

the court on p. 824 of the above-cited opinion and referred to in your letter, of a library or park established in an unincorporated area as violating this provision can be distinguished in that in the court's example, the library or park was for the *exclusive* use and benefit of the residents of the unincorporated area which is not the case here.

On consideration of the foregoing and assuming that the facilities of the county library service are available and open to the use of the residents of Ormond Beach, as well as all other municipalities within the county, I am of the opinion that a real and substantial benefit does accrue to the property and residents within the City of Ormond Beach from the county library service and that the library system is of beneficial use to and in the best interests of the welfare of the residents of all areas of the county.

073-328—September 7, 1973

CONFLICT OF INTEREST

COUNTY COMMISSIONER DISTRIBUTOR FOR OIL COMPANY WHICH SUBMITS SEALED BID TO SUPPLY COUNTY PETROLEUM PRODUCTS

To: *County Commissioner*

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

QUESTION:

May a county of less than 100,000 population entertain a sealed competitive bid from an oil company for the supply of the county's petroleum needs when the board of county commissioners includes a member who is the local distributor of products of such company, and when such member receives a percentage commission on all of the company's products distributed in the area?

SUMMARY:

Pending legislative or judicial clarification, an oil distributor whose operation of his distributorship is relatively autonomous is not an "agent" of the oil company within the purview of §112.314(1), F. S.; thus, the board of county commissioners of which the oil distributor is a member could enter into a contract under sealed competitive bids with the oil company whose products the county commissioner distributes, if his distributorship is his sole connection with the oil company. As a contract made under sealed competitive bids in a county of less than 100,000 population, it would be an exception to, and thus not prohibited by, §839.09, F. S.

Section 839.09, F. S., prohibits a board of county commissioners from purchasing goods, supplies, or materials for public use from any firm in which any board member is interested, "either directly or indirectly." However, §839.091, *id.*, provides certain exceptions to this prohibition in counties of less than one hundred thousand population, including purchases made "from the lowest bidder under sealed bids." Thus, §839.09 would not prohibit the contract here in question.

The provision of the Standards of Conduct Law, §112.314(1), F. S., relating to prohibited transactions by public bodies due to a conflict of interest, reads as follows:

No officer or employee of a state agency or of a county, city or other political subdivision of the state shall transact any business in his official

capacity with any business entity of which he is an officer, director, agent, or member or in which he owns a controlling interest.

This section has been uniformly construed by this office to prohibit transactions between a public body and a firm in which any one of its members has an interest described therein. You state that the county commissioner in question owns no stock in the oil company, holds no managerial position, and has nothing to do with the contract between the county and the oil company. He distributes its products, for which he receives a commission of less than 10 percent on the total price of the deliveries. All billing and negotiations are handled by the oil company directly with the county. The county commissioner in question would, of course, benefit by the contract between the oil company and the county to the extent of his commission on the total price of the deliveries. However, §112.314(1) does not prohibit contracts from which a member of the commission would benefit "directly or indirectly," as does §839.09, *supra*; its prohibition is directed only to contracts with a business entity in which one of its members serves as an "officer, director, agent, or member or in which he owns a controlling interest." Under the facts stated by you, he is neither an officer, director, member, nor owner of a controlling interest in the oil company. So the only question here is whether he is an "agent" of the company within the purview of §112.314(1).

There is nothing in the statute to indicate that, in describing the interests that constitute a bar to business transactions between a public body and a business entity in which one of its members is interested, the legislature intended to use the word "agent" in any except its usual significance. In *City of Leesburg v. Ware*, 153 So. 87 (Fla. 1934), in holding that municipal bonds were not "supplies, goods or materials" within the purview of §839.09, *supra*, the court said that, being a criminal statute, it should be strictly construed.

Nothing should be regarded as included within its meaning that is not within its letter and spirit. If there is doubt or ambiguity in its provisions leaving a doubt as to their meaning, the provisions are to be construed in favor of life and liberty.

In light of this rule of construction—which is equally applicable to the Standards of Conduct Law, *see State v. Llopis*, 257 So.2d 17 (Fla. 1971)—it must be concluded that the legislature used the term "agent" in §112.314(1) *supra*, in its usual sense; that is, one who is subject to the control of his principal as to the manner in which the engagement entrusted to him is carried out. *See King v. Young*, 107 So.2d 751 (2 D.C.A. Fla., 1958), in which the distinction between an agent and an independent contractor is clearly drawn.

No opinions of this or any other state have been found on the question of whether an oil distributor is an "agent" within the purview of a conflict-of-interest statute similar to §112.314(1), *supra*. In AGO 049-232, May 25, 1949, Biennial Report of the Attorney General, 1949-1950, p. 576, it was held that the board of county commissioners could not purchase petroleum products from a service station which was an outlet for an oil distributor who was a member of the board, as the oil distributor-commissioner was "directly interested" in the contract within the purview and prohibition of §839.09, *supra*. However, this opinion is not determinative of the question of whether an oil distributor is the "agent" of the oil company within the purview of §112.314(1). The question of whether bulk oil dealers and distributors of oil products are agents of the oil companies has been considered in other contexts. An annotation in 83 A.L.R.2d at pp. 1282 *et seq.* considers this question with regard to the liability in tort of an oil company for the actions of its dealers and distributors and their employees and under workmen's compensation statutes. As noted by the annotator on p. 1284, in resolving this question the courts have been governed by the same general principles applicable in determining the existence of agency relationships in other situations, "the

problems being regarded factually rather than legally distinctive." He states also that here, as in other situations, the decision turns on "control." He says:

In general, the determinative question has usually been posed as one of "control," the view being that if the defendant controls, or has the right to control, the manner in which the operations are carried out, the defendant is liable as a master, while, if the control extends only to the result to be achieved, the actor is regarded as an independent contractor, and the defendant is liable under neither respondeat superior nor the workmen's compensation statutes. [83 A.L.R.2d at 1284.]

The Florida courts have followed this rule. Thus, in *Gulf Refining Co. v. Wilkerson*, 114 So. 593 (Fla. 1927), the court found that the oil company was not liable for the negligence of an employee of the distributor, as the distributor was relatively autonomous in his operation of the distributorship and was, therefore, an independent contractor. *Accord*: *Cawthon v. Phillips Petroleum Company*, 124 So.2d 517 (2 D.C.A. Fla., 1960); *McMillion v. Sinclair Refining Company*, 236 So.2d 151 (1 D.C.A. Fla., 1970).

Applying these principles to the situation here present: The fact that the oil distributor earns a commission on the total price of oil distributed by him will not, standing alone, make him the "agent" of the oil company. If his operation of the distributorship is relatively autonomous, as in the *Gulf Refining*, *Phillips Petroleum*, and *Sinclair Refining Company* cases referred to above, he would not be the agent of the oil company under the principles of law relating to the tort liability of the oil company; and, pending legislative or judicial clarification, I have the view that he should not be held to be the company's agent within the purview of §112.314(1), *supra*.

073-329—September 7, 1973

PUBLIC DEFENDERS

FACILITIES AND SERVICES SUPPLIED BY COUNTIES

To: James A. Gardner, Public Defender, Sarasota

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Are the three counties within the Twelfth Judicial Circuit required to furnish office space, utilities, telephone service, and custodial services for the appellate staff of the public defender's office of that Circuit and if so, how are the costs to be apportioned among the counties?
2. Are the counties within each judicial circuit required to pay for long distance telephone calls of the public defender's office or only for installation and maintenance cost of the telephone service?

SUMMARY:

Under §27.51(4)(e), F. S., the expense of a public defender in prosecuting appeals on behalf of a public defender of another judicial circuit in his appellate court district is payable from state funds appropriated for that purpose; and a county has no duty under §27.54(3), *id.*, to provide housing and related services for an appellate staff required by the public defender to prosecute such appeals. Nor is a county required to pay for long distance calls and monthly service charges incurred by a public defender in the operation of his office.