

be admissible based upon the reasonability of the search without regard to the necessity to impound.

AS TO QUESTION 4:

Your question regarding the effect of attorney general opinions is discussed at 3 Fla. Jur. *Attorney General* §7:

Although the opinions of the Attorney General have in no sense the effect of judicial utterances, in actual practice they are usually followed. His opinion, while not binding on the courts, is entitled to weight in construing the Florida statutes. And his official opinions as to the validity or invalidity of a statute are the guides for state executive and administrative officers in performing their official duties until superseded by judicial decisions.

073-44—March 5, 1973

STATE LANDS

TRANSFER OF TITLE FROM ST. AUGUSTINE HISTORICAL  
RESTORATION AND PRESERVATION COMMISSION  
TO BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND—JUDICIAL  
PROCEEDINGS APPROPRIATE

To: *Richard Stone, Secretary of State, Tallahassee*

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

QUESTION:

Is the property known as "Government House" in St. Augustine excluded from the provisions of §253.03(1), F. S., and §28, Ch. 72-409, Laws of Florida, requiring transfer of title to state lands to the Board of Trustees of the Internal Improvement Trust Fund?

SUMMARY:

The question of whether "Government House" in St. Augustine is excluded from the provisions of §253.03(1), F. S., requiring conveyance of all state lands to the Board of Trustees of the Internal Improvement Trust Fund, is one of mixed law and fact that should be determined in appropriate judicial proceedings. Pending such a determination, the conveyance should not be made without the assurance of the Secretary of the Interior that he will not exercise any reversionary right, if any, activated by such a transfer.

Section 253.03(1), F. S., vests in the Board of Trustees of the Internal Improvement Trust Fund all lands "owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions" with some exceptions referred to hereafter; and §253.03(6), *id.*, provides that "any board, commission, department or agency holding title to any state lands used for public purpose shall execute all instruments necessary to transfer such title to the said board of trustees . . . ." The exceptions referred to above include lands held by the state that must be devoted to a particular purpose, such as port authorities, navigation and drainage districts, and military reservations. The exception which may be applicable here refers to lands the conveyance of which "to the board of trustees of the internal improvement fund under this act would work a reversion from any other cause . . . ."

Quite obviously, one of the purposes of the legislature in excepting lands

subject to a reversionary clause that would be activated upon the conveyance thereof to the Board of Trustees of the Internal Improvement Trust Fund was to avoid the loss of such lands to the holder of the reversionary interest. Here, the conveyance to the board of trustees would not work an immediate and automatic reversion, as the deed provides that, upon breach of any covenant, the property shall revert to the United States of America "at its option." However, there seems to be little if any doubt that the federal government would have the right to claim its reversionary interest, should the property be taken out from under the management and control of the St. Augustine Historical Restoration and Preservation Commission. The deed of conveyance provides that

. . . for and in consideration of the perpetual use and maintenance of the property hereinafter described, by STATE OF FLORIDA, acting by and through Saint Augustine Historical Restoration and Preservation Commission, to be now and hereinafter known as the party of the second part, as and for an historic monument, and for no other purpose . . . has . . . quitclaimed . . . unto the party of the second part, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter expressed. . . .

The deed also contains a covenant that the party of the second part (the state acting by and through the historical commission) will not sell, lease, assign, or otherwise dispose of, any of the property "except to another *local* governmental agency that the Secretary of the Interior is satisfied can assure the continued use and maintenance of the property as and for an historic monument. . . ." (Emphasis supplied.)

As the Board of Trustees of the Internal Improvement Trust Fund is the state agency charged by law with the responsibility of holding the title to most state-owned lands, it may be that the transfer of the naked legal title to that board, together with a simultaneous agreement on the part of the board to vest the "use and maintenance" of the property in the St. Augustine Historical Restoration and Preservation Commission, would not be deemed to be a breach of the covenant referred to above. In any event, the question of whether the particular property in question is within the exception to §253.03(1), quoted above, is a mixed one of law and fact which should more appropriately be determined in a judicial proceeding in which the contentions of all interested parties may be considered and determined. It is suggested that, in the absence of or pending such a judicial decision, the transfer of the title to the Board of Trustees of the Internal Improvement Trust Fund and the relinquishment of management by the St. Augustine Historical Commission should not be made without some assurance from the Secretary of the Interior that he will not exercise the reversionary right, if any, activated by such a transfer.

In the meantime, in view of the fact that, under the express terms of the deed of conveyance from the United States to the State of Florida, the property in question must be maintained and used for an historic monument by the State of Florida *acting by and through the St. Augustine Historical Commission*, and that there is a substantial question of law and fact that must be resolved before a conveyance under §253.03, *supra*, to the Trustees of the Internal Improvement Trust Fund can safely be made (other than the simultaneous conveyance and agreements referred to above), it would seem that the Department of State and its agency, the St. Augustine Historical Commission, are in compliance with the requirements of §253.03, F. S., insofar as is conceivably possible under the circumstances; and, in my opinion, the funds appropriated to the use of the commission could appropriately be released to it by the Department of Administration.