

The act addresses itself only to those veterans attending institutions "within the state university system." It was added as subsection (4) of §240.052, F. S., which vests in the board of regents the authority to adopt regulations concerning the admission of and fees for students in the state university system. Section 239.01, *id.*, defines the "state university system" to include the Florida Board of Regents of the Division of Universities of the Department of Education and the specifically-named four-year institutions under the control of the board of regents. The junior colleges (or community colleges, as they are now called) of this state are not under the control of the board of regents. Under §§230.7535 and 230.754, F. S., community colleges are operated by district boards of trustees, subject to regulations prescribed by the state board of education; and under §230.761(2), *id.*, "[f]ees may be charged to students attending a community college only as authorized by and pursuant to regulations of the state board [of education]."

The fact that the "state university system" does not include the junior or community colleges is additionally demonstrated by paragraphs 228.041(1)(b) and (c), F. S., which are part of the definitions section of the Florida School Code. There, the community colleges are characterized as those institutions operated by district boards of trustees and which offer courses of instruction "parallel to that of the first and second years of work in institutions in the state university system." Institutions of higher learning are defined as those "state supported educational institutions offering work above the public school level, *other than community colleges.*" (Emphasis supplied.) See also §§230.7591 and 230.7681, F. S. (added by Ch. 73-338, Laws of Florida), authorizing the State Board of Education to prescribe, by regulation, the content and custody of limited access records which a community college may maintain on its students and employees. The 1973 act added similar provisions authorizing the board of regents to prescribe such regulations as to the records of the students and employees in the state university system.

When the terms used in a statute have acquired a fixed legal meaning, the legislature in using such terms must be presumed to have been fully aware of the impact of the use of such terms. *Abenkay Realty Corp. v. Dade County*, 185 So.2d 777 (3 D.C.A. Fla., 1966). In *Tamiami Trail Tours v. Lee*, 194 So. 305, 306 (Fla. 1940), it was stated that "there is a presumption that the legislature, in enacting a statute, acted with full knowledge of existing statutes, relating to the same subject."

In light of the above authorities and in view of the settled meaning of "state university system," as used throughout the Florida Statutes dealing with education and public educational institutions, it cannot be said with any degree of certainty that the legislature intended to include community colleges within the purview of Ch. 73-184, *supra*; and pending judicial or legislative clarification, your question can only be answered in the negative.

It should be noted that Public Law 92-540 added 38 U.S.C. §1780 to the laws relating to veterans. In part, this section provides for advance payment of the veterans' educational allowances "for the month or fraction thereof in which pursuit of the program will commence, plus the allowance for the succeeding month." From this, it may be seen that although Ch. 73-184, *supra*, did not do all that it was perhaps intended to do, the problem has substantially been obviated by the parallel federal response.

073-309—September 4, 1973

#### SPECIAL DISTRICTS

#### LIMITATIONS ON POWER TO ACQUIRE PROPERTY

To: Tom Gallen, Senator, 24th District, Bradenton

Prepared by: Sharyn Smith, Assistant Attorney General

## QUESTION:

Are the referendum requirements of Ch. 70-796, Laws of Florida, applicable to the acquisition by the trustees of the Trailer Estates Park and Recreation District of a parking area to be used in conjunction with an auditorium?

## SUMMARY:

The referendum requirements of Ch. 70-796, Laws of Florida, are applicable to the acquisition by the trustees of a parking area to be used in conjunction with an auditorium of the Trailer Estates Park and Recreation District if the cost of such property exceeds ten thousand dollars.

The original enabling legislation which created the Trailer Estates Park and Recreation District, Ch. 69-1287, Laws of Florida, provided at §3, *id.*, that "[t]he business and affairs of said district shall be conducted and administered by a board of nine trustees." Section 8, *id.*, empowers the trustees to "acquire and hold property, sue and be sued [and] enter into contracts." The "property" which the trustees are authorized to acquire is enumerated at §13, *id.*, and consists of

. . . [a] *recreational hall*, shuffleboard courts, marina, playgrounds, walks, and other property and improvements . . . purchased by the trustees for the district as well as any other real or personal property which the trustees may in their discretion determine to be necessary or convenient *for the purposes of the district*. (Emphasis supplied.)

Additionally, §15, *id.*, authorizes the trustees "to pay for such purchases either with cash or by the issuance of bonds or revenue certificates."

Ch. 69-1287, *supra*, was amended by Ch. 70-796, Laws of Florida, which provides at §26(a) that:

Notwithstanding any provisions to the contrary (as may now appear in Section 8, 13 or 15) the trustees of Trailer Estates Park and Recreation District *shall not enter into any contract involving the initial purchase, lease, conveyance or other manner of acquisition of real or tangible personal property constituting recreational facilities*, which presently exist within the territory included in the Trailer Estates Park and Recreation District, in any instance when the cost price or consideration therefor exceeds Ten Thousand (\$10,000.00) Dollars, including all obligations proposed to be assumed in connection with such acquisition, unless:

- (1) The trustees by two-thirds vote have approved the terms and conditions of such acquisition by written resolution;
- (2) Within not less than thirty (30) nor more than sixty (60) days of the date of the resolution, the trustees certify the resolution to the supervisor of elections of Manatee County for a referendum election; and,
- (3) A majority of qualified electors approve the resolution by referendum election. (Emphasis supplied.)

The powers granted the trustees under Ch. 69-1287, *supra*, are limited by the requirements contained in Ch. 70-796, *supra*. The purpose of the amendment is to qualify or condition the exercise of the trustees' authority to contract for the initial acquisition or purchase of recreational facilities (real or personal property) without the approval of the electors of the district in a referendum election called for that purpose in all instances where the cost price thereof exceeds ten thousand dollars.

Relating this to the issue presented in the instant situation, the resolution of

your question turns on whether or not the questioned parking lot used in connection with an auditorium can be considered a recreational facility or a necessary adjunct to, or appurtenance of, such auditorium. Since the statute may be reasonably construed to embrace such auditorium within the park and recreational purposes of the district provided for by the statute within the term "recreational hall," under the rule of liberal construction mandated by §24, Ch. 69-1287, *supra*, I am of the opinion that the parking area would be incidental to the authorized purposes of the district, and a necessary adjunct to, and appurtenance of, such auditorium.

"Recreational facility" has been defined to include such diverse areas as public parks, parkways, playgrounds, playfields, swimming pools, public baths, bathing places, and gymnasiums. Appeal of Municipal Authority of Borough of West View, 113 A.2d 307 (Pa. 1955). So long as a facility is used for *public recreational purposes* it would qualify as a *recreational facility*. See, State v. Village of North Palm Beach, 133 So.2d 641 (Fla. 1961). Such purposes include, *inter alia*, games, sports, plays, and dances performed by or for the residents of the district. Bear v. Board of Education of North Summit School Dist., 16 P.2d 900 (Utah 1932). Since the above activities would normally take place within an auditorium, the auditorium itself would be a recreational facility within the meaning of Ch. 70-796, *supra*. Further, §13, Ch. 69-1287, *supra*, specifically states that the property the trustees may acquire includes a "recreational hall." Since both a recreational hall and an auditorium are buildings in which the public gathers for recreational purposes, they could be considered one and the same and therefore the acquisition and operation of an auditorium is an authorized function and purpose of the district.

Since the parking area is to be used in connection with the auditorium, its acquisition would, of course, be subject to the referendum requirements of Ch. 70-796, *supra*, if the value of such property is in excess of ten thousand dollars. The acquisition of such a parking area by the trustees is proper if the parking lot is considered an appurtenance of the auditorium, *i.e.*, an area necessary and essential to the full enjoyment and use of the auditorium. See 6 C.J.S. *Appurtenance* pp. 133 and 136.

As a general rule, land can never be an appurtenance to other land. This principle has been followed in a number of Florida cases. South Venice Corp. v. Caspersen, 229 So.2d 652 (2 D.C.A. Fla., 1969); Brickell v. Trammel, 82 So. 221 (Fla. 1919); Rivas v. Sollary, 18 Fla. 122 (1881). See also, 23 Am. Jur.2d *Deeds* §258. However, when adjacent land is used with a building and is necessary to the building's functions, it is then considered to be appurtenant to the structure. Black v. Ervin, 176 N.E.2d 142 (2 D.C.A. Ind., 1961); Webber v. Austin, 121 A. 673 (Me. 1923). Assuming, therefore, that the lot is adjacent to the auditorium, it is necessary or convenient for the full enjoyment of the auditorium, and that the trustees by official act have found and determined that the property is in fact necessary and convenient for the purposes of the district, the acquisition of such lot requires the approval of a majority of the qualified voters of the district only if the cost of such lot exceeds ten thousand dollars.

073-310—September 4, 1973

#### PAROLE

#### PRISONER MUST BE IN JAIL OR PRISON TO BE CONSIDERED FOR PAROLE

To: Armond R. Cross, Chairman, Florida Parole and Probation Commission,  
Tallahassee

Prepared by: Reeves Bowen, Assistant Attorney General