

073-408—November 7, 1973

CIRCUIT COURT CLERKS

INVESTMENT OF COUNTY FUNDS; HANDLING OF STATE FUNDS

To: Fred O. Dickinson, Jr., Comptroller, Tallahassee

Prepared by: Sharyn Smith, Assistant Attorney General

QUESTIONS:

1. Does the Department of Banking and Finance have the responsibility of ensuring that proper and sufficient collateral is pledged to secure county funds and funds in the registry of the court invested in qualified depositories in interest bearing certificates pursuant to Ch. 73-282, Laws of Florida?

2. Are state funds in the custody of the clerk of the circuit court or the clerk of the county court, and which are to be used by the appropriate clerk for payment of jurors in the circuit and county courts and witnesses before the grand jury, within the purview of Ch. 73-282, Laws of Florida, and required to be invested?

3. Should nonpublic moneys deposited in the registry of the court or in the custody of the court be invested pursuant to Ch. 73-282, Laws of Florida?

SUMMARY:

The Department of Banking and Finance has the responsibility of ensuring that proper and sufficient collateral is pledged to secure county funds and funds in the registry of the court invested in qualified depositories in interest-bearing certificates pursuant to Ch. 73-282, Laws of Florida.

State funds in the custody of the clerk of the circuit court or the clerk of the county court which are to be used by the appropriate clerk for payment of jurors in the circuit and county courts and witnesses before the grand jury are not within the purview of Ch. 73-282, Laws of Florida, and such state moneys may not be invested by the clerks of courts.

Nonpublic moneys deposited in the registry of the court or in the custody of the court may be invested by the clerk of the circuit court in interest-bearing certificates at his discretion pursuant to Ch. 73-282, Laws of Florida.

AS TO QUESTION 1:

Chapter 73-282, Laws of Florida, which relates to the investment of funds by the several clerks of the circuit courts, expressly repealed at §2, effective July 1, 1973, §43.17, F. S. Section 43.17 required that all moneys paid into any court be deposited with the state treasurer or in designated state depositories and further required the state treasurer to approve the security furnished by such state depositories to secure such court funds. Due to the repeal of §43.17, the state treasurer is no longer responsible for, and has no duty to regulate, deposits of such court funds or the furnishing of collateral security for such funds.

Section 1 of Ch. 73-282, *supra* [§28.33, F. S.], provides that the clerks of the circuit court shall invest any funds in specified securities within designated depositories and all investments so made shall be open for bid to all qualified depositories. All moneys in the court registry are required to be invested, at the clerks' discretion, in interest-bearing certificates subject to the prescribed guidelines. If local banks refuse to bid on securing such funds, the clerks are authorized to take bids from banks in other counties. No clerk investing such funds shall be liable for the loss of any interest when circumstances require the

withdrawal of funds placed in a time deposit and needed for immediate payment of county obligations.

While Ch. 73-282, *supra*, does not specify who is responsible for ensuring that sufficient security is furnished by the designated depositories, the statute speaks in terms of "designated depository banks," "qualified depositories in the counties," and "banks." In general, the Department of Banking and Finance regulates all county depositories and depositories of public funds. This includes, *inter alia*, prescribing the security furnished by such depositories for public moneys deposited in, invested in, or received by such depositories pursuant to §§136.01, 136.02, and 659.24, F. S. The funds referred to in §1 of Ch. 73-282 are public funds within the purview of Ch. 136, F. S., and Ch. 659, F. S. Since the Department of Banking and Finance is charged under the aforementioned statutes with the responsibility of ensuring that all public funds deposited in, invested in, or received by such county depositories and depositories of public funds are adequately and duly secured as prescribed by law, I am of the opinion that Chs. 136 and 659, read in conjunction with Ch. 73-282, require the Department of Banking and Finance to ensure that all funds designated in Ch. 73-282 and invested in the depository banks therein designated are adequately and duly secured as required by law. Sections 136.01, 136.02, and 659.24.

Therefore, the Department of Banking and Finance, under either Ch. 136, F. S., or Ch. 659, F. S., whichever is appropriate in any given set of circumstances, is the only agency of state government which is charged with any responsibility in respect to public moneys deposited in, invested in, or received by county depositories and depositories of public funds, including the investment of the funds designated in and within the purview of Ch. 73-282, *supra*.

AS TO QUESTION 2:

The jury and witness moneys referred to in your second question apparently are in reference to §§40.29-40.33, F. S. (as amended by §9, Ch. 73-334, Laws of Florida). Such moneys, which are to be disbursed per §40.32 *only* as payment to jurors, are *state* moneys, drawn out of the state treasury by the clerk and transmitted to the clerk by the *state* treasurer. The moneys are disbursed by the clerk as payment *by the state* of jurors and witnesses before the grand jury. Such moneys are never "county funds," but rather remain "state funds" in the custody of the clerk to be used solely for *state* purposes. The clerks are acting as fiscal agents of and for the state during the time they are responsible for the custody and disbursement of state moneys, which is generally a function of the state treasurer and state comptroller. Section 40.32, as amended by Ch. 73-334, provides that such *state* moneys may be paid by the clerk either in cash or by warrant. In order to issue a warrant, it must be drawn on a demand account in a qualified depository, and if any unexpended *state* moneys remain in the possession of the clerk at any term of court, the clerk "shall transmit the same to the Comptroller within ten days after the adjournment of such court."

In contrast, Ch. 73-282, *supra*, refers solely to moneys needed for the projected financial needs of the *county* and for the payment of *county* obligations. The clerk is further required to report the interest earned on all investments to the *county* governing authority. Thus, it is clear that a comparison of Ch. 73-282 and §§40.29-40.33, F. S., as amended by Ch. 73-334, *supra*, shows that the state moneys referred to in §§40.29-40.33 are not within the purview of Ch. 73-282 as county funds and may not be invested by the clerks.

Moreover, §§40.29-40.33, *supra*, as amended by Ch. 73-334, *supra*, do not authorize or require the clerk to invest such state moneys when they are in his custody or control. The clerk does not receive such *state moneys* under Ch. 73-282, *supra*, since they are not moneys paid into the court registry nor are they moneys in the custody of the court. The use and disbursement of such funds is governed solely by Ch. 40, F. S., as amended by Ch. 73-334, and with respect to such moneys, the

clerk is *not* authorized to invest, or do anything else with, such funds not specifically provided for by Ch. 40. If the clerk pays the jurors by warrant, upon his receipt of the duly requisitioned and transmitted *state funds*, he is required by law to deposit such moneys in a qualified county depository and draw his warrants on, or order payment from, the *county depository*, and not to invest such funds.

AS TO QUESTION 3:

Chapter 73-282, *supra*, provides that moneys in the registry of the court shall be invested by depositing such funds in interest-bearing certificates at the discretion of the clerk, subject to the guidelines contained in §1 of Ch. 73-282. A statute found on the statute books must be presumed to be valid and must be given effect until it is judicially declared unconstitutional. *Evans v. Hillsborough Co.*, 186 So. 193 (Fla. 1938). Therefore, under Ch. 73-282, the clerk may invest funds in the court registry in qualified depositories in interest-bearing certificates at his discretion.

073-409—November 7, 1973

COUNTIES

MAY ADMINISTER FEDERAL AID TO STATE ATTORNEYS
AND PUBLIC DEFENDERS BUT MAY NOT CONTRIBUTE
COUNTY FUNDS

To: *Reubin O'D. Askew, Governor, Tallahassee*

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

QUESTIONS:

1. Do §§27.34 and 27.54, F. S., preclude counties from applying for, receiving, and administering federal funds on behalf of the offices of state attorneys and public defenders?
2. Do §§27.34 and 27.54, F. S., preclude counties from appropriating and providing county revenue as cash match for federal funds for programs to be implemented in state attorney and public defender offices?

SUMMARY:

Sections 27.34 and 27.54, F. S., do not prohibit a county from applying for, receiving, and administering federal funds on behalf of the offices of state attorneys and public defenders; however, pending legislative or judicial clarification, a county should not appropriate its own funds to match federal funds to finance a program that is a part of the operation of a state attorney's or public defender's office.

AS TO QUESTION 1:

You advise that the 1973 Florida LEAA (Law Enforcement Assistance Administration) Comprehensive State Plan to use federal LEAA funds includes programs to be carried out in the offices of the state attorneys and public defenders of this state relating to Professional Administrators and Pre-Trial Intervention/Diversion. Because of the federal requirement that a certain percentage of LEAA funds (73.7 percent in fiscal year 1973) be passed on to units of general local government, it is necessary to channel these funds through the counties. I understand that the Governor's Council on Criminal Justice has already approved the allocation of some of these funds for a Pre-Trial Intervention/Diversion Program in a state attorney's office, to be channeled through the county to the state attorney. However, some question has arisen as to the propriety of a county's applying for these funds and passing them on to a state