

AS TO QUESTION 9:

Neither §316.065, *supra*, nor any other provision of law authorizes the Department of Highway Safety and Motor Vehicles to centrally issue damage release stickers to be used by county and municipal police authorities. The department is a creature of its enabling legislation only and is strictly limited in its powers and duties. Where the authority of such a legislative entity is subject to reasonable doubt, the exercise of such an authority should be arrested immediately. *State v. Atlantic Coastline R. Co.*, 47 So. 969 (Fla. 1908). *Accord: State ex rel. Burr v. Jacksonville*, 71 So. 474 (Fla. 1916); *State ex rel. Wells v. Western U. Tel. Co.*, 118 So. 478 (Fla. 1928); *Gessner v. Del-Air Corp.*, 17 So.2d 522 (Fla. 1944); *Crandon v. Hazlett*, 26 So.2d 638 (Fla. 1946); *Edgerton v. International Co.*, 89 So.2d 488 (Fla. 1956).

However, it must be noted with regard to Ch. 316, F. S., that the jurisdiction and enforcement thereof by the state is the responsibility of the Florida Highway Patrol and the Florida Public Service Commission. *See* §316.016(1)(a) and (b), F. S.

The Florida Highway Patrol is a division of the Department of Highway Safety and Motor Vehicles under the Governmental Reorganization Act of 1969 [*see* §20.24(2)(a), F. S.], and as such it is the responsibility of the department to make available such damage release stickers as may be necessary for the Division of Florida Highway Patrol to execute its duties under Ch. 72-164, *supra*.

20.05 Heads of departments; powers and duties.—Each head of a department, except as otherwise provided herein, *shall*:

(1) *Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department shall not be construed to be a limitation upon this authority and responsibility. (Emphasis supplied.)*

Therefore, I conclude that the Department of Highway Safety and Motor Vehicles is neither under a duty nor does it have the authority to issue damage release stickers for the use of any police authority except the Division of Florida Highway Patrol.

073-29—February 22, 1973

CONFLICT OF INTEREST

COUNTY TAX ASSESSOR RETAINING PRIVATE BUSINESS
AS REAL ESTATE APPRAISER

To: *County Tax Assessor*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

May a county tax assessor retain his private practice as a real estate appraiser if he engages in his private practice on his own time, uses his own employees, and devotes his full time to the duties of his elected office?

SUMMARY:

Under the Standards of Conduct Law, §§112.311-112.318, F. S., a county tax assessor should not engage in the business of real estate appraiser of property located in the county.

In §112.311, F. S., the legislature has declared as the policy of this state that no public officer or employee

. . . shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. . . .

To implement this policy, the legislature has expressly prohibited 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." Section 112.313(4), *id.*

Section 112.313(6), *id.*, prohibiting a public officer or employee from accepting other employment "which might impair his independence of judgment in the performance of his public duties," was invalidated by the Supreme Court in *State v. Llopis*, 257 So.2d 17 (Fla. 1971), on the ground of vagueness; however, §112.314(2), *id.*, prohibiting a public officer or employee from having any "personal investments in any enterprise which will create a substantial conflict between his private interests and the public interest," is still in full force and effect.

The department of assessments of your county has the duty and responsibility vested by law in the office of county tax assessor and, in addition, is required to "perform a continuing review of the assessment and exemption of all real and personal property within the county sufficient to permit the annual presentation of a tax equalization study and report for the board of equalization. . . ." See §601.1(3), of the county charter. The county tax assessors are charged with the duty and responsibility of arriving at a "just valuation" of taxable property in the county, as required by Art. VII, §4, State Const., in accordance with the legislative directions contained in Ch. 193, F. S. See §192.011, F. S. While the Standards of Conduct Law was not intended to prevent a public officer or employee from engaging in other employment that does not interfere with the full and faithful discharge of his public duties, *see* §112.316, *id.*, it seems to me that some conflict between the director's duties as head of the department of assessments and his private interests arising out of his activities in connection with his private real estate appraisal business would inevitably arise, thereby interfering with the full and faithful discharge of his official duties.

In these circumstances, I must advise you that, in my opinion, the continuation of your practice as a private real estate appraiser of property located within the county would be contrary to the Standards of Conduct Law, *supra*.

073-30—February 22, 1973

PUBLIC RECORDS

SALARIES OF ASSISTANT STATE ATTORNEYS

To: Donald G. Nichols, State Attorney, Jacksonville

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

Are the salaries paid to assistant state attorneys public records as defined in Ch. 119, F. S.?

SUMMARY:

Records of a state attorney's office concerning the salaries paid to assistant state attorneys are public records within the meaning of §§119.01 and 119.011, F. S., and as such are open to public inspection at all times.