

073-469—December 18, 1973

CLERGYMEN

IDENTIFICATION OF CLERGYMEN FOR PURPOSES OF EXEMPTION FROM BRIDGE AND FERRY TOLLS

To: *Frank A. Pavese, Lee County Attorney, Fort Myers*

Prepared by: *William R. Hanley, Assistant Attorney General*

QUESTIONS:

1. What is meant by the term "clergymen" and "preachers of the gospel" as those terms are used in §347.19(2), F. S.?
2. May a board of county commissioners require proof of the above status based upon certain criteria?
3. May a board of county commissioners maintain a list of those claiming such status and preclude those not on the list from claiming said exemption in §347.19(2), F. S., from paying bridge and ferry tolls?

SUMMARY:

For the purpose of §347.19(2), "clergymen and preachers of the gospel" are those persons selected by their religious societies in accordance with their usages and practices to stand as spiritual representatives of the organizations. When a religious society has determined according to its precepts and rules that one or more individuals are to be its religious representatives, then those representatives are required by law to be allowed free passage over all toll bridges and ferries in the State of Florida.

The board of county commissioners, in regulating toll bridges under its jurisdiction, may require reasonable evidence of the status of those persons claiming exemption as clergymen or preachers of the gospel under §347.19(2), F. S., based on the usages and practices of the various religious organizations and in accordance with the credentials issued by the particular religious society to its spiritual representatives.

The county commission may maintain a list of those clergymen and preachers of the gospel who may wish to identify themselves and establish their exempt status so that they make use of their exemptions conveniently and without unnecessary procedures at the toll gates, but such preregistration may not be required to enable any clergyman or preacher of the gospel to claim his exemption under the statute or used to exclude others who have not so identified themselves and established their exempt status.

Section 347.19(2), F. S., provides that:

Clergymen and preachers of the gospel shall be allowed to pass free over all toll bridges and ferries in this state.

It has long been accepted in the United States that the church and state should be kept separate so that the legislative powers of the government could reach actions only and not opinions. United States Const., Amend. I; 28 Fla. Jur. *Rel. Soc.* §5.

As such, persons are left free to establish their own voluntary organizations for religious purposes and as an incident thereto, these persons are left free to choose their own spiritual representatives. *Accord:* Attorney General Opinion 073-315.

Clergymen or other ministers [of the gospel] of any religion embraces spiritual adviser of any religion whether he be termed priest, rabbi,

clergyman, minister of the gospel, or any other official designation. *It includes anyone who may stand as a spiritual representative of his church.* (Emphasis supplied.) [*In re Swenson*, 237 N.W. 589, 591 (Minn. S.Ct. 1931).]

However, this term is construed so as to separate those who represent others and those who are represented. It is established that one may not proclaim himself to be a representative absent the consent of his congregation.

The mere proclaiming by [a person] of himself as the religious superior of the congregation may suffice to establish that fact in spiritual matters of his church, but it does not effect legal superiority in secular matters. There must be clear and convincing evidence of congregational acknowledgment of and acquiescence in the concept of legal superiority and authority over church business and property matters. [*Gospel Tabernacle Body of Christ Church v. Peace Publishing Co.*, 506 P.2d 1135 (Kansas 1973).]

Although the above quotation deals with the ability of a self-proclaimed "clergyman" to convey church property, it stands for the proposition that in secular matters a clergyman must act with his congregation's or organization's acknowledgment and acquiescence and this logically extends to the free use of a toll bridge.

From the foregoing, the answer to question 1 is that for the purpose of §347.19(2), F. S., "clergymen and preachers of the gospel" are those persons selected by their religious society in accordance with the organization's practices to stand as a spiritual representative of the organization. Cf. AGO 073-315 holding that if a religious society has determined that a particular individual is an ordained minister under its creed, that person may solemnize marriages under §741.07, F. S. The term does not include self-proclaimed representatives who, although distinguished by title (deacon, canon, etc.), are not one of those persons officially designated a spiritual representative by a congregation and in actuality make up the main body of the religious society's congregation. Whenever a religious society has determined according to its precepts and rules that an individual is to stand as its spiritual representative, then that representative is required by law to be allowed free passage over all toll bridges and ferries in the state.

In answer to question 2, under §125.01, F. S., it is provided that:

(1) The legislative and governing body of a county shall have the power . . . to:

* * * * *

(m) Provide and regulate . . . toll, and other
. . . bridges

As such, the board of county commissioners is empowered to regulate toll bridges under its jurisdiction and can require reasonable evidence of the religious status of those persons claiming exemption under §347.19(2), *supra*.

Unfortunately, the number of religious societies is so great and the differing approaches taken in individual organizations so varied that I am unable to lay down any definite and uniform criteria to control the determination of which persons qualify for the exemption and which do not, nor to suggest controls for the issuance of credentials by the various religious societies or organizations to their respective spiritual representatives.

The county commissioners may require evidence of such exempt status but it must be based on the usages and practices of varied organizations and in accordance with the credentials issued by the particular religious society, and must not be arbitrary or capricious in its application.

In answer to question 3, it is reasonable to allow a list to be maintained by the county commission comprised of those clergymen and preachers of the gospel who may wish beforehand to identify themselves and establish their exempt status so they may make use of the exemption conveniently and without unnecessary procedures at the toll gate. However, such preregistration may not be required to enable any clergyman or preacher of the gospel to claim his exemption under the statute. The scope of the statute applies to "any clergyman or preacher of the gospel" over "all toll bridges and ferries of this state", and any list compiled by the county for the mutual benefit and convenience of the county and the exempted class of persons could not hope to list all those who fall into that classification. (Emphasis supplied.)

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COUNTY OFFICIALS

COMPENSATION—FEE OR BUDGET STATUS OF TAX ASSESSOR AND TAX COLLECTOR

To: Christopher C. Ford, Lake County Attorney, Tavares

*Prepared by: William R. Cave, Assistant Attorney General, and Daniel C. Brown,
Legal Intern*

QUESTION:

Does the board of county commissioners have the authority to unilaterally waive the fees provided for the county assessor and tax collector in §192.091, F. S. 1971?

SUMMARY:

Fees provided for the county assessor or tax collector under §192.091, F. S., may be waived by the board of county commissioners only with the concurrence of the official involved. Section 145.022, F. S. However, as of January 1, 1974, the tax assessor will become a budget officer, no longer entitled to receive the fees presently available to him under §192.091, F. S. 1971, as amended by §§8 and 16, Ch. 73-172, Laws of Florida.

Your question is answered in the negative as to the tax collector.

Your question as to the tax assessor is also answered in the negative, but with the qualifications discussed below.

Section 192.091, F. S., provides that tax collectors are entitled to certain fees therein prescribed for the performance of their duties to various political subdivisions and taxing districts. However, §145.022(1), F. S., as amended by Ch. 73-172, Laws of Florida, provides the method whereby those fees may be waived. Section 145.022 provides:

(1) Any board of county commissioners, *with the concurrence of the county official involved*, shall by resolution guarantee and appropriate a salary to the county official, in an amount not to exceed that specified in this chapter, if all fees collected by such official are turned over to the board of county commissioners. Copies of the resolution adopted shall be filed with the department of banking and finance and the auditor general. (Emphasis supplied.)

It is thus clear that the procedure authorized in §145.022, *supra*, is an alternative mode of compensation only. Attorney General Opinion 069-83. The