

Revision of occupational license tax ordinance

Number: INFORMAL

Date: January 31, 2001

Ms. Julie B. Schutta
Vero Beach City Attorney
Post Office Box 1389
Vero Beach, Florida 32961-1389

RE: MUNICIPALITIES--OCCUPATIONAL LICENSE TAXES--ORDINANCES--revision of occupational license tax ordinance by municipality. Ch. 205, Fla. Stat.

Dear Ms. Schutta:

Thank you for considering this office as a source for assistance regarding revisions to the occupational license tax ordinance of the City of Vero Beach. Attorney General Butterworth has asked me to respond to your letter.

According to your letter, the City of Vero Beach currently has an occupational license tax ordinance which it enacted pursuant to section 205.042, Florida Statutes. The ordinance contains language allowing exemptions for persons prohibited from engaging in a profession, business, or occupation unless they operate under the direct supervision of another person, individual, or corporation, and for persons who are the employees of certain businesses. The city has considered its ordinance to exempt real estate salespersons and others from these licensing requirements. You have become aware of Attorney General's Opinion 2000-01 which concluded, "the City of Sebastian may not create an exemption for real estate agents operating under a real estate broker from the city's occupational license tax." You have asked for assistance in resolving this problem.

In Attorney General Opinion 83-17, this office was asked by the city attorney for the City of Clearwater whether a real estate salesperson licensed and regulated by the state under Chapter 475, Florida Statutes, who operated under the direction, control or management of a licensed real estate broker was subject to the occupational license tax authorized by section 205.042, Florida Statutes. The opinion discussed the nature of the municipal taxing power, that is, that this power derives from Article VII, sections 1(a) and 9(a), of the Florida Constitution, rather than being a home rule power. Because a municipality has no inherent power to impose taxes, such taxing power, if it exists, must be derived from the state and strictly exercised as described in the statutory grant. In the absence of any language exempting real estate salespersons from the occupational license tax provisions of Chapter 205, the 1983 opinion concluded that a real estate salesman licensed and regulated by the state pursuant to Ch. 475, F.S., as amended, who functions under the direction, control or management of a licensed real estate broker as required by Ch. 475 and performs or renders services for and to investors and the public, is a person within the meaning of s. 205.042, F.S., and subject to the occupational licensing tax authorized by s. 205.042, F.S.

In Attorney General Opinion 2000-01, this office was again asked to consider whether a city could exempt a specific business from the occupational licensing requirement when the business is not exempted under Chapter 205, Florida Statutes. In that opinion, the City of Sebastian had enacted an occupational license tax ordinance pursuant to section 205.042, Florida Statutes. The local real estate association had asked that real estate agents operating under real estate brokers be exempted from the licensing requirements. The 2000 opinion noted that no statutory changes had been made that would alter the conclusion in Attorney General Opinion 83-17. Further, it appeared that several exemptions and partial exemptions were enumerated in the statute. Relying on the rule of statutory construction that where the Legislature has directed how a thing shall be done, it effectively operates as a prohibition against its being done in any other manner,[1] the opinion concluded that the city had no authority to create an exemption for real estate agents operating under a real estate broker from the city's occupational license tax.

Most recently, Attorney General Opinion 2000-63, considered the provisions of section 205.0535, Florida Statutes, and whether a city could decrease, for a particular classification, the rates of local occupational license taxes established in its occupational license tax ordinance. Section 205.0535 authorized the reclassification and rate structure revision of local occupational license tax ordinances by October 1, 1995. Section 205.0535(3)(a), Florida Statutes, states:

"After the reclassification and rate structure revisions have been transmitted to and considered by the appropriate local governing body, it may adopt by majority vote a new occupational license tax ordinance. Except that a minimum license tax of up to \$25 is permitted, the reclassification shall not increase the occupational license tax by more than the following: for licenses costing \$150 or less, 200 percent; for licenses costing more than \$150 but not more than \$500, 100 percent; for licenses costing more than \$500 but not more than \$2,500, 75 percent; for licenses costing more than \$2,500 but not more than \$10,000, 50 percent; and for licenses costing more than \$10,000, 10 percent; however, in no case may any license be increased more than \$5,000."

The statute recognizes that cities may find it necessary to reconsider their occupational license tax ordinances:

"After the conditions specified [for adoption of a new occupational license tax ordinance] are met, municipalities and counties may, every other year thereafter, increase by ordinance the rates of local occupational license taxes by up to 5 percent. The increase, however, may not be enacted by less than a majority plus one vote of the governing body."[2]

Thus, depending on the timing of the adoption of the City of Vero Beach's original occupational license taxing ordinance, it may be appropriate for the city to include real estate salespersons within the scope of its ordinance during its biennial review and revision under section 205.0535(4), Florida Statutes. If this is not an option, the city may wish to consider seeking a declaratory judgment pursuant to Chapter 86, Florida Statutes, for a definitive statement from the court as to its duties and responsibilities in this regard.

I trust that these informal comments will be of assistance to you in resolving this matter. I am enclosing copies of the Attorney General Opinions discussed above for your consideration.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosures: AGO's 83-17 (1983), 2000-01 (2000), and 2000-63 (2000).

[1] See, e.g., *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[2] Section 205.0535(4), Fla. Stat.