

personal property found on "public property." And, in any event, any conflict or inconsistency between §705.16, *supra*, and §376.15, *supra*, must be resolved in favor of the latter, as the latest expression of the legislative will. *See Johnson v. State*, 27 So.2d 276 (Fla. 1946); *Overstreet v. Ty-tan, Inc.*, 48 So.2d 158 (Fla. 1950).

The authority of the Department of Natural Resources to act under §376.15, *supra*, to rid the "public waters" of this state of hazards to navigation or potential dangers to the environment would seem to include, by fair intendment, abandoned vessels lying below the high-water mark that, under the common law, constitute "purprestures" which the sovereign may remove at pleasure. *See Williams v. Guthrie*, 137 So. 682, 685 (Fla. 1931), stating that any erection on tide lands without a license is "deemed an encroachment upon the property of the sovereign, or as it is termed in the language of the law, a 'purpresture.'" (And, as noted above, the authority of the Board of Trustees of the Internal Improvement Trust Fund extends to tidal lands as well as water bottoms.) The rules of law and decisions with respect to public water bottoms referred to above would seem to be equally applicable to a decision of the question of whether the state-owned "uplands" or tidelands below the high-water mark were intended to be within the purview of §705.16, *supra*, as "public property." *Cf. State v. Massachusetts Company*, *supra*, in which the court noted that §705.01, F. S.—providing for the sale of "wrecked and derelict goods" upon order of the county judge, the proceeds of which are to be paid into the state treasury for the benefit of the state school fund—had no effect upon the existing common-law right of the state to wrecked or derelict goods, whether technically "droits of admiralty" or "wreck of the sea," that is, goods cast upon the shore. And, pending legislative or judicial clarification, I am inclined to the view that abandoned vessels or wrecked or derelict property found on the foreshore below the high-water mark would be subject to removal by the state under §376.15 or §253.04, *supra*, and not by local governmental officials under §705.16, *supra*.

Your question is answered in the negative.

073-319—September 6, 1973

#### CLASS ACTION

#### APPROPRIATENESS IN EVENT OF FRAUD INVOLVING MULTIPLE CONTRACTS

To: Robert C. Hector, Representative, 114th District, Miami

Prepared by: Victor Walsh, Assistant Attorney General

#### QUESTION:

May a class action in fraud be brought against either a health studio which has breached a number of distinctly separate but identical contracts or the financial institution to which the studio has assigned or negotiated the contract?

#### SUMMARY:

When a firm has totally breached a number of similar, but distinctly individual, contracts, a class action against either the firm or its assignee is inappropriate because of failure of the requisite community of interest of the prospective parties plaintiff.

Class actions are permitted in certain circumstances by Rule 1.220, RCP, which states:

When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to

bring them all before the court, one or more may sue or defend for the whole.

It has been specifically held that a class action is inappropriate to a cause of action based upon multiple and similar frauds: *Osceola Groves v. Wiley*, 78 So.2d 700 (Fla. 1955); *Hedler v. Rogers House Condominium Co.*, 234 So.2d 128 (4 D.C.A. Fla., 1970).

The former case pronounced what might be called the "separate contracts" distinction. The fact that the members of the prospective class individually and independently executed contracts militates against a finding of that "community of interest" which is requisite to a class action. The representative plaintiff must have some interest in the contracts of the other members of the class. This may flow either from the fact that the undertaking was a cooperative enterprise or from the fact that the plaintiff has a pecuniary or other interest in the contracts of the other parties. *Osceola Groves v. Wiley*, *supra*; *Hedler v. Rogers House Condominium Co.*, *supra*; *Wilson v. First National Bank of Miami Springs*, 254 So.2d 362 (3 D.C.A. Fla., 1971); *Watnick v. Florida Commercial Banks Inc.*, 275 So.2d 278 (3 D.C.A. Fla., 1973).

The *Wilson* case, *supra*, intimated that if the defendant were cast in the posture of a trustee, the class could move against him for an accounting. Otherwise the style of the cause of action appears to matter little.

In the given circumstances I believe it clear that none of the above qualifying relationships exist. It does not matter whether the studio or the financial institution is made defendant. So long as these contracts were executed individually and lack the degree of coextensiveness requisite to a class action, your question must be answered in the negative.

073-320—September 6, 1973

#### TAXATION

#### APPROVAL OF TAX ASSESSORS' BUDGETS PRIOR TO JANUARY 1, 1974

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

Prepared by: William R. Cave, Assistant Attorney General and James D. Beasley,  
Legal Intern

#### QUESTION:

Are those tax assessors whose budgets are presently on a fiscal year ending before December 31, 1973, and who do not submit their budgets to the Department of Revenue for approval, required to submit an interim budget to the department for approval for that period of time subsequent to the end of their present fiscal year and prior to January 1, 1974?

#### SUMMARY:

Should it become necessary for a county assessor whose budget is locally approved pursuant to special or local law or a resolution of the board of county commissioners made pursuant to §145.022, F. S. 1971, to prepare an interim budget required by §17 of Ch. 73-172, Laws of Florida, such budget should be submitted to the budget review authority prescribed in said local or special law or resolution, rather than to the Division of Ad Valorem Tax. Such interim budget may not cover a fiscal period extending beyond December 31, 1973.