

shall be appointed by the City Manager. *The Council shall fix, by ordinance, the compensation of the City Manager, the Mayor, the City Clerk, the City Attorney, and the City Judge.* The City Manager shall fix the salaries or compensation of all other officers and employees. (Emphasis supplied.)

* * * * *

Section 60. a. The Municipal Court shall have jurisdiction for the trial of all offenses arising under the Charter and the ordinances of the City. The City Clerk shall act as Clerk of the Court, and the Judge of the said Court shall be appointed by the City Council.

b. The City Judge shall have power to try all cases involving the violation of the City Charter and ordinances and for such violations to impose such penalties or fines as may be prescribed by ordinance, and shall have power to try cases upon information filed by the City Attorney, or upon affidavit filed by the complaining witness; and shall have the right to administer oath and the power to issue warrants for arrest upon proper information or affidavits and to issue summons to compel the attendance of witnesses. All summons and warrants shall be attested by the Clerk of the Municipal Court and may be served by a police officer of the City. *The City Judge shall have the exclusive power to impose fines for the breach of any City ordinance, to estreat and reinstate bonds.* (Emphasis supplied.)

* * * * *

d. The City Judge is hereby authorized to promulgate rules and regulations for the government of such Municipal Court, and to provide for the costs of all prosecutions in said Court.

It appears that the City Council of Niceville in accordance with the pertinent charter provisions has duly enacted a municipal ordinance providing for the compensation of the city judge and other officers. The ordinance provides that the city judge will be compensated in the amount of five dollars per case. Therefore, based on the provisions of said municipal ordinance and the charter provisions authorizing it, the municipal judge does have the authority to assess a five-dollar fee for each case that appears on the court docket.

073-325—September 6, 1973

TAXATION

HOMESTEAD, WIDOWS', DISABILITY, AND DISABLED VETERANS' EXEMPTIONS

To: Lamar Jenkins, Suwannee County Tax Assessor, Live Oak

Prepared by: Winifred L. Wentworth, Assistant Attorney General and David M. Hudson, Legal Intern

QUESTIONS:

1. May a tax exemption be applied to a parcel of land which does not join the homestead when the exemption is granted for "additional" homestead exemption granted to certain persons sixty-five years of age or older pursuant to §196.031(3), F. S.?

2. May a tax exemption be applied to a parcel of land which does not join the homestead when the exemption is granted for widows, blind

persons or totally and permanently disabled persons pursuant to §196.202, F. S.?

3. Is a disabled veteran's widow entitled to carry over the disability exemption of five hundred dollars and also get a widow's exemption of five hundred dollars on the same parcel of land?

SUMMARY:

The increase in homestead tax exemption for certain persons aged sixty-five years or older from taxes levied by district school boards for current school operating expenses provided by §196.031(3), F. S., may not be applied to property other than that which is qualified as "homestead property" pursuant to Art. VII, §6 State Constitution, and §196.031, F. S. Exemptions granted pursuant to §196.202, F. S., may be applied to, but are not limited to, homestead property. Widows who are entitled to "carry over" exemptions which had been granted to their husbands pursuant to §196.081, F. S., or §196.091, F. S., may additionally be granted an exemption provided by §196.202 as a widow. Qualified disabled veterans may be granted the exemption provided by §196.081 or §196.091, in addition to the exemption provided by §196.202. Qualified quadriplegics may be granted exemptions under §§196.101, and 196.202.

Question 1 is answered in the negative, question 2 in the affirmative, and question 3 by the discussion below.

The homestead tax exemption is provided by Art. VII, §6, State Const., and §196.031, F. S. In order to be entitled to the exemption, a claimant must have either the legal or equitable title to the real property and maintain his or her own permanent residence, or the permanent residence of another person legally or naturally dependent upon him or her, thereon. The mandatory, self-executing exemption provided by Art. VII, §6(a) is limited to the assessed value of the claimant's interest in the property up to the amount of five thousand dollars. The exemption is further limited by Art. VII, §6(b), which provides that "[n]o exemption shall exceed the value of the real estate assessable to the owner." Only one homestead exemption is available for each "residential unit," Art. VII, §6(b), *supra*, and by current implementing acts is limited to "contiguous real property," Section 196.031(1), F. S., and Rules and Regulations of the State of Florida, Department of Revenue, Ch. 12B-1.202(1). Article VII, §6(c) permits, in certain situations, an increase in the amount of the exemption up to ten thousand dollars if provided "[b]y general law and subject to conditions specified therein." The legislature has partially implemented this provision by §196.031(3), F. S.:

(3) For every person who is entitled to the exemption provided in subsection (1), who has been a permanent resident of this state for the five consecutive years prior to claiming an exemption under this subsection, and who is sixty-five years of age or older, the exemption is increased to ten thousand dollars for taxes levied by district school boards for current school operating purposes. . . . [See also Ch. 73-340, Laws of Florida.]

The above-quoted statutory provision accordingly does not actually provide "an additional homestead exemption," but merely provides for an increase in the amount of the exemption for certain qualified applicants, subject to the same limitations, including contiguity, applicable to any homestead claim under the constitution, statutes, and rules.

The exemption provided by §196.202, F. S., on the other hand, is not limited to homestead property. Attorney General Opinion 046-344, Aug. 12, 1946, Biennial Report of the Attorney General, 1945-1946, p. 776. Persons who qualify for the

exemption provided by §196.202 (widows, blind persons, and persons "totally and permanently disabled") may apply this exemption to homestead property or to other taxable property owned by them, including real property which is not contiguous to the homestead.

Your third question, pertaining to exemptions allowable to widows of disabled veterans, requires analysis of several constitutional and statutory provisions with regard to the exemption to which the veteran was entitled prior to his death. Article VII, §3(b), State Const. and §196.202, F. S., provide a five hundred dollar tax exemption for persons who are "totally and permanently disabled." Section 196.24, F. S., permits an ex-serviceman who is "disabled to a degree of ten percent or more" to qualify for the five hundred dollar tax exemption provided by the Constitution and §196.202, while persons who do not qualify under §196.24 must be otherwise "totally and permanently disabled" under statutory standards. *See* AGO 072-151. There is no provision for the exemption granted to a serviceman who qualified by virtue of §196.24, for the exemption provided by §196.202, to "carry over" to his widow. Upon his death, that exemption ceases for subsequent tax years, and the widow (assuming that she is otherwise qualified) may become entitled to an exemption of her own, as a widow, under §196.202.

A qualified disabled veteran may, however, be entitled to additional tax exemptions as provided by §§196.081 (permanent and total disability as a result of certain enumerated causes) and 196.091, F. S. (disabled veterans confined to wheelchairs). The exemptions provided by the last-cited provisions may under express statutory language "carry over" in certain situations to a widow upon her husband's death. Section 196.091(3) provides:

(3) In the event the homestead of the wheelchair veteran was or is held with the veteran's wife as an estate by the entirety, and in the event the veteran did or shall predecease his wife, the exemption from taxation shall carry over to the benefit of the veteran's wife, provided, however, that she continue to reside on said real estate and use it as her domicile or until such time as she shall remarry or sells or otherwise disposes of the property.

The "carry over" provision contained in §196.081(3), is virtually identical. For comparison, §196.101, F. S., which provides exemption for quadriplegics, contains no "carry over" provisions for widows.

The exemptions provided by §§196.081 and 196.091, F. S., like the exemptions provided by §196.202, constitute legislative implementation of the exemption provision contained in Art. VII, §3(b), State Const. *See* AGO 069-132. It was my opinion in AGO 071-151 that an individual may receive more than one five hundred dollar tax exemption under §196.202 if such individual qualifies independently under more than one category of exemption, *i.e.*, for blindness, for total and permanent disability, or as a widow. Similarly, a widow who qualifies for a "carry over" exemption under §196.081(3) or §196.091(3) would also be entitled to her exemption, as a widow, under §196.202.

Although the point was not specifically raised by your questions, it appears relevant to point out that, in keeping with the analysis of the provisions indicated above, a properly qualified disabled veteran may be entitled to exemptions either under §196.081, F. S., or §196.091, F. S., in addition to that provided by §196.202, F. S. Also, a qualified quadriplegic may be granted exemptions under both §196.101, F. S., and §196.202.