

would have been physically impossible of performance in time to produce the necessary tax income needed by the governmental agencies of Dade County during the current year. In other words, even if the remedy requested by the appellants could have been granted it would have disastrously affected the operations of the government, including the school system, because of the time that would have been required and the resultant delay in obtaining essential income.

Here, it appears that the tax officials in Gadsden County have encountered difficulty and delay in complying with the requirement of §195.0012, F. S. [§2 of Ch. 73-172, Laws of Florida], that there be a "just valuation" of property for ad valorem tax purposes and a "uniform assessment as between property within each county and property in every other county or taxing district," to the satisfaction of the Department of Revenue, as required by §193.114, *id.* [§10 of Ch. 73-172.]. I understand that many other counties in the state have the same problem. While the statute no longer requires the county's budget to be submitted to the Department of Banking and Finance (prior to 1969, the comptroller) for approval, *see* §129.01, F. S., as amended by Ch. 73-349, Laws of Florida, it would seem that his administrative ruling would be equally applicable in the situation in which a county finds itself as a result of the disapproval of the tax assessor's assessment roll by the Department of Revenue and the delay in exhausting the procedures provided by law for review of the department's ruling. *See* §195.098, F. S. [added by §7 of Ch. 73-172, *supra*]. And I have the view that, pending legislative or judicial clarification, county funds may be disbursed in accordance with a tentative budget adopted in accordance with the procedure required by law, until the county's tax assessment roll has been finally approved and a final budget adopted. As noted in the comptroller's memorandum of August 5, 1966, referred to above, the circuit court clerk (acting as county auditor) should proceed with the preparation of a tentative budget in the usual manner, as provided by §129.03(2), F. S., including all estimated expenditures to operate the county for the fiscal year and estimated receipts from sources other than ad valorem tax revenues; and a statement summarizing all tentative budgets should be prepared and advertised by the board, and hearings held, as required by §129.03(2). The amount necessary to balance the budget may be shown as receipts from ad valorem taxes, although the tax millage and assessed valuations will not, of course, be known and cannot be shown on the summary statement.

073-401—October 30, 1973

#### TAXATION

#### MUNICIPAL TAX LEVY TO MEET REQUIREMENTS OF REVENUE-SHARING ACT

To: Gerald L. Brown, City Attorney, Gulf Breeze

Prepared by: Winifred L. Wentworth, Assistant Attorney General, and Walter Kelly, Legal Intern

#### QUESTION:

May a city levy an ad valorem tax on real property only at a rate of no less than three mills and meet the requirements of the Revenue-Sharing Act (Ch. 73-349, Laws of Florida)?

#### SUMMARY:

A municipal tax upon real property only would not comply with the

**Florida Revenue-Sharing Act of 1972 nor with constitutional exemption requirements.**

Your question is answered in the negative, based on a consideration of the terms of the cited act as well as constitutional inhibitions against the exclusion or exemption of tangible personal property from an ad valorem property tax when such exemption is not confined to property used for constitutionally designated purposes. Article VII, §§3(a) and 4, State Const. When municipal ad valorem taxes are imposed they are to be assessed "as prescribed by general law, in a manner not inconsistent with general law," and "shall be governed by the general laws relating to county taxes." Section 166.211, F. S. [Part III of Ch. 73-129, Laws of Florida]; §195.203, F. S.; and by §192.011 and §196.001, F. S. 1971. The conclusion in AGO 068-105, that personal property may not be excluded as a class from a levy of municipal tax, appears to me to be consistent with current law and previous decisions as to municipal power to tax or exempt, stating that "it is competent to confer such powers only for [constitutionally] designated purposes." *St. Lucie Estates v. Ashley*, 141 So. 738, 739, (Fla. 1932).

Section 218.23, F. S. [as amended by Ch. 73-349, Laws of Florida], of the "Florida Revenue-Sharing Act of 1972," reads in relevant portion:

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement for any quarter during any fiscal year, a unit of local government is required to:

\* \* \* \* \*

(c) Have levied ad valorem taxes, exclusive of taxes levied for debt service or other special millages authorized by the voters, at a millage rate not less than three mills on the dollar or, in order to produce revenue equivalent to that which would otherwise be produced by a three mill ad valorem tax . . . . .

\* \* \* \* \*

(2) The distribution to a unit of local government under this part is determined by the following formula:

(a) The entitlement of an eligible unit of local government shall be computed on the basis of the apportionment factor provided in §218.245, which shall be applied for all eligible units of local government to all receipts available for distribution in the respective revenue sharing trust fund . . . . .

Section 218.245(2)(c), F. S., as amended by Ch. 73-349, Laws of Florida, reads in relevant portion:

(2) The apportionment factor for all eligible municipalities shall be composed of three equally weighted portions as follows:

\* \* \* \* \*

(c) The ratio of the relative local ability to raise revenue, to be determined:

1. By dividing the per capita nonexempt assessed *real and personal* property valuation of all eligible municipalities by the per capita nonexempt real and personal property valuation of each eligible municipality.

2. By multiplying the population of an eligible municipality by the percentage applicable to that municipality as established under subparagraph 1.

3. By dividing the population, as recalculated to reflect the relative local ability, by the total recalculated population of all eligible municipalities in the state. (Emphasis supplied.)

From a study of this chapter with special emphasis on the above-quoted sections, there is not reflected any intent to treat personal property differently from real property. Instead, §218.245, *supra*, states that local government ability to raise revenue will be computed on valuation of both *real* and *personal* property. To place a three-mill tax on real property only would neither meet the purpose of this computation nor reflect accurately the ability of a municipality to raise revenue from this source. Since real and personal property valuations are pertinent to eligibility and determination of revenue allotted to the municipality, the compliance requirement of §218.23(1)(c), *supra*, did not in my opinion contemplate a millage placed on real property only.

073-402—October 30, 1973

### REGIONAL PLANNING COUNCIL

#### VOTING RIGHTS OF COUNCIL MEMBERS

To: Wallace Dunn, City Attorney, Ocala

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTIONS:

1. May a regional planning council established under the provisions of Ch. 160, F. S., limit membership to all municipalities who make application to join such a council so as to restrict or prohibit their right to vote as a member in such a council?
2. May a regional planning council established under the provisions of Ch. 160, F. S., organized by two or more counties thereafter restrict or prohibit a municipality whose application for membership is accepted from a right to voting membership?

#### SUMMARY:

A regional planning council created pursuant to Ch. 160, F. S., may not prohibit municipalities who desire to do so from participating in the affairs of the council through the two representatives appointed by each of them as members of the council.

#### AS TO QUESTIONS 1 AND 2:

Section 160.01(1), F. S., authorizes "any two or more counties and municipalities" to create and establish a regional planning council "to be composed of two representatives appointed thereto by each county commission and municipal legislative body *desiring representation on such council* . . . ." (Emphasis supplied.) The italicized language apparently contemplates participation in regional planning and representation on the planning council by any county or municipality in the region who desires to do so. While the regional planning council is authorized to "adopt rules of procedure for the regulation of its affairs and the conduct of its business . . . ." §160.02(1), *id.*, no citation of authority is needed for the proposition that such rules may not conflict with the statute under which the rulemaking body was established. And, as noted above, each municipality who desires to do so apparently has the right to have two representatives on the regional planning council. That such "representation" carries with it the right to vote is made clear by the last sentence of §160.01(1), providing that