

election laws of this state relating to the registration of electors in this state qualified to vote in municipal elections.

Chapter 73-155, *supra*, requires that all municipalities put into use a permanent single registration system prior to January 1, 1974. Once said registration system is adopted, municipal elector qualifications such as those found in Art. III, §4, of the Charter of the Town of Manalapan will cease to have any force or effect.

073-485—December 26, 1973

### COUNTY OFFICERS

#### EXPENSE ALLOWANCES UNDER SPECIAL LAW

To: W. L. Hendry, Attorney, Okeechobee County Commission, Okeechobee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTIONS:

1. Was Ch. 63-807, Laws of Florida, providing an "expense allowance" to the chairman and members of the board of county commissioners of Okeechobee County, repealed by Ch. 73-173, Laws of Florida?
2. If so, may the compensation received by these county officials pursuant to Ch. 63-807, *supra*, be counted in computing the 20 percent salary increase limitation prescribed by §11 of Ch. 73-173, *supra*?

#### SUMMARY:

A 1963 special law providing a monthly "expense allowance" to members of a board of county commissioners and to the chairman of the board was repealed by Ch. 73-173, Laws of Florida, as to the county commissioners but not as to the chairman of the board.

The expense allowance may not be counted in computing the compensation to which members and the chairman of the board of county commissioners are entitled under the 20 percent limitation on salary increases prescribed by §11 of Ch. 73-173, *supra*.

#### AS TO QUESTION 1:

Under Ch. 61-1319, Laws of Florida, the county commissioners of Okeechobee County were granted an "expense allowance of fifty (\$50.00) dollars per month, in addition to all other compensation to which they may be entitled." The act provided also for travel expenses when traveling outside the county on official business—eleven dollars per day or fraction thereof and ten cents per mile when using their privately owned automobiles. The 1961 act was amended in 1963, by Ch. 63-807, *id.*, to increase the "expense allowance" of county commissioners to one hundred dollars per month and to authorize the chairman of the county commissioners to receive one hundred twenty-five dollars per month "in addition to all other compensation to which they may be entitled." The provision for travel expenses was deleted—presumably because the 1963 Legislature, by Ch. 63-400, Laws of Florida, amended §112.061, F. S., to provide for reimbursement of county and city officers and employees for their travel expenses. (Prior to the 1963 amendment, the act applied only to state officers and employees.)

Section 13 of Ch. 73-173, *supra*, provides as follows:

All general acts and all special and general acts of local application are hereby repealed to the extent that they require, authorize, or permit

any officer whose compensation is established by chapter 145 to receive any other compensation for the execution of his powers, functions and official duties.

A similar provision was contained in the 1969 Uniform County Officials' Salary Act, Ch. 69-346, Laws of Florida [Ch. 145, F. S.], which repealed:

[A]ll local or special laws, or general laws of local application enacted prior to July 1, 1969 which relate to compensation of county officials . . . *except laws pertaining to travel expenses of county officers*, or to payment of extra compensation to the chairmen of boards of county commissioners, or district school boards. . . . (Emphasis supplied.)

Section 145.131, *id.* And in AGO 069-68, in construing this provision, it was said by my predecessor in office that, under the exception italicized in the quotation, "county officers who are authorized to *receive reimbursement* for travel expenses under the provisions of special acts may continue to draw such reimbursement. . . ." (Emphasis supplied.)

I am advised that the purpose of the fifty dollar and one hundred dollar expense allowance to county commissioners made by the 1961 and 1963 special acts was to compensate them for their in-county travel expense. However, in view of the fact that these additional amounts are payable regardless of the amount of in-county travel occurring in any particular month and are, in fact, declared to be "*in addition to all other compensation* to which they may be entitled," (Emphasis supplied.), it cannot be concluded with any degree of certainty that this was the type of special law "pertaining to travel expenses" that the legislature had in mind; and, in any event, §13 of Ch. 73-173, *supra*, repeals *without exception* all general and special acts insofar as they authorize a county official whose compensation is fixed in Ch. 145 "to receive any other compensation for the execution of his powers, functions and official duties."

Accordingly, your first question is answered in the affirmative, insofar as the county commissioners are concerned.

A different situation exists as to the award of extra compensation to the chairman of the board of county commissioners. The 1969 act expressly excepted from the repealer clause laws pertaining to the "payment of extra compensation to the chairmen of board of county commissioners. . . ." And it was ruled by my predecessor in office in AGO 069-87 that the chairman of a board of county commissioners may receive supplemental compensation for extra services rendered as chairman when such additional compensation is expressly authorized by a special law. I find nothing in the 1973 revision of Ch. 145, *supra*, to require a different conclusion. The compensation of the chairman of a board of county commissioners for his duties as chairman is not fixed by Ch. 145; and the prohibition of §13 of Ch. 73-173, *supra*, relates to "any officer whose compensation is established by Ch. 145. . . ." That the legislature could not have intended to prohibit the payment of extra compensation to the chairman, when authorized by special law, is confirmed by the fact that §14 of Ch. 73-173, *supra*, repealed paragraphs 145.121(2)(a), (b), and (c), F. S., but retained and renumbered as subsection (2) the following provision of §145.121(2)(d):

(d) Any board of county commissioners which prior to July 1, 1969, had not authorized an additional monthly expense allowance for the chairman of the commission may authorize such an allowance of up to fifty dollars per month for travel and other expenses related to the performance of his duties, and compensation shall not be considered as part of the chairman's income from office.

Accordingly, it must be concluded that the provision of Ch. 63-807, *supra*,

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?