

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Mayor and Members of the City Commission
FROM: Alejandro Vilarello, City Attorney
DATE: April 15, 2003
RE: Request for ~~Advisory~~ Legal Opinion
Interpretation of Section 111.065, Florida Statutes
MIA-0300007

My office requested the opinion of the Attorney General of the State of Florida (Attachment "A" hereto) regarding the following:

DOES A MUNICIPALITY, UNDER SECTION 111.065, F.S., HAVE THE OPTION TO EXPEND PUBLIC FUNDS TO REIMBURSE, WHOLLY OR IN PART, A LAW ENFORCEMENT OFFICER FOR LEGAL COSTS AND REASONABLE ATTORNEYS 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 *NOLLE PROSSES* THE CRIMINAL ACTION.

The Attorney General's Office opined in AGO 03-13, (Attachment "B" hereto) 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.

Opinions of the Florida Attorney General are not legally binding on a court or this Office, but they are entitled to careful consideration, given a great weight in legislative construction and generally regarded as highly persuasive. *See Abreau v. Cobb, 670 So2d 1010 (Fla. 3d DCA 1996).*

Consequently, AGO 03-13, which has been reviewed by my Office, is hereby approved and adopted as my response to inquiries on the referenced subject.

AV:JEM:mmd

Attachments

c: Joe Arriola, City Manager
Priscilla A. Thompson, City Clerk
John Timoney, Chief of Police

City of Miami

LEJANDRO VILARELLO
City Attorney



Telephone: (305) 416-1800
Telecopier: (305) 416-1801
E-MAIL: Law@ci.miami.fl.us

February 12, 2003

Charlie Crist
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

**Re: Request for Advisory Legal Opinion
Interpretation of Section 111.065, F.S.**

Dear Mr. Crist:

Pursuant to Section 16.01(3), F.S., I am requesting a legal opinion on the following recurring issue:

Does a municipality, under Section 111.065, F.S., have the option to expend public funds to reimburse, wholly or in part, a law enforcement officer for legal costs and reasonable attorneys 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 *nolle prosequit* the criminal action.

As background, two municipal law enforcement officers have sought reimbursement from the City of Miami for costs and attorneys fees incurred for representing the officers in defense of criminal charges brought against them in unrelated criminal cases. (See demand letters attached as Exhibits "A" and "B").

The first officer was charged with attempted second-degree murder, battery, and improper exhibition of a dangerous weapon or firearm. On March 4, 1999, while off-duty, the officer responded to a domestic dispute involving his mother. The officer first utilized pepper spray against a participant in the dispute. That participant then allegedly threatened the officer in such a way as to make him fear for his life, causing the officer to discharge three rounds from his weapon. All missed. Because the Court denied the prosecution a continuance, the prosecutor *nolle prosequit* the case.

The second officer, was charged in a separate criminal matter, in a three count information, with battery, falsifying public records and official misconduct, all arising out

"Attachment A"

of an arrest while on-duty and performing police services. The State Attorney *not* *prossed* the case in connection with a plea bargain in which the officer agreed to attend an Anger Control Program (see Offer of Plea Bargain and Advocate Program Contract attached as Exhibits "C" and "D").

Section 111.065, F.S., provides:

111.065 Law enforcement officers, civil or criminal action against; employer payment of costs and attorney's fees.—

(1) For the purpose of this act, "law enforcement officer" means 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.

(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**. [bolding added].

In AGO 77-98, your office concluded that s. 111.065, F.S., did not authorize the use of public funds to pay, or reimburse an agent for, a judgment for either compensatory or punitive damages levied against a former special agent. Your office reasoned that the statute referred only to payment of legal costs and attorney fees and did not mention or authorize the payment of any judgment that might be recovered — where a statute enumerates the things on which it is to operate, it impliedly excludes from its operation all other things not expressly mentioned therein.

Later, in AGO 79-67, your office concluded that s. 111.065 did not authorize the use of public funds to reimburse a deputy sheriff for attorney's fees and other legal expenses incurred in connection with an administrative hearing, which exonerated the deputy and secured his reinstatement. In reaching this conclusion, your office also relied

upon the principle that the express mention or authorization of one thing by the Legislature implicitly excludes the exercise of that authority for other things not mentioned.

Finally, in AGO 82-31, your office concluded that marine patrol officers in the Florida Department of Natural Resources, who were employed in approved off-duty part-time jobs with other employers, were not eligible for the payment of costs and attorney's fees in defending civil or criminal actions under s. 111.065.

The issue as I see it is whether the Legislature's use of the word "**plaintiff**" in subsection (2)(a) was meant to include the "prosecution" in a criminal case.

On the one hand, it seems evident that the Legislature understood, and was able to distinguish between, a civil action and a criminal action. For example, in addition to using the terms "civil" and "criminal" in subsection (2), in subsection (2)(b), the Legislature differentiated between the conclusion on the merits of a civil action ("not liable"), and the conclusion on the merits of a criminal action ("not guilty").

However, on the other hand, I also note the definition of "Plaintiff" from Black's Law Dictionary (6th Ed. 1990):

Plaintiff. A person who brings an action; the party who complains or sues in a civil action and is so named on the record. A person who seeks remedial relief for an injury to rights; it designates a complainant. *City of Vancouver v. Jarvis*, 76 Wash.2d 110, 455 P.2d 591, 593. The prosecution (i.e. State or United States) in a criminal case. [underlining added].

Prudently, the publisher included a caution in the Preface indicating that, many legal terms are subject to variations from state to state and again can differ under federal laws. Accordingly, a legal dictionary should only be used as a "starting point" for definitions. Additional research should follow for state or federal variations. Indeed, I note that the Florida Legislature has defined the word "Plaintiff" twice in the Florida Statutes, both in reference to civil actions, practice and procedure. See ss. 45.011 and 49.031, F.S.

In the event that you deem the statutory language to be unclear, I have consulted the legislative history of s. 111.065, which I obtained from the Florida State Archives. It consists of the Staff Analysis, Bill Action Report, Fiscal Note, and Report from

Committee on Ways and Means, from Senate Bill 583 of 1976 (see Exhibit "E"). The only relevant comment I found is contained in the Fiscal Note under the heading, "FINANCIAL EFFECT", which reads:

FINANCIAL EFFECT:

The financial effect of this bill is indeterminate, but probably not significant because the authority is optional, the agencies already have the authority to proceed in certain civil actions and 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.

The author of this note used the word "plaintiff" to mean "prosecution" consistent with the third Black's Law Dictionary definition. However, the author of the note also used the term "not liable" in connection with a criminal action, which seems an erroneous usage to me.

In light of the above, in the absence of judicial or legislative clarification, I am unable to divine the legislative intent of this statute without your assistance. Since public funds may only be expended as authorized by law, I require your opinion in determining whether s. 111.065 authorizes the City of Miami to pay the legal fees and costs of its law enforcement officers at issue. I hope that your opinion will be in the affirmative.

Very truly yours,


Alejandro Vilarello *wb*
City Attorney

AV:WB:agl
enclosures
cc: Ronald J. Cohen, Esq.

RONALD J. COHEN, P.A.
ATTORNEYS AT LAW

ANDREW JACKSON BUILDING
8100 OAK LANE, SUITE 403
MIAMI LAKES, FLORIDA 33106

DADE 1305 823 12 2
BROWARD 1984 922 1443
FACSIMILE 1305 823 7778

September 5, 2001

Carlos Gimenez, City Manager
City of Miami
444 S.W. 2nd Avenue, 10th Floor
Miami, FL 33130

Re: Recovery of Attorneys' Fees - Police Officer Moises Martinez
Our File No. 00-0073

Dear Mr. Gimenez:

This office represents Police Officer Moises Martinez and Seiden, Alder, Rothman, Petosa & Matthewman, P.A. We are writing seeking reimbursement for a reasonable fee for Mr. Matthewman's successful representation of Moises Martinez in State v. Moises Martinez, Dade Circuit Court Case No. F99-7732.

On March 4, 1999, Moises Martinez responded to a domestic dispute involving his mother, Francisco Martinez, one of the participant's in the domestic dispute was acting in such a fashion that Officer Martinez found it necessary to utilize pepper spray. Francisco Martinez initially retreated, but then approached Officer Martinez and the female victim with a stick. In fear for his life, Officer Martinez fired three rounds. All shots missed.

On March 5, 1999, Officer Martinez was arrested for aggravated assault, simple battery and improper exhibition of a dangerous gun. The State Attorney's Office increased the charges to second degree murder, battery, and improper exhibition of a dangerous weapon or firearm. Extensive pre-trial motion practice, investigation and discovery was taken and trial scheduled to begin August 8, 1999. When the jury was about to be selected, the prosecutor moved for a continuance and the court denied the motion. The State then nolle prossed the case. Officer Martinez was returned to full duty and is currently assigned to uniform patrol. Although Officer Martinez was off-duty at the start of the incident, Officer Martinez was required to and did act as a law enforcement officer to protect the victim and to protect himself, and therefore was acting in the course and scope of his employment.



Carlos Gimenez
Re: Recovery of Attorneys Fees
September 5, 2001
Page 2

In accordance with the long standing agreement with the Fraternal Order of Police and the City of Miami, in accordance with the common law, and in accordance with the City's longstanding policy of providing legal defense to officers who are found not guilty and who are not terminated as a result of the incident, Officer Martinez requests that he be reimbursed his reasonable legal fees and costs.

A statement for legal services, including detailed time records are attached. We are seeking reimbursement of \$37,034.31. We believe that Mr. Matthewman is entitled to be reimbursed this amount. Please place this matter on the next available agenda.

Sincerely,



Ronald J. Cohen

RJC:ls

cc: William D. Matthewman, Esq.
Maria Chiaro, Esq., Assistant City Attorney

RONALD J. COHEN, P.A.
ATTORNEYS AT LAW

JACKSON BUILDING
100 OAK LANE, SUITE 403
MIAMI, FLORIDA 33016

TELEPHONE (305) 823-1212
FAX (305) 823-1446
FACSIMILE (305) 823-7778

APR 26 2002
RECEIVED

April 24, 2002

Via Facsimile & U.S. Mail

Carlos Gimenez, City Manager
City of Miami
444 S.W. 2nd Avenue, 10th Floor
Miami, FL 33130

ASSIGNED TO: CAG
DATE: 4-20-02
UB

Re: Recovery of Attorneys' Fees - Police Officer Willie F. Bell
Our File No. 02-009

Dear Manager Gimenez:

This office represents Police Officer Willie Bell, the Fraternal Order of Police, Miami Lodge 20 and Seiden, Alder, Rothman, Petosa & Matthewman, P.A. We are seeking reimbursement for reasonable attorneys' fee and reimbursement for costs for Mr. William D. Matthewman's successful representation of Willie F. Bell in State v. Willie Bell, 11th Circuit Court Case No. F00-19910.

In 2000, Police Officer Willie Bell was charged in a three count information with battery, falsifying public records and official misconduct, all arising out of his arrest of Carl Deshazior while on duty and performing police services.

Willie F.-Bell was required to defend himself on these charges. Mr. Matthewman began defending Mr. Bell on April 18, 2000. After thoroughly preparing the case, the State Attorney nolle prossed the case, meaning that the case was voluntarily dismissed. The police department has not given any punishment to Officer Bell and in fact Internal Affairs has found that all the charges against him were inconclusive.

The charges against Officer Bell were serious and the case complex. He was defended by William D. Matthewman, a highly experienced, well-known criminal defense attorney who has defended Miami Police Officers in the past. The Internal Affairs Report states that



EXHIBIT
"B"

Carlos Gimenez, City Manager
Re: Recovery of Atty Fees (Bell)
April 24, 2002
Page 2

Assistant State Attorney Jani Kline Singer, who brought the charges, concluded that the alleged victim was "an intoxicated disgruntled individual who has no regard for police authority." Internal Affairs Report 99-542, Page 7.

I am enclosing a copy of all Mr. Matthewman's bills in this case. Mr. Matthewman's reasonable fee, and costs in this case, total \$52,560.46, of which \$51,855 are fees and the remainder costs.

In accordance with a long-standing agreement between the Fraternal Order of Police and the City of Miami, in accordance with the common law, and in accordance with the City's long-standing policy of reimbursing legal defense to officers who are not found guilty (Officer Bell did not receive any discipline at all), request is hereby made that the City reimburse Officer Bell his reasonable attorneys' fees and costs. Please place this matter on the next available agenda.

Very truly yours,



Ronald J. Cohen

RJC:ls

cc: Alejandro Vilarello, Esq., City Attorney
Maria Chiaro, Esq., Assistant City Attorney
William D. Matthewman, Esq.
Officer Willie F. Bell
Lt. Ornel "Al" Coteria, President, FOP, Miami Lodge 20



STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
E. R. GRAHAM BUILDING
1350 N.W. 12TH AVENUE
MIAMI, FLORIDA 33136-2111

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

TELEPHONE (305) 547-0100

December 11, 2001

David Howard, Esq
2300 Glades Road
Suite 340-W
Boca Raton, FL 33431

Re: Willie Bell

Dear Mr. Howard:

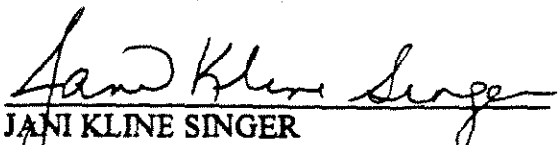
In a final effort to resolve your client's case without a trial, I am offering him the opportunity to participate in the pre-trial intervention program with the special condition that he successfully complete anger control classes. Once he has complied with the terms of the program, I will nolle pros his case.

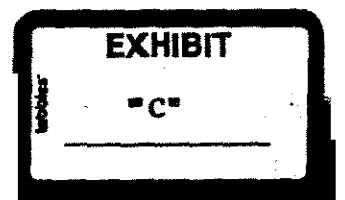
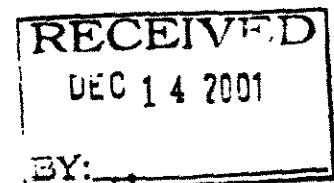
I believe this resolution fairly addresses the concerns I have with your client's history of discourteous and/or abusive conduct, but it also recognizes his years of service to the department and the community.

Please advise me of your client's decision within ten (10) days. I look forward to hearing from you.

Sincerely,

KATHERINE FERNANDEZ RUNDLE
State Attorney

By: 
JANI KLINE SINGER
Assistant State Attorney



ADVOCATE PROGRAM, INC.

Name _____

Address _____

City _____ State _____ Zip _____

Telephone # _____

Social Security # _____

D.O.B. _____ Age _____

Report monthly: Mail Phone In Person Beginning _____

William Hill HEREBY AGREE TO THE FOLLOWING CONDITIONS FOR MY SUPERVISION WITH THE ADVOCATE PROGRAM, INC.

1. I will attend 3 C.C.F. Classes as follows: #1 _____; #2 _____; #3 _____ all at 8:15 PM. I will attend 2 Class(es) - SPACE (code) on SAT (day) at 8:45 (time) beginning 12-15-01 (date) at 12712 #5 Completion Date _____

I will attend each meeting on time. I realize there is a penalty for lateness and a \$ 25.00 charge for every session missed. 12-22-01

2. In addition to an initial payment of \$ 0 I will complete payment of the \$ 100.00 balance by 12-12-01

In addition I will meet the following financial obligations within the time specified:

Court Cost \$ _____ SAVE \$ _____ Cost Recovery \$ _____ due by _____ (date).

3. RESTITUTION

I will pay restitution to _____ (Victim).

The amount of restitution is \$ _____ payable @ \$ _____ per month, starting _____ (date).

4. COMMUNITY SERVICE HOURS

I will work _____ hours as a volunteer at _____ (location).

Written verification of completion of these hours is due by _____ (date).

5. SPECIAL CONDITIONS

I will comply with the following special conditions as ordered by the Court/State Attorney's Office and provide written verification of completion to the Advocate Program, Inc. by the date indicated.

- TASC Evaluation/Treatment if required. Verification of completion due by _____ (date).
- DUI School/Treatment if required. Verification of completion due by _____ (date).
- Private counseling with _____ (name). Verification of completion due by _____ (date).
- Other _____

Verification of completion due by _____ (date).

Probationers are required to provide written proof of on-going treatment at regular reports.

- 6. I will notify the Advocate Program and the Clerk's Office of any change in my address.
- 7. I agree not to be involved in any legal action against the victim nor will I be arrested while in the Advocate Program.
- 8. I will I will not appear at arraignment. Date _____ time _____ Courtroom _____
- 9. I will complete all parts of this program by 2-13-02 (completion date).
- 10. I have read and agree to the above, and realize that if I do not comply, my case will be set before the Court.

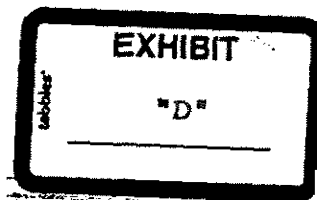
11. THIS CONTRACT MUST BE PRESENTED AT EVERY CLASS OR COUNSELING SESSION!

12. Your acceptance and the specific conditions of your contract may be contingent upon the approval of the State Attorney. I hereby authorize the Directors of Advocate Program to secure any information they deem necessary from medical, psychiatric, employment, police, etc., sources.

Client: William Hill Counselor: [Signature] Date 12-13-01

THERE WILL BE A \$25.00 CHARGE IF RE-ENTRY IS NECESSARY. THERE IS A \$25.00 NON-REFUNDABLE PROCESSING FEE FOR ALL DIVERSION CASES. THIS CHARGE WILL BE APPLIED TO THE TOTAL PROGRAM FEE UPON ACCEPTANCE.

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FLORIDA DEPARTMENT OF STATE
Ken Detzner
Secretary of State
DIVISION OF LIBRARY AND INFORMATION SERVICES

FLORIDA STATE ARCHIVES
FACSIMILE TRANSMISSION COVER SHEET

Please deliver the following pages to:

NAME: KHADILAH DEAN WILLIAMS

ADDRESS: _____

FAX NUMBER: 305-416-1803

FROM: MIRIAM SPALDING

DATE: 2/11/03

Total number of pages, including cover sheet: 5

SENDER'S PHONE NUMBER (850) 245-6700
SENDER'S FAX NUMBER (850) 488-4894
SENDER'S SUNCOM NUMBER 205-6700

COMMENTS: ENCLOSED ARE MATERIALS
RELATED TO SB 583, 1976



<u>4/27/76</u> (date)	<u>Y</u> (approved)
4/28/76	
Sponsor Furnished Copy	

ACTION: : Com. Law/W 3 amend s
: Final _____

Rev. 4/28/76 SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS
Staff Analysis (by Vandervalk/rm)

1976
BILL NO. & INTRODUCER: RELATING TO:
SB 583 by Senator Johnston Legal actions against law enforcement officers.

REFERENCES: Governmental Operations; Ways and Means

I. BILL SUMMARY:

Authorizes the employing authority of any law enforcement officer to pay the legal costs and reasonable attorney's fees of any officer in any action against the officer arising out of his employment when the plaintiff requests dismissal of his suit or the officer is found to be not liable or not guilty. Law enforcement officer is defined.

II. ANALYSIS:

A. CURRENT SITUATION:

Section 111.06, F.S., authorizes the state or counties to pay for the defense of any warden or deputy sheriff in any civil suit arising out of the performance of his duties.

Section 111.07, F.S., allows any agency or political subdivision of the state to defend any tort action brought against any of its officers or employees as a result of any alleged negligence which occurred while in the scope of their employment unless the officer or employee acted in bad faith, or with malicious purpose, or exhibited a willful and wanton disregard of human rights, safety or property.

B. BILL ANALYSIS:

The bill defines law enforcement officer as any person employed fulltime by any municipality, the state or any political subdivision of the state 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.

The bill substantially enlarges the authority of governmental units within the state to pay the legal expenses of law enforcement officers.

Under the bill, the employing governmental authority may pay the legal costs and reasonable attorney's fees of any law enforcement officer sued or charged with a criminal act in any court when the action arises out of performance of his official duties if the plaintiff requests a dismissal of his suit or the officer is found to be not liable or not guilty.

III. TECHNICAL ERRORS:

None noted.

IV. STAFF COMMENTS:

None.

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FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. GRAY BUILDING
Tallahassee, FL 32399-0250
files 18 Carton 193

FLORIDA SENATE
FISCAL NOTE

PRINCIPAL AGENCY AFFECTED: All governmental agencies employing law enforcement officers

PRINCIPAL FUND AFFECTED: Not determinable

BILL SUBJECT SUMMARY:

Authorizes employing authority of any law enforcement officer to pay the legal costs and reasonable attorneys' fees of any officer in any action against the officer arising out of his employment when the plaintiff requests dismissal of his suit or the officer is found to be not liable or not guilty.

FINANCIAL EFFECT:

The financial effect of this bill is indeterminate, but probably not significant because the authority is optional, the agencies already have the authority to proceed in certain civil actions and 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.

OTHER COMMENTS:

Effective July 1, 1976.

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DEPARTMENT OF STATE
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Tallahassee, FL 32399-0250
series 18 Carton 560

This fiscal note has been prepared by the staff of the Committee on Ways and Means with the cooperation of the agency and others concerned.

Jay Tiedberg
Analyst

5-17-76
Date

H. E. Helton
H. E. Helton

OS 75: File with Secretary (Senate)

COMMITTED ON WAYS AND MEANS

DATE 5/18/76

Date Reported 5/18/76

TIME 3:00 pm - 7 pm

FINAL ACTION:

PLACE Committee Room "A" Lower Level

Favorably with 0 amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

Favorably with Committee Substitute

Unfavorably

Gov. op. - Con. y. 2 bills

OTHER: Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	<i>Gov. op.</i>									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
		CHILDERS, W. D.										
<input checked="" type="checkbox"/>		GRAHAM, D. ROBERT										
<input checked="" type="checkbox"/>		HAIR, MATTOX										
<input checked="" type="checkbox"/>		HOLLOWAY, VERNON C.										
<input checked="" type="checkbox"/>		LANE, DAVID C.										
<input checked="" type="checkbox"/>		LEWIS, PHILIP D.										
		MACKEY, KENNETH H., JR.										
		MYERS, KENNETH M.										
<input checked="" type="checkbox"/>		PETERSON, CURTIS										
<input checked="" type="checkbox"/>		PLANTE, KENNETH A.										
<input checked="" type="checkbox"/>		POSTON, RALPH R.										
		SAUNDERS, BOB										
		SPICOLA, GUY										
<input checked="" type="checkbox"/>		THOMAS, JOHN C.										
<input checked="" type="checkbox"/>		THOMAS, PAT										
<input checked="" type="checkbox"/>		TOBIASSEN, THOMAS J.										
<input checked="" type="checkbox"/>		VOGT, JOHN W.										
<input checked="" type="checkbox"/>		WALL, JULIAN B., V-CHM.										
<input checked="" type="checkbox"/>		CORDON, JACK D., CHM.										
<u>14</u>	<u>0</u>	TOTAL										

Gov. op.
(3) recorded by [illegible]

no objection

(Attach additional page if necessary)

The undersigned
A Senator approved

[Signature]

Florida Attorney General Advisory Legal Opinion

Number: AGO 2003-13

Date: April 1, 2003

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."

"Attachment B"

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. (e.s.) 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).