

In addition to the competency examination mentioned above, which a municipality may require only for registered contractors, the city may impose the same regulations as those named for certified contractors.

073-400—October 30, 1973

#### COUNTIES

#### EXPENDITURES UNDER TENTATIVE BUDGET PENDING APPROVAL TO TAX ROLL AND FINAL BUDGET

To: Alton M. Towles, Attorney, Gadsden County Commission, Quincy

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTION:

May county funds be disbursed for payroll and other operating expenses of the county in accordance with a tentative budget approved by the board of county commissioners pending final approval of the tax roll and county budget for the fiscal year that began on October 1, 1973?

#### SUMMARY:

Pending legislative or judicial clarification, county funds may be disbursed under a tentative budget duly adopted by the county commissioners in accordance with the procedure required by law, until such time as the county tax assessment roll is finally approved and its final budget is adopted.

It was ruled in AGO 062-136 that the provisions of §129.03, F. S., prescribing the procedure for the preparation of the county budget,

. . . contemplate the preparation of a tentative county budget, based on the tentative figures furnished by the county assessor of taxes under §129.03(1), F. S., and final county budget after the millages have been ascertained and fixed through the use of the equalized and final assessment valuations.

Until there is a legal final county budget duly made and adopted for each and every fiscal year, no county expenditures are authorized. This being true, expenditures made from county funds prior to the making of the final budget would seem to be illegal and unauthorized.

However, it was ruled administratively by the comptroller in 1966, following a court decision requiring counties to assess property at its "fair market value" [Walter v. Schuler, 176 So.2d 81 (Fla. 1965)], that counties could operate on a tentative budget, pending the completion of tax assessment reappraisals that could not possibly be completed prior to the time for final approval of the budget. This ruling is in accordance with the decision in Dickinson v. Geraci, 190 So.2d 368 (3 D.C.A. Fla., 1966), affirming the trial court's judgment that Hillsborough County's 1966 tax roll, prepared in accordance with the procedure followed in prior years, should be accepted by the comptroller, pending a reappraisal of the property. Noting that it was physically impossible to complete the reappraisal in time for use in preparing the 1966 tax rolls, the court quoted with approval the opinion by the late Mr. Justice Thornal in *State ex rel. Glynn v. McNayr*, 133 So.2d 312 (Fla. 1961), as follows:

We think also that within the area of discretion available to him in a mandamus proceeding, the trial judge properly denied the peremptory writ on the ground that the command of the requested writ, even if valid,

would have been physically impossible of performance in time to produce the necessary tax income needed by the governmental agencies of Dade County during the current year. In other words, even if the remedy requested by the appellants could have been granted it would have disastrously affected the operations of the government, including the school system, because of the time that would have been required and the resultant delay in obtaining essential income.

Here, it appears that the tax officials in Gadsden County have encountered difficulty and delay in complying with the requirement of §195.0012, F. S. [§2 of Ch. 73-172, Laws of Florida], that there be a "just valuation" of property for ad valorem tax purposes and a "uniform assessment as between property within each county and property in every other county or taxing district," to the satisfaction of the Department of Revenue, as required by §193.114, *id.* [§10 of Ch. 73-172.]. I understand that many other counties in the state have the same problem. While the statute no longer requires the county's budget to be submitted to the Department of Banking and Finance (prior to 1969, the comptroller) for approval, *see* §129.01, F. S., as amended by Ch. 73-349, Laws of Florida, it would seem that his administrative ruling would be equally applicable in the situation in which a county finds itself as a result of the disapproval of the tax assessor's assessment roll by the Department of Revenue and the delay in exhausting the procedures provided by law for review of the department's ruling. *See* §195.098, F. S. [added by §7 of Ch. 73-172, *supra*]. And I have the view that, pending legislative or judicial clarification, county funds may be disbursed in accordance with a tentative budget adopted in accordance with the procedure required by law, until the county's tax assessment roll has been finally approved and a final budget adopted. As noted in the comptroller's memorandum of August 5, 1966, referred to above, the circuit court clerk (acting as county auditor) should proceed with the preparation of a tentative budget in the usual manner, as provided by §129.03(2), F. S., including all estimated expenditures to operate the county for the fiscal year and estimated receipts from sources other than ad valorem tax revenues; and a statement summarizing all tentative budgets should be prepared and advertised by the board, and hearings held, as required by §129.03(2). The amount necessary to balance the budget may be shown as receipts from ad valorem taxes, although the tax millage and assessed valuations will not, of course, be known and cannot be shown on the summary statement.

073-401—October 30, 1973

#### TAXATION

#### MUNICIPAL TAX LEVY TO MEET REQUIREMENTS OF REVENUE-SHARING ACT

To: Gerald L. Brown, City Attorney, Gulf Breeze

Prepared by: Winifred L. Wentworth, Assistant Attorney General, and Walter Kelly, Legal Intern

#### QUESTION:

May a city levy an ad valorem tax on real property only at a rate of no less than three mills and meet the requirements of the Revenue-Sharing Act (Ch. 73-349, Laws of Florida)?

#### SUMMARY:

A municipal tax upon real property only would not comply with the