

## SUMMARY:

"Reasonable costs" incurred by the public defenders in using the discovery procedures authorized by Rule 3.220, CrPR, are to be taxed as costs and paid by the county as in the case of other court costs when the defendant is insolvent.

Section 27.54(2), F. S. 1971, expressly prohibits a county or municipality from appropriating or contributing funds to the operation of the offices of the public defender "except for the purposes of defending misdemeanors." [See also Ch. 72-733, Laws of Florida, authorizing counties and municipalities to contribute additional funds to the public defenders during the period January 1, 1973, through June 30, 1973, to be used for representing indigents charged with violations of county or municipal ordinances, as well as misdemeanors.] Rule 3.220 of the Florida Rules of Criminal Procedure authorizes the taking of depositions in connection with the discovery procedures provided for therein; and paragraph (k) of this rule provides that "[a]fter a defendant is adjudged insolvent the reasonable cost incurred in the operation of these rules shall be taxed as costs against the county." The clear implication of this provision of the rule is that the "reasonable cost" of the deposition procedures authorized by Rule 3.220 is to be considered a "court cost" to be paid as provided by Ch. 939, F. S.

This conclusion is in accord with my previous opinion in AGO 072-39. It was ruled therein that the pretrial expense of preliminary hearings, criminal investigations, and grand jury hearings that do not become a part of the court costs "are payable from funds allocated to the operating expense of the state attorney's office and may not be charged against the county." However, it was noted, parenthetically, that the costs of the discovery procedures provided for by the then Rule 1.220, CrPR (the present Rule 3.220, *supra*), are payable from county funds as are other court costs when the defendant is insolvent. It was noted also that the fees of the official court reporter for reporting arguments of counsel and preparing a transcript of the proceedings to be used in the trial of the cause "are chargeable as costs in the proceedings to be paid by the defendant if he is convicted and solvent, or by the county if he is discharged or insolvent." And the purpose of the provision of Rule 3.220, here in question, must have been to make clear that the "reasonable cost" of the deposition procedures is also to be paid by the county as in the case of any other "court cost" when the defendant is insolvent.

No authority need be cited for the proposition that the rules of practice and procedure adopted by the Supreme Court take precedence over any conflicting statutes, unless and until such rules should be repealed "by general law enacted by two-thirds vote of the membership of each house of the legislature." Section 2(a) of revised Art. V, State Const. Thus, insofar as there may be any conflict between §27.54(2), *supra*, and Rule 3.220(k), *supra*, the latter will prevail.

073-86—March 28, 1973

## LABOR

## RIGHT TO WORK—APPLICATION, IMPLEMENTATION

To: Donald L. Tucker, Representative, 11th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

## QUESTIONS:

1. Does §447.09(11), F. S., apply to all persons whether or not they are otherwise covered under §§447.01 and 447.02, *id.*?

2. Is additional legislation needed to implement Art. I, §6, State Constitution, with respect to the right to work?

SUMMARY:

The provisions of §447.09(11), F. S., prohibiting the coercion and intimidation of employees in the enjoyment of their right to work apply equally to union and nonunion employees; and no additional legislation is needed to implement the constitutional right-to-work guarantee. However, appropriate legislation setting out guidelines for collective bargaining by public employees should be adopted.

AS TO QUESTION 1:

Section 447.09(11), *supra*, is a part of our statute laws regulating the affairs and activities of labor unions and their members (Ch. 447, F. S., enacted by Ch. 21968, 1943, Laws of Florida). This particular section makes it unlawful to

... coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in §447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

Section 447.01, *supra*, declares the policy of this state to regulate the labor unions; and §447.02 merely defines the terms "labor organization" and "business agent" as used in the act. However, §447.03, *supra*, guarantees to employees in this state the right to belong to a labor union and to bargain collectively through representatives of their own choosing. And Art. I, §6, State Const., declares that "[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization. . . ." It was said in *Local Union No. 519 of United Ass'n. of Journeymen and Apprentices of Plumbing and Pipefitting Industry of U.S. and Canada v. Robertson*, 44 So.2d 899 (Fla. 1950), that:

Under these provisions it is the declared public policy of the State that all working men, whether union or non-union, shall be considered on an equal footing with respect to labor opportunities. They are guaranteed complete freedom of decision in whether to join or refrain from joining any labor organization. No person or organization may deny them the right of obtaining or retaining employment, nor may the right be abridged, by reason of membership or nonmembership in any labor organization. They are not to be coerced or intimidated in the enjoyment of their legal rights, including the right of free decision as to whether or not they will join a union, and any person or labor organization who so coerces or intimidates them is to be deemed guilty of a crime punishable by fine or imprisonment, or both.

I know of no changes in the statutory or decisional law that would render the above-quoted statement any less applicable today than when made by the late Mr. Justice Sebring in 1950. *See also American Federation of Labor v. Watson*, 60 F.Supp. 1010 (D.C. 1945), in which it was noted that the fact that Art. I, §6, *supra*, makes it possible for nonunion members to benefit from union activities without bearing any of the burdens of such activities does not render the section invalid under the federal constitution.

Accordingly, your first question is answered in the affirmative.

AS TO QUESTION 2:

It does not appear that any additional legislation is needed to implement the right-to-work provision of Art. I, §6, *supra*. *See*, for example, *Local No. 234 of United Ass'n. of Journeymen and Apprentices of Plumbing and Pipefitting*

Industry of U.S. and Canada v. Henley & Beckwith, Inc., 66 So.2d 818 (Fla. 1953), and Schermerhorn v. Local 1626 of Retail Clerks Intern. Ass'n., AFL-CIO, 141 So.2d 269 (Fla. 1962), striking down contracts between an employer and a labor union for violation of this constitutional inhibition.

It might be noted, however, that additional legislation is needed in one area: that of collective bargaining by public employees. Under Art. I, §6, State Const., public employees have the same rights of collective bargaining as are held by private employees, with the exception of the right to strike. It was so held in Dade County CTA v. Ryan, 225 So.2d 903 (Fla. 1969), in which the court said also that

In the sensitive area of labor relations between public employees and public employer, it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subject within the limits of said Section 6. A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers without, however, in any way [en]trenching upon the prohibition against public employees striking either directly or indirectly or using coercive or intimidating tactics in the collective bargaining process.

*Accord:* Bassett v. Braddock, 262 So.2d 425 (Fla. 1972), in which the court observed that "[i]mplementing legislation unfortunately has not yet been passed to give guidance and meaning to this vital constitutional protection."

The Legislature in the 1972 Session did provide appropriate guidelines for one group of public employees—members of fire departments—by adopting the Fire Fighters Bargaining Act, Ch. 72-275, Laws of Florida (§§447.20-447.35, F. S.). Additional legislation to fix appropriate guidelines for other groups in the public sector should also be adopted.

073-87—March 28, 1973

#### JUDGES

#### RETIREMENT—LENGTH OF SERVICE

*To: David H. McClain, Senator, 21st District, Tampa*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Is a circuit judge who served two years as judge of a civil and criminal court of record prior to serving eighteen years as circuit judge entitled to retire at two-thirds of his total salary, regardless of his age?

#### SUMMARY:

To be eligible to retire, regardless of age, as authorized by §123.04(1), F. S., a circuit judge must have been serving as such on July 1, 1955, and have completed twenty years of aggregate service prior to the expiration of his term of office in January of 1961.

You state that the circuit judge in question assumed the duties of that office (presumably for a six-year term) on January 4, 1955, and has served as such continuously since that date. He had served for two years as judge of the civil and criminal court of record immediately prior to assuming the duties of circuit judge. It is assumed that he elected to comply with the provisions of Ch. 123, F. S., referred to hereafter.