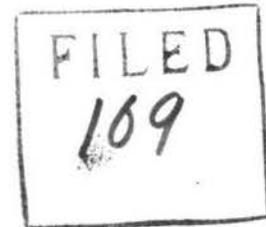


April 15, 1971

Answered by Letter - Mansur
OPINION LETTER NO. 109



Honorable Peter H. Rea
Prosecuting Attorney
Taney County
Taney County Court House
Forsyth, Missouri 65653

Dear Mr. Rea:

This is in response to your request for an opinion from this office as follows:

"Please provide my office with statutory authority and case authority, if such exists, as to my duty as prosecuting attorney in regard to the operation of the Welfare Department in my county. Does the prosecuting attorney have any duty to ascertain or determine, or to investigate or prosecute misrepresentations made in connection with the obtaining of relief, or fraud and misrepresentation in connection with retaining this help from the taxpayer? If the prosecutor has a duty, does the Welfare Department have a duty to provide the prosecutor's office with any and all information relating to the amount of money granted to individuals, the individual's name, and the basis for obtaining this relief?"

We direct your attention to Section 56.060, RSMo, 1969. Under this statute, it is the duty of the prosecuting attorney to commence and prosecute all civil and criminal actions in his county

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in which the county or state is concerned and defend all suits against the state or county.

It is our view that in criminal matters, it is the duty of the prosecuting attorney to be zealous in enforcement of the criminal laws, and in the exercise of his discretion, he has the right to choose the course of action or non action, as long as he does not act willfully or arbitrarily, in determining when, how and against whom to initiate criminal proceedings within his county. State ex rel. Griffin v. Smith, 258 S.W.2d 590.

While it is not the duty of the prosecuting attorney to pry in other people's business, it is his duty to initiate proceedings against parties he knows, or has reason to believe have committed crimes. State ex inf. Dalton v. Moody, 325 S.W.2d 21; State on inf. McKittrick v. Wallach, 182 S.W.2d 313; State on inf. McKittrick v. Wymore, 132 S.W.2d 979.

It is the opinion of this office that if a prosecuting attorney knows or has a good reason to believe that an individual has violated the criminal law in obtaining or in attempting to obtain public assistance from the State Division of Welfare, it is his duty to make such investigation as he deems necessary and file criminal charges in the same manner as he would in any other criminal violation.

When the State Division of Welfare informs the prosecuting attorney of a criminal violation, it is his duty to make such an investigation as he deems necessary to determine whether a crime has been committed and if so, it is his duty to prosecute in the same manner as he would in any other criminal case. Under Section 208.040, RSMo 1969, the Division of Welfare may request the prosecuting attorney to investigate and take any action he deems necessary to secure support for the children in aid to dependent children cases.

It is the opinion of this office that a prosecuting attorney has no authority or duty to make any investigation to determine whether an applicant or recipient is eligible for public assistance unless a crime is involved or under investigation. The determination of eligibility for public assistance is vested in the State Division of Welfare under Chapter 208, RSMo.

Section 208.120, RSMo 1969, provides:

"1. For the protection of applicants and recipients, all officers and employees of the state of Missouri are prohibited, except as hereinafter provided, from disclosing any information obtained by them

in the discharge of their official duties relative to the identity of applicants for or recipients of benefits or the contents of any records, files, papers and communications, except in proceedings or investigations where the eligibility of an applicant to receive benefits, or the amount received or to be received by any recipient, is called into question, or for purposes directly connected with the administration of old age assistance aid to dependent children, and aid to the permanently and totally disabled. In any judicial proceedings, except such proceedings as are directly concerned with the administration of these programs, such information obtained in the discharge of official duties relative to the identity of applicants for or recipients of benefits, and records, files, papers, communications and their contents shall be confidential and not admissible in evidence.

"2. The division of welfare shall in each county welfare office maintain monthly a report showing the name and address of all recipients certified by such county welfare office to receive old age assistance, aid to dependent children and aid to the permanently and totally disabled benefits, together with the amount paid to each recipient during the preceding month, and each such report and the information contained therein shall be open to public inspection at all times during the regular office hours of the county welfare office; provided, however, that all information regarding applicants or recipients other than names, addresses and amounts of grants shall be considered as confidential.

"3. It shall be unlawful for any person, association, firm, corporation or other agency to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of any name or list of names for commercial or political purposes of any nature; or for any name or list of names of recipients secured from such report in the county welfare office to be published in any manner.

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Anyone willfully or knowingly violating any provisions of this section shall be guilty of a misdemeanor. If the violation is by other than an individual, the penalty may be adjudged against any officer, agent, employee, servant or other person of the association, firm, corporation or other agency who committed or participated in such violation and is found guilty thereof."

Under this statute, all officers or employees of the state of Missouri are prohibited from disclosing any information obtained by them to discharge their official duties except as provided therein. It is the opinion of this office that the officers or employees of the State Division of Welfare are not prohibited under the above statute from disclosing information they have to the prosecuting attorney of the county that involves the commission of a crime by an applicant or recipient of public assistance but only if the investigation is to determine if a criminal offense has been committed but not in any other matter concerning the eligibility of an applicant or recipient for public assistance except as required in aid to dependent children cases under Section 208.040. We believe the same is true if a prosecuting attorney believes or has reason to believe that a particular individual has committed a criminal offense in obtaining public assistance. Employees of the Division of Welfare would not be prohibited from furnishing any information they have that involves a violation of the criminal laws of this state concerning public welfare.

In regard to the duties of the prosecuting attorney in civil matters, under Section 50.060, RSMo 1969, it is the duty of the prosecuting attorney to commence and prosecute all civil cases in which the county or state is concerned, and defend all suits against the state or county. In 27 C.J.S. District and Prosecuting Attorneys, paragraph 12(5) the rule is stated:

"The prosecuting attorney and the county board stand in the same position as that of attorney and client generally. If the administrative body of a county has by law the direction and control of litigation except in specified cases, the prosecuting attorney cannot institute any other proceeding on behalf of the county without authority from such body; but his duty to institute proceedings on behalf of the state is not dependent on authority from any public officer required to report violations of law and direct prosecutions in certain cases. It has been held, how-

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ever, that when a railroad commission is charged with the duty of enforcing certain laws, the district attorney cannot bring suit for violation thereof without authority from the commission. An order of court to prosecute is sometimes required under statute. Want of original authority may be cured by ratification."

We will not attempt to be specific regarding the duties of the prosecuting attorney in civil matters in which the state or county may be interested but will restrict this opinion to his responsibility in regard to the State Division of Welfare. It is our view as heretofore stated the administration of the state welfare laws is vested in the State Division of Welfare which has exclusive authority in determining whether a person is or is not eligible to receive public welfare. If the State Division of Welfare requests his aid and assistance in a manner in which the State Welfare Division is a party or is interested it is his duty to represent such division.

Very truly yours,

JOHN C. DANFORTH
Attorney General