

073-34—February 28, 1973

## TAXATION

VALIDITY OF PROPOSED CONSTITUTIONAL AMENDMENT  
LIMITING APPRAISED VALUATION OF HOMESTEAD  
PROPERTY OWNED BY PERSONS 60 YEARS  
OF AGE OR OLDER*To: Frank Carlucci, Representative, 18th District, Jacksonville**Prepared by: Winifred L. Wentworth, Assistant Attorney General and James D. Whisenand, Legal Intern*

## QUESTION:

Is a joint resolution proposing a constitutional amendment to Art. VII, §4, State Const., limiting the appraised valuation of homestead property owned by persons sixty years of age or older constitutional?

## SUMMARY:

A joint resolution proposing a constitutional amendment to Art. VII, §4, State Const., limiting the appraised valuation of homestead property owned by persons sixty years of age or older appears to be constitutionally proper under federal and Florida provisions.

The proposed constitutional amendment to Art. VII, §4, State Const., would limit the appraised just valuation of homestead property to persons sixty years of age or older. Under its terms such property "shall be valued for taxation at the just valuation of the homestead at the time the owner attains age sixty or at the just valuation of the homestead five years prior to the current valuation, whichever is the later valuation." For reasons stated below, I would respond to the question stated in the affirmative.

Initial consideration should be given to the effect of the federal equal protection clause on state power to make proper and reasonable classifications for such purposes. *Loftin v. Crowley's, Inc.*, 8 So.2d 909 (Fla. 1942), *cert. denied* 317 U.S. 661 (1942); Art. VII, §4, State Const.; *Jackson v. Consolidated Gov. of City of Jacksonville*, 225 So.2d 497 (Fla. 1969). This guaranty is not violated by reasonable classifications having a substantial relation to the purpose of the legislation. *Cf. Dunn v. Blumstein*, 405 U.S. 330 (1972). In the economic area there must be shown only a rational basis, rather than the more demanding test of a compelling state interest when personal constitutional rights are limited. Attorney General Opinion 072-126.

Historically, the Florida Constitution has been viewed as a limitation on the legislature's power to provide exemptions or equivalent special valuations. *Franks v. Davis*, 145 So.2d 228 (Fla. 1962); *Aeronautical Commun. Eq. v. Metropolitan Dade Co.*, 219 So.2d 101 (3 D.C.A. Fla., 1969); *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965). The proposed special *constitutional* homestead classification for the aged appears to me to be comparable to other special valuation provisions of Art. VII, §4, State Const. *Rainey v. Nelson*, 257 So.2d 538 (Fla. 1972).

In *Just Valuation & Taxation League, Inc. v. Simpson*, 209 So.2d 229 (Fla. 1968), the court presented a comprehensive review of equal protection classification cases and concluded at p. 233:

So it is our opinion and we hold that the citizens of Florida had the right by constitutional amendment to place intangible personal property in a separate classification and to authorize the Legislature to impose a special tax thereon and to place a limit on the amount of the tax thus to be imposed. . . .

The view of the courts appears to be that preferential property tax treatment

may be accorded elderly people based either on economic factors, *i.e.*, financial hardship and financial exigencies of the elderly, or on a broader social concern for geriatric problems. *See* Bd. of Assessors of Everett v. Formosi, 212 N.E.2d 210 (Mass. 1965); Kirby v. Bd. of Assessors of Medford, 215 N.E.2d 99 (Mass. 1966); Jasper v. Mease Manor, Inc., 208 So.2d 821 (Fla. 1968); Art. VII, §2, State Const. This rationale affirms the general principle that there exists a large discretion to establish reasonable classifications when delineating objects of taxation. *Cf.*, Jefferson v. Hackney, 406 U.S. 535 (1972).

In *Doran v. Cullerton*, 283 N.E.2d (Ill. 1972), the court considered the statutory tax exemption for individuals over sixty-five years of age, and concluded at p. 868:

Initially we find that the classification of individuals on the basis of under and over 65 years of age is rational and reasonable for at this age many persons retire and their sole financial support may be derived from social security or private pensions. . . . Moreover, various Federal and State exemptions are granted to those over the age of 65 without regard to the individual's personal wealth.

*See* Jasper v. Mease Manor, Inc., *supra*.

In accord with the referenced judicial authority, the proposed joint resolution appears to me to be constitutionally proper.

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#### COUNTY OFFICERS

#### COMPENSATION UNDER SECTION 145.121(2)(c), F. S. (1972 Supp.)

To: *L. Victor Desguin, Charlotte County Tax Collector, Punta Gorda*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Under §145.121(2)(c), F. S. (1972 Supp.), does a county official's base salary remain at the level fixed by the applicable statute in effect immediately prior to July 1, 1969?

#### SUMMARY:

Under §145.121(2)(c), F. S. (1972 Supp.), a county official's compensation is computed upon the basis of his 1967 statutory salary, plus ex officio personal income from fees, commissions, and other compensation actually received during the fiscal year.

Your question is answered in the affirmative.

Chapter 145, F. S., was amended in 1969 to fix the salaries of county officials at a uniform rate throughout the state, based upon the population of the county. Section 145.121(2)(c), as amended by Ch. 70-455, Laws of Florida, provides that those officials whose total compensation (salary plus ex officio personal income from fees, commissions, and other compensation) was in excess of the salary payable under the act "shall continue to be compensated under the terms and conditions which prevailed immediately prior to July 1, 1969, until the expiration of their present term of office . . . ." (The statute was amended in 1972, Ch. 72-240, to extend the period during which such compensation should be paid, but it was not otherwise changed.)

My predecessor in office consistently ruled that a county official who is