Leave Payments -- Sheriffs

Number: INFORMAL

Date: December 18, 2008

Major Kurt A. Hoffman
General Counsel
Sarasota County Sheriff's Office
Post Office Box 4115
Sarasota, Florida 34230-4115

Dear Major Hoffman:

You have asked for this office's assistance in determining whether sections 30.48 and 145.071, Florida Statutes, preclude payment of accumulated vacation, compensatory, and sick leave to the Sarasota County Sheriff upon his retirement. Attorney General McCollum has asked me to respond to your letter.

Sections 30.48 and 145.071, Florida Statutes, both deal with compensation for county sheriffs; neither speaks to the question of whether additional compensation may be paid to the sheriff for leave accumulated prior to the sheriff's election. Payment of retroactive compensation, lump sum allowances, or other forms of compensation not provided by law or contract is prohibited by section 215.425, Florida Statutes, unless otherwise specifically authorized by state statute.[1] Extra compensation generally refers to an additional payment for services performed or compensation over and above that fixed by contract or by law when the services are performed.

In Attorney General Opinion 93-14, this office was asked whether a sheriff could lawfully authorize the payment of sick and annual leave to the chief deputy upon the termination of the chief deputy's employment with the sheriff's office. Based in large part on the principles set forth above, this office concluded that, in the absence of a formal personnel policy adopted by the sheriff establishing the right of a chief deputy sheriff to payment for sick and annual leave upon termination of employment, such a payment was unauthorized and could be illegal. I am enclosing a copy of this opinion for your review.

Subsequently, in an informal opinion to Sheriff Roth of Monroe County, this office commented on the question of whether the sheriff himself was entitled to payment for accrued sick leave under the sheriff's office personnel policy. As noted in that opinion, the sheriff's department had adopted a policy for the payment of accrued sick leave to employees. While recognizing that service as a sheriff does not qualify as employment for which sick leave may be accrued, the informal opinion concludes that the sheriff's subsequent service as sheriff would not divest him of the benefits earned during his previous employment as a deputy. I am also enclosing a copy of this informal opinion.

While this office does not generally comment on the administrative policies of local governments, it would appear that the Sarasota County Sheriff's Office does have a leave policy and that it provides for a pay-out of accrued leave under specific situations. Thus, the provisions of section

215.425, Florida Statutes, would not appear to prohibit the payment of retroactive compensation, lump sum allowances, or other forms of compensation. Further, it appears that this office has taken the position that entitlement to payment for accrued leave is not divested by subsequent service as a sheriff.

I trust that these informal comments will be helpful to you in advising your client. This informal Attorney General's Opinion was prepared by the Department of Legal Affairs in an effort to be of assistance. The opinions expressed herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure: Op. Att'y Gen. Fla. 93-14 (1993) and
Inf. Op. to Roth, dated June 5, 1997

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[1] *See, e.g.*, ss. 125.01(1)(bb) and 166.021(7), Fla. Stat., which authorize the governing body of a county or a municipality to provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, provided that bonus payment is not included in the employee's base rate of pay and is not carried forward in subsequent years.