

makes clear that employing agencies may not discharge a former offender unless such individual's prior conviction directly relates to the position held. To the extent any state or local civil service laws or civil service rules conflict with the state policy enumerated in Chs. 71-115 and 73-109, such rules are now modified and superseded.

It should be noted, as a practical matter, that the conviction of a felony or first degree misdemeanor not directly related to the employment generally renders the employee physically incapable of continuing in his or her employment and, if imprisoned, could constitute absence without leave or an abandonment of employment under governing state or local merit or civil service laws and regulations, and such conviction could, of course, then be a valid reason for termination of employment.

AS TO QUESTION 6:

This question is answered in the negative for the same reasons stated in the answer to question three.

AS TO QUESTION 7:

This question is answered in the affirmative. Section 112.011(1)(a), F. S., makes a person who has been convicted of a crime eligible for employment and a person whose civil rights have been restored eligible for a state regulated license.

A prior conviction is no longer a fatal disqualification, and a "clean record" of criminal convictions is not a condition precedent to eligibility for employment or licensing unless such prior conviction *directly* relates to a particular position of employment or license sought and, in the case of licensing, an individual's civil rights have not been restored. The question of whether or not a prior conviction directly relates to a position of employment or license sought requires a factual determination that, in the first instance, must be made by the affected agency or officer. In order for an affected agency to exercise its granted discretion to deny a license or employment due to a directly related offense, the agency would, of necessity, be required to pursue an investigation in order to arrive at the facts relating to the prior offense which served as the basis for the denial of the employment or license. It is, therefore, incumbent upon an agency or officer to conduct a due investigation before denying any employment or license.

073-356—September 20, 1973

COUNTIES

POWERS OVER COUNTY OFFICERS UNDER HOME RULE CHARTER

To: Maggy Hurchalla, Martin County Charter Commission, Stuart

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. Can a charter proposed under §125.63, F. S., abolish constitutional officers and transfer their duties to officers of the county?
2. Does such a transfer remove said county officers from Florida Statutes directed toward the constitutional officers?
3. Can a charter proposed under general law treat the budgetary practices of the tax collector in the same manner as is done by the Consolidated City of Jacksonville; what effect, if any, does §125.01(1)(u), F. S., have on this question?
4. Can the charter provide the county commission with authority to fix the compensation of said county officers?
5. Can the proposed charter require such county officers to use county purchasing, personnel, legal, and budgeting services?

## SUMMARY:

Under the authority of Art. VIII, §1(d), State Const., a county charter proposed under §§125.60-125.64, F. S., can abolish constitutional offices and transfer the duties thereof to other offices. Such a transfer of duties to a county officer does not remove said officers from the control of Florida Statutes directed toward the constitutional officers. County budgeting and tax collecting procedures are now regulated by state law and no county can, by charter provision, provide its own procedures. A county charter probably cannot authorize the county commission to fix by ordinance the compensation of county officers. A county charter can require county officers to use county purchasing, personnel, legal, and budgeting services.

## AS TO QUESTION 1:

The proposed draft by the Martin County Charter Commission contains provisions which abolish the constitutional offices of clerk of the circuit court, tax collector, tax assessor, supervisor of elections, and sheriff, and transfer the duties of these offices to various county offices, *i.e.*, department of finance, department of tax collections, department of assessments, county clerk of the court, department of elections, and department of public safety. Each of these county departments is headed by a director who is "the principal officer of the department and responsible for all duties and operations provided for in the Administrative Code." Article VIII, §1(c), State Const., authorizes the establishment of county government by charter duly adopted pursuant to general law; and Art. VIII, §1(d), of the State Const., provides that:

There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a tax assessor, a supervisor of elections, and a clerk of the circuit court; *except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.* When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. (Emphasis supplied.)

Sections 125.60-125.64, F. S., implement the provisions of Art. VIII, §1(c), and empower any county to locally initiate and adopt a county home rule charter pursuant to the provisions thereof. In light of the above constitutional and statutory provisions, the Martin County Charter Commission can accomplish its proposed transfer of duties and abolishment of constitutional offices.

## AS TO QUESTION 2:

A transfer of duties of constitutional officers to county officers does not remove the county officers from the Florida Statutes directed toward the constitutional officers. There must always be a county officer charged with carrying out the duties presently assigned to the constitutional officers. The fact that the names of the officers have been changed and the duties have been transferred does not change the existence of such duties.

## AS TO QUESTION 3:

The section of the Jacksonville Charter referred to in this question provides the budgetary process and procedure for the office of tax collector and for the preparation and approval of the annual budget. The question of whether Martin County can establish similar provisions must be answered in the negative since the

passage of Ch. 73-172, Laws of Florida, by the Florida Legislature. Section 195.087, F. S. [§6 of Ch. 73-172], applies to county assessors and tax collectors regardless of the form of county government. This section provides budgetary procedures which must be complied with by all counties. The legislature also passed Ch. 73-349, Laws of Florida, which provides, among other things, a uniform fiscal year and certain budgeting requirements and procedures for all units of local government. In AGO 073-281 I concluded that county tax collectors, whether fee or budget officers, should establish a fiscal year of October 1 through September 30, pursuant to Ch. 73-349.

#### AS TO QUESTION 4:

Article II, §5(c), State Const. provides that "[t]he powers, duties, compensation and method of payment of state and county officers shall be fixed by law." However, §145.012, F. S., says in part that

This chapter applies to all officials herein designated in all counties of the state, except those officials whose salaries are not subject to being set by the legislature because of the provisions of a county home rule charter . . . .

This statute, together with the express provisions of §1(d) of Art. VIII, *supra*—when provided by county charter or special law approved by vote of the electors, "any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office"—necessarily implies that the charter act may fix the salary schedule of the newly created county officers. I have previously so ruled in AGO 071-109. But the question of whether a county home rule charter could authorize the county commissioners to fix the salary schedule of the newly created offices is an entirely different matter. Despite the fact that such officers are not "constitutional" officers, they are county officials, charged under the charter with the duty and responsibility of carrying out all or a portion of the duties of the constitutional officers whom they have replaced. The framers of the various constitutions of this state, and the people who adopted them, have traditionally treated the power to fix the compensation of state and county officials as a nondelegable statutory duty. *See Musleh v. Marion County*, 200 So.2d 168 (Fla. 1967), striking down a special act authorizing the board of county commissioners to fix the compensation of the county attorney. Neither §1 of Art. VIII, *supra*, nor any other provision of the Constitution expressly provides that the compensation of county officials may be fixed by county ordinance under appropriate county charter authority. The only constitutional provision from which such an intent could be inferred is that portion of §1(d) of Art. VIII, quoted above; and in light of the traditional practice of fixing the compensation of county officials by law—in this context, by home rule charter—I am unwilling to conclude that the fact that the Constitution authorizes a county charter to transfer the duties of a constitutional county officer to another officer necessarily implies that the charter may also delegate to the board of county commissioners the duty and responsibility to fix the compensation of other county officials.

#### AS TO QUESTION 5:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. [Article VIII, §1(g), State Const.]

A provision in a county charter requiring county officials to use county purchasing, personnel, legal, and budgeting services, if not inconsistent with general law or special law approved by a vote of the electorate, would be valid. I can find no conflicting general or special law on this subject. You may also wish to note AGO 071-366 which said that each county of this state may now provide, by home

rule ordinance, for the procedure to be followed in that county in purchasing materials, equipment, and supplies for county use.

Your question is answered in the affirmative.

073-357—September 20, 1973

### STANDARDS OF CONDUCT

#### STATE TROOPER AS MEMBER OF CORPORATION WHICH ACTS AS AGENT FOR NATIONAL CORPORATION HAVING STATE CONTRACTS

To: Florida Highway Patrolmen

Prepared by: Victor Walsh, Assistant Attorney General

#### QUESTION:

Does the Standards of Conduct Law, §§112.311-112.318, F. S., prohibit a highway patrolman from serving as a director and part owner of a corporation which will distribute, as a franchised dealer, the tires of a national company to state and county agencies, pursuant to contracts with such public agencies entered into by the national company?

#### SUMMARY:

The Standards of Conduct Law, §§112.311-112.318, F. S., would not prohibit a state highway patrolman from serving as a director and part owner of a corporation which is a franchised dealer of the products of a national tire company, even though the national company sells such products to state and local governmental agencies and distributes them to such agencies through the franchised corporate dealer. The patrolman should file a sworn statement disclosing his interest in the distributor corporation as required by §112.313(2).

You refer to the employee policies of your department. I assume that you are referring to those policies promulgated under §321.02, F. S., by the Department of Highway Safety and Motor Vehicles. Policy number 017 is essentially a verbatim reiteration of the Standards of Conduct Law, *supra*. Accordingly, I will consider only the statute and assume that the department's view of its parallel policy is in line with my view of the Standards of Conduct Law.

Section 112.314(1), F. S., in part, states:

(1) No officer or employee of a state agency . . . shall *transact any business in his official capacity* with any business entity of which he is an officer, director, agent, or member or in which he owns a controlling interest. (Emphasis supplied.)

Since in your official capacity you play no role in the decision as to when, whether, and from whom to purchase tires, this section is inapplicable. *Accord*: Attorney General Opinion 073-121.

Section 112.313(4), *id.*, prohibits a public 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." The applicability of this provision of the law to your situation is not immediately apparent to me. However, it should be considered by you in the light of your superior knowledge of the facts and circumstances of your official employment.