

As to your second question, §200.065(7), F. S. (§13, Ch. 73-172, *supra*), provides:

(7) Nothing contained in this section shall serve to extend or authorize any millage in excess of the maximum millage permitted by law nor prevent the reduction of millage.

I find nothing in the act which requires the assessor to notify taxing authorities of the requirements of this subsection. Further, the act does, in §200.065(5), F. S. (Ch. 73-172, *supra*), designate certain information about which the assessor "shall notify each taxing authority." This further indicates that no such requirement exists as to said §200.065(7).

This opinion is, of course, limited to an analysis of the statutory provisions and subject to such rules and regulations as may in the future be promulgated by the Florida Department of Revenue.

073-290—August 15, 1973

ADULT RIGHTS LAW

AGE REQUIREMENT FOR SERVICE OF SUBPOENAS

To: Phillip A. Hubbard, Public Defender, Miami

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May persons eighteen to twenty years of age serve subpoenas?

SUMMARY:

Rule 1.410(c), RCP and Rule 8.090(f)(2), R.J.P., which require a person to be twenty-one years of age to be able to serve a subpoena, take precedence over any inconsistent statute. However, under the rules, a person eighteen to twenty years of age may serve process or subpoenas if authorized by law or if appointed by the court under Rule 1.070(b), RCP.

The Adult Rights Law, Ch. 73-21, Laws of Florida [§743.07, F. S.], gives to persons eighteen years of age or older all the rights, privileges, and obligations formerly possessed by persons twenty-one years of age or older. This might normally include the right or privilege to serve subpoenas or process. However, the requirement that a person be twenty-one before he is able to serve a subpoena is found, not in the statutes, but in the Florida Rules of Civil Procedure:

A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than twenty-one years of age. [Rule 1.410(c), RCP.]

The Florida Temporary Rules of Juvenile Procedure, in Rule 8.090(f)(2), also provide:

Subpoenas may be served within the State by any person over twenty-one years of age who is not a party to the proceeding.

Under the "Process" rule, Rule 1.070(b), RCP:

Service of process may be made by any officer authorized by law to serve process but the court may appoint any competent person not interested in the action to serve such process.

The Florida Constitution, revised Art. V, §2, gives the Supreme Court the power to make rules of procedure for the court system. It is a general rule that in case

of conflict with a statute, the rule prevails. "[The Rule] supersede[s] any legislative enactment governing practice and procedure to the extent that the statute and the rule may be inconsistent." *Jaworski v. City of Opa-Locka*, 147 So.2d 33 (Fla. 1963). *See also* *Fort v. Fort*, 104 So.2d 69 (1 D.C.A. Fla., 1958); 8 Fla. Jur. *Courts* §193. Therefore, it would seem that a person under twenty-one years of age cannot serve a subpoena under the language of Rule 1.410(c), RCP—"or by any other person who is not a party and who is not less than twenty-one years of age"—or under Rule 8.090(f)(2), R.J.P., unless and until the Supreme Court changes its rules to conform to the statute.

According to the language of Rules 1.410(c) and 1.070(b), RCP, any person or any officer may serve process or a subpoena if so authorized by law. Under these provisions, persons eighteen to twenty years of age may, in appropriate circumstances, serve process or subpoenas. Section 48.021, F. S., says that "[a]ll process shall be served by the sheriff of the county where the person to be served is found, but witness subpoenas may also be served by any person authorized by rules of procedure." Sheriffs also have the power to execute all process of the courts of this state under §30.15, F. S. Accordingly, if there had been an age requirement of twenty-one years in order to be sheriff, which under Ch. 73-21, *supra*, became a requirement of eighteen years, then a person eighteen years of age or older, if such person is a sheriff, may serve process or witness subpoenas. If a person eighteen years of age or older is not a sheriff, then under Rule 1.410(c), he may not serve a subpoena unless he is twenty-one. But a person eighteen or older may serve process if appointed by a court under Rule 1.070(b).

073-291—August 16, 1973

COUNTIES

COMPETITIVE BIDDING ON TOTAL COST CONCEPT

To: Hal Y. Maines, Union County Attorney, Lake Butler

Prepared by: Jerry E. Oxner, Assistant Attorney General

QUESTIONS:

1. May a board of county commissioners consider bids which are submitted on the total cost concept of purchasing when such a concept is not stated in the specifications or request for bids?
2. May such board request and accept bids based on the total cost concept of purchasing?

SUMMARY:

The "total cost purchasing" concept of bidding may not be used when such bids are unresponsive to the invitation to bid.

Counties may opt for inviting bids under the "total cost purchasing" concept if adequate safeguards are provided to prevent fraud and insure competition.

The first question is answered negatively. Assuming that your invitation for bids made no reference to buy-back provisions and maintenance, any bid based upon the total cost of purchasing concept as defined herein would not be responsive to the invitation and would not be in the best public interest due to the absence of true competition.

Your second question is answered with a qualified affirmative. Assuming that there is no special or local law or county ordinance that would operate to inhibit such a system of letting bids and assuming that the county commission determines to use the total cost method of soliciting, receiving, and awarding bids, and