

073-119—April 16, 1973

COUNTY COURTS

PAYMENT OF COSTS OF SERVICE OF PROCESS BY CERTIFIED
OR REGISTERED MAIL FROM FILING FEE*To: S. Morgan Slaughter, Clerk, Circuit Court, Jacksonville**Prepared by: Halley B. Lewis, Assistant Attorney General*

QUESTION:

Is the clerk required under Rule 7.070, Rules of Summary Procedure, to pay the costs of issuing alias or pluries summons or of effecting the service thereof by certified or registered mail from the filing fee prescribed by §34.041(1), F. S.?

SUMMARY:

The clerk of the circuit court is required under Rule 7.070, RSP and §34.041(1), F. S., to pay the costs of issuing alias or pluries summons or of effecting service thereof by certified or registered mail, return receipts, from the filing fee prescribed by §34.041(1), but the imposition and fixing of the filing fee and the requirement that such costs be paid from such filing fee are controlled and governed by the statute, not the rule.

Attention is first directed to the provisions of §34.041, F. S., which provide for a filing fee to cover the costs of service by certified mail when authorized by rule of the Supreme Court.

Rule 7.070, Rules of Summary Procedure, provides service of process shall be effected as provided by law, or as provided by Rule 1.070, Rules of Civil Procedure. Service of process may also be effected by certified mail or registered mail, return receipt, the cost of which is included in the filing fee. Rule 7.070. The footnote to Rule 7.070 states that the payment of costs of service by certified or registered mail from the filing fee is authorized by §34.041(1), *supra*. Rule 1.070(b) provides that when any process is returned not executed or returned improperly executed for any defendant, the party causing its issuance shall be entitled to such additional process against the unserved party as is required to effect service.

Section 34.041(1), *supra*, provides for service charges, "[e]xcept as provided herein," for performing the duties of the clerk relating to the county court, which shall be as provided in §§28.24 and 28.241, F.S., but the costs of issuance or of the service of process or of alias or pluries summons by certified or registered mail or otherwise is not provided for in said §§28.24 and 28.241, nor are any service charges therefor fixed or prescribed by said statutes. Even if such costs were service charges within the meaning of §§28.24 and 28.241, *supra*, §34.041(1) specifically directs that the filing fee prescribed therein shall cover the costs of service by certified mail, and such filing fee is otherwise provided for by §34.041(1) within the meaning of the aforementioned exception. Sections 28.24 and 28.241, therefore, are not material to the instant question.

Section 34.041, F. S., does not make any exception for or any allowance for, or authorize any additional fees—over and above the filing fees therein fixed—for the issuance of any alias or pluries summons or other additional process or for the costs of effecting service thereof by certified or registered mail, nor does it impose any obligation on the parties litigant to pay any additional fees for the issuance of or the service of such additional process by certified or registered mail. The statute then requires such costs of effecting such service of additional process to be included within and paid from the filing fee prescribed and fixed therein.

What has been said above with respect to §34.041(1) *supra*, is equally applicable to the costs of effecting service of additional process by certified or

registered mail as provided for in Rule 7.070, RSP, and such costs of effecting such service are required to be included within and paid from the filing fee prescribed by law. However, the imposition of the filing fee, as well as the inclusion of the costs of service by certified or registered mail as authorized by Rule 7.070 in such filing fee, and the payment of said costs from said filing fee are controlled and governed by the statute rather than the rule.

Your question is answered in the affirmative.

073-120—April 16, 1973

STANDARDS OF CONDUCT LAW

COUNTY PURCHASE OF FIRE EQUIPMENT FROM COMPANY OWNED BY PART-TIME COUNTY EMPLOYEE

To: *Public Employee*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

Is it lawful under the Standards of Conduct Law for the county to purchase fire equipment from a company owned and operated by a part-time county employee?

SUMMARY:

The Standards of Conduct Law, §112.314(1) and (2), F. S., does not prohibit the county commissioners from purchasing, on competitive bidding, fire equipment from a company owned by a part-time employee in the county's fire department.

The section of the Standards of Conduct Law relating to business transactions of a public officer or employee §112.314(1), F. S. reads as follows:

(1) No officer or employee of . . . a county . . . shall transact any business *in his official capacity* with any business entity of which he is an officer, director, agent, or member or in which he owns a controlling interest. (Emphasis supplied.)

It is clear that the sale of fire equipment by you to the board of county commissioners would not be in your official capacity but in your private capacity as owner of the fire equipment company. It appears that the equipment is purchased by the board under competitive bidding; and you apparently have no part in the decision as to what the various county fire departments need or from whom and on what terms the supplies and equipment for their use are acquired. In these circumstances, I can find no violation of §112.314(1), *supra*, in making the purchase and sale in question.

I have not overlooked §112.314(2), F. S., which prohibits an employee of the county from having personal investments "in any enterprise which will create a substantial conflict between his private interests and the public interest." A violation of this provision of the statute would subject the county employee to dismissal from employment and to the criminal sanctions prescribed by §112.317, *id.* However, I can see no *substantial* conflict between your duties as a part-time employee of the fire department and your personal interest in the fire equipment company, in view of the fact that the purchases of fire equipment are made by the county commissioners under competitive bidding procedures.

It should be noted that §112.313(2), *id.*, requires a public officer or employee to file a sworn statement of an interest as officer, director, agent, member, or owner of