

show a two-party contract between the city and developer and no third party is included thereunder as a third-party beneficiary.

Therefore, the adjoining property owners cannot force the city to complete the installation of the public improvements. The city may, however, on its own volition proceed against the bond and may obtain a deficiency decree against the developer for the cost of completing the public improvements agreed upon.

073-456—December 10, 1973

RESIGN-TO-RUN LAW

**APPLICABILITY TO UNPAID COMMISSIONER OF
HOUSING AUTHORITY**

To: Vernon W. Turner, City Attorney, Homestead

Prepared by: Michael Parrish, Assistant Attorney General

QUESTION:

Is a commissioner of the Homestead Housing Authority required by §99.012, F. S., to resign as such commissioner in order to qualify as a candidate for the office of city councilman of the City of Homestead?

SUMMARY:

A commissioner of a housing authority, being appointed to office and serving without salary, is within the exception to the Resign-to-Run Law created by §99.012(5), F. S.

The Resign-to-Run Law (§99.012, F. S.) contains an exception which exempts a person "who serves as a member of any appointive board or authority *without salary*" from the resignation requirements of that section. (Emphasis supplied.) See §99.012(5), *id.* As you note in your letter, under §421.05(1), F. S., a commissioner of a housing authority "shall receive no compensation for his services." Such a commissioner, who under §421.05(1) is appointed by the mayor, is clearly within the above-mentioned exception to the Resign-to-Run Law. Accordingly, the failure of such a commissioner to resign presents no obstacle to his qualification as a candidate for the office of city councilman.

073-457—December 10, 1973

GAME AND FRESH WATER FISH COMMISSION

**FEES FOR ARREST AND CONVEYANCE OF
PRISONERS—COLLECTION**

To: Sal Geraci, Clerk, Circuit Court, Fort Myers

Prepared by: Michael M. Parrish, Assistant Attorney General

QUESTIONS:

1. Are the Game and Fresh Water Fish Commission and its conservation officers entitled to receive fees for arrests made between July 5, 1963 and August 1, 1970?
2. Are there any time limitations on an action to recover such fees?

SUMMARY:

Under §372.72, F. S., as amended by Ch. 70-370, Laws of Florida,

the Game and Fresh Water Fish Commission and its conservation officers are without authority to collect fees for making arrests and mileage for conveying prisoners on or after July 1, 1970, but may collect such fees and mileage for arrests made prior to July 1, 1970. A suit for the collection of such fees is not subject to the statute of limitations.

AS TO QUESTION 1:

Prior to its amendment in 1970, §372.72, F. S., which originated as Ch. 13644, 1929, Laws of Florida, reads as follows:

All moneys collected from fines, penalties or forfeitures under this chapter shall go into the fine and forfeiture fund of the county where such convictions are had. The game and fresh water fish commission and its conservation officers shall be allowed for making arrests the same fees as sheriffs, and the same mileage for conveying prisoners, the same to be taxed as costs in the cause, in case of conviction, and paid in the like manner as the compensation of sheriffs, but no fees or mileage shall be allowed in case of acquittal. All mileage and other fees received by the game and fresh water fish commission, or any of its conservation officers under this section, shall be deposited in the state treasury to the credit of the state game trust fund. (Emphasis supplied.)

Attorney General Opinion 049-171, April 13, 1949, Biennial Report of the Attorney General, 1949-1950, p. 399, in answer to a similar question about §372.72, *supra*, as it read prior to amendment, concluded:

In view of the foregoing statute, it is my opinion that the Commission of Game and Fresh Water Fish and its conservation officers should receive the same fees for making arrests and conveying prisoners that are allowed sheriffs. That said fees shall be deposited to the credit of the State Game Fund.

I concur in the view expressed in that opinion, but direct your attention to the fact that effective July 1, 1970, §372.72, F. S., was amended by Ch. 70-370, Laws of Florida, by deleting the last two sentences of that section (italicized above) and adding language to the first sentence (which language does not bear on the questions under discussion). As shown by its title, the major purpose and effect of the amendment were to delete, as of July 1, 1970, the authorization for the Game and Fresh Water Fish Commission and its conservation officers to collect fees for making arrests and conveying prisoners; and it is clear that the Game and Fresh Water Fish Commission is without authorization to collect fees for arrests and mileage for conveying prisoners, made on or after July 1, 1970. The matter of arrests made prior to July 1, 1970, for which such fees and mileage were not claimed until after that date, requires an examination of the amending legislation. As stated in AGO 057-279:

“It is an elementary rule of construction that ‘a statute is not to be given a retroactive effect unless its terms show clearly that such an effect was intended’. . . .” (City of Miami v. Board of Public Instruction, Fla., 72 So.2d 901, text 904 and authorities there cited).

I have examined the amending act, Ch. 70-370, and find nothing showing or indicating any intention on the part of the legislature to make the amendment retroactive to arrests made prior to the effective date of said amendment. In the absence of any indication that the legislature intended to give a retroactive effect to the amending act, I am of the view that the Game and Fresh Water Fish Commission and its conservation officers are authorized to collect arrest fees and mileage for conveying prisoners for arrests made prior to July 1, 1970.

Such fees appear to come within the purview of Paxson v. State, 165 So. 661

(Fla. 1936), in which the Florida Supreme Court held that a constable could proceed by mandamus to compel the county commissioners to pay his fees so long as the county fine and forfeiture fund contained an amount sufficient to cover those fees.

As to such accounts, it should be noted that the statute which authorized collection of such fees provided that "no fees or mileage shall be allowed in case of acquittal." Attorney General Opinion 049-283, June 20, 1949, Biennial Report of the Attorney General, 1949-1950, p. 401, concluded that the commission was not entitled to arrest and mileage fees in a case where the defendant was released upon the condition that he pay the costs in the case. I concur with that conclusion and am further of the view that the Game and Fresh Water Fish Commission is not authorized to collect such fees in any cases disposed of other than by conviction. Accordingly, fees for arrests by conservation officers which did not result in convictions are not proper charges against the county.

Your attention is also directed to §§142.10-142.12, F. S., which prescribe the manner in which an officer shall present his account against the county for his fees arising from criminal causes, as well as the duty of the county commissioners upon receipt of such account. Section 142.10, F. S. 1971, provides:

The officer shall make out his account against the county in such form as the county commissioners may require, stating the services for which the fee is charged, the title of the case in which the services were performed, and the facts which, under the provisions of §142.09, make the fees a good claim against the county, including all legal charges and costs before justices of the peace, and present the same to the board of county commissioners, with the affidavit that the same is correct.

Although the accounts in question are accounts of the Game and Fresh Water Fish Commission payable into the state treasury, inasmuch as they are to be "paid in the like manner as the compensation of sheriffs," I am of the view that such accounts are subject to the requirements of §142.10, *supra*. The accounts shown in the attachment to your letter fall short of those requirements. In light of §129.09, F. S., which imposes both civil and criminal sanctions for signature of a warrant for the payment of an improper claim against the county, it is suggested that the Game and Fresh Water Fish Commission should be required to substantiate its claims for arrest and mileage fees in the manner required by §142.10 prior to the payment of same by the county.

AS TO QUESTION 2:

A claim against a county is normally barred by §95.08, F. S., unless it is presented to the board of county commissioners within one year. However, pursuant to §§95.02 and 95.021, F. S., the time bar of §95.08 does not apply to an action by, or on behalf of, the state. Attorney General Opinion 058-235 concluded that the University of Florida, as an agency of the state, was not subject to the statute of limitations, and in *Florida Industrial Commission v. Felda Lumber Co.*, 18 So.2d 362 (Fla. 1944), our Supreme Court held that the Florida Industrial Commission "is an agency of the sovereignty and acts for the State," and is, therefore, not subject to the statute of limitations. Although the state is subject to statutes which provide for a twenty-year period of limitation, there is no such limitation statute applicable to claims of the type under consideration.