

board of county commissioners is empowered to guarantee a fixed salary to the collector upon his delivery of all fees collected to the county, but the commissioners are so empowered only with the concurrence of the collector. The importance of the official's concurrence in any waiver of fees is underscored by the permanence of such an arrangement. Once such a plan is initiated, it cannot be revoked or rescinded by either party without express legislative authority. Attorney General Opinion 071-363. It is my opinion that the tax collector, if he so elects, need *not* concur in any action of a board of county commissioners purporting to eliminate his fees; rather, he is entitled to continue operations as a fee officer, receiving his salary from fees collected and utilizing the monthly advancements procedure with annual accounting outlined in §192.102, F. S. However, if he elects to remain a fee officer, he must continue to pay over excess fees at the close of the fiscal year as required by law. Chapter 73-349, Laws of Florida [§§218.35 and 218.36, F. S.]; *see also* AGO's 073-281 and 073-415.

As to the tax collector, your question is answered accordingly. It should be noted that the same result would obtain with respect to a proposed waiver of fees by any officer described in §145.14, F. S., inasmuch as the language of that section is substantially the same as that of §145.022, *supra*.

With reference to the tax assessor, it should be noted that Ch. 73-172, Laws of Florida, amends both §§192.091 and 145.022, *supra*, as they relate to the funding of his operations. By §8 of Ch. 73-172, the tax assessor is transformed from a fee officer to a budget officer under the format therein provided. As such, the assessor will no longer be entitled to the fees prescribed in §192.091, as of January 1, 1974. Section 24(4), Ch. 73-172, *supra*. As of that date, no provision allowing for the elimination of the assessor's fees will be necessary. This judgment is reflected in §16, Ch. 73-172, which amends §145.022 to exclude county assessors, effective January 1, 1974.

073-471—December 18, 1973

TAXATION

COMPENSATION OF TAX ASSESSOR AND TAX COLLECTOR FOR SERVICES RENDERED TO MUNICIPALITIES

To: Howard W. Duke, Belleair Town Attorney, Clearwater

Prepared by: William R. Cave, Assistant Attorney General, and Daniel C. Brown, Legal Intern

QUESTION:

Does the tax assessor or the tax collector of Pinellas County have the authority to receive payment from municipalities for their services in connection with assessing and collecting municipal taxes in view of the repeal of §167.437, F. S., by Ch. 72-368, Laws of Florida [effective July 1, 1973]?

SUMMARY:

The repeal of §167.437, F. S., did not affect the authority of the assessor or the tax collector of Pinellas County to receive compensation to their offices from municipalities located in Pinellas County. Their authority to do so derives from Ch. 25518, 1949, Laws of Florida, as amended by Ch. 61-1170, Laws of Florida, which acts remained unaffected both by the enactment and by the repeal of §167.437. However, since Ch. 25518 was transformed from a general law of local application to a county ordinance by Ch. 71-29, Laws of Florida, the county commissioners of Pinellas County have the power

to repeal such authority. Should they choose to do so, Pinellas County municipalities would no longer be required to make such compensation. In any event, Ch. 73-172, Laws of Florida, precludes the receipt of such fees by the tax assessor's office as of January 1, 1974. Furthermore, Ch. 73-173, Laws of Florida, precludes any existing fee arrangement of personal compensation to either officer as of its effective date of October 1, 1973. To the extent that work for fiscal year 1973 is completed prior to the operative date of Ch. 73-172 or Ch. 73-173, where relevant, it must be compensated according to present statutory arrangements.

As to the tax assessor, your question is qualifiedly answered in the affirmative respecting time periods prior to January 1, 1974, but from and after that date, your question is answered in the negative. As to the tax collector, your question is answered in the affirmative, with the qualifications discussed below.

The answer to your question requires substantial prefacing concerning the chronology of legislative action on the subject.

In 1949, the legislature enacted Ch. 25518, 1949, Laws of Florida. This act, a general law of local application, transferred the municipal functions of tax assessment and collection to the county tax assessor and tax collector in counties having populations of 115,000 to 200,000. It also provided for a fee system of compensation to the office of the assessor and the collector in return for their services to the municipalities. Section 7, Ch. 25518, 1949, Laws of Florida. Chapter 25518 was amended by Ch. 61-1170, Laws of Florida, to bring within its ambit counties having a population of 300,000 to 385,000. The decennial census then in effect and relevant to the construction of the population act indicates that the population of Pinellas County was officially 374,665 on the effective date of Ch. 61-1170. See Art. VII, §5, State Const., 1885; 1960 Federal Census. Thus, Pinellas County became subject to Ch. 25518 as amended by Ch. 61-1170. The tax assessing and collecting functions of Pinellas County's municipalities were thereby transferred to the county, and the offices of the county assessor and collector became entitled to the fee system of remuneration prescribed by §7, Ch. 25518, 1949, Laws of Florida.

In 1969, the legislature by general law transferred municipal tax assessment and collection to the counties uniformly throughout the state. Sections 167.433-167.439, F. S. 1971 [originally enacted as Ch. 69-54, Laws of Florida] [and §167.4391, F. S. (1972 Supp.) (Ch. 72-360, Laws of Florida)], renumbered §§195.201-195.207 by §3(2), Ch. 73-129, Laws of Florida. Section 167.437 required municipalities to negotiate a contract with the county to compensate the assessor and the collector for the expense of their services to each municipality. However, any county which by prior special act had already arranged with its municipalities for consolidated tax assessment and collection was exempted from the operation of §167.437 by §167.439. Pinellas County was therefore not required to negotiate the contract called for in §167.437, inasmuch as Ch. 25518, *supra*, subsisted and continued to define the compensation arrangement between Pinellas County and its municipalities. See AGO 073-191.

In 1971, the legislature, by Ch. 71-29, Laws of Florida, repealed Ch. 25518, as amended. However, §3(2) of Ch. 71-29 provides:

All of the enumerated chapters contained in section 2 [including Ch. 25518 and Ch. 61-1170 as amendatory thereto] affecting a particular county or counties shall become an ordinance of an affected county on the effective date of this act, subject to modification or repeal as are other ordinances.

Since the chapters repealed by Ch. 71-29 became valid ordinances of *affected* counties only, the question arises as to whether Pinellas County was an "affected county" under Ch. 25518 on the effective date of Ch. 71-29. If not,

Pinellas County, having no existing agreement with its municipality respecting compensation to the assessor and collector, would then have become subject to §167.437, *supra*. The effective date of Ch. 71-29, *supra*, is provided in §6 thereof:

This act shall take effect on the twenty-ninth day after the final adjournment of the 1971 regular session of the legislature. . . .

The legislature adjourned on June 4, 1971. Thus, Ch. 71-29 became effective July 3, 1971. This effective date becomes significant when considered with the fact that 1970 ushered in a new federal census. Under the 1960 Census, Pinellas County showed an official population of 374,665, falling within the population brackets specified by Ch. 25518 as amended by Ch. 61-1170, *supra*.

Under the 1970 Census, however, Pinellas County showed a population of 522,329, in excess of the ceiling specified in Ch. 61-1170, *supra*. Therefore, whether Pinellas was an affected county on the effective date of Ch. 71-29, *supra*, depends upon which census should properly be used to calculate its population. Article X, §8, State Const., provides:

(a) Each decennial census of the state taken by the United States shall be an official census of the state.

(b) Each decennial census, for the purpose of *classifications based on population*, shall become effective upon the *thirtieth day* after the final adjournment of the regular session of the legislature convened next after certification of the census. (Emphasis supplied.)

Since the 1970 Census did not become effective until the *thirtieth day* after final adjournment of the 1971 Legislative Session, while Ch. 71-29, *supra*, became effective one day earlier on the twenty-ninth day, the 1960 Census controls, and Pinellas County was an affected county within the meaning of §3(2), Ch. 71-29. Chapter 25518, *supra*, although repealed as general law, remained in full force and effect for Pinellas County as a county ordinance.

The above chronology of events makes it apparent that Pinellas County was not affected by the operation of §167.437, *supra*, during the time in which that statute was viable. Accordingly, the repeal of §167.437 by Ch. 72-368, Laws of Florida, could not alter the compensation arrangement specified in Ch. 25518 (now continued as a county ordinance). It appears then that, at this time, the assessor and the collector are still authorized to receive compensation from municipalities.

However, the legislature has recently enacted Ch. 73-172, Laws of Florida. This act directly affects the question under consideration here, and requires further comment.

Concerning compensation to the assessor's office, §8 of Ch. 73-172 [§192.091, F. S.], provides:

(1) The budget of the assessor's office as approved by the department of revenue shall be the basis upon which the several tax authorities of each county (*except municipalities and the district school board*) shall be billed by the assessor for services rendered. Each such taxing authority shall be billed an amount equal to its proportionate share of the total ad valorem taxes collected for the preceding year; *provided that all municipal . . . taxes shall be considered as taxes levied by the county* for purposes of this computation. (Emphasis supplied.)

Section 22(1) of Ch. 73-172, *supra*, further provides:

Any resolution of a board of county commissioners enacted pursuant to §145.022, Florida Statutes, and any special act or general

act of local application relating to compensation of assessors, the budgeting or expenses of assessors' offices . . . which are in conflict with any provision of this act are repealed to the extent of such conflict.

Section 7, Ch. 25518, *supra*, provides that the one-fourth of one percent commission payable thereunder to the county assessor "shall be used to defray the additional expense of assessing . . . the taxes of . . . municipalities and in reimbursement for such expense." It therefore relates to the budgeting and expenses of the assessor's office and is in conflict with the requirement of §8, Ch. 73-172, *supra*, that the county reimburse the assessor for such expenses. Chapter 73-172 expressly repeals only special acts or general acts of local application, while Ch. 25518 in its present form is a county ordinance. Nevertheless, when an act is intended as a general revision of a whole subject which is presently covered by disconnected enactments, it impliedly repeals all laws in conflict with its provisions. *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938); 30 Fla. Jur. *Statutes*, §158. Such is clearly the case in reference to Ch. 73-172.

It is therefore my opinion that, on its effective date of January 1, 1974, §8 of Ch. 73-172, *supra*, will nullify any authority now vested in the tax assessor to receive compensation to his office for services rendered to municipalities. However, the assessor is entitled to compensation for the office under Ch. 25518, *supra*, for any work completed prior to that date. *See* AGO 073-368.

Section 8 of Ch. 73-172, *supra*, does not affect the office of the county tax collector, since, by its terms, it applies only to the office of the tax assessor. [See] 30 Fla. Jur. *Statutes*, §156. Consequently, Ch. 25518, *supra*, is still viable with reference to the tax collector and continues to require the municipalities of Pinellas County to compensate the collector at the rate specified therein. However, should the county elect to repeal the ordinance created by Ch. 25518, there would be no law requiring the municipalities to compensate the collector for his services to them. Attorney General Opinions 073-77 and 073-191. It should be noted that the foregoing statement would also be true of the assessor's office, should the county elect to repeal the ordinance prior to January 1, 1974.

Although the point is not directly raised by your question, I believe it is appropriate here to mention the effect of Ch. 73-173, Laws of Florida, passed during the same legislative session as Ch. 73-172, *supra*. Chapter 73-173, unlike Ch. 73-172, applies both to the assessor and to the collector. It deals with the subject of personal compensation to the assessor and collector, as distinguished from the compensation to their offices discussed above. The act prescribes a standardized salary schedule for both offices, and in §10 [§145.17, F. S.], dictates that such salary is to be the exclusive manner of personal compensation for such officers. The effective date of the act is October 1, 1973. Chapter 73-172 provided for an earlier effective date for salary changes of the assessors; however, Ch. 73-173, being the last expression of the legislature, will control concerning the effective date of salary changes. *See* AGO 073-280. Therefore, from and after that date any special or general act of local application which may provide any other personal compensation to either the assessor or the collector of Pinellas County is repealed. Section 13, Ch. 73-173. However, since the act has no retrospective application, either official will remain entitled to any personal compensation available under an existing enactment for work completed thereunder prior to October 1, 1973. Attorney General Opinion 073-368.