

073-388A—February 8, 1974  
(Supplement to 073-388)

### WORKMEN'S COMPENSATION

#### CHANGES EFFECTED BY NEW LEGISLATION

To: *Thomas H. Johnson, Senator, 28th District, West Palm Beach*

Prepared by: *Staff*

#### QUESTION:

Is there *any other* language in §112.18, F. S., which presents any problem in making a conclusive determination that the presumptions apply in workmen's compensation cases?

#### SUMMARY:

The legislature intended that §112.18, F. S., apply to all sections of Ch. 440, F. S., other than §440.09(4).

Chapter 73-125, Laws of Florida, which became law on June 7, 1973, amended §112.18(1), F. S., so as to change the conclusion which I reached in AGO 073-388. Section 112.18(1), F. S., provides:

(1) Any condition or impairment of health of any Florida municipal, county, port authority, special tax district, or fire control district fireman caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence.

Prior to the enactment of Ch. 73-125, Laws of Florida, the above-quoted provision concluded with the statement that, "nothing herein should be construed to extend or otherwise affect the provisions of chapter 440 pertaining to workmen's compensation." Chapter 73-125 amended the line to read, "nothing herein should be construed to extend or otherwise affect the provisions of Chapter 440.09(4) pertaining to workmen's compensation." The obvious legislative intent was to narrow the limitation to §440.09(4). Conversely, it must be presumed that the legislature intended that §112.18 apply to all other sections of Ch. 440. I hope that this will clarify the matter for you.

073-389—October 16, 1973

### TAXATION

#### EFFECT OF CH. 73-172, LAWS OF FLORIDA, ON CIVIL SERVICE REGULATIONS

To: *John R. Jones, Jr., Escambia County Tax Assessor, Pensacola*

Prepared by: *William R. Cave, Assistant Attorney General, and James D. Beasley,  
Legal Intern*

#### QUESTIONS:

1. Does §22 of Ch. 73-172, Laws of Florida, remove "classified service" employees of the tax assessor's office from the following regulatory provisions of the Escambia County Civil Service Act: Civil service job classifications, civil service job requirements, civil service pay schedules, civil service supervision of employment, or limitations as to number of employees?

2. If any part of question 1 is answered in the affirmative, what is the effective date of severance from civil service requirements?

**SUMMARY:**

Chapter 73-172, Laws of Florida, supersedes provisions of the Civil Service Act for Escambia County (Ch. 67-1370, Laws of Florida) and personnel administration standards established thereunder when the tax assessor's budget, as approved or amended by the Florida Department of Revenue or the administration commission, is in conflict therewith.

Question 1 should, in my opinion, be answered in the negative except when authority is exercised by the Florida Department of Revenue under Ch. 73-172, Laws of Florida, to change any budget item affected by the Civil Service Act, or otherwise to regulate assessment services and standards under the general law.

Chapter 73-172, *supra*, entitled "the Property Assessment Administration and Finance Law," is a general law which effects an extensive revision of law in the field of ad valorem taxation and state regulation thereof. Substantial portions of the act are designed to augment state regulatory powers over tax assessment procedures for the purpose of insuring uniform and efficient tax administration. Other sections of the act hereinafter discussed pertain to the fiscal administration and budgets for the operation of the offices of county assessors.

Chapter 67-1370, *supra*, is a special law which establishes a comprehensive system of personnel administration for Escambia County employees included in what the act terms "classified service."

Your first question calls for a determination of whether the later enactment of a general law (Ch. 73-172, Laws of Florida) repeals or supersedes the operation of any of several enumerated provisions of a previously enacted special law (Ch. 67-1370, *supra*). A proper treatment of this issue requires reference to the following rules of statutory construction:

It is well established that a special act is not repealed by a later general law unless a legislative intent to this effect is clearly shown. In such a case, the maxim "generalalia specialibus non derogant" applies. That is, the general act will not be deemed to have repealed or modified a special one embraced within its general terms unless the general act is a general revision of the whole subject, or unless the two acts are so irreconcilable as to indicate a legislative intent to this effect. [30 Fla. Jur. *Statutes* §158. (Footnotes omitted.)]

The following pertinent language appears in §22 of Ch. 73-172, *supra*:

(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.)

Generally speaking, statutes may be repealed by express enactment or by necessary implication. [See] 30 Fla. Jur. *Statutes* §147. An express repeal results from the enactment of a law which clearly identifies a specific prior law and declares that such prior law shall be revoked and abrogated. See 82 C.J.S. *Statutes* §282. Section 22 of Ch. 73-172, *supra*, does not appear to constitute an express repeal of any law because it conditions its repealing effect upon the existence of

conflict without indicating, other than inferentially, which prior laws or portions thereof are considered to be in conflict with the provisions of Ch. 73-172. *Id.* Examination of the laws listed shows they relate primarily to budget procedure, although one referenced act is a charter law (Ch. 70-966) covering personnel classification.

Section 22 of Ch. 73-172, *supra*, is properly classified as a general repealing clause. The following is stated in regard to such clauses:

Although in a measure such a repealing clause has the form of an express repeal . . . in legal effect it adds nothing to the repealing effect of the act of which it is a part, since . . . without such provision, all prior conflicting laws or parts of laws would be repealed by implication . . . [82 C.J.S. *Statutes* §285.]

Section 22 does state the legislature's intent that any provisions of such laws as Ch. 67-1370, *supra*, relating to "expenses of assessors' offices, or the compensation of any employee of assessor's office" and in conflict with Ch. 73-172 should be considered repealed or superseded to the extent of such conflict, rather than treated as exceptions to the provisions of Ch. 73-172.

A later statute may repeal a prior law by implication only when the later law is intended to supplant all prior laws dealing with the same subject, or when the provisions of the later statute are so repugnant to the earlier one that the two are irreconcilable. [See] 82 C.J.S. *Statutes* §290. As I indicated above, "[t]he rule that a general act will not be held to repeal or modify a special or local one does not apply where the general act is a general revision of the whole subject, or where the two acts are so repugnant or irreconcilable as to indicate a legislative intent that the one should repeal or modify the other. . . ." [See] 30 Fla. Jur. *Statutes* §158. *See also*, Langston v. Lundsford, 165 So. 898 (Fla. 1936).

It should be noted that repeals by implication are not favored by the courts. [See] 30 Fla. Jur. *Statutes* §153. In *Fields v. Wilensky*, 247 So.2d 477, 481 (4 D.C.A. Fla., 1971), the court stated the rule as follows:

Repeals by implication are not favored and should not be resorted to unless there is an irreconcilable conflict between the provisions of two statutes *relating to the same subject matter* . . . (Emphasis supplied.)

*See also* *Tamiami Trail Tours v. City of Tampa*, 31 So.2d 468 (Fla. 1947). Every effort is made by the courts to avoid a construction which places a statute in conflict with another statute relating to the same general field. *Cf.* *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938).

A comparison of the provisions of Ch. 67-1370 and 73-172, *supra*, reveals no positive repugnancies or irreconcilable conflicts between the two laws except that resulting from authority under the general law to amend any budget item, discussed below. Included in Ch. 67-1370 are detailed provisions for the creation and subsequent modification of a job classification plan for classified service employees. *See* particularly §§6 and 7 of the act. An examination of Ch. 73-172 shows no express reference in that act to the position classification of employees of county tax assessors' offices. The same is true for the other areas of personnel administration enumerated in question one, to wit: job requirements, pay schedules, restrictions as to the number of employees, and the supervision of employment. Chapter 73-172 does not, therefore, except for budget amendment powers, present positive and direct inconsistencies with the subject provisions of Ch. 67-1370. It is important to note that any conflict existing between two laws must be plain, positive, unavoidable, and material before the courts will infer the legislative intent to repeal prior legislation. [See] 82 C.J.S. *Statutes* §291b. *See also* *Atkinson v. State*, 23 So.2d 524 (Fla. 1945); *In re Wade*, 7 So.2d 797 (Fla. 1942); *Miami Waterworks Local No. 654 v. City of Miami*, 26 So.2d 194 (Fla. 1946).

Section 6 of Ch. 73-172, *supra*, establishes a detailed procedure for the annual review by the Department of Revenue of budgets prepared and submitted by county assessors. That section transfers to §195.087, F. S., and substantially rewords the provisions of former §195.011, F. S. Under the new provisions of §195.087, every tax assessor, regardless of the form of county government, must submit to the Division of Ad Valorem Tax of the Department of Revenue a proposed budget for the ensuing fiscal year beginning October 1, in the same manner and form as that required for state agencies. The division is vested with the power to revise the budget request and to *amend or change the same "as it deems necessary in order that the budget be neither inadequate nor excessive."* (Emphasis supplied.)

Section 6 of Ch. 73-172, *supra* [§195.087, F. S.], further authorizes the administration commission (governor and cabinet) to hear appeals from the final action of the Division of Ad Valorem Tax upon the request of either the assessor or the county commission. The administration commission may amend the budget "if it finds that any aspect of the budget is *unreasonable in light of the workload of the assessor's office in the county under review.*" (Emphasis supplied.)

Said §6 [§195.087(1)(b), F. S.], further provides:

The budget request as approved by the division and as amended by the commission shall become the operating budget of the assessor for the ensuing fiscal year beginning October 1, provided that the budget so approved may subsequently be amended under the same procedure. After final approval the assessor shall make no transfer of funds between accounts without the written approval of the ad valorem tax division.

Once a budget is approved pursuant to the foregoing review procedures, the county tax assessor is powerless to vary its terms without first obtaining the written approval of the Division of Ad Valorem Tax.

The integrality of, and procedural safeguards incorporated in, the foregoing budget review system give rise to the inference that the legislature, by enacting Ch. 73-172, *supra*, intended to establish a comprehensive uniform expression of state policy regarding the review of county assessors' budgets to secure their functional sufficiency to achieve uniform state-wide assessment practice. The extensive rewording of that portion of former §195.011, F. S., pertaining to the review of assessors' budgets represents a complete revision of the law on that subject and should, in my opinion, be construed as impliedly modifying or repealing prior laws which pertain directly or indirectly to the same subject. No repeal by implication of any of the provisions contained in Ch. 67-1370, *supra*, appears warranted except those indicating salary and classification standards thereunder should be final and exclusive, such as §§14 and 16.

In *American Bakeries Co. v. Haines City*, *supra*, the court observed that the enactment of a general law may, under certain circumstances, modify, rather than repeal in toto, provisions contained in an earlier special or local law. Although, as I have indicated, Ch. 67-1370, *supra*, remains intact subsequent to the enactment of Ch. 73-172, *supra*, the force and effect of certain personnel administration standards established by the civil service board appear to be somewhat restricted by the enactment of Ch. 73-172. Chapter 67-1370 confers upon the civil service board the authority to govern various aspects of personnel administration for classified service employees, including those areas referenced in question 1.

Budget changes, when and if they are deemed to be necessary and accorded final approval, may encroach upon limitations previously formulated by the civil service board pursuant to its statutory authority. To the extent that the approved budget deviates from personnel administration standards established pursuant to Ch. 67-1370, *supra*, those standards must be considered ineffective and unenforceable. Such conflict might occur, for example, if a pay item or job classification description as set out on the assessor's budget request is inconsistent with the civil service pay schedule and such budget request is approved by the

division of ad valorem taxation. A conflict might also occur if a pay item or job classification as set out in the tax assessor's budget request is consistent with the civil service pay schedule, but the division deems it to be either inadequate, excessive or "unreasonable in light of the workload of the assessor's office." On the other hand, an assessor might present a budget request which includes a pay item or job classification which is inconsistent with the civil service pay schedule and the division or the administration commission might determine that the budget request is inadequate, excessive, or unreasonable and amend it to reflect the civil service schedule, in which case there would be no conflict.

The Division of Ad Valorem Tax and the Assessment Administration Review Commission are, in effect, vested with the authority to supersede those civil service standards. Section 6 of Ch. 73-172, *supra*, does not in terms or by apparent intent require that the budget reviewing authorities defer to regulatory standards set by the civil service board pursuant to Ch. 67-1370, and §22 would, as noted above, infer to the contrary at least as to "compensation of any employee."

It should be emphasized that Ch. 73-172, *supra*, does not abrogate the decision-making authority conferred by law upon the Civil Service Board of Escambia County. Chapter 73-172 does, however, modify the finality of decisions made by the board under certain circumstances. This construction of Chs. 67-1370 and 73-172 comports with the apparent legislative goals of insuring uniform control over assessors' budgets at the state level without sacrificing initial control at local levels of government.

The foregoing treatment of question 1 obviates an answer to question 2.

073-390—October 16, 1973

#### PROBATION

#### PAROLE AND PROBATION COMMISSION HAS NO AUTHORITY TO SUPERVISE PERSON NOT VALIDLY PLACED ON PROBATION

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

Prepared by: Reeves Bowen, Assistant Attorney General

#### QUESTION:

Is the Florida Parole and Probation Commission either required or authorized to supervise a defendant as a probationer after a trial court has adjudged him not guilty of the crime charged against him by reason of insanity and has thereupon made an order of probation in the same case, placing him on probation under supervision of the commission?

#### SUMMARY:

After a defendant in a criminal case is adjudged not guilty, whether by reason of insanity or for another reason, the trial court has no authority to place him on probation and an order purporting to do so is void. Therefore, even if such an order of probation specifies that such defendant be under the supervision of the Parole and Probation Commission during probation, said commission has no duty or authority to supervise him as a probationer.

Probation is a statutory creation and a court has no authority to place a defendant on probation unless he meets one of the criteria set forth in §948.01 (1), F. S., which specifies when a defendant is eligible for probation consideration and which reads as follows: