

073-412—November 8, 1973

TAX ASSESSOR

BUDGET ITEM FOR INDEPENDENT LEGAL COUNSEL

*To: Robert A. Mallard, Duval County Tax Assessor, Jacksonville**Prepared by: Stephen E. Mitchell, Assistant Attorney General*

QUESTION:

Does Ch. 73-172, Laws of Florida, allow the Duval County Tax Assessor to put an item in his requested budget for independent legal counsel, *i.e.*, a law firm other than the office of the General Counsel of the City of Jacksonville?

SUMMARY:

Chapter 73-172, Laws of Florida, supersedes provisions of Ch. 67-1320, the Consolidated City of Jacksonville Charter, and implementing ordinances relating to utilization of legal services provided by the consolidated government by the tax assessor when a budget item in the tax assessor's budget affecting such use, as approved or amended by the Florida Department of Revenue or the Administration Commission, is in conflict therewith. To the extent that the approved budget conflicts with the charter or implementing ordinances, the budget will prevail.

Your question is answered in the affirmative, assuming justifying circumstances hereinafter noted and without determining the issue of utilization of independent counsel generally.

Chapter 73-172, Laws of Florida, entitled "the property assessment administration and finance law," is a general law which effects an extensive revision of law concerning ad valorem taxation and state regulation thereof. Pertinent sections of the act relate to fiscal administration and budgets for the operation of the office of county assessors:

Section 6. Section 195.011, Florida Statutes, is transferred to 195.087 and amended to read:

(1)(a) On or before June 1 of each year, every assessor regardless of the form of county government shall submit to the ad valorem tax division of the department of revenue a budget for the operation of his office for the ensuing fiscal year beginning October 1. The assessor shall submit his budget in the manner and form required by the department of administration for state agencies. A copy of such budget shall be furnished at the same time to the board of county commissioners. *The division shall, upon proper notice to the county commission and assessor, review the budget request and may, on or before July 15, amend or change the budget request as it deems necessary in order that the budget be neither inadequate nor excessive.* The county commission may present testimony to the ad valorem tax division concerning the whole or any part of the budget request.

(b) The governor and cabinet, sitting as the administration commission, may hear appeals from the final action of the division of ad valorem tax upon a written request being filed by the assessor or the presiding officer of the county commission. The assessment and administration review commission *may amend the budget if it finds that any aspect of the budget is unreasonable in light of the work load of the assessor's office in the county under review.*

Section 22.

(1) Any resolution of a board of county commissioners enacted pursuant to §145.022, Florida Statutes, and *any special act* or general act of local application *relating to* compensation of assessors, the budgeting or *expenses of assessors' offices, or the compensation of any employee of an assessor's office* including, but not limited to Chapter 14678, Laws of Florida, 1931, chapters 57-1004, 63-676, 65-1044, 65-1185, 65-1224, 69-631, 69-638, 69-652, 69-729, 69-730, 69-731, 69-733, 69-734, 69-735, and 70-966, Laws of Florida, *which are in conflict with any provision of this act are repealed to the extent of such conflict.* (Emphasis supplied.)

The portions of the city's charter, Ch. 67-1320, as amended, relevant to the use by the assessor of legal counsel are:

Section 7.301. General. The central services department shall include the purchasing, legal services, motor pool, data processing, public relations and communications divisions. . . .

* * * * *

Section 7.303. Utilization of Central Services. All of the services provided by the central services department and the personnel Department shall be utilized by all offices, departments and boards of the consolidated government and by all independent agencies, except when otherwise provided by law or directed by the council or by this charter. . . .

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Section 7.306. Legal Division. The legal division shall have general responsibility for furnishing legal services to the consolidated government and to independent agencies; except where the council may otherwise direct. . . .

. . . [N]o special counsel shall be employed by the consolidated government and paid from public funds, unless otherwise provided for any independent agency, except that whenever, upon recommendation by the general counsel, the interests of the consolidated government require special counsel, the council by resolution may employ such counsel, who shall be paid such compensation for their services as the general counsel shall determine, and the council shall approve, to be reasonable compensation for the services to be rendered.

Pursuant to the above-quoted charter provisions, the assessor may utilize special counsel when approved by the general counsel and the council. In this situation said special counsel would be paid by the consolidated government from public funds and not from funds budgeted to the assessor.

Your question is, notwithstanding these provisions, may the assessor put an item in his budget for independent legal counsel to be used at the discretion of the assessor when he considers it necessary? Such action would appear to conflict with the city charter and not be allowable unless it is permitted under Ch. 73-172, *supra*. In two recent opinions I have discussed in detail the preemptive nature of this act and its effect on conflicting local or special laws. In ACO 073-381, directed to the General Counsel of the City of Jacksonville, I concluded:

. . . Ch[apter] 73-172, *supra*, does not on its face create such an irreconcilable conflict with the quoted charter provisions as to repeal entirely their application to the office of the tax assessor. The Assessment Administration and Finance Law apparently contains no provision which either expressly or by necessary inference precludes the assessor's

use of the city's central services department, job classification system, and job pay plan, *in the absence of a finding by the Department of Revenue (made independently or upon request of the assessor) that a budget item affected by such use is either inadequate or excessive, or a finding upon review that "any aspect of the budget is unreasonable in light of the work load of the assessor's office."* Section 6, Ch. 73-172, *supra* [§195.087(1)(b), F. S.]. The responsibility of the assessor is, therefore, to present to the department a budget incorporating in detail his requests for specific items, including expenses and employees' salaries which he considers adequate, together with such substantiation as may be necessary for the department to determine the propriety of any budget item which does not comply with provisions of the charter or implementing ordinances. In so doing, he is not required to follow the city's charter or ordinances or, specifically, its job classification system and job pay plan or to submit his budget to the city commission for review prior to its submission to the department (although he is obligated to provide the commission with a copy of the budget). *To the extent that the budget as approved by the department is in conflict with the charter or ordinances, the budget will prevail.* (Emphasis supplied.)

See AGO 073-389 for a detailed treatment of the application of the principles of statutory construction to Ch. 73-172, *supra*.

It is pointed out in your letter and recognized by the charter (§7.306) that occasions will arise wherein by virtue of representing the entire consolidated government, the general counsel would be unable, through conflict of interest or otherwise, to adequately advise or represent the assessor. Since reasonable minds will differ, there will likely be occasions when the assessor, but not the general counsel, deems the employment of independent counsel essential to the proper functioning of his office. Thus, if the assessor does not include an item in his budget for independent legal counsel and the Ad Valorem Tax Division or the Administration Commission (governor and cabinet) determines that such an omission would render the budget inadequate or unreasonable, then such an amendment could be made in the budget resulting to that extent in the charter provision being superseded. Such a conclusion is consistent with §22 of Ch. 73-172, quoted *supra*, the general repealer, this section expressly including budgeting or expenses of assessors' offices. As indicated earlier, the assessor may, upon sufficient substantiation, simply include in his budget an item for the necessary legal expenses which he considers adequate. Since the charter would be superseded only to the extent necessary to implement the property assessment administration and finance law, it would appear that the budgeted item could represent only that amount necessary to hire independent counsel without the consent of the general counsel. I recognize that in AGO 073-356 I concluded that a charter county could require county officers to use the county legal services, if not inconsistent with general law. However, the conflict that is the subject of this opinion and the effect of Ch. 73-172 on the budget operations of the assessors' offices were not considered, and that opinion is accordingly subject to the conclusions herein in the application of that law to the budgets of the several tax assessors and state regulation of ad valorem tax administration.