

not a city employee), was not an appropriate use of the space in light of the respective duties of the mayor, city commission, and the city manager, as prescribed by the city's charter act. This is shown by the minutes of the meeting at which the motion was adopted and confirmed by a resolution, subsequently adopted by the city commission, allocating space in the city hall for a "City Commission Chambers" for the use of any member of the commission, including the mayor.

Accordingly, unless and until it should be judicially determined to the contrary, question 1 is answered in the negative. A negative answer makes unnecessary an answer to your second question.

073-117—April 13, 1973

INTERGOVERNMENTAL PROGRAMS AND RELATIONS

FIRE FIGHTERS NOT MEMBERS OF CRIMINAL JUSTICE AGENCIES

To: *Edward J. Trombetta, Secretary, Department of Community Affairs,
Tallahassee*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General and Molly J.
Tasker, Legal Intern*

QUESTION:

Are fire fighters, as defined in §163.470(1), F. S., members of "criminal justice agencies" for the purpose of obtaining fingerprint identification records from the Federal Bureau of Investigation?

SUMMARY:

By definition, fire fighters are not law enforcement officers in the State of Florida. Florida law does not vest fire fighters with the powers of law enforcement officers; and fire fighting agencies are not recognized as criminal justice or law enforcement agencies for the purpose of obtaining fingerprint identification records from the Federal Bureau of Investigation.

Your question is answered in the negative.

Section 163.470(1), F. S., defines a fire fighter as any person who is employed as a full-time professional fire fighter by any employing agency, as defined by §163.470(2), F. S., whose primary responsibilities are the prevention and extinguishment of fires, the protection of life and property, and the enforcement of state and local fire prevention codes and any laws pertaining to the prevention and control of fires.

Section 23.061(1), F. S., defines a police officer as anyone employed full time by any municipality, the state, or any political subdivision of the state, whose primary responsibilities are the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state. To carry out these primary responsibilities, police officers are vested with the power of arrest and are authorized to carry concealed weapons.

Since the Florida Statutes do not bestow the same responsibilities or powers on fire fighters as they do on law enforcement officers, then it cannot be said that under the laws of Florida a fire fighter is a law enforcement officer. Attorney General Opinion 072-335.

The Identification Division of the Federal Bureau of Investigation has approximately two million sets of fingerprints on file; and these prints are maintained in separate criminal and applicant files. The Identification Division

considers any state, city, or county law enforcement agency to be an authorized recipient of information from the criminal files. *Menard v. Mitchell*, 328 F.Supp. 718 (1971). Title 28 United States Code §534, is designed only to facilitate coordinated law enforcement activities between the federal and local governments to assist arresting agencies, courts, and correctional institutions in the apprehension, conviction, and proper disposition of criminal offenders. [See] 328 F.Supp. at 726. From the above it is clear that access to criminal files is limited to criminal justice or law enforcement agencies. The State of Florida itself does not define fire fighters as law enforcement officers; therefore, it cannot be expected that the Federal Bureau of Investigation would permit Florida fire fighters to utilize a service generally open only to criminal justice agencies.

073-118—April 16, 1973

TAXATION

REAL PROPERTY OWNED BY UNITED STATES SMALL BUSINESS ADMINISTRATION NOT SUBJECT TO AD VALOREM TAX

To: Clark Maxwell, Brevard County Tax Assessor, Titusville

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

QUESTION:

Is real property owned by the United States Small Business Administration entitled to ad valorem property tax exemption?

SUMMARY:

Real property owned by the United States Small Business Administration is not subject to ad valorem taxation, and is entitled to exemption therefrom under §196.199(1)(a), F. S.

According to the facts submitted, the federal Small Business Administration owns real property in the state and as an agency of the United States government seeks an ad valorem property tax exemption. The agency has in the past received the exemption.

Section 196.199(1)(a), F. S., specifically exempts from ad valorem taxation all property of the United States unless otherwise made subject to taxation by federal statute. On the basis of current statutes and decisions, the Small Business Administration appears to me to be generally considered an agency of the United States and subject to state taxation only to the extent of congressional consent. [See] 15 U.S.C. §§631, 633(a) and 634; 91 C.J.S. United States §34; and *Finch v. Small Business Administration of Richmond*, 112 S.E.2d 737 (N.C. 1960).

In an earlier opinion, AGO 071-212, I discussed the concept of federal immunity from state taxation and concluded that "[s]tate taxation of [federal] government instrumentalities is limited to that permitted by Congress and the mere silence of Congress amounts to a prohibition."

Absent congressional consent to tax, I am of the opinion that the real property in question is not taxable and is entitled to exemption from ad valorem taxation under §196.199(1)(a), F. S.