

[§731.071, F. S.], apply to wills executed and made self-proved prior to October 1, 1973, the effective date of the act?

SUMMARY:

A will executed in conformity with §731.07, F. S., prior to the effective date of Ch. 73-8, Laws of Florida (October 1, 1973), may be made self-proved at "any subsequent date," but an acknowledgment made for the purpose of proving its execution before the effective date of the act is without force or effect and proof of the execution thereof must be made in the manner required by §732.24, F. S., unless made self-proved subsequent to October 1, 1973, in the manner prescribed by §731.071, F. S.

Chapter 73-8, Laws of Florida [§731.071, F. S.], adds to the Florida Probate Law a new procedure for proving execution of wills which have been executed pursuant to the requirements of §731.07(1) and (2), F. S. Use of the new procedure makes a will self-proved and renders unnecessary the proof of will required by §732.24, F. S., as amended by Ch. 73-334, Laws of Florida.

It is clear from the language of Ch. 73-8, *supra*, that a will may be made self-proved in the manner provided by that act "at the time of its execution *or at any subsequent date*." (Emphasis supplied.) Accordingly, a will executed in conformity with §731.07(1) and (2), *supra*, prior to the effective date of Ch. 73-8 may be made self-proved "at any subsequent date" following the effective date of the new act (October 1, 1973).

It is an elementary rule of construction that "a statute is not to be given a retroactive effect, unless its terms show clearly that such an effect was intended. . . ." *City of Miami v. Board of Public Instruction, Fla.*, 72 So.2d 901 (Fla. 1954), at 904, and authorities there cited. *Accord*: Attorney General Opinion 057-279, interpreting another provision of the Probate Code, §734.041, F. S. An examination of the language of Ch. 73-8, *supra*, reveals nothing to indicate that the legislature intended to authorize the use of the self-proof procedure prior to the effective date of the act. I am, therefore, of the view that where a will has been *acknowledged* for the purpose of proving its execution or the attestation of a witness thereto before October 1, 1973, the effective date of Ch. 73-8, such acknowledgment is without force or effect and proof of execution of such a will must be made in the manner provided by §732.24, *supra*—or, of course, it may be made self-proved subsequent to October 1, 1973, in the manner prescribed in, and as authorized by, Ch. 73-8.

073-480—December 21, 1973

PUBLIC EMPLOYEES

**RIGHTS OF PUBLIC EMPLOYEE WHOSE JOB
HAS BEEN ABOLISHED**

To: *Elvin L. Martinez, Cochairman, Hillsborough County Legislative Delegation,
Tampa*

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

QUESTION:

What are the rights of former employees of the city court of Tampa, in light of Ch. 72-210, Laws of Florida, and what are the obligations of the county court, the state, or the city to such former employees regarding job protection?

SUMMARY:

Chapter 72-210, Laws of Florida [§112.0515, F. S.], relates solely to the retirement or pension benefits of employees and does not have the effect of providing any job protection or preserving any civil service rights or privileges of former municipal employees of abolished municipal courts who are now employed in the county court system. Under existing constitutional and statutory law, neither the state nor the county has any obligation toward such employees with respect to job protection, including the civil service rights and privileges granted by the city.

I have previously ruled in AGO 073-383 that municipal court employees whose positions were abolished when the municipal court was abolished and who were employed in similar positions with the county court have no right to continue to be compensated on the basis prescribed by the pay plan of the municipality. It was concluded therein that Ch. 72-210, *supra* (§112.0515, F. S.), "has no applicability to the salary or compensation of employees affected by a consolidation or merger and . . . the term 'benefits' relates solely to the retirement or pension rights of such employees." This conclusion is equally applicable to the question of whether Ch. 72-210 preserves other "rights" of the former employees of the city court of Tampa. The first part of your question is answered accordingly.

As to the job protection to which such employees are entitled: I know of no constitutional or statutory provision which guarantees to the employees of abolished municipal courts either their positions in the public service or the job protection benefits which they may have been enjoying under the city's civil service system. Section 28.091, F. S. [§8 of Ch. 72-404, Laws of Florida], provides job protection for former clerks of courts having *countywide* territorial jurisdiction which were abolished under Art. V, State Const. However, this statute would not cover clerks of municipal courts nor, *a fortiori*, employees of such courts; and, as noted, there is nothing in the *Constitution* which can be construed as providing job protection for these employees. *Cf.* City of Jacksonville v. Smoot, 92 So. 617 (Fla. 1922), holding that an office created by the legislature may be abolished by the legislature, even during the term of the incumbent, without violating any of his constitutional rights, in the absence of any constitutional limitation on the subject. *Accord:* Hall v. Strickland, 170 So.2d 827 (Fla. 1964), upholding the shortening of the tenure of several incumbent judges of the Metropolitan Court of Dade County when the court was reorganized and the existing judgeships were abolished. Applicable provisions of the city's civil service plan (such as reemployment rights) could, of course, be enforced against the city in a proper case; but in the absence of any provision of statutory or constitutional law protecting such rights and making them enforceable against another governmental agency-employer, it must be concluded that any job protection, including civil service rights and privileges, which they enjoyed as city court employees are not enforceable against their subsequent employer, whether the county or the state, under presently existing law.

It was said in AGO 073-383 that the compensation or salaries of the former employees of the city court who now hold similar positions in the county court system "would be established under the county position classification and pay plan and paid by the county in accordance with the budget of the clerk of the county court as approved and adopted by the county commissioners." Similarly, as county employees, the employees in question would be entitled to the same job protection as any other county employee. I understand that the state has now taken over the financing from state funds of some of the operations of the county court system and that some of the county court employees are now on the state payroll. Here, again, the employees would be entitled to the same job protection as other employees in the state judicial system.