

procedures for the disposition of money or a motor vehicle that is "being held by state, county or municipal officials as evidence." *While unfortunately F. S. Section 811.201, F.S.A., is not sufficiently broad to cover all situations where items of evidence are held in custodia legis and are sought to be recovered by the true owner, it does serve as an example of procedures which the criminal courts may fashion within their inherent powers to provide necessary procedures and processes for the recovery of evidentiary items held by them.* (Emphasis supplied.)

Following this direction of the court, I advise you that it is within the inherent power of the trial court to provide the necessary procedure and process for the return of evidentiary items held by them. A former attorney general has responded to the procedure required under §811.201 in AGO 058-277 (copy attached), and while this opinion was written prior to *Garmire* I find no reason to recede from the statements contained therein except as the opinion might be amended by the language of the Supreme Court in *Garmire*.

AS TO QUESTIONS 7 AND 8:

Both of these questions are too general in nature—void of sufficient facts—to permit a reasonable research and determination of the question of law involved. They both relate to the rights of persons claiming a right of ownership or possession to personal property. The ultimate determination of such questions can only be determined in a proper adversary proceeding in a court of law upon presentation and determination of the facts as they exist in each respective case. I therefore must decline to express an opinion thereon.

073-287—August 15, 1973

PUBLIC DEFENDER

REPRESENTATION OF INDIGENT—COMMITMENT AS ALCOHOLIC

To: Jack O. Johnson, Public Defender, Bartow

Prepared by: Enoch J. Whitney, Assistant Attorney General

QUESTION:

May the public defender be appointed to represent an indigent person whose involuntary commitment as an alcoholic is being adjudicated pursuant to §396.102, F. S.?

SUMMARY:

In the absence of statutory provisions to the contrary, a public defender is without authority to accept an appointment to represent a person whose involuntary commitment as an alcoholic is being adjudicated under §396.102, F. S.

Section 396.102, F. S., provides for involuntary commitment of alcoholics. Section 396.102(9), provides, in pertinent part:

The person whose commitment or recommitment is sought shall be informed of his right to contest the application, to be represented by counsel at every stage of any and all proceedings relating to his commitment and recommitment, and to have counsel appointed for him by the court or provided for him by the court, if he wants the assistance of counsel and is financially unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall appoint counsel for him regardless of his wishes.

The above statutory provisions make no mention of the authority of a public defender to represent a person whose involuntary commitment as an alcoholic is sought. I can find no such authority in §§27.50-27.59, F. S.

Apparently, then, the legislature has not seen fit to authorize a public defender to represent an indigent whose involuntary commitment as an alcoholic is being adjudicated under §396.102, *supra*. This conclusion is in accord with previous opinions of this office that have held that the authority of a public defender to provide representation must be conferred by statute. Attorney General Opinions 073-111, 073-78, and 072-197. Therefore, in the absence of other statutory provisions to the contrary, a public defender has no such authority or responsibility to accept an appointment to provide such representation.

073-288—August 15, 1973

DUAL OFFICEHOLDING

ELECTED OFFICER SERVING ON ADVISORY COMMISSION

To: *S. Charles Adams, City Attorney, Pompano Beach*

Prepared by: *Victor Walsh, Assistant Attorney General*

QUESTION:

Does the dual-office prohibition of Art. II, §5(a), State Const., preclude a county tax collector, upon taking office, from continuing as a member of a municipal advisory zoning board?

SUMMARY:

Under the exception to the dual-office prohibition of Art. II, §5, State Const., a member of a municipal zoning board having only advisory powers may continue to serve as such after he is elected to a county office.

Article II, §5(a), State Const., contains both a prohibition and an exception thereto:

No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except . . . *any officer may be a member of a . . . statutory body having only advisory powers.* (Emphasis supplied.)

The Pompano Beach City Charter, which derives from Ch. 57-1754, Laws of Florida, as amended, states that the zoning board is advisory in nature. The board members are appointed by the city commission. Section 214, Ch. 57-1754. The zoning board is authorized to disburse certain city funds on miscellaneous expenses but the board may only incur these expenses in accordance with the ordinances, rules, and regulations imposed upon it by the city commission. Sections 215 and 216, Ch. 57-1754. My understanding of the charter and ordinances is that the zoning board does not and cannot act unless and until the commission so directs it or until a private citizen petitions for a zoning change. When the board does act it merely gathers data and makes a recommendation to the commission.

In AGO 073-47 I determined that a municipal parks, planning, and zoning commission had only advisory powers and concluded that a member of such commission would fall within the exception to Art. II, §5(a), *supra*. The facts here are essentially the same as those presented in AGO 073-47, *supra*; and I am of the view that a like conclusion is required.

Accordingly, your question is answered in the negative.