

073-136—April 26, 1973

TAXATION

EXTENSION OF HOMESTEAD EXEMPTION—CERTAIN
COOPERATIVE AND CONDOMINIUM APARTMENTS*To: Charles H. Weber, Senator, 30th District, Tallahassee**Prepared by: Stephen E. Mitchell, Assistant Attorney General*

QUESTIONS:

1. May §196.031(2), F. S., be amended to grant a homestead tax exemption to owners of apartments in existing cooperative apartment corporations holding leases of fifty to ninety-eight years?

2. May §196.041, F. S. 1971, be amended to grant owners of existing condominium leases of fifty to ninety-eight years a homestead tax exemption?

3. If the above are possible, would it also be necessary to amend a similar provision in §711.08, F. S.?

SUMMARY:

Article VII, §6(a), State Const., limits for homestead tax exemption purposes leases held by cooperative apartment corporations to those initially in excess of ninety-eight years and the legislature may not constitutionally amend §196.031(2), F. S., to grant a homestead tax exemption for existing leases of fifty to ninety-eight years. This limitation is inapplicable to condominiums, and the legislature may define this term by amending §196.041, F. S. 1971, to grant a homestead tax exemption for existing condominium leases of fifty to ninety-eight years. It is unnecessary to amend §711.08, F. S.

Your first question is answered in the negative.

The proposed Senate bill amends §196.031(2), F. S., by adding to the end of this subsection defining the term "cooperative apartment corporation" the words "except persons holding leases of fifty (50) years or more, existing prior to the passage of this act, shall be deemed the owner for the purpose of qualifying for homestead exemption."

Article VII, §6(a), State Const., provides, in pertinent part, certain restrictions with respect to homestead tax exemptions:

. . . The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a *leasehold initially in excess of ninety-eight years*. (Emphasis supplied.)

It is a well established canon of constitutional construction that language in a constitution is to be interpreted in its most usual, obvious, natural, and popular meaning as understood by the people who adopted it. *Wilson v. Crews*, 34 So.2d 114 (Fla. 1948). It follows, therefore, that the phrase "leasehold initially in excess of ninety-eight years" applies only to the indirect form of ownership in a cooperative apartment. Furthermore, this phrase is a limitation on the legislature proscribing any attempt to alter the number of years required for a lease of this type. *State v. Dickinson*, 188 So.2d 781 (Fla. 1966); *State v. Butler*, 69 So. 771 (Fla. 1915).

Your second question is answered in the affirmative.

Article VII, §6(a), *supra*, declares the condominium form of ownership to be

real estate for homestead tax exemption purposes; however, the term "condominium" is not defined in the constitution. The legislature may by statute define "condominium" for one or several purposes. *Ammerman v. Markham*, 222 So.2d 423 (Fla. 1969).

As stated above, the ninety-eight year limitation applies only to cooperative apartments, and the proposed Senate bill, adding the same amendatory language to §196.041, F. S. 1971, would merely define this concept for homestead tax exemption purposes.

Your third question is answered in the negative.

Section 196.041, *supra*, describes a condominium for the purpose of homestead tax exemption only, and since it is your desire to retain the ninety-eight year lease requirement prospectively, it is not necessary to amend §711.08, F. S.

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ELECTIONS

MUNICIPAL ELECTION NOT REQUIRED TO BE HELD—NO OPPOSING OR WRITE-IN CANDIDATES

To: William J. Rish, City Attorney, Port St. Joe

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

When a municipality's charter act contains no provision for write-in candidates and adopts the general law of this state relating to elections not inconsistent with its charter act, must the municipality hold an election when only one candidate has qualified for each vacant municipal office and the time for qualifying as a write-in candidate under general law has expired?

SUMMARY:

In the absence of any controlling charter act provisions, a municipality which has adopted the general election law is not required to hold a municipal election when only one candidate has qualified for each vacant municipal office and the time for write-in candidates to qualify under §99.023, F. S., has expired.

Your question is answered in the negative.

Section 101.151(5)(b), F. S., provides that

The names of unopposed candidates shall not appear on the general election ballot unless a write-in candidate has qualified under §99.023. Each unopposed candidate shall be deemed to have voted for himself.

And under §99.023, F. S., in order to have write-in votes cast for him counted, a write-in candidate must qualify for the office he seeks not less than forty-five days prior to the general election. Thus, under general law, if the forty-five days had expired, the names of unopposed candidates would not be placed on the general election ballot; and, by the same token, the names of the unopposed candidates for municipal office would not be placed on the municipal ballot in this situation, when the municipality is operating under the general law in this respect. It necessarily follows that, in the circumstances here present, no municipal election is required to be held as it would serve no useful purpose.