

QUESTION:

Does a sheriff have the authority to appoint special deputy sheriffs whose authority and function are limited to the service of civil process, assuming that the normal bonding requirements of deputy sheriffs are met?

SUMMARY:

Nothing in §30.09(4), F. S., prohibits a sheriff from appointing special deputies for the sole purpose of serving civil process.

The answer to your question is in the affirmative.

I do not interpret §30.09(4), F. S., as limiting legislation relative to the appointment of special deputy sheriffs. Clearly, if the legislature intended to specifically control such appointments, it would have so allowed *only* in the situations embraced in §30.09(4)(a)-(f), F. S. This limitation not being present, the presumption follows that if the appointment for purposes mentioned in your letter is not proscribed, then the authority to do so is present.

While I find nothing irregular in these types of appointments, I might include the caveat that the function and authority of the special deputy sheriffs be restricted solely to the service of civil process and nothing more.

073-437—November 27, 1973

TAXATION

ADVERTISEMENT OF EXEMPTED PROPERTY; FORM
OF PAYMENT

To: Robert Grafton, District Counsel, Central and Southern Florida Flood Control
District, West Palm Beach

Prepared by: Winifred L. Wentworth, Assistant Attorney General

QUESTIONS:

1. Does §196.194, F. S., restrict required advertising to disputed or appealed applications for exemption?
2. Does a tax assessor have authority to demand payment on a pro rata basis from another agency or political entity?

SUMMARY:

The annual exemption publication requirement set forth in §196.194(2), F. S., does not apply to constitutionally mandated exemptions, or immunity for which no application is required. Property owned by the Central and Southern Florida Flood Control District, pursuant to Rule 12B-1.207, Rules and Regulations of the State of Florida, Department of Revenue, is included in the latter class of property, except for leasehold interests in such property which, when exempt, must be included in the annual publication of exemptions required by §196.194(2). The fact that an exemption application has not been disputed or appealed has no bearing upon the requirement that it be included on the published list of exemptions.

The questions should in my opinion be answered in the negative for reasons discussed below. A third issue not expressly stated in your letter but inherent in the subject matter of your inquiry concerns potential immunity of the district's real property from ad valorem taxation, which may exclude such properties from

publication requirements for statutory exemptions. That issue is resolved in favor of immunity, based on Rule 12B-1.207, Rules and Regulations, State of Florida, Department of Revenue.

Section 196.194(2), F. S., requires the annual publication of a list of tax exemptions in each county and provides in part the following:

(2) At least two weeks prior to the meeting of the board of tax adjustment (but no sooner than May 15), notice of the meeting shall be published Such notice shall list:

(a) Applicants for exemption under this chapter that have had their applications wholly or partially *approved* by the tax assessor . . . and the extent of the exemption granted;

(b) Applicants for exemption under this chapter that have had their applications *denied* by the tax assessor (Emphasis supplied.)

I am unable to find any language in §196.194, F. S., which may reasonably be construed to render the exemption publication requirement applicable only to disputed or appealed exemption publications. As I have indicated by previous opinion, AGO 072-142, the legislature, by enacting the annual exemption publication requirement of §196.194(2), apparently sought to provide the public with a meaningful review of the discretion exercised by tax assessors in granting—either wholly or partially—or denying tax exemptions. Limiting the scope of the published list to contested exemption applications could easily frustrate that intent. It cannot be assumed that a property owner who benefits from an exemption will dispute or appeal the action, but given access to such information public scrutiny becomes a means of ensuring responsible action.

The laws pertaining to the board of tax adjustment do not expressly designate a source of funds for the payment of all necessary expenses incurred by the board in the performance of its official duties. Section 194.032(4), F. S., however, directs that the expenses of hearings before special masters and any compensation of special masters shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. My predecessor in office reasoned that the board of tax adjustment might well conclude that other expenses properly incurred in the performance of its official duties could be allocated in the same proportion, between the component governing bodies from which the board's members are chosen. Attorney General Opinion 070-94. *See also* AGO 070-128. This view comports with the apparent intent of the legislature and, in my opinion, represents a proper method of financing the important functions performed by the board, including the annual publication of exemptions required by §196.194(2), F. S. I find nothing in the statutes which may reasonably be construed to authorize the pro rata allocation of such publication costs to other parties or entities, public or private.

In an earlier opinion (AGO 072-142) I have concluded that the publication requirements of §196.194(2), *supra*, apply to those exemptions which are granted by Ch. 196, F. S., not based on immunity or constitutional grant under Art. VII, §§3(b) and 6, State Const., even though restated by Ch. 196. The conclusion in that opinion (prior to amendment of §196.194) did not relate to local government entities such as municipalities, because they were not then expressly excluded from application requirements, nor were they excluded by the immunity doctrine because Florida law on that subject did not extend to them. Attorney General Opinions 072-56 and 063-138. The question of whether special districts should be regarded as political subdivisions of the state as opposed to local government was not raised.

The notice published pursuant to §196.194(2)(a), *supra*, must list “[a]pplicants for exemption under this chapter” (Emphasis supplied.) The language would apparently infer an intent that the list of exemptions be prepared by

reference to annually submitted exemption applications. The class of property not subject to the annual exemption *application* requirement was expanded with the enactment of Ch. 72-290, Laws of Florida, to include, in addition to the church exemption, "property of the state, any county, any municipality, or any school district or community college district thereof." Section 196.011(2), F. S. With an application for exemption no longer required for these properties (assuming compliance with §196.193, F. S., as to an initial return and continued exempt use), it seems reasonable to conclude that they are not required to be included in the annual publication prescribed by §196.194(2). This designation of governmental bodies does not, of course, refer specifically to such a special district as that on behalf of which you inquire.

However, paragraph 1(C) of Rule 12B-1.207, Rules and Regulations of the State of Florida, Department of Revenue, Ch. 12B-1, provides in pertinent part the following:

(C) Property owned and used exclusively by the United States, the state, or a political subdivision thereof is immune from taxation. No application for exemption of this property shall be required. *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571 (Fla. 1957)

2. A political subdivision of this state shall include the following: *special tax districts* (Emphasis supplied.)

The Department of Revenue is charged with the duty of prescribing "reasonable rules and regulations for the assessing and collecting of taxes" Section 195.042, F. S. 1971. Absent a judicial determination to the contrary, I would assume that the quoted provisions of Rule 12B-1.207, *supra*, constitute a proper exercise of that authority. [See] 1 Fla. Jur. *Admin. Law* §90. Cases relating to the nature of such districts are: *Rabin v. Lake Worth Drainage District*, 82 So.2d 353 (Fla. 1955); *Arundel Corporation v. Griffin*, 103 So. 422 (Fla. 1925); *Hillsborough County Aviation Authority v. Walden*, 210 So.2d 193 (Fla. 1968); *Seaboard Air Line Railroad Company v. Sarasota-Fruitville Drainage District*, 255 F.2d 622 (5th Cir. 1958); *Broward County Port Authority v. Arundel Corp.*, 206 F.2d 220 (5th Cir. 1953); *Aerovias Interamer, De Panama v. Board of County Com'rs*, 197 F.Supp. 230 (S.D. Fla. 1961).

As indicated in AGO's 072-56 and 072-142, *supra*, the publication requirements of §196.194(2), F. S., do not encompass immune property, and the absence of application for exemption would not result in the taxation of such property. It follows that property owned by the district and used for district purposes may, under the above-cited rule, be excluded from the exemption publication requirement here in question.

It should be observed, however, that §378.49, F. S. 1971, authorizes the lease of any lands or interest in land to which the district has acquired title. Unless district lands leased to nongovernmental lessees pursuant to this section are used for governmental, municipal, or public purposes or functions as defined in §196.012(5), F. S. 1971, or one or more of the exempt uses set forth in §196.199(4), F. S., such lands may be subject to taxation under §196.001, F. S. 1971, which provides in part:

196.001 *Property subject to taxation.*—Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

(2) All leasehold interests in property of the United States, of the

state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Except to the extent that this section, in conjunction with Ch. 196, F. S., provides for taxation of leasehold interests in governmentally owned property, it does not purport to alter the immunity doctrine noted above, but would appear to me to require compliance with statutory procedures for securing the exemption of such leasehold interests and for the inclusion of such applications within the annual list of exemptions published under §196.194(2), *supra*.

073-438—November 27, 1973

DRIVERS' LICENSES

REEXAMINATION NOT REQUIRED AFTER CHANGE OF NAME

To: Reubin O'D. Askew, Governor, Tallahassee

Prepared by: Staff

QUESTION:

Does §322.121, F. S., require reexamination of a married woman (Applying for a two-year driver's license renewal) whose married name now places her in an alphabetical bracket different than her maiden name, even though she has already taken an examination under her maiden name and the four-year reexamination period has not expired?

SUMMARY:

Section 322.121, F. S., relating to reexamination of all drivers of motor vehicles, does not require reexamination of any person prior to the expiration of the four-year reexamination period, even though that person's name may change in the interim.

This question is answered in the negative.

Section 322.121, F. S., divides citizens of Florida into four groups for the purpose of drivers' license reexamination: those born in odd-numbered years whose last names begin with letters A-M; those born in even-numbered years whose last names begin with letters A-M; those born in odd-numbered years whose last names begin with letters N-Z; and those born in even-numbered years whose last names begin with letters N-Z. Each group is *reexamined* during a given year and every four years thereafter.

The problem arises in the above-outlined cycle when a person changes his or her name, necessitating the transfer of that person to another alphabetical bracket. The most common example of the problem is in the case of a woman who marries or is divorced and assumes her maiden name or shortly remarries subsequent to the original examination, but prior to the expiration of the four-year reexamination period. A similar problem occurs when a nonresident moves to Florida and enters the reexamination cycle at a time which would preclude that person from receiving full benefit of the period. The nonresident is entitled only to that portion of time remaining in the reexamination period and not necessarily a full four-year or two-year time period. Chapter 73-238, Laws of Florida [§322.031, F. S.], states in this regard:

322.031 NONRESIDENT—WHEN LICENSE REQUIRED

(1) In every case where a nonresident, except a nonresident migrant farm worker as defined in section 316.003(62), accepts employment or engages in any trade, profession, or occupation in the state or enters his