

073-413—November 8, 1973

## JURORS

### MUNICIPAL LAW ENFORCEMENT OFFICERS AND FBI AGENTS NOT DISQUALIFIED

To: *Bernard L. Garmire, Chief of Police, Miami*

Prepared by: *Michael M. Corin, Assistant Attorney General*

#### QUESTIONS:

1. Are municipal law enforcement officers disqualified to be jurors pursuant to the provisions of §40.07(2), F. S.?
2. Are FBI agents considered to be United States officials for purposes of §40.07(2), F. S.?

#### SUMMARY:

Municipal law enforcement officers are not disqualified to be jurors under §40.07(2), F. S., and FBI agents are not considered to be United States officials for purposes of §40.07(2).

#### AS TO QUESTION 1:

Section 40.07(2), F. S., provides:

BY OFFICIAL POSITION.—Neither the governor, nor his cabinet officers, nor any sheriff or his deputy, assessor of taxes, collector of revenue, county treasurer, clerk of court, judge, county commissioner or United States official shall be qualified to be a juror.

It is clear that the language of §40.07(2) does not specifically include municipal law enforcement officers as persons who by official position are disqualified to be jurors. My research of the Florida case authorities which have discussed or construed §40.07(2) fails to reveal a court opinion in which municipal law enforcement officers have been judicially included within the provisions of this section.

In *Cawthon v. State*, 156 So. 129, 130 (Fla. 1934), the court set out the purpose of the disqualification statute as applicable to sheriffs and their deputies:

. . . The purpose of the statute prohibiting sheriffs and their deputies from serving as grand and petit jurors is not only to preserve the fairness and impartiality of grand and petit jurors in fact, but to assure an accused that the jurors who will be called upon to consider his case will be free from any suspicion of bias or prejudice against him on account of their official relationship with prosecuting officers of the state.

See also AGO 072-155.

Subsequent to the opinion in *Cawthon*, the Florida Supreme Court, in the case of *Brown v. State*, 184 So. 777 (Fla. 1938), determined that a special police officer of the City of Jacksonville was not disqualified to act as a juror under the provisions of subdivision 2 of Section 4451, C.G.L. (predecessor to §40.07(2), F. S.).

More recently, the Florida Supreme Court has recognized that ". . . every citizen, not exempt or disqualified, has the right not to be denied the opportunity of jury service . . ." *Porter v. State*, 160 So.2d 104, 109 (Fla. 1964).

From the preceding cases, it can be determined that the policy considerations underlying §40.07(2), F. S., as applicable to sheriffs and their deputies, would be equally applicable to municipal law enforcement officers; but given the plain language of §40.07(2) and the recent affirmation in *Porter, supra*, that every citizen, if not exempt or disqualified, has the right not to be denied the opportunity of jury service, I must answer your first question in the negative.

## AS TO QUESTION 2:

In AGO 072-155, the following question was raised:

Does §40.07(2), F. S., disqualify military officers of the United States from jury duty because they are "United States officials"?

Based on Art. II, §2, of the United States Constitution, and the case law interpreting its provisions, the question in AGO 072-155 was answered affirmatively.

The rationale was that the appointment of a United States military officer in every case meets one of the following procedures: by appointment by the President and confirmation by the Senate, or, by an act of Congress, by the President alone, by the head of a cabinet department, or by order of a court of law.

It is my understanding that FBI agents do not obtain their positions through any of the above procedures. Accordingly, your second question is answered in the negative.

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## PUBIC FUNDS

EXPENDITURE FOR EMPLOYEES' INCOME PROTECTION  
INSURANCE UNAUTHORIZED

To: *Charles Miner, General Counsel, Florida State Board of Education,  
Tallahassee*

Prepared by: *Stephen F. Dean, Assistant Attorney General*

## QUESTION:

Does §112.12, F. S., contemplate that income protection insurance be included in the terms "accident" and "hospitalization" insurance for the purpose of authorizing payment of premiums therefor from available public funds?

## SUMMARY:

Section 112.12, F. S., does not authorize the expenditure of public funds to pay premiums for income protection insurance.

Your question is answered in the negative.

As indicated in AGO 059-276, which did not specifically deal with the question raised herein, statutory authority must exist for the expenditure of public funds to pay premiums for insurance coverage on public employees.

Since its original passage, §112.12, F. S., has been amended to include additional types of insurance coverage and to include officers as well as employees. The latest amendment by Ch. 72-338, Laws of Florida, expanded the authority to expend public moneys for insurance premiums to life insurance.

Section 112.12, F. S., does not specifically enumerate income protection insurance among the types of coverage for which the premiums may be paid from public funds. In the absence of statutory authority the expenditure of public moneys is not authorized. Because the history of §112.12 indicates specific amendments which expand the types of coverage, the premiums of which could be paid from public funds, and expands those whose premiums for insurance could be paid from public funds, I find that the rule of statutory construction *expressio unius est exclusio alterius* is particularly applicable. Because income protection insurance has not been enumerated and other different types of insurance coverages have been enumerated, I must conclude it was not the intent of the legislature to authorize the expenditure of public funds for the payment of premiums on income protection insurance.