY CHARTER COMMISSION

#### COMPOSITION OF LEGISLATIVE DELEGATION APPOINTING COMMISSION

To: Charles H. Weber, Senator, 30th District, Fort Lauderdale

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTION:

What legislators should vote as members of the "legislative delegation" in appointing a county charter commission, as provided by §125.61(2), F. S.?

#### SUMMARY:

Pending legislative or judicial clarification, the "legislative delegation" for the appointment of members of a county charter commission under §125.61(2), F. S., should consist of all legislators in whose districts all or any portion of the county is included.