

authorizing payment of additional compensation to the chairman of the board of county commissioners, was not repealed by Ch. 69-346, *supra*, or Ch. 73-173, *supra*, and is still in force and effect.

AS TO QUESTION 2:

Section 11 of Ch. 73-173, *supra* [§145.18(2), F. S.], provides as follows:

In no event shall any person receive for the execution of his powers, functions and official duties compensation in excess of the salaries provided in this act, and in no event shall any person receive an increase in salary in any one fiscal year in excess of twenty percent (20%) of his total compensation for the preceding fiscal year ending June 30th . . . .

As noted above, both the 1969 and the 1973 laws provided uniform salary schedules for the county officials therein designated and repealed all special laws relating to the compensation of county officials. Only laws relating to the travel expenses of county officers (and extra compensation payable to the chairman of a board of county commissioners) were excepted from the repealer clause by the 1969 act. Thus, even if it is assumed, *arguendo*, that the 1963 special law authorized the payment of in-county *travel expense* of the county commissioners, and thus was saved from repeal as an exception to the repealer clause of the 1969 act, the amount thus received for *travel expense* could not be counted as a part of the *compensation* of the county commissioners for carrying out their official duties.

Accordingly, as to the county commissioners, the second question must be answered in the negative.

As to the chairman of the board of county commissioners: As noted above, the compensation of this official was not fixed in the uniform salary schedules prescribed by the 1969 and 1973 acts; however, the expense allowance authorized by a special law was expressly saved from repeal by the 1969 act and tacitly recognized by the 1973 act in renumbering paragraph (2)(d) of §145.121, *supra*, as subsection (2). In view of the provision of this section that the additional monthly expense allowance for the chairman "shall not be considered as part of the chairman's income from office," it must be concluded that the monthly expense allowance provided by the 1963 special law in question for the chairman of the board of county commissioners may not be added to the salary provided by law for a county commissioner in computing the compensation to which the county commissioner who is serving as chairman is entitled under the 20 percent limitation provision quoted above.

Your second question is, therefore, answered in the negative.

073-486—December 26, 1973

## COUNTIES

### SUBLEASE OF SPACE IN COUNTY-LEASED BUILDING—PUBLIC PURPOSE

To: Arthur I. Jacobs, Nassau County Attorney, Fernandina Beach

Prepared by: Sharyn Smith, Assistant Attorney General

#### QUESTION:

May a part-time assistant state attorney or public defender conduct a part-time private practice of law in an office on premises leased by the county, so long as the use of the office for county purposes is not needed full time, if he pays rent representing a reasonable value of the use of the office for private purposes?

## SUMMARY:

A part-time assistant state attorney or public defender, in order to conduct a part-time private law practice, may not sublease space in a building leased by the county for use as public offices by public agencies and officers.

Section 125.35, F. S., as amended by Ch. 70-388, Laws of Florida, provides that the county may sell or *lease* its real property whenever the county commissioners decide it is in the best interest of the county to do so. The property is to be leased to the highest and best bidder for whatever length of term and under whatever conditions the county commissioners may determine to be appropriate. The bid in the case of a lease serving the *highest* public interest must be accepted. This requirement was interpreted in AGO 072-68, which held that a county may not rent unneeded space in a county-owned building to a veterinarian for the practice of his profession even though the county had no practicing veterinarian and the need for the services of such a veterinarian within the county was apparent, as a tacit recognition of the constitutional prohibition contained in Art. VII, §10, State Const., that a county may not "give, lend, or use its taxing power or credit to aid any corporation, association, partnership or person" except in the limited circumstances described therein. *Cf. O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967), which held, *inter alia*, that only when there is some clearly identified and concrete public purpose as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished, may the state, or its subdivisions, disburse, loan, or pledge public funds or property to a nongovernmental entity such as a nonprofit corporation. *Accord:* Attorney General Opinions 072-129 and 072-167, holding that the leasing of space to private physicians by a hospital corporation or district in a county or hospital corporation's building would probably violate Art. VII, §10. An analogous provision of the 1885 Constitution (Art. IX, §10) has been applied by the Supreme Court to prohibit a municipality or a housing authority from purchasing land and erecting buildings for the use of private corporations for private profit or gain. *See, State v. Town of North Miami*, 59 So.2d 779 (Fla. 1952); *Adams v. Housing Authority of City of Daytona Beach*, 60 So.2d 633 (Fla. 1952).

However, if the purpose of the leasing is incidental to, and in furtherance of, the public purpose of the building, such leasing would not violate Art. VII, §10, State Const. For example, in many municipal and county buildings, space is leased by private individuals for the sale of food, magazines, newspapers, etc., which are incidental to the main purpose of the building but are for the convenience of those who use the building for a public purpose. *See, Gate City Garage v. City of Jacksonville*, 66 So.2d 653 (Fla. 1953). *Accord:* Attorney General Opinion 055-101 (dealing with the leasing of office space in the county courthouse by an official court reporter who also rendered part-time, private court reporting).

In the case of the official court reporter, it is readily apparent that a public purpose was being served by having the official court reporter located within the courthouse. However, in the case of a private attorney engaged in the private practice of law, no certain benefits will accrue to anyone other than a private individual and no primary public purpose is served by such a leasing arrangement. Such activity would not serve any public agency or the public generally, nor is it a purpose authorized by statute or the constitution. *Accord:* *O'Neill v. Burns*, *supra*. Although the authorities relied upon herein deal primarily with the leasing of county-owned property and not the subleasing of property already leased by the county, I am of the opinion that the court decisions and attorney general opinions cited are sufficiently analogous to the situation presented in the instant case to likewise prohibit any private individual from *subleasing* office space in a building *leased* by the county for county purposes for the purpose of conducting a part-time private practice of law in such public office building.

It should be noted that possible conflicts might arise between such an attorney's private and public practice of law by the conducting of a private practice in or out of the public office of the state attorney or public defender. By way of suggestion, I might add that any ethical conflicts should be submitted to the Professional Ethics Committee of The Florida Bar for determination.

073-487—December 26, 1973

### COUNTIES

#### PUBLICATION OF MINUTES OF COUNTY COMMISSION MEETING—RATES

*To: Alton M. Towles, Attorney, Gadsden County Commission, Quincy*

*Prepared by: Michael Parrish, Assistant Attorney General*

#### QUESTION:

May a board of county commissioners enter into a contract with a newspaper to publish all or a substantial portion of the minutes of county commission meetings at rates less than those provided by §50.061, F. S.?

#### SUMMARY:

A board of county commissioners may lawfully contract for the publication of the minutes of its meetings at rates lower than those specified in §50.061, F. S.

Your question is answered in the affirmative.

Chapter 67-84, Laws of Florida, added §125.57, F.S., which reads:

(1) The board of county commissioners of any county in the state may publish the minutes of its meetings in a newspaper of general circulation in said county. The costs of such publication of the minutes may be paid out of the general fund of the county.

(2) It is the intent of this Act to provide the citizens of the county affected with information concerning the activities and business being conducted in behalf of the county by the board of county commissioners.

Although §125.57 was repealed by Ch. 71-14, Laws of Florida, the repealer provided:

The repeal of the foregoing sections of the Florida Statutes shall not be deemed to repeal or limit the powers of the board of county commissioners, but shall be deemed to continue and expand such powers and remove certain limitations heretofore prescribed by law.

Thus, although there is no longer any specific statutory authorization, it is clear that a board of county commissioners has the authority to contract for the publication of the minutes of its meetings and to expend county funds therefor. *See also*, §125.01(1)(w) and (3), F. S.

Section 50.061, F. S., provides that the rates specified therein must be charged for "official public notices or legal advertisements." Clearly, the minutes of meetings of a county commission are not "legal advertisements," nor do they appear to be "official public notices" within the scope of §50.061. Although the term official public notices is not defined in Ch. 50, F. S., it appears from a reading of §50.061 *in pari materia* with the other sections of that chapter that the intent of the legislature was to make the rates specified in §50.061 applicable only to notices required by *statute* or notices in the nature of, or in lieu of, process or in exercising