

application are hereby repealed to the extent that they require, authorize, or permit any officer whose compensation is established by chapter 145 to receive any other compensation for the execution of his powers, functions and official duties.

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Section 16. 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.

Pursuant to the above-quoted statute and AGO 073-280, the new salary schedule takes over or goes into effect on October 1, 1973, but prior to that date the tax assessor shall continue to be compensated at a rate not less than that existing for the month of June, 1973, through September 30, 1973. *See also*, AGO 073-330A, with respect to limitations on salary increases.

If the tax assessor is an officer compensated in prior years pursuant to §145.121(2)(c), F. S. (1972 Supp.), as apparently the Monroe County Tax Assessor is, then he may be compensated in full as personal income for assessment of municipal taxes up to October 1, 1973.

If the Monroe County Tax Assessor has completed all the work on the 1973 assessment roll prior to October 1, 1973, and since Ch. 73-173, *supra*, has no retrospective operation, I conclude that the assessor has earned the statutory compensation as provided in Ch. 69-1313, *supra*, and is entitled to be paid the same for 1973. Attorney General Opinions 069-42, 069-72, 069-73, and 069-74.

073-369—October 2, 1973

#### MUNICIPALITIES

##### MUNICIPALLY OWNED BUILDING OUTSIDE MUNICIPAL LIMITS SUBJECT TO COUNTY BUILDING CODE

*To: Jonathan H. Hancock, Avon Park City Attorney, Sebring*

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#### QUESTION:

Must a municipality obtain a county building permit to construct a building at its municipal airport when such airport is located in the county outside the municipality's boundaries?

#### SUMMARY:

In the absence of any specific legislation providing otherwise, a municipality owning and operating an airport situate in the unincorporated area of the county is governed by, and subject to, the duly adopted building regulations of the county. The municipality may be required by the county to obtain a building permit for any building or structure to be erected on the airport property and to otherwise comply with the county building code.

Section 332.02, F. S., authorizes a municipality to acquire property for the establishment or enlargement of airports either within or without the territorial limits of the municipality. Section 332.08, F. S., gives the municipality power to construct, enlarge, improve, and operate airport facilities. Section 125.56, F. S., authorizes a county to adopt a building code and provides that after adoption of

such code, "it shall be unlawful for any person, firm or corporation to construct, erect, alter or repair any building within the territory embraced by the terms of this act [territory of county outside of municipal limits], without first obtaining a permit." Section 125.56(4).

There seem to be no cases directly on point. However, since the ability to enact both building codes and zoning regulations falls under the police power, the following zoning cases should be relevant to the instant question. In *AIA Mobile Home Park, Inc. v. Brevard County*, 246 So.2d 126 (4 D.C.A. Fla., 1971), the court held that in the performance of a governmental activity a governmental entity is not subject to its own zoning restrictions. *AIA Mobile Home Park, Inc.*, at 131. The court cited with approval a New York case which said:

In the very nature of things, a municipality must have the power to select the site of buildings or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions in the performance of its governmental, as distinguished from its corporate or proprietary, activities. [*Nehrbas v. Incorporated Village of Lloyd Harbor*, 2 N.Y.2d 190, 140 N.E.2d 241, 159 N.Y.S.2d 145 (1957).]

*City of Treasure Island v. Decker*, 174 So.2d 756 (2 D.C.A. Fla., 1965), involved the question of whether a municipality could impose its zoning regulations upon another municipality whose property was located and operated within the territory of the first municipality. In holding that the zoning regulations could be imposed, the court said that a "government within another government or even the governmental body itself if *operating in a proprietary capacity* is governed by the zoning regulations of the area in the absence of specific legislative pronouncement to the contrary." (Emphasis supplied.) *City of Treasure Island* at 759.

The distinction between governmental and proprietary activities was noted by the court in *AIA Mobile Home Park, Inc.*, *supra* at 130:

... in the case of the former, the municipal corporation is executing the legislative mandate with respect to the public duty generally, while in the other, it is exercising its private rights as a corporate body.

In AGO O-552, Aug. 26, 1939, Biennial Report of the Attorney General, 1939-1940, p. 356, it was held that the operation of an airport by a municipality was a proprietary activity. According to 4 Fla. Jur. *Aviation* §31,

The operation of an airport by a municipality is generally regarded as a proprietary function as distinguished from a governmental function, that is, where the municipality does not devote the airport exclusively to municipal or governmental purposes, but undertakes to conduct an enterprise of a commercial character from which it seeks to derive revenue.

A municipality holds an airport established by it in a proprietary capacity, even under a statute providing that the acquisition thereof is for a public or governmental purpose. [See] 2A C.J.S. *Aeronautics & Aerospace* §61. Although there is authority to the contrary in other jurisdictions, it would seem that under the rationale of *City of Treasure Island*, *supra*, a municipality owning and operating an airport situate in the unincorporated area of the county is governed by, and subject to, the duly enacted building regulations of the county in whose governmental and territorial jurisdiction such municipal airport is located, in the absence of any specific statute otherwise providing. Therefore, for any building or structure to be erected on such airport, the municipality will be required to obtain a building permit and to otherwise comply with the county building regulations.