

effective to repeal and supersede the conflicting provisions of the earlier law, §15 of Ch. 73-172, referred to above, as of June 13, 1973.

In light of this clear intent and the rules of statutory construction referred to above, it must be concluded that the compensation of tax assessors is governed by the provisions of Ch. 73-173, *supra*, and by the effective-date clause, October 1, 1973, therein prescribed.

073-281—August 14, 1973

COUNTY OFFICERS

ESTABLISHMENT OF UNIFORM FISCAL YEAR

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Should county tax collectors, as county fee officers, establish a fiscal year beginning October 1 and ending September 30 of the following year pursuant to Ch. 73-349, Laws of Florida?

SUMMARY:

County tax collectors, whether fee or budget officers, should establish a fiscal year of October 1-September 30, pursuant to Ch. 73-349, Laws of Florida [§218.35, F. S.].

Chapter 73-349, Laws of Florida, amended Ch. 218, F. S., by adding a new part III to that chapter entitled "Uniform Local Government Financial Management and Reporting Act [§§218.30-218.36]." It requires all units of local government—defined to include counties, municipalities, and special districts—to begin their fiscal years on October 1 of each year and end on September 30. It also requires each "county fee officer" to establish a fiscal year of October 1-September 30 and an annual budget for the office to reflect accurately the available revenues for the office and the "functions" for which the money is to be expended for that fiscal year, and to report his "finances" annually to the county fiscal officer within fifteen days of the close of the fiscal year.

County fee officers are defined in the act [§218.31(8), F. S.] as

... those county officials who are assigned specialized functions within county government and whose budget is established independently of the local governing body, even though said budget may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.

A county tax collector appears to be a "county fee officer" within this definition. That the legislature intended to include tax collectors within the purview of the statute in question is confirmed by the following provision of the act (§218.36, *id.*):

(2) 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; provided that whenever a *tax collector* or an assessor in any county has money in excess, he shall divide the excess into a portion for each governmental unit paying fees, and each governmental unit shall receive as its proportion of the excess fees that proportion of said excess fees that its fee payments represent of the officer's total fee income. (Emphasis supplied.)

Your question arises from an apparent conflict between the provisions of Ch. 73-349, *supra*, and an amendment to §195.011, F. S. 1971, made by §6 of Ch. 73-172, Laws of Florida. The latter act, entitled the "Property Assessment Administration and Finance Law," amended, among others, §195.011, relating to the budgets of county tax assessors and county tax collectors. Prior to its amendment by the 1973 act, this section required these officials to submit their budgets to the Department of Revenue on or before December 1 for the operation of their offices for the ensuing calendar year. As amended, this provision becomes §195.087, F. S., and requires each *tax assessor* of this state to submit his proposed budget for the operation of his office for the ensuing *fiscal* year beginning October 1. Section 195.087 (1). However, it continues to provide that the budgets of *tax collectors* must be submitted to the Department of Revenue prior to December 1 for the ensuing *calendar* year. Section 195.087(2).

Generally, statutes adopted at the same session of the legislature are not to be construed as inconsistent or in conflict if it is possible to construe them otherwise. *Orlando Transit Co. v. Florida Railroad & Pub. Util. Com'n*, 37 So.2d 321 (Fla. 1948); *Palmquist v. Johnson*, 41 So.2d 313 (Fla. 1949); *Markham v. Blount*, 175 So.2d 526 (Fla. 1965). *Accord*: Attorney General Opinion 072-49. However, when provisions in the same statute or in different statutes are in irreconcilable conflict, the last in order or arrangement or in point of time will prevail, being the last expression of the legislative will. *Johnson v. State*, 27 So. 2d 276 (Fla. 1946); *Routh v. Richards*, 138 So. 69 (Fla. 1931); *Provident Life & Accident Ins. Co. v. Mathers*, 26 So.2d 814 (Fla. 1946); *Sharer v. Hotel Corp. of America*, 144 So.2d 813 (Fla. 1962); *State v. City of Boca Raton*, 172 So.2d 230 (Fla. 1965).

The clear intent and purpose of the legislature in adopting the provisions of Ch. 73-349, referred to above, was to put all units of local government, including all fee officers of the county, on a uniform fiscal year basis (October 1 to September 30), and to require the budgeting of revenues and expenditures and financial reporting on this basis. And I cannot reconcile the requirement that the tax collector submit to the Department of Revenue his proposed budget for the ensuing *calendar* year with this overall intent and purpose.

Under the rule referred to above, the statute "last enacted will control." *Routh v. Richards*, *supra*. The legislative history of the two acts in question reveals that Ch. 73-349 is the latest expression of the legislative will. Chapter 73-172 passed both houses on June 6, was signed by the legislative officers and presented to the governor on June 13, and was approved by the governor and became a law on that date. Chapter 73-349 passed both houses on June 6, was signed by the officers and presented to the governor on June 20, and was approved by the governor and became a law on June 26. Both Ch. 73-349 and the provision of Ch. 73-172 here in question took effect on July 1, 1973. However, as Ch. 73-349 became a law after Ch. 73-172, it is deemed to be the latest expression of the legislative will and, to the extent of any irreconcilable conflict, its provisions will prevail. *See* 82 C.J.S. *Statutes* §297, pp. 500 and 501.

The legislative intent that the tax collectors should be on the same fiscal-year basis as all other county officials is apparent for another reason: Chapter 73-349, *supra*, is particularly concerned with and provides a uniform system for local governmental financing and reporting, whereas the conflicting provision of Ch. 73-172 was adopted in connection with, and as an incident to, a revision of the laws relating to tax assessment and collection and the administration of our tax laws. In *Sparkman v. State ex rel. Bank of Ybor City*, 71 So. 34 (Fla. 1916), in which the court was concerned with a somewhat similar situation, it was said:

A general statute covering an entire subject-matter, and manifestly designed to embrace all the regulations of the subject, may supersede a former statute covering a portion only of the subject, when such is the manifest intent, even though the two are not wholly repugnant.

For the reasons stated, it must be concluded that insofar as the provision of §6 of Ch. 73-172, *supra*, here in question [§195.087(2), *supra*] can be interpreted as requiring the tax collectors of this state to operate their offices on a calendar-year basis, it has been impliedly repealed and superseded by Ch. 73-349, *supra*.

Accordingly, your question is answered in the affirmative.

073-282—August 14, 1973

TAXATION

DOCUMENTARY STAMP TAX—STOCK ISSUED ON MERGER OR CONSOLIDATION OF CORPORATIONS

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTION:

Is corporate stock issued in connection with a merger or consolidation of two or more corporations into a single corporation subject to taxation under either §201.04 or §201.05, F. S.?

SUMMARY:

In general, original issue and transfer tax stamps are required on all phases of mergers or consolidations. The one exception would be that no transfer taxes are due in a merger on the surrender of stock by stockholders of the surviving corporation to that corporation in exchange for new stock in that corporation. Original issue stamps in that phase of the transaction are required only if, and to the extent that, the aggregate par value of the new stock exceeds that of the surviving corporation for which it is exchanged. However, both original issue and transfer stamp taxes are required upon the exchange of new stock of the surviving corporation for the old stock of the constituent corporations which do not survive.

The question should in my opinion be answered in the affirmative, both as to §201.04, F. S., and as to §201.05, F. S.

The above question was previously answered by AGO 061-57, which concluded that:

. . . where two or more corporations are merged into a single corporation, being one of the merging corporations usually referred to as the continuing corporation, without the dedication of newly committed capital, no taxes are payable under either §201.04 or 201.05, F. S. Where a new and additional corporation is formed, stock issued by it in lieu of stock in the merged or consolidated corporations would seem to be an original issue of stock. Any additional capital, not previously dedicated, brought in through or in connection with a merger or consolidation, would seem to be an additional issuance of capital stock so that the portion of the stock representing such additional capital would be subject to taxation.

This opinion is in the nature of a reconsideration of that previous opinion in the light of developed case law in this area. The conclusion of this opinion is in accordance with new administrative rules adopted by the Department of Revenue for the documentary stamp tax which were filed June 21, 1973, and become effective August 18, 1973.