

by which a landlord may speedily regain possession and said remedy is *exclusive* of the right of the landlord to make a forcible entry

The statement in AGO 071-152 which is quoted above was not intended to be broader than the above-quoted statement from the *Ardell* opinion. Both stand for the proposition that the remedies provided in Ch. 83, F. S., are exclusive of the previously existing common-law right of forcible reentry by a landlord. *See* *Adelhelm v. Dougherty*, 176 So. 775 (Fla. 1937). But the provisions of Ch. 83 are not exclusive of other statutory remedies given to landlords, including the remedies provided in §509.141, *supra*. *See* *Kent v. Wood*, *supra*. Viewed in this light, there appears to be no real conflict between AGO's 072-134 and 071-152.

073-140—May 2, 1973

CIRCUIT COURT CLERK

APPOINTMENT OF DEPUTY—METHOD, ACCEPTANCE

To: *Philip S. Shailer, State Attorney, Fort Lauderdale*

Prepared by: *Reeves Bowen, Assistant Attorney General*

QUESTION:

When the clerk of a circuit court writes a letter to an attorney appointing him a deputy clerk, does this place such attorney in the position of being a deputy clerk?

SUMMARY:

An attorney may be a deputy clerk of the circuit court but he is forbidden to practice law in this state while he is such deputy.

An attorney, or other person, may be appointed as deputy clerk by letter of appointment addressed to him by the clerk. However, the addressee of such a letter must take some action which indicates his acceptance of the appointment before he actually becomes a deputy clerk.

To begin with, it is noted that §454.18, F. S., says with reference to attorneys that "No sheriff, or clerk of any court, or deputy of either, shall practice in this state" and that §454.23, F. S., says:

454.23 Penalties.—Any person other than those entitled to practice on June 25th, 1925, who shall practice law or assume or hold himself out to the public as qualified to practice in this state, without first having obtained his certificate from the state board of law examiners as required by this chapter, *and any person entitled to practice then or thereafter who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.* (Emphasis supplied.)

These statutory provisions do not bar an attorney from being a deputy clerk. They do prohibit an attorney from practicing law in this state while he is a deputy clerk and provide criminal penalties if he does so.

We next consider the effect of a letter written by a clerk to an attorney, appointing him deputy clerk.

Section 28.06, F. S., reads as follows:

28.06 Power of clerk to appoint deputies.—The clerk of the circuit court may appoint a deputy or deputies, for whose acts he shall be liable,

and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise, excepting the power to appoint a deputy or deputies.

Neither said §28.06 nor any other statute nor any constitutional provision prescribes the manner in which a clerk may appoint a deputy clerk. Therefore, the clerk is free to make the appointment in such manner as he may see fit. Even an oral appointment is sufficient when, as in Florida, there is no statutory inhibition (14 C.J.S. *Clerks of Court* §84; 15 Am.Jur.2d *Clerks of Court* §39).

Therefore, in my opinion, a clerk can appoint a deputy clerk by letter.

However, I do not think that the writing of such a letter, without more, places the addressee in the position of being a deputy clerk. The addressee must in some manner accept the appointment before he can be said to be a deputy clerk.

It appears to me that the following excerpt from 67 C.J.S. *Officers* §37, with respect to the acceptance of an appointment to public office, is equally applicable to the appointment of a deputy clerk, to wit:

Acceptance of office. It has been held that an office may not be considered as filled until there is an acceptance of the appointment by the person chosen. Such acceptance need not be express but may be implied from the subsequent conduct of the appointee, such as . . . entering on the discharge of the duties of the office; and where the appointee fails to take any of such steps nonacceptance may be implied. . . .

The necessity for acceptance is highlighted by the fact that it is possible, even if not probable, that the appointee is wholly unwilling to serve and has no intention of doing so.

073-141—May 3, 1973

CITY COUNCILS

EFFECT OF ABSTENTION FROM VOTING BY COUNCIL MEMBER

To: *Kenneth W. McIntosh, Attorney, Casselberry City Council, Sanford*

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

QUESTIONS:

1. Is a city council's decision valid when a member abstains from voting upon a matter before that body for decision without filing a sworn statement disclosing a conflicting personal interest?
2. Is the abstaining council member subject to any penalty?
3. Is the abstaining council member subject to removal from office under state law?

SUMMARY:

If a decision of a city council is otherwise valid under applicable law and rules of procedure, the abstention of a member of the council without filing a sworn statement disclosing a disqualifying conflict of interest, as required by §286.012, F. S., will not invalidate the council's decision. The member's abstention without filing the sworn statement will not, under present law, subject him to any criminal sanction or penalty; however, it might constitute grounds for expulsion from the council for "malconduct" under the general law, §165.18, F. S., if applicable.

Section 286.012, F. S. (1972 Supp.), prohibits a member of a governmental