

§112.0515, *supra*, as enacted by Ch. 72-210, Laws of Florida, would prevent the diminution or impairment of annual compensation or salary of public employees in the event of a consolidation or merger of the two court systems or transfer of functions between the two courts (or governments or governmental functions).

The only language contained in §112.0515, *supra*, which could relate to compensation or salaries is the portion emphasized above. With the exception of the emphasized portion, the remainder of the provision cited above relates solely to retirement or pension rights. Upon careful analysis of the statutory language it would appear that the word benefits is used in the context of a retirement benefit since the term as used is followed by the phrase "or other pension rights." See 30 Fla. Jur. *Statutes* §108.

If some question continues to exist regarding the meaning of the term benefits, then the title of the bill can be examined to see if salary and compensation rights are part of the subject matter and could be included in the meaning of the term benefits. *State v. Yeats*, 77 So. 771 (Fla. 1928), *appeal dismissed* 268 U.S. 877 (1928). *Foley v. State ex rel. Gordon*, 50 So.2d 179 (Fla. 1951).

The title of Ch. 72-210, *supra*, provides as follows:

An Act relating to public employees; providing that the *retirement and pension rights* of a public employee shall not be diminished or impaired as a result of any consolidation or merger of governments or of governmental services, either state or local; establishing state policy with respect to public employee *pension rights* when such mergers or consolidations occur; providing an effective date. (Emphasis supplied.)

Reference to the title of the act, as quoted above, reveals no reference therein to compensation or salary. Accordingly, I conclude that §112.0515, *supra*, has no applicability to the salary or compensation of employees affected by a consolidation or merger and that the term benefits relates solely to the retirement or pension rights of such employees.

The rate of compensation or salary paid a public employee is established by the employer as authorized by law. In the instant situation there is no provision of general law establishing or fixing the rate of compensation or salary of the employees of the office of clerk of the county court.

Because the longevity bonus is a part of the annual compensation or salary of the affected employees and Ch. 72-210, *supra*, does not apply to such compensation or salaries, but only to retirement or pension rights and benefits, and because the general law is silent as to the rate of compensation or salaries and mode of payment thereof to the affected employees, accordingly, such employees' compensation or salaries would be established under the county position classification and pay plan and paid by the county in accordance with the budget of the clerk of the county court as approved and adopted by the county commissioners. In the absence of provisions for a longevity bonus, such employees would not be entitled to it pursuant to Ch. 72-210, now §112.0515, *supra*, or any other provision of general law.

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#### CONFLICT OF INTEREST

DIRECTOR OF STATE FINE ARTS COUNCIL SERVING AS  
PRESIDENT OF PRIVATE NONPROFIT CORPORATION

To: Richard (Dick) Stone, Secretary of State, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

## QUESTION:

Is it proper, under pertinent provisions of Florida law, for a person to serve as the director of the Florida Fine Arts Council, a full-time, paid state employee, while also serving as the president of a private, nonprofit foundation for which he receives a salary?

## SUMMARY:

If approved by his agency head and the state personnel director, the director of the Florida Fine Arts Council may serve as the president of a private, nonprofit foundation and be compensated for such service.

You state that the position of director has not yet been filled and that you hope to be able to attract a better qualified and more experienced person if it is possible to assure such an applicant that his modest state salary will be supplemented by the compensation which he would receive for serving as president of the foundation. It appears that the foundation was organized to serve substantially the same purpose as the council.

I find nothing in the applicable laws that would prohibit the director from serving as president of the foundation and receiving compensation therefor. As both the public and the private bodies have the same general goals and the director would be working towards the same ends in carrying out his public and private duties, I can find no conflict of interest under the Standards of Conduct Law, §§112.311-112.318, F. S.

Nor would the provisions of §216.262, F. S., or Rule 22A-2.16A.1, F.A.C., relating to dual employment of state employees, prohibit such dual employment and compensation, so long as the outside employment is approved by the employee's agency head and the state personnel director. Section 216.262(1)(c) provides that:

No individual employed by a state agency may hold more than one employment during his normal working hours with the state, such working hours to be determined by the head of the state agency affected, *unless approved by the department [of administration]*. (Emphasis supplied.)

Rule 22A-16A.1, F.A.C., contains a similar requirement, as follows:

Unless recommended by the agency head and approved by the State Personnel Director during each fiscal year, no employee shall be employed or compensated by more than one state agency or hold more than one employment during the normal working hours for which the employee is being compensated by a state agency.

I have heretofore ruled that the statute does not prohibit a state employee from receiving supplemental compensation from a nonstate source, so long as the outside employment is properly approved. In AGO 071-162, it was ruled that a Florida State University professor could receive supplemental compensation from a federal agency for performing tutorial services in connection with a state public defender intern program. *Accord:* Attorney General Opinion 072-107, approving a county health officer's employment during his off-duty hours as a standby physician at the county hospital. *Cf.* AGO 072-101, advising that a member of the Barbers' Sanitary Commission could serve as an employee of a county health department and receive compensation from both sources.

Accordingly, your question is answered in the affirmative.