

constitutional and statutory pre-auditing duties with respect to county funds by so doing. County funds may not be expended for a municipal purpose or donated to a municipality for use in carrying out a municipal purpose *See City of Lynn Haven v. Bay County*, 47 So.2d 894 (Fla. 1950), holding that a county's racetrack funds cannot constitutionally be diverted to a municipality in that county. *Accord: Prescott v. Board of Public Instruction*, 32 So.2d 731 (Fla. 1947) at 733, stating that taxes of one unit of government "cannot be expended for the purposes of another unit."

073-114—April 11, 1973

STANDARDS OF CONDUCT LAW

FILING OF SWORN STATEMENT BY STATE PUBLIC OFFICER WHO OWNS BUSINESS SUBJECT TO STATE REGULATION

To: *Public Officer*

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General and Victor Walsh, Legal Research Assistant

QUESTIONS:

1. Is there any violation of the Standards of Conduct Law prescribed for public officers for a division director in a state agency to own a business which is subject to the regulation of another division in the same state agency?
2. Does ownership of a regulated business require a state officer to file a sworn statement prescribed by §112.313(2), F. S.?

SUMMARY:

A state officer may own a controlling interest in a business entity regulated by a division of a state agency other than the division which he serves as director; however, he must file a sworn statement disclosing such interest as required by §112.313(2), F. S.

You state that the state agency division of which you are a director has no jurisdiction over the business, in this case a motel, that you own jointly with your wife. Section 112.316, F. S. states:

It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his duties to the state or county, city, or other political subdivision of the state involved.

If, as you state, your division has no part in the regulation of your business and further if your private business interests do not distract you from the "full and faithful discharge" of duty, I do not believe you will be liable for any violation of part III, Ch. 112, F. S., except the disclosure provisions to be presently discussed.

A motel is a business entity and you obviously own a controlling interest as defined in §112.312(3), F. S. You state that the business is regulated by the state. Without more, it is clear that you as a state officer must follow the directive of §112.313(2), F. S., which for your information reads as follows:

- (2) If an officer or employee of a state agency, or of a county, city, or other political subdivision of the state, or any legislator or legislative

employee is an officer, director, agent, or member of, or owns a controlling interest in any corporation, firm, partnership, or other business entity which is subject to the regulation of, or which has substantial business commitments from any state agency, county, city, or other political subdivision of the state, he shall file a sworn statement disclosing such interest with the department of state, if he is a state officer or employee, or if he is an officer or employee of a county, city, or other political subdivision of the state he shall file the sworn statement with the clerk of the circuit court of the county in which he is principally employed.

073-115—April 13, 1973

MUNICIPALITIES

EXTENSION OF MUNICIPAL SERVICES TO AREA ANNEXED BY ORDINANCE PENDING JUDICIAL ATTACK ON VALIDITY OF ANNEXATION ORDINANCE

To: Jack Poorbaugh, Representative, 77th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Assuming that a municipality has adopted ordinances of annexation pursuant to §171.16, F. S., and that suit has been brought under §171.04, F. S., to contest those annexation ordinances on the ground, among other things, that the property annexed was not contiguous with the city at the time it was proposed to be annexed and that the area so proposed to be annexed does not form a reasonably compact area when added to the municipality, can the municipality extend municipal services, including police, fire, garbage collection, and health and sanitation, to the area proposed to be annexed during the pendency of the suit and prior to any final adjudication?

SUMMARY:

The procedure prescribed by §171.04(1), F. S., for attacking a municipality's annexation of territory containing less than ten registered voters has been invalidated by the Florida Supreme Court and cannot be used to attack the validity of, or to obtain a stay of, annexation proceedings or of an annexation ordinance adopted under the authority of §171.16, *id.* However, proceedings *in quo warranto* or for an injunction and declaratory relief, in a proper case, are available to attack the validity of such ordinance or annexation proceedings.

Section 171.16, F. S., (1972 Supp.) [§1, Ch. 72-2, Laws of Florida], provides a supplemental method of annexation of contiguous unincorporated property to a municipality. This statute (the validity of which has not as yet been tested in the courts) authorizes a municipality to adopt an ordinance annexing contiguous unincorporated territory merely upon the petition of the owner or owners of the property sought to be annexed, after publication of the proposed ordinance once a week for four consecutive weeks. Section 171.04(1), *supra*, *formerly* provided a procedure for annexation by a city of contiguous unincorporated territory containing less than ten registered voters and provided that, pending judicial action on objections to such annexation registered by a petition filed in the circuit court, "all further action in the premises by the said city or town shall thereupon be stayed until the further order of the said court." However, this