Taxation and local sales ,cigarette , alcohol tax

Number: AGO 74-131

Date: November 04, 1998

Subject:
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RE: TAXATION--LOCAL SALES--CIGARETTE, OR ALCOHOL TAX IMPERMISSIBLE

To; Charles L. Nergard, Representative, 76th District, Tallahassee

Prepared by: Winifred L. Wentworth, Assistant Attorney General, and David M. Hudson, Special Assistant Attorney General

QUESTION:

May a sales tax, cigarette tax, or alcohol tax be imposed at the local level to finance a local hospital expansion program?

SUMMARY:

There is no general law authorization for the imposition of a sales, cigarette, or alcohol tax at the local level; and without such authorization they are prohibited by Art. VII, ss. 1(a) and 9(a), State Const.

Your question should, in my opinion, be answered in the negative under current statutes.

Article VII, s. 1(a), State Const., provides:

"(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. *All other forms of taxation shall be preempted to the state except as provided by general law.*" (Emphasis supplied.)

Article VII, s. 9(a), State Const., provides in pertinent part that the designated local governments "may be authorized by general law to levy other [excise] taxes. . . ."

Under the current statutory framework, there is no general law authority for local governmental bodies to levy a sales tax, except for the "grandfather clause" provision of s. 212.081(3)(b), F. S., which provides in pertinent part:

"[N]o municipality shall levy any excise tax upon any privilege, admission, lease, rental, sales, use or storage for use or consumption which is subject to a tax under this chapter unless permitted by general law, provided, however, that this provision shall not impair valid municipal ordinances which are in effect and under which a municipal tax is being levied and collected on July 1, 1957."

Accord: Section 212.04(2)(c), F. S.; and City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1 (Fla. 1972).

Likewise, there is no general law authorization for local governmental bodies to impose a cigarette tax or alcohol tax. *See also* AGO's 073-20 and 073-64. Section 210.03, F. S., specifically provides: "No municipality shall, after July 1, 1972, levy or collect any excise tax on cigarettes." *Accord*: Section 561.342(3), F. S.:

"(3) No tax on the manufacture, distribution, exportation, transportation, importation, or sale of such [alcoholic] beverages shall be imposed by way of license, excise, or otherwise by any municipality, anything in any municipal charter or special or general law to the contrary notwithstanding."

The prohibition of Art. VII, ss. 1(a) and 9(a), State Const., against the levy of a sales, cigarette, or alcohol tax without authorization by general law also applies to noncharter and charter counties. *See* Art. VIII, s. 1(f) and (g), State Const.; and State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972).