

Salary of county commissioner

Number: AGO 78-85

Date: January 21, 1998

Subject:
Salary of county commissioner

(Revision of 078-71)

COUNTIES--EXTRA COMPENSATION OF CHAIRMAN OF BOARD OF COUNTY COMMISSIONERS

To: John L. Mica, Representative, 39th District, Tallahassee

Prepared by: Joslyn Wilson, Assistant Attorney General

(See 078-71 for question)

SUMMARY:

Chapter 57-507, Laws of Florida, a special or local act relating to Orange County, is not currently in effect and has no legal effect or operation on the additional compensation of the Chairman of the Orange County Board of County Commissioners, having been expressly repealed and supplanted by Ch. 61-1387, Laws of Florida, and would not be revived by the subsequent repeal of Ch. 61-1387 by Ch. 65-785, Laws of Florida. Under the express provisions of s. 2.04, F. S., the repeal of Ch. 61-1387 by Ch. 65-785, Laws of Florida, does not operate to revive Ch. 57-507, in the absence of an express provision in Ch. 65-785 so providing. Chapter 65-785 contains no such provision for the revival of Ch. 57-507.

As I indicated to you in our recent telephone conversation, I have considered it necessary to reexamine the statements and conclusions in AGO 078-71 and, upon further consideration, I find it necessary to recede from and revise AGO 078-71. First, I must emphasize that this opinion is limited to the precise question presented in your letter, that is, is Ch. 57-507, Laws of Florida, currently in effect? My response to this question is, as in AGO 078-71, in the negative.

Section 1 of Ch. 57-507, Laws of Florida, assuming the validity thereof, authorized and required the Chairman of the Board of County Commissioners of Orange County to be paid \$100 a month in addition to his salary as county commissioner. In 1961 the Legislature by Ch. 61-1387, Laws of Florida, assuming the validity thereof, expressly repealed and supplanted Ch. 57-507, effective October 1, 1961. Section 1 of Ch. 61-1387 provided:

"The Chairman of the Board of County Commissioners in all counties having a population of not less than two hundred thirty thousand (230,000) and not more than three hundred thousand (300,000) according to the latest official statewide decennial census, shall be paid five hundred dollars (\$500.00) per annum in addition to his salary as County Commissioner, payable in equal

monthly installments."

Section 2 of Ch. 61-1387 expressly repealed s. 1 of Ch. 57-507. Section 2 of Ch. 65-785, Laws of Florida, assuming the validity thereof, expressly repealed s. 1 of Ch. 61-1387, Laws of Florida, effective July 1, 1965, and s. 1 of Ch. 65-785 provided that the chairman of the board of county commissioners in all counties having a population of not less than 230,000 and not more than 300,000 according to the latest official decennial census should be paid \$900 per annum in addition to his salary as county commissioner, payable in equal monthly installments. At the time Chs. 61-1387 and 65-785, Laws of Florida, were enacted, Orange County was the only county within the state with a population within the population brackets set forth in s. 1 of Ch. 61-1387 and s. 1 of Ch. 65-785. See Florida Statutes 1967, Vol. 3 at p. 5418, which shows that, under the 1960 Official Florida State and Federal Decennial Census, Orange County had a population of 263,540 and was the only county in the state within the population range of 230,000 to 300,000. Chapter 65-785, Laws of Florida, was subsequently repealed by s. 2, Ch. 71-29, Laws of Florida.

You inquire as to whether Ch. 57-507, Laws of Florida, would be revived by the repeal of Ch. 61-1387 by Ch. 65-785, Laws of Florida. Under the common law, when a repealing statute is itself repealed, the first statute is revived without any formal words for that purpose in the absence of a contrary intention expressly declared or necessarily implied from the enactment by which the last repeal is effected. 82 C.J.S. *Statutes* s. 307(a), at p. 523. This common law rule, however, has been changed by statute in Florida. Section 2.04, F. S., provides:

"No statute of this state which has been repealed shall ever be revived by implication; that is to say, if a statute be passed repealing a former statute, and a third statute be passed repealing the second, the repeal of the second statute shall in no case be construed to revive the first, unless there be express words in the said third statute for this purpose."

See *generally* State v. Sholtz, 169 So. 849, 853 (Fla. 1936); State ex rel. Scott v. Christensen, 170 So. 843 (Fla. 1936), and 82 C.J.S. *Statutes* s. 307(a), at p. 524. Applying the aforementioned statutory provisions to the instant inquiry, it seems clear that Ch. 57-507, Laws of Florida, having been expressly repealed and supplanted by Ch. 61-1387, Laws of Florida, would not be revived by the subsequent repeal of Ch. 61-1387 by Ch. 65-785, Laws of Florida, absent an express provision in Ch. 65-785 so providing. Chapter 65-785 contains no such provision for the revival of Ch. 57-507. Accordingly, it is my opinion that Ch. 57-507, a local or special act relating to Orange County, is not currently in effect and has no legal effect or operation on the additional compensation of the Chairman of the Orange County Board of County Commissioners, having been expressly repealed and supplanted by Ch. 61-1387, Laws of Florida, and would not be revived by the subsequent repeal of Ch. 61-1387 by Ch. 65-785.