

The legislative intent that a county shall not be responsible for the cost of the operation of the office of its state attorney is made clear in §27.34(1), *supra*, and again in the legislative comments appended to the appropriations for these offices for the fiscal year 1973-1974, quoted above. Too, it seems clear that travel expenses of the state attorney, assistant state attorneys and investigators of the state attorney's office are not to be borne by the counties inasmuch as these expenditures are required to be part of the state attorney's annual budget submitted to the Department of Administration pursuant to §27.33(1)(d) and (e), F. S. as amended by Ch. 73-305, Laws of Florida.

However, transportation services "provided for common use by county governmental units" are now to be made available to each state attorney "as may be necessary for the proper and efficient functioning of these offices." Pending legislative or judicial clarification, this conclusion is required under the authorities cited above. Exactly what transportation services are provided for common use by county governmental units, and thus are now available for use by the state attorney's office, must be determined on a county-by-county basis, because such services would, of course, vary, depending upon each county's particular circumstances.

073-459—December 11, 1973

DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

ENFORCEMENT BY STATE ATTORNEYS—CONDITIONS

To: Donald G. Nichols, State Attorney, Jacksonville

Prepared by: Rodney Lee Tennyson, Assistant Attorney General

QUESTIONS:

1. Does a state attorney have concurrent jurisdiction with the Department of Legal Affairs in matters arising under part II, Ch. 501, F. S., when the violation occurs in both the state attorney's judicial circuit as well as other judicial circuits?
2. Does part II, Ch. 501, F. S., provide for the Department of Legal Affairs to confer jurisdiction upon a state attorney when the department has referred the matter to the state attorney even though the violation is occurring in both the state attorney's judicial circuit as well as other judicial circuits?

SUMMARY:

Under §501.203(4), F. S., both the appropriate state attorney and the Department of Legal Affairs have concurrent jurisdiction to enforce the Deceptive and Unfair Trade Practices Act, even when the violation is also occurring in, or affecting, other judicial circuits, when the matter has been referred to the state attorney by the department.

Your questions are both answered in the affirmative when the department has referred the matter of violation to the state attorney.

Section 501.203(4), F. S., defines the enforcing authority under the Deceptive and Unfair Trade Practices Act as:

. . . [T]he office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction and if a complaint of such violation has been referred to the state attorney by the Department of Legal Affairs. "Enforcing authority" means the Department of Legal Affairs if the violation occurs in or affects more than

one judicial circuit or if the office of state attorney fails to act upon a violation within a reasonable period of time after it has been referred to him by the Department of Legal Affairs.

The meaning of this section is best explained by reviewing the legislative history of the provision as it was passed during the 1973 Legislative Session [§1, Ch. 73-124, Laws of Florida]. The original draft of this subsection, which passed the House, read as follows:

(4) "Enforcing authority" means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction, and the department of legal affairs if the violation occurs in or affects more than one (1) judicial circuit, or if the office of the state attorney fails to act upon a violation solely within his judicial circuit within a reasonable period of time after it has been brought to his attention. [See *Journal of the House of Representatives*, May 10, 1973 (HB 1915).]

The intent of this section was to give jurisdiction to both the state attorney and the department to allow independent enforcement.

On May 15, 1973, the proposed law was referred to the Senate Commerce Committee where subsection (4) was amended to its present form, §501.203(4), F. S. The intent of the amendment was simply to require a state attorney to obtain permission from the department before initiating a legal action against a violator of the act. In effect, the amendment simply gave the department the authority to decide who would initiate enforcement procedures, the local state attorney, the department itself, or both. This amendment was adopted and passed by the Senate on May 30, 1973, with the House concurring on May 31, see *Journal of the Florida Senate*, p. 676, May 30, 1973.

A literal reading of §501.203(4), F. S., conforms completely with the legislative intent of this provision. The section demands the occurrence of two events before the state attorney has authority to initiate enforcement proceedings: a violation of the act *occurs in or affects* his judicial circuit; and the department has referred the matter to him for action. Once both of these conditions are met, the state attorney has standing to enforce the act as he pleases. It does not matter that the violation is occurring in or affecting other judicial circuits. If such is the case, the department itself would have jurisdiction and could deny the state attorney standing by simply refusing to refer the matter to him. If the matter of violation affects or is occurring in more than one judicial circuit and the department has referred the matter to the appropriate state attorney then the state attorney *and* the department would have concurrent jurisdiction to file separate enforcement actions or to file one joint action. If the matter of violation is purely local and affects only one judicial circuit then the department has no jurisdiction to file enforcement proceedings unless it has referred the violation to the local state attorney and the state attorney has refused to act upon the matter within a reasonable period of time.

073-460—December 11, 1973

PUBLIC DEFENDERS

MAY NOT CONCLUDE PRIVATE MATTERS BEGUN BEFORE
TAKING OFFICE

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