

the federal government is not a "corporation" within the purview of that constitutional prohibition; and, in any event, state funds will merely be disbursed through the federal government, as the agent of the state, and paid in due course to the ultimate beneficiary—the recipient of state and federal aid to the blind, aged or disabled—at the time when he is entitled to receive such payments and not before. By the same token, state funds will not be paid in advance of services rendered or goods delivered, contrary to the rule which is customarily followed by the comptroller in disbursing state funds. (See, e.g., §215.42, F. S., authorizing the comptroller to require proof "as he deems necessary, of delivery and receipt of purchases" before honoring any voucher for payment.) As noted above, the federal government, acting as the agent of the state, will disburse the state's welfare payments to the recipients at the time they are entitled to receive them and not before.

As soon as the program gets under way, the comptroller will be provided with substantially the same information concerning welfare recipients as he now receives. I understand that the Department of Health and Rehabilitative Services will furnish him each month an up-to-date list of the recipients of state and federal benefits, showing the disposition of state funds as to each recipient, which list will serve as the basis for the estimate of funds needed for the state's payments during the ensuing month and for the department's requisition of such funds for disbursement to the federal government for payment to the state's welfare recipients; and that the contract with the federal government will provide for an adjustment of the funds to be advanced to reflect either an over-advancement or an under-advancement of funds for a particular month. Presumably, other provisions necessary to satisfy the "bookkeeping" requirements of the comptroller and the auditor general will be included in the contract. However, as noted above, the only question presented here for determination is whether the disbursement of funds to the state's welfare recipients through the federal government constitutes an unlawful delegation of power. For the reasons stated, no such unlawful delegation has been found.

Accordingly, your question is answered in the negative.

073-446—November 29, 1973

MUNICIPAL HOME RULE POWERS ACT

POWER TO BORROW MONEY INCONSISTENT WITH CHARTER ACT POWER

To: Denis L. Fontaine, Mulberry City Attorney, Lakeland

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. May a city finance a municipal civic center by the issuance of revenue bonds under Ch. 73-129, Laws of Florida, despite restrictions on borrowing in the city's charter?
2. Is a referendum of the electorate required for the passage of a bond issue not secured by a pledge of ad valorem taxes?

SUMMARY:

A city may finance a municipal civic center by the issuance of revenue bonds under Ch. 73-129, Laws of Florida, despite restrictions on borrowing in the city's charter.

AS TO QUESTION 1:

Sections 48 and 49 of the Mulberry Charter Act, Ch. 63-1665, Laws of Florida,

specifically limit the power of the city to borrow. The time period, renewal possibilities, and amounts of tax anticipation notes are spelled out in the charter.

The Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida [§166.121(1), F. S.], says that:

Bonds issued under this part shall be authorized by resolution or ordinance of the governing body and, if required by the state constitution, by affirmative vote of the electors of the municipality. Such bonds may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or mortgage issued pursuant thereto.

There is an evident inconsistency, then, between the charter act and Ch. 73-129, *supra*. Generally, a special law will take precedence over a general law unless a subsequent general law specifically or impliedly repeals the former special law. The intent of the legislature in enacting Ch. 73-129 was to grant broad home rule powers to municipalities.

The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the legislature to extend to municipalities the exercise of powers for municipal governmental, corporate or proprietary purposes not expressly prohibited by the constitution, general law or county charter, or by special law; and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. . . .
[Section 166.021(4), F. S.]

This section continues by listing several areas contained in a special law or municipal charter (none of which concerns municipal borrowing) which cannot be changed without a referendum of the electors. Then it says that "[a]ny other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed." Section 166.021(4), F. S. Sections 48 and 49 of the Mulberry Charter, being limitations on the borrowing power of the municipality are, under §166.021(4), repealed. Therefore, Mulberry may follow the provisions of Ch. 73-129 concerning municipal borrowing. The same result is reached under §166.021(5) which provides that any charter provision, with certain exceptions not applicable here, shall become an ordinance of the municipality, subject to amendment or repeal as any other ordinance. Under this provision, §§48 and 49 of the Mulberry Charter are now ordinances and may be amended or repealed by the city council.

Your statement in your letter to the following effect is correct. If a bond, certificate of indebtedness, or any form of tax anticipation certificate pledges ad valorem taxes, and matures more than twelve months after issuance, then under Art. VII, §12, State Const., a referendum of the electorate is necessary. A referendum is not necessary if ad valorem taxes are not used as collateral but rather other revenues are pledged in lieu of ad valorem taxes.

You also question the necessity of further compliance with §63 of the city charter which reads: "The city shall authorize the issuance of bonds by a 'bond ordinance' passed by the affirmative votes of at least three-fifths of all the members of its commission." Section 166.121, F. S., says that "[b]onds issued under this part

shall be authorized by resolution or ordinance of the governing body” There is a uniform procedure for the passage of municipal ordinances set out in §166.041, F. S., which provides that the affirmative vote of a majority of a quorum shall be necessary to pass an ordinance. This section is “cumulative to other methods now provided by law.” However, §166.041(6) also provides that municipalities may specify additional requirements for the adoption or enactment of ordinances as long as the requirements of the general law are not lessened. Section 63 of the Mulberry Charter, which provides for an affirmative vote of three-fifths of the council members in order to authorize a bond issue, is more restrictive than the provision in §166.041(4) requiring the affirmative vote of a majority of a quorum. Although §166.041(6) also says that a municipality may provide for such additional requirements “by future ordinance or charter amendment,” it would seem foolish to require a municipality to reenact a provision already contained in its charter. Therefore, the city may, if it wishes, continue to follow its present procedure.

AS TO QUESTION 2:

Nowhere in §§166.101-166.141, F. S., the parts of Ch. 73-129, Laws of Florida, on municipal borrowing, is there mention of a referendum of the electorate being necessary to approve a bond issue except when required by the State Constitution; *i.e.*, if ad valorem taxes are to be used to finance the issue. Section 166.021 does have a provision for a referendum in certain circumstances—which circumstances do not include a bond issue. Therefore, it must be concluded that a referendum of the city electorate is not necessary to approve the financing of the new civic center building, but rather the city commission may approve it.

073-447—November 29, 1973

TAX ASSESSORS

ADDITIONAL SALARY FOR QUALIFICATION AS CERTIFIED ASSESSOR

To: J. Pierce Smith, Alachua County Tax Assessor, Gainesville

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

For what portion of the 1973 calendar year should a county tax assessor who has been certified under the Florida Certified Assessor Program prior to October 1, 1973, be paid his special qualification salary?

SUMMARY:

County tax assessors who became “certified Florida assessors” prior to October 1, 1973, may receive the special qualification salary provided by §145.10(2), F. S., beginning October 1, 1973.

Section 145.10(2), F. S. [added by the 1973 County Officers’ Salary Act, §8, Ch. 73-173, Laws of Florida], provides for a supplement to the tax assessors’ salaries, as follows:

(2) Special qualification salary shall be an additional two thousand dollars per year to each assessor who has met the requirements of the department of revenue and has been designated a certified Florida assessor. Any assessor who is certified during a calendar year shall receive in that year a pro rata share of the special qualification salary