

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

To: Elton H. Schwarz, Public Defender, Stuart

Prepared by: Enoch J. Whitney, Assistant Attorney General

**QUESTION:**

May a public defender, during his term of office, conclude matters begun in private practice before taking office?

**SUMMARY:**

Section 27.51(3), F. S., requires a public defender, during his term of office, to disassociate himself completely from the private practice of law.

Section 27.51(3), F. S., provides in pertinent part:

All public defenders elected to office on or after November 1, 1972, shall be elected on a full-time basis and shall be prohibited from the private practice of law while holding office.

It seems clear that this statutory prohibition does not contain an exception which would permit the completion, during the public defender's term of office, of matters begun in private practice before taking office. I have recently held in AGO 073-242 that it is not proper for an attorney who becomes a legislative employee to continue handling a transaction begun in private practice before his employment with the legislature. This conclusion was required under §11.26(1)(d), F. S., which states:

(1) No employee of the legislature shall:

\* \* \* \* \*

(d) During his employment by any division of the legislature. be associated or interested in the private practice of law in any manner . . . .

Therefore, pending legislative or judicial clarification, I am of the view that §27.51(3), *supra*, requires a public defender to disassociate himself completely from the private practice of law so long as he is a public defender. Accordingly, your question is answered in the negative.

073-461—December 13, 1973

**ADULT RIGHTS LAW****EMPLOYMENT AS MUNICIPAL FIREMEN AND POLICEMEN**

To: *Fred E. Meincke, Civil Service Director, Daytona Beach*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

**QUESTION:**

May persons eighteen, nineteen, or twenty years of age apply for employment, and serve, as municipal firemen or policemen?

**SUMMARY:**

Under the provisions of Ch. 73-21, Laws of Florida, persons eighteen, nineteen, or twenty years of age, if otherwise qualified, may apply for employment, and serve, as municipal firemen or policemen.

Section 2 of Ch. 73-21, Laws of Florida [§743.07, F. S.], provides that:

The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older and they shall enjoy and suffer the rights, privileges and obligations of all persons 21 years of age or older