

(b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct *municipal* government, perform *municipal* functions and render *municipal* services, and may exercise any power for *municipal* purposes except as otherwise provided by law."

and stated that this new constitutional provision still limits municipal powers to the performance of municipal functions. Then the court went on to say:

That *the paramount law of a municipality is its charter*, (just as the State Constitution is the charter of the State of Florida,) *and gives the municipality all the powers it possesses*, unless other statutes are applicable thereto, has not been altered or changed. *Gontz v. Cooper City*, (Fla. App., 1970) 228 So.2d 913, *Clark v. North Bay Village et al.*, (Fla. 1951) 54 So.2d 240. The powers of a municipality are to be interpreted and construed in reference to the purposes of the municipality and if reasonable doubt should arise as to whether the municipality possesses a specific power, such doubt will be resolved against the City. *Liberis v. Harper* (Fla. 1925) 89 Fla. 477, 104 So. 853. "*Municipal corporations are established for purposes of local government, and, in the absence of specific delegation of power, cannot engage in any undertakings not directed immediately to the accomplishment of those purposes.*" *Hoskins v. City of Orlando, Florida* (5th Cir., 1931) 51 F.2d 901. The aforesaid holding of the United States Fifth Circuit Court is entirely consistent with the 1968 change in our Constitution. (Emphasis supplied.)

Since I find no authorization in said Ch. 67-1274, Laws of Florida (the Daytona Beach City Charter), or in any other statute for said city to offer a reward for the capture of a felon, I conclude that it has no authority to do so.

073-94—March 29, 1973

STANDARDS OF CONDUCT

SCHOOL BOARD MEMBER—DIRECTOR OF BANK DOING BUSINESS WITH SCHOOL BOARD

To: School Board Member

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General and Victor Walsh, Legal Research Assistant

QUESTIONS:

1. May a district school board member also serve as a director of a bank:
 - a. Which is or intends to be a depository bank for such school funds?
 - b. Which has made or intends to make loans to such school board?
2. May a bank, one of whose directors serves as a member of a county school board, make a loan to such county school board?

SUMMARY:

A member of a district school board may serve as a director of a bank acting as a depositor for school funds, providing all applicable conditions precedent contained in §§18.10(5), 112.313, and 136.02, F. S., are observed. A member of a district school board should not accept a position as a director of a bank which ordinarily engages in business

transactions, such as loans, with the school board, as such transactions would then be prohibited by §112.314(1), F. S.

I have consistently adhered to the opinions of my predecessor in office in AGO's SC69-6, SC69-8, SC70-2, and SC70-3 that, under §136.02, F. S., members of public bodies may serve as directors of banks in which the funds of such public bodies are deposited, when such banks have qualified as depositories of public funds. However, you should note carefully the language of §136.02(5), which reads in part:

... provided it shall appear in the records of the state or county agency that the governing body of such agency has investigated and determined that such county officer or member . . . has not favored such bank or banks over other qualified banks and that there is no violation of [§136.02(1)].

Section 18.10(5), F. S., has a similar requirement.

You should note also that your directorship in the bank will require your filing of a sworn statement with the clerk of the circuit court under §112.313(2), F. S., if the bank has substantial business commitments with the state or any of its counties, municipalities, or other political subdivisions. Similarly, if the bank is regulated by the state or any of its subdivisions or agencies, this subsection would mandate the filing of a statement. For your information, the subsection, in part, states:

If an officer or employee of a state agency, or of a county, city, or other political subdivision of the state . . . is . . . [a] director . . . in any corporation . . . or other 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, he shall file a sworn statement disclosing such interest . . . or if he is an officer or employee of a county, city, or other political subdivision of the state he shall file the sworn statement with the clerk of the circuit court of the county in which he is principally employed.

Subject to the above qualifications, I would answer the first part of question 1 in the affirmative.

The second part of the first question is answered in the negative. It is axiomatic that there is no such thing as an honorary directorship. All directors are fiduciaries and as such must be concerned with the successful and profitable operation of the business they direct. For a district school board to deal with a bank (other than as a depository of school funds) of which one of its members is a director would violate §112.314(1), F. S., reading as follows:

(1) No officer or employee of a state agency or of a county, city, or other political subdivision of the state shall transact any business in his official capacity with any business entity of which he is an officer, director, agent, or member or in which he owns a controlling interest.

The opinion of my predecessor, AGO SC69-30, makes clear what "transact" and "business entity" encompass. A bank loan clearly is a transaction with a business entity and the making of such a loan while you were a member of both governing bodies would violate §112.314(1). The fact that you abstained from participation in the decision of either body would not matter.

The second question is also answered in the negative by what was said in answer to your question 1b.: Aside from the fact that you as a public officer would be personally criminally liable under §112.314(1), F. S., and possibly under Ch. 839, F. S., the district school board and the bank may not enter into such a loan transaction. Any attempt to do so would be void *ab initio*. See *Hooten v. Lake County*, 177 So.2d 696 (2 D.C.A. Fla., 1965), holding that where a statute

pronounces a penalty for an act, a contract founded upon the act is void, although the statute does not pronounce it void nor expressly prohibit it.

073-95—March 29, 1973

CONSTITUTION
STATE STATUTE PREEMPTION OF CONFLICTING
LOCAL ORDINANCE

To: John W. Mikos, Sarasota County Tax Assessor, Sarasota

Prepared by: Winifred L. Wentworth, Assistant Attorney General and James D. Whisenand, Legal Intern

QUESTIONS:

1. Is the provision in §1 of Sarasota County Ordinance 72-52 requiring the county tax assessor to give written notice to the owner or his agent of "any increase of over five hundred dollars (\$500.00) in assessment for real property" currently valid in view of §194.011(2), F. S. 1971, which requires that such notice be given regardless of the amount of increase?

2. Is the provision in §1 of the ordinance requiring that such notification be given within a reasonable time prior to hearing complaints and reviewing assessments currently valid in view of §194.011(2), F. S. 1971, which requires that such notification be given on or before completion of the tax roll, and §194.011(1), F. S. 1971, which provides that the tax roll be completed on or before July 1 of each year?

3. Is the provision in §2 of the ordinance setting forth a form to be used for such notification to the taxpayer currently valid in view of §195.022, F. S. 1971, which requires that all forms to be used by county tax assessors in administering and collecting ad valorem taxes shall be those prescribed and furnished by the Department of Revenue?

SUMMARY:

Section 1 of Sarasota County Ordinance No. 72-52, by failing to require written notice of real property ad valorem tax assessment increases of five hundred dollars or less, is inconsistent with the notice requirements set forth in §194.011(2), F. S. 1971, and, regarding the time for notice of assessment increases, is also inconsistent with §194.011(1) and (2), F. S. 1971. Such inconsistencies with general law apparently render §1 of the ordinance constitutionally improper. Article VIII, §1(g), State Const. Section 2 of the subject ordinance does not appear to be legally severable.

All three questions are answered in the negative for the reasons indicated in the following discussion.

Having recently adopted a county home rule charter pursuant to §§125.60-125.64, F. S., Sarasota County is subject to the following constitutional limitation upon the scope of law-making powers vested in its board of county commissioners: "The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. . . ." Article VIII, §1(g), State Const.

The authority of the board of county commissioners to enact the ordinance provisions in question, and hence the validity of such provisions, depend in part upon a determination that such provisions are not inconsistent with general law, as that status is contemplated by Art. VIII, §1(g), State Const.