

were taxable rental because the lease required them to be paid and in fact designated such as rent. Since I find no change in statutory or judicial authority, I consequently affirm the prior opinion.

I have not been apprised of the terms of the lease you are concerned with regarding how the payment of dues is described. However, even if the lease were silent as to the description of the payments, I nevertheless must conclude that if the payment of such dues is part of the consideration for the rental of the floor space and not a collateral contract entered into by the parties, then such dues are rent subject to the sales tax. Section 212.031(1)(d), F. S., *Seaboard Coast Line Railroad Company v. Askew*, Circuit Court, Second Judicial Circuit, Case No. 72-15, 1972, and AGO 070-151.

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### PUBLIC PROPERTY

#### LOCAL AUTHORITY MAY NOT PROHIBIT SWIMMING ON PUBLIC BEACH

*To: Jere Tolton, Representative, 6th District, Fort Walton Beach*

*Prepared by: Michael Parrish, Assistant Attorney General*

#### QUESTION:

Does the Okaloosa Island Authority have the authority to ban all swimming along a portion of the Gulf of Mexico coastline of Santa Rosa Island?

#### SUMMARY:

The Okaloosa Island Authority is without authority to ban all swimming along the foreshore of the Gulf of Mexico coastline of Santa Rosa Island, title to which is held by the State of Florida in trust for all the people under Art. X, §11, State Const.

Section 1(4) of Ch. 29336, 1953, Laws of Florida, which creates the Okaloosa Island Authority, defines the geographic area under its authority as "such portion or portions of Santa Rosa Island as may be owned by Okaloosa County, Florida, or in which said county may have a proprietary interest, from time to time." Article X, §11, State Const., provides that

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, *in trust for all the people*. (Emphasis supplied.)

The foreshore on the Gulf is held by the state in trust for the public, the traditional purposes of which are fishing, swimming, boating, and other public uses authorized by law; and such purposes may not be excluded or unduly abridged or the trust completely alienated except as may be authorized by the constitution and then only in the public interest. *See* annotations, at p. 522, *et seq.*, 26A F.S.A.

Under Ch. 253, F. S., all lands held by the state by virtue of its sovereignty, including beaches below the high water lines, are administered and controlled by the Trustees of the Internal Improvement Trust Fund.

I am advised that the State of Florida has not alienated its title to any of the foreshore or beaches along the Gulf coast of Santa Rosa Island. Therefore, inasmuch as the Okaloosa Island Authority neither owns nor has any sovereign or

"proprietary interest" in the beaches in question, it is without the authority to ban all swimming at or along those beaches.

Accordingly, your question is answered in the negative.

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#### COUNTY HOSPITALS

##### OPERATION NOT TRANSFERABLE TO PUBLIC HEALTH TRUST

To: Eugene C. Mooney, Representative, 33rd District, Fern Park

Prepared by: Sharyn Smith, Assistant Attorney General

#### QUESTION:

May the operation of a county hospital operating under Ch. 155, F. S., be transferred to a public health trust, under Ch. 73-102, Laws of Florida?

#### SUMMARY:

A county hospital operating under Ch. 155, F. S., may not be transferred to a public health trust, pursuant to Ch. 73-102, Laws of Florida.

Chapter 73-102, Laws of Florida [§§154.07-154.12, F. S.], authorizes the governing body of each county to create a governmental unit known as a public health trust. Due to the fact that county governing bodies have been unable to devote undivided attention to the pressing needs of the operation and governance of public health-care facilities, the legislature, in the preamble to Ch. 73-102, has recognized the need for such a public health trust which will assume the ownership, operation, management, control, or governance, or all of the foregoing, of designated public health-care facilities within the counties, and, therefore, relieve the county governing body of the burden of operating, managing, or controlling designated health-care facilities.

A Ch. 155, F. S., hospital is owned by the county as a political subdivision, but it is *not* operated and governed or controlled by the governing body of the county. A board of trustees, appointed by the governor pursuant to §155.06, is responsible for the operation, maintenance, and governance of a Ch. 155 hospital.

An inspection of the preamble to Ch. 73-102, *supra*, forecloses the possibility that the legislature intended a Ch. 155 hospital to be included within §2(a), Ch. 73-102 [§154.08(1), F. S.], as a "designated facility." The preamble, which clearly states in the first sentence that "[w]hereas there are counties of this state which *through their governing bodies own, operate and govern* public health care facilities . . . ." (Emphasis supplied.), precludes the possibility of including a Ch. 155 hospital, which is not owned, operated, *and* governed by a board of county commissioners, within those designated health-care facilities which may be transferred to the public health trust. Thus, the only health-care facilities intended by the legislature to be designated facilities, and hence transferable, are those which are actually owned, *operated, and governed* by the board of county commissioners.