

The several administrative officials concerned with the administration of pension and retirement laws or with the disbursement of public money in payment of workmen's compensation benefits or disability retirement benefits are under a duty to make or cause to be made the offset for any workmen's compensation benefits received by any member of any retirement system as a result of the same injury or disability for which he or she received disability retirement benefits under any of the several state-administered retirement systems to which §440.09(4), F. S. 1971, applies as hereinabove discussed. Any improper or unauthorized payment of workmen's compensation or disability pension may be recovered by recoupment, setoff, or other means or proceedings appropriate to the individual case as the peculiar circumstances attending it require.

073-63—March 15, 1973

TAXATION

USE OF NINTH CENT MOTOR FUELS TAX

To: Ted Randell, Representative, 112th District, Fort Myers

Prepared by: Winifred L. Wentworth, Assistant Attorney General and James D. Whisenand, Legal Intern

QUESTION:

May the Lee County Board of County Commissioners use the 9th cent gas tax provided in §336.021, F. S., to construct roads and bridges within the county, providing the referendum is approved?

SUMMARY:

The tax imposed for the purpose of paying the costs of a transportation system, pursuant to §336.021, F. S., may not be used to construct roads and bridges within the county because the statutes limit such proceeds to establishment and operation of a transportation system.

Your question should in my opinion be answered negatively. Chapter 72-384, Laws of Florida (§336.021, F. S.), permits, by referendum and county ordinance, the imposition of a one cent tax on all motor fuels and special fuels taxed under Ch. 206, F. S., which are sold within the county. The tax is "for the purpose of paying the costs and expenses of establishing, operating and maintaining a transportation system." Additional revenue for the referenced transportation system may be drawn from county general funds, special taxing district funds, or other such funds as may be authorized by special or general law. *See City of Waldo v. Alachua County*, 249 So.2d 419 (Fla. 1971). *Cf.* AGO's 072-170, 072-77, and 072-8.

The preamble to Ch. 72-384, *supra*, sets forth the legislative intent to promote a "transportation system" that will *reduce all aspects* of highway administration, the *need* for roads, highways and parking facilities, and *enhance* the service of a *transit system* that serves the urban-metropolitan counties. The word "transportation" is generally defined as "system and modes of conveyance of persons or goods from place to place." *Borough of Brielle v. Zeigler*, 179 A.2d 789 (N.J. 1962). In *Yellow Bus Lines v. Atkins*, 310 S.W.2d 181 (Tenn. 1958), the court concluded a "transportation system" was present, for tax purposes, when a bus company maintained a terminal and routine routes within certain designated areas.

Chapter 336, F. S., generally provides for the county road system. Section 336.59 authorizes the levy of an ad valorem tax for road and bridge purposes, and certain other "gas taxes" and funds are used for similar purposes. Sections 206.41, 206.60, 336.62, and 550.13, F. S. The intent of the legislature is, of course, the paramount concern. If that intent had been to permit the tax to be diverted to road

and bridge uses generally, the legislature could easily have so provided. Such a conclusion is clearly negated by the succinct legislative expression of an intent to promote a "transportation system" and reduce the "need for and size of roads, highways, expressways and parking facilities."

073-64—March 21, 1973

TAXATION

VALIDITY OF MUNICIPAL RESORT TAX

To: *Sherman S. Winn, Senator, 34th District, Bal Harbour*

Prepared by: *Winifred L. Wentworth, Assistant Attorney General*

QUESTIONS:

1. For what purposes can the revenue derived from the 2 percent municipal resort tax imposed by the Village of Bal Harbour under Ch. 67-930, Laws of Florida, and Resolution No. 159 and Ordinance No. 135 of the Village of Bal Harbour be used?
2. Is this tax constitutional in the light of *City of Tampa v. Birdsong Motors, Inc.*, 261 So.2d 1 (Fla. 1972)?

SUMMARY:

Section 6 of Ch. 67-930, Laws of Florida, delineates those purposes for which revenue derived from the resort tax can be used. It appears that the tax ordinances authorized thereunder are not within the proscription of the *Birdsong* decision against authorization by special act.

This office construed certain provisions of Ch. 67-930, Laws of Florida, in AGO 071-320. *Cf. State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970); *Fried v. City of Miami Beach*, 212 So.2d 308 (3 D.C.A. Fla., 1968). Section 6 of Ch. 67-930 clearly sets forth the *only* purposes for which the collected funds may be used:

Any funds received under and by virtue of the municipal resort tax imposed or levied under the authority of this act shall be used for the following purposes only: creating and maintenance of convention and publicity bureaus, cultural and art centers, enhancement of tourism, publicity and advertising purposes, and for the future cost, purchase, building, designing, engineering . . . expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or structures, and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

With respect to question 2, Ch. 67-930, Laws of Florida, authorizes qualified municipalities to levy, by ordinance, an excise tax of 2 percent to promote and advertise the tourist industry of the metropolitan areas. This tax is in addition to the tax provided by Ch. 212, part I, F. S.; §§4 and 7, Ch. 67-930. *Cf. AGO's 072-341 and 072-215.*

In *State v. City of Miami Beach*, *supra*, the court sustained the constitutionality of this resort tax as authorized by general law. Implicit in that opinion is a negative disposition of any blanket contention as to duplicative taxation prohibited by §212.081(3)(b), F. S. that "no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or consumption which is subject to a tax under this chapter *unless permitted by general law*" (Emphasis supplied.)

City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972), which held