Purchasing procedures of court

Number: INFORMAL

Date: July 18, 2007

The Honorable Belvin Perry, Jr.
Chief Judge
Ninth Judicial Circuit of Florida
Orange County Courthouse
425 North Orange Avenue, Suite 2010
Orlando, Florida 32802

Dear Judge Perry:

Thank you for contacting the Florida Attorney General's Office regarding the purchasing procedures of the court. More specifically, you have asked whether the court, as a component of the judicial branch of government, is subject to county purchasing procedures. Attorney General McCollum has asked me to respond to your letter.

You advise that the court participates fully in the county appropriations and budgeting process. The court submits a detailed budget request to the county with justification for each budget amount requested. Members of court administration, on behalf of the chief judge, meet with county staff to discuss the court's proposed budget. The board of county commissioners approves a final appropriation for the court. After the appropriation has been approved by the board of county commissioners, however, you advise that county staff will not approve and pay for court expenditures from the fully approved budget and appropriated monies unless the court specifically follows the county's purchasing procedures. It is this last step in the process that is of concern to you.

Article V, section 14, Florida Constitution, revised the method of paying for Florida's judicial system by specifying the costs to be paid by the state, the counties, or from other sources. The constitution now requires that, with certain exceptions, Florida courts are funded with state revenues appropriated by general law. Article V, section 14(c), provides that:

"Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."

This constitutional provision is implemented in Chapter 29, Florida Statutes, which tracks the language of the constitution and describes "local requirements" with more particularity.[1] Section 29.008(4)(a), Florida Statutes, also requires the Department of Financial Services to "review county expenditure reports . . . for the purpose of ensuring that counties fulfill the responsibilities of this section." The Department is required to

"compare county fiscal reports to determine if expenditures for the items specified in paragraphs (1)(a)-(h) and subsection (3) have increased by 1.5 percent over the prior county fiscal year. The initial review must compare county fiscal year 2005-2006 to county fiscal year 2004-2005. If the department finds that expenditures for the items specified in paragraphs (1)(a)-(h) and subsection (3) have not increased by 1.5 percent over the prior county fiscal year, the department shall notify the President of the Senate and the Speaker of the House of Representatives and the respective county. The Legislature may determine that a county has met its obligations for items specified in this section if the prior county fiscal year included nonrecurring expenditures for facilities or information technology that is not needed in the next county fiscal year or expenditures or actions that enable a county to attain efficiencies in providing services to the court system. The Legislature may direct the Department of Revenue to withhold revenue-sharing receipts distributed pursuant to part II of chapter 218, except for revenues used for paying the principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness allowed under s. 218.25(1), (2), or (4), from any county that is not in compliance with the funding obligations in this section by an amount equal to the difference between the amount spent and the amount that would have been spent had the county increased expenditures by 1.5 percent per year."[2]

Thus, the counties and the Department of Financial Services are under an obligation to track compliance with section 29.008, Florida Statutes, with regard to county expenditures on behalf of the courts.

Section 29.008, Florida Statutes, does not speak to whether monies provided to the courts pursuant to this section are subject to county purchasing procedures. While this section does provide, with some particularity, what the Legislature considers to be "court-related functions," nothing in the statute addresses whether the county executive retains some type of auditing function over county funds once they have been budgeted and appropriated to the courts. However, as discussed above, the counties are under a duty to track expenditures made to accomplish the purposes of section 29.008, Florida Statutes, and the Florida Constitution.

The only case of which I am aware that addresses the issue of executive oversight of judicial spending is *State of Florida v. Lewis,* 550 So. 2d 522 (Fla. 1st DCA 1989). The *Lewis* case presented the question of whether the court had the power to incur the expenditure that became the subject of the litigation. In that case, the court was asked to issue a writ of mandamus directing the State Comptroller to pay a voucher for furniture purchased by the Second District Court of Appeal. Two judges had been added to the district court of appeal and funds for purchasing furniture and fixtures had been allocated. The chief judge of the circuit had waived certain state purchasing requirements, but had acted in compliance with purchasing directives of the state court system. When a voucher was submitted for payment of a portion of the furniture, the Comptroller rejected the request for payment. In directing the Comptroller to pay the warrant for the furniture, the court elaborated on the nature of the system for appropriating monies to and expending monies by the courts:

"It is too basic to require further explication that the judicial branch of government in our constitutional scheme of things is not a state agency and is no more or no less equal than the executive and legislative branches. As do the other two branches, it derives its power from the people. The power to do a thing necessarily carries with it the discretion as to how that power

will be exercised. Were it otherwise, power would be only an illusory and meaningless concept. Power and discretion are not unbridled or unlimited. Indeed, they are limited by the grant of power itself."[3]

The court did not deny that the Comptroller had a role in the review of judicial expenditures. As the court noted,
"if a component part of the judicial branch of government contracts for the expenditure of public funds for a purpose not contemplated in a legislative appropriation or in furtherance of the judicial function, the Comptroller would be duty bound to refuse to issue a payment warrant. This would be so because that judicial component did not have the power or discretion to incur the expenditure."[4]

However, in the *Lewis* case, the Comptroller did not question the power of the court to make the approved purchase in question, rather, the Comptroller asserted the power to review the exercise of discretion of judicial branch officers in how to make such a purchase. The court determined that the Comptroller had not been granted such power and directed him to pay the outstanding warrant.

Based on the reasoning of this case, it would appear that a county executive officer would have no authority to review the exercise of discretion of judicial branch officers in the expenditure of monies properly budgeted by and appropriated to the court so long as those expenditures are contemplated by the appropriation or further the judicial function. However, I would note that *State v. Lewis* was decided prior to the changes in Article V of the State Constitution and I am aware of no other case following *Lewis* in regard to the executive's auditing function of judicial expenditures.

Further, a review of the legislative history surrounding the adopting of Article V, section 14, Florida Constitution, and section 29.008, Florida Statutes, does not provide any direction on this issue.[5] Thus, it appears that a definitive resolution of this matter may require litigation.

This informal Attorney General's Opinion was prepared for you by the Department of Legal Affairs in an effort to be of assistance. The opinions expressed herein are those of the writer and do not represent a formal Attorney General's Opinion. If this office can be of assistance to you in the future, I hope that you will contact us.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 29.008, Fla. Stat. *See also*, ss. 29.0081, 212.055(2)(d)2.c., and 939.185, Fla. Stat.

[2] Section 29.008(4)(a), Fla. Stat. *And see*, s. 29.0085, Fla. Stat., requiring counties to submit

an annual statement of revenues and expenditures and an annual statement of compliance to the Chief Financial Officer and providing that the statement of revenues and expenditures "identify total county expenditures on each of the services outlined in s. 29.008."

[3] *State of Florida v. Lewis,* 550 So. 2d 522, 526 (Fla. 1st DCA 1989).

[4] *Id.*

[5] *See*, Florida Constitution Revision Commission, "Analysis of the Revisions for the November 1998 Ballot," Revision 7; and Senate Staff Analysis and Economic Impact Statement for CS/SB 1212, dated March 30, 2000.