Article IV, §9, State Const. 1968. provides:

> There shall be a game and fresh water fish commission, composed of five members appointed by the governor for staggered terms of five years, The commission shall exercise the non*judicial powers of the state with respect to wild animal life and fresh water aquatic life, except that all license fees for taking wild animal life and fresh water aquatic life and penalties for violating regulations of the commission shall be prescribed by specific statute.

This is an amended version of Art. IV, §30, State Const. 1885. The LS85 Constitution article delineated in more detail the authority of the commission, specifically listing certain of its powers, including the authority of its director in personnel matters.

The 1968 constitutional provision, if anything, broadened the power of tin* commission, by assigning **to** it all of the "nonjudicial" **powers** of the state with respect to wild animal life and fresh water aquatic life. This sweeping language was absent from the 1885 Constitution.

Black's Law Dictionary defines "judicial power" as: "The authority exercised by that department of government which is charged with declaration *of* what law is and its construction, [citation] The authority vested in courts and judges, as distinguished from the executive and legislative power." [citation]

It is apparent, then, that by retaining all nonjudicial powers the commission retained all administrative and legislative powers inherent in the operation of government. It should be noted we are not talking about mere ‘‘legislative-type" or “administrative-type” powers of an administrative agency. We are talking about all the nonjudicial powers of the state.

This constitutional agency has, w'ithin its specified area, replaced the legislature as the representative of the people. The legislative branch is powerless to mandate policy to this commission contrary to its wishes .save in the two specific areas excepted in the Constitution: the amount of license fees and the penalties for violating regulations.

In all other matters having to do with “wild animal life and fresh water aquatic life" in this state, the commission’s decisions are the law, the legislature notwithstanding. See Beck v. Game and Fresh Water Fish Comm., Fla. 1918, 33 So.2d 594; State ex *rel.* Griffin v. Sullivan, Fla. 1947, 30 So.2d 919. The new wording does not change the reasoning of these cases. If the commission decides, for instance, it wants to collect money from the public by means other than license fees or fines, it is apparently free to do so without legislative approval. (There is some legal doubt whether even Art. VII, §1, State Const. 1968 prohibits the commission from levying taxes, since it stands in the shoes of the legislature. This opinion does not rule on this point, however.) Should the commission decide it shall spend this money collected on a new office building for its operations, then presumably it is free to do so without more. It need not follow the budgeting or legislative appropriation process the rest of government follows: See AGO 058-289. Should the commission decide it needs more employee slots at higher pay with special higher per diem expense

accounts, no authority of the State Personnel Division can interfere. See AGO 070-34; AGO 068-32. Its employees, further, have no appeal rights to the State Career Service Commission, as all other state employees have. To summarize the situation, the commission "is a law unto itself," in the areas of wild animal and fresh water aquatic life, and no statute of the legislature could prescribe otherwise.

This office, in following the above clear law of the Constitution, with its attendant court and prior Attorney General rulings, does not necessarily adopt the policy implicit in such law and rulings. We are morels following the Constitution of the state. It would seem to this office that the orderly processes

of government would be better served, as a policy matter, if the usual budgeting and personnel procedures of all other agencies of government were applied to this agency. Such a determination would have to be made by the people, however, in amending their constitution.

072-42--February 9, 1972

HOMESTEAD EXEMPTIONS

EXTENT OF EXEMPTIONS FOR DISABLED EX-SERVICEMEN WHEN DISABILITY NOT SERVICE CONNECTED

To: Homer C. Fletcher, Indian River County Tax Assessor, Vera Reach

Prcftared by: Winifred I.. Wentworth, Assistant Attorney General and David Hiidson. l.ef>a! Intern

QUESTIONS:

1. Is a disabled ex-serviceman entitled to an exemption from taxation under §196.202, F. S., when his present disability was incurred after his service in the armed forces?
2. Would this individual be entitled to any further exemption under §196,081, F. S.?
3. Would this individual be entitled to any further exemption under Art. VII, §6(c), State Const. 1968?

SUMMARY:

A totally and permanently disabled resident is entitled to tax exemption for property to the value of 8500 under §196.202, F. S. Unless the disabling injury of an ex-serviceman is "service connected," he would not qualify for an exemption under §196.081, F. S. Additional exemptions for disabled persons under Art. VII, §G(c), State Const. 1968, have not been implemented by statute.

In AGO 069-133 my predecessor in office concluded that a totalis disabled |x*rson is entitled to a five hundred dollar exemption under §196.191(7).

K. S.,, even though disability was nonservice connected.

Chapter 71-133, Laws of Florida, repealed 5196.191, F., and added §196.202, K. S., which reads: "Property to the value of five hundred dollars of every ... totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation." This section provides for essentially the same exemptions which had been established in 5196.191(7), F. S.: "Property to the value of five hundred dollars to ev ery .. . person who is a bona fide resident of the state and has... been disabled ... by misfortune."

Therefore, it is my opinion that a disabled ex-serviceman is entitled to a five hundred dollar exemption under 5196.202, F. S,, even when said disability was incurred after his service in the armed forces.

Your second question is answered in the negative. Section 196.081(1), F. S., reads:

> (1) Any real estate used and owned as a homestead by an ex-serviceman, honorably discharged with *service connected* total and permanent disability ... shall be exempt from taxation. (Emphasis supplied.)

Even though the individual is an ex-serviceman and has been totally and permanently disabled, he would not qualify for tire exemption in 5196.081 unless

the injury is "service connected," which I assume would not he the case if disability was "incurred after his service."

Your third question must also be answered in the negative. Article VII, 56(c), State Const. 1968, concerns homestead exemptions and states:

> By general law and subject to conditions specified therein, the exemption may be increased up to an amount not exceeding ten thousand dollars ... if the owner has attained age sixty-five or is totally and permanently disabled.

This provision has been partially implemented by 5196.031(3), F. S., to provide the increased exemption for persons who are sixty-five years of age or older. To date, the provision for an increase in exemption for disabled persons has not been implemented by law,

072-13—February 9, 1972

CONSTITUTIONAL I.AW

LOCAL BILL CREATING MISDEMEANORS WITHOUT ESTABLISHING PUNISHMENT NOT UNCONSTITUTIONAL UNDER ART. III. 511(a)(4), STATE CONST.

To: Cr/i/ S*picola. Representative. H2mi District. Tallahassee*

Prepared hi/: Kenneth F. Hoffman. Assistant Attornei/ General

OVFSTION:

Does Article 111, §11(a)(4), Slate Conti. 1968, which prohibits special lass's or lass* of local application pertaining to punishment for crimes also prohibit lasss of local application creating misdemeanors. but do not establish a punishment, leasing that aspect to general law?

SUMMARY:

A pollution control statute of local application which creates misdemeanors, but does not establish a punishment, would not he in violation of Art. 111. §11(a)(4), State Const. 1968. Punishment for violation of the statute would he provided for under §775.082, F. S,

Iti my opinion, such a statute as you propose would not he in violation o| Art. III. 411(a)(4), State Const., and would therefore be a valid exercise of legislative authority.

Article III. §20, State Const. 1885 prohibited local laws "lor the punishment of crime or misdemeanor." litis language has been retained in Art. Ill, 411(a)(4), State Const. 1968, without the word "misdemeanor." However, since new 4775.08, F. S, (Ch. 71-136, Laws of Florida), includes misdemeanors within the definition of crimes, there is no legal difference between the 1885 and 1968 Constitutional provisions Therefore, decisions rendered by the courts interpreting Art. Ill, 420, State Const 1885, would be directly applicable to the interpretation of Art. III. 411(a)(4), State Const. 1968.

In Dehnonico v. State, Fla. 1963. 15.5 So.2d 365. the Florida Supreme Court stated at page 371, footnote 11:

Invalidation of penal provisions in such statutes as that at bar, under Section 20. Article III, Fla. Const, prohibiting local laws "for the punishment of crime or misdemeanor" would not under our decisions prevent imposition of a penalty prescribed by valid general law tor such

offenses. Douglas v. Smith, 55 Fla 460, 63 So. 844; Harper v. Calloway, 58 Fla. 255. 51 So. 226. 26 L.H.A., N.S., 79-1. *Cf.* Snowden v. Brown, 60 Fla. 212, 53 So 548. F. S Sec. 775.07, F.S.A.

In Jannctt v. Windham, Fla. 193), 147 So. 296, re/i. *dm.* Fla. 19)5, 153 So, 784, *aff'd* 290 U.S. 602, the court has held, at 296:

...If the act is not a general law, the violation of the regulations of a special or local law may he made u misdemeanor, and the punishment therefor may be imposed under the general law, section 7104 (5005), Compiled General Laws, providing for the punishment in cases where the punishment prescribed in a local law in [sic] invulid under section 20, Article 3, Constitution, or is otherwise invalid, (citing cases)

Sec also Taulty v. Hobby. Fla 1954, 71 So.2d 489; Lynch v. Durrance. Fla. 1965. 77 So .2d 455; Beasley v. Gaboon, Fla 1933. 147 So. 288

These cases make it clear that statutes of local application may create a definable misdemeanor, so long as punishment is not also prescribed within the statute. This is true so long as a law of general application exists which provides for a punishment for misdemeanors. In the *Delmonico* case, the statute applied was §775,07, F. S., which provided:

> The punishment for commission of crimes other than felonies in this state, when not otherwise provided by statute, or when the penalty provided by such statute is ineffectual because of constitutional provisions, or because the same is otherwise illegal or void, shall be a fine not exceeding two hundred dollars, or imprisonment not exceeding ninety days; and where punishment by fine alone is provided the court may, in his discretion, sentence the defendant to serve not exceeding sixty days in default of the payment of the said fine.

That section or its predecessors were cited by the court in all of the above opinions. In 1971, however, the legislature, at §6 of Ch. 71-136, Laws of Florida, repealed §775.07, F. S. In its place, the legislature enacted new §§775.081, 775.082 and 775.083, F. S., which are pertinent to the problem of punishment for misdemeanors.

Section 775.081, F. S., provides in part:

> (2) Misdemeanors are classified, for the purpose of sentence and for any other purpose specifically provided b\ statute, into the following categories:
> (a) Misdemeanor of the first degree
> (b) Misdemeanor of the second degree.
>
> A misdemeanor is of the particular degree designated by statute.
> Any crime declared by statute to be a misdemeanor, without specification of degree, is of the second degree.

Section 775,082(3), F. S,, entitled “penalties for felonies and misdemeanors," declares:

> (3) A iverson who has !>een convicted of a designated misdemeanor may be sentenced as follows:
> (a) For a misdemeanor of the first degree, by a definite term of imprisonment in the county jail not exceeding 1 year;
> (b) For a misdemeanor of the second degree, by a definite term of imprisonment in the county jail not exceeding 60 days.

Coder §775.083 (Ch. 71-136, Laws of Florida), criminal penalties in the form of fines must be specifically designated by statute. However. Art. Ill,

§11(a)(4), State Const, 1968, prohibits the designation of punishment in laws of local application. It follows, therefore, that the only law of general application which now provides for punishment for misdemeanors is the new §775.082, F. S.. which provides for imprisonment.

Unfortunately, the pollution control law of general application in Florida,

i,h, "tud, r, a., clot's not now contain provisions tor criminal penalties. It is my opinion that should this- statute contain criminal penalties, pollution control statutes of local application could utilize the punishments provided for therein.

Until such time as a change in that statute is enacted, however, a pollution control statute of local application which prohibits certain acts, and makes such acts misdemeanors, would be constitutional, and punishable under 5775.082, F. S. Such a statute should, of course, classify the misdemeanor as to first or second degree, but failure to do so, as explained above, would result in the misdemeanor being considered of the second degree.

072-44— February 9, 1972

TAXATION

PENALTIES FOR DELINQUENCY FOR NONPAYMENT OK INTANGIBLE TAXES-INTEREST NOT ALLOWABLE-PENALTIES MAY BE WAIVED

To: /. Ed Strauuhn. Executive Director. Deixirtment of Revenue. Tallahassee

Prepared hip Winifred I. Wentworth, Assistant Attorney General

QUESTIONS:

1. Under the new intangible tax statute [Ch, 71-134, Laws of Florida], what penalties may be imposed IOT delinquent or unpaid taxes due after Jan. 1, 1972?
2. In back-assessments, which penalties apply to taxes collected for the period before Jan. 1, 1972?
3. May interest be included in the assessment of penalties?
4. Which penalty and interest provisions may be waived by the Department of Revenue?

SUMMARY:

Section 199.052(8), created by Ch. 71-134, delineates those intangible tax penalties to be imposed after Jan. 1. 1972. Penalties under F. S, 1969, appear to be abated by Ch. 70-243. Penalty provisions of Ch. 70-243, not being repealed, are valid and binding as provided. No interest may be levied administratively by the department pursuant to Ch. 71-134. The department has the power to waive penalties prescribed by Ch. 71-134.

Questions 1, 2, and 4 are answered as discussed herein and question 3 in the negative. Attorney Ceneral Opinion 072-45 discusses generally the implementation of other aspects of Ch. 71-134.

AS TO QUESTION 1:

Section 199.052(8), created by Ch. 71-134, Laws of Florida, prescribes the applicable penalties as follows:

(a) Filing returns or paying all or any portion of tax as shown on the return after the due date shall require a delinquency penalty of 5 percent for each month, or portion thereoi, on *the amontit*

of tax delinquent l>ut not In exert'd 2-5 *pereent of the total tax* levied against the property covered by that return. (Emphasis supplied.)

The delinquency provision applies to the total fas not paid, but not to ev ceed 25 percent of the total tax levied.

(b) If a return has not been filed or payment in full of the tax shown on a return has not been made within twelve months after the due date, there shall also be paid, *in addition to the delinquency penalty,* a specific penalty of *15* percent *of the lax levied* against the property and an additional 15 percent shall be paid for each twelve-month period until such return and payment has been filed and paid. (Emphasis supplied.)

This penalty provision is against the total amount of tax levied, not the unpaid portion thereof.

(e) Proiwrty omitted from any return shall require, *in addition to the delinquency penalty,* a specific penalty of *15 percent of the tax attributed to the omitted property.* (Emphasis supplied.)

(d) Property undervalued shall required a specific penalty of 15 percent *of the tax attributed to the undervaluation....* (Emphasis supplied.)

Paragraphs (c) and (d) vary from the preceding statutory' provisions by computing the penalty as a percentage of the tax attributable to the omitted property or undervaluation. See $ 199.321, F. S. 1909, and AGO's 070-14 and **070 no.**

AS TO QUESTION 2

Section 49, 70-24-3, Laws of Florida, effective Jan. 1, 1971, repealed §199.-■321, F. S, 1969, which dealt specifically with intangible personal property tax penalties. In lieu thereof the legislature placed the assessment of intangible jjersonal property within the scope of Ch. 193, F. S. (1970 Supp.), applicable to assessment of property for all back ad valorem taxes. See $§11, 12, 13 and 15, Ch. 70-243, effective Jan 1, 1971, and applicable to the 1971 tax rolls. Attorney General Opinion 070-110. Section I, Ch. 71-134, repeals Ch. 199, F. S., as presently constituted and in lieu thereof provides new provisions. The new penalty provisions in that chapter are enumerated in response to your first question and are, of course, read in pari materia with Ch. 193, K. S.

Statutory provisions for civil penalties, absent a saving clause in the applicable legislative statement, generally possess no immunity against statutory repeal or modification. Tel. Service Co. v. Gen. Capital Corp-, Fla. 1969, 227 So.2d 667; and Pensacola & A, R. Co. v. State, Fla. 1903, 33 So. 985. However, where the laws are merely amended the statutes so affected must be followed as amended unless there is an appropriate saving clause or other indication of a contrary legislative intent. (70 C.J.S. *Penalties* §9.) The absence of a saving clause or other indication of a contrary legislative intent in Ch. 70-243 and Ch. 71-134 would therefore result in the application of penalties provided by §1, Ch. 71-134 after Dec. 31, 1971, in back assessments.

AS TO QUESTION 3

Question 3 is answered in the negative. Although §§193.222 and 199.321, F. S. 1969, repealed by Ch. 70-243, provided for the assessment of interest, there is now no general provision for interest applicable to these assessments, limvever, pursuant to §194.192, F. S. (1970 Supp.), interest is provided in the

event of judgment.

AS TO QUESTION I:

Pursuant to $199,202(3), created by Ch. 71-134, the Department of Revenue would api>ear to have tiie gftnend power to waive any or all penalties provided: "Penalties as provided in this chapter, *miless waived or compromised hi/ the deportment,* shall be assessed and collected in the same manner as the tax levied by this chapter." (Emphasis supplied.)

Notice is also taken of $193,072(4), F. S. (1970 Supp.), providing a like provision of general application upon the showing of "good cause."

072-45—February 9, 1972

TAXATION

COLLECTION AND ENFORCEMENT OF INTANGIBLE PERSONAL PROPERTY TAXES AFTER REPEAL OF CH 199. F. S.

To: Rudy Underdoun. Brevard County Tax Collector, Titusville

Prejtared by: Winifred L. Wentworth, Assistant Attorney General

QUESTIONS:

Since Ch. 199, F. S. I9G9, was entirely repealed by Ch. 71-134, Laws of Florida, which became effective July 1, 1971:

1. Is there an intangible personal property tax law for the period July I, 1971, to Dec. 31, 1971?
2. Is there now an intangible tax law?
3. Did the continuing duty of the tax collector to collect lax executions under §199.281, F. S. 1969, end on June 30, 1971, since this entire chapter was repealed?
4. Since the chapter was repealed in its entirety, are recorded executions still collectible?
5. Is the taxpayer entitled to a refund due to the tax collector collecting during the period front July 1, 1971, to Dec. 31, 1971. on a tax execution which was previously recorded and is less than seven years old?
6. In referring to §199.291, **F.** S. 1969, has not the tax collector been relieved of accountability for the collection of intangible personal property taxes under this chapter as of June 30, 1971?
7. On what date does the implementation of Ch. 71-134, Laws *of* Florida, end?
8. What powers are granted to the Department of Revenue and the tax collector relating to collection and enforcement of collections for the 1971 intangible personal property tax roll?
9. W'hen shall the tax collector he relieved of accountability for collection of taxes assessed for the calendar year 1971?

w, uoes ine iscparrmeni **<it nwenur uiikci ia\e» uuc uii ww** 1971 roll after Jan. 1, 1972?

11. Is the taxpayer relieved of paying the 1971 intangible personal property tax as shown on the 1971 tax roll after Dec. 31, 1971 on unpaid items as of that date?

12. Is the tax collector entitled to commission only for the amount collected in Nov. and Dec. 1971 on the 1971 intangible personal property tax roll?

13. Since there is no §199.921, is the taxpayer relieved of reporting his money when the lew under §199.032 refers to money as defined in § 199.021?