Article V Indigent Services Committees, status

Number: INFORMAL

Date: May 04, 2006

Ms. Victoria A. Montanaro
Executive Director
Justice Administrative Commission
Post Office Box 1654
Tallahassee, Florida 32302

Dear Ms. Montanaro:

You ask several questions relating to the status of the circuit Article V indigent services committees established pursuant to section 27.42, Florida Statutes.

These committees are established in each judicial circuit of the state and are responsible for, among other things, managing the appointment and compensation of court-appointed counsel within a circuit pursuant to sections 27.40 and 27.5303, Florida Statutes, maintaining a registry pursuant to section 27.40, and developing a schedule of fees and expense allowances.[1] Membership on the committees is prescribed by statute and consists of the chief judge of the circuit or designee, the public defender of the circuit, an experienced private criminal defense attorney appointed by the chief judge, and an experienced civil trial attorney appointed by the chief judge.[2]

In considering the status of other circuit officials, this office has, for example, stated that circuit court judges are state officers.[3] Moreover, it has been specifically held by Florida courts that a state attorney is "an officer of the state."[4] In Attorney General Opinion 85-103, this office concluded that state attorneys, public defenders, and circuit court judges are "state officers."

Similarly, the circuit Article V indigent services committees, established pursuant to state statute to operate within the circuit and funded by state appropriation, would appear to constitute state agencies.[5] As such, they would appear to be subject to suit as are other state entities.[6] Determinations, however, of whether the actions taken by indigent services committees are covered under the State Risk Management Trust Fund are determinations which must be made by the Division of Risk Management within the Department of Financial Services and not by this office.[7] In addition, any question of representation would have to be made on a case by case basis.[8]

I hope that the above informal comments may be of assistance in resolving these issues. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] *See* s. 27.42(2), Fla. Stat. *Cf.* Art. V, s. 2(d), Fla. Const., providing that the chief judge in each circuit shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

[2] *See* s. 27.42(1), Fla. Stat.

[3] *See, e.g,* Op. Att'y Gen. Fla. 70-167 (1970).

[4] *See Johns v. State*, 197 So. 791, 796 (Fla. 1940); *Hall v. State*, 187 So. 392, 398 (Fla. 1939) (noting that the state attorney's salary is paid by the state); *Taylor v. State*, 38 So. 380, 384 (Fla. 1905). *And see* Op. Att'y Gen. Fla. 75-111(1975) in which this office stated that the state attorney is a state officer.

[5] *See* s. 27.42, Fla. Stat., stating that the funding and positions for the processing of committees' fees and expenses shall be as appropriated to the Justice Administrative Commission in the General Appropriations Act.

[6] *See, e.g.,* s. 768.28, Fla. Stat., providing in part in subsection (1): "In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act."

[7] *See*, Part II, Ch. 284, F.S., creating the State Risk Management Trust Fund to provide general liability, as well as other, insurance coverage for all departments of the State of Florida. *And see* s. 111.071, Fla. Stat. regarding the payment of judgments or settlements against certain public officers or employees by, among others, an agency of the state excluded from participation in the Insurance Risk Management Trust Fund.

[8] *Cf.* s. 111.07, Fla. Stat.