

073-360—September 21, 1973

CIRCUIT COURT CLERKS

COMPENSATION BY COUNTY FOR SPECIAL SERVICES

To: Ernest Ellison, Auditor General, Tallahassee

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QUESTIONS:

1. What duties performed by the circuit court clerk constitute "special services" for which the clerk may be personally compensated by a board of county commissioners under §28.25, F. S.?
2. Is the clerk entitled to retain all or any part of the amount paid by the county as personal compensation in addition to his statutory salary under §145.051 (3), F. S., under the attached county ordinance?
3. If so, is the clerk required to perform the special services personally and in an individual capacity without using any of the personnel, equipment, space, or supplies of his office?

SUMMARY:

For services rendered prior to October 1, 1973, a circuit court clerk may retain as personal income such sums, if any, as the board of county commissioners may have appropriated for *special* services personally performed by him as clerk of the board which do not require the use of the office space, equipment, or personnel of his office. After October 1, 1973, under Ch. 73-173, Laws of Florida, a clerk may be personally compensated by the board only for special services that are not ordinarily performed by a circuit court clerk as a part of his official duties and which he performs personally and in his individual capacity without using any of the personnel, equipment, or space of his office.

AS TO QUESTION 1:

Section 28.25, F. S., as amended by Ch. 70-134, Laws of Florida, provides that:

Compensation for special services may be paid to the clerk of the circuit court by the county commissioners as clerk of the board of county commissioners, and for other services he shall be paid such charges as provided by law.

At the time this provision was adopted, §145.121 (1), F. S. (adopted by Ch. 69-346, Laws of Florida), provided that, except for the salary provided by Ch. 145, F. S., the county officials whose salaries were fixed therein at a uniform rate throughout the state could not retain as personal income any fees or commissions received for any service performed by such official "wherein any of the personnel, equipment, or space of the office is employed" and that such fees or commissions "shall be included as income of the office." I ruled in AGO 071-145, as clarified in AGO 071-145A, that a circuit court clerk could retain as personal income such sums, if any, as the board of county commissioners should appropriate for *special* services *personally* performed by him as clerk of the board. The clear implication of these opinions is that such special services would not require the use of the office space, equipment, or personnel of his office.

In 1973 (by Ch. 73-173, Laws of Florida) the legislature amended Ch. 145, *supra*, to change the salary schedules for county officials, effective October 1, 1973, and added the following provision:

The compensation provided in chapter 145, Florida Statutes, shall be the *sole and exclusive compensation* of the officers whose salary is

established therein *for the execution of their official duties*, and except as specifically provided herein, the acceptance of salary *for official duties* as a result of other general, special or general laws of local application, resolution, supplement or from any other source is a misdemeanor of the first degree punishable as provided in section 775.082 and section 775.083, Florida Statutes. [Section 10, Ch. 73-173 (§145.17, F.S.).]

See also §13 of Ch. 73-173, *supra*, providing that:

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.

The 1973 Legislature did not expressly repeal §28.25, *supra*, and left unchanged §145.121 (1), *supra*, in amending Ch. 145, F. S. However, in adopting §§10 and 13 of Ch. 73-173, *supra*, as a part of Ch. 145, the legislature has expressed its clear intent that the county officials therein designated may not retain as *personal* income any fees or commissions or other compensation received by them for carrying out their official duties. It is equally clear that, under §145.121 (1), a county official may not retain as personal income any fees or commissions or other compensation received by him for services in the performance of which he employs any of the personnel, equipment, or space of his office. Thus, when construed in the light of these provisions, §28.25 authorizes the board of county commissioners to pay additional personal compensation to a circuit court clerk only for special services that are not ordinarily performed by a circuit court clerk as a part of his *official* duties and which he performs *personally* and in his individual capacity without using any of the personnel, equipment, or space of his office. In other words, the board of county commissioners may contract with the circuit court clerk for personal and individual services (if the performance of such services would not interfere with the carrying out of his official duties), just as the board could contract with any other individual or firm for special services not ordinarily required to be performed by a county official. Cf. AGO 048-358, Dec. 14, 1948, Biennial Report of the Attorney General, 1947-1948, p. 167, in which it was ruled that the clerk could retain as personal income the sums paid to him by the board of county commissioners for reindexing and copying old indices of county records under a special contract with the board for such services.

This interpretation of §28.25, *supra*, is in accordance with the clear intent of the legislature, as expressed in §§10 and 13 of Ch. 73-173, *supra*, and the retention (and, presumably, reenactment in F. S. 1973, as provided by Ch. 73-70, Laws of Florida, §11.2421, F. S.) of §145.121 (1) *supra*. And, as of October 1, 1973 (the effective date of Ch. 73-173), the ruling in AGO's 071-145 and 071-145A referred to above is hereby modified to the extent of any inconsistency with the opinions herein expressed.

Sections 10 and 13 of Ch. 73-173, *supra*, were obviously intended to emphasize and clarify the legislative intent expressed in §145.121 (1), *supra*. However, it is not clearly apparent that the 1973 provisions should be given effect as a clarification of §28.25, *supra*, rather than as a repeal of the provisions of that statute insofar as they are in conflict with the 1973 act. Many circuit court clerks of this state may have drawn as personal income additional compensation for special services personally performed by them as clerk of the board of county commissioners in reliance upon our former opinions, *supra*. This being so, and in the absence of anything in the statute that expressly or by necessary implication requires a different conclusion, I am constrained to the view that the question of the propriety of the county commissioners' personally compensating the circuit court clerk for any of the services listed by you, which were performed prior to October 1, 1973, should be

considered in the light of and in accordance with my interpretation of the statute in AGO's 071-145 and 071-145A, *supra*.

When tested by the rule announced in those opinions, very few of the listed services would appear to qualify as "special services" as clerk of the board for which county funds could be budgeted and appropriated by the board as additional personal income for the clerk. Certainly, the services performed by the clerk for special districts and authorities and similar separate statutory entities are not special services as clerk of the board for which *county* funds may be used to compensate him personally. (The question of whether the clerk may retain the compensation paid to him by these entities as personal compensation is not presented nor decided.) It is clear, also, that such services as "audits and sale of dog licenses," "custodian of voting machines," "custodian of property records," "handling passport applications," and the like, are not compensable from county funds as additional personal compensation to the clerk, not only because they do not appear to be *special services as clerk of the board* but also because they use the space, personnel, and equipment of the office.

The question of the propriety of compensating the clerk personally from county funds for performing the many other services listed by you would appear to be easily resolved by applying the rule referred to above in the light of these examples.

AS TO QUESTION 2:

The ordinance in question recites that the clerk is entitled to be compensated for "special services," without naming them, and "ordains" as follows:

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners to instruct the Clerk to the Board of County Commissioners that he be entitled beginning with the budget year 1970-71, to receive as personal income for special services rendered to the Board, *up to 80%* of the present remuneration to the Clerk for such services. (Emphasis supplied.)

This ordinance falls far short of appropriating or authorizing the appropriation of county funds to compensate the clerk for special services to the board of county commissioners. And even if it did appropriate or authorize the appropriation of a definite amount for such purpose on an annual basis, it fails to designate the special services for which he is to be personally compensated. It was said in AGO 071-145A that the clerk may be compensated for special services either "on an annual basis or for designated special services as they are performed." However, routine budget and accounting procedures would seem to require that the special services for which compensation is to be made be spelled out, regardless of whether payment is made on an annual or on an ad hoc basis.

Accordingly, I am inclined to the view that your second question should be answered in the negative.

AS TO QUESTION 3:

Your third question need not be answered in view of the answer given to your second question. However, as noted in my answer to your first question, additional personal compensation for special services may not be paid to the clerk if the performance of the services requires the use of the personnel, equipment, or space of the clerk's office.