

to purchase past service for employees by amortizing such payments over a period of years, do not conflict with applicable constitutional prohibitions. Therefore, the administrator is not in violation of the law by crediting the accounts of such employees as if the past service had been paid in full.

AS TO QUESTION 2:

Employees of city and special districts which elect not to purchase past service for employees are entitled to purchase past service credits individually by payment of the required contributions prior to retirement. *See*, §121.081(1)(b), F. S.; Rule 22B-2.03, 22B-3.02, 22B-3.04, Florida Administrative Code. Although a participating employee may make annual payments for his past service, he is only credited with the years of past service for which he has made the total required payments. Since the employee is credited only for the years of past service for which annual payments have been made, no credit is extended and the prohibition against lending the credit of the state to private individuals is likewise inapplicable.

073-373—October 3, 1973

TAXATION

**INTANGIBLE TAX LIABILITY ON INVESTMENT CONTRACTS
FOR SALE OF CATTLE**

To: Lamar Jenkins, Suwannee County Tax Assessor, Live Oak

Prepared by: Harold F. X. Purnell, Assistant Attorney General

QUESTION:

May "investment contracts" registered with the Florida Division of Securities pursuant to Ch. 517, F. S., which pass actual title to cattle, be taxed as intangible personal property pursuant to Ch. 199, F. S.?

SUMMARY:

Investment contracts, registered with the Florida Division of Securities pursuant to Ch. 517, F. S., which pass actual title to cattle, are not taxable as intangibles pursuant to Ch. 199, F. S. Any promissory notes utilized to purchase such cattle, however, would constitute taxable intangibles. The county tax assessor's office may validly levy ad valorem taxes against the cattle as inventory to the owners thereof.

From the file which you forwarded with your opinion request, it appears that a Florida cattle ranch seeking to raise additional capital funds has offered for sale to Florida residents "investment contracts" covering several hundred head of cattle. Such investment contracts are made up of a "sales agreement" and a "service contract." Under the sales agreement, title to the cattle is passed to the purchaser for a monetary consideration which includes both the sale price as well as the fee for maintaining the cattle at the ranch for the first year. The purchaser is also invited but not required to enter into the "service agreement" pursuant to which the ranch in return for an annual fee keeps and maintains the purchaser's cattle beyond the first year. Each investor must purchase a herd containing a minimum of four head of cattle, and all animals purchased are individually tagged so as to physically identify them with their particular owner.

The attractiveness of this investment scheme is not derived from the present value of the cattle but rather from the future income expectation resulting from herd growth as well as from certain potential federal tax benefits which may become available to the purchaser as an owner of cattle held for breeding purposes. Consequently, few, if any, investors can be expected to be experienced cattlemen

who will take actual physical possession of their herd. Rather, virtually all such investors can be expected to utilize the expertise of the ranch in maintaining the cattle by opting to leave their herd with the ranch pursuant to the service agreement.

Investment contracts are commonly included within the definition of the term "security" as this latter term is defined in state and federal security registration statutes. Since such securities registration statutes, on both the federal and state level, have as their primary purpose the protection of the public through the prevention of fraud, they are given a broad and liberal interpretation by the courts so as to effectuate this purpose. *Tcherepnin v. Knight*, 389 U.S. 332 (1967) and *McElfresh v. State*, 9 So.2d 277 (Fla. 1942). However, the mere inclusion of an investment contract as a security for purposes of registration does not conclusively establish the same as an intangible subject to taxation pursuant to Ch. 199, F. S. Rather, the tax status of the particular investment contract must be established within the boundaries of the statutory enactment which levies the tax, Ch. 199. *Maas Brothers, Inc. v. Dickinson*, 195 So.2d 193 (Fla., 1967).

In viewing the applicable taxing provisions of Ch. 199, F. S., certain long-established rules of statutory construction must be borne in mind. The obligation of a citizen to pay taxes is purely of statutory creation, *State v. Gay*, 35 So.2d 403 (Fla., 1948), and to validly levy the tax, the statute must impose the tax in clear and certain terms. *Lake Garfield Nurseries Company v. White*, 149 So.2d 576 (2 D.C.A., Fla., 1963). Where any doubt or ambiguity exists in the application of the statute, it must be construed most liberally in favor of the taxpayer. *State v. Dickinson*, 212 So.2d 293 (Fla., 1968).

Section 199.032(1), F. S., levies an annual one mill on the dollar tax on the just valuation of all "intangible personal property" with the exception of certain obligations secured by Florida realty. Intangible personal property is defined in §199.023(1), F. S., as "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents." Intangible personal property is also defined in §192.001(11)(b), F. S., as:

Money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

In light of the above statutes, taxation of the particular investment contracts under consideration herein depends on construing them to be a species of personal property which is not intrinsically valuable but rather which derives its value from a representative capacity. Intangibles, however, are but "legal relationships between persons," *Graves v. Schmidlapp*, 315 U.S. 657, 660 (1942), which involve "rights not related to physical things," *Curry v. McCanless*, 307 U.S. 357 (1939). Intangibles thus derive their value from the legal relationships and the incorporeal rights which the intangibles represent rather than from any intrinsic value of the intangible itself.

The investment contracts in question herein, however, would appear to have an intrinsic value as reflected in the present value of the cattle, title to which is passed to the purchaser by the sales agreement portion of the investment contract. Further, the service agreement portion of the contract appears to require payment of the service fee in advance of the performance of any of the maintenance services and thus would appear to be nontaxable as an intangible until such time as the payment of the maintenance fee is in arrears. *DeVore v. Gay*, 39 So.2d 796 (Fla. 1949) and AGO 057-198. Also, the purchaser of the investment contract is not given any voice in the management of the ranch so as to make the investment contract an evidence of ownership in a business organization. Therefore, following the fundamental rule of statutory construction that where doubt or ambiguity in a taxing statute exists it must be resolved in favor of the taxpayer, *Maas Brothers, Inc.*

v. Dickinson, *supra*, we must conclude that the investment contracts under consideration herein are not subject to taxation under Ch. 199, F. S.

We might note that the cattle ranch does have provisions permitting payment of the sales price to be made through the execution by the purchaser of a promissory note payable quarterly to the ranch over a five-year period. Nothing contained in this opinion should be construed as precluding the taxation of such promissory notes as intangibles, as such notes clearly constitute taxable intangibles within the dictates of §199.023(1)(d), F. S. Nor should anything contained herein be construed as prohibiting the levy of ad valorem taxes against the cattle as inventory to the owners thereof by the county tax assessor's office. *See* AGO 072-267.

073-374—October 8, 1973

SPECIAL DISTRICTS

AUTHORITY TO BORROW MONEY FOR LAND PURCHASE OR BUILDING CONSTRUCTION

To: Board of Supervisors, Old Dixie Fire Control District No. 2, Lake Park

Prepared by: J. Kendrick Tucker, Assistant Attorney General

QUESTION:

Does the Old Dixie Fire Control Tax District No. 2 have the authority to borrow money for purchase of land and construction of buildings?

SUMMARY:

When a special tax district is granted the power to issue and sell bonds for construction of new buildings, it may exercise that power for that purpose in strict compliance with its enabling legislation but is precluded from exercising another means of borrowing money for construction of new buildings unless that means is expressly conferred upon the district. Unless expressly granted by statute, a special tax district has no power to borrow money and such power will not be implied from a power of the district to acquire property.

Your question as stated is answered in the negative.

Special districts possess only such powers as are expressly given, or necessarily implied because essential to carry into effect those powers expressly granted. Bonds of counties or special districts are void unless there be authority to issue them and such authority must be strictly pursued. *State v. City of Pompano*, 188 So. 610 (Fla. 1938); *Halifax Drainage Dist. of Volusia County v. State*, 185 So. 123 (Fla. 1938); *State v. Johnson*, 150 So. 111 (Fla. 1933); *State v. Broward County*, 126 So. 491 (Fla. 1930); and 63 C.J.S. *Municipal Corporations* §1359.

Chapter 63-1747, Laws of Florida, authorizes the creation of fire control tax districts in Palm Beach County. Chapter 69-1421, Laws of Florida, amends Ch. 63-1747 and provides in pertinent part as follows:

Section 7(a). *For the construction of new buildings or purchase of new equipment the fire control tax districts created under the terms and provisions of this act are hereby authorized and empowered to issue and sell from time to time, their bonds . . . not exceeding one hundred thousand dollars (\$100,000) for any one fire control tax district, providing the issuance of such bonds shall have been approved by a majority of votes cast in an election in which a majority of the freeholders who are*