

Chapter 73-129, Laws of Florida, in part rennumbers [Effective Oct. 1, 1973] as §195.201, F. S., the provisions of former §167.433, F. S.

Under the provisions of §167.433, F. S. (1972 Supp.), the county commission, rather than the board of tax adjustment, is the proper administrative forum for the review and equalization of assessments of property located within a municipality. The language in §167.433(6), providing for notice of, and an opportunity to appear and be heard at, hearings related to tax adjustment proceedings, apparently refers to those hearings relating to municipal tax assessments which are conducted before the board of county commissioners. This does not, of course, authorize any municipality to appeal to, file a petition with, or appear before, the board of tax adjustment opposing land classifications made by a tax assessor pursuant to §193.461, F. S.

073-295—August 16, 1973

STATE OF FLORIDA

FULFILLMENT OF PUBLIC PURPOSE THROUGH CONTRACT WITH PRIVATE CORPORATION

To: *Richard Stone, Secretary of State, Tallahassee*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTION:

May the Board of Trustees of the State Theater of Florida enter into a contract with a private nonprofit corporation in order to provide theater productions for the State Theater of Florida?

SUMMARY:

The Board of Trustees of the State Theater of Florida may enter into contracts with private corporations in order to effectuate the purposes for which the State Theater was created.

The State Theater of Florida was created by Ch. 65-164, Laws of Florida, and placed under the direction and control of the Florida State University. Section 1, *id.* In 1970, the legislature, at §1, Ch. 70-329, Laws of Florida, transferred the State Theater by a type one transfer to the Department of State, which became supervisor of the theater. See §5, *id.* [§241.68(1), and (2), F. S.] A board of trustees was authorized by statute to *directly* supervise the theater, such board to consist of five members, including: the head of the Department of Theatre of Florida State University, the Dean of the College of Arts and Sciences of Florida State University, the Director of the State Theater of Florida, a member of the Board of Trustees of the Ringling Museum of Art and one member of the public at large. The general purposes of the theater are found at §4, *id.*, [§241.68(6), F. S.] and are, in pertinent part, to:

(c) Provide, through workshops, clinics and seminars and *any other means developed by the committee of the state theatre*, a program to enrich and enlarge the artistic capacity of community theatre directors and participants, teachers, artists and citizens thus encouraging and assisting in the expansion of quantity and quality of both amateur and professional theatres throughout the state. (Emphasis supplied.)

The State Theater was given this broad grant of power by the legislature in order to most effectively accomplish the far-reaching purposes contained in §4 [§241.68(6)F. S.], *supra*, of bringing to the people of Florida an expansive theater program while at the same time being mindful of the public fisc. The contract in

question, between the board of trustees and the Asolo State Theatre, Inc., a nonprofit corporation, appears on its face to serve these purposes by enabling the trustees to present quality productions by a proven theater group to large numbers of citizens within the limited funding provided for by ticket sales, *see* §241.68(2), F. S., and general revenue appropriations; *see* item 913 of Ch. 72-409, Laws of Florida. By the terms of the contract, the Asolo State Theatre, Inc., is obligated to present three school tour plays, sixteen repertoire theater productions, and four children's theater productions during the 1972-73 season. All productions are authorized by and under the supervision of the secretary of state and the board of trustees. The Asolo Theatre, Inc., is further obligated to present, in conjunction with the Florida State University Department of Theatre and within the confines of the approved budget, a summer education program for high school, college, and university students. Additionally, key positions within the production staff of the corporation, such as executive director, managing director, artistic director, director of education, children's theater director, and costume designer, are held by individuals from the Department of Theatre of Florida State University. With these provisions in mind, it is my opinion that the contract between the Asolo State Theatre, Inc., and the board of trustees, does not unlawfully delegate to the Asolo State Theatre, Inc., any of the powers conferred upon the board by §241.68, F. S.

By the terms of the contract, the Asolo Theatre is merely employed by the board in order to effectuate the purposes of §4 of Ch. 70-329, Laws of Florida. In general, measures which are calculated to produce benefits to the public have been held to be valid and not an illegal delegation of power even though public purposes are effected through the instrumentality of a private corporation. *See*, 16 Am. Jur.2d *Const. Law* §249. So long as the agreement between the board of trustees and the Asolo Theatre, Inc., contains no provision granting arbitrary powers to the corporation, the contract is valid. By the express terms of the questioned contract, the secretary of state is given the power to supervise theater productions as well as to act as the final arbiter of any disputes and disagreements concerning productions and policies arising from the contract. No powers are given to the corporation except as agreed upon by the board or the secretary of state.

The budget for the 1972-73 season has been approved by the board of trustees and appears to be thorough and complete. Furthermore, the contract in question states that the trustees shall incur no financial liability arising from any other actions of the corporation, and the Asolo Theatre, Inc., is solely responsible for presenting the required programs within the approved budget. In *Miller v. Ryan*, 54 So.2d 60 (Fla. 1951), a similar situation arose whereby private chambers of commerce were employed by a board of county commissioners to collect advertising taxes. In upholding such an arrangement against a constitutional attack based on an alleged improper delegation of power, the Florida Supreme Court noted, at p. 62, that:

. . . The board of county commissioners is shown to have acted at all times within the power delegated to it and the chambers of commerce . . . are no more than agents of the board of county commissioners who may approve or disapprove any or all of their acts . . . [t]he board of county commissioners directs the budget and other policies of the chambers of commerce and requires them to make an annual accounting of all expenditures. There is no aspect of expenditures of tax funds in which they act except as directed by the board of county commissioners.

Similarly, there is no aspect of the expenditures of tax funds in which the Asolo Theatre, Inc., acts except as authorized and approved by the board of trustees and the secretary of state. The Asolo Theatre, Inc., is merely the instrumentality employed by the trustees and the secretary of state to most efficiently present quality theater to the citizens of Florida. The contract is, therefore, valid and does not constitute an improper delegation of the powers vested in the board of trustees.