

Clerk of court authorizing extra compensation

Number: INFORMAL

Date: November 19, 2002

The Honorable Ruth W. Attaway
Calhoun County Clerk of the Circuit Court
20859 Southeast Central Avenue, East
Blountstown, Florida 32424

RE: CLERK OF CIRCUIT COURT—COMPENSATION—EMPLOYEES— COUNTIES—authority of clerk of court to authorize extra compensation. s. 215.425, Fla. Stat.

Dear Ms. Attaway:

You have asked for my opinion on your authority, as clerk of the circuit court, to provide extra compensation in the form of bonuses to employees of the clerk's office.[1] You contemplate adopting a written policy prior to establishing a bonus plan for your office.

Section 215.425, Florida Statutes, provides:

"No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made The provisions of this section do not apply to extra compensation . . . given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts *or to employees of the clerk of the circuit court pursuant to written policy of the clerk*[" (e.s.)

Thus, section 215.425, Florida Statutes, generally prohibits the payment of extra compensation to certain local, county, or state employees after services have been rendered or a contract relating to salary, wages or retirement has been executed.[2]

The Office of the Attorney General has issued a number of opinions regarding the appropriateness of "extra compensation" under this statutory provision. Attorney General Opinions have consistently stated that the prohibition against extra compensation for work already performed serves to accomplish "a basic and fundamental principle that public funds may be used only for a public purpose and it is contrary to this policy to use public funds to give extra compensation for work which has already been performed for an agreed upon wage." [3]

However, the Florida Legislature has amended the statute to authorize specific entities under certain circumstances to offer extra compensation in addition to an employee's salary or other compensatory agreement. In 1999 the Legislature excluded the employees of the clerk of the court from the prohibition against receipt of extra compensation, provided the clerk of the court has implemented a written policy to that effect.[4]

In sum, it is clear from the language of section 215.425, Florida Statutes, that a clerk of the

circuit court is authorized to provide extra compensation or bonuses to his or her employees if the clerk develops a written policy implementing such a plan for compensation prior to payment of these bonuses or extra compensation.

I trust that this informal advisory opinion will assist you in resolving this matter.

Sincerely,

Richard E. Doran
Attorney General

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[1] You have advised this office and provided a copy of Calhoun County Ordinance No. 2002-06 which prohibits the payment of extra compensation by public employers who receive funding from the board of county commissioners. You have not asked and this office will not comment on the validity of this ordinance or its application to you. I would note however, that implementation of s. 14, Art. V, Fla. Const., relating to funding of the judicial system by the state rather than by the counties is currently under way and s. 29.003(1)(a), Fla. Stat., provides for legislative review of the state courts system to determine those elements appropriate to receive state funding.

[2] Section 215.425, Fla. Stat., was formerly s. 11, Art. XVI, State Const. 1885, and was one of several constitutional provisions converted to statutory law by s. 10, Art. XII, State Const. 1968.

[3] See, e.g., Op. Att'y Gen. Fla. 97-21.

[4] See s. 8, Ch. 99-259, Laws of Florida, and Senate Staff Analysis and Economic Impact Statement on CS/SB 1282 dated March 9, 1999.