

and special acts dealing with the nomination of municipal officers by means of a nominating, elimination, or "primary" election and to the "election" of such officers at a "regular" or "general" municipal election, the local law regulating the procedures for an election and the general law regulating the campaign expenditures for such elections should be read together. *Cf. American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938); *Seminole Rock Products, Inc. v. Town of Medley*, 180 So.2d 457 (Fla. 1965); *State v. Hillsborough County*, 183 So. 157 (Fla. 1938).

We are, therefore, in considering the diversity of local provisions, considering the application of §10(5), *supra*, to situations involving either: the selection of a candidate *for an office*; or the election of a candidate *to an office*; and accordingly the type of elections provided by the organic laws of a particular city will control.

Therefore, based upon the above-cited authorities, I am of the opinion that the provisions of §10(5) should be applied as follows:

Assuming a municipal charter or ordinance provides for a single nonpartisan election, since the results of that single election will place a candidate in office, it is a general election and candidates in such an election are authorized to a total campaign expenditure of twenty-five thousand dollars.

If a city charter, special act, or ordinance, provides for a nominating, eliminating, or "primary" election, preceding the city's regular or "general" nonpartisan election, then in that event a candidate for municipal office is allowed campaign expenditures of fifteen thousand dollars for the nonpartisan nominating, eliminating, or primary election, and twenty-five thousand dollars for the city's nonpartisan regular or general election.

If a city charter, etc., provides more than one such nominating election, then in that event the limitation placed on campaign expenditures for such an election will be as that authorized for a second primary, to wit, fifteen thousand dollars.

If a city charter provides that the city's regular or general nonpartisan election may be either a nominating or general election, and if no one candidate receives a majority of the total votes cast, the two candidates receiving the highest and next highest number of votes cast shall be placed on a ballot in a subsequent, special, or run-off election from which election a candidate will be elected to office. The candidates under such circumstances shall be authorized to a total campaign expenditure of fifteen thousand dollars in the first nonpartisan city election and twenty-five thousand dollars for the second or run-off nonpartisan election.

In a situation where a city's charter, etc., provides that the city's regular or general nonpartisan municipal election may be followed by a second and third election, then in that event candidates for such offices shall be authorized campaign expenditures of fifteen thousand dollars for the first such election, fifteen thousand dollars for the second election and twenty-five thousand dollars for the third such nonpartisan municipal election.

073-346—September 17, 1973

TAXATION

MILLAGE ALLOWABLE BY SPECIAL DISTRICT—INCREASE OR DECREASE

To: Betty Easley, Representative, 56th District, Clearwater

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTIONS:

1. Is the Central Pinellas Transit Authority excluded from the reduction of millage as set forth in §1 of Ch. 73-593, Laws of Florida?
2. For the year 1973, may the Central Pinellas Transit Authority

assess up to the limit approved by a vote of the electors regardless of reassessment or the application of Ch. 73-593, Laws of Florida?

SUMMARY:

The Central Pinellas Transit Authority does not fall within the exclusion from reduction of millage as set forth in Ch. 73-593, Laws of Florida, the District's millage rate not being a millage within the terms of Art. VII, §9(b), of the State Constitution. The authority is subject to the limitations of Ch. 73-593 in maintaining or raising its millage rate. In addition, the authority is subject to the limitations of Ch. 73-172, Laws of Florida, in raising its levy to the maximum millage rate authorized, and must comply with the requirements of §13 of Ch. 73-172 before effecting such an increase.

Both of your questions are answered in the negative.

Senate Bill 557, which has been enacted into law as Ch. 73-593, Laws of Florida, relates to ad valorem tax assessments for substantially all taxing authorities situate in Pinellas County and provides, *inter alia*, a method of fixing millage for those taxing authorities for the current fiscal year. (Note that the act is automatically repealed by §11 on July 1, 1974.) Section 3 of the act provides in part:

Section 3. Excluded millages.—

Section 1 of this act shall not be construed as to require the reduction of any millage that has been approved by a vote of the electors, pursuant to section 9 of article VII of the state constitution

Article VII, §9(b), State Const. provides in relevant part:

(b) Ad valorem taxes, *exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation*, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: . . . for special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes. (Emphasis supplied.)

Chapter 70-907, Laws of Florida, which provides for the establishment of the Central Pinellas Transit Authority and grants the authority, *inter alia*, for special district ad valorem taxing power after referendum, reads in part:

Section 8. Special district taxation. The Central Pinellas Transit Authority shall be deemed a special district and is authorized to levy an ad valorem tax on the taxable real property in the transit area at a rate sufficient to produce an amount that may be necessary for the purposes of this act but not to exceed one-quarter mill; provided such millage limit is approved by a vote of the electors who are owners of freeholds therein not wholly exempt from taxation. Property taxes determined and levied under this section shall be certified by the authority to the county auditor, extended, assessed and collected in like manner as provided by law for regular property taxes for the county or [sic] municipalities. . . .

The Central Pinellas Transit Authority does not levy a tax for the payment of bonds or for periods not longer than two years, and therefore the millage of the district is subject to the requirements of Ch. 73-593, Laws of Florida, and does not benefit from the exception of §3 of that chapter.

As to your second question, the Central Pinellas Transit Authority, being

subject to the limitations of Ch. 73-593, *supra*, would not be able to assess to the limit approved by a vote of the electors.

Section 8 of Ch. 70-907, *supra*, which provides for establishment of the district, also provides for authorization for the district to levy an ad valorem tax on taxable district real property not in excess of one-quarter mill. According to your letter, the district voters did authorize a levy not to exceed one-quarter mill and the past levy imposed by the authority was one-fifth mill.

Section 1(1) of Ch. 73-593, Laws of Florida, provides in part:

After the tax assessment rolls have been prepared on the basis as required by law, the board of county commissioners and all other governing boards or governing authorities of all other taxing districts in Pinellas County including municipalities, whose taxes are assessed on the tax roll prepared by the county assessor, except the board of public instruction, shall reduce the millage to be levied by each such governing authority from what it was in the preceding year proportionate to the increase of the general level of assessed value over the preceding year, unless otherwise required by law to maintain a higher millage level in order to participate in state revenue sharing, or any other matching formula for funding of state or local governmental programs or projects. . . .

The chapter then provides in §1(1) for an increase in operating funds of not more than 10 percent where advertising requirements are complied with. Thus, the authority cannot increase its millage levy, or even maintain it at its present level, except upon compliance with the limitations of Ch. 73-593, Laws of Florida, and then only to the extent permitted by that chapter.

The Central Pinellas Transit Authority is, in addition, subject to the limitations on its power to levy increased millage for 1973 set out in §13 of Ch. 73-172, Laws of Florida [§200.065, F. S.]. That section reads in pertinent part as follows:

Section 13. Section 200.061, Florida Statutes, is created to read:
200.061 Method of fixing millage.—

(1) . . . Exclusive of such new construction, improvements and deletions the assessor shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the assessor shall use ninety-five percent of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

(2) No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year

Section 13 of Ch. 73-172, Laws of Florida, limits the millage rate for the taxing authority by the formula set out above. Reassessment would, therefore, be a factor in any calculation of the rate of millage under this chapter. A higher assessed value would necessitate a lower millage rate so that to increase the millage rate, thus producing an increased amount of ad valorem tax revenue, would, under Ch. 73-172, require compliance with §200.061(2), *supra* [§200.065(2) F. S.], set forth above.

In general, statutes are to be construed so as to preserve the force of both, without destroying their evident intent, if possible. *State v. Collier County*, 171 So.2d 890 (Fla. 1965). The mere fact that a later special statute covers matters in an earlier general statute does not act to repeal the older general statute except where they are inconsistent or repugnant in their practical effect and consequences or

unless a contrary intent clearly appears. *State v. Collier County, supra*; *State ex rel. Luning v. Johnson*, 72 So. 477 (Fla. 1916).

It is my opinion, therefore, that although Ch. 73-593, Laws of Florida, was passed subsequent to Ch. 73-172, Laws of Florida, and relates to a part of the subject matter of Ch. 73-172, the Central Pinellas Transit Authority nevertheless comes within the above prohibition of §13 of Ch. 73-172 [§200.061, F. S.], since that section is not repugnant to Ch. 73-593 insofar as the latter chapter relates to increases in levy of millage for the Central Pinellas Transit Authority. Once it has complied with the publication and the subsequent hearing requirements of §13 of Ch. 73-172, the authority may, subject to Ch. 73-593, increase its millage within the voter approved limits pursuant to §200.065(3)(b), F. S.:

(b) The taxing authority, after the public hearing has been held in accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage.

Thus, the authority may increase its millage rate only by compliance with the conditions set out in Ch. 73-172, Laws of Florida, and in Ch. 73-593, Laws of Florida.

073-347—September 17, 1973

ANTINEPOTISM LAW

WHO MAY NOT BE APPOINTED; ACTS AS DE FACTO OFFICER

To: *John A. Madigan, Jr., Attorney, Florida Sheriffs Association, Tallahassee*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTIONS:

1. May a sheriff legally appoint a relative to the position of a deputy sheriff so long as the deputy would not receive compensation for his services?
2. Would the official acts performed by such deputy while serving under such appointment be legal and binding?

SUMMARY:

A sheriff who appoints a relative to the position of a deputy sheriff violates the Antinepotism Law even if the relative is serving without compensation. All official acts performed by such deputy are legal and binding in that he is a de facto officer.

AS TO QUESTION 1:

For purposes of the first question, three assumptions are made in regard to the queried appointment of a deputy sheriff: First, the appointee is otherwise in all respects legally qualified for appointment in accordance with §23.068, F. S., prescribing the qualifications for police officers; second, the appointment is to a position as a regular deputy sheriff and not as a special deputy sheriff; and, third, the appointment occurred after the effective date of the new Antinepotism Law, to wit, January, 1970. It must also be emphasized that the following is confined solely to the Antinepotism Law.

Section 116.111, F. S., commonly known as the Antinepotism Law, prohibits "public officials" from appointing or employing relatives to positions in agencies over which they have supervision or control. In pertinent part, §116.111(2)(a) states that: