

Under the Charter of the City of Lauderhill, §13, Ch. 59-1487, Laws of Florida, the mayor, subject to the approval of the city council, has the power to appoint city officers. The only provision for the removal of such officers is found in §15:

It shall be [the mayor's] duty to suspend any appointed officer except Councilmen, at any time for gross neglect or dereliction of duty . . . .

The city council may then remove the officer if the cause for removal is deemed sufficient.

The city also has an ordinance, No. 201(7)(a) Code of Ordinances, which states that:

The Police Chief, Fire Chief, the Director of Planning and Zoning, the City Clerk and other City Officials and Department Heads who the appointment is provided for by the Charter shall be appointed in accordance with the terms of the Charter. The term of the aforesaid City Officials shall run from the time of appointment until such time the Officials shall resign, reach retirement age or be removed from office in accordance with the terms of the Charter. Nothing contained herein shall be construed to provide for the expiration of the term of office of the aforesaid Officials upon the expiration of the term of the Mayor appointing the Official or the term of the Council Members approving such appointment.

Therefore, under the charter provision, the mayor cannot suspend and the city council cannot remove any officer except for cause as prescribed in the charter. The mayor may, of course, make appointments to the offices (subject to approval by the city council), but not until there is a vacancy in the office.

However, under the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, any special law or municipal charter relating to the power and jurisdiction of a municipality or limiting its power, with certain exceptions not applicable in this case, either becomes an ordinance of the municipality subject to repeal or amendment as are other ordinances, §166.021(5), F. S., or is repealed and nullified, §166.021(4). Therefore, it would appear that the city council could pass an ordinance changing the provisions of §§13 or 15 of the city charter. Section 7(a) of Ordinance No. 201 may also be changed. Until the council does enact an ordinance providing otherwise, §15 of the charter and §7(a) of Ordinance No. 201 continue to control. You may wish to note the uniform ordinance-passing procedures found in §166.041, F. S.

073-476—December 20, 1973

#### CIRCUIT COURT CLERKS

#### DUTIES TO RECORD CERTAIN INSTRUMENTS—PAYMENT OF FEES

To: *Charles Tom Henderson, Counsel, Florida Association of Court Clerks, Tallahassee*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Is a circuit court clerk required to refuse to record a deed until the information form or twenty-five dollar fee in lieu thereof is filed with him, as provided by §195.027, F. S. [Ch. 73-172, Laws of Florida]?

## SUMMARY:

After January 1, 1974, upon the adoption of an appropriate information form by the Department of Revenue, a circuit court clerk may not record a conveyance of real property presented to him for recordation unless it is accompanied by an information form or a twenty-five dollar fee in lieu thereof, as required by §195.027, F. S. [Ch. 73-172, Laws of Florida].

Section 2 of Ch. 73-172, *supra*, effective January 1, 1974, requires the Department of Revenue to adopt rules and regulations establishing uniform standards and procedures for the assessment and collection of ad valorem taxes in this state. Among other things, such rules and regulations are required to prescribe an "information form" relating to transfers of real property so as to enable the tax assessor "to evaluate the transfer, its terms, and consideration." The statute places upon the circuit court clerks of this state the duty and responsibility for collecting these information forms on behalf of the tax assessors in the following language:

. . . The clerk of the circuit court, shall require at the time of recording of conveyances in real property either a properly executed information form or a fee in lieu thereof of twenty-five dollars (\$25). Either the buyer or the seller or the agent of either shall complete the information form and certify that the form is accurate to the best of his knowledge and belief. . . . Failure of the clerk to obtain an information form with the recording shall not impair the validity of the recording of the conveyance. . . . The fee shall be received by the clerk for the assessor's office, and the clerk shall forward the revenues to the assessor's office monthly. The clerk shall promptly deliver all information forms received by him to the assessor for his custody and use. [Section 195.027(5)(a), F. S.]

Under §28.222, F. S., prescribing the duty of the circuit court clerks as recorders of instruments in the official records of the counties, a circuit court clerk is required to record deeds and other instruments relating to the transfer of ownership interests in land "upon payment of the service charges prescribed by law." [Section 28.222(3), F. S.] It is well settled that statutes *in pari materia* must be construed together so as to preserve the force and effect of each, if possible. *State v. Collier County*, 171 So.2d 890 (Fla. 1965). But if a provision of one is in irreconcilable conflict with a provision of the other, the last expression of the legislative will must prevail. *State v. City of Boca Raton*, 172 So.2d 230 (Fla. 1965).

Here, the purpose and intent of the 1973 provision in question, §195.027, *supra*, is to require the circuit court clerk to collect, on behalf of the tax assessor, the information needed by him to bring his tax records up to date following a change of ownership of real property—or, in the alternative, a twenty-five dollar fee which, presumably, will reimburse the tax assessor for the expense of gathering this information himself. Thus, the twenty-five dollar fee is, in a sense, a "service charge" collected by the circuit court clerk on behalf of the tax assessor; and, as so considered, the circuit court clerk has no duty under §28.222, *supra*, to record the deed until such a service charge has been paid.

Moreover, the statute is couched in mandatory terms; and there is nothing to indicate that the legislature intended the directive to the clerk to be permissive only. A legislative intent merely to authorize the clerk *in his discretion* to demand either the information form or the twenty-five dollar fee prior to recording a deed is consistent neither with logic nor with reason, so that not only the legislative language itself but also the common sense of the matter compel the conclusion that the clerk has no discretion in this respect. Thus, following

the adoption of an appropriate information form by the Department of Revenue as provided by law, §195.027, *supra*, the circuit court clerks must comply with the legislative directive by collecting either the information form or the statutory fee before recording a conveyance of an interest in real property.

073-477—December 20, 1973

## COUNTIES

### APPLICABILITY OF ORDINANCE IN INCORPORATED MUNICIPALITIES

*To: J. Dillard Workman, Director, Hendry County Health Department, LaBelle*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Is the Hendry County Food Service Ordinance enforceable in the incorporated areas of the county?

#### SUMMARY:

A county ordinance may be enforced throughout the county, in the cities as well as the unincorporated areas, if it is not in conflict with an ordinance of the city and deals with a matter that is susceptible to countywide regulation. An ordinance establishing standards for food service establishments and requiring a county permit is such an ordinance.

Under Art. VIII, §1(f), State Const.,

. . . The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

I understand that it was the intention of the county commissioners, in adopting the ordinance in question, that it apply throughout the entire county, in the incorporated as well as unincorporated areas. I am also advised that this type of local regulation, if not inconsistent with the state rules and regulations respecting the licensing and inspection of food establishments adopted under the authority of Ch. 509, F. S., is permissible. Thus, the only question presented here is whether a county ordinance of this type may validly be applied to, and enforced in, the municipalities within the county.

A similar question was answered in the affirmative in AGO 071-223. In that opinion I said that, under its constitutional and statutory home rule powers, a county could adopt an ordinance applicable throughout the county, in the incorporated as well as unincorporated areas, when such ordinance deals with a subject that is not purely local in nature and is susceptible to countywide regulation. It was said that a countywide ordinance could not be effective within a municipality to the extent that it conflicted with a municipal ordinance but that, in the absence of such conflict, such an ordinance could be given countywide application.

It seems clear that an ordinance requiring food establishments to comply with certain standards and to secure a permit from the county evidencing such compliance deals with a situation that is the same, without regard to whether the food establishment is in the county or in a city within the county.