

OPINION NO. 71-059

Syllabus:

The duty to initiate prosecution of persons who have obtained food stamps through misrepresentations, or otherwise misuse such stamps, lies with the county department of welfare, which should provide the county prosecutor with the information necessary to institute prosecution.

To: John E. Hansan, Director, Dept. of Public Welfare, Columbus, Ohio
By: William J. Brown, Attorney General, October 1, 1971

Your request for my opinion reads as follows:

"The Department of Public Welfare administers the federal food stamp program through county departments of welfare. There is no specific legislation governing the stamp program in Ohio.

"The U.S. Department of Agriculture is asking what authority the State has to prosecute persons who secure stamps through misrepresentation or who otherwise misuse coupons. In January 1970, a letter was sent by Mr. Denver White to the U. S. Department of Agriculture. Since then Cuyahoga and Hamilton counties have both questioned their authority to prosecute under the provisions of section 2911.01.

"We would appreciate your advice as to whether the state or county welfare departments have the duty to bring action under this section in cases where they learn that persons have secured stamps through fraudulent statements."

Section 2 of "The Food Stamp Act of 1964" states congressional policy in the following terms (7 U.S.C. 2011):

"It is hereby declared to be the policy of Congress in order to promote the general welfare, that the nation's abundance of food should be utilized cooperatively by the States, the Federal Government, and local governmental units to the maximum extent practicable to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households. * * * To effectuate the policy of Congress * * *, a food stamp program, which will permit those households with low incomes to receive a greater share of the nation's food abundance, is herein authorized."

Section 4 of the Act, which authorizes the Secretary of Agriculture to formulate and administer the food stamp program, provides in pertinent part (7 U.S.C. 2013):

"(a) The secretary is authorized to formulate and administer a food stamp program under which, at the request of an appropriate state agency, eligible households within the state shall be provided with an opportunity more nearly to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than their normal expenditures for food. The coupons so received by such householder shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this chapter shall be redeemable at face value by the secretary through the facilities of the Treasury of the United States.

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Section 5 of the Act empowers the participating state agencies to establish standards for determination of the eligibility of applicant households. It provides (7 U.S.C. 2014):

"(a) Participation in the food stamp program shall be limited to those households where income is determined to be a substantial limiting factor in the attainment of a nutritionally adequate diet.

"(b) In complying with the limitation or participation set forth in subsection (a) above each state agency shall establish standards to determine the eligibility of applicant households. Such standards shall include maximum income limitations consistent with the income standards used by the state agency in administration of its federally aided public assistance programs. Such standards also shall place a limitation on the resources to be allowed eligible households. The standards of eligibility to be used by each state for the food stamp program shall be subject to approval by the secretary."

Section 10 of the Act, concerning the operation of the program, provides in pertinent part (7 U.S.C. 2019):

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"(b) The state agency of each participating state shall assume responsibility for the certification of applicant households and for the issuance of coupons: Provided, that the state agency may, subject to state law, delegate its responsibility in connection with the

issuance of coupons to another agency of the State government. * * *

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The Act also provides that, upon issuance of the coupons, an eligible household shall be charged such portion of the face value of the allotment as that household would normally spend for food, 7 U.S.C. 2016(b); and that the coupons are to be used by the household only in approved retail food stores, 7 U.S.C. 2015(b). It further provides criminal penalties, both felonies and misdemeanors, for various misuses of the coupons in violation of the provisions of the Act or the regulations adopted pursuant thereto. 7 U.S.C. 2023.

In 1959, the General Assembly had required the board of commissioners of each county to establish a county department of welfare (Section 329.01, Revised Code), which is directed, among other duties (Section 329.04, Revised Code):

* * * * * * * *

"(d) To cooperate with state and federal authorities in any matter relating to public welfare and to act as the agent of such authorities;

* * * * * * * *."

And in 1970 a law was enacted requiring all counties, not already participating in the food stamp program, to submit an application and a plan of operation, and the duty of certification of the households eligible for participation was imposed upon the county departments of welfare. Section 329.042, Revised Code, provides:

"Within thirty days of the effective date of this act, each county not participating in the food stamp program under the "Food Stamp Act of 1964" * * * shall make application and submit a plan of participation in such program. Subject to approval of the county plan by the United States Secretary of Agriculture, the department of welfare shall certify public assistance and non-public assistance households eligible under the federal act and federal and state regulations adopted pursuant to such act to enable low income households to participate in the food stamp program, and thereby to purchase foods having a greater monetary value than is possible under public assistance standard allowances or other low income budgets."

To summarize, the above statutes establish a cooperative food stamp program for low income households in which the Federal Government is to act in a general planning and super-

visory capacity and is to supply the necessary coupons and the major part of the funds for redemption thereof, while the state is to establish standards for participation and the county department of welfare is to certify which households meet those standards and are eligible to receive coupons. I understand that the United States Department of Agriculture provides the coupons to a fiscal agent in the county - usually a bank or other institution which is able to supply the necessary security for the coupons and for the money received when coupons are issued to an eligible household. The key to the successful operation of the entire program is the county department of welfare, which must make the determination of fact as to whether a household is eligible to participate or not.

Since the county department of welfare is the agency which has access to the information necessary to prosecute an abuse of the program and the machinery for investigation of allegation of abuse, an appropriate criminal sanction is contained in Section 2911.01, Revised Code, which provides, in pertinent part, as follows:

"No person shall, by false pretense and with intent to defraud, obtain anything of value * * *.

"The attorney general, upon request by a prosecuting attorney, may assist him in inquiring into and prosecuting violations of this section in his county.

"Whoever violates this section shall be imprisoned not less than one nor more than three years if the value of the property so procured * * * is sixty dollars or more * * *.

"If said value is less than sixty dollars, such person shall be fined not more than three hundred dollars or imprisoned not more than ninety days, or both."

It is true that abuses of the food stamp program can also be prosecuted as federal offenses under 7 U.S.C. 2023, supra. But that does not prevent the state from invoking its own criminal sanctions relative to a subject matter in which the state and the Federal Government have a common interest. In Fox v. The State of Ohio, 46 U.S. 410 (1847), the Supreme Court upheld a state conviction under state statute making it an offense to counterfeit coins of the United States, or knowingly to utter such counterfeits. (That statute now appears as Section 2913.09, Revised Code; and see Section 2913.10, Revised Code, which makes it a state offense to counterfeit Federal stamps.) Where one act constitutes an offense as to each of two sovereignties, either sovereign can prosecute the offense against itself. Waller v. Florida, 397 U.S. 387, 394 (1970), quoting Fox v. The State of Ohio, supra. Whether a subsequent prosecution by

the other sovereign upon the same facts would constitute a violation of the constitutional protection against double jeopardy, is a question with which we are not here concerned. See Fox v. The State of Ohio, supra, at page 435; State v. Fletcher, 44 Ohio Op. 2d 498 (1968); State v. Fletcher, 22 Ohio App. 2d 83 (1970).

In specific answer to your question it is my opinion, and you are hereby advised, that the duty to initiate prosecution of persons who have obtained food stamps through misrepresentations, or otherwise misuse such stamps, lies with the county department of welfare, which should provide the county prosecutor with the information necessary to institute prosecution.