

traditional authority of the sheriffs to "fire" as well as "hire" their deputies by providing that "[t]he independence of the sheriffs shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel" [Section 30.53, F. S.]

From what is said in your letter, it appears that the sheriff's power to suspend his deputies without pay as a disciplinary measure is just as rooted in tradition as the power to terminate their employment, and that the sheriffs of this state have interpreted §30.53, *supra*, as recognizing their traditional right not only to "hire and fire" but also to suspend deputies without pay for minor infractions. It is well settled that the administrative interpretation of a statute is entitled to great weight and will not be overturned by the courts except for the most cogent reasons and where clearly erroneous. *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952).

In these circumstances, I can conclude only that, pending legislative or judicial clarification, the sheriffs of this state may continue their traditional practice of suspending *without pay* a deputy who has been guilty of an infraction that does not warrant dismissal. And insofar as my opinion in AGO 073-91 may be inconsistent with this conclusion, it is modified to that extent.

073-92—March 29, 1973

PAROLE AND PROBATION COMMISSION

INTERVIEWS WITH PERSONS CONVICTED OF CAPITAL CRIMES

To: *Armond R. Cross, Chairman, Florida Parole and Probation Commission, Tallahassee*

Prepared by: *Reeves Bowen, Assistant Attorney General*

QUESTIONS:

1. Did Ch. 72-724, Laws of Florida, create any "capital crimes" to which the following provision of §947.16(1), F. S., is applicable: "An inmate *convicted of a capital crime* shall be interviewed at the discretion of the parole commission."?
2. May persons convicted of capital crimes and sentenced to death or life imprisonment before the enactment of Ch. 72-724 now be interviewed at the commission's discretion?

SUMMARY:

If a person is convicted and sentenced for first degree murder committed after December 8, 1972 (the effective date of Ch. 72-724), contrary to §782.04(1)(a), F. S., or for rape committed after December 8, 1972, contrary to §794.01(1), F. S., he stands convicted of a "capital crime," regardless of whether he is sentenced to death or life imprisonment, and it is discretionary with the Parole and Probation Commission as to whether to interview him for parole consideration.

As of July 24, 1972, crimes which had previously been capital crimes became noncapital crimes. As to inmates previously sentenced for such crimes to imprisonment in the state prison instead of to death, the provisions of §947.16(1), F. S., requiring interviews with inmates sentenced to serve prison terms were applicable after July 24, 1972. For the purpose of computing the time within which said provisions require interviews to be made, the inmate's sentence should be regarded as having commenced on July 24, 1972.

A person sentenced for a capital crime before July 24, 1972, no longer stood convicted of a capital crime after that date, so that the

discretionary interview provision of §947.16(1), *supra*, was no longer applicable to him. Also, the provisions of §947.16(1) relating to interviews with persons sentenced to terms of imprisonment did not become applicable to a person who had a death sentence; he had no sentence to a term of imprisonment. However, when such a person has been resentenced since July 24, 1972, to be imprisoned for life or for a lesser time, such person for the first time came within the provisions of §947.16(1) relating to interviews with inmates sentenced to terms of imprisonment.

AS TO QUESTION 1:

Section 3 of Ch. 72-724, Laws of Florida, which became effective on December 8, 1972, amended §782.04, F. S., so that subsection (1)(a) thereof provides that murder in the first degree shall be a "capital felony." Also, §7 of Ch. 72-724 amended §794.01, F. S., so that subsection (1) thereof makes it a capital felony to commit rape under specified circumstances.

Therefore, if a person is convicted and sentenced for committing first degree murder contrary to §782.04(1)(a), F. S., after December 8, 1972, or for committing rape contrary to §794.01(1), F. S., after December 8, 1972, such person is convicted of a "capital crime" within the contemplation of the above-quoted provision of §947.16, even though the sentence be to life imprisonment rather than to death. The result is that such a person may be interviewed at the discretion of the commission.

AS TO QUESTION 2:

As the result of the United States Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972), there were no capital crimes in Florida between the effective date of said decision and the enactment of Ch. 72-724, Laws of Florida. With respect to the effective date of the *Furman* decision, the Supreme Court of Florida said in *State ex rel. Manucy v. Wadsworth* (opinion rendered February 14, 1973, but not yet reported), "The decision of the United States Supreme Court in *Furman v. Georgia*, became final and effective on July 24, 1972." Therefore, a crime which was a capital crime prior to July 24, 1972, became a noncapital crime on that date. Since that date, the provision of §947.16(1), F. S., relating to discretionary interviews with inmates convicted of capital crimes has had no application to any inmate whose crime was committed before Ch. 72-724 became effective on December 8, 1972.

The other provision of §947.16(1), F. S., relating to interviews with inmates reads as follows:

An inmate who has been *sentenced for a term of five years or less* shall be interviewed by a member of the commission or its representative within six months after the initial date of confinement in execution of the judgment. An inmate who has been *sentenced for a term in excess of five years* shall be interviewed by a member of the commission or its representative within one year after the initial date of confinement in execution of the judgment. . . . (Emphasis supplied.)

After the *Furman* decision became effective on July 24, 1972, these provisions have applied to inmates who had been convicted of crimes which were previously capital offenses but who had been sentenced to imprisonment in the state prison instead of to death. For the purpose of computing the times within which said statutory provisions require interviews to be made, the inmate's sentence should be regarded as commencing on July 24, 1972.

A person convicted of a capital crime and sentenced to death before the *Furman* decision became effective on July 24, 1972, no longer stood convicted of a capital crime after that date, so that the provisions of §947.16(1), F. S., relating to discretionary interviews with inmates convicted of capital crimes ceased to apply to him. Nor did the provisions of §947.16(1) relating to interviews with persons

sentenced to terms of imprisonment apply to such an inmate because he had no term of imprisonment; all that he had was a death sentence. It is my understanding that all such persons have been resentenced since July 24, 1972, to terms of imprisonment for life or for a lesser time, and when this occurred as to one of such persons, he for the first time came within the provisions of §947.16(1) relating to interviews with inmates sentenced to terms of imprisonment.

073-93—March 29, 1973

PUBLIC FUNDS

MUNICIPALITY OFFERING REWARD

To: John C. Chew, City Attorney, Daytona Beach

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

May the City of Daytona Beach use municipal funds for the purpose of offering a reward for the capture of a felon?

SUMMARY:

The City of Daytona Beach is without authority to use municipal funds for the purpose of offering a reward for the capture of a felon.

In 23 Fla. Jur. *Municipal Corporations* §75, I find the following comments:

The prevention of crime and the enforcement of the criminal law are functions of the state rather than of any subdivision thereof. No duties with respect to the enforcement of the criminal laws of the state are delegated by implication to municipal corporations. Accordingly, a municipal corporation has no implied power to offer a reward for the apprehension or conviction of persons guilty of a crime.

To the same effect is the general rule in this country (McQuillin on *Municipal Corporations*, Vol. 3, pp. 11 and 12, §11.06).

The law thus enunciated was adhered to and applied by the Supreme Court of Florida in *Murphy v. City of Jacksonville*, 18 Fla. 318 (Fla. 1881). I find no general statute which empowers any municipality to offer rewards for the capture of felons.

Nor do I find anything in the Municipal Charter of the City of Daytona Beach, bestowed by Ch. 67-1274, Laws of Florida, authorizing said city to offer such rewards.

True, §5 of said Ch. 67-1274, Laws of Florida, authorizes said city to enact ordinances and take all action necessary to preserve and enforce peace upon the private and public property within the municipality. However, it appears from the Supreme Court's opinion in the said *Murphy* case that the City of Jacksonville was also authorized by statute to enact ordinances for the preservation of the peace but that the Supreme Court nevertheless held that said city had no authority to offer a reward for the apprehension and conviction of a felon.

The fact that §56 of said Ch. 67-1274, Laws of Florida, authorizes the City of Daytona Beach to levy taxes for municipal purposes gives it no authority to levy taxes to pay such rewards, since in the said *Murphy* case the Supreme Court held that the power of the City of Jacksonville to tax for municipal purposes did not authorize it to offer such a reward.

What effect, if any, does Art. VIII, §2(b), State Const., have upon the powers of a municipality? In *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801, 803 (Fla. 1972), the Supreme Court of Florida quoted said §2(b) as follows: