

§1 of Ch. 73-332, Laws of Florida, fall on a Saturday, a Sunday, or on a legal holiday, the taxpayer may still comply with the deadline by mailing his payment. The postmarked date will control in computing the discount rate. While this procedure may slightly burden the taxpayer's compliance, it by no means renders it impossible. Therefore, in my opinion, the *Stockslager* rationale is inapposite with regard to Ch. 73-332 (§197.012), *supra*. No extensions of time should be afforded to taxpayers who fail to take advantage of the opportunity to comply by mail when the deadline happens to fall on a Saturday, a Sunday, or a legal holiday.

073-466—December 17, 1973

## COURTS

### FEES FOR SERVICES; LAW LIBRARY AND LEGAL AID

To: Curtis R. Barnes, Clerk, Circuit Court, Titusville

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### QUESTIONS:

1. What is meant by the term "per item" in §28.24(25), F. S., providing a fee for receiving and disbursing domestic support payments?
2. Are the fees for law library and legal aid added to the filing fees in the county court, including summary claims, when a special law provides a fee for a law library and legal aid to be added to filing fees in the circuit court?
3. Is a special law required before authority exists for the adding of additional fees for library and legal aid in the county court?

### SUMMARY:

The term "per item" in §28.24(25), F. S., providing a service charge for receiving and disbursing domestic support payments, has reference to each particular payment received of the entire number of payments handled, whether paid separately or at the same time with another.

Section 34.041, F. S., authorizes the imposing of service charges for the maintenance of county facilities, including a law library, for the use of the courts in the county by the Board of County Commissioners of Brevard County on filing fees in county court.

In the absence of an ordinance as aforesaid, there exists no authority for the imposing of an additional service charge or fee on actions filed in county court for the maintenance of the law library.

There is no authority under existing law for the imposition of a service fee or service charge on actions filed in county court for legal aid.

The first question essentially is whether "per item" means for each payment, *i.e.*, if there are three weekly payments received simultaneously are there three one dollar fees or three dollars for handling or one fee of only one dollar. In answer to the first question you are advised that the words per item cited in §28.24(25), F. S., have reference to each item or payment received and distributed of the entire number of items or payments handled.

The term per item, while not defined by the statute, is used in connection with the receipt and disbursement of "payments" and the term "item" is used in singular form. This means, in effect, "per particular payment" or for each payment due or accrued whenever paid, whether paid separately or at the same time with another. See 48 C.J.S. *Item* p. 787.

In *Green v. Rawls*, 122 So.2d 10 (Fla. 1960), the court cited *People ex rel. State Board of Agriculture v. Brady*, 115 N.E. 204, 207, (Ill., 1917) as follows:

"The word 'item' is in common use and well understood as a separate entry in an account or a schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries . . . ."

In the case of *Ward v. Foley*, 141 F. 364 (8th Cir. 1905), a contract for the sale of an interest in land at the rate of fourteen dollars per acre was construed to mean at the rate of fourteen dollars for each acre in the entire tract.

Your attention is called to the provisions of Ch. 73-112, Laws of Florida [§61.181 F. S.], which authorizes the chief judge of the circuit, by administrative order, to create a central governmental depository within the circuit to receive, record, and disburse all support, alimony, or maintenance payments and to provide for the collection of a fee for handling same.

Therefore, your first question is answered accordingly. In the situation imagined above in which three weekly payments are received simultaneously, there would be three one dollar fees for handling.

The answer to your second question is in the negative. The third question is answered in the affirmative.

Chapter 61-1916, Laws of Florida, provides:

Section 2. There shall be taxed and collected by the clerk of the circuit court of Brevard county, the sum of two dollars, fifty cents (\$2.50) as costs in each civil cause at law or in equity commenced in the circuit court in and for Brevard county, in addition to the costs otherwise provided by law, the whole of which sum shall be set apart by said clerk to be used exclusively for the purchase and maintenance of said law library and courtroom equipment. . . .

Chapter 70-598, Laws of Florida, provides:

Section 1. The establishing, equipping, furnishing, maintaining and operating of a legal aid office or offices in Brevard County for the purpose of making legal services available to the indigent and needy public in Brevard County is hereby declared to be a county purpose.

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Section 3. Upon institution of any civil action, suit or proceeding in the circuit courts and courts of record in and for Brevard County there shall be paid by the party or parties instituting such action, suit or proceeding, in addition to the fee otherwise provided by law, the sum of two dollars and fifty cents (\$2.50), the whole of which shall be set apart by the clerk to be used exclusively for the legal aid office or offices as herein provided. . . .

The provisions above quoted have to do with additional fees or charges on actions filed in the circuit court, or as specified in the latter statute, "courts of record." Since the enactment of Ch. 70-598, aforementioned, Art. V of the State Const. was revised to the extent of eliminating courts of record. Therefore, for the purposes hereof the statutory reference to courts of record can be disregarded.

Section 34.041, F. S., in part provides as follows:

. . . Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or by special or local law, and such excess shall be expended as provided by such ordinance or any special or local law now or hereafter in force in providing and maintaining facilities, including a law library, for the use of the county court in the county in which the charge is collected. . . .

It is to be particularly noted that the last above quoted statutory language does

not authorize the county by ordinance to impose an additional service charge for legal aid.

Heretofore, in AGO 073-119, it was pointed out that the fixing and imposing of filing fees are controlled by statute. In this connection it was stated:

Section 34.041, Florida Statutes, does not . . . impose any obligation on the parties litigant to pay any additional fees for the issuance of or the service of such additional process by certified or registered mail. The statute then requires such costs of effecting such service of additional process to be included within and paid from the filing fee prescribed and fixed therein.

Likewise, §34.041, F. S., does not authorize additional charges for legal aid, nor does it impose an obligation on litigants to pay any additional charges for legal aid.

Additionally, §34.041, *supra*, does appear to authorize additional service charges to be imposed by ordinance by the Board of County Commissioners of Brevard County. The authority appears to be only for the purpose of maintaining "facilities, including a law library, for the use of the county court[s]."

Fee laws are to be strictly construed. The legislature is the one to specify for what purpose a fee or service charge may be imposed. In this instance the authority for the imposition is for the establishment and maintenance of facilities for the use of the county courts in the county. No other purpose or use of such charges may be implied and all others are excluded.

Support for the last stated proposition, often appropriately used in statutory construction, is found in the expression *expressio unius est exclusio alterius* meaning that when a statute enumerates things on which it operates or excludes certain things, such must be taken to mean that other things not expressly mentioned are expressly excluded for operation of the statute. *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So.2d 234 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So.2d 341 (Fla. 1952). Furthermore, when statutory authority is given to administrative officers such authority must be exercised in accordance with the requirements of controlling provisions and principles of law. In other words, there must be some basis in the statute for the exercise of the jurisdiction and power by the administrative agency. If there is a reasonable doubt as to the lawful existence of a particular power it should not be exercised. *Edgerton v. International Company*, 89 So.2d 488 (Fla. 1956).

The statute specified uses the word "facilities." Yet, it does not define this word although used in connection with or in relation to the use of the county courts. In general, the term means anything animate or inanimate that assists or serves a specific function, duty, or convenience, or makes easier the performance thereof. In other words, anything which assists or serves the county court in carrying out its duties and functions is a facility. *See* 35 C.J.S. *Facility and Facilities* p. 488. The conclusion is therefore that legal aid is not viewed as a facility. Judging by the expressed intent of Ch. 70-598, *supra*, a service to indigents was contemplated rather than a facility for the use of the courts and county officials. This intent is made clear in §1 of Ch. 70-598, Laws of Florida, quoted above.

It is to be observed that neither law library nor legal aid charges can be added to a filing fee in county court under the statutes above cited. Under §34.041, *supra*, the Board of County Commissioners of Brevard County may, by ordinance, impose charges for law library maintenance. Legal aid charges cannot be authorized or imposed by ordinance by the Board of County Commissioners of Brevard County under existing law.