

property described in the notice, neither does it create any superior rights in that property for the litigant who files said notice," citing 54 C.J.S. *Lis Pendens* §38. Accordingly, it was ruled that the flat filing fee collected by the circuit court clerk under §28.241, F. S., for filing the civil proceeding in which the notice of lis pendens is filed included the fee for filing and recording the notice of lis pendens in the lis pendens docket; however, he was held to be entitled to the regular recording fee prescribed by §28.24, *id.*, where the action was commenced in a county other than where the property designated in the notice of lis pendens was located. This ruling would appear to be equally applicable to service charges which the clerk (or the comptroller, when the duties are divided) is entitled to make when filing notices of lis pendens in the official records of the county.

073-91—March 29, 1973
(See also 073-91A)

DEPUTY SHERIFFS

ENTITLEMENT TO BACK PAY FOR PERIOD OF SUSPENSION UPON REINSTATEMENT

To: Theron Cook, Washington County Sheriff, Chipley

Prepared by: Richard Bennett, Assistant Attorney General

QUESTION:

When a sheriff suspends and then reinstates a deputy, is the sheriff authorized to pay back salary and allowances to the reinstated deputy?

SUMMARY:

A sheriff has no authority to suspend a deputy but may only "fire" such deputy as provided by statute. And a sheriff has no power to pay back salary and allowances to "suspended" deputies upon "reinstatement" absent statutory authority to that effect.

Section 30.07, F. S., authorizes the sheriff to appoint deputy sheriffs who shall have the same power as the sheriff appointing them. The independence of the sheriff is preserved with regard to the "selection of personnel, the hiring, firing, and setting of salaries of personnel" by virtue of §30.53, F. S. (Emphasis supplied.) As stated in a dissent by Justice Terrell in the case of *Blackburn v. Brorein*, 70 So.2d 293 (Fla. 1954), deputy sheriffs are appointed by the sheriff and "may be hired and fired as often as he changes his collar if he so desires."

In the case before me for consideration, the sheriff purported not to "fire" but to "suspend" a deputy, and during the interim he employed another individual as a deputy sheriff. After careful research of the constitutional and statutory law, I find no provision granting the sheriff the power to suspend a deputy sheriff; and it would seem that the sheriff was without power to do so. That being the case, it appears that the deputy in question was fired, not suspended, and then rehired, not reinstated. Hence, the issue of "back pay" disappears.

Even assuming, *arguendo*, that the sheriff lawfully suspended his deputy and then reinstated him, I have been unable to find any legal authorization for the payment of back salary and allowances to such suspended deputy. Authority does exist in §112.45(2), F. S., for reimbursement for such pay and emoluments of office from the date of suspension to the date of the reinstatement order by the senate in those cases where the governor has ordered the suspension and reinstatement under Art. IV, §7, State Const.

Section 30.49(7), F. S., does provide that the reserve fund for contingencies in the sheriff's budget "shall be appropriated upon written request of the sheriff." However, it has been held that public officers (deputy sheriffs were held to be officers for the purpose of county civil service rules found to be inapplicable to deputies in *Blackburn, supra*) have no claim to compensation for services rendered except when, and to the extent that, it is provided by law, and the statutes dealing with the compensation payable to public officers are to be strictly construed. *Pridgeon v. Folsom*, 181 So.2d 222 (1 D.C.A. Fla., 1965), rehearing denied 1966. And here neither §30.50, F. S. (which concerns the payment of salaries and expenses by a sheriff), nor any law that I am aware of authorizes the sheriff to pay back salary to a deputy upon reinstatement. In the absence of such authority the sheriff is without the power to allocate moneys for such a purpose.

Before an ousted official can claim that he is entitled to the emoluments of an office for the period of his suspension or removal, he must establish that he was wrongfully deprived of his right and title to the office; and this can only be done in a direct proceeding brought in a court of competent jurisdiction for that purpose. *Ball v. State ex rel. Harvey*, 146 So. 830 (Fla. 1933). However, in those states, including Florida, where deputy sheriffs are mere appointees of the sheriff without tenure of office and removable at the will of the appointing power, there would appear to be no recourse in the courts for removal without cause. [See] 80 C.J.S. *Sheriffs and Constables* §26, p. 195.

It should be mentioned that the deputy's claim for back pay could be introduced as a claims bill pursuant to Art. XVI, §11, State Const. 1885, F.S.A., which now is and has the force and effect of a statute [§215.425, F. S.], and, if passed by two-thirds of the members elected to each house of the legislature, would become law.

073-91A—April 23, 1973
(Supplement to 073-91)

DEPUTY SHERIFFS

SUSPENSION WITHOUT PAY AS DISCIPLINARY PROCEDURE

To: John A. Madigan, Jr., Counsel, Sheriffs Association, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

(See 073-91 for question)

SUMMARY:

A deputy sheriff may be suspended *without pay* by the sheriff as a disciplinary measure for an infraction that would not warrant a dismissal.

This is in response to your letter of April 16, 1973, requesting on behalf of the Florida Sheriffs' Association a clarification of my former opinion in ACO 073-91, insofar as the power of a sheriff to suspend a deputy *without pay* is concerned. You state that suspension without pay has traditionally been used by the sheriffs throughout the state as a disciplinary measure for minor infractions that do not warrant the dismissal of the deputy.

As noted in ACO 073-91, *supra*, the late Mr. Justice Terrell commented in his dissent in *Blackburn v. Brorin*, 70 So.2d 293, 299 (Fla. 1954), that deputy sheriffs may be "hired and fired" by the sheriff "as often as he changes his collar if he so desires." And in adopting Ch. 57-368, Laws of Florida, providing a budget procedure for certain of the sheriffs of this state, the legislature recognized the

traditional authority of the sheriffs to "fire" as well as "hire" their deputies by providing that "[t]he independence of the sheriffs shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel" [Section 30.53, F. S.]

From what is said in your letter, it appears that the sheriff's power to suspend his deputies without pay as a disciplinary measure is just as rooted in tradition as the power to terminate their employment, and that the sheriffs of this state have interpreted §30.53, *supra*, as recognizing their traditional right not only to "hire and fire" but also to suspend deputies without pay for minor infractions. It is well settled that the administrative interpretation of a statute is entitled to great weight and will not be overturned by the courts except for the most cogent reasons and where clearly erroneous. *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952).

In these circumstances, I can conclude only that, pending legislative or judicial clarification, the sheriffs of this state may continue their traditional practice of suspending *without pay* a deputy who has been guilty of an infraction that does not warrant dismissal. And insofar as my opinion in AGO 073-91 may be inconsistent with this conclusion, it is modified to that extent.

073-92—March 29, 1973

PAROLE AND PROBATION COMMISSION

INTERVIEWS WITH PERSONS CONVICTED OF CAPITAL CRIMES

To: Armond R. Cross, Chairman, Florida Parole and Probation Commission,
Tallahassee

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTIONS:

1. Did Ch. 72-724, Laws of Florida, create any "capital crimes" to which the following provision of §947.16(1), F. S., is applicable: "An inmate *convicted of a capital crime* shall be interviewed at the discretion of the parole commission."?
2. May persons convicted of capital crimes and sentenced to death or life imprisonment before the enactment of Ch. 72-724 now be interviewed at the commission's discretion?

SUMMARY:

If a person is convicted and sentenced for first degree murder committed after December 8, 1972 (the effective date of Ch. 72-724), contrary to §782.04(1)(a), F. S., or for rape committed after December 8, 1972, contrary to §794.01(1), F. S., he stands convicted of a "capital crime," regardless of whether he is sentenced to death or life imprisonment, and it is discretionary with the Parole and Probation Commission as to whether to interview him for parole consideration.

As of July 24, 1972, crimes which had previously been capital crimes became noncapital crimes. As to inmates previously sentenced for such crimes to imprisonment in the state prison instead of to death, the provisions of §947.16(1), F. S., requiring interviews with inmates sentenced to serve prison terms were applicable after July 24, 1972. For the purpose of computing the time within which said provisions require interviews to be made, the inmate's sentence should be regarded as having commenced on July 24, 1972.

A person sentenced for a capital crime before July 24, 1972, no longer stood convicted of a capital crime after that date, so that the