

In keeping with this action, the 1972 Legislature enacted Ch. 72-358, which became effective on January 2, 1973, and which repealed said §37.21. However, all of this does not mean that peace bond proceedings are no longer authorized in Florida.

Section 19 of said revised Art. V says:

SECTION 19. Judicial officers as conservators of the peace.—All judicial officers in this state shall be conservators of the peace.

And §901.01, F. S., provides in pertinent part that:

Each state judicial officer including all judges of courts created by home rule charter counties which have five or less justices of the peace, is a conservator of the peace and a committing magistrate with authority to issue warrants of arrest and commit offenders to jail and recognize them to appear to answer the charge. He may require sureties of the peace when the peace has been substantially threatened or disturbed. . . . (Emphasis supplied.)

The words "state judicial officer," as used in said §901.01, exclude a municipal judge and include a circuit judge and a judge of a county court. That a circuit judge and a county court judge are state judicial officers is attested by the fact that their salaries are required to be paid by the state, it being provided by §14 of said revised Art. V that "[a]ll justices and judges shall be compensated only by state salaries fixed by general law. . . ." (Emphasis supplied.) The result is that peace bond proceedings before judges of county courts, as well as before circuit judges, are authorized by law.

Sections 923.04 through 923.07, F. S., containing forms for use in peace bond proceedings before justices of the peace, have not been repealed and these forms may serve as guidance in drafting similar papers for use by circuit judges and county court judges.

Also, although said §37.21 stands repealed, I think that it would be safe to follow its principles in a current peace bond proceeding.

073-109—April 10, 1973

INTANGIBLE TAX RETURNS

CONFIDENTIALITY—AUDITOR GENERAL'S POWER TO INSPECT INTANGIBLE TAX RETURNS OF PUBLIC ASSISTANCE RECIPIENTS

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: Harold Purnell, Assistant Attorney General

QUESTION:

May the auditor general inspect certain intangible tax returns of public assistance recipients pursuant to §11.50, F. S.?

SUMMARY:

Section 199.222, F. S., prohibits the Department of Revenue from disclosing in any manner, save for three express exceptions contained in the statute, particulars set forth in intangible tax returns. This statute must be strictly construed both as to its letter and spirit, which is to facilitate full disclosure on the taxpayer's return. The failure to expressly provide for disclosure of intangible tax returns in the

provisions of §11.50, F. S., precludes construing this statute as creating by implication a fourth exception to the confidentiality rule, §199.222.

Section 11.50, F. S., is entitled "Division of public assistance fraud" and grants to the auditor general broad investigative powers. The most pertinent sections of this statute are as follows:

(1) (a) The auditor general shall investigate, on his own initiative or when required by the legislative auditing committee, public assistance made under the provisions of chapter 409. In the course of such investigation the auditor general shall examine all records and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys, food stamps, or other items to recipients.

(b) All public assistance recipients, as a condition precedent to qualification for assistance under the provisions of chapter 409, shall first give in writing, to the state division of family services and to the division of public assistance fraud, consent to make inquiry of past or present employers and records, financial or otherwise.

The broad investigative powers granted by §11.50, however, clash with express dictates of §199.222, F. S., when they are sought to be applied to the inspection of intangible tax returns.

Section 199.222, F. S., entitled "Information confidential" provides in subsection (1):

It is unlawful for the department [of revenue] or any examiner or employee to divulge or make known in any manner the values or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns. However, the department may permit the Commissioner of Internal Revenue or other duly authorized official of the Internal Revenue Service of the United States or the proper officer of any state or his authorized agent to inspect the tax returns of any individual, and the department may furnish to such person an abstract of any return or any item of information contained in any return.

Section 199.282, F. S., makes the violation of this section a misdemeanor.

The passage of statutory enactments providing confidentiality is clearly within the prerogative of the legislature, *U.S. v. Dickey*, 268 U.S. 378 (1925), and such enactments find the basis for their existence in a common legislative purpose.

The manifest purpose of the act [granting confidentiality] was to collect the taxes accruing to the state, and to that end it sought to induce the taxpayer to make the fullest disclosure of his income sources thereof, whether arising from honest toil and labor, or from sources of questionable legitimacy. [*Oklahoma Tax Comm. v. Clendinning*, 143 P.2d 143 (Okla. 1943), 151 A.L.R. 1035, 1040.]

In rendering intangible tax returns confidential, the legislature delineated only *three* exceptions to the prohibition against disclosure. These are contained in §199.222 (1), F. S., and permit the publication of statistics so classified as to prevent the identification of particular returns, disclosure to the Commissioner of the Internal Revenue or other duly authorized I.R.S. official and, lastly, disclosure to "the proper officer of any state or his authorized agent." While the classification the "proper officer of any state or his authorized agent" could be construed as including the auditor general, this latter phrase must be viewed in

conjunction with the preceding phrase in the statute referring to the Commissioner of the Internal Revenue and authorized officials of the Internal Revenue Service.

The rule of ejusdem generis may be employed to aid in the construction of statutes when the specific members of an enumeration constitute a class and the class is not exhausted by the enumeration and the series is concluded by a general term descriptive of the class. Under these circumstances the rule is applicable provided there is not clearly manifested an intent to isolate the general expression by according it a broader meaning than the doctrine justifies. *Southerland Statutory Construction*, 3rd Edition, Vol. 2, Section 4910. *State v. Town of Davie*, 127 So.2d 671, 673 (Fla. 1961).

Thus, the term "the proper officer of any state" must be read as meaning the officer who occupies in each state the position comparable to that on the federal level occupied by the Commissioner of Internal Revenue. This position in Florida encompasses the office of the Executive Director of the Department of Revenue only. Section 199.222 (1), F. S., therefore, can not be viewed as including within the purview of the express exceptions to its confidentiality rule, disclosure of the intangible returns to the auditor general.

This result leads next to consideration of the question whether either or both the power to investigate granted to the auditor general by §11.50(1) (a), F. S., and the written consent requirement of §11.50(1) (b), F. S., are sufficiently broad to provide for disclosure of the returns to the auditor general despite §199.222, F. S.

In viewing §11.50, F. S., it is of note that the statute does not mention specifically "intangible tax returns" but rather uses only the very general terminology of "all records" and "records, financial or otherwise." Further, the statute does not grant to the auditor general the power to compel the testimony of witnesses or the production of documents and records. The extent of the auditor general's power to investigate is, thus, limited to public records and records covered by the release that public assistance recipients are required to sign by §11.50(1)(b), F. S. Intangible tax returns, however, by virtue of §119.07(2)(b), F. S., are exempt from the inspection of public records statute, §119.07, F. S. We are then left with the proposition that the waiver provisions of §11.50(1)(b) would provide access to these returns.

In *Webb v. Standard Oil Company of California*, 319 P.2d 621 (Cal. 1958), the common legislative intent upon which confidentiality statutes like §199.222, F. S., are based was held to preclude compelling the individual to produce a copy of his return.

The purpose of the amended statutory provisions prohibiting disclosure is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that his statements will be revealed or used against him for other purposes. If information can be secured by forcing the taxpayer to produce a copy of his return, the primary purpose of the secrecy provision will be defeated. [319 P.2d at 624].

In *Finance Commission of Boston v. McGrath*, 180 N.E.2d 808 (Mass. 1962), the commission was empowered to compel both the attendance and testimony of witnesses as well as the production of books and documents relating to any matter under investigation. This power, however, was held insufficient to require the production of McGrath's state tax return in light of the Massachusetts confidentiality statute which precluded its production even in judicial proceedings.

In *Leave v. Elevated R. Co.*, 28 N.E.2d 483 (Mass. 1940), the state

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,