

073-385—October 12, 1973

MUNICIPALITIES

WHEN NOTICE OF PROPOSED ORDINANCE MUST BE PUBLISHED

To: Jerry Pollock, City Attorney, Miramar

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Must the required notice of proposed enactment of an ordinance required by §166.041(3)(a), F. S., be published prior to the first reading of the ordinance or can it be published between the first and second reading?

SUMMARY:

Under §166.041(3)(a), F. S. (adopted as a part of the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida), the notice of the proposed enactment of an ordinance must be published at least fourteen days prior to the meeting at which it is proposed to be adopted, and not prior to the meeting at which it is introduced and first read.

Section 166.041(3)(a), *supra*, adopted as a part of the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, provides that:

A proposed ordinance may be read by title, or in full, on at least two separate days and shall, at least fourteen days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting, the title or titles of proposed ordinances, and the place or places within the municipality where such proposed ordinances may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

In common usage, a statute or an ordinance is "adopted" when it is finally passed by the legislative body, not when it is first introduced and passed upon first reading. There is nothing in the statute to indicate that the legislature intended to use the word adoption in any except its usual and ordinary sense. And, as stated in *Van Pelt v. Hilliard*, 78 So. 693 (Fla. 1918):

Where a word used in a statute has a definite meaning, and the sense in which it is used is clear, the courts must give to such word its popular meaning, as the Legislature is assumed to have said what they intended by the use of such word, and there is nothing for the courts to construe.

Nor does the purpose sought to be achieved by the publication of the notice require a different interpretation. As stated in *Masnick v. Mayor and Council of Tp. of Cedar Grove*, 240 A.2d 192 (N.J. 1968), "[t]he purpose of requiring publication prior to adoption is to afford an opportunity to parties in interest and citizens to be heard on the subject matter." *Accord*: 62 C.J.S. *Municipal Corporations* §427, p. 817; *Hutchison v. Board of Zoning Appeals*, 83 A.2d 201 (Conn. 1951); *Mid-Georgia Natural Gas Co. v. City of Covington*, 84 S.E. 2d 451 (Ga. 1954). This purpose is effectively served by directing the notice to, and scheduling, the hearing for the meeting of the city's legislative body at which the ordinance is coming up for final passage; and, in view of the possibility that a proposed ordinance could be defeated or amended when it is introduced on first reading, the requirement of publication prior to final adoption rather than prior to first reading is certainly a more efficient procedure. *Cf. Mid-Georgia Natural Gas Co. v. City of Covington*,

supra, in which the Georgia Supreme Court said that the city's charter act requirement that, after being read, a proposed ordinance must be published in full and may not come up for passage until five days after such publication, "accords with the general rule on the subject," citing 37 Am. Jur. §151, p. 763.

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PUBLIC OFFICERS

SPEECH HONORARIUMS NOT "CONTRIBUTIONS" WHICH MUST BE REPORTED TO THE STATE

To: Paul G. Rogers, Congressman, Washington, D.C.

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is income earned from speech honorariums a "contribution" which must be reported by an officeholder under §111.011, F. S.?

SUMMARY:

Payments of money received by a public officer as speech honorariums are not contributions that are required to be reported under §111.011, F. S.

Section 111.011, F. S., requires all elected public officers of this state—national, state, county, or municipal—to report semiannually the contributions received by them during the preceding calendar year. The statute defines contributions to mean "any gift, donation or payment of money, the value of which is in excess of twenty-five dollars to any elected public officer or to any other person on his behalf." (Emphasis supplied.) The sworn statement is required to list not only the contributions but also the "expenditures from, or disposition made of, such contributions . . . with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof." In AGO 071-25, I considered the question of the "payments of money" that are deemed to be "contributions" within the purview of this statute and concluded that "only those payments of money that are, in fact, gratuitous in nature are to be reported as 'contributions.'" It was said also that

. . . such items as compensation from outside employment, a repayment of a loan, interest on investments, stock dividends—in short, any payment of money that represents a valid *quid pro quo*—should not be deemed to be a contribution within the intendment of the statute.

According to Webster, an "honorary" is "a reward, usually for services on which custom or propriety forbids a price to be set." Nevertheless, it is given to a public official or other distinguished guest as a *quid pro quo* for his appearance before and remarks to an audience. You state that such honorariums are declared by you as income on your income tax return; and it seems clear that such honorariums should not be deemed to be contributions within the purview of the law.

Accordingly, your question is answered in the negative.