

I am aware that §2 of said Ch. 72-722 amended §27.54(2), F. S., to read:

(2) No county or municipality shall appropriate or contribute funds to the operation of the offices of the various public defenders, except for the purpose of defending misdemeanors and violations of municipal or county ordinances.

Said §27.54(2) is to be read *in pari materia* with the above-quoted portion of §27.51(1) and, when so read, it merely authorizes a municipality to contribute funds for the operation of the public defender's office in defending persons charged in the county court with violating municipal ordinances.

Your letter refers to Criminal Procedure Rule 3.111, headed "Providing Counsel to Indigents," and it is true that said rule refers to "violation of a municipal ordinance" and to the "public defender." However, Criminal Procedure Rule 3.010, headed "Scope," makes it clear that all of the Criminal Procedure Rules apply to criminal proceedings *in state courts* as distinguished from municipal courts.

073-112—April 11, 1973

#### JUVENILE COURTS

##### INSPECTION OF JUVENILE COURT RECORDS BY PAROLE AND PROBATION COMMISSION SUBJECT TO JUVENILE COURT JUDGE DISCRETION

To: Armond R. Cross, Chairman, Florida Parole and Probation Commission,  
Tallahassee

Prepared by: Wallace E. Allbritton, Assistant Attorney General

#### QUESTION:

May a circuit court judge handling juvenile matters refuse to permit the Florida Parole and Probation Commission to inspect juvenile court records pertaining to a prisoner being considered for parole or a person on whom the commission is conducting a presentence investigation by order of a court of record?

#### SUMMARY:

A circuit court judge handling juvenile matters may in his discretion refuse to permit the Florida Parole and Probation Commission to inspect juvenile court records when making a pre-parole investigation or presentence investigation.

I think the following statutory provisions are relevant to your inquiry. Section 39.12, F. S. (1972 Supp.), provides in pertinent part as follows:

(3) Juvenile court records of proceedings under this chapter, except records of traffic violations, shall not be open to inspection by the public. *All records, except those for traffic violations, shall be inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein*, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child. *The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records*, under whatever conditions upon their use and disposition the judge may deem proper, and may punish

by contempt proceedings any violation of those conditions. (Emphasis supplied.)

(4) *All information obtained* pursuant to this chapter in the discharge of official duty *by any* judge, counselor, assistant counselor, employee of any juvenile court, or *authorized agent of the division of family services shall be privileged and shall not be disclosed to anyone* other than the authorized personnel of the juvenile court, the department of health and rehabilitative services, and others entitled under this chapter to receive that information except upon order of the judge. (Emphasis supplied.)

Section 947.14(5), F. S., provides:

(5) The division of family services of the department of health and rehabilitative services and all other state, county and city agencies, sheriffs, and their deputies, and all peace officers shall cooperate with the commission and shall aid and assist it in the performance of its duties.

Section 948.01(2), F. S., provides:

(2) Prior to such hearing the court may refer the case to the parole and probation commission for investigation and recommendation. The court, upon such reference, shall direct the commission and it shall be the duty of the commission to make an investigation and report in writing at a specified time to the court upon the circumstances of the offense, *the criminal record, the social history*, and the present condition of defendant together with its recommendation. (Emphasis supplied.)

It is my opinion based upon the above-quoted statutes that it is discretionary with a circuit court judge as to whether he will permit the Florida Parole and Probation Commission to inspect juvenile court records for the purpose of conducting a pre-parole or presentence investigation. See AGO's 059-134 and 065-51.

There is no irreconcilable conflict between §39.12(3) and (4), F. S. (1972 Supp.), and §§947.14(5) and 948.01(2), F. S. A circuit judge may well be of the opinion that the "social history" and "criminal record" of the person under investigation may be secured from other sources. Indeed, §39.10(3), F. S. (1972 Supp.), provides:

(3) An adjudication by a juvenile court that a child is a dependent or delinquent child shall not be deemed a conviction, nor shall the child be deemed to have been found guilty *or to be a criminal* by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, nor to disqualify or prejudice the child in any civil service application or appointment. (Emphasis supplied.)

In any event, the provisions of §39.12(3) and (4) would control, since such provisions were enacted subsequent to §§947.14(5) and 948.01(2). Indeed, §39.12, F. S. was amended and reenacted by Ch. 72-404, Laws of Florida, effective January 1, 1973. *Routh v. Richards*, 138 So.69 (Fla. 1931); and *Johnson v. State*, 27 So.2d 276 (Fla. 1946), *cert. denied* 329 U.S. 799 (1947).

In the *Standards Relating to Probation* published by the American Bar Association, Approved Draft, 1970, the commentary following Standard 2.3 contains the following:

A word should also be added in explanation of what is meant by "prior criminal record" in subsection (ii) (B). By this the Advisory

Committee means to include only those charges which have resulted in a conviction. Arrests, juvenile dispositions short of an adjudication, and the like, can be extremely misleading and damaging if presented to the court as part of a section of the report which deals with past convictions. If such items should be included at all—and the Advisory Committee would not provide for their inclusion—at the very least a detailed effort should be undertaken to assure that the reader of the report cannot possibly mistake an arrest for a conviction.

While a circuit judge may embrace the philosophy evidenced by the above-quoted commentary, it should be remembered that under the law of this state a presentence investigation report is a confidential document. *Morgan v. State*, 142 So.2d 308 (2 D.C.A. Fla. 1962), *cert. denied*, 146 So.2d 751 (Fla. 1962). The reasoning behind the confidentiality of presentence investigation reports was well stated by Justice Black when writing for a seven-member majority in *Williams v. New York*, 337 U.S. 241 (1949). I quote from that opinion:

Under the practice of individualizing punishments, investigational techniques have been given an important role. Probation workers making reports of their investigations have not been trained to prosecute but to aid offenders. Their reports have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guesswork and inadequate information. To deprive sentencing judges of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation after careful consideration and experimentation. We must recognize that most of the information now relied upon by judges to guide them in the intelligent imposition of sentences would be unavailable if information were restricted to that given in open court by witnesses subject to cross-examination. *And the modern probation report draws on information concerning every aspect of a defendant's life.* (Emphasis supplied.) [337 U.S. at 249, 250.]

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#### COUNTY FUNDS

#### PAYMENT OF SEVERANCE PAY OR LIQUIDATED DAMAGES TO TERMINATED EMPLOYEES—CONTRIBUTION TO PRIVATE NONPROFIT ORGANIZATIONS

To: Stanley Burnside, Clerk, Pasco County Commission, Dade City

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTIONS:

1. In the absence of litigation, special acts of the legislature, or county ordinance, may severance pay or liquidated damages be paid to a county employee who has been terminated?
2. May county funds be contributed to a nongovernmental committee (West Pasco Little League Complex Committee) for capital improvements on an athletic site?

#### SUMMARY:

In the absence of statutory or home rule ordinance authority or a valid contract, neither severance pay nor liquidated damages may be

