

legislature had provided for confidentiality of state tax returns but granted an exception permitting disclosure pursuant to proper judicial order. This statute was later amended and the exception pertaining to judicial order was deleted. The court held that the intent of the legislature was to preclude their disclosure even in judicial proceedings and to effectuate this intent the court would not allow the taxpayer to be quizzed as to the contents of his return or allow the other party to request of the taxpayer permission to obtain a copy of the return.

The same rationale would appear to be applicable to the intangible returns. To construe the provisions of §11.50(1)(b), F. S., which require public assistance recipients to sign a written consent permitting the auditor general to make inquiry of "records, financial or otherwise," as requiring the Department of Revenue to disclose intangible tax returns would be to defeat the very purpose of §199.222, F. S.

Section 199.222, F. S., being penal in nature, must be strictly construed according to its letter. [See] 30 Fla. Jur. *Statutes* §125 at 230. The provisions of this statute explicitly make it unlawful, save for the three previously mentioned exceptions, for the department or any of its employees to disclose *in any manner* particulars set forth in intangible tax returns. Also, the very fact that express exceptions are provided in the confidentiality statute gives rise to a strong inference that no other exceptions were intended. *Biddle v. State Beverage Department*, 187 So.2d 65 (4 D.C.A. Fla., 1966). The conclusion clearly follows that the very general language of §11.50, F. S., including the written consent provisions of paragraph (1)(b), cannot be read as providing by implication a fourth exception to the confidentiality provisions of §199.222. Consequently, the question posed at the beginning of this opinion is answered in the negative.

073-110—April 11, 1973

## CRIMES AND OFFENSES

### ATTEMPT TO COMMIT A "LIFE FELONY"

*To: Joseph P. D'Alessandro, State Attorney, Fort Myers*

*Prepared by: Reeves Bowen, Assistant Attorney General*

#### QUESTION:

Will a prosecution lie under the attempt statute, §776.05, F. S. (1972 Supp.), for attempting to commit a "life felony"?

#### SUMMARY:

A prosecution will not lie for attempting to commit a "life felony," since such an attempt is not a crime. It is respectfully suggested that the legislature, while presently in session, should address itself to this problem and amend §776.04, F. S., so as to include an attempt to commit a life felony. Despite the fact that it is not at this time a crime to attempt to commit a life felony, I point out that when a defendant commits an assault with intent to commit a life felony in connection with his attempt to commit that felony, he is subject to prosecution for such assault.

Prior to the enactment of Ch. 72-724, Laws of Florida, there was no such thing as a "life felony" under the laws of Florida. Section 1 of said chapter amended §775.081, F. S., relating to the classification of felonies and misdemeanors, by adding "life felony" thereto, and §2 of said chapter amended §775.082, F. S., relating to penalties for felonies and misdemeanors, by adding a provision prescribing a penalty for one convicted of a life felony. However,

when these amendments were effected, the attempt statute, §776.04, F. S. (1972 Supp.), did not cover an attempt to commit a "life felony," and the legislature has not amended it to cover such an attempt. The result is that it is not unlawful to attempt to commit a life felony and your question must be answered in the negative. It is respectfully suggested that the legislature, while presently in session, should address itself to this problem and amend §776.04 so as to include an attempt to commit a life felony.

Even though it is not at this time a crime to attempt to commit a life felony, I point out that in some instances where there is an attempt to commit a life felony, there is also an assault with intent to commit that felony. In such a situation, the defendant is subject to prosecution under the last sentence of §784.06, F. S., which section provides:

**784.06 Assault with intent to commit a felony.**—Whoever commits an assault on another, with intent to commit any capital felony or felony of the first degree shall be guilty of a felony of the second degree, punishable as provided in §775.082, §775.083, or §775.084. *An assault with intent to commit any other felony constitutes a felony of the third degree, punishable as provided in §775.082, §775.083, or §775.084.* (Emphasis supplied.)

073-111—April 11, 1973

#### PUBLIC DEFENDER

#### REPRESENTATION OF INDIGENT DEFENDANT IN MUNICIPAL COURT

To: B. L. David, City Attorney, Hollywood

Prepared by: Reeves Bowen, Assistant Attorney General

#### QUESTION:

Does a public defender have the authority to assign an assistant public defender to represent indigent defendants in a municipal court?

#### SUMMARY:

A public defender is not authorized to assign one of his assistants to represent indigent defendants in a municipal court.

Section 27.51(1), F. S., as amended by §1 of Ch. 72-722, Laws of Florida, provides in pertinent part that:

The public defender shall represent without additional compensation as provided in section 925.035, any person who is determined to be insolvent, as provided in this act, who is under arrest for, or is charged with, a felony. The public defender may represent any person who is determined to be insolvent, as provided in this act, who is under arrest for, or is *charged with a misdemeanor or violation of a municipal or county ordinance in the county court.* . . . (Emphasis supplied.)

Said statutory provision authorizes the public defender to represent persons charged with violating municipal ordinances *only in the county court*; it does not authorize him to represent them in the municipal court. Since the public defender has no authority to represent such persons in the municipal court, he cannot assign one of his assistants to perform that task.