

audiology when administering hearing tests is whether a fee is charged or medical treatment is given in connection with such tests. Because the nonprofit corporation referred to in your question neither charges a fee for its hearing tests nor provides medical treatment, it does not engage in the practice of audiology within the meaning of §§468.140 and 468.141, *supra*. Accordingly, I have the view that a nonprofit corporation which conducts hearing tests on either children or adults without charge and without medical treatment does not come within the purview of part IV, Ch. 468.

073-98—March 30, 1973

TAXATION

OCCUPATIONAL LICENSE TAX ON PROFESSIONAL SERVICE CORPORATION

To: Winifred S. Hill, St. Johns County Tax Collector, St. Augustine

Prepared by: Winifred L. Wentworth and Sam R. Neel, Assistant Attorneys General

QUESTION:

When a professional service corporation is formed under the provisions of Ch. 621, F. S., and practices a profession within a county, may the county require the professional corporation as an entity and each professional employee or member to pay a county occupational license tax?

SUMMARY:

A county may require a professional service corporation operating an office in which a profession is practiced and each member and professional employee thereof to pay a county occupational license tax.

The facts submitted present a situation in which St. Johns County is imposing an occupational license tax on a professional service corporation that maintains an office within the county, and on each member or employee practicing the profession within the county. These license taxes were levied pursuant to St. Johns County Ordinance No. 72-2, containing the provisions of Ch. 205, F. S., dealing with occupational license taxes, as it existed prior to April 24, 1972. The provisions of that ordinance applicable to your question are as follows:

(1) Every person engaged in the practice of any profession . . . shall pay a license tax of fifteen dollars for the privilege of practicing, which license shall not relieve the person paying same from the payment of any license tax imposed on any *business operated by him*. (Emphasis supplied.)

* * * * *

(4) *Every* individual or group of individuals who operates a branch office, or any *professional corporation* which operates an office in which a profession is practiced, *shall license each office* in which the profession is practiced. (Emphasis supplied.)

The provisions are the same as §205.461(1) and (4), F. S. 1971, and in terms authorize a separate license tax on a professional corporation and on every member of the corporation practicing the profession of the corporation.

However, on April 24, 1972, Ch. 72-306, Laws of Florida, became effective and substantially revised Ch. 205, F. S., while repealing §205.461, F. S., and other sections of Ch. 205. Section 205.032, F. S. (1972 Supp.), provides in pertinent part:

Levy; counties.—The governing body of a county may levy, by appropriate resolution or ordinance, an occupational license tax for the privilege of *engaging in or managing* any business, profession, or occupation within its jurisdiction. . . . (Emphasis supplied.)

Section 205.033(1), F. S. (1972 Supp.), imposes certain conditions on the authority of the county to levy the license tax, among which are:

(a) The tax shall be based upon reasonable classifications and shall be uniform throughout any class.

(b) No occupational license tax levied hereunder shall be at a rate greater than the *rate provided by chapter 205 in effect for the year beginning October 1, 1971.* (Emphasis supplied.)

There is no indication that the legislature intended by amended Ch. 205, F. S. (1972 Supp.), to alter or prohibit the licensing of professional corporations as well as component members required by §205.461(1) and (4), F. S. 1971. Section 205.032, *supra*, authorizes the levy of the license tax for the privilege of “engaging in or managing any . . . profession.” This would, in my opinion, imply that separate taxation of a professional service corporation and of a member thereof is contemplated, since under Ch. 621, F. S., the corporation engages in professional practice through its officers, agents, and employees, and also necessarily participates in the management of that practice. The same alternative language appears in §205.022(1), F. S. (1972 Supp.). Also, in the definition section of the new law [§205.022(3), F. S. (1972 Supp.)], “person” is so defined as to include individuals, firms, associations, and corporations.

I am aware that AGO 062-131 concluded that when a professional service corporation was organized under Ch. 621, F. S., occupational license taxes should be required of each member of the professional service corporation and from its professional employees, but not from the professional service corporation itself so long as the corporation restricts itself to the professions of its members. This opinion was written when the pertinent provision of Ch. 205, F. S. 1961, read as follows:

205.52 Professions.—Every person engaged in the practice of any profession, whether or not such profession be regulated by law, shall pay a license tax of ten dollars for the privilege of practicing, which license tax shall not relieve the person paying same from the payment of any license tax imposed on any business operated by him. This section shall include real estate brokers but no license shall be required of their salesmen.

In 1967, the legislature revised Ch. 205, F. S., and the above-cited section of Ch. 205 was amended and incorporated into §205.461(1), F. S., as it existed prior to the passage of Ch. 72-306, Laws of Florida [§§205.032 and 205.033, F. S. (1972 Supp.)]. However, in 1967 the legislature also added §205.461(4) to Ch. 205, specifically providing that “any professional corporation which operates an office in which a profession is practiced, shall license each office in which the profession is practiced.” This addition, in my opinion, modified the conclusion reached in AGO 062-131.

Therefore, because §205.461, F. S., prior to being deleted by Ch. 72-306, Laws of Florida, required an occupational license tax for each professional service corporation and each member or professional employee thereof, and since Ch. 72-306, Laws of Florida, contemplates that the same is authorized

under Ch. 205, F. S. (1972 Supp.), I am of the opinion that licensing of both the professional service corporation and the members or professional employees thereof is valid under St. Johns County Ordinance No. 72-2, adopted subsequent to the effective date of Ch. 72-306, Laws of Florida.

073-99—March 30, 1973

COUNTIES

ALLOTMENT OF OFFICE SPACE BY COUNTY GOVERNING BODY

To: T. Edward Austin, General Counsel, Jacksonville

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

QUESTION:

Does the City Council of the Consolidated City of Jacksonville have the authority to require the county's superintendent of schools, and his staff, to vacate the premises they presently occupy in the Duval County Courthouse?

SUMMARY:

The Council of the City of Jacksonville, as governing authority of Duval County, has the authority to require the county's superintendent of schools, and his staff, to vacate office space they presently occupy in the Duval County Courthouse.

According to information accompanying your request, the present Duval County Courthouse was constructed in accordance to certain plans and specifications which allotted occupancy of the fifth floor of said building for the county's superintendent of schools and his staff, and such designated areas are currently so occupied. As a result of the recent court reorganization under revised Art. V of the Constitution, the City Council of the Consolidated City of Jacksonville has determined that additional court facilities are required within the present courthouse and accordingly have, by resolution, notified the Duval County School Board that "on April 1, 1973, or as soon thereafter as is feasible" the present space on the fifth floor of the courthouse now occupied by the school superintendent and his staff shall be vacated. The city further, by resolution, is assuming responsibility to defray such moving expenses and resulting rental costs of the school board for the remainder of the city's 1972-73 fiscal year.

Under consolidation, the City Council of the City of Jacksonville succeeded to the authority of that formerly held by the Board of County Commissioners of Duval County. Cf. *Jackson v. Consolidated Government of City of Jacksonville*, 225 So.2d 497 (Fla. 1969).

Under the provisions of §230.29, F. S., the office of the superintendent of schools shall be located at the county seat. Initial responsibility to provide such superintendent with office space, heat, and light at the county seat is placed upon the board of county commissioners, or, as in the instant case, the Jacksonville City Council.

However, this particular authority carries with it a proviso that if in the event the commissioners *do not* provide the required office space, then the local school board may provide the necessary space as well as furniture, equipment, etc., it would have been required to furnish initially had the office space been provided by the board of county commissioners.

Notwithstanding that, it may be contended that in requiring the superintendent's office to be located at the county seat (§230.29, *supra*), and also initially authorizing the school board to hold its meetings at the county seat, it is not