

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.

The statutory background against which your questions are posed is as follows: Under §27.51(4) (a) through (d), F. S., the public defenders of the second, twelfth, eleventh, and fifteenth judicial circuits of this state—the judicial circuits in which the four district courts of appeal are located—are authorized to handle appeals to state and federal courts when requested to do so by a public defender of another judicial circuit within the same appellate court district. Section 27.51(4)(e), F. S., provides that:

(e) A sum shall be appropriated annually to the public defender of those judicial circuits enumerated in paragraphs (a)-(d) for the employment of attorneys as part-time public defenders, clerical employees and expenses, including those incurred in cases on appeal.

Also relevant here is §27.54(2) and (3), F. S., as amended by Ch. 73-216, Laws of Florida, providing that:

(2) No county or municipality shall appropriate or contribute funds to the operation of the offices of the various public defenders.

(3) The public defenders shall be provided by the counties within their judicial circuits with such office space, utilities, telephone services, and custodial services as may be necessary for the proper and efficient functioning of these offices. . . .

The legislative intent respecting the expenditure of state and county funds to finance the public defenders of this state is further clarified by the legislative comments appended to the appropriations for the several public defenders (Items 674 through 693) in the 1973 General Appropriations Act, Ch. 73-335, Laws of Florida. This comment reads as follows:

As authorized by SB 1368 [Chapter 73-216, *supra*], the funding formula for offices of the Public Defender was revised based upon increased duties and workload funded by supplementary appropriation in FY 1972-73 and State assumption of support by local government other than certain services currently provided by local government. Counties are required to provide adequate housing for offices of the Public Defender. Services allowed, other than office space and related utilities and janitorial services, are common services such as Central PBX and legal library, provided for common use by county governmental units in which the Public Defender was allowed to participate, as opposed to specific services acquired per se for the office of the Public Defender. . . .

AS TO QUESTION 1:

You state that the public defender of the Twelfth Judicial Circuit is required to prepare appeals for all the counties within the jurisdiction of the Second District Court of Appeal and that your appellate staff will number four attorneys and three secretaries. As §27.51(4), *supra*, is couched in permissive and not mandatory terms and vests in a public defender jurisdiction to handle appeals from another judicial circuit only when requested by the public defender of that circuit, it is assumed for the purpose of this opinion that the appellate staff referred to by you is necessary in order to prosecute appeals from the other judicial circuits in the Second Appellate District, in accordance with requests for such assistance made by the public defenders of those judicial circuits.

The clear intent of §27.51(4) (e), *supra*, is that the expense of a public defender in prosecuting appeals on behalf of other public defenders in the appellate district is to be borne from the state funds appropriated to his office for that purpose. There is nothing in §27.54(3), *supra*—requiring a county to provide housing and related custodial and utilities services necessary to the “proper and efficient functioning of” the office of public defender—to indicate that the legislature had in mind

anything other than the housing and related services necessary for the performance by the public defender of his duties in and for that particular county and judicial circuit. And it seems clear that, in the absence of any statutory directive, either express or necessarily implied, a county should not be required to assume any portion of the financial burden of appeals taken by the public defenders of other judicial circuits on behalf of indigent persons charged with the commission of criminal offenses in those circuits.

Accordingly, pending legislative or judicial clarification, I have the view that the expense of any additional housing (and related services) required by a public defender of any of the four judicial circuits designated in §27.51(4) (a) through (d), *supra*, for the purpose of prosecuting appeals on behalf of public defenders of other judicial circuits should be charged against the state funds especially appropriated for that purpose pursuant to the mandate of §27.51(4) (e), *supra*, and the records of such disbursements should be included in the accounts relating to the expenditures of such state funds.

AS TO QUESTION 2:

The legislative intent that a county shall not be responsible for the cost of the operation of the office of its public defender is made clear in §27.54(2), *supra*, and again in the legislative comments appended to the appropriations for these offices for the fiscal year 1973-1974, quoted above. The cost of long distance calls and the monthly service charge for telephone service would appear to be "operation" costs that are not properly chargeable to the county. Thus, pending legislative or judicial clarification, only the installation costs of telephone service—or the cost of connecting with a Central PBX system—should be paid by the county.

073-330A—September 26, 1973

COUNTY OFFICERS

EFFECTIVE DATE OF AMENDMENTS TO UNIFORM COUNTY OFFICIALS' SALARY ACT

To: Alvin N. Andrews, Martin County Tax Collector, Stuart

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

When do the salary increases provided for in Ch. 73-173, Laws of Florida, amending Ch. 145, F. S., take effect for fee officers and budget officers, and when do the second-year salary increases take effect?

SUMMARY:

The salary increased provided by Ch. 73-173, Laws of Florida (Ch. 145, F. S.), will take effect for all county officials, whether fee or budget officers, on October 1, 1973. However, such an increase may not exceed 20 percent of the total compensation received by the official for the preceding fiscal year ending June 30, 1973.

Chapter 73-173, *supra*, amending the Uniform County Officials' Salary Act (Ch. 145, F. S., adopted in 1969 by Ch. 69-346, Laws of Florida), broadens the population brackets or "groups" upon which the base salaries for the various county officials therein designated are established and provides that, in addition to the base salary therein prescribed, increased compensation shall be made from year to year for population increments over the minimum for each population group. The 1973 act limits the compensation and the salary increases that may be received by these county officials, as follows: