

073-371—October 2, 1973

PUBLIC FUNDS

FURNISHING UNIFORMS FOR COUNTY COURTHOUSE
NIGHT WATCHMEN*To: Thom Rumberger, Seminole County Attorney, Sanford**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTIONS:

1. May a board of county commissioners authorize a reimbursement to courthouse night watchmen who have purchased and are using uniform clothing?
2. May a board of county commissioners pay directly to the vendor or pay a flat allowance to its courthouse night watchmen for the purchase of uniforms for said watchmen?

SUMMARY:

A county may lawfully underwrite the expense of uniforms for its night watchmen at the county courthouse.

Although you seem to attach some importance to how the county might relieve these employees of the expense of uniforms, I do not believe the means undertaken in accomplishing the stated objective are important. What is important is that the expenditures must directly and predominantly serve a county purpose under the constitutional mandate that county tax funds must be used for a county purpose. Article IX, §5, State Const. 1885; Art. VII, §9, State Const. 1968. See also Article VII, §10, State Const., which, among others, prohibits the expenditure of public funds for the benefit of private persons. As noted in AGO 072-129, "[i]f the paramount purpose is a public purpose, a project may, as an incident thereto, lawfully benefit private corporations or individuals."

My predecessors in office and I have consistently held that when the type of work requires special clothing or when the dignity of a public function is enhanced, it is proper for a public body to expend public funds on uniforms for its employees. Attorney General Opinions 062-18 (uniforms for deputy sheriffs), 065-101 (protective uniforms for mosquito sprayers), and 068-90 (athletic uniforms for school coaching staff), give a general review of the law. Here, it seems clear that a public purpose is served by the county's providing a uniformed night watchman for the courthouse, as the uniform would serve to distinguish him from prowlers and would serve the important purpose of immediately demonstrating his authority. It would also enhance the dignity of the courthouse.

In summary, therefore, assuming that the necessary funds are lawfully budgeted and appropriated, I believe that an expenditure of county funds for these uniforms is proper.

Your questions are answered in the affirmative.

073-372—October 3, 1973

FLORIDA RETIREMENT SYSTEM

CREDIT FOR PAST SERVICE OF MUNICIPAL OR SPECIAL
DISTRICT EMPLOYEE—PAYMENT THEREFOR*To: L. K. Ireland, Jr., Secretary, Department of Administration, Tallahassee**Prepared by: Sharyn Smith, Assistant Attorney General*

QUESTIONS:

1. Is the Division of Retirement in violation of statutory authority or constitutional law in crediting to the account of each individual city or special district employee for whom past service is being purchased by a city or special district participating in the Florida Retirement System the total years of past service as though each individual account had been paid in full, even though the local government may not yet have made payment for past services in an amount sufficient to cover the cost of past service for a single employee?

2. Is the Division of Retirement in violation of statutory authority or constitutional law in permitting employees who purchase their own past service to make annual payments but crediting such employees with only the years of past service for which they have made the total required payment?

SUMMARY:

The Division of Retirement is not in violation of any statute or constitutional principle in extending credit to cities and special districts participating in the Florida Retirement System in order to allow such governmental bodies to amortize their obligations to purchase past service for their employees. The Division of Retirement may not, however, extend credit to individual employees of participating governmental bodies who elect to purchase their own past service when the governing body elects not to do so.

AS TO QUESTION 1:

The Division of Retirement is authorized by statute, §121.081, F. S., to allow cities and special districts who are not financially able to pay the single-sum amount for the purchase of past service for the benefit of employees to amortize such obligation over a reasonable number of years. Attorney General Opinion 071-164. This liability for past service credit becomes an obligation of the local governmental agency which is enforceable by written contract as required by 22B-1.07(E), Florida Administrative Code. The contract for past service credit is entered into by the governing body of the city or special district with the secretary of administration. Should the city or special district fail to make the contributions required by the agreement, the administrator (*i.e.*, the Director of the Division of Retirement) may seek the amount due by invoking the provisions of §121.061(2)(b), F. S., which authorize the local tax collector to deduct the amount owed from the taxes collected for the local government and remit the amount to the Director of the Division of Retirement for distribution and deposit to the retirement trust funds.

Thus, even though the accounts of each individual employee are credited as if paid in full, it is the local governmental employer desiring to participate in the Florida Retirement System who is obligated as the promisor to fully comply with the terms of the written contract. Credit is not extended to a municipal or district employee, but rather to another governmental body. Thus, the prohibition of Art. VII, §10, State Const., against lending the credit of the state to private corporations or individuals is inapplicable since the credit involved in the amortization of payments for past service is extended to the local governmental bodies electing to participate in the state retirement system and not the individual employees thereof. The state and its political subdivisions, including municipalities and special districts, are not corporations, associations, partnerships, or persons within the purview of Art. VII, §10, *supra*. See AGO's 072-382 and 058-9.

In sum: Under §121.031, F. S., the administrator is authorized to make such rules and regulations as are necessary for the effective and efficient administration of the Florida Retirement System, and such rules have been promulgated. These rules are presumptively valid and, insofar as they enable cities and special districts

to purchase past service for employees by amortizing such payments over a period of years, do not conflict with applicable constitutional prohibitions. Therefore, the administrator is not in violation of the law by crediting the accounts of such employees as if the past service had been paid in full.

AS TO QUESTION 2:

Employees of city and special districts which elect not to purchase past service for employees are entitled to purchase past service credits individually by payment of the required contributions prior to retirement. *See*, §121.081(1)(b), F. S.; Rule 22B-2.03, 22B-3.02, 22B-3.04, Florida Administrative Code. Although a participating employee may make annual payments for his past service, he is only credited with the years of past service for which he has made the total required payments. Since the employee is credited only for the years of past service for which annual payments have been made, no credit is extended and the prohibition against lending the credit of the state to private individuals is likewise inapplicable.

073-373—October 3, 1973

TAXATION

**INTANGIBLE TAX LIABILITY ON INVESTMENT CONTRACTS
FOR SALE OF CATTLE**

To: Lamar Jenkins, Suwannee County Tax Assessor, Live Oak

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

QUESTION:

May "investment contracts" registered with the Florida Division of Securities pursuant to Ch. 517, F. S., which pass actual title to cattle, be taxed as intangible personal property pursuant to Ch. 199, F. S.?

SUMMARY:

Investment contracts, registered with the Florida Division of Securities pursuant to Ch. 517, F. S., which pass actual title to cattle, are not taxable as intangibles pursuant to Ch. 199, F. S. Any promissory notes utilized to purchase such cattle, however, would constitute taxable intangibles. The county tax assessor's office may validly levy ad valorem taxes against the cattle as inventory to the owners thereof.

From the file which you forwarded with your opinion request, it appears that a Florida cattle ranch seeking to raise additional capital funds has offered for sale to Florida residents "investment contracts" covering several hundred head of cattle. Such investment contracts are made up of a "sales agreement" and a "service contract." Under the sales agreement, title to the cattle is passed to the purchaser for a monetary consideration which includes both the sale price as well as the fee for maintaining the cattle at the ranch for the first year. The purchaser is also invited but not required to enter into the "service agreement" pursuant to which the ranch in return for an annual fee keeps and maintains the purchaser's cattle beyond the first year. Each investor must purchase a herd containing a minimum of four head of cattle, and all animals purchased are individually tagged so as to physically identify them with their particular owner.

The attractiveness of this investment scheme is not derived from the present value of the cattle but rather from the future income expectation resulting from herd growth as well as from certain potential federal tax benefits which may become available to the purchaser as an owner of cattle held for breeding purposes. Consequently, few, if any, investors can be expected to be experienced cattlemen