

Clerk of court as county auditor

Number: INFORMAL

Date: August 24, 2000

Mr. George R. Moon
Chairman, St. Johns County Children's Commission
103 Ferdinand Street
St. Augustine, Florida 32080

Dear Mr. Moon:

Thank you for considering this office as a source for assistance regarding the authority of the clerk of court to refuse payment of an expenditure authorized by the board of county commissioners. Attorney General Butterworth has asked me to respond to your letter.

While this office is precluded from formally commenting upon this matter,[1] the following informal advisory comments are offered in an effort to be of assistance.

The clerk of the circuit court is a constitutional officer deriving his or her authority and responsibility from both constitutional and statutory provisions.[2] As county auditor, the clerk is required by law to refuse to sign and deliver county warrants for unlawful expenditures, even though such expenditures have been approved by the board of county commissioners.[3] Section 129.09, Florida Statutes, imposes personal liability upon "[a]ny clerk of the circuit court, acting as county auditor, who signs any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance[.]"

I am, however, enclosing a copy of Attorney General Opinion 83-05, in which this office concluded that under proper circumstances, and based upon appropriate legislative findings and pursuant to the exercise of the county's home rule powers, it was a matter of legislative judgment of the county commission whether to expend county funds for incentive awards for certain county employees in recognition of superior job-related achievements and to pay for retirement dinners or for coffee and refreshments for visitors. That opinion also made it clear that it is the county commission which must make the appropriate legislative findings as to the purpose of the ordinance providing for such an incentive program and the benefits which would accrue to the county from such a program; such legislative functions and determinations could not be delegated to the Attorney General nor could the Attorney General undertake to make such legislative findings and determinations on behalf of the county. Also enclosed is Attorney General Opinion 84-49, which discusses whether county funds may be used for awards given under a county safety program.

I hope that the enclosed material may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures

[1] The Attorney General is statutorily authorized to render opinions only to public officials on questions relating to their own official duties. See s. 16.01(3), Fla. Stat., and this office's Statement Concerning Attorney General Opinions, copies of which are enclosed. Your inquiry concerns the authority of the clerk of the court to refuse payment. In the absence of the clerk joining in such a request, this office is precluded from formally commenting on this matter.

[2] See, e.g., Art. VIII, s. 1(d), Fla. Const., providing that the clerk is a county officer who shall be "ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

[3] And see *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977); *Mayes Printing Co. v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963).