

department of law enforcement upon recommendation of the executive director.

Section 23.105, F. S., states:

Additional assessment by local government.—Municipalities and counties may assess an additional \$1.00, as aforesaid, for law enforcement education expenditures for their respective law enforcement officers.

I find the following quote taken from AGO 072-195 to be pertinent to your inquiry:

Section 23.105 authorizes a county to "assess an additional \$1.00, as aforesaid," for law enforcement education expenditures. The words "as aforesaid" refer to the provision in §23.103 for the assessment of one dollar "as a court cost" except when the offense is relating to the parking of vehicles. The result is that §23.105 merely authorizes a county to have an extra dollar assessed as a court cost for law enforcement education expenditures *when a person is convicted of violating a penal statute or a penal county ordinance involving an offense not relating to the parking of vehicles*. This authorization has nothing to do with a bail bond forfeiture. (Emphasis supplied.)

The provision in §§23.103 and 23.105, F. S., for the assessment of one dollar costs clearly mandates that the assessment be predicated upon the conviction of the assessee for violation of a state penal or criminal statute or for violation of a municipal or county ordinance, except that no assessment shall be made when the assessee is convicted of an offense relating to the parking of vehicles.

Under Florida case law, it is well settled that a defendant is not convicted until the judge adjudicates the defendant's guilt. *Weathers v. State*, 56 So.2d 536 (Fla. 1952); *Gordon v. State*, 119 So.2d 753 (2 D.C.A. Fla., 1960). *See also State v. Young*, 238 So.2d 589 (Fla. 1970), *appeal dismissed*, 400 U. S. 962 (1971).

Accordingly, your question is answered in the negative.

073-175—May 18, 1973

PUBLIC OFFICERS

COMPENSATION FOR ADDITIONAL SERVICES—TEMPORARY ADDITIONAL SERVICE BY JUSTICE OF THE PEACE

To: Warren O. Tiller, Volusia County Attorney, DeLand

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

QUESTIONS:

1. Is a county responsible to pay a temporarily assigned justice of the peace, in addition to his statutory salary, additional compensation for additional duties and services performed upon assignment by the chief judge of the judicial circuit to serve in another justice of the peace court in the circuit pursuant to Rule 1.020 RCP (1971)?

2. If the county is responsible, does the county then have the authority to seek reimbursement of the salary payments made to the disabled justice of the peace during his period of disability and absence from the bench?

SUMMARY:

A county is not responsible to pay additional compensation to a

former justice of the peace who was a budget or salaried officer, when temporarily assigned additional duties in another justice of the peace district by the chief judge of the circuit under Rule 1.020 RCP (1971). An elected public officer is not legally entitled to any additional compensation beyond that which is provided by law, and the county is not legally authorized to pay any such additional compensation for temporary services of a former justice of the peace in another justice of the peace court.

Your first question is answered in the negative. Since the first question is answered in the negative, no response is required to the second question.

Your inquiry indicates that it has been the practice among the former justices of the peace in Volusia County to substitute for each other temporarily on a gratuitous basis during temporary absences, *i.e.*, vacations, etc. During the summer of 1972, the former justice of the peace for Volusia County's Eighth Justice of the Peace District suffered a disabling heart attack and was incapacitated for a number of weeks. Upon a request to the chief judge of the Seventh Judicial Circuit, the former justice of the peace for the Sixth Justice of the Peace District was assigned by the chief judge of the circuit to temporary service in, and to try and otherwise handle the civil and criminal case load of, the Eighth Justice of the Peace District Court, during the period of time the justice of the peace for District Eight was incapable of performing his official duties. During this period, the county continued to pay the disabled justice of the peace his regular salary, as it did for the temporarily assigned justice of the peace of the Sixth District. Both justices of the peace were budget officers and they were paid their annual salaries as prescribed by law. *See* Ch. 71-469, Laws of Florida.

The assigned justice of the peace from District Six served in and performed the duties of the office in both of said justice of the peace districts during the period of his assignment by the chief judge of the judicial circuit under the impression that in so doing he would be paid for his additional services by the disabled justice of the peace during the period of the later's incapacity. The justice of the peace for District Eight contends that he did not contract with the assigned justice of the peace to serve in his stead during his time of disablement, and that the assignment of the substitute justice of the peace to serve in the Eighth District Justice of the Peace Court during such period of time does not entitle such substitute justice of the peace to any additional compensation from the disabled justice of the peace. The substitute justice of the peace now claims payment from the county for such additional services rendered under said assignment by the chief judge of the circuit, and the county in turn questions its authority to make such a payment.

The subject of your inquiry relates to payment, after the fact, for services rendered by an officer of the state's judicial system, *i.e.*, a justice of the peace, after the office has been abolished. *See* Art. V, §§1, 2, and 11, State Const. (1885); revised Art. V, §20(c)(4), State Const., effective January 1, 1973, and Chs. 72-358 and 72-404, Laws of Florida.

Pursuant to the Florida Rules of Civil Procedure, 1971 Revision, Rule 1.020(b)(3)(i), the chief judge of the Seventh Judicial Circuit was, during the period of time in question, authorized to assign any justice of the peace in the Seventh Circuit to temporary service in another justice of the peace court in the circuit, whenever a justice of the peace was temporarily absent, disqualified in an action, or unable to perform his duties.

This authority, however, merely applies to procedure and the progress of the court's business. It has nothing to do with the funding of the court's operation or with the compensation or salary of a substitute justice of the peace, nor with the authorization to pay any additional compensation for any additional duties or services performed or rendered by a justice of the peace while serving under such a temporary assignment. The compensation and method of payment for county

officers must be fixed by law, Art. II, §5(c), State Const., and the only salary the substitute justice of the peace was entitled to was that prescribed in Ch. 71-469, *supra*.

Neither Ch. 71-469, *supra*, nor any other law brought to my attention provides for any additional compensation to such justices of the peace as here involved upon their assignment by the chief judge of the circuit to temporary service in another justice of the peace court in a circuit pursuant to Rule 1.020, *supra*.

In this state, the duties of a public officer may be exacted without specific compensation therefor, including additional duties imposed upon him by law. *Flood v. State*, 129 So. 861 (Fla. 1930); *State v. Fussell*, 24 So.2d 804 (Fla. 1946); *Pridgeon v. Folsom*, 181 So.2d 222 (Fla. 1965). Public officers have no legal claim to compensation for official services rendered except when, and to the extent that, compensation is provided by law, and when no compensation is so provided, the performance of such service is deemed to be gratuitous. *Rawls v. State*, 122 So. 222 (Fla. 1929); *Gavagan v. Marshall*, 33 So.2d 862 (Fla. 1948).

In AGO 059-55, one of my predecessors in office answered in the negative the question of whether a justice of the peace in a county wherein the justice of the peace received a salary from a county in lieu of fees was entitled to additional compensation when temporarily assigned to handle the duties of another justice of the peace in the county under the provisions of the 1885 Constitution and rules of the court thereunder and the law then existing. The rationale of that opinion, and the principles of law therein enumerated, are equally applicable to the Constitution, the rules of court duly adopted thereunder, and the statute existing at the time the instant issue arose under the temporary assignment herein before set forth.

In view of the foregoing, and as no additional compensation is provided by law for a temporarily assigned or substitute justice of the peace, I am of the opinion that such an assigned justice of the peace is not entitled to, and the county is not legally authorized to pay, any additional compensation for his temporary service in the other justice of the peace court in the same county under the temporary assignment thereto by the chief judge of the circuit pursuant to Rule 1.020 RCP.

073-176—May 21, 1973

STATE FIRE MARSHAL

AUTHORITY TO MAKE SAFETY INSPECTIONS OF PUBLIC SCHOOL BUILDINGS; MAY NOT REQUIRE CORRECTIVE ACTION

To: D. Robert Graham, Senator, 33rd District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Does the state fire marshal or his agent, under existing law, have the authority to enter a public school on his own volition, with or without the prior permission of the principal or the school board, to conduct a fire safety inspection of the school?
2. Does the state fire marshal or his agent, under existing law, have the authority to require a district school board to take appropriate action to correct deficiencies noted during any lawful fire safety inspection of a school under the jurisdiction of the school board?
3. Would a deputy fire chief, or another designee of a fire chief or a mayor, qualify as an "agent" of the state fire marshal for the purpose of making fire safety inspections of schools, reporting deficiencies, and