

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELDON SADLER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-2214  
 )  
 DEPARTMENT OF MANAGEMENT SERVICES, )  
 DIVISION OF RETIREMENT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On October 4, 2000, a formal administrative hearing in this case was held in Tallahassee, Florida, before Don W. Davis, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Larry E. Levy, Esquire  
1828 Riggins Road  
Tallahassee, Florida 32308

For Respondent: Larry D. Scott, Esquire  
Division of Retirement  
Cedars Executive Center, Building C  
2639 North Monroe Street  
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

The issue in the case is whether Eldon Sadler, Taylor County Property Appraiser, (Petitioner) is required to enroll Connie LaValle in the Florida Retirement System (FRS) for all of her employment with the Taylor County Property Appraiser's Office from June 1993 until the present.

PRELIMINARY STATEMENT

By letter dated February 18, 2000, the Division of Retirement notified Petitioner that since an employee of Petitioner's office, Connie LaValle, was receiving additional compensation from Petitioner, beyond that paid Lavalle for work in her permanent FRS position, the additional compensation would have to be reported for retirement purposes and retro-active retirement contributions would have to be paid to the Division of Retirement (Respondent) by Petitioner's office.

Petitioner requested a formal administrative hearing. Respondent forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, Petitioner testified in his own behalf. Respondent presented the testimony of one witness. Both parties presented one joint composite exhibit in evidence. No transcript of the final hearing was provided. Both parties did file Proposed Recommended Orders and those proposed orders were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Connie LaValle has been employed in Petitioner's office as a permanent part-time employee since September 16, 1992, as a "mapper." Pursuant to a contract, she has also been performing additional mapping services for Petitioner since June 1993, for

which no contributions have been made to FRS. Contributions have been made for LaValle's other part-time employment in the office.

2. Prior to June 2, 1993, LaValle and Petitioner spoke regarding LaValle's performing services related to implementing a Geographic Information System (GIS) in the event that Taylor County decided to obtain such a system. As a consequence, LaValle sought and obtained placement of her name on the Department of Revenue's approved bidder's list. Placement on the list is a prerequisite to entering into a contract with Petitioner's office.

3. On June 2, 1993, Petitioner's office and LaValle entered into a contract whereby LaValle would perform "mapping services to aid in assessment." While not detailed as such in the written contract, these services were related to the GIS mapping function and were in addition to LaValle's existing part-time employment in the office. The contract was renewed on May 30, 1996.

4. LaValle was not given any training for the tasks for which she contracted, she was not required to follow daily or weekly routines or schedules established in Petitioner's office, she was given no instructions in the way that work was to be performed, and Petitioner could not change methods used by LaValle or otherwise direct her as to how to do the work.

5. LaValle did the contractual work at her convenience and was not required to perform that work in the office or pursuant to any schedule. She was paid for the work product as she

finished it. Payment under one contract resulted in a \$60 per map payment from Petitioner when the product was completed. Under the renegotiated contract, she received \$3 per parcel on computerized maps. She was not guaranteed a minimum payment, nor did she receive pension benefits, bonuses, paid vacation time, or sick pay. Earnings pursuant to the contract were reported by LaValle as self-employment income on form 1099.

6. The contract provided that neither Petitioner nor LaValle could terminate the agreement absent 30 days notice to the other party. In addition to furnishing her own work location, work equipment, tables, engineering scales, computer and other necessary equipment, LaValle also paid all related expenses.

7. LaValle performed all contract work in her home. Although not prohibited by terms of the contract, she did not work for other entities.

8. Respondent, pursuant to an audit of retirement records of Petitioner's office, determined that LaValle was performing additional duties for Petitioner's office and receiving salary for which no retirement contributions were paid. Petitioner was notified by Respondent by letter dated August 10, 1999, that LaValle previously filling a part-time regularly established position, was now performing additional duties for the same employer and was now considered to be filling a regularly established position for her total employment. Petitioner was

informed that salary earned by LaValle for the additional duties should have been reported and contributions paid to Respondent for retirement benefits.

9. Petitioner maintains that LaValle is an independent contractor with regard to additional duties and no retirement contributions are due and payable.

10. Respondent has determined LaValle is not an independent contractor. Respondent asserts that the additional duties are an extension of her normal duties in her part-time position and contributions for retirement benefits are due with regard to compensation paid to her by Petitioner.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

12. Petitioner has the burden of establishing by a preponderance of the evidence, entitlement to the relief sought. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (1st DCA 1977). Florida Department of Transportation v. JWC Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this case, the burden has not been met.

13. Rule 60S-1.004(4)(c)1, Florida Administrative Code, states:

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 contributions.

14. Rule 60S-6.001(33), Florida Administrative Code, defines independent contractor as:

[A]n individual who is not subject to the control and direction of the employer for whom work is being performed, with respect not only to what shall be done but how it shall be done. If the employer has the right to exert such control, an employee-employer relationship exists and the person is an employee and not an independent contractor.

15. Not only did LaValle fail to appear and testify in this proceeding, no work products of her contractual work were presented to demonstrate any indicia of independent content and control over the product. The very nature of a situation where a part-time employee who is subject to control, direction and even termination of that employment by the employer, demonstrates ultimate control by the employer that belies the artifice of a contract to provide additional compensation to the employee. The evidence fails to establish that the supplemental payments to LaValle, did not constitute "compensation" for purposes of determining retirement benefits under the FRS. As stated by the Florida Supreme Court in Cantor v. Cochran, 184 So. 2d 173, 174 (Fla. 1966), "independent contractor status . . . depends not on the statements of the parties but upon all the circumstances of their dealings with each other."

16. While Petitioner may have intended to retain LaValle as an independent contractor and thereby avoid paying contributions

for her retirement benefits, the evidence is insufficient to establish that relationship.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the State of Florida, Division of Retirement, enter a final order finding that payments made to Connie LaValle for additional duties from Petitioner's office constitute salary for additional employment requiring payment of retirement contributions by Petitioner.

DONE AND ENTERED this 30th day of October, 2000, in Tallahassee, Leon County, Florida.

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DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of October, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order must be filed with the agency that will issue the final order in this case.