

reasonable salaries of bailiffs, secretaries and assistants of the circuit and county courts and all reasonable expenses of the office of circuit and county court judges.

It is clear that these two aforementioned statutes, §§26.50 and 34.171, in no way conflict with one another. While §26.50 authorizes sheriffs to pay for certain expenses of the court, §34.171 also provides for the payment of office expenses of the circuit and county courts. Additionally, §26.50 (which was originally enacted in 1849) was not amended or repealed during the extensive statutory revision mandated by the adoption of Art. V, State Const. *See* Ch. 72-404, Laws of Florida. The legislature is, therefore, aware of §§26.50 and 34.171 and the pertinent provisions of the statutes. Since the legislature did not repeal nor amend §26.50, it must be assumed that the legislature intended both statutes to serve complementary as opposed to exclusive functions.

The term "article" has been defined as meaning a material thing or tangible object; a thing of value. *See* Black's Law Dictionary, p. 143 (rev. fourth ed. 1968). Therefore, the term "articles" contained within §26.50, *supra*, refers to any material object of value. Additionally, in AGO 048-288, Sept. 9, 1948, Biennial Report of the Attorney General, 1947-1948, p. 24, it was held that the stationery or other articles mentioned in §26.50, *supra*, referred only to stationery and articles used by the court when in session and does not include stationery or other articles that may be necessary for the judges in conducting their offices when sitting in chambers.

In a letter dated June 17, 1970, this office followed such an interpretation of §26.50, *supra*, by holding that the cost of telephone service for the office of a circuit judge is not an expense within the purview of §26.50. Since the telephone was to be used by the judge *in his office*, such a telephone expense was not an authorized expenditure under §26.50.

Thus, if the circuit judge requesting the requisition determines the article to be a tangible object of value which is *necessary* for the use of the court and that the article will be used *exclusively* while the court is in session, the sheriff is authorized, pursuant to §26.50, *supra*, to purchase an article so deemed.

073-483—December 26, 1973

#### TAXATION

##### COMPENSATION OF TAX ASSESSOR AND TAX COLLECTOR BY MUNICIPALITY

*To: James M. McEwen, Temple Terrace City Attorney, Tampa*

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#### QUESTION:

Does Ch. 73-486, Laws of Florida, expressly repealing Ch. 23330, 1945, Laws of Florida, also repeal by implication Ch. 22782, 1945, Laws of Florida, inasmuch as its language is identical to that of Ch. 23330?

#### SUMMARY:

Chapter 22782, 1945, Laws of Florida, has been impliedly repealed by Ch. 73-486, Laws of Florida. Chapter 31320, 1955, Laws of Florida, has also been impliedly repealed to the extent that it makes reference to Ch. 22782. Therefore, as of June 22, 1973, the effective date of Ch. 73-486, municipalities of Hillsborough County are no longer required to compensate the tax assessor or the tax collector for the assessment and collection of municipal taxes within that county. However, to the extent

that those officers earned fees for work completed prior to June 22, 1973, they must be compensated according to the provisions of Ch. 22782.

Your question is answered in the affirmative.

Chapters 23330 and 22782, 1945, Laws of Florida, were enacted during the same legislative session. Both became effective in close succession, Ch. 22782 being the later in that respect. Compare §12, Ch. 23330, with §12, Ch. 22782. The two acts are identical in language, format, and function. Both transferred the functions of municipal tax assessment and collection to the offices of the Hillsborough County assessor and collector. In §7 of each act a fee is provided, payable out of collected municipal taxes, to defray the expense of handling municipal tax assessment and collection.

In 1969, the legislature enacted §§167.433-167.439, F. S., and in 1972 enacted §167.4391, F. S. [renumbered §§195.201-195.207 by Ch. 73-129, Laws of Florida]. The 1969 act, as a matter of general law, consolidated municipal and county tax administration in the offices of county assessors and collectors. However, it expressly exempted counties which had already arranged a consolidated tax assessment and collection system by prior special act. Section 167.439; AGO 073-191. By reason of Chs. 23330 and 22782, *supra*, Hillsborough County was thus not within the purview of §§167.433-167.439. During the 1973 Regular Session of the Legislature, the Hillsborough delegation, desirous of bringing the county under the general law, introduced and procured passage of Ch. 73-486, Laws of Florida. Chapter 73-486 recites in its preamble that the general law is adequate to provide for consolidated tax assessment and collection and declaims that local acts on the same subject matter are unnecessary. However, it expressly repeals only Ch. 23330; no mention is made of Ch. 22782. Therefore, if Ch. 22782, is repealed, it must be by implication.

At the outset, it would be well to briefly set out the rules of statutory construction relating to repeal by implication. There is a general presumption against repeal by implication. [See] 30 Fla. Jur. *Statutes* §147; *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938). This presumption is stronger in cases where a repealing statute enumerates particular statutes to be expressly repealed. [See] 30 Fla. Jur. *Statutes* §156; *American Bakeries Co. v. Haines City*, *supra*. On the other hand, it is elementary that legislative intent is the central consideration in interpreting a statute and it controls over the strict language of the statute. [See] 30 Fla. Jur. *Statutes* §73; *State v. Wentworth*, 185 So. 357 (Fla. 1938); *Dade Fed. Savings and Loan Ass'n v. Miami Title & Abstract Division*, 217 So.2d 873 (3 D.C.A. Fla., 1969). Intent may be found not only by examining the language of the statute, but reference may be had to the purpose and causes for which it was enacted. *Wallace Corporation v. Overstreet*, 99 So.2d 626 (3 D.C.A. Fla., 1958); AGO 057-269. An implied repeal will be found when it is apparent that there exists a positive repugnancy between the statutes which is not susceptible of a reasonable harmonizing construction. *State v. Board of Public Instruction*, 113 So.2d 368 (Fla. 1959); *St. Petersburg v. Siebold*, 48 So.2d 291 (Fla. 1950); AGO 058-175. Furthermore, no literal or strict interpretation of a statute should be embraced if it would lead to an unreasonable result. *Maryland Casualty Co. v. Marshall*, 106 So.2d 212 (1 D.C.A. Fla., 1958).

A closer inspection of the cases demonstrates the relative weight to be accorded to these principles of construction. In *American Bakeries Co. v. Haines City*, *supra*, Haines City had passed an ordinance pursuant to its special charter act. The ordinance imposed a license tax on vehicles used by wholesalers for the delivery and sale of goods within the city. Subsequently, the legislature enacted a general law which prohibited the taxing of such vehicles as individual units. The general act expressly repealed several earlier laws, but did not mention the portion of the charter act which had enabled Haines City to impose the disputed tax. Still further, the general law provided that it was not to be construed to repeal any law imposing

such a tax which was not expressly repealed. Nevertheless, the Florida Supreme Court held that the Haines City ordinance was impliedly repealed. The court recognized the tandem presumptions against implied repeal generally, and against implied repeal of unnamed statutes in a case where the repealing statute expressly repeals enumerated provisions. However, the court held those presumptions inapplicable when the acts in question are so irreconcilable as to indicate a legislative intent that the former should be repealed. In so doing the court apparently relied upon the rudimentary proposition that the overall intent of the legislature must receive priority over the narrow language of the repealing statute.

In *Dade Federal Savings and Loan Ass'n, supra*, the court rejected a strict interpretation of the word "judgment" in a statute requiring that a judgment be recorded before it could become a perfected lien. Although the statute itself distinguished between judgments and certified copies of judgments, the court there held that the two were the same, since it would be impossible to file the judgment per se. In the course of its reasoning, the court stated:

The legislative intent is the guiding factor and overriding precept inherent in every statute. And when such intent has once been ascertained, it must be given effect, even if it appears to be contradictory to the strict wording of the statute, *or to other rules of construction*. . . . (Emphasis supplied.) [217 So.2d 873, at 877.]

*Accord: State v. Wentworth, supra.*

It thus appears that ordinarily the presumption will be indulged that a statute containing a specific repealer clause was not intended to repeal unnamed acts by implication. However, it is equally apparent that where the legislative intent in enacting a particular statute is clearly contrary to the presumption, it must yield to the policy of preserving that transcendent intent.

Turning to Ch. 73-486, *supra*, I note that its preamble recites as follows:

Whereas, the provisions of such general law are adequate to provide for consolidated tax assessment and collection for the municipalities located within Hillsborough County, and

Whereas, Chapter 23330, Laws of Florida, 1945, is a local act which is no longer necessary in order to provide for such consolidation . . . .

By the words of the statute itself, the legislature's intent in enacting Ch. 73-486 is made apparent. Its overriding purpose was to effectively abolish local laws made unnecessary by the passage of §§167.433-167.4391, F. S., renumbered §§195.201-195.207, F. S., by Ch. 73-129, Laws of Florida, and to remove them as impedimenta to bringing Hillsborough County within the general law on the subject. Chapter 22782, *supra*, is identical in language and function to repealed Ch. 23330, *supra*. It is as repugnant as its twin to the stated policy of Ch. 73-486. A conclusion that it is not repealed by implication could only rest upon a rigid adherence to a rule of construction that is demonstrably subordinate to the contrary legislative purpose stated in Ch. 73-486, *supra*. Also, as noted above, a literal interpretation of a statute is not to be vindicated at the expense of reaching an illogical result.

Further, it appears that both laws—Ch. 23330, *supra*, and Ch. 22782, *supra*—were enacted by the 1945 Legislature pursuant to the following mandate contained in Art. VIII, §§12 and 13, State Const. 1885 (added by amendments adopted in 1944):

SECTION 12. *Assessment of state, county, municipal, etc., taxes in Hillsborough County.*—

1. From and after January 1, 1946, the County Tax Assessor in the County of Hillsborough, State of Florida, shall assess all property for all . . . . Municipal taxes . . . .

2. The Legislature shall, at the Legislative Session in

1945 . . . enact laws specifying the powers, functions, duties, and compensation of County Tax Assessor . . . .

SECTION 13. *Collection of state, county, municipal, etc., taxes in Hillsborough County.*—

1. From and after January 1, 1946, the County Tax Collector in the County of Hillsborough, State of Florida, shall collect all taxes levied in the county by . . . Municipalities.

2. The Legislature shall at the Legislative Session of 1945 . . . enact laws specifying the powers, functions, duties, compensation of County Tax Collector . . . .

As noted above, Chs. 23330 and 22782, *supra*, are identical in language and format, with the exception that Ch. 22782 was apparently enacted as a general law while Ch. 23330 was enacted as a special law. This fact, conjoined with the observation that both were enacted to implement the mandate of the constitutional provisions set out above, indicates that the two laws are in effect merged into one. They are but duplicate expressions of a single legislative act designed to execute a single constitutional directive. That directive was carried forward under the 1968 revision of the Florida Constitution until the legislature saw fit to change it. Article VIII, §6(b), State Const. *See also*, Art. XII, §6, State Const. Pursuant to Art. VIII, §6(b), the legislature, by enacting Ch. 73-486, has indicated its intent to rescind that former constitutional provision; that rescission itself implies repeal of all laws implemental thereto.

It is therefore my opinion that Ch. 22782, *supra*, is impliedly repealed by Ch. 73-486, *supra*. Also, the provision in the charter act for the City of Temple Terrace providing that municipal taxes shall be assessed and collected pursuant to Ch. 22782, is to that extent repealed by implication. *See* Ch. 31320, 1955, Laws of Florida.

Section 167.437, *supra*, has been repealed by Ch. 72-368, Laws of Florida. Therefore, as of June 22, 1973 (the effective date of Ch. 73-486), there is no longer any statutory authorization or requirement that the tax assessors or the tax collector of Hillsborough County be compensated by municipalities for services rendered in assessing and collecting municipal taxes. However, prior to that date, Chs. 22782 and 23330, *supra*, provided statutory authorization for the collection of fees from municipalities. As noted above, the enactment of §167.433-167.439 did not repeal those chapters. Section 167.4391, F. S. (renumbered §195.207, F. S., by Ch. 73-129, Laws of Florida). Furthermore, Ch. 22782 is a general law validly applicable to only Hillsborough County, since it is implemental of a constitutional mandate affecting only Hillsborough County. Ordinarily laws which do not operate uniformly throughout the state are repugnant to Art. III, §§20 and 21, State Const. 1885 (*also see* Art. III, §§10 and 11, State Const. 1968), but when the constitution expressly requires the legislature to do a certain thing, such constitutional mandate (Art. VIII, §§12 and 13, State Const. 1885), takes precedence over, and qualifies the general effect of, the constitutional notice and referendum requirements generally applicable to local or special laws. Attorney General Opinion 071-113.

Because it is not a population act, its efficacy could not have been impaired prior to its repeal by population changes in Hillsborough County. *See* Art. X, §8, State Const. 1968; Art. VII, §5, State Const. 1885. The same is true of Ch. 23330, *supra*, since it was a special act, not a population act. Since both Ch. 22782, *supra*, and Ch. 23330 were operative until June 22, 1973, the tax assessor and the collector must be compensated for fees earned under those chapters prior to that date. Attorney General Opinions 073-19 and 073-368.