

073-37—March 2, 1973

STATE CAREER SERVICE SYSTEM

JUDGES OF INDUSTRIAL CLAIMS

To: Tom Adams, Secretary of Commerce, Tallahassee

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QUESTIONS:

1. Are industrial claims judges exempt from the State Career Service System under §110.051(2), F. S.?
2. If so, may the Division of Labor and Employment Opportunities prescribe attendance and leave rules for these positions as in the case of other positions in the division that are exempt from the State Career Service System?

SUMMARY:

Judges of industrial claims are exempt from the State Career Service System; however, the Division of Labor and Employment Opportunities may prescribe attendance and leave rules for these positions as in the case of other positions in the division that are exempt from the State Career Service System.

My predecessor in office ruled in AGO 068-102 that the position of industrial claims judge is exempt from the State Career Service System, Ch. 110, F. S. This ruling was based on the language of §110.051(2)(d), *id.*, exempting "judges, referees, receivers" from the system, and on the fact that §440.44(4)(a), F. S. 1967, requiring a merit system for personnel in the Workmen's Compensation Division, expressly excluded members of the Florida Industrial Commission and judges of industrial claims from this merit system.

After the transfer of the Florida Industrial Commission to the Division of Labor and Employment Opportunities of the Department of Commerce by the Governmental Reorganization Act (§17 of Ch. 69-106, Laws of Florida), §440.44(4)(a), *supra*, requiring a special merit system for Workmen's Compensation Division personnel, was deleted by the revisers (§163 of Ch. 71-377, *id.*)—presumably because the State Career Service System prescribed by Ch. 110, *supra*, would now be applicable to such personnel. However, no change was made in §110.051(2) (d), *supra*. It is noteworthy, also, that in 1969 an additional exempt classification was added to §110.051(2)—namely, "[a]ll officers and employees of the judicial branch of state government; provided, however, that the department shall set the salary of these positions, unless otherwise fixed by law." See Ch. 69-343, Laws of Florida. By expressly adding judicial officers—which would, of course, include judges of all courts—to the list of exempt positions and retaining the reference to "judges, referees, receivers," the legislature must have intended to make clear its intention to include such quasi-judicial officers as judges of industrial claims among the positions exempt from the State Career Service System.

Accordingly, your first question is answered in the affirmative.

A question somewhat similar to your second question was also posed to my predecessor in 1968. It was answered in the negative in AGO 068-102, *supra*, on the ground that Ch. 440 did not authorize the Florida Industrial Commission to promulgate a body of "personnel rules and regulations applicable to judges of industrial claims" and for the further reason that §440.44(4), *supra*, "explicitly excludes said judges from any classificatory schedules, standards, rules or regulations so promulgated by the commission for its employees." (Emphasis supplied.) Implicit in this statement is the conclusion that judges of industrial

claims are employees; in fact, the opinion states that such positions "are probably not offices," in answer to another question.

The ruling in AGO 068-102, *supra*, is no longer authoritative. As noted above, §440.44(4)(a), *supra*, has now been repealed by the legislature, so that any limitations that had been imposed upon the Industrial Commission when it administered its own special merit system under §440.44(4)(a) are no longer applicable. More importantly, §1 of revised Art. V, State Const., now expressly authorizes the legislature to grant quasi-judicial power to commissions or administrative officers or bodies;* and the former constitutional provision requiring all state and county officers to be either appointed by the governor or elected by the people (Art. III, §27, State Const. 1885) was not carried forward into the 1968 Constitution. (The 1968 Constitution had not been adopted at the time AGO 068-102, *supra*, was written.) Thus, the fact that the industrial claims judges are appointed by the division and not elected by the people or appointed by the governor no longer requires a finding that the position is one of employment and not an office.

And there can be little, if any, doubt that industrial claims judges are quasi-judicial officers. It is true that §440.44, *supra*, still vests in the administrative body charged with the duty of administering the Workmen's Compensation Act (now the Division of Labor and Employment Opportunities, formerly the Florida Industrial Commission) the authority to employ and fix the compensation of all personnel in the division, including specifically judges of industrial claims. A similar provision was in the act when it was first adopted, at a time when the commission, with the approval of the governor, was authorized to "appoint and fix the salaries of necessary deputy commissioners and [to] delegate to such deputy commissioners such powers and authority as may be necessary to enable them to effectively perform their duties." See §440.45, F. S. 1941. However, §440.45(1), F. S., now authorizes the division, with the approval of the governor, to appoint as many full-time judges of industrial claims "as may be necessary to effectually perform the duties prescribed for them under this chapter and the rules and regulations promulgated by the commission pursuant to this chapter" and specifically prescribes the term of and the compensation to be paid to industrial claims judges. See §440.45(2) and (3), as to their term and salary; and §§440.19, 440.20, and 440.25, F. S., as to their duties. Thus, these positions have three of the indicia usually present in a position that has the status of an "office," namely, duties, tenure, and compensation prescribed by law. See *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919). And the other requirement—the right to exercise some portion of the sovereign power, conferred or defined by law and not by contract—is present here also, as a compensation order entered by a judge of industrial claims becomes final and is binding upon the parties unless review of said order by the Industrial Relations Commission is sought within twenty days; and the case is reviewed by the commission upon the record as certified to it by the industrial judge and not *de novo*. See §440.25(4), *id.*

I understand that the State Personnel Board has adopted an administrative policy authorizing state agencies to adopt attendance and leave rules for exempt positions; and I see no reason why the judges of industrial claims may not have the benefit of such rules and regulations as in the case of other positions in the division that are exempt from the State Career Service System.

Accordingly, your second question is answered in the affirmative.

*It should be noted that Ch. 72-241, Laws of Florida, divorced the Industrial Relations Commission—successor to the Full Commission of the old Florida Industrial Commission—from the Division of Labor and Employment Opportunities, rendering the former a judicially qualified administrative appeals tribunal pursuant to §1 of revised Art. V, State Const., and the latter an administrative unit of the Department of Commerce.