

073-130—April 20, 1973

SOVEREIGN IMMUNITY

APPLICABILITY—EMPLOYEES OF STATE UNIVERSITY SYSTEM

*To: Robert B. Mautz, Chancellor, State University System, Tallahassee**Prepared by: Henry George White, Assistant Attorney General*

QUESTIONS:

1. Are all full-time employees of the State University System, including faculty, career service employees, and administrative and professional personnel, covered by the protection of the doctrine of sovereign immunity so long as they act in their official capacities and within the scope of their authority?

2. Are those employees hired on a part-time or contractual basis, including student employees, covered by the doctrine of sovereign immunity so long as they act in their official capacities and within the scope of their authority?

SUMMARY:

Public officers and their subordinates, whether full- or part-time, are not individually liable in private actions for the consequences of official acts which are performed while such individuals are acting in good faith and within the course and scope of their authority or official duty. However, all employees of the State University System may be individually liable for their tortious acts or for acts in excess of their legal authority or outside the scope of their legal authority and official duty.

Your questions are answered in the affirmative subject to the qualifications and explanations which follow.

I have previously ruled in AGO 072-207 that a suit against the chancellor or a president of a university for acts taken in his official capacity and within the scope of his authority is a suit against the state and is barred by the doctrine of sovereign immunity. Your present inquiry concerns the effect of the doctrine of sovereign immunity on employees of the State University System. As you indicated in your letter, the three broad categories of employees within the State University System are faculty, administrative and professional, and career service. You also noted that while the status of all of these individuals as state employees is rather clear, there is considerable doubt about which, if any, of them are "public officers" and which are "public employees." Although there is a legal basis for distinguishing the terms "officers" and "employees" in other contexts, 26 Fla. Jur. *Public Officers* §§9-11, and AGO 069-2, the distinction vis-a-vis the coverage afforded each under the doctrine of sovereign immunity is relevant only to the extent discussed hereafter. It is important to note at this point that the doctrine of sovereign immunity protects only the *state*. It does not protect individual officers or employees from *personal* judgments for acts committed within the scope of their official duties. The law relating to their personal liability is dealt with below.

Except in the circumstances described in the next succeeding paragraphs, it is generally held that public officers and their subordinates are not individually liable in private actions for the consequences of official acts which are performed while such officers are acting in good faith and within the scope of their authority. Attorney General Opinions 060-81 and 058-99; AGO 046-416, Oct. 7, 1946; Biennial Report of the Attorney General, 1945-1946, p. 548; 67 C.J.S. *Officers* §§125 and 128; 81 C.J.S. *States* §84; 63 Am. Jur.2d *Public*

Officers and Employees §288. It is not necessary that the acts of officers and their subordinates be prescribed by statute or that they be specifically directed or requested by a superior in order for such acts to fall within the course and scope of their authority or official duty. It is enough that the acts of officers and employees be done in connection with and in relation to matters committed by law to their supervision or control, or that the acts be done in accordance with the lawful requirements of the department under whose authority they act. Attorney General Opinion 060-81; 63 Am. Jur.2d *Public Officers and Employees* §288. It has been noted that the purpose of the rule which exempts public officers and employees from the harassment of private suits for acts taken within the course and scope of their official duties is only secondarily for their protection, so that its primary objective, a fearless administration of the law, may be achieved. Attorney General Opinion 058-99.

It should be noted, however, that since the immunity which the state governmental boards and agencies enjoy is an attribute of the state's sovereignty, it may not be invoked by public officers and employees when they are sued for their own negligence or other torts, and public officers and employees may be individually liable for their negligent or other tortious acts even when such acts occur within the scope of their authority and official duty. [See] 63 Am. Jur.2d *Public Officers and Employees* §293; 67 C.J.S. *Officers* §125; 26 Fla. Jur.*Public Officers* §120. Moreover, when an officer or employee of the state university system goes beyond the scope of his authority or duty, or exceeds the power conferred on him by law, he is not entitled to the protection of his office and is liable for his acts as is every private individual. A plea that he was a public agent acting under color of his office will not shield him from liability. Attorney General Opinion 060-81; 67 C.J.S.*Officers* §126; 63 Am. Jur.2d *Public Officers and Employees* §291; and 26 Fla. Jur.*Public Officers* §118.

However, as the Supreme Court observed in *Modlin v. City of Miami Beach*, 201 So.2d 70 (Fla. 1967), the tort liability of public officials is not always the same as that of a private individual. When a public official fails to perform or negligently performs a ministerial duty, he will be liable only to a private person who has a special and direct interest in the proper performance of such ministerial duty. The official is not liable for his negligent performance of, or his failure to perform, a duty owed to the public generally. The remedy in such cases is said to be by prosecution. *Modlin, supra*. As a general rule, public officials are not personally liable for the negligent performance of discretionary duties in the absence of a showing of gross neglect of duty or a willful and malicious exercise of power. [See] 63 Am. Jur.2d *Public Officers and Employees* §293. In the *Modlin* case, the Supreme Court specifically refused to deal with the issue of a public officer's liability for discretionary acts. Therefore, you should be guided by the general rule until such time as it is changed or modified.

It is also a well-settled general rule that public officers are not personally liable for the defaults or malfeasances of their agents and subordinates in the absence of evidence that the officers were negligent in the selection or the supervision of their agents or subordinates. However, the rule of *respondeat superior* will be applicable where such officers participate in or direct the tortious act of a subordinate since the act is in contemplation of law the act of the superior. [See] 81 C.J.S. *States* §84; 63 Am. Jur.2d *Public Officers and Employees* § 295. *Accord*: Attorney General Opinions 060-81 and 072-207.

To the extent that any officers, agents, or employees of the state, including student employees, are employed on a part-time basis, the scope of their authority and official duty in terms of time is limited accordingly. But the fact that an individual is employed on a part-time basis can in no way diminish his duties or the standards of care required of him with respect to that employment. Likewise, the responsibility of a superior to supervise and direct his

subordinates is the same whenever those subordinates are on the job, whether it be on a full- or part-time basis. In other words, the liability *vel non* of public officers, agents, and employees is affected quantitatively, but not qualitatively, by the fact that their superiors or subordinates are employed on a part-time basis.

073-131—April 20, 1973

TAXATION

REAL PROPERTY ASSESSMENT BASED ON LAND SALES CONTRACT—TO WHOM ASSESSED

To: *Roland Walsingham, Washington County Tax Assessor, Chipley*

Prepared by: *Harold F.X. Purnell, Assistant Attorney General*

QUESTIONS:

1. May the county tax assessor legally assess property by basing such assessment on a recorded agreement of purchase and sale contract?
2. If question 1 is answered in the affirmative, should the property be assessed in the name of the vendor or the vendee?

SUMMARY:

Recorded land sale contracts which reflect ownership of the property may be used by the county tax assessor in assessing real property. The property should be assessed in the name of the vendor when, under the contract, the vendee is neither in possession nor entitled to the right of possession or the contract does not impose a binding obligation of purchase.

Agreements for the purchase and sale of realty (hereinafter referred to as land sale contracts) provide, generally, that the vendor will convey legal title to the property upon the payment by the vendee of the agreed upon purchase price. The particular land sale contract which was forwarded with your opinion request provides for payment of the purchase price over an eight and one half year period with title to pass ninety days following the expiration of this payment period regardless of any prepayment. The vendee is not entitled to possession until title passes and is under no binding personal obligation to pay the purchase price.

By virtue of §193.052(2), F. S., a return for real property is not required where ownership is reflected in instruments recorded in the public records of the county. This provision would authorize the county tax assessors to utilize a recorded land sale contract in preparing the assessment roll where the contract reflects ownership of the property. In the contract which was forwarded with your opinion request, title is shown to reside in the vendor, subject to terms of the contract. Hence, your first question is answered in the affirmative.

The prevailing rule applicable to assessing real property which is the subject of an executory land sales contract is stated in 84 C.J.S. *Taxation* §98, at 213 and 214:

Land may be assessed and taxed to a person who is in possession thereof under an executory contract of sale; and under such circumstances it is not taxable to the vendor. However, in the absence of a statute providing otherwise, if the purchaser has not gone into possession under the executory contract, or if the contract of sale is