State Attorney, stopping payment of a check

Number: INFORMAL

Date: November 19, 2007

The Honorable Hugh H. Gibson, III
Representative, District 42
916 Avenida Central
The Villages, Florida 32159

Dear Representative Gibson:

Thank you for considering this office as a source for assistance in determining whether the state attorney is required to prosecute under a specific statute when the criminal activity is addressed in more than one statute. You raise the issue of prosecution under either section 832.04 or section 832.041, Florida Statutes, both of which address stopping payment of a check with intent to defraud.

Section 832.04, Florida Statutes, makes it a misdemeanor of the first degree for anyone, with the intent to defraud any producer of farm products, to stop payment on a check given to the producer for such products with a value of $150 or more. Section 832.041(1), Florida Statutes, makes it a felony of the third degree to stop payment of a check, with intent to defraud for the procurement of goods or services, if their value is $150 or more. Section 832.041(2), Florida Statutes, states that the section "shall be taken to be cumulative and shall not be construed to repeal any other statute now in effect." I would note that Section 832.04, Florida Statutes, was originally enacted in 1951, while section 832.041, Florida Statues, was enacted in 1965. Both were simultaneously amended by sections 979 and 980, Chapter 71-136, Laws of Florida, to reflect the dissimilar treatment for the procurement of goods with a value of $150 or more.

I have not found, nor have you directed my attention to, any appellate case that has addressed the application of either statute over the other in a situation where the criminal act could be prosecuted under either statute. It is well settled that the state attorney had absolute discretion in choosing the statute under which the crime will be prosecuted, despite the disparate penalties provided for the same act.[1]

Ultimately, therefore, it is the state attorney's decision as to whether an individual is prosecuted under section 832.04 or section 832.041, Florida Statutes.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See Michael Crews v. State of Florida*, 366 So. 2d 117 (Fla. 1st DCA 1979) (state attorney has absolute discretion whether to prosecute under a state statute or municipal ordinance; defendant has no constitutional right to elect which would be the basis of his indictment and prosecution).