

Usher, 170 So. 846 (Fla. 1936), the Florida Supreme Court analyzed in depth the relationship between a broker and a customer buying on margin for purposes of defining the dower rights of the widow of the customer. The court ruled that the broker held the shares of stock in question as pledgee. In the intangible tax case of Smith v. Lummus, 14 So.2d 897 (Fla. 1943), the court described a margin transaction in some detail for the purpose of determining the taxing situs of the receivable generated thereby. In the process of describing a typical transaction, the court said, "[t]he 100 shares of stock [purchased on margin] is the *property of the Florida customer pledged* by him for payment of the money loaned." [See] 14 So.2d at 899 (Emphasis supplied.). Thus, it is my conclusion that in Florida the customer is the owner of a share of stock purchased on margin, even prior to delivery. It would seem to follow that the customer would be primarily taxable on that share of stock on its full value on the assessment date. Putnam v. Ford, 155 S.E. 823, (Va. 1930); 71 A.L.R. 1225. To the extent that AGO 0-517, *supra*, and AGO 058-165 are inconsistent with the views expressed above, they are hereby superseded. It should be made clear that this opinion applies only to stock purchased on margin. The case law in Florida is clear that the account receivable generated by a margin transaction is taxable to the broker, at least where it has a business situs within this state. Smith v. Lummus, 6 So.2d 625 (Fla. 1942), same case, 14 So.2d 897 (Fla. 1943).

073-313—September 5, 1973

TAXATION

DISPOSITION OF MONEYS IN MUNICIPAL FINANCIAL ASSISTANCE TRUST FUND

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee
Prepared by: Stephen E. Mitchell, Assistant Attorney General and James D. Beasley, Legal Intern

QUESTION:

What disposition should be made of the balance in the Municipal Financial Assistance Trust Fund which has accumulated for those counties which do not have a qualifying municipality under §200.132, F. S. 1971?

SUMMARY:

Cigarette tax revenues which are credited or transferred to the Municipal Financial Assistance Trust Fund pursuant to §210.20, F. S., but which have accumulated for lack of a qualifying municipality prescribed in §200.132(1), F. S. 1971, must remain in the trust fund, subject to future appropriation, disposition, or transfer by the legislature. Any disbursement to other than a qualifying municipality is unauthorized as the fund may not be disbursed for any purpose not specified in the statute.

The enactment of Ch. 71-364, Laws of Florida, added §210.026, F. S., which section created the Municipal Financial Assistance Trust Fund (hereinafter referred to as the trust fund). Section 210.026 also provided for an additional cigarette tax of two cents per package, and directed that the proceeds of such tax be paid to the state treasurer to the credit of the trust fund commencing October 1, 1971.

A formula for distributing the tax revenues appropriated to the trust fund was also included in Ch. 71-364, *supra*, and now appears in §200.132, F. S. 1971. The following provisions of that section are pertinent to this discussion:

(1) The department of revenue shall administer a program of grants to municipalities within the amount appropriated each fiscal year for this purpose to the municipal financial assistance trust fund. Each municipality which has a total ad valorem millage rate of three mills or more, excluding millage for payment of principal and interest on general obligation bonds, shall receive a pro rata amount of the total [revenue from the additional tax imposed under §210.026(1)] collected in the county, to be distributed to the municipality in such proportion as the population of the municipality is to the total population of the other municipalities in the county qualified to receive distributions under this section. . . .

(2) Amounts deposited in the municipal financial assistance trust fund are hereby appropriated exclusively for grants to municipalities as provided in subsection (1). . . .

The bracketed words were added by the Statutory Revision Division of the Joint Legislative Management Committee.

It should be observed that the enactment of Ch. 72-360, Laws of Florida, substantially changed the laws pertaining to the trust fund. Section 7 of the act in part expressly repealed §210.026, F. S., thereby deleting from the statutes the original authority for the creation of the trust fund, as well as the added cigarette tax which theretofore provided the sole revenue source for the trust fund. However, §8 of Ch. 72-360, *supra*, amended §210.20, F. S., so as to provide in part the following:

(2) (a) The division [of beverage] shall from month to month certify to the comptroller the amount derived from the cigarette tax imposed by Section 210.02, less the service charge provided for in Section 215.22, specifying the amounts to be transferred from the cigarette tax collection trust fund and credited on the basis of *two seventeenth[s] to the municipal financial assistance trust fund* (Emphasis supplied.)

Taken together, §§7 and 8 of Ch. 72-360, *supra*, suggest that rather than repeal the actual existence of the trust fund, the legislature intended only to alter the source of tax revenues deposited in said fund. This apparent legislative intent is reflected by the fact that §8 of the act expressly refers to the trust fund and directs that certain tax revenues be credited to the fund. This expression, appearing in a later section of the act relative to that portion of the act which repeals §210.026, F. S., may be construed as indicative of the legislature's intent that the trust fund continue in existence, notwithstanding the repeal of the law which created it. In 30 Fla. Jur. *Statutes* §114, it is said that:

One important general rule [of statutory construction] . . . is that the last expression of the legislative will is the law, and that, therefore, the last in point of time or order of arrangement prevails. This rule is applicable where the irreconcilable provisions appear in different statutes, *or in different provisions of the same statute*. (Emphasis supplied.)

Even if §7 of Ch. 72-360, *supra*, were construed as terminating the existence of the trust fund, the later reference to said fund in §8 of the act would appear to authorize the continuation of the trust fund pursuant to the following pertinent provisions of §215.32(2) (b)1., F. S.:

The administration commission of the department of administration shall have the power and authority to approve the establishment of any trust fund it deems necessary to preserve the integrity of any moneys received or collected by a state agency for a specific use or purpose authorized by law. . . .

For the foregoing reasons, it appears that the trust fund may be viewed as

currently existing and valid, with its source of tax revenues being prescribed in §8 of Ch. 72-360, *supra*.

The distribution formula set forth in §200.132, *supra*, must be construed in light of the change in the source of tax revenues deposited in the trust fund. This requires that the bracketed reference in §200.132 to the revenue derived from the additional tax imposed under §210.026 be construed to refer instead to the two seventeenths fraction of "the cigarette tax imposed by Section 210.02, less the service charge provided for in Section 215.22" Section 8 of Ch. 72-360, *supra*.

That portion of §200.132, F. S. 1971, which enumerates the qualifications which must be met before a municipality is entitled to participate in trust fund distributions does not appear to be affected by the subsequent enactment of Ch. 72-360, *supra*.

In regard to your specific question, I note that Art. VII, §1, State Const., prohibits all expenditures except those made in pursuance of appropriations made by law, the legislative power to appropriate state funds for state purposes being exercised only through duly enacted statutes. Attorney General Opinions 057-150, 064-162, and 071-28; State *ex rel.* Kurz v. Lee, 163 So. 850 (Fla. 1935). Article VII, §8, State Const. provides that "[s]tate funds may be appropriated to the several counties . . . [and] municipalities . . . upon such conditions as may be provided by general law."

In connection with this constitutional restriction on the use of state funds, I reemphasize the following pertinent language of §200.132(2), F. S. 1971:

(2) Amounts deposited in the municipal financial assistance trust fund are hereby *appropriated exclusively* for grants to municipalities *as provided in subsection (1)*. . . . (Emphasis supplied.)

In view of the foregoing provision, it is clear that any disbursement from the trust fund other than to a municipality which meets the qualifications prescribed in §200.132(1), F. S. 1971, would exceed the legislative appropriation provided for in §200.132(2) and, hence, would constitute an unauthorized disbursement of state funds. I conclude that any cigarette tax revenues credited to the trust fund which are not distributable in accordance with the appropriation provided for in §200.132(2), must remain in the trust fund, subject to future appropriation, disposition, or transfer by the legislature, and may not lawfully be disbursed for any other purposes.

073-314—September 5, 1973

SPECIAL DISTRICTS

POWER TO ANNEX TERRITORY

To: Allan J. Levin, Legal Counsel, Port Charlotte-Charlotte Harbor Fire Control District, Port Charlotte

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. Is an ordinance adopted by the Port Charlotte-Charlotte Harbor Fire Control District annexing land valid, and does said district come under the provisions of §171.04, F. S. ?

2. If such ordinance is valid and the fire control district is subject to the provisions of §171.04, F. S., would the county supervisor of elections have a duty to call or conduct the special election called for thereunder, and at whose expense?