Clerks of Court, branch offices

Number: INFORMAL

Date: May 16, 1997

The Honorable Charlie Green
Clerk of Lee County Circuit Court
Post Office Box 2469
Fort Myers, Florida 33902-2469

RE: COUNTIES--CLERKS OF COURT--COUNTY OFFICERS--establishment of branch offices. s. 28.07, Fla. Stat.; Art. VIII, s. 1(k), Fla. Const.

Dear Mr. Green:

You ask whether the clerk of the circuit court may establish a branch office within the county seat. If so, you ask how the priority of documents filed for recording is to be determined. If not, you ask about the continued existence of the Cape Coral branch office, which was created prior to the expansion of the boundaries of the county seat but which is now located within the county seat.

The clerk of the circuit court is a county officer and, unless otherwise provided by county charter or special law approved by the voters, serves as the *ex officio* clerk of the board of county commissioners, county auditor, county recorder, and custodian of county funds.[1] Although the clerk is a constitutional county officer, his powers are limited to those which have been expressly granted or are necessary to give effect to those powers expressly granted.[2]

Article VIII, section 1(k), Florida Constitution, provides:

"In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded in the county until filed at the county seat according to law."

The above constitutional provision thus requires that the principal offices and permanent records of all county constitutional officers be located at the county seat. It is the governing body of a county, however, rather than the individual county officers that is granted the authority by this constitutional provision to establish branch offices elsewhere in the county.[3]

The Legislature has statutorily authorized the clerks of the circuit court to establish branch offices. Section 28.07, Florida Statutes, provides:

"The clerk of the circuit court shall keep his or her office at the county seat. If the clerk finds a need for branch offices, they may be located in the county at places *other than the county seat*.

One or more deputy clerks authorized to issue process may be employed for such branch offices. The Official Records books of the county must be kept at the county seat. Other records and books must be kept within the county but need not be kept at the county seat." (e.s.)

The authority granted above is limited to the establishment of branch offices at places other than the county seat. Where the Legislature has prescribed how a thing is to be done, it impliedly prohibits it being done in a substantially different manner.[4] Accordingly, the clerk would not appear to be authorized by section 28.07, Florida Statutes, to establish a branch office to conduct county business within the county seat.

In Attorney General Opinion 79-70, however, this office recognized that branch offices could be established by the clerk of court acting as clerk of the county court. This office concluded that these satellite offices could be opened in the branches of the county court established by the chief judge of the judicial circuit pursuant to court rule and section 34.181, Florida Statutes.[5] These branch offices located both within and outside of the county seat, however, were concerned with the clerk's *judicial* functions as clerk of the county court and were not created under the constitutional authority given to local governments in Article VIII, section 1(k), Florida Constitution.

Subsequently in *Hoffman v. Hoffman*,[6] and in *Sanchez v. Swanson*,[7] which cited *Hoffman* with approval, the court concluded that a filing at a branch office constituted a timely filing within the contemplation of the court rules. However, such a holding did not mean that such branch office could serve as the home of permanent records nor that "documents for which recording is necessary will be considered recorded on receipt at a branch office or annex."[8] Accordingly, while it appears that the branch offices within the county seat may be established for judicial purposes, the clerk of the circuit court would not appear to be not authorized to establish a branch office within the county seat for the purpose of recording of documents into the Official Records.[9]

In light of the above, it is not necessary to respond to your second question. However, I would generally note that Article VIII, section 1(k), Florida Constitution, states that no instrument shall be deemed recorded in the county until filed in the county seat according to law. Based upon this constitutional limitation, this office has stated that the recording of instruments becomes effective when the instrument is placed in the official office of the clerk of the circuit court at the county seat, not when it is presented or received by a deputy clerk at a branch office. As stated by this office in Attorney General 79-70, the "filing or recording in the Official Records or the affixation of the official register number or other entries in the register must occur only at the county seat at the principal office of the clerk where the Official Records and other permanent records are kept."[10] Accordingly, for purposes of determining priority, the filing of documents for recordation in the Official Records would be deemed effective when placed in the principal office of the clerk of the circuit court located in the county seat.

You ask about the continued existence of a branch office in Cape Coral. The office was apparently established prior to the amendment of the county seat's boundaries to include not only the City of Fort Myers where the principal offices of the county officers are located but also the City of Cape Coral where the branch office is located.

Resolution of this issue will necessarily have a profound impact on those documents that have been or may be filed for recording in the Cape Coral office. It would therefore appear that an expeditious and binding resolution of this issue would be in the best interest of not only the county but its citizens. Accordingly, the county may wish to consider seeking a declaratory judgment on this matter.[11]

I trust that the above informal advisory comments, which should not be considered a formal opinion of the Attorney General's Office, may be of assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

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[1] *See* Art. II, s. 5(c), and Art. VIII, s. 1(d), Fla. Const.; *see also Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977).

[2] *See generally Security Finance Company v. Gentry*, 109 So. 220 (Fla. 1926); Op. Att'y Gen. Fla. 78-95 (1978).

[3] *See* Op. Att'y Gen. Fla. 70-166 (1970), stating that Art. VIII, s. 1(k), Fla. Const., authorizes the board of county commissioners to establish branch offices for the conduct of county business outside the county seat; and Op. Att'y Gen. Fla. 76-173 (1976) (branch offices for the conduct of county business may be established outside the county seat by the governing body of the county).

[4] *See Alsop v. Pierce*, 19 So. 2d 799 (Fla. 1944).

[5] *See* s. 34.181(1), Fla. Stat., providing in part that a county may apply to the chief judge of the circuit in which the county is situated for the county court to sit in a location suitable to the county and convenient in time and place to its citizens and police officers. Rule 1.020, Fla. R. Civ. P., upon which the opinion relied, was repealed in 1979, *see In re Florida Rules of Judicial Administration*, 372 So. 2d 449 (Fla. 1979). *See now* Rule 2.050(b)(9), Fla. R. Jud. Admin., providing:

The chief judge may authorize the clerks of courts to maintain branch county court facilities. When so authorized, clerks of court shall be permitted to retain in such branch court facilities all county court permanent records of pending cases, and may retain and destroy these records in the manner provided by law.

[6] 463 So. 2d 517 (Fla. 1st DCA 1985).

[7] 481 So. 2d 481 (Fla. 1986).

[8] *Hoffman, supra* at 520.

[9] *Compare* Op. Att'y Gen. Fla. 74-56 (1974), in which this office stated that the clerk could store permanent official books and records in a building within the county seat other than the county courthouse where the clerk's office and records are maintained. The opinion, while concluding that the records could be stored at another building, did not address the authority of the clerk to establish a branch office at which county business, including the recording of official documents, would be conducted.

[10] *And see* Op. Att'y Gen. Fla. 58-17 (1958).

[11] *See generally Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles,* 680 So. 2d 400, (Fla. 1996), stating that the purpose of a declaratory judgment is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations; *Santa Rosa County v. Administration Commission, Division of Administrative Hearings,* 661 So. 2d 1190, 1192 (Fla. 1995), stating that a party seeking declaratory relief must show there is a bona fide, actual, present practical need for the declaration and that there is some person who has, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.