Public Records, salaries

Number: AGO 73-30

Date: September 30, 2011

Subject:
Public Records, salaries

RE: PUBLIC RECORDS—SALARIES OF ASSISTANT STATE ATTORNEYS

To: Donald G. Nichols, State Attorney, Jacksonville

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

Are the salaries paid to assistant state attorneys public records as defined in Ch. 119, F. S.?

SUMMARY:

Records of a state attorney's office concerning the salaries paid to assistant state attorneys are public records within the meaning of ss. 119.01 and 119.011, F. S., and as such are open to public inspection at all times.

Section 119.01, F. S., commonly known as the Public Records Law, reads as follows:

"All state, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen."

Section 119.011, F. S., 1971, provides:

"For purposes of this act:

(1) 'Public records' shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) 'Agency' shall mean any *state*, county or municipal *officer,* department, division, board, bureau, commission or other separate unit of government created or established by law." (Emphasis supplied.)

Section 119.07(1), F. S., states:

"(1) Every person having custody of public records shall permit them to be inspected and

examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law."

In AGO 071-243 it was held that reports made by engineers in connection with the collapse of the roof of a school building, and received by a school board as a part of its official investigation of the incident, were public records within the meaning of s. 119.011, F. S. In AGO 071-394 it was observed that the receipt by a school board of information relating to the background and qualifications of applicants for the position of superintendent for the school district was an essential part of the process of employing a superintendent. Accordingly, it was held that the records pertaining to the qualifications of applicants were "made or received pursuant to law" and were public records within the purview of s. 119.011, F. S. The conclusions reached in AGO's 071-243 and 071-394 suggest the approach which must be taken with respect to the question you pose.

A state attorney is authorized to appoint such assistants as may be authorized by law. Article V, s. 17, State Const. He is also authorized to set the salary of his assistants, not to exceed 90 percent of his own salary, and the salary of assistant state attorneys must be paid from funds appropriated for that purpose. Section 27.181(4), F. S. (1972 Supp.). *Also see* Ch. 72-734, Laws of Florida. Section 27.33, F. S. 1971, provides in part as follows:

"(1) On or before November 15, biennially, [annually; see s. 216.023, F. S.] prior to the meeting of the legislature, each state attorney shall submit to the department of administration a written report containing an estimate in itemized form showing the amount needed for operational expenses for the two years [year] beginning July 1, thereafter. Each such estimate shall itemize the expenditures required for the state attorney submitting it and for his assistants, as follows:

(a) Salary of state attorney.

(b) Salaries of assistant state attorneys.

* * * * *

(5) After this act takes effect as law, all of the provisions of chapter 216, which relate to the budgets and expenses of state officers shall be applicable to state attorneys and their budgets and expenses."

Finally, it should be noted that the payrolls of the state attorneys' offices are handled through a central office maintained by the Judicial Administrative Commission. *See* s. 43.16, F. S. These payroll procedures are based upon information furnished by the state attorneys. It can thus be seen that the records of a state attorney's office concerning the salaries of assistant state attorneys are records made "pursuant to law" and consequently are public records within the meaning of ss. 119.01 and 119.011, F. S.

I am aware that the disclosure of information regarding salaries might prove embarrassing to some employees or have a detrimental effect on office morale. But these considerations cannot change the clear mandate of the Public Records Law. *See* AGO 072-356 in which it was noted that concern for the security of the state's highest officials could not overcome the requirement

that advance itineraries of officials who use executive aircraft be open to public inspection pursuant to s. 119.01, F. S. The legislature must have believed the inconvenience which results from compliance with ss. 119.01 and 119.07(1), F. S., to be outweighed by the benefits which flow from free public access to public records. I am aware of no statutory or common-law provision which excepts records pertaining to salaries of public employees from the provisions of the public records law. Until such time as the legislature chooses to create such an exception, it is my opinion that the records of your office concerning the salaries of your assistants must be open to public inspection. *See* Caswell v. Manhattan Fire & Marine Ins. Co., 399 F.2d 417 (5th Cir. 1968); and State *ex rel.* Cummer v. Pace, 159 So. 679 (Fla. 1935).