

state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Except to the extent that this section, in conjunction with Ch. 196, F. S., provides for taxation of leasehold interests in governmentally owned property, it does not purport to alter the immunity doctrine noted above, but would appear to me to require compliance with statutory procedures for securing the exemption of such leasehold interests and for the inclusion of such applications within the annual list of exemptions published under §196.194(2), *supra*.

073-438—November 27, 1973

DRIVERS' LICENSES

REEXAMINATION NOT REQUIRED AFTER CHANGE OF NAME

To: Reubin O'D. Askew, Governor, Tallahassee

Prepared by: Staff

QUESTION:

Does §322.121, F. S., require reexamination of a married woman (Applying for a two-year driver's license renewal) whose married name now places her in an alphabetical bracket different than her maiden name, even though she has already taken an examination under her maiden name and the four-year reexamination period has not expired?

SUMMARY:

Section 322.121, F. S., relating to reexamination of all drivers of motor vehicles, does not require reexamination of any person prior to the expiration of the four-year reexamination period, even though that person's name may change in the interim.

This question is answered in the negative.

Section 322.121, F. S., divides citizens of Florida into four groups for the purpose of drivers' license reexamination: those born in odd-numbered years whose last names begin with letters A-M; those born in even-numbered years whose last names begin with letters A-M; those born in odd-numbered years whose last names begin with letters N-Z; and those born in even-numbered years whose last names begin with letters N-Z. Each group is *reexamined* during a given year and every four years thereafter.

The problem arises in the above-outlined cycle when a person changes his or her name, necessitating the transfer of that person to another alphabetical bracket. The most common example of the problem is in the case of a woman who marries or is divorced and assumes her maiden name or shortly remarries subsequent to the original examination, but prior to the expiration of the four-year reexamination period. A similar problem occurs when a nonresident moves to Florida and enters the reexamination cycle at a time which would preclude that person from receiving full benefit of the period. The nonresident is entitled only to that portion of time remaining in the reexamination period and not necessarily a full four-year or two-year time period. Chapter 73-238, Laws of Florida [§322.031, F. S.], states in this regard:

322.031 NONRESIDENT—WHEN LICENSE REQUIRED

(1) In every case where a nonresident, except a nonresident migrant farm worker as defined in section 316.003(62), accepts employment or engages in any trade, profession, or occupation in the state or enters his

children to be educated in the public schools of the state, such nonresident shall within thirty days after the commencement of such employment or education be required to make application for his driver license if he operates a motor vehicle on the highways of the state.

(2) *Every applicant who is entitled to the issuance of an original driver license, as provided in this section, shall be issued a valid license for that period of time until his next birth month then renewable in accordance with the provisions of section 322.18.*

(3) The fee to be charged for the fractional year license shall be one dollar (\$1.00), in addition to the fee for driver education as provided by section 233.063 and in, addition to the fee for color photograph as provided by section 322.142. (Emphasis supplied.)

In order to comply with the provisions of Ch. 73-238, Laws of Florida, a nonresident driver must apply for a driver's license within thirty days after commencing employment or enrolling a child in the public schools of the state. The issuance of the license shall be for that period of time remaining until his or her birth month when next the license must be renewed.

Section 322.18, F. S., provides for *renewal* of drivers' licenses at an interval of less than four years if the driver purchases a two-year rather than four-year license. However, the statute expressly prohibits *reexamination* of the applicant unless the Department of Highway Safety and Motor Vehicles has reason to believe the licensee is no longer qualified to be licensed. §322.18(3) reads thusly:

(3) All operators', restricted operators', or chauffeurs' licenses shall be renewed only during the month in which the holder's date of birth occurs and shall be renewed during that month as provided in the chapter upon application and payment of the required fee and *shall be renewed without examination* unless the department has reason to believe the licensee is no longer qualified to receive a license. (Emphasis supplied.)

"Renewal" and "reexamination" are not used interchangeably. Although *renewal* may be for a period of less than four years, nowhere does the law require *reexamination* (except upon a showing of good cause) at an interval of less than four years.

Section 322.121(1), F. S., reads as follows:

(1) All licensees are required to submit to and pass a reexamination upon notification from the department at the time they apply for renewal during birth month. The reexamination shall include a test of the licensee's eyesight, his hearing and his ability to read and understand highway signs regulating, warning and directing traffic. Such *reexamination will be required of each licensee every four years*. (Emphasis supplied.)

The statute states unequivocally that reexamination is required of each licensee every four years. It does not authorize reexamination of an applicant at an interval less than four years. A statute is to be construed so as to effectuate the intent of the legislature. Presumably, if the legislature had intended that an applicant be reexamined at an interval of less than four years, it would have, in its considered discretion, so provided. The only statutory provision other than §322.18, F. S., requiring *reexamination* at an interval of less than four years is §322.221, F. S., relating to the competence of certain drivers to operate a motor vehicle. That provision is inapposite to the question raised herein.

Additionally, note should be made of §322.19, F. S., which reads as follows:

322.19 Notice of change of address or name.—Whenever a person, after applying for or receiving an operator's or chauffeur's license, shall move from the address named in such application, or in the license is-

sued to him, or when the name of the licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the department in writing of his old and new addresses, or of such former and new names, and of the number of his license.

It appears clear that the legislature intended only that the applicant notify the department of a name change and nothing more. Obviously, complete reexamination of the applicant is not required.

Accordingly, reexamination of applicants for drivers' licenses at an interval shorter than four years, without good cause shown, is not required by the laws of Florida.

073-439—November 27, 1973

STANDARDS OF CONDUCT LAW

PURCHASE OF CITY PROPERTY BY CITY COMMISSIONER PROHIBITED

To: Frank L. Kunberger, City Attorney, Fort Meade

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a city commission member purchase property owned by the city and set aside for industrial development when a per-acre price has been established for the property, the purchase and sale has been approved by the city's industrial park board, and the member abstains from voting on the question?

SUMMARY:

The purchase and sale of city-owned property by and between the city commission and one of its members is a "business transaction" within the purview and prohibition of §112.314(1), F. S., and is also contrary to public policy.

The Standards of Conduct Law, §112.314(1), F. S., prohibits a public officer or employee from transacting any business with any business entity of which he is an officer, director, or member, or in which he owns a controlling interest. This statute has uniformly been interpreted by my predecessor in office and by me as prohibiting the governing body of which such an official is a member from entering into a business transaction with the official himself or with any business entity in which he has the described interest. It was held in AGO 070-132 that a rental agreement by which a public official undertook to rent his own personal office furniture and equipment for official use "would unquestionably be a business transaction within the meaning of this statute." *Accord:* Attorney General Opinion 071-239, holding that a board of county commissioners may not grant a garbage franchise to a member of the board.

Moreover, as noted in AGO 070-132, *supra*, even in the absence of statute, such a business transaction would be contrary to public policy and, at least, voidable. The general rule in this respect was stated in AGO 067-66, as follows:

Public officers may not make contracts, in their official capacity, with themselves or become interested in contracts so made, or make contracts which it is their official business to see faithfully performed. A public officer, or board, may not make contracts with a board, firm or corporation of which he is a member or a part. (67 C.J.S. 406 and 407, Sec. 116) A governmental board cannot make a contract with one of its own