

Sheriff, payment of salary for suspended officer

Number: INFORMAL

Date: July 03, 2003

Ms. Gail Garrard
Chairperson
Lafayette County Board of County Commissioners
Post Office Box 88
Mayo, Florida 32066

RE: SHERIFF-PUBLIC
OFFICERS-GOVERNOR-SALARY-COUNTY-SUSPENSION-SALARY-payment of salary for
suspended officer. s. 111.05, Fla. Stat.

Dear Ms. Garrard:

On behalf of the Board of County Commissioners of Lafayette County you have asked this office for our assistance in determining whether section 111.05, Florida Statutes, requires a county to pay the salary of an officer who is currently the subject of a gubernatorial suspension for the period of a prior suspension.

According to the information you have supplied, the Sheriff of Lafayette County was suspended from office by Governor Bush on August 21, 2002 in Executive Order No. 02-236. The sheriff was reinstated by the Governor on March 21, 2003, in Executive Order No. 03-55. Following his reinstatement, the sheriff was again suspended from office on April 28, 2003, for failing to meet the conditions of the reinstatement order.[1] The following day, April 29, 2003, the county commission received a request from the sheriff that the county pay his salary for the eight month period of his first suspension from August 21, 2002, through March 21, 2003.

Article IV, section 7, Florida Constitution, provides for gubernatorial suspension:

"(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor."

Subsection (b) of this constitutional article authorizes the Senate to remove a suspended officer or reinstate him or her.[2]

If a suspended public officer is reinstated to his or her office by the Governor, section 111.05, Florida Statutes, provides that the officer may receive payment of salary for the period of the suspension under the circumstances described in the statute:

"An officer who is lawfully entitled to resume the duties of office after suspension by the Governor shall suffer no loss of salary or other compensation because of the suspension. Compensation which is unpaid because of the officer's suspension is appropriated and shall be paid from the source and in the manner in which the compensation of the office is normally paid. If funds sufficient to pay the unpaid compensation are not available in the proper source, the deficit is appropriated and shall be paid from the general funds of the state or of the political subdivision under which the office exists, as the case may be."

Florida courts have recognized the right of officers to payment of salary for periods of suspension once they have been reinstated and lawfully resume the duties of their office. In *State ex rel. Williams v. Lee*,^[3] the Florida Supreme Court considered whether an officer who was twice suspended from office by the Governor and reinstated and who resigned immediately after the second reinstatement was entitled to his salary for the period during which he was suspended. Because the officer resigned immediately after he had been reinstated, the argument made to the Court was that he was not entitled to payment because he had not resumed the duties of his office. In finding the complainant entitled to the benefits of his office, the Court recognized that he had resumed his duties at the time of his reinstatement and thereby continued in office, *i.e.*, but for his resignation, he would have been authorized to perform his lawful duties. Thus, an officer who has been suspended by the Governor and is subsequently reinstated to his or her office is entitled to the official salary for that position for the period of suspension.

However, in the case you have presented the officer, after being reinstated, was again suspended. It was only after this second suspension that the officer requested payment of his salary for the period of his initial suspension. Under these circumstances it does not appear that the officer is "lawfully entitled to resume the duties of office" as required by the statute and cannot, therefore, request payment of his salary for the suspension period. Rather, the officer is again under suspension. No salary need be paid to this officer since the request for payment of his salary was received outside the time period during which he was lawfully entitled to resume his duties. Because he is currently suspended from performing the duties of his office he is not entitled to pursue salary payments for any previous suspension period.

The language of section 111.05, Florida Statutes, requires that an officer be "lawfully entitled to resume the duties of office" in order to seek payment of salary for a period of suspension. Because the officer involved in this matter is clearly not lawfully entitled to resume his duties but is under a gubernatorial suspension, it does not appear that the county is required to pay his salary for a prior period of suspension.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See State of Florida, Office of the Governor, Executive Order No. 03-76.

[2] *And see* Part V, Chapter 112, Florida Statutes, providing statutory authority for the suspension, removal, or retirement of public officers.

[3] 164 So. 536 (Fla. 1935).