

QUESTIONS:

1. Are installation or erection costs of tangible personal property (machinery, equipment, signs, pipelines, etc.) taxable?
2. If all installation costs are not taxable, what guidelines should be used in establishing when, and under what conditions, they are taxable?

SUMMARY:

Installation and erection costs of tangible personal property are to be included in deriving the "just value" of said property when such costs enhance the value of the property within the terms of §193.011, F. S.

Both questions are answered as discussed herein. In deriving "just valuation" a tax assessor must consider all factors listed in §193.011, F. S., *Town of Bay Harbor Island v. Lancelot Associates*, 243 So.2d 437 (3 D.C.A. Fla., 1971). Synonymous with just valuation are such terms as "fair market value" and "full cash value" which indicate the monetary amount a purchaser, willing but not obligated to buy, would pay to one willing but not obligated to sell. *See Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

The installation or erection costs expressed in your letter reflect pecuniary amounts that an owner invests in the respective property which enhances the value of said property. It is apparent that such costs which are merely an expense, and do not improve the present cash value, the highest and best use, the replacement value, the condition, and the expected net proceeds of the sale of such property, are not to be included in the assessed value. *Overstreet v. Dean*, 219 So.2d 752 (3 D.C.A., Fla., 1969); *State v. Colding*, 200 So.2d 246 (2 D.C.A. Fla., 1967). In essence, the criterion appears to be whether the installation or erection cost enhances the just value of the tangible personal property. *Metropolitan Dade County v. Tropical Park, Inc.*, 231 So.2d 243 (3 D.C.A. Fla., 1970); *Aeronautical Commun. Eq. v. Metropolitan Dade Co.*, 219 So.2d 101 (3 D.C.A. Fla., 1969); *Rodeo Telephone Mem. Corp. v. County of Greeley*, 149 N.W.2d 357 (Neb. 1967); *Bridgeport Gas Company v. Town of Stratford*, 216 A.2d 439 (Conn. 1966).

073-77—March 22, 1973

TAXATION

TAX COLLECTORS' FEES FOR COLLECTING
MUNICIPAL TAXES

To: *Harry F. Knight, Monroe County Tax Collector, Key West*

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

QUESTION:

May a tax collector collect fees from, or be compensated by, a municipality for tax collection services rendered said municipality subsequent to the repeal of §167.437, F. S., by Ch. 72-368, Laws of Florida?

SUMMARY:

Tax services rendered by a tax collector pursuant to Ch. 167, F. S., subsequent to the repeal of §167.437, F. S., are not to be compensated for by the municipalities. A municipality is not a "taxing district" within the purview of §192.091, F. S. 1971.

Your question is answered in the negative.

Public officers may be required to perform official duties without compensation. Generally they have no legal claim to compensation for services rendered except to the extent provided by law. Attorney General Opinion 067-44. When no compensation is statutorily provided, the service is deemed to be gratuitous. *State v. Fussell*, 24 So.2d 804 (Fla. 1946); *Bradford v. Stoutamire*, 38 So.2d 684 (Fla. 1949); *Pridgeon v. Folsom*, 181 So.2d 222 (1 D.C.A. Fla., 1965).

Sections 167.433-167.435, F. S. 1971, enacted by Ch. 69-54, Laws of Florida, divested the municipalities of their tax assessing and tax collecting functions and transferred those functions to the county. Therefore, these are no longer municipal functions, unless specifically reserved under Ch. 69-54, *supra*, but are county functions. *City of Belle Glade v. McGehee*, 244 So.2d 425 (Fla. 1971). Pursuant to §167.437, F. S., 1971, repealed by Ch. 72-368, Laws of Florida, the municipalities were authorized to compensate the several county tax assessors and collectors for services rendered and were required to negotiate a contract for such compensation. *City of Belle Glade v. McGehee*, *supra*; AGO 071-377.

Section 167.437, F. S. 1971, having been repealed, there is no longer any statutory requirement that the county tax assessors and collectors be compensated by the municipalities for performing a function that is no longer a municipal function but a county function. Therefore, any contract entered into prior to the repeal of §167.437, F. S., can no longer be enforced because of subsequent failure of consideration on which it was based. [See] 7 Fla. Jur. *Contracts* §39; cf. 7 Fla. Jur. *Contracts* §48.

Section 192.091, F. S. 1971, was enacted by Ch. 4322, 1895, Laws of Florida, and provides for the compensation of county tax assessors and collectors for the assessing and collecting of taxes for the county, school board, taxing districts, and flood control or water management districts. Section 192.091 does not contemplate the inclusion of municipalities within the phraseology of "taxing district." See Art. VII, §9(b), State Const. The defined taxing entities expressed in §192.091 are exclusive in nature, setting forth only counties and taxing districts not created under Ch. 378, F. S. 1971. A municipality differs in many aspects, one of which is its general governmental powers, from that of restricted or special taxing districts contemplated by such terms within §192.091. See §§180.01 and 180.02, F. S.; cf. Ch. 378; 23 Fla. Jur. *Municipal Corporations* §§3, 5, 49, and 62.

073-78—March 23, 1973

PUBLIC DEFENDER

REPRESENTATION IN MUNICIPAL COURTS

To: James A. Gardner, Public Defender, Sarasota

Prepared by: Richard W. Prospect, Assistant Attorney General

QUESTION:

Does a public defender have the authority to represent an indigent person charged with a violation in a municipal court?

SUMMARY:

A public defender has no authority to represent an insolvent person in municipal court proceedings.

The authority of a public defender to represent persons charged with crimes is conferred by the following provision of §27.51(1), F. S., as amended by Ch. 72-722, Laws of Florida: