

Legislative power to protect witness

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Subject:
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WITNESSES--LEGISLATURE HAS NO POWER TO IMMUNIZE WITNESS FROM SUBSEQUENT PROSECUTION

To: Richard Clark, Chairman, House Select Committee on Fraudulent Mortgage Sales,
Tallahassee

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QUESTIONS:

1. Does a witness testifying before a legislative committee and producing books, papers, or other documents pursuant to a committee subpoena and having been apprised of his *Miranda* rights, become immune from subsequent prosecution under Florida's immunity statutes?
2. Does a legislative committee have the power to immunize a witness testifying before it and producing books, papers, or other documents pursuant to a committee subpoena, having been apprised of his *Miranda* rights?

SUMMARY:

A witness appearing before a legislative committee is not immunized under s. 914.04, F. S., and a legislative committee is not authorized to grant a witness appearing before it immunity from subsequent criminal prosecution.

The answer to the questions presented is in the negative.

Section 914.04, F. S., provides:

"914.04 Witnesses; person not excused from testifying in certain prosecutions on ground testimony might incriminate him; immunity from prosecution. -- No person, having been duly served with a subpoena or subpoena duces tecum, shall be excused from attending and testifying or producing any book, paper, or other document *before any court* having felony trial jurisdiction, *grand jury, or state attorney*, upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or

produced shall be received against him upon any criminal investigation or proceeding."
(Emphasis supplied.)

In AGO 060-168, my predecessor was asked whether s. 932.29, F. S., now s. 914.04, *supra*, applied to witnesses appearing before a legislative committee. It was held in said opinion that:

". . . Said statute deals only with attending and testifying, or producing books, papers and other documents *before a court*, and it has no application to attending and testifying or producing books, papers, or other documents before a legislative committee, which is not a court. . . ."

My research reveals no relevant change in the Florida Statutes since AGO 060-168 was written and that said opinion disposes of the question as to whether the immunity statute applies to persons appearing before a legislative committee.

In AGO 073-150, it was held that under s. 914.04, *supra*, *only a prosecuting attorney* could immunize a witness from subsequent criminal prosecution. In the opinion, I concluded that a judicial officer could not immunize a witness under the statute. An examination of Florida Statutes fails to disclose any statute authorizing a legislative committee to grant immunity from prosecution to a witness appearing before it, and in the absence of such a statute, no legal power to grant immunity exists.