

073-272—August 13, 1973

COUNTIES

SEPARATE REFERENDA TO APPROVE SPECIAL ACT AND BONDS ISSUED THEREUNDER

To: Tom Callen, Senator, 24th District, Bradenton

Prepared by: J. Kendrick Tucker, Assistant Attorney General

QUESTION:

Must there be another referendum pursuant to Art. VII, §12, State Const., before bonds may be issued when the electors of a county have approved, by referendum, a special act authorizing the establishment and operation of a county free public library service and authorizing the issuance of bonds to finance capital improvements therefor secured by a pledge of ad valorem taxes?

SUMMARY:

A referendum called and held for the purpose of adopting a special act providing for the establishment and operation of a county free public library service and authorizing in general terms the issuance of bonds to finance capital improvements therefor secured by a pledge of ad valorem taxes is sufficient to approve the special act and to make the same an effective law; but the bonds authorized to be issued for such purposes by such special law cannot be issued without approval of the electors of the county in a separate bond referendum duly called and held for that purpose following the adoption of said special act as an effective law.

Your question is answered in the affirmative.

It is settled authority that counties and districts possess no inherent authority to issue bonds, *State v. Broward County*, 126 So. 491 (Fla. 1930), and that provision of statutes authorizing the issuance of bonds must be strictly complied with. *State v. City of Pompano*, 188 So. 610 (Fla. 1938).

Chapter 71-760, Laws of Florida, is a grant of power to the County of Manatee to issue bonds for certain purposes and to levy an ad valorem tax to repay the bonds. The act provides in pertinent part as follows:

Section 2. The Board of County Commissioners of Manatee County may establish, operate, and maintain a free public library or free public library service for Manatee County

Section 10. When the Board of County Commissioners of Manatee County shall have determined . . . to establish . . . a Free Library . . . the said Board of County Commissioners is authorized to levy an annual tax, in the same manner and at the same time as other county taxes are levied

Section 12. *The Board of County Commissioners of Manatee County is hereby authorized to issue bonds for the purpose of paying for capital improvements for the Free Public Library or Free Library Service.* (Emphasis supplied.)

Section 15. This act shall take effect only upon its approval by a

majority of the duly qualified electors voting in a referendum election The question shall be placed on the ballot at such election as follows:

For: Authorization for the adoption of the Manatee County Free Public Library Act and for the Creation of a Manatee County Library Board.

Against: Authorization for the adoption of the Manatee County Free Public Library Act and for the Creation of a Manatee County Library Board.

You have stated in your letter that the said Ch. 71-760 became law upon approval of a majority of qualified electors in November of 1972. That being the case, the county has the authority to issue the bonds pursuant to Ch. 71-760. In addition, a county has the authority to issue bonds for construction of libraries pursuant to §125.01(1)(f) and (r), F. S., and for the erection of public buildings under §130.01, F. S.

However, pursuant to Art. VII, §12, State Const., counties may issue bonds in such instances as the one referred to in your letter only after approval by vote of the electors in the county. Article VII, §12 provides:

Counties . . . may issue *bonds*, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) *to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation* (Emphasis supplied.)

In *State v. City of St. Augustine*, 235 So.2d 1 (Fla. 1970), the court held that Art. VII, §12, *supra*, is self-executing and that any statute in conflict with said §12 is inoperative and invalid to the extent of such conflict. Furthermore, in *State v. County of Dade*, 234 So.2d 651 (Fla. 1970), the court found the present §12, *supra*, to be more restrictive than similar provisions in the Constitution of 1885 and that certain exceptions under the Constitution of 1885 allowing the issuance of bonds to finance essential government requirements without a referendum would no longer be constitutionally permitted. The issuance of bonds, supported by ad valorem tax levy, by a county without approval by referendum of the electors in the county is invalid. *State v. County of Dade*.

As to whether a referendum approving a special act might also be deemed to approve the issuance of bonds pursuant to that act, §100.341, F. S., appears to preclude this result:

The ballots used in bond elections are on plain white paper with printed description of the issuance of bonds to be voted on as prescribed by the authority calling the election. *A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots in connection with the question "For Bonds" and "Against Bonds."* (Emphasis supplied.)

Section 130.03, F. S., provides that bond referendums are to be held pursuant to §100.341, F. S., and other relevant sections of Ch. 100, F. S. The ballot as provided in Ch. 71-760, *supra*, does not meet the statutory requirement of Ch. 100. In addition, the ballot appears not to give proper notice to the electorate that they are called upon to approve or disapprove an issue of bonds or the amount, interest rate, or term thereof. Elections, generally, are invalid when held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained. *State v. Dade County*, 39 So.2d 807 (Fla. 1949). In an election, a voter should not be misled and he must have an

opportunity to know and be on notice as to the proposition on which he is to cast his vote. *Hill v. Milander*, 72 So.2d 796 (Fla. 1954). Furthermore, two separate and distinct propositions united in one proposition may not be submitted to the voters in one ballot.

... “[I]f there are two or more separate and distinct propositions to be voted on, *each proposition should be stated separately and distinctly, so that a voter may declare his opinion as to each matter separately*, since several propositions cannot be united in one submission to the voters so as to call for one assenting or dissenting vote upon all the propositions; *and elections are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained.* . . . ” [*Antuono v. City of Tampa*, 99 So. 324 (Fla. 1924). (Citation Omitted.)] (Emphasis supplied.)

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TAXATION

SALES TAX ON CHARGES BY ADVERTISING AGENCY

To: *Granville H. Crabtree, Jr., Representative, 73rd District, Sarasota*

Prepared by: *J. Kendrick Tucker, Assistant Attorney General*

QUESTION:

Are sales taxes due on charges made by advertising agencies?

SUMMARY:

The sale of advertising material is the sale of tangible personal property and hence taxable under the sales tax law; the sale of an advertising agency's services is taxable pursuant to the sales tax law only when tangible personal property is sold to the customer along with the services of the agency.

Your question is answered in the affirmative with the exceptions as noted below.

Section 212.05, F. S., provides in pertinent part as follows:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state

It is held in Florida that the sale of advertising material is a sale of tangible personal property and taxable within the sales tax law. *United States Gypsum Company v. Green*, 110 So.2d 409 (Fla. 1959).

The Department of Revenue, pursuant to its rulemaking authority as prescribed in §§212.17(6) and 212.18(2), F. S., has issued regulations providing for the sales tax treatment of advertising materials and advertising charges. Rule 12A-1.34, Florida Administrative Code [F.A.C.], provides in pertinent part with regard to the sale of advertising materials as follows:

(1) Upon final sales to ultimate consumers of direct mail advertising pieces, circulars, hand-outs, throw-aways and similar advertising matter, the dealer shall collect the sales tax upon the selling price thereof from his purchaser.

(2) Advertising pieces, circulars, hand-outs and similar advertising matter are taxable.