

based on the remaining period of the year. The department shall establish and maintain a certified Florida assessor program.

Prior to the adoption of the 1973 act, no additional compensation was payable to a tax assessor because of his certification. As noted in AGO 073-280, the new salary schedules for county tax assessors are those prescribed by Ch. 73-173, *supra*, the effective date of which was October 1, 1973. It was said also that the effective date clause of Ch. 73-173

. . . evidences a clear legislative intent that the Act was to take effect as of the date of its adoption, June 13, 1973, *insofar as the compensation to which county officials are entitled under existing laws is concerned*, and as of October 1, 1973, *insofar as the new salary schedules therein provided for county officials are concerned*. . . (Emphasis supplied).

Accord: Attorney General Opinion 073-330A, in which it was pointed out that the opinions in AGO's 069-68 and 058-57, relating to salary increases for county fee officers, were distinguishable on the facts.

It is well settled that statutes are always presumed to be intended to operate prospectively, and should never be construed as having a retrospective effect, unless their terms clearly show a legislative intention that they should so operate. *Schonfield v. City of Coral Gables*, 174 So.2d 453 (3 D.C.A. Fla., 1965), *cert. disch.* 183 So.2d 682 (Fla. 1966). I find nothing in §145.10(2), *supra*, to indicate that the provisions of the act relating to the special qualification salary supplement are to be given a retrospective operation—either to July 1, 1973, or to January 1, 1973. Accordingly, it must be concluded that tax assessors who were certified by the department prior to October 1, 1973, may receive the special qualification salary beginning October 1, 1973, the effective date of the act.

073-448—November 29, 1973

MUNICIPAL HOME RULE POWERS ACT

PROCEDURE FOR AMENDMENT OF ORDINANCES

To: Patrick G. Kennedy, City Attorney, DeLand

Prepared by: Sharyn Smith, Assistant Attorney General

QUESTIONS:

1. May the City of DeLand adopt an ordinance assessing costs and attorneys' fees against the owners of property which has been determined to be a public nuisance and, therefore, subject to abatement by the city commissioners?
2. Could such an ordinance legally be given a retrospective application?

SUMMARY:

The City of DeLand may adopt an ordinance assessing costs and attorneys' fees against the owners of property which has been determined to be a public nuisance and, therefore, subject to abatement by the city commissioners. Such an ordinance may legally be given a retrospective application; however, it may not apply to abatement proceedings already completed when no existing law authorized such assessment of costs and attorneys' fees.

AS TO QUESTION 1:

As a general rule, attorneys' fees may be recoverable as costs and assessed

against the losing party only when provided for by law or contract. [See] 8 Fla. Jur. Costs §33. Although such statutes authorizing attorneys' fees are given a strict construction since they are in derogation of common law, *Kittel v. Kittel*, 210 So.2d 1 (Fla. 1967), the trend in recent years has been to uphold the validity of such statutes. [See] 8 Fla. Jur. Costs §35. Thus, the state has the power by statute to authorize that costs, including attorneys' fees, be assessed against the owners of property which constitutes a public nuisance so long as such a statute does not create an unreasonable classification violative of the equal protection clause contained in either the state or federal constitution *See, Hunter v. Flowers*, 43 So.2d 435, (Fla. 1949).

Pursuant to the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, effective October 1, 1973, the municipalities were granted, by the legislature, complete home rule powers. Article VIII, §2(b), State Const., provides in part:

Municipalities shall have governmental . . . powers to enable them to conduct municipal . . . functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

Chapter 73-129, *supra*, defines "municipal purpose" as used in the Constitution, to mean "any activity or power which may be exercised by the state or its political subdivisions," §166.021(2), F. S. (Emphasis supplied.) The grant of powers set forth in Art. VIII, §(2)(b), *supra*, includes the power to enact any legislation concerning any subject matter upon which the state legislature could act unless expressly forbidden by the Constitution or expressly preempted to state or county government by Constitution or general law, or preempted to a county pursuant to a county charter. Section 166.021(3), F. S. Further, §166.021(4), F. S., provides that any limitations of power, except those specifically enumerated therein, contained in any municipal charter enacted prior to July 1, 1973, are nullified and repealed.

Therefore, since the state has the power to authorize that costs (including attorneys' fees) may be assessed against owners of property which is found to constitute a public nuisance, a municipality pursuant to Ch. 73-129, *supra*, may likewise enact legislation assessing costs (including attorneys' fees) against owners of property constituting a public nuisance.

AS TO QUESTION 2:

If specifically provided for, a statutory allowance of attorneys' fees may be given retroactive application. *McCarthy v. Havis*, 2 So. 819 (Fla. 1887); 8 Fla. Jur. Costs §34. However, it is an elementary rule of statutory construction that "a statute may not be given retrospective effect, unless its terms show clearly that such an effect was intended." (citations omitted), *City of Miami v. Board of Public Instruction of Dade County*, 72 So.2d 901, 904 (Fla. 1954). All ordinances or resolutions passed by the governing body pursuant to §166.041(4), F. S. [Municipal Home Rule Powers Act], became effective ten days after passage or as otherwise provided therein. This provision is similar to Art. III, §9, State Const., which has been held not to prevent retroactive operation of a law. *Kirk v. Brantley*, 228 So.2d 278 (Fla. 1969). *See also, Crooks v. State ex rel. Pierce*, 194 So. 237 (1940). *Anderson v. Ocala*, 91 So. 182 (Fla. 1922); *Charlotte Harbor & N. R. Co. v. Welles*, 82 So. 770 (Fla. 1919), *aff'd* 260 U.S. 8 (1922).

Since municipalities have the power under the Municipal Home Rule Powers Act, Ch. 73-129, *supra*, to enact an ordinance assessing costs, including attorneys' fees, against the owners of property which is found to constitute a nuisance, the municipalities may further provide, in clear and unambiguous terms, that such an ordinance is to be given retroactive effect. However, such an ordinance may not retroactively apply to abatement proceedings already completed when no existing

law authorized such assessment of costs and attorneys' fees. *Cf. McCord v. Smith*, 43 So.2d 704 (Fla. 1950).

As a caveat, it should be noted that retroactive laws are characterized by a lack of notice and knowledge of past conditions and such laws tend to disturb the sense of security in past transactions. *Sutherland on Statutory Construction*, 3rd ed., §§2212 and 2201. In particular, the notice aspect of such laws has come, in recent years, under strict judicial scrutiny. *See, Goldberg v. Kelly*, 397 U.S. 254 (1970).

It is elemental to due process that an individual may not be penalized until given adequate notice and an opportunity to be heard. If an ordinance in its application would circumvent these requirements, serious constitutional problems would arise. However, since in the instant case the city ordinances clearly provide for adequate notice and a hearing on the issue before any action may be taken, a denial of due process in connection with circumvented notice and hearing requirements is not presented.

073-449—November 29, 1973

MUNICIPAL HOME RULE POWERS ACT

PROCEDURE FOR AMENDMENT OF ORDINANCES

To: W. W. Caldwell, City Attorney, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Does §166.041(2), F. S. [Ch. 73-129, Laws of Florida], require that amendatory municipal ordinances shall set out the act, section, subsection, or paragraph in full as it was prior to amendment, as well as the act, section, subsection, or paragraph in full as amended?

SUMMARY:

Section 166.041(2), F. S. [Ch. 73-129, Laws of Florida], does not require that ordinances shall set out the act, section, subsection, or paragraph of a section or subsection in full as it was prior to amendment, as well as the act, section, subsection, or paragraph in full as amended.

The amendatory ordinance must set out the revised or amended section, subsection, or paragraph of a section or subsection in full, including all the language of the former section or subsection or paragraph thereof not being deleted or amended and the amendatory language. Enough of the ordinance being amended must be republished to make the meaning of the provision published complete and intelligible from its language.

Section 166.041(2), F. S., as created by §1, Ch. 73-129, Laws of Florida, states in part that "ordinances to revise or amend shall set out in full the revised or amended act, section, subsection, or paragraph of a section or subsection."

The State Constitution, Art. III, §6, has an almost identical provision relating to state statutes. The Florida Supreme Court has addressed itself to this provision several times. *See Jackson v. Consolidated City of Jacksonville*, 225 So.2d 497 (Fla. 1969); *Auto Owners Insurance Co. v. Hillsborough County Aviation Authority*, 153 So.2d 722 (Fla. 1963); *Lipe v. City of Miami*, 141 So.2d 738 (Fla. 1962). The court has stated that the purpose of such provision is "to inform both the legislature and the public of the nature and extent of proposed changes in existing laws." *Auto Owners Insurance Co.*, *supra*, at 725. The court has further held that

. . . when a section, sub-section or paragraph is amended enough of