

Law Enforcement Officers, costs & attorney fees

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Subject:
Law Enforcement Officers, costs & attorney fees

Mr. Alejandro Vilarello
Miami City Attorney
444 Southwest 2nd Avenue
Suite 945
Miami, Florida 33130-1910

RE: MUNICIPALITIES–PUBLIC FUNDS–ATTORNEY FEES–LAW ENFORCEMENT OFFICERS–STATE ATTORNEY–reimbursement of attorney fees and costs in defending law enforcement officer against criminal charges when state nolle prosequi action. s. 111.065, Fla. Stat.

Dear Mr. Vilarello:

On behalf of the City of Miami, you ask the following question:

Pursuant to section 111.065, Florida Statutes, does a municipality have the option to expend public funds to reimburse, wholly or in part, a law enforcement officer for legal costs and reasonable attorney's fees incurred by said officer in connection with the defense of criminal charges commenced against such officer where the action arose out of the performance of the officer's official duties and the prosecutor enters a "nolle prosequi" in the criminal action?

According to your letter, two municipal law enforcement officers have sought reimbursement from the City of Miami for costs and attorney's fees incurred in defending the officers against criminal charges brought against the officers in unrelated criminal cases. Both cases were "nolle prossed."

Section 111.065(2), Florida Statutes, provides:

"(2) The employing agency of any law enforcement officer shall have the option to pay the legal costs and reasonable attorney's fees for any law enforcement officer in any civil or criminal action commenced against such law enforcement officer in any court when the action arose out of the performance of the officer's official duties and:

- (a) The plaintiff requests dismissal of the suit; or
- (b) Such law enforcement officer is found to be not liable or not guilty."

"Law enforcement officer" is defined in the statute to mean "any person employed full time by any municipality or the state or any political subdivision thereof or any deputy sheriff whose primary responsibility is the prevention and detection of crime or the enforcement of the penal,

traffic, or highway laws of this state." [1]

Payment of the legal costs and reasonable attorney's fees is authorized by section 111.065, Florida Statutes, only when the action arose out of the performance of the full-time law enforcement officer's official duties *and* the action is dismissed by the plaintiff or the officer is found not liable or not guilty. In *Florida Police Benevolent Association, Inc. v. Miller*, [2] the court recognized that the statute does not require an employing agency, in that case the sheriff, to pay out of public funds for the attorney's fees and legal costs of one of its law enforcement officers who successfully defends a criminal prosecution. Instead, the statute gives the employing agency the *option* to provide such costs and fees. (e.s.) Moreover, in response to claims that the "common law" required reimbursement, the court held that "[i]f the common law did require it, then that has been changed by statute." [3] Thus, reimbursement is governed by the statute, not by the common law.

In the instant inquiry, the prosecutor has "nolle prossed" both cases, in effect declaring that he or she will no longer prosecute the case. [4] While the decision to "nolle prosequi" lies within the discretion of the prosecutor rather than the court, [5] a "nolle prosequi" is the dismissal of a pending information or indictment. [6] You question, however, whether the prosecutor in a criminal action qualifies as a "plaintiff," citing to such statutes as section 45.011, Florida Statutes. That statute defines "plaintiff" for purposes of general provisions relating to civil procedure. The term "plaintiff," however, has also been used to refer to the state in criminal actions. For example, an examination shows that the forms under the Rules of Criminal Procedure refer to the State of Florida as the plaintiff. [7] The prosecuting attorney is representing the State of Florida.

Moreover, as you point out, the fiscal note on the bill creating section 111.065, Florida Statutes, states that while the financial effect of the bill cannot be determined, "there probably would not be many criminal actions in which the plaintiff drops all charges or the defendant is adjudicated not liable or not guilty." [8] The courts of this state have recognized that a staff analysis may be used in determining legislative intent. [9] Such a statement indicates a legislative intent that the provisions of section 111.065(2)(a), Florida Statutes, apply not only to civil actions but also to criminal actions in which the action has been dismissed.

Accordingly, I am of the opinion that section 111.065, Florida Statutes, permits, but does not require, the city to reimburse a law enforcement officer for legal costs and reasonable attorney's fees incurred by said officer in connection with the defense of criminal charges commenced against such officer where the action arose out of the performance of the officer's official duties and the prosecutor has "nolle prossed" the criminal action.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] Section 111.065(1), Fla. Stat.

[2] 464 So. 2d 236 (Fla. 5th DCA 1985), *petition for review denied*, 475 So. 2d 694 (Fla. 1985).

[3] 464 So. 2d at 237.

[4] See Black's Law Dictionary, *Nolle Prosequi*, p. 1198 (4th rev. ed. 1968).

[5] See *generally State v. Spence*, 658 So. 2d 660, 661 (Fla. 3d DCA 1995) ("Upon the state's announcement of a nol pros of the information, which was self-executing, the case was effectively nullified and the proceeding terminated"); *L.C. v. State*, 750 So. 2d 160 (Fla. 3rd DCA 2000); *State v. R.J.*, 763 So. 2d 370, 371 (Fla. 4th DCA 1998) (decision to file a nolle prosse is vested solely in the discretion of the state); *State v. Braden*, 375 So.2d 49 (Fla. 2d DCA 1979) (permission of the trial court is not necessary, because the decision to file a nolle prosse is within the sole discretion of the state).

[6] See, e.g., *Allied Fidelity Insurance Company v. State for Use and Benefit of Dade County*, 408 So. 2d 756, 758 n.1 (Fla. 3d DCA 1982).

[7] See, e.g., Fla. R. Crim. P. 3.993.

[8] See Florida Senate Fiscal Note on SB 583 (enacted as Ch. 76-191, Laws of Florida), 1976 Legislative Session, dated May 17, 1976.

[9] See, e.g., *Ellsworth v. Insurance Company of North America*, 508 So. 2d 395, 401 n.3 (Fla. 1st DCA 1987) (staff analysis of legislation should be accorded significant respect in determining legislative intent); *State, Department of Environmental Regulation v. SCM Glidco Organics Corporation*, 606 So. 2d 722, 725-726 (Fla. 1st DCA 1992); *cf.* 82 C.J.S. *Statutes*, s. 356 (reports and explanatory statements of legislative committees in charge of a bill, while not binding, may be resorted to as indicative of the intent of the Legislature).