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April 8, 2013

Pam Bondi
Attorney General of Florida
The Capitol/PL-01
Tallahassee, FL 32399-1050

RE: Initiating Quo Warranto Proceeding Pursuant to
Chapter 80, Florida Statutes

Dear Attorney General Bondi:

This office represent Jesse James Hilton, Alan Griffiths, Michael Tierney, Todd Glenn, Lori McDonald and Virginia Johnson. The Honorable Catherine Vogel is the State Attorney for the 16th Judicial Circuit in and or Monroe County, Florida. In the course of representing these misdemeanor defendants, it has come to my attention that the State Attorney entered into a partnership agreement with the Monroe County Coalition Inc. ("MCC") and the Guidance/Care Center, Inc. ("GCC"). (Exhibit A) The pertinent terms of the agreement are as follows:

WHEREAS, MCC and GCC have partnered with the SA's Office to support prosecution of DUI and adult enablers of underage drinking cases, to increase prosecution and the perception of being prosecuted; and

WHEREAS, MCC and GCC wish to support the SA's Office in these prosecutions by funding an additional prosecutor position to prosecute DUI cases and cases involving adult enablers of underage drinking through Grants administered by South Florida Behavior Health Network ("SFBHN"). Copies of the SFBHN administered grants are attached hereto and made a part hereof as if done so verbatim as collective Exhibit 1.

- 1. That MCC shall provide \$25,000.00 to the SA's office to fund approximately one-half of a full time prosecutor to prosecute DUI and adult enabler of underage drinking cases. This \$25,000.00 shall be reimbursed to SA's Office at a rate of \$31.25 per billable hour paid over a 10 month period (8 remaining months).

- 2. That GCC shall provide \$27,094.00 to the AG's Office to fund approximately one-half of a full time prosecutor to prosecute DUI and adult enabler of underage drinking cases. This \$27,094.00 shall be reimbursed to the SA's Office at a rate of \$39.00 per billable hour paid over a 10 month period (8 remaining months)
- 3. That the SA's Office agrees that the assigned prosecutor will prepare daily Service Activity Logs (SAL form attached) necessary for MCC and GCC to bill for the activities performed. The Logs will be submitted at least once per week and all daily logs for the month are to be submitted no later than the second day of the month following. SALs shall be sent to MCC attention of Brooke Brown at brookeleabro@yahoo.com. SALs shall be sent via GCC attention of Janet Cook (janet.cook@westcare.com).
- 4. That the SA's office agrees to provide monthly invoices for payment to MCC and GCC separately no later than the 10th of the month following. Documentation of time expenditure should include submitting timesheets and payroll registers. Invoices for MCC shall be sent to Brook Brown, Project Coordinator, at email brookeleabro@yahoo.com. Invoices for GCC shall be sent to Marianne K. Benvenuti, Regional Controller via fax (305-434-9040) or email (Marianne.benvenuti@westcare.com).
- 6. That the SA's Office will have a representative from said Office attend at least one, either General Membership or Board of Directors meeting of MCC and GCC, each calendar quarter to provide progress reports to MCC and GCC.

Article 5, §14 and Florida Statutes

Under Article 5, §14, the State of Florida is mandated to provide for "all funding for salaries, expenses and costs of the state attorneys' offices". (See Statement of Intent marked as Exhibit B). The funding to pay for the salaries for Assistant State Attorneys shall be provided from "state revenues appropriated by general law" (see Florida Statute 29.005 attached as Exhibit C). If a State Attorney so chooses to prosecute County and /or Municipal violations Florida Statute 27.34 (attached as Exhibit D) mandates that the County

reimburse the State for salaries and costs incurred. *This is the only reimbursement scheme provided under Florida Law.* A statute should be construed so as to give a meaning to every word and phrase in it. *Stein v. Biscayne Kennel Club, Inc.*, 145 Fla. 306, 199 So.364, 365 (Fla. 1940); *Terrinoni v. Westward Ho!*, 418 So.2d 1143, 1146 (Fla. 1st DCA 1982); *Vocelle v. Knight Brothers Paper Co.*, 118 So.2d 664, 667 (Fla. 1st DCA 1960). It is a general principle of statutory construction that where a statute directs how a thing is to be done, it is, in effect, a prohibition against it being done in any other manner. *Thayer v. State*, 335 So.2d 815, 817 (Fla. 1976). Express exceptions made in a statute give rise to a strong inference that no other exceptions were intended. *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla. 1952); *State Road Department v. Levato*, 192 So.2d 35, 39 (Fla. 4th DCA 1966), *cert. dismiss'd*, 199 So.2d 714 (Fla. 1967); *Biddle v. State Beverage Department*, 187 So.2d 65, 67 (Fla. 4th DCA 1966), *cert. dismiss'd*, 194 So.2d 623 (Fla. 1966); *Williams v. American Surety Company of New York*, 99 So.2d 877, 880 (Fla. 2d DCA 1958). As the *Dobbs* court stated:

We have oft-times held that the rule *expressio unius est exclusio alterius* is applicable in connection with statutory construction The legislature made one exception to the precise language of the statute of limitations. We apprehend that had the legislature intended to establish other exceptions it would have done so clearly and unequivocally We cannot write into the law any other exception ...

Dobbs, 56 So.2d at 342.

Pursuant to the funding and partnership agreement attached, *two private corporations* are funding the position of a prosecutor in Monroe County Florida. These corporations are not public entities and certainly cannot bear any legal resemblance to a municipality or County. The proposition that a private company can pay for the salary of a prosecutor is disturbing. A prosecutor should not be tempted to bill more hours in order to receive funding. The partnership agreement mandates that the "privately funded Assistant State Attorney bill on an hourly basis and attend the board meeting of two private corporations to *provide progress reports*. It is not hard to imagine that criminal defense lawyers will now seek *Brady* material from these two private corporations. It is also not hard to imagine that the State Attorney's Office is exposing taxpayers to potential civil liability as well established sovereign immunity law is at risk.

Attorney General Opinions (AGO)

AGO Opinion 84-8 and 84-9 (see attached as Exhibit E)(are illustrative of the long standing mandate that salaries and expenses of State Attorneys are governed in accordance with Florida law. The Opinions attached speak for themselves and provide guidance in this matter. It is clear that the State Attorney can only do what is mandated and allowed by Florida Law. The State Attorney's Office must strictly follow the Florida Constitution and enable legislation.

It is the opinion of the undersigned that the State Attorney's Office for the 16th Judicial Circuit in for Monroe County together with MCC and GCC formed a joint venture in violation of Article 7, §10 of the Florida Constitution. The agreement allows private non-profit corporations to fund and control whether funds are submitted to the State Attorney's Office based on hourly billable time and the preparation of daily service activity logs. In addition, Section 5 of the contract allows for an open-ended allocation of funds to the State Attorney's Office. A representative of the State Attorney's Office *must* attend either General Membership or Board of Directors meetings of MCC and GCC each calendar quarter and *provide progress reports* to the board of directors of MCC and GCC. The agreement is clear and concise in its terms: The Monroe County State Attorney's Office is required to report to two private entities who are paying for the salary of a prosecutor. What if a multimillionaire decides to form a non-for profit for the nefarious purpose of funding the position of a prosecutor? The rational for keeping prosecutors public employees is clear. Justice can only be accomplished when a prosecutor is clothed with the perception and reality of being a true public servant.

Based on the above and pursuant to Section 80.09 of the Florida Statute, we respectfully request commencing an action in Quo Warranto to establish that the Honorable Catherine Vogel is acting in excess of her statutory authority by receiving private monies to fund a position of an Assistant State Attorney and entering into an "Unconstitutional" Prosecutor Funding Agreement that binds the State Attorney's Office to a joint venture with two private non-profit corporations (see attached as **Exhibit F the Corporate Entity Information Sheets**). I have included in this letter and attached as **Exhibit G** for your review, a copy of the hearing transcript which gave rise to the issue now before you.

Due to the urgent nature of this situation, and in order to avoid any further prejudice to my clients' interests in this matter, we would respectfully request that your office provide a response to this request by the close of business on Monday, May 6, 2013. If we have received no response by that time, we will assume that your office has refused to commence an action in Quo Warranto, and we will commence such an action in the name of the State, as provided for in Chapter 80, Florida Statutes.

Respectfully,

THE MARGALLI LAW OFFICE, P.A.

By:


Giulio F. Margalli