

073-415—November 8, 1973

COUNTY FEE OFFICERS

CHANGEOVER TO UNIFORM FISCAL YEAR

To: Jack Faircloth, Clerk, Circuit Court, Bonifay

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QUESTION:

Are tax assessors, tax collectors, and other county fee officers who have been operating on a calendar year basis required to change to a fiscal year of October 1-September 30 in 1973 and remit all excess fees to the board of county commissioners by October 15, 1973?

SUMMARY:

Under the Uniform Local Government Financial Management and Reporting Act, §§218.30-218.36, F. S., tax assessors and tax collectors may continue to operate under their current budgets until the end of the calendar year, December 31, 1973, and turn over their excess fees on January 15, 1974. Other county fee officers who have been operating their offices on a calendar year basis should change over to the new fiscal year as of October 1, 1973, and make their financial reports and turn over excess fees to the county general fund on or before October 15, 1973. However, if any county fee officer would be unable to carry out the duties of the office in these circumstances, he may continue to operate under his current budget until the end of the calendar year and pay over excess fees on or before January 15, 1974. His board of county commissioners should be notified, in writing, accordingly.

Section 2 of Ch. 73-349, Laws of Florida, added a new part III to Ch. 218, F. S. [§§218.30-218.36, cited as the "Uniform Local Government Financial Management and Reporting Act"], for the purpose of placing all units of local government and all county officers on a fiscal year of October 1-September 30 for the purpose of budgeting and reporting their revenues and expenditures. As to local government units—defined to include counties, municipalities, and special districts—the act provides that the new fiscal-year requirement "shall apply to all fiscal years beginning after September 30, 1973," but that the Department of Banking and Finance "may, upon the request of a local governmental unit and a showing of inability to conform by September 30, 1973, extend the time of compliance to September 30, 1974." Section 218.33(3). As to county fee officers, §218.35 requires them to establish an annual budget to reflect available revenues and estimated expenditures and reserves and provides in general terms that

(3) Each county fee officer shall make provision for establishing a fiscal year beginning October 1 and ending September 30 of the following year and shall report his finances annually upon the close of each fiscal year to the county fiscal officer for inclusion in the annual financial report by the county.

The following section, §218.36, relating to the accounting for receipts and expenditures and the paying over of excess fees by fee officers and unexpended budget balances by budget officers, does not differ substantially from §145.12, F. S. 1971, which was repealed. (Section 4, Ch. 73-349, *supra*.) It requires each county officer to make an annual report to the board of county commissioners "within fifteen days of the close of his fiscal year," specifying in detail his official expenses "and the amount of net income or unexpended budget balance as of the close of the fiscal year [§218.36(1)]." Subsection (2) provides that

On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he is entitled under the provisions of chapter 145. . . .

(It is noted that a tax collector or assessor divides his excess fees ratably among the governmental units from which such fees were collected.) This section also requires the board of county commissioners to notify the governor "on the sixteenth day following the close of the fiscal year" of the failure of any county officer to file the report and pay over excess moneys [§218.36(3)]. Compliance with the section "shall exempt said officer [from making] any report [to the Department of Banking and Finance] required pursuant to §116.03" [§218.36(4)].

As noted above, the 1973 act expressly provides that, as to units of local government, the new fiscal-year requirement "shall apply to all fiscal years beginning after September 30, 1973" and authorizes the Department of Banking and Finance to waive that requirement upon a showing of inability to conform by September 30, 1973. It was noted in AGO 073-303 that the department has adopted the "apparently reasonable position" that units of local government whose fiscal years began before September 30, 1973, may have until September 30, 1974, to comply with the act, upon proper notification to the department. In support of the reasonableness of this position, it was said:

Clearly, to interrupt an ongoing fiscal period such as began on July 1, 1973, for the subject district at this time would create considerable inconvenience and disruption in the fiscal planning of the district. The legislature could not have intended to interrupt an ongoing fiscal period in such a manner, and the extension provision shows a recognition of this situation and a desire on the part of the legislature for an orderly and prospective transition.

The section relating to county fee officers—§218.35, *supra*—does not expressly require the changeover to be made on October 1, 1973, nor does it contain an extension provision. It provides in general terms that a county fee officer "shall make provision for establishing a fiscal year beginning October 1 and ending September 30 of the following year. . . ." I am advised that the Department of Revenue—which has the responsibility for approving the budgets of tax collectors under §195.087, F. S. (former §195.011, *id.*, amended and transferred to §195.087 by §6 of Ch. 73-172, Laws of Florida)—has made an administrative determination that tax collectors' budgets as presently constituted remain in effect until the close of their current fiscal year (December 31, 1973), and that the reports and excess-fee payments are to be made within fifteen days from that date, or January 15, 1974. A proposed budget to cover the remainder of the new fiscal year—January 1, 1974, through September 30, 1974—must be submitted to the department for approval no later than December 1, 1973.

It is well settled that an administrative interpretation of a statute by the agency charged by law with its administration is entitled to great weight and will not be overturned by the courts except for the most cogent reasons and where clearly erroneous. *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952). Because of the time when the bulk of the tax collections and the fees and commissions of the tax collector based thereon begin to come in, it would be impossible for a tax collector to operate his office after October 15, 1973, if the entire amount of income in excess of expenditures *as of September 30, 1973*, were to be turned over to the governmental units on October 15, 1973. A possible solution to the problem would be for the tax collector to hold back funds sufficient to cover his budgeted expenses for the three months remaining in the calendar year, on the theory that funds budgeted for such expenses are not "excess" fees within the purview of §218.36, *supra*. However, the department's interpretation of the statute appears to provide a more practicable method of making the changeover and, for the reasons stated hereafter, is not clearly erroneous.

There can be little, if any, doubt that the legislature intended the changeover to the new fiscal-year basis for all local government units and county fee officers to take place beginning October 1, 1973, if reasonably possible. It is equally clear that the statute, as interpreted by the Department of Banking and Finance, authorizes the department to grant an extension to a local government unit if it is impracticable for the changeover to be made as of October 1, 1973; and in light of the absence of any *express* requirement that county fee officers shall make the changeover as of October 1, 1973, and the very broad and general nature of the legislative directive that each county fee officer "shall make provision for establishing a fiscal year beginning October 1 and ending September 30 of the following year," it is not unreasonable to conclude that the legislature intended also to allow some leeway to county tax collectors and other fee officers similarly situated in changing over to the new fiscal year.

Moreover, as noted above, if the tax collectors were to turn over all their excess funds on October 15, 1973, they would have insufficient funds with which to operate their offices until such time as the tax collections and fees based thereon began to come in. This would mean that the county tax collectors, and other fee officers similarly situated, would be severely hampered in carrying out their public duties and functions and rendering the public services required of them by law and which the public has a right to expect. I am unwilling to ascribe such an intent to the legislature, in the absence of a clear legislative directive to that effect. Accordingly, pending legislative or judicial clarification, I have the view that they should not be required to do so.

The procedure prescribed by the Department of Revenue for county tax collectors in making the changeover to the new fiscal year, referred to above, appears to be a reasonable and practicable method of complying with the statutory requirement that county fee officers "shall make provision for" establishing the new October 1-September 30 fiscal year; and county fee officers who, like county tax collectors, find it impossible to make the changeover by October 1, 1973, should follow this procedure. It is suggested that the officer's board of county commissioners should be notified, in writing, accordingly.

As to the tax assessors: As noted in AGO 073-320, Ch. 73-172, Laws of Florida, expressly provides for the implementation of the new October 1-September 30 fiscal-year requirement insofar as tax assessors are concerned. Section 17 of that act provides that

(1) For the fiscal year beginning October 1, 1973, and ending September 30, 1973, the several assessors shall not be required to submit a budget by July 1, but rather they shall submit a budget by November 1, 1973, for the nine months beginning January 1, 1974, and ending September 30, 1974. *For the period prior to January 1, 1974, their office shall be operated on their existing budget or, if no budget has been approved for such period, on a budget adopted and approved for that period of time.* (Emphasis supplied.)

It was said also that the current budgets of tax assessors which were submitted to the Department of Revenue pursuant to §195.011, F. S. 1971, "are effective through December 31, 1973, at which time they will be succeeded by the nine-month changeover budget provided for in §17 of Ch. 73-172, *supra*." It necessarily follows that the 1973 "fiscal year" of tax assessors for the purpose of reporting receipts and disbursements and paying over excess fees is the year ending December 31, 1973.