

entitled to be compensated under §145.121(2)(c), F. S. (1972 Supp.), should have his compensation computed upon the basis of the base salary fixed by law for the office under Ch. 145, F. S. 1967. This was made clear in the earliest opinions of my predecessor interpreting the 1969 amendments to Ch. 145—AGO's 069-136, 069-137, and 070-105—as well as in numerous informal opinions to various county officials. In AGO 070-105 it was said that the statute meant that the subsection (2)(c) official

. . . shall continue to receive his base salary as prescribed by Ch. 145, F. S. 1967, plus all the *ex officio* personal income from fees and commissions earned by him, during the remainder of his term of office—assuming, of course, that the base salary rate is not increased, either by law or by a population increase, to an amount *in excess of the total compensation earned during the preceding fiscal year*. . . . (Emphasis supplied.)

As noted in AGO 070-105, *supra*, if the statutory salary is increased so as to exceed the total compensation formerly received under the subsection (2)(c) formula, the official will be entitled to be compensated at the higher rate. However, the subsection (2)(c) formula must be based on the 1967 statutory base salary under what seems to me to be the clear and unambiguous language of the statute. The legislature has met in several sessions since the 1969 and 1970 opinions were rendered; and, this being so, I would be reluctant to recede from the opinions of my predecessor in office, even if I were inclined to do so. On the contrary, I have reaffirmed those opinions in AGO 072-185.

073-36—March 2, 1973

TAXATION

AD VALOREM TAX EXEMPTION—PERSONS WHO HAVE LOST A LIMB NOT CONSIDERED TOTALLY AND PERMANENTLY DISABLED

To: Clark Maxwell, Brevard County Tax Assessor, Titusville

Prepared by: Winifred L. Wentworth, Assistant Attorney General and David M. Hudson, Legal Intern

QUESTIONS:

1. May a person who has lost a limb, but who is not considered totally and permanently disabled, and the loss of the limb is not "service connected," be granted a \$500 ad valorem tax exemption under Art. VII, §3(b), State Const., and §196.202, F. S.?
2. If such an individual had been granted an exemption under prior constitutional and statutory authority [Art. IX, §9, State Const. 1885, and §192.06(7), F. S. 1967], is it necessary that such previous exemptions granted be recalled and disallowed?
3. For purposes of allowing an exemption under §196.202, F. S., may a tax assessor accept certification of total and permanent disability from the Federal Social Security Administration under §196.012(10), F. S., as amended by Ch. 72-367, Laws of Florida?

SUMMARY:

A person who has lost "a limb" but who is not certified as "totally and permanently disabled" and the loss of the limb is not "service connected" is not entitled to the tax exemption provided by Art. VII, §3(b), State Const., and §196.202, F. S., and applications for the

exemption provided therein by such unqualified persons should be denied by the tax assessor. Prior constitutional and statutory provisions which granted an exemption for persons who had lost "a limb" have been repealed and constitutional and statutory provisions currently in effect do not grant an exemption to such persons. Section 196.012(10), F. S., as amended by Ch. 72-367, Laws of Florida, no longer permits the tax assessor to accept certification from the Federal Social Security Administration as to an individual's total and permanent disability for purposes of allowing an exemption under §196.202, F. S.

Your first question is answered in the negative, the second in the affirmative, and the third in the negative.

Both Art. VII, §3(b), State Const., and the statutory implementation thereof contained in §196.202, F. S., require a person to be "totally and permanently" disabled (or a widow or blind) in order to qualify for the tax exemption provided thereby. Tax exemptions are regarded as express grants so that one claiming an exemption must establish his right to it by clear evidence and law. [See] 31 Fla. Jur. *Taxation* §144 (1960). Further, when exemptions are granted either by the Constitution or by statute, they are to be strictly construed against the taxpayer claiming the exemption and in favor of the taxing power. [See] 31 Fla. Jur. *Taxation* §142 (1960). Article VII, §3(b), State Const., and §196.202, F. S., both clearly require that disability be both total and permanent before an exemption may be granted; therefore, an individual who has lost a limb, but who is not certified to be totally and permanently disabled [under §196.012(10), F. S. (1972 Supp.)] may not be granted the exemption provided by the constitutional and statutory provisions.

Under constitutional and statutory provisions in effect prior to 1969 [Art. IX, §9, State Const. 1885, and §192.06(7), F. S. 1967], provision was made for granting an exemption to individuals who had lost "a limb" even though not certified to be totally and permanently disabled. Neither the constitutional nor statutory authority for such exemptions is any longer in effect, having been superseded by Art. VII, §3(b), State Const., and §196.202, F. S., which eliminates the exemption for individuals less than "totally and permanently disabled." See "Commentary" to Art. VII, §3(b), State Const., in F. S. A. Thus, individuals who qualified and annually claimed the former exemption, on the basis of having lost a limb, no longer qualify on that basis; and if they should claim such an exemption by annual application (§§196.011 and 196.021, F. S.) it should be denied.

Section 196.012(10), F. S. (1972 Supp.), defines "totally and permanently disabled persons," and, as enacted by Ch. 71-133, Laws of Florida, provided:

(10) "Totally and permanently disabled persons" means those persons who are currently certified by the Florida department of health and rehabilitative services *or the federal social security administration* or veterans' administration to be totally and permanently disabled. (Emphasis supplied.)

Chapter 72-367, Laws of Florida, amended §196.012(10), F. S., to read:

(10) "Totally and permanently disabled persons" means those persons who are currently certified by the Florida department of health and rehabilitative services *or two licensed physicians of this state* or the veterans' administration to be totally and permanently disabled. (Emphasis supplied.)

The amendment of §196.012(10), F. S., provided by Ch. 72-367, Laws of Florida, replaces the original section and that which is omitted is repealed, *i.e.*, authority for total and permanent disability to be certified by the federal Social Security Administration. See 30 Fla. Jur. *Statutes* §135 (1960) and Vol. I, Sutherland *Statutory Construction* §2017.