

anything other than the housing and related services necessary for the performance by the public defender of his duties in and for that particular county and judicial circuit. And it seems clear that, in the absence of any statutory directive, either express or necessarily implied, a county should not be required to assume any portion of the financial burden of appeals taken by the public defenders of other judicial circuits on behalf of indigent persons charged with the commission of criminal offenses in those circuits.

Accordingly, pending legislative or judicial clarification, I have the view that the expense of any additional housing (and related services) required by a public defender of any of the four judicial circuits designated in §27.51(4) (a) through (d), *supra*, for the purpose of prosecuting appeals on behalf of public defenders of other judicial circuits should be charged against the state funds especially appropriated for that purpose pursuant to the mandate of §27.51(4) (e), *supra*, and the records of such disbursements should be included in the accounts relating to the expenditures of such state funds.

AS TO QUESTION 2:

The legislative intent that a county shall not be responsible for the cost of the operation of the office of its public defender is made clear in §27.54(2), *supra*, and again in the legislative comments appended to the appropriations for these offices for the fiscal year 1973-1974, quoted above. The cost of long distance calls and the monthly service charge for telephone service would appear to be "operation" costs that are not properly chargeable to the county. Thus, pending legislative or judicial clarification, only the installation costs of telephone service—or the cost of connecting with a Central PBX system—should be paid by the county.

073-330A—September 26, 1973

COUNTY OFFICERS

EFFECTIVE DATE OF AMENDMENTS TO UNIFORM COUNTY OFFICIALS' SALARY ACT

To: Alvin N. Andrews, Martin County Tax Collector, Stuart

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

When do the salary increases provided for in Ch. 73-173, Laws of Florida, amending Ch. 145, F. S., take effect for fee officers and budget officers, and when do the second-year salary increases take effect?

SUMMARY:

The salary increased provided by Ch. 73-173, Laws of Florida (Ch. 145, F. S.), will take effect for all county officials, whether fee or budget officers, on October 1, 1973. However, such an increase may not exceed 20 percent of the total compensation received by the official for the preceding fiscal year ending June 30, 1973.

Chapter 73-173, *supra*, amending the Uniform County Officials' Salary Act (Ch. 145, F. S., adopted in 1969 by Ch. 69-346, Laws of Florida), broadens the population brackets or "groups" upon which the base salaries for the various county officials therein designated are established and provides that, in addition to the base salary therein prescribed, increased compensation shall be made from year to year for population increments over the minimum for each population group. The 1973 act limits the compensation and the salary increases that may be received by these county officials, as follows:

In no event shall any person receive for the execution of his powers, functions and official duties compensation in excess of the salaries provided in this act, and in no event shall any person receive an increase in salary in any one fiscal year in excess of twenty percent (20%) of his total compensation for the preceding fiscal year ending June 30th

This limitation is not clearly made applicable to the increases in salary provided by the 1973 salary schedules, as was the case when the 1969 uniform salary schedules were adopted. The 1969 act, in clear and unmistakable terms, required the salary increases therein prescribed to be "adjusted" at the rate of 20 percent per year for those officials whose current compensation was less than the uniform salary provided by the act. And, in the absence of such a clear expression of intent, I ruled in AGO 073-330 [omitted from the Annual Report] that the 20 percent limitation referred to above was not applicable to the salaries established by the 1973 uniform salary schedule.

However, I am now apprised of tape recordings of legislative debates on the floor of the house at the time the quoted provision was added as an amendment to the original bill (CS/HB 2144). Reference to these recordings reveals clearly that the members of the house who introduced and who debated the proposed amendment were under the impression that the amendment would prevent any immediate pay raise in excess of 20 percent of the current compensation (salaries plus authorized supplements) received by a county official for the twelve months ending June 30, 1973. In addition, I now have before me a copy of a memorandum prepared by the staff of the Chairman of the Senate Committee on Ways and Means and the Chairman of the House Committee on Finance and Taxation, summarizing the 1973 County Officials' Salary Act, together with a schedule of all such salaries. This report states that:

Regardless of the amounts computed as total salary under this act, no official is allowed more than 20% increase in 1973-74 over the amount of total compensation for the twelve months ending June 30, 1973. Special qualification allowance of \$2,000 for a Certified Florida Assessor is unaffected by the 20% limitation.

In these circumstances, any ambiguity in the language of the 1973 act in the respect here in question must be resolved in accordance with the legislative intent as shown by the legislative debates and reports. Accordingly, I am constrained to, and do hereby, recede from my opinion to the contrary as expressed in AGO 073-330.

I have the view that the salary increases (or decreases) of county officials under the 1973 salary schedules will take effect on October 1, 1973, without regard to whether they are fee or budget officers. Here, again, the question is one of legislative intent; and in light of the fact that a fiscal year of October 1 to September 30 has been established for all county officials, whether fee or budget officers, by Ch. 73-349, Laws of Florida, and that, under §12 of Ch. 73-173, *supra* [§145.18, F. S.], the annual adjustments either upward or downward, to reflect changes in the cost-of-living index are to be made on October 1, commencing in 1974, it is reasonable to conclude that the legislature intended the salary increases or decreases of fee officers, as well as budget officers, to take effect on October 1, 1973. This conclusion is confirmed by the effective-date clause of the act, providing that the act shall take effect on October 1, 1973, and that

. . . nothing herein contained shall be construed to prohibit the continuation of compensation received by county officers *at a rate not less than that existing for the month of June, 1973, until the effective date of this act.* (Emphasis supplied.)

As some county fee officers who are receiving additional personal compensation under the provisions of §145.121(2)(c), F. S. 1971 (repealed by Ch.

73-173, *supra*), will take a decrease in their total annual compensation under the 1973 act, the italicized provision confirms that the effective date of the salary changes will be October 1, 1973, for all the officials, whether fee or budget officers. Similarly, the second-year increases or decreases—including changes to reflect a change in the cost-of-living index or in the population of the county—will take effect on October 1, 1974.

I have not overlooked the fact that in AGO 069-68 my predecessor in office construed the 1969 Uniform County Officials' Salary Act as requiring the salary increases therein prescribed to take effect as of January 1, 1969, for fee officers, who at that time operated on a calendar-year basis. He relied in part upon a similar ruling in AGO 058-57. But in that opinion it was noted that "[i]n each case the paramount rule of statutory construction is to ascertain the legislative intent. . . . To this extent each act of the legislature must be interpreted separately and individually." And in view of the provisions of the 1973 act referred to above, it cannot be inferred, as it was in the opinions of my predecessors, that the legislative intent was "to increase the salary of a fee officer for the entire year even though the act did not become effective until the middle of the year."

073-332—September 10, 1973

STANDARDS OF CONDUCT

SCHOOL BOARD MEMBER EMPLOYED AS ATTORNEY FOR COUNTY COMMISSION

To: County School Board Member

Prepared by: Victor Walsh, Assistant Attorney General

QUESTION:

May an elected county school board member accept the county commissioners' offer of a part-time position as attorney for the commission?

SUMMARY:

An elected county school board member may accept part-time employment under §125.01(1)(b), F. S., as counsel to the county commission in the absence of any provisions in the School Code prohibiting such employment. He should refrain from any participation as counsel in those occasional dealings between the county commission and the school board.

My predecessor in office noted in AGO 069-3 that mere "employments are not within the purview and intention of subsection (a) of §5, Art. II of the State Const." The Constitution does not define "office" or "officers" but traditionally,

The term "office" implies a delegation of a portion of sovereign power to, and the possession of it by, the person filling the office, while an employment does not comprehend a delegation of any part of the sovereign authority. The term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. [State v. Sheats, 83 So. 508 (Fla. 1919). *Accord*: Attorney General Opinion 069-2.]

AGO 071-263 held that an assistant state attorney was not an officer for the purposes of the aforementioned prohibition; and AGO 071-347 held that an attorney retained by the county under §125.01(1)(b), F. S., was not an officer and thus not within the purview of the "resign-to-run" law, §99.012, F. S. Assuming