

Construction of tax statutes

Number: AGO 74-33

Date: November 05, 1998

Subject:
Construction of tax statutes

RE: STATUTORY CONSTRUCTION--TAXATION STATUTE AMENDED BY TWO ACTS OF SAME LEGISLATURE

To: Rudy Underdown, Brevard County Tax Collector, Titusville

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Has s. 145.12, F. S., been repealed in its entirety as stated under Ch. 73-349, Laws of Florida, and subsection 145.12(4) reinstated by Ch. 73-172, Laws of Florida?
2. Does the amending of s. 145.12(4), F. S., under Ch. 73-172, Laws of Florida, reinstate s. 145.12 in its entirety?

SUMMARY:

Section 218.36, F. S., as created by Ch. 73-349, Laws of Florida, has superseded former s. 145.12, F. S. 1971, with respect to the distribution of excess fees by county officials, including tax collectors and assessors.

Section 145.12, F. S. 1971, required county officials who receive fees and commissions to keep a record of, and report annually to the board of county commissioners, their receipts and expenses and the amount of their net income during the preceding fiscal year. On or before the date for filing the report, the officer was required to pay into the county general fund all money in excess of the amount to which he was entitled as annual salary under Ch. 145, F. S. Subsection (4) of this section related to tax assessors and collectors and required them to pay over to the district school board a proportionate part of the excess fees based on the proportion of the fees and commissions actually received from the district school board for assessing or collecting school taxes.

Chapter 73-172, Laws of Florida, amended subsection (4) of s. 145.12, *supra*. As amended, it requires the tax collectors and assessors to divide excess fees into a portion for each "governmental unit" paying fees and provides further that:

"Each governmental unit shall receive as its proportion of the excess fees that proportion of said excess fees that its fee payments represent of the officer's total fee income."

The effective date of this particular amendment was stated as January 1, 1974. Chapter 73-172 made no changes in the other provisions of s. 145.12. However, as noted in AGO 073-415, Ch. 73-349, *supra* -- the "Local Financial Management and Reporting Act" -- repealed s. 145.12 in its entirety and reenacted its provisions as s. 218.36, F. S. As reenacted, the provisions for the distribution of excess fees are substantially the same as those of former s. 145.12 as to county officials other than county tax collectors and assessors; and, as to the latter, they are substantially the same as subsection 145.12(4), as amended by Ch. 73-172.

I ruled in AGO 073-281 that the provisions of Ch. 73-349, *supra*, relating to the fiscal year of a county tax collector, as the latest expression of the legislative will, took precedence over conflicting provisions of Ch. 73-172, *supra*. The rationale of that opinion is equally applicable in deciding your questions. Thus, to the extent of any conflict -- and there appears to be none, except as to the effective date -- the provisions of Ch. 73-349 will control, as the latest expression of the legislative will.