

pronounces a penalty for an act, a contract founded upon the act is void, although the statute does not pronounce it void nor expressly prohibit it.

073-95—March 29, 1973

CONSTITUTION

STATE STATUTE PREEMPTION OF CONFLICTING LOCAL ORDINANCE

To: John W. Mikos, Sarasota County Tax Assessor, Sarasota

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

QUESTIONS:

1. Is the provision in §1 of Sarasota County Ordinance 72-52 requiring the county tax assessor to give written notice to the owner or his agent of "any increase of over five hundred dollars (\$500.00) in assessment for real property" currently valid in view of §194.011(2), F. S. 1971, which requires that such notice be given regardless of the amount of increase?

2. Is the provision in §1 of the ordinance requiring that such notification be given within a reasonable time prior to hearing complaints and reviewing assessments currently valid in view of §194.011(2), F. S. 1971, which requires that such notification be given on or before completion of the tax roll, and §194.011(1), F. S. 1971, which provides that the tax roll be completed on or before July 1 of each year?

3. Is the provision in §2 of the ordinance setting forth a form to be used for such notification to the taxpayer currently valid in view of §195.022, F. S. 1971, which requires that all forms to be used by county tax assessors in administering and collecting ad valorem taxes shall be those prescribed and furnished by the Department of Revenue?

SUMMARY:

Section 1 of Sarasota County Ordinance No. 72-52, by failing to require written notice of real property ad valorem tax assessment increases of five hundred dollars or less, is inconsistent with the notice requirements set forth in §194.011(2), F. S. 1971, and, regarding the time for notice of assessment increases, is also inconsistent with §194.011(1) and (2), F. S. 1971. Such inconsistencies with general law apparently render §1 of the ordinance constitutionally improper. Article VIII, §1(g), State Const. Section 2 of the subject ordinance does not appear to be legally severable.

All three questions are answered in the negative for the reasons indicated in the following discussion.

Having recently adopted a county home rule charter pursuant to §§125.60-125.64, F. S., Sarasota County is subject to the following constitutional limitation upon the scope of law-making powers vested in its board of county commissioners: "The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. . . ." Article VIII, §1(g), State Const.

The authority of the board of county commissioners to enact the ordinance provisions in question, and hence the validity of such provisions, depend in part upon a determination that such provisions are not inconsistent with general law, as that status is contemplated by Art. VIII, §1(g), State Const.

Section 194.011, F. S. 1971, provides in pertinent part the following:

(1) The tax assessor shall complete all assessments and have them entered on the appropriate tax rolls on or before July 1 of each year, as required in §193.023.

(2) On or before completion of the tax roll, each tax assessor shall notify by first class mail each person subject to real or tangible personal ad valorem taxes of the assessment of *each taxable item* of real property and tangible personal property as the item appears on the tax roll *which he proposes to increase from the previous year's assessment*, unless such increased assessment is not greater than that value declared by the taxpayer on his return. (Emphasis supplied.)

It should be noted that the subject ordinance deals only with notice requirements respecting real property assessment increases. Accordingly, any reference to §194.011, F. S. 1971, for comparison purposes should be limited to the requirements of that section which pertain to real property assessment increases. The notice requirements of §194.011(2), F. S. 1971, as that section pertains to real property assessments, are not conditioned upon the amount of increase in such assessments. The absence of any language within §194.011(2) suggesting discretionary compliance with the notice provisions as they pertain to real property assessment increases is also apparent. The only clause which obviates written notification is inapplicable to real property assessments.

Sarasota County Ordinance No. 72-52, on the other hand, provides for written notice of increased real property assessments when such increases exceed five hundred dollars. By implication, assessment increases which do not exceed five hundred dollars are excluded from the notification requirement. Adherence to this portion of the ordinance would therefore deprive a sizable number of real property owners of the notification to which they are entitled under §194.011(2), F. S. 1971. This apparent conflict between the county ordinance and §194.011(2) in my opinion falls within the category of inconsistencies prohibited by Art. VIII, §1(g), State Const. Accordingly, in answer to question 1, it is my view that Sarasota County Ordinance No. 72-52 is constitutionally invalid insofar as it purports to nullify the general law notice requirement for real property assessment increases which do not exceed five hundred dollars. To conclude otherwise would be to condone county-by-county modification or repeal of general law provisions which play a critical role in the administrative review process. Article II, §5(c), State Const.

Similar considerations require a negative answer to question 2. Inconsistencies are shown by comparing the ordinance provisions concerning the time for notice of increases in real property assessments with the provisions of §194.011(1) and (2), F. S. 1971, which deal with the same subject. Section 194.011(2) requires the mailing of written notice to affected taxpayers on or before the completion of the tax roll, which by virtue of §194.011(1) must be taken to mean on or before July 1 of each year, provided the tax roll completion date is not duly extended. Section 1 of the ordinance provides that such notice be given only "within a reasonable time prior to hearing complaints and reviewing assessments" By providing within the general law a specific deadline for the mailing of such notice, the legislature apparently intended to resolve uniformly any conflicts over what constitutes a reasonable time for such notice. It is therefore my view that §1 of the ordinance is inconsistent with general law on the subject of time for notice, and that such inconsistency provides additional grounds sufficient to invalidate §1 of the ordinance in view of Art. VIII, §1(g), State Const.

In answer to your final question, it is my opinion that the apparently unseverable relationship between §§1 and 2 of the ordinance renders §2 invalid. It is clear that the intended use of the form prescribed in §2, or the "equivalent" of such form, cannot be determined without reference to the constitutionally

objectionable §1. The rule on severability is stated: "The court will uphold the remainder [of a partially invalid enactment] if that which is left is complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected" [See] 30 Fla. Jur. *Statutes* §138. None of these sustaining characteristics appears applicable when §2 is removed from the context of §1.

073-96—March 29, 1973

HOUSING AUTHORITY

RESIDENT OF HOUSING PROJECT AS MEMBER OF AUTHORITY'S GOVERNING BOARD

To: James W. Vance, City Attorney, West Palm Beach

Prepared by: Joseph C. Mellichamp III, Assistant Attorney General

QUESTION:

May a tenant residing in a housing project built by a city housing authority pursuant to Ch. 421, F. S., be appointed to the governing board of such housing authority?

SUMMARY:

A tenant residing in a housing project built by a city housing authority pursuant to Ch. 421, F. S., may be appointed to the governing board of such housing authority.

Your question is answered in the affirmative.

It is assumed from your inquiry that the housing authority in question is duly established and is operating under the provisions of Ch. 421, F. S.

Once a housing authority has been properly established by the governing body of a city, five commissioners are appointed to transact the business of the authority. Section 421.05, F. S. Section 421.05 provides for the length of the commissioners' terms of office and provides further that they are to serve without compensation but will be entitled to the necessary expenses incurred in the discharge of their duties.

The only disqualifying factor contained in the statutes which would affect the appointment of a person to the commission is that no commissioner of an authority may be an officer or employee of the city for which the authority was created. Section 421.05(1), F. S. This disqualifying factor in the appointment of persons to the commission in no way places any other limitation on the power of the mayor (with the approval of the governing body) to appoint commissioners or to fill any expired term of office. *Accord:* Attorney General Opinion 060-204.

As to the question of owning or controlling an interest in the housing project, §421.06, F. S., provides that if any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included in or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority; and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office and shall be grounds for removal. Section 421.07, F. S. However, it would seem that the mere owning or controlling an interest in the housing project (when disclosure has been made) is not, by itself, a disqualifying factor for appointment to the commission.

Section 421.06, *supra*, also provides that no commissioner or employee shall acquire any interest, direct or indirect, in any housing project or in any property included in or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.