IN THE SUPREME COURT OF FLORIDA

PRISCILLA WILLIAMS,

Petitioner,

vs.

STATE DEPT. OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT,

Respondent.

CASE NO. 85,041

PETITION FOR DISCRETIONARY REVIEW OF DECISION OF DISTRICT COURT OF APPEAL FOR THE FIRST DISTRICT OF FLORIDA

INITIAL BRIEF OF PETITIONER PRISCILLA WILLIAMS

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES

ATTORNEY GENERAL OPINIONS

OTHER CITATIONS

STATEMENT OF THE CASE AND FACTS

THE CASE

Pursuant to §120.57, Fla.Stat. (1991), and Fla. Admin. Code R. 28-5.111, Petitioner on the 15th day of May, 1991 filed with the Department of Administration, Division of Retirement, an Amended Petition for Formal Hearing appealing final agency action of the Division of Retirement, and served a copy of that Amended Petition by certified mail on the Chairman of the Board of County Commissioners, Gadsden County, and Nicholas Thomas, Clerk of Courts, Gadsden County (R-12). The Division of Retirement thereafter referred the matter to the Division of Administrative Hearings for formal hearing pursuant to Chapter 120, Fla. Stat. (1991). On March 30, 1992 the parties filed a Prehearing Stipulation in which they stipulated and agreed that the case be heard on the Stipulation and exhibits attached thereto (R-38). The Hearing Officer thereafter entered his Recommended Order on June 24, 1992 finding for Petitioner (R-111). In his Recommended Order the Hearing Officer made findings of fact, among others, that Petitioner was an employee of both the State of Florida and Gadsden County (R-114); that Petitioner was identified in the County's records as a salaried employee who filled a regularly established position (R-114), and that the burden of paying Petitioner's salary should be shared by the State and County (R-114). The Hearing Officer concluded as a matter of law that payments to Petitioner reported on a form 1099 rather than a form W-2 constituted compensation within the meaning of §121.021 (22) Fla. Stat. (1991) because the statute does not limit the reporting form to a W-2, and a 1099 is a "similar form" for reporting income (R-120). The Hearing Officer further concluded that payment for transcription did not constitute fees paid to professional persons for special or particular services ". . . because a court reporter is required by law to report and transcribe criminal proceedings, and it is illogical to characterize the transcribing of a criminal

proceeding as a special or particular service" while labeling the reporting of the identical proceeding as something else." (R-121); that Petitioner was filling a regularly established position with the County within the meaning of Fla. Admin. Code R. 22B-6.001 (49) (R-121); that the language of §121.021 (22) Fla. Stat. (1991) is plain and unambiguous; that the language does not differentiate between salary and fees, and that both salary and fees received by Petitioner while performing her duties as Official Court Reporter should have been used in calculating her retirement benefits (R-120).

No exceptions to the Recommended Order were filed by either party, and on September 21, 1992, the Division of Retirement entered its Final Order rejecting certain of the Findings of Fact and Conclusions of Law of the Hearing Officer and finding for the Division of Retirement (R-125). The Division rejected the Hearing Officers findings of fact that Petitioner was an employee of Gadsden County (R-132), that the County's records reflected that Petitioner filled a regularly established position with the County (R-132), and that payment of Petitioner's salary was an obligation shared by the County and the State (R-132). The Division then rejected various of the Hearing Officer's conclusions of law, and stated its own conclusion of law that the payments in question were not "compensation" within the meaning of §121.021 (22), Fla. Stat. (1991) (R-155).

Petitioner filed her Notice of Appeal on October 12, 1992 (R-172), and Amended Notice of Appeal on October 16, 1992 (R-174). On December 20, 1994, the First District Court of Appeal filed its Opinion affirming the decision of the Division of Retirement that transcription fees collected by Petitioner in criminal cases do not constitute compensation for the purpose of calculating retirement benefits. The District Court of Appeal in its Opinion determined that Petitioner was an employee of Gadsden County (1st DCA Opinion-14), but felt that it was not

illogical to treat transcription fees differently from appearance fees because it did not consider the preparation of transcripts to be a part of the compensation arrangement with the State and County, but rather to be payments made on behalf of third parties (1st DCA Opinion-17, 18). The District Court also opined that transcription is not an additional duty for the same employer and concluded that it therefore was unable to say that the agency's interpretation of §121.021 (22), Fla. Stat. (1991) was improper (1st DCA Opinion-18). The District Court of Appeal then certified the following question to be of great public importance:

> WHETHER TRANSCRIPTION FEES COLLECTED BY COURT REPORTERS IN CRIMINAL CASES CONSTITUTE COMPENSATION FOR THE PURPOSE OF CALCULATING RETIREMENT BENEFITS PURSUANT TO THE FLORIDA RETIREMENT SYSTEM?

On December 20, 1994, Petitioner filed a Motion for Rehearing or Clarification which the First District Court of Appeal denied on January 13, 1995.

On January 20, 1995, Petitioner filed a Notice to Invoke Discretionary Jurisdiction, and on January 24, 1995, this Court entered its Order Postponing Decision on Jurisdiction and Briefing Schedule.

THE FACTS

From January 1973 through February 1990 Petitioner was the Official Court Reporter in the Second Judicial Circuit of Florida for the Circuit and County Courts of Gadsden County, Florida (R-42, 114). During the time Petitioner served as an Official Court Reporter, she was furnished office space, furnishings, equipment, telephone, parking permit and insurance by Gadsden County and was identified in the records of Gadsden County as a salaried employee (R-42, 114). Petitioner was identified as an employee of Gadsden County in her Division of Retirement Personal History Record (R-46, 114) and her Loyalty Oath (R-48, 114), and was

certified as such by the Board of Commissioner of Gadsden County in her Florida Retirement System Application for Service Retirement (R-50, 114). Florida Retirement System form FR-11, certified by the Chief Judge of the Second Judicial Circuit, identified Petitioner's last employers as the State of Florida, Office of State Courts Administrator, and the Board of County Commissioners, Gadsden County, Florida (R-51). These documents also establish that Petitioner's position with Gadsden County was an employment position that was in existence for a period beyond six consecutive months (R-46, 50, 114). While serving as Official Court Reporter, Petitioner received payments from salary accounts pursuant to §29.04, Fla. Stat. (1991), which provides for payment of official court reporters by both the state and county (R-43, 114). These payments were reflected in Petitioner's wage and tax withholding statements (W-2's) received from the state and county (R-43, 114).

In calculating Petitioner's retirement benefits, the Division used only the payments reflected in these W-2's (R-43, 44, 114). In addition to the foregoing payments, during the period between January 1973 and February 1990, Petitioner received payments from the county for services enumerated in §29.03 and §29.05, Fla. Stat. (1991). These services were personally rendered by her as an official court reporter and included the preparation of transcripts of criminal proceedings at the demand of the presiding judge, state attorney or public defender (R-14, 43, 115). The amount of compensation received and the month in which such compensation was paid are set forth on pages 4-8 of the Amended Petition, and range from nothing in some months to as much as $7,152.00 in October 1984 (R-15-19, 44, 115). These payments were reported to the Internal Revenue Service on Forms 1099 issued by the County and were not included by the Division in its calculation of Petitioner's retirement benefits (R-44, 115).

In administering the Florida Retirement System the Division has included as either "salary" or "compensation" those fees set by statute only where such fees have been the sole source of the salary or compensation of the officer or employee during any given period of time. In other words, the Division will treat as compensation the fixed monthly salary of an employee or the total cash remuneration from fees set by statute, but not both. Under this practice, then, payments to Petitioner pursuant to §29.04, Fla. Stat. (1991) were treated as compensation for retirement purposes, while the payments for transcribing criminal proceedings pursuant to §29.03 and §29.05 Fla. Stat. (1991) were not. (R-44, 115, 115).

SUMMARY OF ARGUMENT

Petitioner is entitled to have the monies she received from Gadsden County pursuant to §29.03 and §29.05, Fla. Stat. (1991) included in her compensation for purposed of calculating retirement on several grounds.

First, payments for the transcription services provided by Petitioner in indigent criminal cases were made pursuant to the same Chapter of Florida Statutes which provided for her compensation for appearances, were a part of Petitioner's compensation arrangement with the State and County, and were not payments made on behalf of third parties. Refusal to include compensation paid by the County to Petitioner for preparation of transcripts in criminal cases of indigent defendants for the purpose of calculating retirement benefits pursuant to the Florida Retirement System is a violation of Petitioner's right to equal protection under Article I, Section 2, Fla. Const.

Second, because services provided to Gadsden County by Petitioner pursuant to §29.03 and §29.05, Fla. Stat. (1991), constituted additional duties performed by a member filling a regularly established position under Fla. Admin. Code R. 22B-1.004 (4) (c), Petitioner was filling a regularly established position for all payments she received for all employment from Gadsden County, regardless of whether such payments resulted from fees set by statute or not, and all such compensation should be considered in calculating retirement benefits.

Third, §121.021 (22), Fla. Stat. (1991), defines compensation as a monthly salary paid to a member, without respect to whether the compensation is derived from fees set by statute or not. Because monies received by Petitioner described in her Amended Petition were paid by Gadsden County for her services pursuant to Chapter 29, Fla. Stat. (1991) and reported by Gadsden

County on a form similar to a W-2, it constituted compensation regardless of whether it was derived from fees set by the statute.

Fourth, §122.021 (22), Fla. Stat. (1991), states that when a member's compensation is derived from fees set by statute, compensation should be the total cash remuneration received from such fees, and Fla. Admin. Code R. 22B-6.001 (16), provides that compensation includes cash remuneration received for fees set by statute. In this case, all of Petitioner's compensation as described in her Amended Petition was received for fees set by statute and should be included in calculating her compensation for retirement purposes.

Fifth, although §122.021 (22), Fla. Stat. (1991), excludes from the definition of compensation fees paid a professional person for special or particular services, a court reporter is not a "professional person" and the preparation of transcripts is not a special or particular service.

ARGUMENT

I. INTRODUCTION

The duties and provisions for compensation of an Official Court Reporter are set forth in §29.02, §29.04(1), and §29.05 Fla. Stat. (1991), which provide as follows:

> §29.02, Fla. Stat. (1991), Duties of Court Reporter. - The Official Court Reporter shall, upon the request of a presiding Judge, or that of the State Attorney or Defendant, report the testimony and proceedings with objections made, the ruling of the Court, the exceptions taken, and oral or written charges of the Court in the trial of any criminal case in the Circuit Court, and the testimony in any preliminary hearing when so requested by the Circuit Judge or State Attorney of that Circuit, and shall report the testimony and proceeding with objections made, the rulings of the Court, the exceptions taken, and oral or written charges of the Court in the trial of any civil case in said Court upon the demand or request of the Attorney for either party.
>
> §29.04(1), Fla. Stat., Each Official Court Reporter shall receive an annual salary of $5,400.00, unless otherwise provided for in the Appropriations Act, payable in 12 equal monthly installments by the Treasurer upon requisition of such Court Reporter. The Reporter, when in attendance upon the trial of any cause in any County or Circuit shall be reimbursed for traveling expenses as provided in §112.061, Fla. Stat. The Reporter shall at all times be subject to the call and order of the Circuit Judge to perform any service required by this Chapter. No Reporter shall report for more than one Judicial Circuit except in cases in which the Reporter of a Circuit is incapacitated.
>
> §29.05, Fla. Stat., Transcripts in criminal cases. - Upon the demand of the State Attorney or the presiding Judge in any criminal case or the Defendant within the time allowed for taking an appeal in a criminal case, such Reporters shall furnish with reasonable diligence a type written transcript of the testimony and proceedings, together with the charges of the Court, and shall receive therefore the same fees for such transcripts as provided §29.03, Fla. Stat., and the costs for same shall be taxed as costs in the case.

Compensation of Court Reporters is also addressed in §29.03, Fla. Stat. (1991), as well as by the Rules of Judicial Administration and Administrative Orders of the Second Judicial Circuit.

Simply put, it is the position of Petitioner that all payments she received pursuant to Chapter 29, Fla. Stat. (1991), including those received pursuant to §29.03 and §29.05, Fla. Stat. (1991), are compensation within the meaning of the Florida Retirement System Act. It is the position of the Respondent that only payments received by Petitioner for services performed pursuant to §29.04 are compensation for purposes of calculating retirement benefits.

The Florida Retirement System Act, in §121.021(22), Fla. Stat. (1991), provides the following definition of compensation:

> (22) "Compensation" means the monthly salary paid a member, including overtime payments paid from a salary fund, as reported by the employer on the wage and tax statement "Internal Revenue Service Form W-2" or similar form. When a members compensation is derived from fees set by statute, compensation shall be the total cash remuneration received from such fees. Under no circumstances shall compensation include fees paid professional persons for special or particular services.

In applying the provisions of the Florida Retirement System Act, they should be liberally construed in favor of Petitioner. As stated by the Fourth District Court Appeal in City of West Palm Beach v. Holaday, 234 So.2d 24, at 26 (Fla. 4th DCA, 1970):

> The construction that we have afforded to the pension plan is in keeping with a long established principle liberally construing pension laws. State ex rel. Holten v. Tampa, 1934, 119, Fla. 556, 159 So. 292, 98 A.L.R. 501. We can think of no area where there is a stronger need to shield those who have given devoted service. The desire for security during the declining years is an important concern to every working person. The feeling of knowing that those later years one will be able to afford himself and his family with the necessities of life should not be likely taken away, for many are induced to remain in employment which is hazardous or low paying and to make such employment a career rather than a passing interlude on the basis that a secure future will be provided via a pension plan.

Those issues which appear to be the basis for the Opinion of the First District Court of Appeal are discussed in paragraphs II - IV; other issues are discussed in subsequent paragraphs.

II.

TRANSCRIPTION BY PETITIONER OF TRANSCRIPTS FOR INDIGENT CRIMINAL DEFENDANTS IS A PART OF THE COMPENSATION ARRANGEMENT WITH THE STATE AND COUNTY AND PAYMENTS FOR SUCH TRANSCRIPTS DO NOT CONSTITUTE PAYMENTS MADE ON BEHALF OF A THIRD PARTY FOR PROFESSIONAL SERVICES.

§29.05, Fla. Stat. (1991), provides as follows:

> §29.05, Fla. Stat., Transcripts in criminal cases. - Upon the demand of the State Attorney, or the presiding Judge in any criminal case, or the Defendant within the time allowed for taking an appeal and for the purpose of taking a appeal in a criminal case, such reporters shall furnish with reasonable diligence a type written transcript of the testimony and proceedings, together with the charges of the Court, and shall receive therefore the same fees for such transcript as provided in §29.03, Fla. Stat., and the costs for the same shall be taxed as costs in the case. (emphasis applied)

It is clear from the wording of the statute that the provision of transcripts is not a duty which the court reporter may elect to perform or not to perform, nor is it a duty, the compensation for which, the court reporter may negotiate with the indigent defendant. The court reporter does not contract with the indigent defendant and then bill the County for the transcript; she is required by law to prepare the transcript, and the County is required to pay for it.

As agreed in the Prehearing Stipulation, both the monies Petitioner received from the Board of County Commissioners of Gadsden County reflected by W-2's and the monies she received from Gadsden County reflected by 1099's were received for services enumerated in Chapter 29, Fla. Stat. (1991), and personally rendered by her as Official Court Reporter pursuant to Chapter 29, Fla. Stat. (1991). There is no reasonable basis for differentiating between the

compensation she received pursuant to one section of Chapter 29, Fla. Stat. (1991), and that she received pursuant to another section. As stated by the Hearing Officer, ". . . A court reporter is required by law to report and transcribe criminal proceedings, and it is illogical to characterize the transcribing of a criminal proceeding as a 'special or particular service' while labeling the reporting of the identical proceeding as something else" (R121). Nor is there a question as to whether the County was responsible for payment of such fees. See Op. Att'y Gen. Fla. 58-50 (February 14, 1958), 68-66 (May 20, 1964), and 75-4 (May 8, 1970), which opine that the compensation for which Court Reporters are entitled for taking testimony before a grand jury, furnishing a transcript of that testimony when requested to do so by an authorized Official, reporting arguments of counsel in criminal cases, and furnishing transcripts of proceedings in criminal cases, are expenses to be borne by the County.

It is not reasonable to exclude payment for the transcript from compensation for purposes of calculating retirement on the basis that the transcript is a benefit to an indigent defendant. Public Defenders are required to represent indigent defendants when appointed by the Court; their work is for the benefit of a third party (the indigent defendant), and they are paid by the State. Court reporters are required to prepare transcripts for indigent defendants when ordered by Court; their work is of benefit to a third party (the indigent defendant), and they are paid by the County. There is no rational basis for including payments made to Public Defenders for representing indigent defendants as compensation for purposes of retirement and for excluding payments made to court reporters for preparing transcripts for use by criminal defendants from compensation for purposes of retirement. Many other state and county employees, such as those in the health care field, provide services for the benefit of third parties. The fact that these State

or County employees provide services for third parties does not result in their remuneration being excluded from compensation for the purpose of calculating retirement benefits.

Equal protection under Article I, Section 2, of the Fla. Const., requires that there be some rational basis for applying a statute or rule in such away as to affect similarly situated persons differently. There is no rational basis for including compensation paid to Public Defenders and other public employees who provide services to indigent parties in calculations of retirement benefits, and excluding compensation paid to Petitioner from inclusion in calculation of retirement benefits on the basis that her services are for the benefit an indigent person. Petitioner's services, including preparation of transcripts were rendered for the benefit of the system of criminal justice of the State of Florida pursuant to the requirement of law and compensation for those services should be included in calculation of retirement benefits.

III.

THOSE PAYMENTS RECEIVED BY PETITIONER FOR SERVICE RENDERED PURSUANT TO §29.03 AND §29.05, FLA. STAT. (1991) WERE FOR WORK PERFORMED IN A REGULARLY ESTABLISHED POSITION AND THEREFORE CONSTITUTED COMPENSATION FOR THE PURPOSE OF CALCULATING RETIREMENT BENEFITS.

A further basis for considering all monies paid Petitioner for her services rendered pursuant to Chapter 20, Fla. Stat. (1991), as compensation for retirement purposes is found in the Department of Administration's own Rules. Fla. Admin. Code R. 22B-1.004(b) states as follows:

> (b) A regularly established position in a local agency (District School Board, County Agency, Community College, City and Special District) is an employment position in which will be in existence beyond 6 months. . .

Petitioner's position as an Official Court Reporter and employee of Board of County Commissioners of Gadsden County was an existence from January 1, 1973, through February 28,

1990, more than six (6) months, and such an position was therefore a regularly established position in a local agency. Section (4) (c) 1. of Fla. Admin. Code R. 22B-1.004, provides as follows regarding regularly established positions:

> 1. A member filling a regularly established position who performs additional duties for the same employer is considered to be filling a regularly established position for the total employment and the employer shall make the required retirement and social security contributions.

In this case, the Petitioner was filling a regularly established position for the Board of County Commissioners of Gadsden County, Florida. The services she provided pursuant to §29.03 and §29.05, Fla. Stat.(1991), if nothing more, are additional duties required of her for the same employer. According to Attorney General's opinions hereinafter discussed, compensation for such employment was an obligation of the County, and the County did in fact compensate her as evidenced by those payments enumerated on pages 4 through 8 of the Amended Petition. Under the Department's Rule then, even if the payments received from the County evidenced by 1099's was not otherwise compensation under the meaning of the statute (which Petitioner does not admit), by this Rule she was considered to be filling a regularly established position for her total employment and all compensation should be included in retirement benefit calculations.

Respondent contends that fees paid to the Petitioner constitute contract payments paid to her for special or particular services from expense account of the Board of County Commissioners of Gadsden County, Florida. There is nothing in the record to establish that any contract for services existed between Petitioner and Gadsden County other than the documents regarding her status as an employee from which it could be inferred that there existed a contract for employment. Nor is there any evidence to establish that the monies Petitioner's received from

Gadsden County were paid for special or particular services, or that they were paid from an expense account of the Board of County Commissioners of Gadsden County.

Respondent next contends that Petitioner was not an employee of the Board of County Commissioners of Gadsden County. There is no evidence to support this contention, and the evidence of record clearly establishes the contrary. Petitioner's form FRS-M10, signed by Petitioner, identifies the Board of County Commissioners of Gadsden County as her employer. Petitioner's Loyalty Oath, contains a sworn statement by Petitioner that she is employed by the Board of County of Commissioners of Gadsden County. Furthermore, on form FR-11, not only does Petitioner state under oath that Board of County Commissioners of Gadsden County (as well as the State of Florida), was her employer, but on that same form, the Chairman of the Board of County Commissioners of Gadsden County certifies that Petitioner was employed by the Board of County Commissioners. In addition, the Division Retirement counted the monies paid to Petitioner by the Board of County Commissioners of Gadsden County pursuant to §29.04, Fla. Stat. (1991), as compensation for purposes of calculating retirement, and if Petitioner was not an employee of Gadsden County the Division would not have done so. If Petitioner was an employ of Gadsden County for purposes of §29.04, Fla. Stat. (1991), there is no logical basis for concluding that she was not also an employee for purposes of the rest of Chapter 29, Fla. Stat. (1991). As pointed out previously, not only is the inclusion of all fees reasonable, but it is required under Fla. Admin. Code R. 22B-1.004(4) (c) 1, which requires that a member filling a regularly established position who performs additional duties for the same employer is considered to be filling a regularly established position for the total employment.

Respondent argues that no matter what the evidence showed, Petitioner was as a matter of law an employee of the State of Florida under §29.01, Fla. Stat. (1991), and therefore as a matter of

law could not be an employee of Gadsden County. Although Petitioner was an employee of the State, as the Hearing Officer found, there is nothing in Chapter 29, Fla. Stat. (1991) that precludes her from also being an employee of the County, as the Hearing Officer also found. Various Florida Statutes set out what is required of public officers, fiduciaries, and others, but such persons are not as a result considered State employees. A Clerk of the Circuit Court, for instance, may be appointed and suspended by the Governor under appropriate circumstances. A Clerk's salary is established by Chapter 145, Fla. Stat., his duties are set forth in Chapter 28, Fla. Stat. (1991), and as Clerk he is subject to the orders of a Court issued in performance of the Court's judicial function. Corbin v. State, 324 So.2d 203 (Fla. 1st DCA 1976). The Clerk, however, is paid by the County pursuant to §145.022 and §145.051, Fla. Stat. (1991), and is a County Officer pursuant to Article VIII, Section 1 (d), Fla. Const.

An Official Court Reporter is in a situation similar to that of a Clerk, and as the Clerk, can be a County employee for purposes of compensation and concomitant retirement benefits. That dual employment such of that of Appellant is recognized by the Division of Retirement is evidenced by reference to present or last employers on the Division's Form FR-11, were it instructs applicants for retirement benefits to "List if more than 1" (R-50,51), and the Fla. Admin. Code R. 22B-1.008, which recognizes simultaneous employment in two or more covered positions and makes provision for situations in which the positions belong to different retirement classes.

If, as contended by Respondent, all of Petitioner's services as an Official Court Reporter pursuant to Chapter 29, Fla. Stat. (1991) were pursuant to her employment relationship with the State, and she therefore could not enter into any employment relationship with Gadsden County, then it follows that she could not have contracted with Gadsden County for those services, for all such services must have been provided pursuant to her relationship with the State. If such was the case,

why did the County pay her for the services rather then the State? The payments which Petitioner is seeking to have included as compensation are not those pursuant to §29.04 (3), Fla. Stat. (1991), which provides for payment by the County and which Respondent has included as compensation, but payments pursuant to §29.05, Fla. Stat. (1991), which contains no such provision.

Respondent is in the position of having to argue that Petitioner was not a County employee, but having to acknowledge that it included in its calculations of compensation for retirement purposes money paid to Petitioner by the County. Respondent attempts to explain this inconsistency by saying that although Petitioner technically is not a County employee, including such payments as compensation is consistent with the concept of the County supplementing the State salary. What Respondent cannot explain is why it would not also be consistent with the concept of the County supplementing the State salary to include as compensation those monies paid to Petitioner by the County for services rendered pursuant to §29.05 Fla. Stat. (1991).

The Department's own Fla. Admin. Code R. 22B.6.001 (16) defines compensation as "the total gross monthly salary paid a member. . ." Petitioner was a member of the Retirement System and the monies which she seeks to have included in the calculation of her retirement benefits were part of her total gross monthly salary. Whether Respondent wishes to consider Petitioner a member of the Retirement System based on her employment relationship with the County, or based on her employment relationship with the State, the payments made by the County for services rendered pursuant to §29.05, Fla. Stat. (1991), were part of her total gross monthly salary, were for routine services required of her by statute, and should be included in the calculation of her retirement benefits.

Respondent further argues that Petitioner is a State employee rather then a County employee under the reasoning of Matter of Compensation of Hunter, 635 P.2d 1371 (Or. App. 1981) because the State controls and benefits most from court reporters services. It is apparent from Hunter that in

Oregon court reporters are the judges' official secretaries (Hunter, p. 1373). Such is not the case in Florida.

More importantly, the issue in Oregon was not whether court reporters were covered by workmen's compensation, but who pays for it. The dispute in this case is not over who pays for Petitioner's retirement benefits, but whether she receives any retirement benefits at all for money earned pursuant to §29.05, Fla. Stat. (1991). Although Petitioner considered herself to be an employee of Gadsden County, Gadsden County considered her to be an employee of Gadsden County, the Hearing Officer found her to be an employee of Gadsden County, and the First District Court of Appeal found her to be an employee of Gadsden County, Petitioner does not care who the Division of Retirement considers to have been her employer so long as she receives her retirement benefits. If, as Respondent argues, the State was Petitioner's sole employer for her position as an Official Court Reporter, and in that position she was required to transcribe proceedings pursuant to §29.05, Fla. Stat. (1991), then payments made by the County for those services must have been as an agent for the State. If the payments were made by the County as agent for the State, there were State payments which should be included in compensation for retirement purposes as a result of Petitioner's employment relationship with the State. When it was time to pay Petitioner, and to furnish her with office space, furnishings, equipment, a telephone, parking, and insurance, the State was glad to consider her a County employee; now that it is time for Petitioner to collect retirement benefits, the State has decided she was not a County employee.

The Hearing Officer found that Petitioner was an employee of Gadsden County, and based on the evidence of record his conclusion is correct both factually and legally.

As the First District Court of Appeal pointed out in its opinion in this case, it has previously held that under appropriate circumstances,, an employee may have two employers for purposes of

determining benefits under the Florida Retirement System. State Department of Administration, Division of Retirement v. University of Florida, 531 So.2d 337 (Fla. 1st DCA 1988)

IV.

THOSE PAYMENTS RECEIVED BY PETITIONER FOR SERVICES RENDERED PURSUANT TO §29.03 AND §29.05, FLA. STAT. (1991) CONSTITUTED MONTHLY SALARY PAID A MEMBER AS REPORTED BY THE EMPLOYER ON A W-2 OR SIMILAR FORM.

It is the position of the Petitioner that the fees in question constituted compensation within the meaning of that term as defined in §121.021(22), Fla. Stat. (1991), in that those fees constituted monthly salary paid a member as reported by the employer on a form similar to a W-2.

As is evident from the description of the payments set forth on page 4 through 8 of the Amended Petition, the payments were paid to the Petitioner on a monthly basis. Although the amount of the payments varied from month to month, the computation of each payment was based on fixed formula and applied mathematically to Petitioner's services. As long as salary is computed pursuant to a formula that is fixed and can be applied mathematically, it is a fixed monthly salary even though the exact amount received each month may vary. See Op. Att'y Gen. Fla. 057-109 (April 26, 1957). It is not contested that these amounts of monthly salary were paid to Petitioner, nor is it contested that she was a member of the Florida Retirement System at the time of payment.

The next portion of the definition of compensations states that it includes "overtime payment and bonuses from a salary fund." The monies which Petitioner seeks to have included in calculation of her retirement benefits do not include any overtime payments or bonuses and that portion of the definition is not relevant to a consideration of the issue at hand.

The first sentence of the definition of compensation in §121.021 (22), Fla. Stat. (1991), describes compensation as being "... reported by the employer on the wage and tax statement (Internal Revenue Service Form W-2) or any similar form." It is important that the legislature did not limit compensation to that reported on W-2's, but specifically included that reported on "any similar form." The only Internal Revenue Service forms used to report compensation are W-2's and 1099's. Under rules of statutory construction the phrase "or similar" was intended by the legislature to have some meaning, and the legislature used that particular wording advisedly and for a purpose. Leigh v. Gulf Oil Corporation, 4 So. 2d 868 (Fla. 1941), Forehand v. Board of Public Instruction, 166 So. 2d 668 (Fla. 1st DCA 1964). Since "any similar form" must have some meaning, and the only form similar to the W-2 is the form 1099, in this case the statute must include compensation reported on Form 1099. This is particularly true in light of the rule of statutory construction that pension plans be liberally construed.

Respondent contends that monies paid to Petitioner pursuant to §29.05, Fla. Stat. (1991), as reported on Form 1099, cannot be compensation because a 1099 is a form used to report payments of income to a independent contractor and not a form on which employer reports payments from a salary fund. First, Respondent misinterprets §121.021 (22) Fla. Stat. (1991), which provides in part as follows:

> "Compensation" means monthly salary paid a member, including overtime payments paid from a salary fund, as reported by an employer on wage and tax statement (Internal Revenue Service form W-2) or any similar form"

There is no coma between the phrase "including overtime payments" and the phrase "paid from a salary fund," and the phrase "paid from a salary fund" therefore modifies overtime payments and not

monthly salary. Furthermore, there is nothing of record to indicate the payments in question were not paid from a salary fund.

Second, Respondent's argument that the reporting of income on a Form 1099 renders such income payments to a independent contractor is inconsistent with its position regarding Petitioner's employment status for services rendered pursuant to Chapter 29, Fla. Stat. (1991). If, as Respondent's argues, Petitioner was an employee of the State for services rendered pursuant to Chapter 29, Fla. Stat. (1991), she could not have contracted with the County for the provision of those same services.

V.

THOSE PAYMENTS RECEIVED BY PETITIONER FOR SERVICES RENDERED PURSUANT TO §29.03 AND §29.05, FLA. STAT. (1991) CONSTITUTED COMPENSATION DERIVED FROM FEES SET BY STATUTE.

The second sentence of the Statutory definition of compensation reads as follows:

> When a member's compensation is derived from fees set by statute, compensation shall be the total cash remuneration received from such fees.

Respondent asserts that this sentence makes reference only to those situations where all of the member's compensation is derived from fees set by statute and from no other source. There is no basis for such a position. Although the statute could have said that when all of a member's compensation is derived from fees set by statute, and from no other source, compensation shall be the total cash remuneration received from such fees, it did not do so. There is nothing in the statutory language to limit the effect of this provision to situations in which all of the compensation is derived from fees set by statute.

Furthermore, the Division, in its own Fla. Admin. Code R. 22B-6.001(16) as amended November, 1991, defines compensation as follows:

(16) COMPENSATION OR GROSS COMPENSATION -
(a) Compensation means the total gross monthly salary paid a member, including:

1. Overtime payments, except as provided in Rule 22B-6.001(11)(b)4;

2. Accumulated annual leave payments, as defined in Rule 22B-6.001(1);

3. Payments in addition to the employee's base rate of pay if all the following apply:

a. The payments are paid according to a formal written policy that applies to all eligible employees equally, and

b. The policy provides that payments shall commence not later than the eleventh year of employment, and

c. The payments are paid for as long as the employee continues his employment, and

d. The payments are paid at least annually;

4. Amounts withheld for tax-sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the internal Review Code;

5. Cash remuneration received for fees set by statute. (Emphasis supplied).

The Rule definition of compensation provides that cash remuneration received for fees set by statute is one type of payment which may be included in compensation. The types of compensation are not exclusive of one another. This Rule provision is directly contrary to the Division's position that remuneration based on fees set by statute is included on an "either-or" basis only when such fees are the sole source of the compensation. The Division is bound by its own Rules, Page v. The Capital Medical Center, Inc., 371 So. 2d 1087 (Fla. 1st DCA 1979)., and its Rule is directly contrary to its position in this case.

The Division's rule regarding those things to be included in compensation is clearly not an either-or rule, because it would make no sense to include, for instance, overtime payments, or cumulative annual leave payments, or annuity payments, or any of the type payments specified in the Rule, and at the same time exclude the base salary.

Despite the Division's own rule which makes it clear that the inclusion of fees set by statute is not an "either-or" situation, the Division contends that because it has historically considered compensation derived from fees set by statute in computing retirement benefits only when such fees are the sole source of compensation of an employee, such a policy is controlling (R-146-148). The Division in its Conclusions of Law Nos. (5) through (10) interprets the second sentence of §121.021 (22), Fla. Stat. (1991), to set up an "either-or" concept whereby fees set by statute are considered compensation only if such fees constitute the sole compensation of the employee, and concludes that such is permissible because, as an agency charged with administration of Chapter 121, Fla. Stat., its construction is entitled to great weight and should not be overturned unless clearly erroneous (R-145-148).

The Division's "interpretation" of this statute is at odds with that given by the Hearing Officer in Conclusion of Law No. 6 of the Recommended Order:

> This language is plain and unambiguous. It provides that compensation includes both "the monthly salary paid a member, including overtime payments paid from a salary fund" and "fees set by statute." In the same manner, compensation is defined in Rule 22B-6.001 (16) (a) 5. to include not only salary but also "cash remuneration received for fees set by statute". Under both the statute and rule, the types of compensation are not exclusive of one another. Where the language of the statute is clear and unambiguous and conveys a clear and definite meaning, as it is and does here, there is no occasion for resorting to the rules of statutory interpretation and construction. The statute must be given its plain and obvious meaning. Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984). Thus, salary and fees received by petitioner while performing her duties as official court reporter should have been used

> in calculating her retirement benefits. By "delving beneath the obvious language of the (statute) to unearth evidence of 'intent' and 'purpose' when there was no necessity to do so", and construing that statute to mean that salary or fees could be used to calculate the benefits, but not both, the Division was in error. Kingsley v. Department of Insurance and Treasurer, 535 So. 2d 604, 605 (Fla. 2nd DCA 1988) (R-119,120).

The Division's action in this case is similar to that overturned by the court in the Kingsley case cited by the Hearing Officer. In Kingsley, the Department of Insurance reversed a Hearing Officer's Conclusion of Law regarding retirement benefits, and the District Court reversed the Department's "interpretation" of the relevant statute, stating that "...agencies, as well as courts, are charged with the duty to accord clear and unambiguous enactments their plain meaning."

The Division's position in this case is also akin to that of the Department of Health and Rehabilitative Services in St. Francis Hospital Inc. v. Department of Health and Rehabilitative Services, 553 So. 2d 1351 (Fla. 1st DCA 1989). That case involved HRS's policy of rejecting hospital certificate-of-need applications without consideration when project cost contained in the application exceeded estimated project cost set forth in the letter of intent.

The hearing officer concluded that HRS's policy was authorized by, and was a permissible interpretation of, the controlling statutes, and found no impediment to HRS utilizing this non-rule policy on a case-by-case basis so long as the non-rule policy was explicated by an adequate record foundation in the proceeding. The hearing officer, however, concluded that a rational basis for the policy had not been shown in the proceeding, and ruled against HRS. In its Final Order, HRS accepted the hearing officer's Findings of Fact, but concluded that when the hearing officer determined that HRS's incipient policy was within the permissible range of statutory interpretation, there was no further need to show a rational basis for the policy, and reversed the hearing officer. This court described the issue before it as follows:

> In this case, the hearing officer determined that the evidence did not support HRS's policy of automatic rejection when the CON application contains a higher project cost then the LOI. HRS does not challenge this portion of the Recommended Order, but instead makes a novel and unsupported argument that it doesn't have to explain its non-rule policy because the policy is a permissible construction of the controlling statute. St. Francis, Supra, page 1354

This court then went on to hold as follows with respect to HRS's argument:

> We recognize that an agency interpretation of the statute which simply reiterates the legislature's statutory mandate and does not place upon the statute an interpretation that is not readily apparent from its literal reading, nor in and of itself purports to create rights, or require compliance, or otherwise have the direct and consistent effect of the law, is not an promulgated rule, and actions based upon such an interpretation are permissible without requiring an agency to go through rule-making. However, in this case, HRS's policy does not simply reiterate a legislative mandate and is not readily apparent from a literal reading of the statutes involved and thus, HRS was required to show the reasonable and factual accuracy of its policy... St. Francis, Supra, page 1354

In this case, in addition to being contrary to its own rule as well as to the plain and unambiguous language of the statute, this alleged "interpretation" is in fact an agency policy which rises to the level of "rule," because it is a statement of general applicability that implements, interrupts, or prescribes law or policy. McDonald v. Department of Banking and Finance, 346 So.2d, 569, 580 (Fla. 1st DCA, 1977). It is not questioned that the Division has not promulgated this policy in the form of a rule pursuant to Chapter 120, Fla. Stat. (1991), with the result that its status must be that of non-rule policy.

The Division's practice in administering the retirement system of including fees as compensation for retirement purposes only where such fees are the sole sources of compensation is not simply a reiteration of the statute readily apparent from reading it. The Division cannot apply this policy to Appellant simply because that is what it has been in the habit of doing. As stated by this

Court, ". . . a reviewing Court must defer to an agency's interpretation of an operable statute as long as that interpretation is consistent with legislative intent and is supported by substantial, competent evidence" (emphasis supplied) Public Employees Relations Commission v. Dade County PBA, 467 So. 2d 787 (Fla. 1985). To the extent that an Agency does not refine statutory standards through rulemaking it is required to explain the policy behind its decisions in each individual case. Albrecht v. DER, 353 So. 2d, 883 (Fla. 1st DCA, 1977). In explaining its policy in such instances, the agency must expose and elucidate the rationale for its policy, and the record of the proceedings must contain evidence to support the policy. General Development Corp. v. DOA, 353 So. 2d, 1199 (Fla. 1st DCA, 1977), Florida City's Water Company v. Florida PSC, 384 So. 2d, 1280 (Fla., 1980). In order to apply non-rule or incipient policy in a §120.57, Fla. Stat. (1991), hearing, the policy must be established by expert testimony, documentary opinions, or other competent, substantial evidence of record. St. Francis Hospital v. HRS, 553 So. 2d, 1351 (Fla. 1st DCA, 1989), Gulf Coast Home Health Services v. HRS, 513 So. 2d, 704 (Fla. 1st DCA, 1987), McDonald v. Department of Banking and Finance, 346 So. 2d, 569 (Fla. 1st DCA, 1977). Indeed, to establish non-rule policy to support agency action in a §120.57, Fla. Stat. (1991), hearing, the agency must create a record foundation supporting the accuracy of every factual premise and the rationality of every policy choice which is identifiable and reasonably debatable. Anheuser-Busch, Inc. v. DBR, 393 So. 2d, 1177 (Fla. DCA, 1981). It is not enough that the agency show that the non-rule policy is within the permissible range of statutory interpretation. St. Francis Hospital v. HRS, 553 So. 2d, 1351 (Fla. 1st DCA, 1989).

In short, the Division cannot rely on its non-rule policy with respect to exclusion of fees as compensation because such policy has neither been promulgated by rule nor established by competent substantial evidence, and in fact is contrary to the Division's duly promulgated rule.

Although Respondent stipulated that Petitioner "received payments pursuant to Chapter 29, Fla. Stat. (1991), from both the State of Florida and Gadsden County..." (R-43), Respondent argues that this does not amount to a stipulation that the payments were derived from fees set by statute. Webster's New Collegiate Dictionary defines "pursuant to" as "in carrying out, in conformance to, according to." If payments pursuant to Chapter 29, Fla. Stat. (1991), are payments in conformance to and according to Chapter 29, Fla. Stat. (1991), and Chapter 29, Fla. Stat. (1991) sets forth fees for the performance of duties, it follows that a stipulation that payments are pursuant to Chapter 29, Fla. Stat. (1991) is a stipulation that payments are derived from fees set by statute.

Respondent also argues that the fees were not set by statutes but by rule. Although the Rules of Judicial Administration are procedural and their provisions prevail over conflicting statutes, an examination of Fla. R. Jud. Admin. 2.070, reveals no provisions for the payment of the fees in question. Fla. R. Jud. Admin. Subsection 2.070 (e) provides that in the absence of an order, the fees for court proceedings and depositions should be as provided by law, and Petitioner is seeking neither fees for court proceedings nor fees for depositions; she is, as pointed out by the Hearing Officer, seeking fees for transcribing criminal proceedings (R-116).

The two cases cited by Respondent, Anderson v. State ex rel. Kriser, 374 So.2d 591 (Fla 1st DCA 1979) and Reedus v. Friedman, 287 So.2d 355 (Fla. 3d DCA 1973) dealt with old Fla. R. Civil P. 1.035 (b) which provided as follows:

> (b) Fees. The judges of the Circuit Court by majority vote may set the fees to be charged by court reporters by general order....

That rule did not limit itself to any particular fees of court reporters, whereas Fla. R. Jud. Admin. 2.070 (e) specifically states that it applies to court proceedings and depositions, but makes no mention of transcription. Even if, as contended by Respondent and denied by Petitioner, Fla. R. Jud.

Admin. 2.070, controls official court reporters fees for services pursuant to §29.05, Fla. Stat. (1991), it does not follow that payments received by Petitioner pursuant to §29.05, Fla. Stat. (1991), cannot constitute compensation "derived from fees set by statute" under §121.021 (22), Fla. Stat. (1991).

Statutes governing retirement benefits are to be liberally construed, and " A statute entitled to a liberal construction should be favorably construed so as to give it, if possible, a beneficial operation which will tend to promote justice and avoid harsh results." (Fla. Jur. 2d, Statutes, § 187). Furthermore, a construction of a statute which would lead to an unreasonable or absurd result should be avoided, State v. Webb, 398 So2d 829 (Fla. 1981), and care should be taken to avoid applying a literal interpretation with the result that seemingly unaffected provisions of unrelated chapters will be changed. Skelton v. Davis, 133 So2d 432 (Fla. 3d DCA 1961).

Under the forgoing rules of statutory construction, "fees set by statute" should include those paid pursuant to Chapter 29, Fla. Stat. (1991), even if the amounts were promulgated pursuant to Fla. R. Jud. Admin. 2.070. It would be an unjust and a harsh result to deny Petitioner retirement benefits because this Court decided to regulate Official Court Reporters, and such a result would also be unreasonable. There is no logical reason for including fees set by statute and excluding fees set by rule from calculation of retirement benefits. It is also difficult to believe that this Court, in promulgating Fla. R. Jud. Admin. 2.070, intended to deprive Official Courts Reporters of Retirement benefits under Chapter 121, Fla. Stat. (1991), an unrelated statute, when it promulgated the rule.

The situation is similar to that faced by this Court in Taylor v. Roberts, 94 So. 874 (Fla. 1922). In that case the City of Jacksonville had authority to regulate "hackney carriages, carts, omnibuses, wagons and drays," but no specific authority to regulate automobiles, which had not been invented when the Jacksonville Charter was enacted. The court held that from the power to regulate known classes of vehicles flowed the implied power to regulate vehicles later coming into use.

In this case, fees set by statute should by implication include fees set by rule when the rule came into effect after the statute.

Petitioner would emphasize that payments received by Appellant need not be "fees set by statute" in order to qualify for inclusion in retirement calculations, and payments received for services pursuant to §29.05, Fla. Stat. (1991), constitutes monthly salary and therefore compensation regardless of whether such payments were set by statute or rule.

VI.

THOSE PAYMENTS RECEIVED BY PETITIONER FOR SERVICES RENDERED PURSUANT TO §29.03 AND §29.05, FLA. STAT. (1991), DID NOT CONSTITUTE FEES PAID A PROFESSIONAL PERSON FOR SPECIAL OR PARTICULAR SERVICES.

The last sentence of the statutory definition of compensation in the Florida Retirement System Act is as follows:

> Under no circumstances shall compensation include fees paid to professional persons for special or particular services.

It is the position of the Division that this sentence excludes Petitioner's compensation from inclusion in calculation of retirement benefits (R-150).

A "professional person" is not defined by the statute, but a profession is defined by Webster's New Collegiate Dictionary as "a calling requiring specialized knowledge and often long and intensive academic preparation." Fla. Jur. 2d, Business and Occupations, Section 1, defines a profession as follows:

> A profession is a vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding, or teaching them, or in serving their interests or welfare in the practice of an art founded on it.

According to the Office of the Attorney General, a profession implies specialized intellectual training and knowledge of some department of learning, science or art as distinguished from mere skill and employment habitually engaged in for livelihood or gain. See Op. Att'y Gen. Fla. 73-25 (February 15, 1973).

An Official Court reporter has never been a professional and does not meet any of the above definitions of a professional. Although the Legislature in Chapter 457, Fla. Stat. (repealed in 1977) at one time regulated Certified Shorthand Reporters, there has been, and presently is, no requirement that an Official Court Reporter be a Certified Shorthand Reporter, or even that an Official Court Reporter be a shorthand reporter at all.

In 1976, when the Legislature repealed Chapter 457, Fla. Stat. and numerous other chapters dealing with the regulation of various professions and occupations, the regulation of those occupational groups was placed under the Department of Professional Regulation by Chapter 455, Fla. Stat. (1991). Although the Florida Department of Professional Regulation pursuant to Chapter 455, Fla. Stat. (1991), regulates numerous occupations, it does not regulate Official Court Reporters. Furthermore, the Legislature stated in §455.201(3), Fla. Stat. (1991), as follows:

> It is the further Legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the Department of Professional Regulation shall not be deemed to mean that such activities are not occupations for other purposes in State or Federal Law; and, accordingly the term "profession" shall also mean "occupation".

Further guidance on this subject can be gained from a review of the definition of "Professional Service" contained in Chapter 621, Fla. Stat. (1991), dealing with Professional Service Corporations. That Chapter, 621.03, Fla. Stat. (1991), defines "Professional Service" as follows:

> The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of

> such service, the obtaining of a license or other legal authorization which prior to the passage of this act and by reason of law cannot be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by Certified Public Accounts, Public Accountants, Chiropractors, Dentists, Osteopaths, Physicians and Surgeons, Doctors of Medicine, Doctors of Dentistry, Podiatrists, Chiropodists, Architects, Veterinarians, Attorneys at Law, Life Insurance Agents.

Again missing from the enumerated professions are Official Court Reporters. Additionally, the only requirements for being an Official Court Reporter are appointment by the Chief Judge of the Judicial Circuit with approval of majority of the Circuit Court Judges and being a Notary Public so that one can place witnesses under oath. Although this Court is considering licensing requirements for court reporters, there has not been and there is no license required in order for one to be an Official Court Reporter.

Furthermore, in order for fees to be excluded from compensation paid a professional person, they must be paid to that professional person for special or particular services. The services which must be provided by a Court Reporter are those enumerated in Chapter 29, Fla. Stat. (1991). It is not reasonable to treat an employee as a professional person rendering special or particular services under one part of Chapter 29, Fla. Stat. (1991), when the same individual rendering similar services is not considered a professional person rendering special or particular services under another part of the statute. The Official Court Reporter is an Official Court Reporter under all of Chapter 29, Fla. Stat. (1991). Put another way, why would an Official Court Reporter's acts in reporting the testimony of a criminal trial not be a special or particular services by a professional person, but the transcription of that same testimony by the same Court Reporter for the same trial constitute special or particular services rendered by a professional person? There is no rational basis for such a distinction.

Respondent's assertion that nothing could be clearer than that transcription constitutes special or particular services is contrary to the conclusion of the Hearing Officer (R-120, 121), and, as pointed out by the Hearing Officer, illogical (R-121). It would be just as logical to label the reporting as the "special or particular service" and the transcribing as the "something else." Fla. R. Jud. Admin. 2.070 (e) (R-121) is silent as to fees for transcripts, and even if transcription was mentioned in the Rule, there is no basis for concluding that a fee under Fla. R. Jud. Admin. 2.070 (e) is for a special or particular service just because it is called a "fee." Petitioner's own Fla. Admin. Code R. 22B-6.001 (16), includes fees set by statute as a form of compensation, and if the word "fee" denotes something received only for a special or a particular service, then the Department's own rule is at odds with the statute it implements.

§29.05, Fla. Stat. (1991), provides that the Official Court Reporter, upon the demand of the State Attorney, presiding Judge, or defendant "....shall furnish with reasonable diligence a transcript of the testimony and the proceedings..." (emphasis supplied). There is nothing in §29.05 Fla. Stat. (1991) to differentiate the nature of those services from those of reporting proceedings under §29.02, Fla. Stat. (1991). The Official Court Reporter has no choice under either section of the statute. She cannot decline to perform her statutory duties under §29.05, Fla. Stat. (1991); she must transcribe under §29.05, Fla. Stat. (1991) just as she must report under §29.02, Fla. Stat. (1991), and there is no reasonable basis to consider the reporting of the proceeding part of her regular duties and the transcribing of that same proceeding a special or particular service.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Court answer the question certified in this case by the District Court of Appeal of the First District of Florida, in the affirmative.

Respectfully submitted this 10 day of March, 1995.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFIY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 10 day of March, 1995 to Stanley M. Danek, Esquire, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida 32399-1560.

EDGAR LEE ELZIE, JR.