

from the circuit court clerk's office by attorneys of record and other persons under the conditions therein specified. It was adopted in 1941, presumably pursuant to the common-law rule (adopted in 1936) that is now, in substantially the same form, incorporated in the Florida Rules of Civil Procedure as paragraph (e) of Rule 1.020, authorizing the adoption of local court rules, subject to the approval of the Supreme Court.

Section 25.371, F. S., provides that when a rule is adopted by the Supreme Court concerning practice and procedure and such rule conflicts with a statute, the rule supersedes the statutory provision. (Under §2(a), revised Art. V, State Const., the rules of practice and procedure adopted by the Supreme Court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.) But the Florida Rules of Civil Procedure have always excluded probate proceedings from their purview. *See* the Author's Comment to the 1967 revision of the rules (30 F.S.A. p. 13) and Rule 1.010, as amended in 1968, excepting from the scope of the rules suits "to which the probate and guardianship rules or the summary claims procedure rules apply." When the local circuit court rule in question was adopted in 1941, there was obviously no intention to supersede the rules of practice and procedure applicable to probate and guardianship or other proceedings cognizable in the county judge's court.

I can find nothing in the statutes implementing revised Art. V, State Const., or in the Transitional Rules of the Supreme Court to indicate that local circuit court rules in effect on January 1, 1973, are now to be applied to such proceedings when in conflict with statutes that are still on the statute books (or, of course, Supreme Court rules applicable especially to such proceedings). As noted above, the Florida Rules of Civil Procedure expressly exclude probate and guardianship proceedings from their purview; and, in my opinion, a local circuit court rule should not be held to apply to such proceedings in the absence of a clear and unambiguous expression of such an intent. Thus, even assuming *arguendo* that a local court rule approved by the Supreme Court, as distinguished from a Supreme Court rule itself, could supersede a duly enacted statute, it seems clear that the local court rule here in question should not be given that effect.

Accordingly, pending legislative or judicial clarification, your question is answered in the negative.

073-129—April 19, 1973

STANDARDS OF CONDUCT

COUNTY HOUSING AUTHORITY DIRECTOR EMPLOYED PART-TIME CONSULTANT TO MUNICIPALITIES

To: County housing authority director

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Does the Standards of Conduct Law apply to a director of a county housing authority who is also employed, after his normal working hours as director have terminated, as a part-time consultant for cities located in Florida?

2. If the answer to the above question is in the affirmative, is the director required to file a sworn statement with the clerk of the circuit court of the county in which he is principally employed under the provisions of §112.313(2), F. S., (the Standards of Conduct Law)?

SUMMARY:

The Standards of Conduct Law applies to the director of a county housing authority. However, that law would not prohibit the director from serving as part-time personnel consultant to two cities in the county, nor does it require the filing of a sworn statement disclosing his employment with the cities.

The Standards of Conduct Law, §§112.311-112.318, F. S., declares the policy of the legislature to be that no officer or employee of a county shall have any interest or engage in any professional activity which is in substantial conflict with the proper discharge of his duties in the public interest.

It is the intent of the legislature that this code shall serve not only as a guide for official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of part III of chapter 112. [Section 112.311, *supra*.]

However, §112.316 provides that it is not the legislative intent to prevent any public officer or employee from accepting other employment which does not interfere with the full and faithful discharge of his duties to the county. I assume for the purposes of this opinion that there is neither general nor special law in existence which prohibits the director from engaging in outside employment after his normal hours have terminated.

As he is a public officer or employee, the Standards of Conduct Law applies to a director of a county housing authority. The only provisions of the law which might be applicable to prohibit the type of activity mentioned in the facts are found in §112.313(4) and (6), *id*.

Section 112.313(4), *supra*, prohibits an officer or employee from accepting employment or engaging in any business or professional activity "which he might reasonably expect would require or induce him to disclose confidential information acquired by him by reason of his official position." It does not appear that this provision would be applicable here. And the Florida Supreme Court has found §112.313(6), *supra*, to be unconstitutionally vague in the case of *State v. Llopis*, 257 So.2d 17 (Fla. 1971). The common-law rule prohibiting the holding of incompatible positions in the public service by a public officer or employee is in full force and effect in this state and is unaffected by the court's holding in *Llopis*, *supra*. However, there does not appear to be any incompatibility between the duties of the office of director of a county housing authority and the employment with the cities here proposed.

As to your second question: My predecessor in office has ruled in AGO's SC67-12 and SC69-30 that neither a governmental agency, such as a municipality, nor a nonprofit corporation is a "business entity" within the purview of §112.313(2), *supra*, requiring a public officer or employee to file a sworn statement disclosing an interest in certain business entities. No changes in the statute that would require a different conclusion have been made; and I agree with his conclusions in these respects. Thus, the director would not be required to file a sworn statement disclosing his employment with the cities as a part-time personnel consultant.

Your second question is answered in the negative.