

and bridge uses generally, the legislature could easily have so provided. Such a conclusion is clearly negated by the succinct legislative expression of an intent to promote a "transportation system" and reduce the "need for and size of roads, highways, expressways and parking facilities."

073-64—March 21, 1973

TAXATION

VALIDITY OF MUNICIPAL RESORT TAX

To: *Sherman S. Winn, Senator, 34th District, Bal Harbour*

Prepared by: *Winifred L. Wentworth, Assistant Attorney General*

QUESTIONS:

1. For what purposes can the revenue derived from the 2 percent municipal resort tax imposed by the Village of Bal Harbour under Ch. 67-930, Laws of Florida, and Resolution No. 159 and Ordinance No. 135 of the Village of Bal Harbour be used?
2. Is this tax constitutional in the light of *City of Tampa v. Birdsong Motors, Inc.*, 261 So.2d 1 (Fla. 1972)?

SUMMARY:

Section 6 of Ch. 67-930, Laws of Florida, delineates those purposes for which revenue derived from the resort tax can be used. It appears that the tax ordinances authorized thereunder are not within the proscription of the *Birdsong* decision against authorization by special act.

This office construed certain provisions of Ch. 67-930, Laws of Florida, in AGO 071-320. *Cf.* *State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970); *Fried v. City of Miami Beach*, 212 So.2d 308 (3 D.C.A. Fla., 1968). Section 6 of Ch. 67-930 clearly sets forth the *only* purposes for which the collected funds may be used:

Any funds received under and by virtue of the municipal resort tax imposed or levied under the authority of this act shall be used for the following purposes only: creating and maintenance of convention and publicity bureaus, cultural and art centers, enhancement of tourism, publicity and advertising purposes, and for the future cost, purchase, building, designing, engineering . . . expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or structures, and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

With respect to question 2, Ch. 67-930, Laws of Florida, authorizes qualified municipalities to levy, by ordinance, an excise tax of 2 percent to promote and advertise the tourist industry of the metropolitan areas. This tax is in addition to the tax provided by Ch. 212, part I, F. S.; §§4 and 7, Ch. 67-930. *Cf.* AGO's 072-341 and 072-215.

In *State v. City of Miami Beach*, *supra*, the court sustained the constitutionality of this resort tax as authorized by general law. Implicit in that opinion is a negative disposition of any blanket contention as to duplicative taxation prohibited by §212.081(3)(b), F. S. that "no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or consumption which is subject to a tax under this chapter *unless permitted by general law*" (Emphasis supplied.)

City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972), which held

unconstitutional a municipal license tax based on gross sales, is in my opinion distinguishable. The municipality there lacked specific general law authorization for the tax, which apparently would have been ample justification for sustaining the tax:

Thus, the question presented is whether the tax imposed by the City of Tampa is authorized by general law. Any tax not authorized by general law must necessarily fall by virtue of the preemption clause of Fla. Const. Art. VII, §1 (1968).

In accord with this rationale, my earlier opinion, AGO 071-303, indicated that the essential sustaining factor would be the existence of general law authorization. Assuming compliance with all requirements of law otherwise applicable, the tax about which you inquire appears to me to be within the constitutional perimeters of the *Birdsong* decision and therefore presumptively valid.

073-65—March 21, 1973

TAXATION

UTILITY TAX ON FUEL OIL PURCHASES

To: Harvey W. Matthews, Representative, 39th District, Orlando

Prepared by: Winifred L. Wentworth, Assistant Attorney General and James D. Whisenand, Legal Intern

QUESTION:

May a municipality lawfully impose a 10 percent utility tax on the sale of fuel oil?

SUMMARY:

A municipality has authority to impose a tax on purchases of specified utilities pursuant to §167.431, F. S. 1971, and may impose such a tax, consequent to its factual determination, on a "competitive utility service."

Your letter inquires as to the legality of a municipality imposing a 10 percent utility tax on purchases.

Section 167.431(1), F. S. 1971, authorizes municipalities to impose a utility tax, not to exceed 10 percent, on the purchase of enumerated utility services and of competitive utility services:

The several cities and towns in this state are hereby given the right, power, and authority, by nonemergency ordinance, to impose, levy and collect on each and every purchase of electricity, metered or bottled gas (natural liquefied petroleum gas or manufactured), water service, telephone service and telegraph service in their corporate limits, a tax In the event any such ordinance imposes such a tax on the purchase of one of the utility services described herein and a competitive utility service or services are purchased in the city or town, then *such ordinance shall impose a tax in like amount on the purchase of the competitive utility service or services* whether privately or publicly owned or distributed (Emphasis supplied.)

In the case of *Owen v. Cheney*, 238 So.2d 650 (2 D.C.A. Fla., 1970), *writ discharged* *Central Oil Co. v. Cheney*, 253 So.2d 869 (Fla. 1971), the court held that fuel oil service might be found competitive with utility services named in §167.431(1), *supra*, and remanded the cause for that determination after concluding