

Committee on Standards of Judicial Conduct, 242 So.2d 711, filed December 21, 1970) which, among others, required a judge to file annually with the Judicial Qualifications Commission a financial report containing a copy of his federal income tax return, a verified statement of his assets and liabilities, and "a statement of the source and amounts of all income, including gifts and bequests, received by him during the preceding year." An amendment to the quoted rule, adopted December 1, 1971 (254 So.2d 788), provides the following exception: "excluding gifts received from a judge's immediate family and *all campaign gifts which are reportable under Chapter 99, Florida Statutes, F.S.A.*" (Emphasis supplied.) (The amendment also excluded from the report of assets and liabilities an individual trade account which does not exceed two hundred dollars in any month, such as sums owed monthly to oil company credit cards, department store charges, utility bills, etc.)

On July 25, 1973, the court adopted a new Code of Judicial Conduct in lieu of the existing Canons of Judicial Ethics (*see In re: The Florida Bar—Code of Judicial Conduct*, opinion filed July 25, 1973, effective September 30, 1973). In the new Code the Florida Supreme Court included without change, as Canon 6, the provisions of former Rule 25 of the Code of Ethics for Judges referred to above relating to judges' financial reports. The court's statement in its opinion of its intent in adopting this rule (now Canon 6) is decisive of your question. It reads as follows:

We point out that Canon 6 requires the manner and method of filing financial reports. A compliance with Canon 6 supersedes the requirements of any statute relating to financial reporting and *it will not be necessary for the justices and judges to file reports under any statute since such reports are filed under Canon 6.* (Emphasis supplied.)

In light of this clear expression of intent, I have the view that the financial reports of gifts or "contributions," as defined by §111.011(1)(c), F. S., other than those required to be reported as *campaign* contributions under the provisions of former §99.161, F. S. 1971 (*see Ch. 73-128, Laws of Florida, which repealed §99.161, supra*), are to be made by justices and judges in accordance with the requirements of Canon 6 and not under §111.011, *supra*.

Accordingly, your question is answered in the negative.

073-359—September 21, 1973

DUAL OFFICEHOLDING

APPOINTMENT OF MEMBER OF APPOINTING BODY TO SECOND OFFICE

To: David E. Bruner, Collier County Attorney, Naples

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a member of a board of county commissioners be appointed to serve as a supervisor of a water and sewer district?

SUMMARY:

The dual-office prohibition, Art. II, §5, State Const., does not apply to a special-district office. However, an appointment by a board of county commissioners of one of its own members to serve as supervisor of a water and sewer district would be contrary to the common-law rules of public policy that a public body may not appoint one of its own members to a remunerative position, and a person may not hold two

positions in the public service when one is subordinate to the other and subject to the supervisory power of its incumbent.

My predecessor in office and I have ruled in AGO's 069-49 and 071-324, respectively, that a member of the governing board of a special district is not an "officer" within the purview of the constitutional dual-office prohibition, Art. II, §5, State Const.

However, even though the dual-office prohibition would not be applicable here, common-law rules that are still in effect in this state stand in the way of such an appointment. As noted in AGO 070-46,

At common law, all officers who have the appointing power are disqualified for appointment to the offices or positions to which they may appoint. [citations omitted] The reason for the public policy rule in this respect has been variously stated: In *Wood v. Whitehall*, 1923, 197 N.Y.S. 789, the court said that such an appointment is against good conscience and public morals; in *Hetrich v. County Commissioners of Anne Arundel County, Md.* 1960, 159 A.2d 642, 645, the prohibition was grounded on the need for impartial official action without suspicion of bias; and in *Ehlinger v. Clark, Tex.* 1928, 8 S.W. 2d 666, the court said that the rule was based on "the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body"

It was said also that the common-law rule of incompatibility which prohibits a person from holding two incompatible positions in the public service

. . . lies in a conflict between the duties and functions of the two offices, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one has the power to appoint or remove or set the salary of the other, or where the duties clash, inviting the incumbent to prefer one obligation over the other. [citations omitted]

Accord: Attorney General Opinion 072-348, holding that a city council may not appoint one of its own members as chief of police.

Here [§2, Ch. 73-438, Laws of Florida], the governing body of the water and sewer district in question is the board of county commissioners, serving *ex officio*. The board is authorized, in its discretion, to appoint three supervisors "who shall be selected and appointed, reappointed and replaced from time to time as three-fifths (3/5) of the Board of County Commissioners voting in special or regular meeting shall deem desirable in the public interest." Each supervisor receives twenty-five dollars for each day actually engaged in district business, not to exceed one hundred dollars in any month, and travel and per diem under §112.061, F. S. Section 34 of Ch. 73-438, Laws of Florida, provides that

No action, proceeding or resolution of the board of supervisors, in the exercise of any of its powers granted herein shall be effective without the approval of a majority of the board of county commissioners

It can thus be seen that an appointment by the board of county commissioners of one of its own members to serve as a supervisor of the district would be contrary to these common-law rules of public policy: a public body may not appoint one of its own members to a remunerative position, and a person may not hold two positions in the public service when one is subordinate to the other and subject to the supervisory power of its incumbent.

Your question is, therefore, answered in the negative.