

including members of the boards of county commissioners. Section 11 of the 1973 act, *supra* [§145.18(2), F. S.], provides in pertinent part that

. . . in no event shall any person receive an increase in salary in any one fiscal year in excess of twenty percent (20%) of his total compensation for the preceding fiscal year ending June 30th. . . .

I have heretofore ruled in AGO 072-122 that the provisions of Ch. 145, *supra*, relating to the compensation of county officials, are applicable not only to an incumbent holding office at the time the act was adopted but also to a successor appointed to serve out the balance of an incumbent's term. The language of the statute there interpreted—§145.121(2)(c), F. S. 1971—was couched also in personal terms, namely,

Those whose total compensation . . . was in excess of the salary payable under this chapter shall continue to be compensated under the terms and conditions which prevailed immediately prior to July 1, 1969, until the expiration of their present term of office . . . .

In holding that the statute was intended to refer to the office as an entity and not to the incumbent officer, the opinion pointed out that the view that the reference was to the office as an entity is "a sound public policy which allows for uniformity and certainty of definition" and is in accord with the Florida rule that the right to compensation "is an incident to the office . . .," citing 67 C.J.S. *Officers* §83. It was noted also that an appointee to serve out an unexpired term "merely steps into the shoes of the former incumbent with all the duties and responsibilities as well as the advantages and detriments; any or all of which might be subject to legislative change effective after his 'term of office.' "

These observations are equally applicable to a determination of the question here presented. Accordingly, you are advised that the appointee to serve out the balance of the term of the deceased county commissioner should be compensated at the same rate as the other county commissioners.

073-424—November 15, 1973

## WORKMEN'S COMPENSATION

### ELIGIBILITY OF COUNTY LAW LIBRARIAN

To: Ernest E. Mason, Chairman, Escambia County Law Library Board, Pensacola

Prepared by: Halley B. Lewis, Assistant Attorney General

#### QUESTION:

Is the librarian employed by the Escambia County Law Library Board for the Law Library of Escambia County an employee subject to the terms and provisions of Ch. 440, F. S., relating to workmen's compensation?

#### SUMMARY:

The Law Library Board of Escambia County is an agency of the county carrying on a county function. It follows that the librarian is a county employee within the meaning of §440.02(2)(a), F. S., employed by the county, a political subdivision within the meaning of §440.02(1)(b), F. S., as his employer within the meaning of §440.02(4), F. S. Neither the county library board, nor the board of county commissioners nor Escambia County is a person or any public service corporation within the meaning of §440.02(5), F. S. Nevertheless, the librarian is a person within the meaning of §440.02(2)(a) and (5).

Chapter 61-2130, Laws of Florida, made it the duty of the Board of County Commissioners of Escambia County to establish and maintain a central law library and created the Escambia County Law Library Board and fixed its powers and duties which, among others, authorized the clerk of the circuit court to serve as *ex officio* librarian under the supervision of the library board until the library board employed a full-time librarian. The County of Escambia is the entity which provides for the librarian rather than the Escambia County Law Library Board in that said Ch. 61-2130 did not make the Escambia County Law Library Board a corporate entity and did not grant to it any corporate powers.

Your letter advises that pertinent provisions of law are contained in special acts of the legislature designated as Chs. 61-2130, 69-1048, and 72-533, Laws of Florida. It further advises, in essential particulars, that on July 16, 1973, the Library Board employed the Honorable C. W. Eggart, Jr., as librarian of the Law Library of Escambia County and that he is presently serving as such librarian.

This inquiry requires a construction of the terms defined in and by §440.02(1) (b), (2) (a), and (4), F. S., and an exclusion of applicability of §440.02(5), F. S., as well as consideration of the exclusions and exemptions set forth in §440.02(1) (c) and (2) (c), F. S.

Section 440.02(1) (a), F. S., defines "employment" as meaning any service performed by an employee for the person employing him and §440.02(1) (b) thereof provides that the term employment includes:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein, including officers elected at the polls.

Furthermore, §440.02(2) (a), F. S., describes an "employee" to mean "every person" engaged in any employment. Section 440.02(4), F. S., defines "employer" to mean, among others, "the state and all political subdivisions thereof." Yet, §440.02(5), F. S., defines "person" to mean any "individual partnership, association or corporation, including any public service corporation."

The question to be resolved, in short, is whether the librarian is in the employment of, and employed by, the county. Incidental to this is the question of whether the county law library, or the county law library board, is an agency, institution, or instrumentality of the county, whether it is a separate, autonomous statutory entity or a public or quasi-public corporation within the meaning of §440.02(1) (b) and (4), *supra*, whether it is a person within the meaning of §440.02(4), read *in pari materia* with §440.02(5), *supra*, or whether it is an entity of some sort not covered by, or made subject to, Ch. 440, F. S.

To resolve the above questions requires some analysis of Ch. 61-2130, as amended, preliminary to analyzing and interpreting §440.02, F. S.

Section 1 of Ch. 61-2130, *supra*, declares it desirable that there be available to county officials and the judges and officers of the courts a central law library and declares such county law library a general county purpose. Section 2 of Ch. 61-2130 declares that the county commission shall establish and maintain the central law library for the use of county officials and judges and all members of the public desiring access thereto, which library shall be operated under rules of the law library board. Section 2 of Ch. 61-2130 also authorizes the county commission to pay the cost of hazard insurance for the library and its contents from general county funds. Section 5 of Ch. 61-2130 initially makes the deputy clerk of the circuit court *ex officio* librarian, under the supervision of the law library board. Section 4 of said chapter, as amended by Ch. 72-533, Laws of Florida, creates or establishes the law library board of said county.

In view of the foregoing legislative declarations, findings, and statutory provisions, it is the opinion of this office that the central law library is a county

purpose and a county function and also an institution of the county. The "Law Library Board" of said county is an agency or instrumentality of the county and as such is carrying out a county function and purpose.

Since the law library board is an agency of the county carrying on county functions, the circuit judges and the county court judges appointed thereto and serving thereon are ex officio county officers.

Since the county law library is an institution of the county, the board members are ex officio county officers (judges), and the lawyer is a county official, carrying on or performing a county function, it follows that for the purposes of Ch. 440, F. S., the librarian is a county employee within the meaning of §440.02(2) (a), and that the county is the employer of the librarian, within the meaning of §440.02(4). It also follows that the employment is by a "political subdivision" within the meaning of §440.02(1) (b), and that neither the county law library board nor the board of county commissioners nor the county, is a person or any public service corporation within the meaning of §440.02(5). However, the librarian is a person within the meaning of §440.02(2) (a) and (5).

It is well to note that Ch. 61-2130, Laws of Florida, created a library board. Under Art. II, §5(c), State Const., only a law can fix such duties and powers as are prescribed by §5 of said Ch. 61-2130 (*i.e.*, employ a librarian) and as in §6 of Ch. 61-2130 (*i.e.*, purchase books and personal property, sell books or property, expend public moneys from the special fund specified in §3). Section 5 of Ch. 61-2130 authorizes the library board to employ a full-time librarian, and until it does the deputy clerk serves as ex officio librarian.

The response is now directed to answering the specific question in the inquiry, *i.e.*: Does the term person as defined in §440.02(5), F. S., include the county "law library entity."

The Supreme Court of Florida in *Evans v. The City of Miami*, 60 So.2d 20 (Fla. 1952), held that a county is an independent entity. In holding that Dade County owned and operated the Jackson Memorial Hospital since January 1, 1949, it was said, at pp. 21 and 22:

. . . The fact is, as found by the Deputy Commissioner, affirmed by the Full Commission and the Circuit Court, that the City of Miami sold the Jackson Memorial Hospital to Dade County and that Dade County owned and operated the same since January 1, 1949. There are many municipalities in Dade County. The same argument could be made had the hospital been sold to Miami Beach, or to North Miami, each of which is a separate and independent entity, and political subdivision. The hospital could have been sold to the State. It would hardly be argued that the City of Miami would still be liable for what happened after it had sold the hospital to the State and the State had accepted the same and managed, operated and controlled it. There is no merit in this contention.

Before setting forth more, it is noted that Ch. 61-2130, *supra*, does not create any kind of corporate entity. Neither does it grant any corporate powers or functions to the county library or to the library board. The term political subdivision in §440.02(4), F. S., can be an employer in the sense of "every person carrying on any employment" described in §440.02(4).

This conclusion is supported by the rationale of the following. In 1941 the Attorney General of Florida in opinion 041-528, Aug. 20, 1941, Biennial Report of the Attorney General, 1941-1942, p. 565, gave the advice that a policy covering county employees covered deputy clerks of circuit court and deputy sheriffs of counties having such a policy.

Furthermore, in the case of *Parker v. Hill*, 72 So.2d 820 (Fla. 1954), the Supreme Court of Florida determined that a deputy sheriff was engaged under a contract of hire when killed, and, therefore, his widow was entitled to benefits under the provisions of §440.02, F. S.

It is noted that it was there held that the county was liable for providing workmen's compensation benefits to the widow of the deceased deputy sheriff rather than the office of the sheriff. It was determined that Ch. 440, F. S., placed liability for providing benefits on the county rather than the sheriff. The county was the political subdivision employing the deputy sheriff within the statutory definition of the term employment. This is substantially the same as §440.02(1)(b), except that the section now includes officers elected at the polls.

The attorney general in AGO 050-386, Aug. 7, 1950, Biennial Report of the Attorney General, 1949-1950, p. 441, gave the advice that the employees of the board of public instruction and the board of county commissioners of a county are employees within the provisions of the act. Likewise in Attorney General Opinion 050-71, Feb. 16, 1950, Biennial Report of the Attorney General, at p. 438, the same advice was given relative to a public school teacher.

073-425—November 21, 1973

### ELECTIONS

#### HONOREE AT TESTIMONIAL AFFAIR NEED NOT BE FORMALLY QUALIFIED CANDIDATE FOR OFFICE

To: Richard (Dick) Stone, Secretary of State, Tallahassee

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

#### QUESTIONS:

1. Is an individual or group of persons organized to hold or sponsor a testimonial affair pursuant to §99.193, F. S., a "political committee" required to register with the Division of Elections pursuant to §3, Ch. 73-128, Laws of Florida [§106.03, F. S.]?
2. Is the printing of tickets and invitations for a testimonial affair, as defined in §99.193, F. S., prohibited prior to the time the person in whose behalf the affair is being held files his qualification papers and pays his filing fees?

#### SUMMARY:

An individual or group of persons organized to hold or sponsor a testimonial affair pursuant to §99.193, F. S., in the honor of a person who holds, or is or was a candidate for nomination or election to, a political office is not a political committee as defined in §1(2), Ch. 73-128, Laws of Florida [§106.011(2), F. S.], and is not required to register as a political committee with the Division of Elections pursuant to §3, Ch. 73-128 [§106.03, F. S.].

Neither §99.193, F. S., nor Ch. 73-128, Laws of Florida, prohibits the printing of tickets and invitations for a testimonial affair prior to the person so honored at such an affair qualifying as a candidate, as the sponsor of such an affair does not come within the purview of Ch. 73-128, nor is a person's qualifying for elective office a condition precedent to his designation as a candidate under §1(1)(b) of Ch. 73-128 [§106.011(1)(b), F. S.].

#### AS TO QUESTION 1:

Section 1(2), Ch. 73-128, Laws of Florida [§106.011(2), F. S.] in pertinent part, defines a "political committee" as being the combination of two or more individuals the primary or incidental purpose of which is to support or oppose any candidate and which accepts contributions or makes expenditures in an aggregate amount in excess of five hundred dollars during a calendar year.