Definition of governmental units

Number: AGO 74-71

Date: November 06, 1998

Subject:
Definition of governmental units

RE: TAXATION--DEFINITION OF "GOVERNMENTAL UNITS" IN PART III, CH. 218--DISTRIBUTION OF EXCESS FEES

To: Rudy Underdown, Brevard County Tax Collector, Titusville

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTIONS:

1. What units of government are included in the language, "governmental units," as used in s. 218.36(2), F.S. (s. 2, Ch. 73-349, Laws of Florida)?

2. What is the proper basis for the calculation of the distribution of excess fees pursuant to s. 218.36(2), F.S.?

3. Shall other remuneration (than that distributed as set forth in question 2), which is received by and paid into the tax collector's office, be paid into the county general fund pursuant to s. 218.36(2), F. S.?

SUMMARY:

Under Ch. 73-349, Laws of Florida [s. 218.36(2), F. S.], as administratively construed by the Department of Revenue, the language "governmental unit" is defined as a county, municipality, or special district. Any excess fees should be distributed based on the fees paid by such governmental units in proportion to the total fees collected. When the excess fees so distributed do not equal the total excess money on hand due to the payment of a portion of the total fees by units of government, such as state agencies, which are not within the definition of governmental units, that excess should be paid over to the county general fund.

AS TO QUESTION 1:

The Division of Ad Valorem Tax of the Department of Revenue, on January 9, 1974, issued a memorandum to all tax collectors and county assessors on the subject of "Dividing and Distributing Excess Fees on Hand January 1, 1974, pursuant to s. 2 (s. 218.36, F. S.) of Ch. 73-349, Laws of Florida." That memorandum construed the language of Ch. 73-349, *supra*, as it relates to the questions you have asked. The construction of a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight and a court generally will not depart therefrom except for the most cogent reasons and unless the

construction is clearly erroneous. Daniel v. Florida State Turnpike Authority, 213 So.2d 585 (Fla. 1968); Miller v. Brewer Co. of Florida, 122 So.2d 565 (Fla. 1960). This being the law, the construction given by the Department of Revenue is conclusive until the courts indicate otherwise.

The memorandum states that: "A governmental unit is defined as a county, municipality or special district."

Thus a "governmental unit" is construed to be synonymous with "unit of local government" as set out in s. 218.31(1), F. S., and as used throughout Part III of Ch. 73-349 (Part III, Ch. 218, F. S.), *supra*. Such a definition would not include departments or divisions of state government such as the Division of Motor Vehicles or the Department of Revenue, but would include all units of local government and special districts [as defined in s. 218.31(5), F. S.]. See AGO 074-17.

AS TO QUESTIONS 2 AND 3:

The memorandum of the Division of Ad Valorem Tax of the Department of Revenue sets out the proper method for calculation of distribution of excess fees as follows in a clear and self-explanatory manner:

"In some instances the amount distributed to the governmental units (as defined) based on the fees paid by such government unit in proportion to the total fee income will not equal the total excess money on hand January 1, 1974. This is the result of state agencies paying some portion of the total fees but not sharing in the excess because such agencies are not included in the definition of governmental unit. In such cases the balance of the excess money, after the division and distribution pursuant to the above quoted provision, should be paid over to the county general fund pursuant to s. 2 [218.36(2), F.S.]. Ch. 73-349, supra, which provides the following:

On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he is entitled under the provisions of Ch. 145;. . .

An example is given assuming the following facts: (1) total fee income was $100,000.00; (2) excess fees on January 1, 1974, were $10,000.00; (3) the county, municipality and special districts A, B, & C are the governmental units concerned.

	% of total fee income	dollar amount of fees paid
County	65%	65,000.00
Municipality	0%	0.00
Special Dist. A	5%	5,000.00
Special Dist. B	5%	5,000.00
Special Dist. C	5%	5,000.00
State Agencies	20%	20,000.00
Total		100,000.00

Distribution of excess fees to governmental units.

County 65% 6,500.00
Municipality 0% 0.00
Special Dist. A 5% 500.00
Special Dist. B 5% 500.00
Special Dist. C 5% 500.00

Total amount distributed based on % of
fees paid in proportion to total fee
income 8,000.00

Amount of Excess Fees $10,000.00
Amount of Excess Fees distributed 8,000.00

Difference $ 2,000.00

The difference of $2,000.00 would be paid to county general fund pursuant to the first part of s. 2 [218.36(2), F.S.] , of Ch. 73-349, supra, quoted above."