

073-90—March 28, 1973

COUNTY COMPTROLLER

RECORDING FINAL JUDGMENTS AND LIS PENDENS—FEES

To: George A. Williamson, Representative, 87th District, Fort Lauderdale

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is a county comptroller required to charge a fee for recording final judgments and notices of lis pendens in the official records of the county?

SUMMARY:

Neither a circuit court clerk nor a county comptroller should make a service charge under §28.24, F. S., for recording *initially* a final judgment entered in a civil proceeding filed in the court of the county in which he serves, or for recording a notice of lis pendens or order of dismissal recorded in such a proceeding. It is only when a *certified* copy of such a judgment is presented for recordation for the purpose of obtaining a lien against the judgment debtor's property (or other similar purpose) that the service charge prescribed by §28.24(16), *id.*, may be made. Such a charge may be made also for recording *certified* copies of judgments of, or notices of lis pendens filed in proceedings in, courts of other counties, states, or the federal government.

Prior to the adoption of the new system of recording final judgments and orders of dismissal in the official records of the *county* (Ch. 72-320, Laws of Florida, amending §28.29, F. S.), the circuit court clerk was required to record final judgments in the court's official record, its minute book. It was said in AGO 072-47 that the reason for requiring the court's final judgments and orders of dismissal to be recorded in the court's minute book is that a court of record speaks only through the official court record and that it is universally required that a court of record keep a record of its proceedings, "the object being to secure an accurate memorial of all the proceedings in the case so that persons interested may ascertain the exact state thereof," citing 21 C.J.S. *Courts* §225, p. 417.

The legislature in its wisdom has seen fit to change this traditional rule by repealing the statutory requirement that the clerk keep a minute book of the court's proceedings and requiring final judgments and orders to be recorded *only* in the official records of the county. See §28.212, F. S., providing that the clerk *may* keep minutes of court proceedings but that "orders and judgments shall *not* be recorded in the minutes," and §28.29, *supra*, providing that "[o]rders of dismissal and final judgments of the courts in civil actions *shall* be recorded in official records. . . ." (Emphasis supplied.) However, the *initial* recording of the judgment or order in the official records still remains only a step in the judicial proceedings and has no effect, as a lien upon the property of the judgment debtor, until a certified copy thereof is re-filed in the official records. See §28.29, *supra*, which provides:

The certified copy of a judgment, *required under §55.10 to become a lien on real property*, shall be recorded only when presented for recording *with the statutory service charge*. (Emphasis supplied.)

[As noted in *Dade Fed. Sav. & L. Ass'n. v. Miami Title & Abstract Div.*, 217 So.2d 873 (3 D.C.A. Fla., 1969), the reason for the rule requiring a *certified copy* of the judgment to be filed in the official records before a lien against the judgment debtor's property will attach is to avoid the undesirable consequences that would result from treating state court judgments differently from federal

court judgments. See *Rhea v. Smith*, 274 U.S. 434 (1927); *B. A. Lott, Inc. v. Padgett*, 14 So.2d 667 (Fla. 1943).]

Section 28.241, F. S., requires a flat filing fee or service charge of fifteen dollars to be paid for filing a civil proceeding in the circuit court, which is declared to "constitute the total service charges of the clerk of said court for all services performed by him in civil actions, suits, or proceedings." And I understand that a great many, if not all, of the circuit court clerks in this state have interpreted this statute to mean that no service charge may be made for the *initial* recording of the final judgment or order of dismissal (or other order required by the court to be recorded) in the official records, on the theory that this service is covered by the flat filing fee; and it is only when a certified copy of the judgment is presented for recordation for the purpose of obtaining a lien upon the judgment debtor's property (or other similar purpose) that the service charge prescribed by §28.24(16), *id.*, is made. This view is supported by the language of §28.29, *supra*, which expressly requires the "statutory service charge" to be paid to the clerk when a certified copy of a judgment is presented for recordation but makes no such requirement when the judgment is *initially* recorded as a step in the judicial proceedings. The rule of logic which, in statutory construction, is known as *expressio unius est exclusio alterius* indicates that there was no legislative intent to require a litigant to pay an additional service charge for the initial recordation of the judgment or for orders of dismissal or other orders that are required by the court to be made a matter of record for the benefit of the court and the litigants.

The division of the duties of the circuit court clerk between the clerk and a county comptroller has no effect, as it cannot, upon the nature of the recordation of final judgments, initially, and orders of dismissal or other orders, as steps in the judicial proceedings. The fact that the legislature has seen fit to isolate final judgments and orders of dismissal from the court's own official records (its minute book) by requiring them to be filed in the county's official records, together with its division of the duties of the circuit court clerk into judicial and nonjudicial duties in some counties, has the combined effect of imposing upon the county comptroller the *judicial* duty of recording final judgments and orders of dismissal (and other orders when required by the court to be recorded, *see* §28.29, *supra*). However, it is well settled that when the legislature imposes additional duties upon an official without prescribing additional compensation, it is presumed that the legislature intended such services to be performed gratuitously. See *Rawls v. State*, 122 So. 222 (Fla. 1929); *Pridgeon v. Folsom*, 181 So.2d 222 (1 D.C.A. Fla., 1965). *Accord*: Attorney General Opinion 053-188, Aug. 6, 1953, Biennial Report of the Attorney General, 1953-1954, p. 255.

Accordingly, pending legislative or judicial clarification, I have the view that the county comptroller must make the initial recordation of a final judgment entered in proceedings filed in the circuit court of the county served by him free of charge. This would be true also of orders of dismissal or other orders required by the court to be recorded. Certified copies of judgments entered by other state, county, or federal courts would, of course, be recorded only after payment of the service charge prescribed by §28.24(16), *supra*, as would the *certified* copies of judgments of the local court also presented for recordation for the purpose of establishing a property lien or other similar purpose.

The reasoning above applies equally to a notice of *lis pendens*. As stated in AGO 058-135,

... a *lis pendens* is something in the nature of a pleading in connection with litigation involving property, which is intended to give notice to all persons that the property listed therein is the subject matter of court action.

It was noted also that the filing of the notice "creates no particular interest in the

property described in the notice, neither does it create any superior rights in that property for the litigant who files said notice," citing 54 C.J.S. *Lis Pendens* §38. Accordingly, it was ruled that the flat filing fee collected by the circuit court clerk under §28.241, F. S., for filing the civil proceeding in which the notice of lis pendens is filed included the fee for filing and recording the notice of lis pendens in the lis pendens docket; however, he was held to be entitled to the regular recording fee prescribed by §28.24, *id.*, where the action was commenced in a county other than where the property designated in the notice of lis pendens was located. This ruling would appear to be equally applicable to service charges which the clerk (or the comptroller, when the duties are divided) is entitled to make when filing notices of lis pendens in the official records of the county.

073-91—March 29, 1973
(See also 073-91A)

DEPUTY SHERIFFS

ENTITLEMENT TO BACK PAY FOR PERIOD OF SUSPENSION UPON REINSTATEMENT

To: Theron Cook, Washington County Sheriff, Chipley

Prepared by: Richard Bennett, Assistant Attorney General

QUESTION:

When a sheriff suspends and then reinstates a deputy, is the sheriff authorized to pay back salary and allowances to the reinstated deputy?

SUMMARY:

A sheriff has no authority to suspend a deputy but may only "fire" such deputy as provided by statute. And a sheriff has no power to pay back salary and allowances to "suspended" deputies upon "reinstatement" absent statutory authority to that effect.

Section 30.07, F. S., authorizes the sheriff to appoint deputy sheriffs who shall have the same power as the sheriff appointing them. The independence of the sheriff is preserved with regard to the "selection of personnel, the hiring, firing, and setting of salaries of personnel" by virtue of §30.53, F. S. (Emphasis supplied.) As stated in a dissent by Justice Terrell in the case of *Blackburn v. Brorein*, 70 So.2d 293 (Fla. 1954), deputy sheriffs are appointed by the sheriff and "may be hired and fired as often as he changes his collar if he so desires."

In the case before me for consideration, the sheriff purported not to "fire" but to "suspend" a deputy, and during the interim he employed another individual as a deputy sheriff. After careful research of the constitutional and statutory law, I find no provision granting the sheriff the power to suspend a deputy sheriff; and it would seem that the sheriff was without power to do so. That being the case, it appears that the deputy in question was fired, not suspended, and then rehired, not reinstated. Hence, the issue of "back pay" disappears.

Even assuming, *arguendo*, that the sheriff lawfully suspended his deputy and then reinstated him, I have been unable to find any legal authorization for the payment of back salary and allowances to such suspended deputy. Authority does exist in §112.45(2), F. S., for reimbursement for such pay and emoluments of office from the date of suspension to the date of the reinstatement order by the senate in those cases where the *governor* has ordered the suspension and reinstatement under Art. IV, §7, State Const.