

**DE 92-02 - January 14, 1992**

**Application of Qualifying Fees and Assessments to the Annual Salary of an Office; What Constitutes a Salary  
Sections 99.092, 99.093, F.S.**

*TO: Honorable Joe Oldmixon, Supervisor of Elections, Escambia County, Post Office Box 12601, Pensacola, Florida 32574-2601*

*Prepared by: Division of Elections*

This is in reference to your recent letter requesting an advisory opinion on what constitutes a salary for purposes of computing the qualifying fees and assessments under Sections 99.092 and 99.093, Florida Statutes. You are the Escambia County Supervisor of Elections and, therefore, under Section 106.23 (2), Florida Statutes, the Division of Elections has authority to issue this opinion to you.

Specifically, you ask:

Is a monthly allotted car allowance considered part of an elected official's salary?

In DE 90-5, we held that a monthly expense allowance paid to a person regardless of whether or not any expenses were actually incurred is tantamount to a salary. This opinion went on to discuss the definition of a salary and held that the outstanding feature of a salary is that it is "fixed compensation over a period of time." This view is in accord with prior division opinions. See, e.g., Op. Div. Elect. Fla. 83-5 and Op. Div. Elect. Fla. 84-5. Similarly, the United States Supreme Court in Benedict v. United States, 176 U.S. 357 (1900), stated that salary meant a fixed annual or periodic payment which was dependent upon the time and not the amount of services rendered. This is in accord with other authorities. See, e.g., 63 Am.Jur.2d, Public Officers and Employees, Sections 451-464; 9 Fla.Jur.2d, Civil Servants, Section 141.

Thus, where one receives an expense allotment with neither a requirement that all or a part be returned when the official incurs no expenses nor a requirement that any expenses must be incurred in order to entitle one to the allotment, it is fixed compensation over a period of time and must be considered a salary.

**SUMMARY**

An expense allowance payable in a fixed amount over a fixed period of time with neither a requirement that all or a part be returned when the official incurs no expenses nor a requirement that any expenses must be incurred in order to entitle one to the allotment is considered a salary.