

bring them all before the court, one or more may sue or defend for the whole.

It has been specifically held that a class action is inappropriate to a cause of action based upon multiple and similar frauds: *Osceola Groves v. Wiley*, 78 So.2d 700 (Fla. 1955); *Hedler v. Rogers House Condominium Co.*, 234 So.2d 128 (4 D.C.A. Fla., 1970).

The former case pronounced what might be called the "separate contracts" distinction. The fact that the members of the prospective class individually and independently executed contracts militates against a finding of that "community of interest" which is requisite to a class action. The representative plaintiff must have some interest in the contracts of the other members of the class. This may flow either from the fact that the undertaking was a cooperative enterprise or from the fact that the plaintiff has a pecuniary or other interest in the contracts of the other parties. *Osceola Groves v. Wiley*, *supra*; *Hedler v. Rogers House Condominium Co.*, *supra*; *Wilson v. First National Bank of Miami Springs*, 254 So.2d 362 (3 D.C.A. Fla., 1971); *Watnick v. Florida Commercial Banks Inc.*, 275 So.2d 278 (3 D.C.A. Fla., 1973).

The *Wilson* case, *supra*, intimated that if the defendant were cast in the posture of a trustee, the class could move against him for an accounting. Otherwise the style of the cause of action appears to matter little.

In the given circumstances I believe it clear that none of the above qualifying relationships exist. It does not matter whether the studio or the financial institution is made defendant. So long as these contracts were executed individually and lack the degree of coextensiveness requisite to a class action, your question must be answered in the negative.

073-320—September 6, 1973

TAXATION

APPROVAL OF TAX ASSESSORS' BUDGETS PRIOR TO JANUARY 1, 1974

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

Prepared by: *William R. Cave, Assistant Attorney General and James D. Beasley, Legal Intern*

QUESTION:

Are those tax assessors whose budgets are presently on a fiscal year ending before December 31, 1973, and who do not submit their budgets to the Department of Revenue for approval, required to submit an interim budget to the department for approval for that period of time subsequent to the end of their present fiscal year and prior to January 1, 1974?

SUMMARY:

Should it become necessary for a county assessor whose budget is locally approved pursuant to special or local law or a resolution of the board of county commissioners made pursuant to §145.022, F. S. 1971, to prepare an interim budget required by §17 of Ch. 73-172, Laws of Florida, such budget should be submitted to the budget review authority prescribed in said local or special law or resolution, rather than to the Division of Ad Valorem Tax. Such interim budget may not cover a fiscal period extending beyond December 31, 1973.

For reasons hereinafter discussed, your question should in my opinion be answered in the negative.

As your letter indicates, §6 of Ch. 73-172, *supra*, transfers to §195.087, F. S., and amends the language of, §195.011, F. S. 1971. The amended version of that section reads in pertinent part as follows:

195.087 Assessors and tax collectors to submit budgets to department of revenue.—

(1) (a) On or before June 1 of each year, *every assessor regardless of the form of county government* shall submit to the ad valorem tax division of the department of revenue a budget for the operation of his office *for the ensuing fiscal year beginning October 1. . . .* (Emphasis supplied.)

Section 17 of Ch. 73-172, *supra*, prescribes through the following pertinent language procedures for the implementation of the foregoing requirement:

(1) For the fiscal year beginning October 1, 1973, and ending September 30, 1974, the several assessors shall not be required to submit a budget by July 1, but rather they shall submit a budget by November 1, 1973, for the nine months beginning January 1, 1974, and ending September 30, 1974. For the period prior to January 1, 1974, their office shall be operated on their existing budget or, *if no budget has been approved for such period, on a budget adopted and approved for that period of time.* (Emphasis supplied.)

Sections 6 and 17 of Ch. 73-172, *supra*, became effective on July 1 and June 13, 1973, respectively. See §24 of the act in conjunction with 30 Fla. Jur. Statutes §§143 and 144.

The issue which you have raised does not pertain to those assessors who heretofore have submitted budgets to the Department of Revenue pursuant to §195.011, F. S. 1971. Current budgets which were prepared pursuant to that law are effective through December 31, 1973, at which time they will be succeeded by the nine-month changeover budget provided for in §17 of Ch. 73-172, *supra*.

Assessors whose offices are currently operating on budgets which were prepared and approved pursuant to either a resolution of a board of county commissioners enacted pursuant to §145.022, F. S. 1971, or a special act or general act of local application do not all have the benefit of a current calendar year budget. Should their current budget terminate prior to December 31, 1973, then §17, Ch. 73-172, *supra*, requires that an interim budget be prepared and submitted for approval, in order to "fill the gap" between the old budget and the new nine-month changeover budget. You seek to determine whether such interim budgets should be submitted to the Department of Revenue for approval, rather than to the local governmental bodies which reviewed such budgets prior to the enactment of Ch. 73-172, *supra*.

Chapter 73-172, *supra*, purports to vest the Department of Revenue with exclusive authority to review budgets for the operation of tax assessors' offices. See §6 of the act, quoted in part above.

Section 17 of Ch. 73-172, *supra*, modifies the effect of §6 during the October 1, 1973—September 30, 1974, fiscal year in order to align all assessors on an October 1—September 30 fiscal year. I note that the budget for the nine-month period beginning January 1, 1974, is the first budget required to be submitted to the Department of Revenue by every assessor, regardless of the form of county government. Stated differently, nothing in Ch. 73-172, *supra*, prohibits the operation of assessors' offices under locally approved budgets prior to January 1, 1974, in those counties where such budgetary procedure is currently authorized by local or special law or by a resolution of the board of county commissioners made pursuant to §145.022, F. S. 1971.

It has long been an established rule of statutory construction that a general act will not be construed by the courts to repeal or modify an earlier special act embraced within its terms unless a legislative intent to this effect is clearly shown. [See] 30 Fla. Jur. *Statutes* §158; *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938). Exceptions to the foregoing general rule are occasioned by circumstances described in 30 Fla. Jur., *Statutes*, §158, as follows:

The rule that a general act will not be held to impliedly repeal or modify a special or local one does not apply where the general act is a general revision of the whole subject, or where the two acts are so repugnant and irreconcilable as to indicate a legislative intent that the one should repeal or modify the other. . . .

See also, 1 Sutherland (3d ed.), §2021.

Inasmuch as Ch. 73-172, *supra*, requires Department of Revenue approval of all budgets which pertain to the operation of assessors' offices on and subsequent to January 1, 1974, regardless of the form of county government, said Ch. 73-172 appears to modify any existing legal authority for the local approval of assessors' budgets, to the extent necessary to insure that such local approval pertains to fiscal periods ending prior to January 1, 1974.

Under the foregoing construction, interim budgets prepared pursuant to §17 of Ch. 73-172, *supra*, should be submitted in the manner and form, and to the budget review authority, prescribed by any applicable local or special law or resolution. The fiscal periods encompassed by such interim budgets may not extend beyond December 31, 1973. Such limitation stems from the obvious legislative intent that the budget review procedure prescribed in Ch. 73-172, *supra*, be construed as a general and complete revision of the law pertaining to the review of assessors' budgets which cover the operation of assessors' offices subsequent to December 31, 1973.

073-321—September 6, 1973

CONSTITUTIONAL LAW

REQUIREMENT OF DEPOSIT TO SECURE PAYMENT OF COSTS OF JURY TRIAL—NOT RESTRICTIVE OF RIGHT TO JURY TRIAL

To: Monroe W. Treiman, Executive Secretary, Conference of County Court Judges of Florida, Brooksville

Prepared by: Rebecca Bowles Hawkins and Victor Walsh, Assistant Attorneys General

QUESTION:

Does the requirement of Rule 7.150, Rules of Summary Procedure, that a deposit be made to secure the payment of costs incurred by reason of a jury trial demanded by a party in civil proceedings in a county court involving a demand for property valued at less than one thousand five hundred dollars, which expense may be taxed as costs in the case, constitutionally impair or unduly restrict a litigant's right to trial by jury?

SUMMARY:

Under Rule 7.150, RSP, relating to small claims not exceeding one thousand five hundred dollars filed in county courts, a party may have a jury trial upon demand, provided a deposit is made with the clerk to secure the payment of the costs incurred by reason of the jury trial. As the amount of the deposit fixed by the judge must in all instances be