

073-326—September 6, 1973

## PUBLIC OFFICERS

## REIMBURSEMENT FOR OFFICE EXPENSE

*To: David Emerson Bruner, Collier County Attorney, Naples**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

## QUESTION:

Is a justice of the peace entitled to compensation for storing and safekeeping the records of his office?

## SUMMARY:

A claim by a justice of the peace for compensation for the "storing and safekeeping" of the records of his office should be denied by the board of county commissioners, no legal basis for such claim having been made to appear.

It is well settled that public officers have a claim for services rendered only when the law provides compensation—the services being deemed gratuitous otherwise. *Rawls v. State*, 122 So. 222 (Fla. 1929); *State ex rel. Landis v. Reardon*, 154 So. 868 (Fla. 1934); *Gavagan v. Marshall*, 38 So.2d 862 (Fla. 1948). Presumably, the salary provided by law for public officials is intended to compensate them for their services in carrying out their statutory responsibilities; and the duty of a justice of the peace to keep records of the causes brought before him was expressly provided by law, §37.15, F. S. 1971. Chapter 59-769, Laws of Florida, fixing the salary of the justice of the peace of Collier County and making him a budget officer similar to the Sheriff of Collier County, was declared unconstitutional by the Florida Supreme Court in *Hancock v. Sapp*, 225 So.2d 411 (Fla. 1969); and, in any event, it would appear that the items budgeted for office expense in each fiscal year would have included amounts allocable to employees' services and office space necessary to perform his statutory duty in this respect. *Cf. AGO 061-40*, in which it was said that:

The power of the sheriff to make expenditures from office funds is limited by his office budget and the above mentioned statutes. The obligation of the sheriff's office, as a public agency, is limited by the office budget and expenditures may not be made therefrom unless provided for in the office budget, and then only to the extent and as authorized.

No legal basis for the claim in question having been shown, the county commissioners should not appropriate county funds for the payment thereof.

073-327—September 7, 1973

## TAXATION

COUNTY MAY TAX PROPERTY WITHIN MUNICIPALITY  
FOR COUNTY PURPOSE*To: Donald J. Seps, City Attorney, Ormond Beach**Prepared by: Stephen E. Mitchell, Assistant Attorney General*

## QUESTION:

May Volusia County validly levy an ad valorem tax upon real property located within the city limits of the City of Ormond Beach for

the purpose of funding a county library system outside the city limits of Ormond Beach?

#### SUMMARY:

A county library system is a proper county purpose and object of ad valorem taxes levied countywide including taxes levied on property situate within a municipality not participating in the system. Article VIII, §1(h), State Const., does not prohibit such a levy as there appears to be a real and substantial benefit accruing to the property and residents within the corporate limits of the nonparticipating municipality, and the county library system appears to be of beneficial use to and in the best interests of the welfare of the residents of all areas of the county.

Your question is answered in the affirmative.

Your letter indicates that Volusia County formed a library system financed by an ad valorem tax on all real property in the county, including property within the city limits of Ormond Beach, consisting of all libraries in the county owned and formerly operated by individual municipalities with the exception of the library owned and operated by the City of Ormond Beach. From a representative contract received from the office of the Director of the Volusia County Public Libraries, it appears that the county is contracting with the various municipalities who are to provide the facilities for the library system. The city would retain ownership of the building and books for as long as it participated in the agreement, with the county supplying the funds for the normal operation of the library. This assumes, of course, that the representative contract is a copy of the one in fact or substantially similar to the ones signed by the other participating municipalities and would be applicable to the situation here present.

It is fundamental that in order for a county to levy an ad valorem tax upon all real property situate within the county, the purpose for which the levy is exacted must be a "county purpose." Article VII, §9(a), State Const.; 30 Fla. Jur. *Taxation* §97. It is well settled that providing a library service is a legitimate county purpose. Section 125.01(1)(f), F. S.; AGO's 072-162 and 072-180; *Rileigh v. Pinellas County*, 200 So.2d 165 (Fla. 1967). Volusia County has a chartered government which was established by the legislature by Ch. 70-966, Laws of Florida. Volusia County is empowered through its charter to establish a county library system and has done so by motion or resolution. Article VIII, §1(c) and (g), State Const.; Art. II, §202, Volusia County Charter; County Council Minute Book 2 p. 613.

In establishing the county library service, the county may provide the service directly, contract for the service, or, as is apparent in this instance, a combination of the two. See AGO's 073-79 and 073-80.

Article VIII, §1(h) of the State Const. (a similar provision also appearing in Art. II, §202 of the Volusia County Charter), provides that "[p]roperty situate within municipalities shall not be subject to taxation for services rendered by the county *exclusively* for the benefit of the property or residents in unincorporated areas." (Emphasis supplied.)

This provision simply states a restriction against the use of county taxes for purposes having no countywide benefit and is a reaffirmation of the principle that county taxes may be imposed only for county purposes. Attorney General Opinion 072-162. It does not require a direct and primary use benefit from a particular county service to city-located property in order to remove such property from the constitutional proscription, but has been construed to require that any particular service furnished by the county, funded by countywide levied tax moneys, must benefit the residents and property of all areas of the county, both incorporated and unincorporated. *City of St. Petersburg v. Briley, Wild and Assoc., Inc.* 239 So.2d 817 (Fla. 1970). The court further stated that the benefit to municipality-situate property must be real and substantial. *Id.* at p. 823. The specific example, cited by

the court on p. 824 of the above-cited opinion and referred to in your letter, of a library or park established in an unincorporated area as violating this provision can be distinguished in that in the court's example, the library or park was for the *exclusive* use and benefit of the residents of the unincorporated area which is not the case here.

On consideration of the foregoing and assuming that the facilities of the county library service are available and open to the use of the residents of Ormond Beach, as well as all other municipalities within the county, I am of the opinion that a real and substantial benefit does accrue to the property and residents within the City of Ormond Beach from the county library service and that the library system is of beneficial use to and in the best interests of the welfare of the residents of all areas of the county.

073-328—September 7, 1973

### CONFLICT OF INTEREST

#### COUNTY COMMISSIONER DISTRIBUTOR FOR OIL COMPANY WHICH SUBMITS SEALED BID TO SUPPLY COUNTY PETROLEUM PRODUCTS

*To: County Commissioner*

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

#### QUESTION:

May a county of less than 100,000 population entertain a sealed competitive bid from an oil company for the supply of the county's petroleum needs when the board of county commissioners includes a member who is the local distributor of products of such company, and when such member receives a percentage commission on all of the company's products distributed in the area?

#### SUMMARY:

Pending legislative or judicial clarification, an oil distributor whose operation of his distributorship is relatively autonomous is not an "agent" of the oil company within the purview of §112.314(1), F. S.; thus, the board of county commissioners of which the oil distributor is a member could enter into a contract under sealed competitive bids with the oil company whose products the county commissioner distributes, if his distributorship is his sole connection with the oil company. As a contract made under sealed competitive bids in a county of less than 100,000 population, it would be an exception to, and thus not prohibited by, §839.09, F. S.

Section 839.09, F. S., prohibits a board of county commissioners from purchasing goods, supplies, or materials for public use from any firm in which any board member is interested, "either directly or indirectly." However, §839.091, *id.*, provides certain exceptions to this prohibition in counties of less than one hundred thousand population, including purchases made "from the lowest bidder under sealed bids." Thus, §839.09 would not prohibit the contract here in question.

The provision of the Standards of Conduct Law, §112.314(1), F. S., relating to prohibited transactions by public bodies due to a conflict of interest, reads as follows:

No officer or employee of a state agency or of a county, city or other political subdivision of the state shall transact any business in his official