

The legislature has so allowed a collection fee for distributors and provided that it is to be deducted from the remaining three gas taxes (§§206.41(4)(a), 206.60, and 206.605, F. S.) imposed by Part I of Ch. 206, F. S., pursuant to §206.43, *supra*.

Your third question is therefore answered in the affirmative.

073-280—August 14, 1973

LEGISLATION

EFFECTIVE DATE OF ENACTMENTS DEALING WITH SAME SUBJECT MATTER

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

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the new salary schedule for tax assessors take effect on July 1, 1973, as provided by Ch. 73-172, Laws of Florida, or on October 1, 1973, as provided by Ch. 73-173, Laws of Florida?

SUMMARY:

The salary schedule for tax assessors takes effect on October 1, 1973, as provided by Ch. 73-173, Laws of Florida.

These two acts became laws upon the same date, June 13, 1973. They contain identical provisions fixing the salaries of the tax assessors of this state and the population brackets upon which such salaries are based, and substantially similar provisions for salary adjustments based on the county's population as shown by the Department of Administration's local government census (*see* §23.019, F. S., requiring the department to "produce up-dated population estimates" each fiscal year), and on the cost-of-living index. Each limits the compensation of the tax assessor to the salary provided therein and prescribes a 20 percent limitation on salary increases in any one fiscal year. Insofar as the tax assessor's salary schedule is concerned, the only possible difference between the two acts is the date upon which the new salary schedule becomes effective.

Some of the tax assessors of this state were receiving compensation in addition to their statutory salaries under the provisions of §145.121(2)(c), F. S. (1972 Supp.), entitling them to compensation "under the terms and conditions which prevailed immediately prior to July 1, 1969." Thus, even though the two acts are substantially identical in all respects except the effective date, the answer to your question will be of considerable importance not only to those tax assessors whose salaries will be increased as a result of the new salary schedule but also to those who will have to take a decrease in their total annual compensation.

Chapter 73-173, *supra*, revises Ch. 145, F. S., which is the uniform county officials' salary act (Ch. 69-346, Law of Florida) establishing uniform population brackets and salary schedules for all constitutional county officers, including tax assessors. Its effective-date clause reads as follows:

This act shall take effect October 1, 1973 provided, however, nothing herein contained shall be construed to prohibit the continuation of compensation received by county officers at a rate not less than that existing for the month of June, 1973, until the effective date of this act.

Chapter 73-172, *supra*, is a revision of the laws relating to tax assessment and collection and the administration of our tax laws. As it deals with many different facets of this entire subject, it provides different effective dates for its several

provisions. The provision relating to the fees and commissions of tax assessors and collectors [§8 of Ch. 73-172 (§192.091, F. S.)] and providing that the amounts paid to any tax collector "shall be a part of the general income or compensation of such officer for the year in which received" and shall not increase the maximum salary provided by law for that office takes effect on January 1, 1974, as does the provision excluding county tax assessors from the purview of §145.022, *id.*, which authorizes the board of county commissioners to agree upon a guaranteed salary for a county official, and the provision [§14, *id.* (§145.12, F. S.)] requiring tax assessors and collectors to divide excess fees received from governmental units proportionately among such units. The section of Ch. 73-172 here in question [§15 (§145.10, F. S.)] does not provide expressly for the date upon which the tax assessors' new salary schedule therein provided shall become effective, nor does the effective-date clause, §24 of Ch. 73-172. And it is only by virtue of the "catch-all" provision of §24—"Except as otherwise provided in this section, this act shall take effect on July 1, 1973; . . ."—that an intent to have the new salary schedule become effective as of July 1, 1973, can be inferred. It is noteworthy that another provision of Ch. 73-172 (§6, amending §195.011, F. S., and transferring it to §195.087, *id.*) requires tax assessors to base their operations upon a fiscal year that begins on October 1, and that the provision for the cost-of-living adjustment in salary made by the provision here in question [§15 (§145.10(3), F. S.)] is based upon and is required to be made each fiscal year, beginning October 1, 1974.

It is a well-settled rule of statutory construction that, 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. And in view of the other provisions of Ch. 73-172 referred to above, it cannot be said to be impossible to construe §15 of that act in accordance with the clear intent of Ch. 73-173, *supra*—that is, that the new salary schedule for tax assessors prescribed by Ch. 73-172 was intended to take effect as of the beginning of the new fiscal year for tax assessors therein prescribed, October 1, 1973. (It might be noted that Ch. 73-349, Laws of Florida, requires all units of local government, including county budget and fee officers, to establish a fiscal year of October 1-September 30, beginning October 1, 1973.)

However, even if it were to be inferred that the intent of Ch. 73-172, Laws of Florida, was that the tax assessors' salary schedule should go into effect on July 1, 1973, another rule of statutory construction would require a holding that the new salary schedule of such officials becomes effective on October 1, 1973, as provided by Ch. 73-173, *supra*. This is the rule, equally well settled, that where provisions in the same statute or in different statutes are in irreconcilable conflict, the last in order of 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).

Reference to the legislative journals and to the records in the office of the Department of State shows that Ch. 73-173, *supra*, was the later in point of time in its introduction into the legislature, its adoption by the legislature, and its approval by the governor. It was introduced on May 22, 1973, as House Bill 2144, over a month later than Ch. 73-172, which was introduced on April 18, 1973, as House Bill 1331. The Committee Substitute to House Bill 2144 was passed by the House, as amended, on May 30 and by the Senate, as amended, on June 1. In contrast, Ch. 73-172 was passed by the House, as amended, on April 24 and by the Senate, as amended, on May 28. Both bills were then "bogged down" in conference committees until the last day of the session—June 6. Nevertheless, the chronological order continued through final passage and approval by the governor—the journals showing that Ch. 73-173 was adopted by the legislature

after it had adopted Ch. 73-172 and the records in the Department of State showing that the governor approved Ch. 73-173 after he approved Ch. 73-172.

In addition to the fact that Ch. 73-173, *supra*, is the latest expression of the legislative will, the legislative intent that the provision respecting the effective date of the tax assessor's salary schedule contained in Ch. 73-173 should prevail is apparent for another reason: Chapter 73-173 is a general revision of a particular subject—county officials' salaries; whereas, Ch. 73-172 merely included a provision in this respect as to the office of tax assessor 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 a somewhat similar situation, the court 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.

Where there is material repugnance in statutory regulation, or where there is anything from which an intent that a later act shall supersede a prior act may be fairly inferred, it will be given that effect, *particularly when the later act covers a broader general subject and contains a portion of the particular provisions of the former act* . . . so as to make such particular regulations contained in the prior act conform to the purpose and policy of the later act covering a broader subject, including the lesser. (Emphasis supplied.)

Similarly, it seems clear that, by including tax assessors in the later act covering the general subject of county officers' compensation, the legislature intended that the tax assessors would be entitled to the same benefits—and be subject to the same disadvantages—as the other constitutional officers of this state insofar as their compensation is concerned.

I have not overlooked the fact that the effective-date clause of Ch. 73-173, *supra*, provides that it shall take effect on October 1, 1973; and, ordinarily, a statute passed to take effect at a future day "is to be understood as speaking from the time it goes into operation, and not from the time of its passage." *Price v. Hopkin*, 13 Mich. 318, quoted with approval in *Neisel v. Moran*, 85 So. 346 (Fla. 1920). However, as stated in *Patterson Foundry and Machine Co. v. Ohio River Power Co.*, 124 N.E. 241, 243 (Ohio 1919), quoted with approval in AGO 073-250,

But that rule applies only where a contrary intent is not manifest in the act itself. Where a contrary intention is expressly stated . . . a valid statute should have effect in accordance with the purpose and intent of the law making body which enacts it.

Cf. White v. Ballinger, 33 So. 2d 157 (Fla. 1948), holding that the six-months' residence required by a city charter as a prerequisite to registering and voting in city elections began to run from the date the legislative act incorporating the territory in which the plaintiffs resided was adopted, even though that act did not become effective, insofar as the actual annexation was concerned, until more than six months later.

Here, the effective-date clause of Ch. 73-173, Laws of Florida, itself provides, in effect, that county officials, including tax assessors, shall continue to be compensated for the period of July 1 to September 30, 1973, "at a rate not less than that existing for the month of June, 1973. . . ." This provision evidences a clear legislative intent that the act was to take effect as of the date of its adoption, June 13, 1973, insofar as the compensation to which county officials are entitled under existing laws is concerned, and as of October 1, 1973, insofar as the new salary schedules therein provided for county officials are concerned. This being so, it was

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.)