

Sheriff, employee severance pay program

Number: INFORMAL

Date: March 27, 1996

The Honorable Charlie Green
Clerk of Lee County Circuit Court
Post Office Box 2469
Fort Myers, Florida 33902-2469

RE: SHERIFFS--COUNTIES--COUNTY EMPLOYEES AND OFFICERS--COMPENSATION--
authority of sheriff to grant severance pay pursuant to county ordinance. s. 215.425, Fla. Stat.

Dear Mr. Green:

You ask whether the Sheriff of Lee County may adopt and implement an incentive program to give severance payments to qualified sheriff's employees who end their employment with the sheriff's office under the program.

In sum, I am of the opinion that pursuant to county ordinance, the Sheriff of Lee County may adopt and implement an internal program to give a severance incentive for qualified employees who elect to end their employment under the terms of the program.

Section 215.425, Florida Statutes, provides:

"No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. . . . The provisions of this section do not apply to extra compensation given to . . . county or municipal employees pursuant to policies adopted by county or municipal ordinance[.]"[1]

Thus, section 215.425, Florida Statutes, prohibits extra compensation after the services have been rendered. The purpose of such a provision is to prevent payments in the nature of gratuities for past services, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service but taken after the period of service.

In considering the application of section 215.425, Florida Statutes, this office has, for example, stated in Attorney General Opinion 91-51 that in the absence of a statute, collective bargaining agreement, or personnel policy or regulation authorizing such payments, severance payments in lieu of notice constituted extra compensation prohibited by section 215.425. Where, however, proposed benefits were not bonuses but rather constituted increased benefits to currently employed personnel through an early retirement option, this office has stated that a city utility board could establish such an early retirement option for employees without violating section

215.425, Florida Statutes.[2]

You have advised this office that the county has adopted an ordinance authorizing the development and implementation of such a program.[3] Under the provisions of the ordinance, the sheriff is authorized to adopt a program to give qualified sheriff's employees a severance incentive to be devised by the sheriff and paid to those employees electing to end their employment with the sheriff's office on a specified date.

As noted above, section 215.425, Florida Statutes, creates an exemption for extra compensation given to county employees pursuant to policies adopted by county ordinance. Nothing in the act creating this exemption indicates any intent by the Legislature to exclude certain county employees from its terms.[4] While the independence of the sheriff in setting salaries has been recognized by the courts and in statute,[5] the Lee County ordinance does not mandate that the sheriff grant the severance pay, but merely authorizes the sheriff to adopt such a program.

Accordingly, I am of the opinion that the Sheriff of Lee County may adopt and implement an internal program to give qualified employees a severance incentive for qualified sheriff's employees who accept the incentive program ending their employment with the sheriff's office.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 215.425, Fla. Stat. (1995), was formerly Art. XVI, s. 11, Fla. Const. 1885, as amended, and was converted into statutory law by Art. XII, s. 10, Fla. Const. 1968. Prior to its conversion, it was applied to county constitutional officers; this office has, therefore, concluded that the provisions of the statute also apply to elected county constitutional officers. See Op. Att'y Gen. Fla. 91-51 (1991). Cf. *Weber v. Smathers*, 338 So. 2d 819 (Fla. 1976), *In re Advisory Opinion to the Governor*, 112 So. 2d 843 (Fla. 1959), and *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 885 (Fla. 1980), for the proposition that decisions construing predecessor provisions of the constitution having the same import as current provisions are sources of authority for the construction of the successor provisions.

[2] See Inf. Op. to Mr. Stanley T. Rzad, Finance Manager for the Key West Utility Board, dated July 20, 1994.

[3] See Lee County Ordinance No. 96-04.

[4] See s. 3, Ch. 92-90, Laws of Florida.

[5] See s. 30.53, Fla. Stat., and *Weitzenfeld v. Dierks*, 312 So. 2d 194 (Fla. 1975).