

073-304A—September 6, 1973
(Supplement to 073-304)

**COUNTY CHARTER COMMISSION
VOTING ON COMMISSION APPOINTMENT BY
LEGISLATIVE DELEGATION**

To: Charles H. Weber, Senator, 30th District, Fort Lauderdale

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

(See 073-304 for question)

SUMMARY:

Under §125.61(2), F. S., in appointing a county charter commission, each member of the legislative delegation having jurisdiction in the county has the same voting right as any other member.

In AGO 073-304 I ruled that, pending legislative or judicial clarification, the "legislative delegation" for the appointment of members of a county charter commission under §125.61(2), F. S., should consist of all legislators in whose districts all or any portion of the county is included. You have advised that, under this interpretation of the statute, there will be six senators and seventeen representatives who will have the appointing power, some of whom live in counties other than Broward and who represent only a small portion of the county; and you have inquired as to how their votes should be tabulated because of the great discrepancy in the numbers of residents or voters which each legislator will represent in this particular situation.

As noted by you, the statute contains no guidelines in this respect. It provides merely that the members of the charter commission "shall be appointed by the legislative delegation having jurisdiction in said county." Section 125.61(2), *supra*. Perhaps weighted voting in this situation would be in order. *Cf. Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), in which the Supreme Court upheld a California statute limiting voting upon the establishment of the district to landowners and weighting the vote according to the assessed value of the land. *Accord: Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973), in which the vote was limited to landowners and weighted according to acreage. However, it seems clear that the question of weighted voting is a matter which should be determined by the legislature itself; and there is nothing in the statute which either expressly or by necessary implication requires this type of vote.

Accordingly, pending legislative clarification, I can only advise that the members of the legislative delegation should cast their votes in accordance with the procedure generally applicable to this type of group action—that is, each member of the appointive body has the same voting right as any other member.

073-305—August 31, 1973

MUNICIPALITIES

**USE OF REVENUE-SHARING FUNDS TO OBTAIN CONTRACTUAL
POLICE SERVICES—POTENTIAL CUT BELOW
MINIMUM MILLAGE FOR ELIGIBILITY FOR
REVENUE-SHARING FUNDS**

To: Harold J. Soehl, North Redington Beach Town Attorney, St. Petersburg

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTIONS:

1. How shall the Town of North Redington Beach report the use of state funds so as to avoid losing its full proportionate share of state revenue-sharing funds since it shares costs of the police department of the Town of Redington Beach on a contractual basis, but has no direct control of that police department or of the paying of personnel of that department?
2. How can the Town of North Redington Beach comply with the requirements of Ch. 73-172, Laws of Florida, as to calculation of millage without losing its proportionate share of the state revenue-sharing funds?

SUMMARY:

A municipality which shares the costs of the police department of another municipality on a contractual basis, but has no direct control of that police department or of the paying of salaries of personnel of that department, should so certify it has no police officers in its employ; but if it does employ one or more full-time police officers, then it should meet the certification requirements of §218.23(1)(d), F. S., in order to meet that requirement for entitlement to revenue-sharing funds. The use of the funds for that contractual purpose is proper, and such use is not restricted by, nor within the limitations on the funds prescribed by, §218.25, F. S.

A municipality which falls below the three-mill base for eligibility for revenue sharing set by §218.23(1)(c), F. S. (Ch. 73-349, Laws of Florida), as a result of an increase in assessed valuation due to the method of fixing millage set out in §200.065, F. S. (Ch. 73-172, Laws of Florida), must elect either to forego revenue sharing, impose new or additional occupational license or utility taxes which, when combining with the ad valorem tax, will be sufficient to produce combined revenues equivalent to that which would be produced by a three-mill ad valorem tax, or comply with the requirements set out in §200.065(2), F. S. (Ch. 73-349, Laws of Florida), for budgeting an increased amount of ad valorem tax revenue sufficient to be eligible for revenue sharing.

As to question one, the following statutory provisions are pertinent. Section 218.21, F. S., as amended by Ch. 73-349, Laws of Florida, provides in relevant part:

(5) "Entitlement" means the amount of revenue which would be shared with an eligible unit of local government if the distribution from trust funds were based solely on the formula computation.

Section 218.23(1)(d), F. S., as amended by Ch. 73-349, *supra*, provides:

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement for any quarter during any fiscal year, a unit of local government is required to:

* * * * *

(d) Certify that persons *in its employ* as police officers, as defined in §23.061(1), meet the qualifications for employment as established by the police standards board, that its salary structure and salary plans meet the provisions of part IV of chapter 23, and that no police officer is compensated for his services at an annual salary rate of less than six thousand dollars. However, the department may waive the minimum police officer salary requirement if a city or county certifies that it is levying ad valorem taxes at ten mills. (Emphasis supplied.)

Section 218.23, *supra*, further provides the formula for determining entitlement for eligible municipalities. The only limitations on the use of the revenue-sharing funds are found in §218.25, F. S.:

Limitation of shared funds; holders of bonds protected.—Local governments shall not use any portion of the moneys received in excess of the guaranteed entitlement from the revenue sharing trust funds created by this part to assign, pledge, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on revenues shared pursuant to this part. . . .

Thus, it would appear that the use of the funds for purposes such as payment to another municipality for cooperative police services provided on a contractual basis is not restricted by the statute.

The only requirement with regard to eligibility relating to reporting, insofar as it concerns police, is that found in §218.23(1)(d), *supra*. That section requires only that the municipality certify certain facts with regard to police officers *in its employ*. It appears from your letter that, although you contribute to the costs of the Redington Beach Police Department on a contractual basis, the police are the employees of and are compensated by the Town of Redington Beach, not North Redington Beach, and North Redington Beach only pays for the services rendered by the Town of Redington Beach pursuant to the subsistent contract between the two towns, and has no direct control over the police department of the Town of Redington Beach. It is therefore my opinion that you do not have any particular requirement for reporting the use of the funds insofar as it affects your entitlement to revenue-sharing funds under the Revenue-Sharing Act of 1972, as amended by Ch. 73-349, Laws of Florida. If North Redington Beach does not have any police in its employ, it should simply so certify, but if it does employ one or more police officers, the certification should meet the requirements of §218.23(1)(d), *supra*. This opinion assumes the validity of the agreement between the two municipalities under pertinent Florida law.

Your second question indicates that the North Redington Beach municipal tax rate may fall below three mills if you follow the requirements of Ch. 73-172, Laws of Florida, effective July 1, 1973, and that you are therefore concerned with how you may comply with both Ch. 73-172, *supra*, and also the requirements of §218.23(1)(c), F. S.

Section 218.23(1)(c), *supra*, reads in relevant portion:

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement for any quarter during any fiscal year, a unit of local government is required to:

(c) Have levied ad valorem taxes, exclusive of taxes levied for debt service or other special millages authorized by the voters, at a millage rate not less than three mills on the dollar or, in order to produce revenue equivalent to that which would otherwise be produced by a three-mill ad valorem tax, to impose and collect an occupational license tax or a utility tax, or both of these taxes, in combination with the ad valorem tax.

Section 13 of Ch. 73-172 [§200.065(1) and (2), F. S.], *supra*, reads in relevant portion:

(1) . . . Exclusive of such new construction, improvements, and deletions the assessor shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of

calculating the certified millage, the assessor shall use ninety-five percent of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

(2) No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to do so at the same time it advertises its intention to fix its budget for the forthcoming fiscal year

When two statutes relate to common things or have a common or related purpose, they are said to be *pari materia*, and where possible, that construction should be adopted which harmonizes and reconciles the statutory provisions so as to preserve the force and effect of each. *Ideal Farms Drainage Dist. et al. v. Certain Lands*, 19 So.2d 234 (Fla. 1944); *State v. Haddock*, 140 So.2d 631 (1 D.C.A. Fla., 1962).

Reading the statutes in such a manner, should there be a 100 percent increase in the taxable value appearing on the tax roll, as you indicate there may be in the case of North Redington Beach, it would reduce the present five-mill tax rate approximately in half, or below three mills. Under §13 of Ch. 73-172, *supra*, such a millage rate where no other taxes are imposed, would not comply with the eligibility requirements of §218.23(1)(c), *supra*.

At that point the taxing authority would have to elect either to forego the receipt of funds available under the Revenue-Sharing Act, as amended, impose sufficient occupational license or utility taxes to have a combined three-mill ad valorem tax, which when combined with the ad valorem tax will produce revenue equivalent to that which would be produced by the ad valorem tax, or budget an increased amount of ad valorem tax revenue pursuant to the requirements of §200.065(2), F. S., as created by §13 of Ch. 73-172, Laws of Florida, so as to have sufficient revenue to meet the three-mill requirement. At that point, the municipality would then be in compliance with Ch. 73-172, and also if it chose, would be eligible for revenue sharing under §218.23(1)(c), *supra*.

073-306—August 31, 1973

EXTRADITION

COUNTY LIABLE FOR COSTS OF EXTRADITION

To: J. Edward Worton, State Attorney, Key West

Prepared by: Michael M. Corin, Assistant Attorney General

QUESTION:

Are the costs and expenses of sending officers of this state to a sister state to apprehend and return a fugitive from this state payable by the state or the county?

SUMMARY:

The costs and expenses of sending officers of this state to a sister state to apprehend and return a fugitive from this state are payable by the county.

As applicable to your inquiry, §30.24, F. S., provides:

The sheriffs of the several counties, when requested to go beyond the limits of this state to bring back a prisoner charged with any offense, or who has been convicted of any crime in this state, and has escaped, shall charge the sum of seven cents per mile for the actual distance traveled