

members of the commission, either directly or indirectly, whatever business or profession they were engaged in, together with all other citizens and residents of the community.

I have heretofore ruled in AGO 073-215 that the ownership of a controlling interest (more than 10 percent) of stock in an engineering corporation does not disqualify a person from holding the office of county commissioner. And in AGO 073-231 I ruled that the ownership of a substantial purchase money mortgage on property of a corporation active in land development in the county did not disqualify a person from holding the office of county commissioner. And, in my opinion, the fact that a member of the planning commission might, in the future, incidentally benefit from a change in zoning recommended by the commission is not the type of *substantial* conflict that will disqualify him from *serving on the commission*.

The question of whether he should abstain, as a matter of public policy, from voting upon a proposition before the commission on account of a conflicting personal interest, as authorized by §286.012, F. S., is not presented here. However, it might be noted that in AGO 073-236 I ruled that a city councilman is not required to abstain from voting upon a request for a zoning change made by one of his regular business customers unless the granting of such request would necessarily result in a substantial benefit to the city councilman's business, and that an increase of 10 percent in the annual gross income of such business is sufficiently substantial to require abstention from voting. *Accord:* Attorney General Opinion 073-198, ruling that a city commissioner who is a member of the board of directors of a nonprofit corporation should abstain from voting upon a zoning change applied for by that corporation.

Your second question is answered in the affirmative.

The attention of the officials in question should be directed to the provisions of §112.313(2), F. S., requiring a public officer or employee who serves as an officer, director, agent, or member of, or owner of a controlling interest in, any business entity which is "subject to the regulation of, or which has substantial business commitments from" any public agency to file a sworn statement disclosing such interest with the clerk of the circuit court, or the secretary of state, as the case may be.

073-363—October 1, 1973

PUBLIC EMPLOYEES

GROUP HOSPITALIZATION INSURANCE FOR HOSPITAL EMPLOYEES

To: Alfred O. Shuler, Attorney at Law, Apalachicola

Prepared by: Stephen F. Dean, Assistant Attorney General

QUESTION:

Is a county hospital board of trustees authorized to purchase hospital insurance for employees of said hospital?

SUMMARY:

A county hospital organized and operating under Ch. 155, F. S., and its governing board of trustees are agencies or instrumentalities of the county, and as such are within the purview of §§112.08 through 112.14, F. S., providing a group insurance plan for public officers and employees. Pursuant to §§155.11 and 112.12, all or part of the expense of providing life, health, accident, or hospitalization insurance, upon a

group insurance plan, for the officers and employees of such county hospital may be paid out of any available and duly budgeted funds of the hospital.

In answer to your question I would first direct your attention to AGO 067-20 wherein my predecessor found that unless an independent statutory agency was an agency of a county, or qualified as a governmental unit or board of the state, there existed no authority to pay health insurance premiums for its employees from tax revenues received by such agency. Cf. AGO 073-32. The George E. Weems Memorial Hospital is a county hospital organized and existing under the provisions of Ch. 155, F. S., and for the reasons hereinafter discussed, such county hospitals and their respective boards of trustees are agencies or instrumentalities of the several counties. *Accord:* Attorney General Opinions 055-245, 056-27, and 056-64.

The subject hospital was created pursuant to Ch. 155, *supra*, as a county hospital. Sections 155.05 and 155.06 provide for the establishment of county public hospitals by petition and referendum of the electors and residents of the county or by the county commission without any referendum elections, and for the appointment of the hospital board of trustees by the governor. Section 155.12 provides in part for taxes levied by the county commission sufficient to defray the operational expenses of such hospital and to pay or provide for debt service on any bonds issued to acquire, improve or support the hospital. Section 155.15 authorizes the county commission to condemn land for hospital purposes. Section 155.21 authorizes donations of money or real or personal property to the hospital, but vests the title thereto in the county, to be controlled, when accepted, by the hospital trustees. Section 155.23 authorizes the county commission to negotiate and to enter into agreements with any federal agency lending or granting money for hospital construction, and to match any such funds obtained for hospital construction. Section 155.24 authorizes the county commission to allocate to the "hospital funds" any additional unallocated public funds in the possession of the county commission. Chapter 155 generally controls the operation of said hospital subject to two special acts, Ch. 61-2188 and 65-1562, Laws of Florida. These two special acts create special authority in the hospital superintendent to establish special bank accounts, to sign and issue checks thereon for the payment of salaries of employees, and to reimburse overpayments by patients.

Chapter 155, *supra*, authorizes the establishment of an institution of the county by the residents or the governing body thereof to be established and supported by county funds, in whose behalf the power of the county to condemn property is authorized, for whom bonds may be issued by the county, and whose trustees may control property donated to said hospitals, but title to which is vested in the county. I therefore find that the George E. Weems Memorial Hospital is an agency of Franklin County. I find support for this conclusion in the fact that the employees of such hospitals may participate in the State and County Officers Retirement System. Participation of county hospitals and similar county agency employees in said system is discussed in AGO's 055-245, 056-27 and 056-64 which conclude generally that in order to participate in this retirement system, an individual must be a state or county employee, and the employees of similar hospitals were found to be county employees. Cf. *In re Florida Board of Bar Examiners*, 268 So.2d 371 (Fla. 1972), as to employees of a state agency and the state insurance program and retirement system. The employees of George E. Weems Memorial Hospital do participate in said retirement system and in its successor, the Florida Retirement System.

Section 155.11, F. S., provides that the trustees may pay out moneys received by such hospital and duly credited to its "hospital fund" only for "bills for material supplies, wages, salaries or other items of expense." Although Ch. 65-1562 and Ch. 61-2188, *supra*, exempt the George E. Weems Memorial Hospital from some provisions of §155.11, these laws do not in any manner diminish the aforementioned limitations. However, all or part of the expense for providing life,

health, accident, or hospitalization insurance could be appropriately included in, and paid from, the budgeted items of "salaries or other items of expense" within the annual budget of the hospital board of trustees. *See also* §112.12, F. S.

However, before any tax moneys or other county funds are received by such a county hospital the trustees must prepare, pursuant to §155.12, *supra*, a statement of its receipts and disbursements for the current or preceding fiscal year, file the same with the board of county commissioners, and certify to the county commission the amount necessary for the improvement and maintenance of the hospital facility during the ensuing year. The county commission thereupon levies a tax of not to exceed 10 mills to provide for the expenses and improvements of the hospital. In effect, the county commission completes the preparation of the hospital's budget by determining the amount of taxes which will meet the operational and capital outlay expenses of the hospital and balances out the other revenues of the hospital. *See* AGO 064-129. Therefore, the board of trustees would have to budget for such insurance expenses in its annual statement of receipts and expenditures and certification of the amount necessary for the operation, improvement, and maintenance of the hospital filed with the county commission.

Having found that the hospital is an agency of the county, that its employees are county employees, and that §155.11, *supra*, would authorize an expenditure of "hospital funds" for such hospitalization insurance benefits, the cost of providing such insurance for the hospital's employees, pursuant to §§112.08 and 112.12, F. S., may be paid out of any of its available and budgeted funds, assuming the expense thereof has been included in the annual report and certification submitted to the county commission.

073-364—October 1, 1973

ARMED FORCES

NATIONAL GUARD TRAINING FACILITY CONSTITUTES MILITARY INSTALLATION FOR PURPOSES OF RULES OF DIVISION OF BEVERAGE

To: Major General Henry W. McMillan, Department of Military Affairs, St. Augustine

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

QUESTION:

Is the Florida National Guard training facility at Camp Blanding a "military installation" within the scope of Rule 7A-4.14, Florida Administrative Code by the Department of Business Regulation, Division of Beverage?

SUMMARY:

The Florida National Guard training facility at Camp Blanding, for the purposes of Rule 7A-4.14, Florida Administrative Code, is an "armed services" or "military installation" within the State of Florida.

Florida Department of Business Regulation, Division of Beverage Rule 7A-4.14, F.A.C., relating to the sale of malt beverages to government installations, provides in part:

(1) Licensed manufacturers and distributors of malt beverages may sell malt beverages tax free to post exchanges, ship service stores and base exchanges located in Military, Navy or Air Force Installations within the State of Florida, if such beverages are thereafter sold by said