

073-311—September 4, 1973

COUNTY JUDGES

DUTIES FORMERLY EXERCISED BY COUNTY JUDGES RELATING TO FISHING LICENSES AND DEVICES

To: O. E. Frye, Jr., Director, Game and Fresh Water Fish Commission,
Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Who has authority to order forfeiture of illegal fishing devices under §372.31, F. S. 1971, in light of revised Art. V, State Const.?
2. Who shall issue hunting and fishing licenses under §372.57(17)(a), F. S. 1971?
3. What change has been made in §372.574, F. S. 1971, which provided for appointment of subagents by the county judge?
4. What change has been made in §372.61, F. S. 1971, relating to reports of license sales?
5. What change has been made in §372.69, F. S. 1971, as to distribution of forms with summaries of regulations?

SUMMARY:

Under §372.31(1), F. S., as amended by Ch. 73-333, Laws of Florida, orders for forfeiting illegal trapping or fishing devices when the owners thereof are unknown are made by the county court judges.

The issuance of hunting and fishing licenses and related administrative duties formerly performed by county judges are now handled by the county tax collectors.

AS TO QUESTION 1:

As reenacted by Ch. 73-333, Laws of Florida (a Reviser's Bill), §372.31(1), F. S., provides in pertinent part that:

When any illegal net, trap or fishing device is found in the fresh waters of the state, and the owner of same shall not be known to the officer finding the same, such officer shall immediately procure from the *county court judge* an order forfeiting said illegal net, trap or fishing device to the game and fresh water fish commission. . . . (Emphasis supplied.)

The substitution of the words, "county court judge" for the words, "county judge" is in accord with the intent of the Supreme Court's Transition Rule No. 3 [adopted and effective Nov. 29, 1972, *see In re* Transition Rules 2, 3, 4, 5 and 6, 269 So.2d 665 (Fla. 1972)], that references in Rules of Court or statutes to the small claims court, justice of the peace court, or other courts whose function has been vested in the county court by revised Art. V, State Const., "shall be deemed to refer to the county court as of January 1, 1973." Thus, under the new judicial system, the orders of forfeiture of illegal fishing devices under §372.31, *supra*, will be made by the county court judge.

AS TO QUESTIONS 2, 3, 4, and 5:

Article V, §20(f), State Const., provides that "[u]ntil otherwise provided by law, the nonjudicial duties required of county judges shall be performed by the judges of the county court." Pursuant to this authority, the legislature adopted §18 of Ch. 72-404, Laws of Florida, transferring to county tax collectors certain administrative duties formerly performed by the county judges of this state with respect to the issuance of hunting and fishing licenses and directing the

substitution of the designation "Tax Collector" for the designation "County Judge" in the applicable statutes. The 1973 Reviser's Bill, Ch. 73-333, Laws of Florida, has made the appropriate substitutions in §§372.57(17) (a), 372.574, 372.61, and 372.69, F. S.

Accordingly, the county tax collectors of this state or their subagents issue hunting and fishing licenses, collect the fees therefor, and report to the Game and Fresh Water Fish Commission the license sales made by them on forms provided for that purpose by the commission. The license forms supplied to tax collectors by the commission contain on the back thereof a "synopsis" of the game trapping or freshwater fishing laws of this state.

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TAXATION

PURCHASER OF STOCK ON MARGIN LIABLE FOR INTANGIBLE TAX

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: E. Wilson Crump II, Assistant Attorney General

QUESTION:

Who is liable, when a Florida resident buys a share or shares of stock from a Florida security broker on margin, for the Florida intangible tax on stock prior to full payment of the marginal account and delivery of the share of stock?

SUMMARY:

In Florida, when a customer buys stock on margin from a broker, the customer is the owner of the stock and the broker is pledgee for purposes of securing the unpaid balance of the purchase price. It follows that the customer is primarily liable for the payment of the intangible personal property tax on such stock.

It is my opinion, subject to the following comments, that the customer is primarily liable to pay the intangible tax on the full value of such stock.

A margin transaction such as is contemplated by the question is one in which a customer orders a share or shares of stock from a stockbroker; only a portion of the purchase price thereof is paid originally by the customer; the broker retains possession of the stock until the purchase price is paid in full by the customer, at which time the stock is delivered to him. A more detailed description of such a transaction may be found in the case of *Smith v. Lummus*, 14 So.2d 897 (Fla. 1943). One of my predecessors in an early opinion, AGO 0-517, Aug. 8, 1939, Biennial Report of the Attorney General, 1939-1940, p. 471, held that the broker was taxable on stock purchased on margin. His primary authority for this conclusion was the Massachusetts case of *Chase v. Boston*, 62 N.E. 1059 (Mass. 1902), which had held that, under the facts of a margin transaction, the broker was the owner of the stock prior to delivery to the customer and that it was taxable to him as his property. This conclusion that the broker is the owner is in accord with the Massachusetts view and the English view. [See] 51 Am. Jur. *Taxation* §434, 41 A.L.R. 1258. On the other hand, the majority rule in this country appears to be that the broker is only the pledgee of the property with title vesting immediately in the customer. [See] 12 Am. Jur.2d *Brokers* §131; 41 A.L.R. 1258.

It is my opinion that AGO 0-517 was mistaken as to the line of authority followed in Florida and that the courts of this state have consistently tended to follow the majority view where the question has arisen. In the case of *Henderson v.*