

currently existing and valid, with its source of tax revenues being prescribed in §8 of Ch. 72-360, *supra*.

The distribution formula set forth in §200.132, *supra*, must be construed in light of the change in the source of tax revenues deposited in the trust fund. This requires that the bracketed reference in §200.132 to the revenue derived from the additional tax imposed under §210.026 be construed to refer instead to the two seventeenths fraction of "the cigarette tax imposed by Section 210.02, less the service charge provided for in Section 215.22" Section 8 of Ch. 72-360, *supra*.

That portion of §200.132, F. S. 1971, which enumerates the qualifications which must be met before a municipality is entitled to participate in trust fund distributions does not appear to be affected by the subsequent enactment of Ch. 72-360, *supra*.

In regard to your specific question, I note that Art. VII, §1, State Const., prohibits all expenditures except those made in pursuance of appropriations made by law, the legislative power to appropriate state funds for state purposes being exercised only through duly enacted statutes. Attorney General Opinions 057-150, 064-162, and 071-28; State *ex rel.* Kurz v. Lee, 163 So. 850 (Fla. 1935). Article VII, §8, State Const. provides that "[s]tate funds may be appropriated to the several counties . . . [and] municipalities . . . upon such conditions as may be provided by general law."

In connection with this constitutional restriction on the use of state funds, I reemphasize the following pertinent language of §200.132(2), F. S. 1971:

(2) Amounts deposited in the municipal financial assistance trust fund are hereby *appropriated exclusively* for grants to municipalities *as provided in subsection (1)*. . . . (Emphasis supplied.)

In view of the foregoing provision, it is clear that any disbursement from the trust fund other than to a municipality which meets the qualifications prescribed in §200.132(1), F. S. 1971, would exceed the legislative appropriation provided for in §200.132(2) and, hence, would constitute an unauthorized disbursement of state funds. I conclude that any cigarette tax revenues credited to the trust fund which are not distributable in accordance with the appropriation provided for in §200.132(2), must remain in the trust fund, subject to future appropriation, disposition, or transfer by the legislature, and may not lawfully be disbursed for any other purposes.

073-314—September 5, 1973

SPECIAL DISTRICTS

POWER TO ANNEX TERRITORY

To: Allan J. Levin, Legal Counsel, Port Charlotte-Charlotte Harbor Fire Control District, Port Charlotte

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. Is an ordinance adopted by the Port Charlotte-Charlotte Harbor Fire Control District annexing land valid, and does said district come under the provisions of §171.04, F. S. ?

2. If such ordinance is valid and the fire control district is subject to the provisions of §171.04, F. S., would the county supervisor of elections have a duty to call or conduct the special election called for thereunder, and at whose expense?

SUMMARY:

Ordinance No. 73-2 of the Port Charlotte-Charlotte Harbor Fire Control District, which annexes to the district certain contiguous land containing more than ten registered electors, is not valid since a fire control district does not come under §171.04, F. S., and since there is no power of annexation in the district's creating statute.

Ordinance No. 73-2 of the Port Charlotte-Charlotte Harbor Fire Control District annexes certain contiguous land containing more than ten registered electors to the district. Attorney General Opinion 069-130 considered the question of whether a fire control district could be treated as a municipality or public municipal corporation. The special act creating the district there involved provided that the district would be a public municipal corporation. The language used in Ch. 65-1355, Laws of Florida, which created the fire control district under discussion is almost identical.

Attorney General Opinion 069-130 stated that:

It is clear from a consideration of these special acts that the district is an entity created for definitely restricted purposes and not for general community government. The single reference to its status as a public municipal corporation, *supra*, is coupled with an enumeration of specified acts which the district may perform only in order to carry out the "purpose of this act." Those purposes, in my opinion, relate primarily to fire protection, and do not encompass the ordinary functions of a municipal corporation.

Accord: Attorney General Opinion 071-305. Section 171.04, F. S., which provides municipalities with the method for annexing land which land contains more than ten registered electors, relates only to municipalities. Since the fire control district is not a municipality, it cannot annex territory under this statute.

As to the district's authority to annex territory under its creating act, the following quotation from general authorities made in AGO 069-130 is relevant:

Customarily, fire protection districts are not treated as municipal corporations. . . . Such districts possess the powers expressly granted to them by statute. . . . In most states grants of power to fire districts will be interpreted narrowly and strictly. Antieau: Local Government Law, Vol. 3A, Ch. XXX(D.). Also McQuillin, Municipal Corporations, Rev. Ed., Vol. 1, p. 403.

The powers granted to the Port Charlotte-Charlotte Harbor Fire Control District are found generally in §9 of Ch. 65-1355, Laws of Florida.

(a) No funds of said district shall be used for any purposes other than the administration of the affairs and business of said district, for the construction, care, maintenance, upkeep, operation, and purchase of fire fighting equipment or a fire station, installation of fire hydrants, payment of public utilities such as electric lights and water, payment of salaries of a fire chief and assistant fire chief and one (1) or more fireman, as the board of commissioners may from time to time determine to be necessary for the operations and effectiveness of said district.

(b) The board of commissioners of the district are hereby authorized and empowered to buy, own, and maintain a fire department within the district, and to purchase, acquire by gift, own and dispose of fire fighting equipment and property, real or personal that the board may from time to time deem necessary or needful to prevent and extinguish fires within said district.

Neither Ch. 65-1355, *supra*, nor Ch. 67-1197, Laws of Florida, which amended

Ch. 65-1355 mentions the power to annex additional territory. Therefore, it must be held that, since the district is not a municipal corporation, and since it has only those powers specifically given to it by the legislature, or necessarily implied in order to carry out those powers, said district cannot annex any additional territory either under §171.04, F. S., or under its creating statute.

Since question one is answered in the negative, there is no need to consider question two.

073-315—September 5, 1973

MARRIAGES

DEFINITION OF "REGULARLY ORDAINED MINISTER"

To: *Claflin Garst, Jr., Manatee County Court Judge, Bradenton*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

QUESTION:

What is meant by the term "regularly ordained minister" as it is used in §741.07, F. S.?

SUMMARY:

The definition of the term "regularly ordained minister" as it is used in §741.07, F. S., is solely dependent on the several religious societies. Thus, if a religious society has determined that a particular individual is an ordained minister under its creed, then that person may solemnize marriages pursuant to said §741.07, and all marriage licenses issued in this regard should be handled as provided for in §§382.23, 382.24, and 741.09, F. S.

Section 741.07, F. S., provides that:

All regularly ordained ministers of the gospel or elders in communion with some church . . . may solemnize the rights of matrimonial contract, under the regulations prescribed by law.

The manner in which the relation of minister, pastor, priest, or rabbi is created depends upon the rules of the particular congregation or denomination. [See] 66 Am. Jur. 2d *Rel. Soc.* §22; AGO 049-379, Aug. 15, 1949, Biennial Report of the Attorney General, 1949-1950, p. 567 and AGO 050-89, Feb. 22, 1950, Biennial Report of the Attorney General, 1949-1950, p. 568. A religious or church society is a voluntary organization whose members are associated not only for religious exercises, but for the purpose of maintaining and supporting its ministry, providing the conveniences of a church home, and promoting the growth and efficiency of the work of the general church. *First Independent Missionary Baptist Church of Chosen v. McMillan*, 153 So. 2d 337 (2 D.C.A. Fla., 1963); 28 Fla. Jur. *Religious Societies* §§2 and 5; 66 Am. Jur. 2d *Religious Societies* §1.

It is generally recognized—so long as a professed creed is not subversive of the peace and good order of society—that it is not within the province of any department of the government to settle differences in creeds or to determine what ought or ought not to be a fundamental of religious beliefs, except so far as is necessary to protect the civil rights of persons and to preserve the public peace. *State ex rel. Singleton v. Woodruff*, 13 So.2d 704 (Fla. 1943); 6 Fla. Jur. *Const.* §239; 66 Am. Jur. 2d *Religious Societies* §31.

In view of the above, it is my opinion that the definition of "regularly ordained minister" under §741.07, F. S., is solely dependent on the several religious