

Tax collectors and bond requirements

Number: AGO 76-198

Date: November 13, 1998

Subject:
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TAX COLLECTORS--BOND REQUIREMENTS--TERM OF BOND

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QUESTIONS:

1. Can the tax collector give one bond which will satisfy both ss. 137.02 and 193.116(2), F. S. (1976 Supp.), by increasing the amount of the Governor's bond to reflect the increased money on hand as a result of municipal collection and by adding the names of the municipalities which will also be protected by the bond?
2. If one bond will suffice, what procedure should the county tax collector follow to obtain approval of the various municipalities and to determine the exact amount of the bond?
3. If one bond will not suffice, then may the tax collector give one bond under s. 137.02, F. S. (1976 Supp.), and one bond to cover *all* the municipalities in the county under s. 193.116(2), F. S. (1976 Supp.)?
4. In any event, for what period of time should the bond be purchased?

SUMMARY:

Under s. 137.02, F. S., as amended, and s. 193.116(2), F. S., as amended, the county tax collector is now required to give one bond conditioned to account for all taxes collected. The tax collector must post bond under s. 137.02 specifically conditioned to account duly and faithfully for all taxes collected by the tax collector. The amount of such bond is to be fixed by the county commission, subject to the approval by the Department of Banking and Finance as to amount and surety. A separate bond for municipal taxes, subject to approval by an affected municipality, is no longer required. The bond that is given should be purchased for, and the term of the bond should coincide with, the term or the unexpired term of office of the individual incumbent tax collector. In cases of ad interim appointments until the office is filled at the next general election, the term of the bond should coincide with such ad interim term of office.

Your questions are answered by the discussion below.

AS TO QUESTIONS 1, 2, AND 3:

Chapter 76-140, Laws of Florida, effective June 15, 1976, addresses the issues which you have presented.

Section 1 of Ch. 76-140, *supra*, adds a new provision to s. 137.02, F. S., requiring the tax collector to give bond in a sum to be fixed by the county commission, subject to the approval of the Department of Banking and Finance as to amount and surety. This new provision states: "The bond shall be specifically conditioned to account duly and faithfully for *all* taxes collected by the tax collector." (Emphasis supplied.) In fixing the bond, the county commission is required to take into consideration the amount of money likely to be in the custody of the tax collector at any one time. Section 137.02.

Section 2 of Ch. 76-140, *supra*, deletes the former provision in s. 193.116(2), F. S., dealing with the requirement that the county tax collector post a sufficient surety bond approved by the municipality, conditioned to account duly and faithfully for the municipal taxes. The title of Ch. 76-140, in pertinent part, reads: "removing the requirement for a separate bond for municipal taxes." When an amendatory act purports to set out the original section of a statute as amended, any matter which was in the original section, but is not in the amendatory section, is repealed by omission. See AGO 071-395; 82 C.J.S. *Statutes* s. 294, p. 504.

The tax collector need only give one bond conditioned to account for all taxes collected, and there is no requirement that approval be given by the municipalities. Your third question does not need to be addressed since it was contingent upon a negative answer to the first question.

AS TO QUESTION 4:

Your fourth question concerns the period of time for which the tax collector's bond should be purchased. Section 137.01, F. S., provides that:

"Each of the county officers of whom a bond is or shall be required by law, shall . . . give bond . . . conditioned for the faithful performance of the duties of his office."

The term of office of the county tax collector and the cycle thereof are established by the Florida Constitution and various statutes; vacancies in office are filled for unexpired terms by appointment or election as therein prescribed. See s. 1(f), Art. IV, and s. 5, Art. VI, State Const.; ss. 100.031, 100.041, and 114.04, F. S. I conclude, therefore, that the bond should be purchased for, and the term of the bond should coincide with, the term or unexpired term of office of the individual incumbent tax collector, *i.e.*, for the length of the term or unexpired term to which he has been duly elected or appointed. In cases of ad interim appointments until the office is filled at the next general election, the term of such bond should coincide with such ad interim term.