

derived from ad valorem taxation or other sources that could be used for other county functions would be used for that purpose.

It can, of course, be argued that the legislature intended to prohibit the use of county funds only for the routine and ordinary operations of the office of a state attorney or public defender and that a special state-federal program for the improvement of our system of prosecuting persons charged with crime—which would, presumably, serve a county as well as a state purpose, as witness the many special acts which have, in the past, authorized counties to augment the salaries of state attorneys—would not be within the purview of the statutory prohibition. However, in view of the clear legislative intent to cut off all cash flow of county funds to the operation of the offices of state attorneys and public defenders, except for the designated items, it cannot be concluded with any degree of certainty that the legislature so intended; and, in these circumstances, I cannot recommend that county funds that could be used for other county purposes be appropriated as matching funds for this type of program.

073-410—November 7, 1973

ADULT RIGHTS LAW

DISTRIBUTION UNDER WILL OR LIFE INSURANCE POLICY; INTESTATE DISTRIBUTION

To: Roger H. Wilson, Representative, 60th District, Seminole

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. Does the Adult Rights Law have the effect of changing the specific age to eighteen if a specific age, such as age twenty-one, is a prerequisite for the final distribution of an estate?
2. Is the same result obtained in the case of life insurance benefits wherein the proceeds are held in trust or distributed on a controlled basis until a certain age, such as age twenty-one.

SUMMARY:

The Adult Rights Law has no effect on a document such as a will or life insurance policy which requires the beneficiary to be twenty-one years of age as a prerequisite for the final distribution of assets.

The estate may be an intestate one which the law requires a representative or guardian to hold the property in trust for a minor beneficiary until he reaches the age of majority. Any assets given to a representative or guardian after July 1, 1973, can be distributed to a person eighteen years of age or older. If distribution of assets was made to a representative or guardian on behalf of a minor beneficiary before July 1, 1973, a judicial determination is necessary to determine whether the Adult Rights Law has any effect on such distribution.

Chapter 73-21, Laws of Florida [§743.07, F. S.], the Adult Rights Law, which gives to persons eighteen through twenty years of age all rights, privileges, and obligations of all persons twenty-one years of age or older, affects only existing laws. There is no law requiring a donor to provide that final distribution of his estate take place when the beneficiary reaches twenty-one years of age. Any will or any life insurance policy written or entered into before or after July 1, 1973, the effective date of the Adult Rights Law, which requires the age of twenty-one as a prerequisite for a partial or final distributions of an estate or of insurance benefits, is to be complied with. Chapter 73-21 should have no effect on any such document.

Another situation is where the estate is an intestate one, and its assets are being held by the personal representative or by a guardian for the heir until he reaches majority. Section 746.12, F. S. Under the law, a minor cannot receive his property until he is "sui juris." Section 746.12. As of July 1, 1973, this means that the person must be eighteen years of age—the age of majority—before he can take control of his property. Thus, any assets given to a guardian after July 1, 1973, can be distributed to a person eighteen years of age or older. However, if distribution was made before that date to a guardian to hold in trust for a minor beneficiary, it is questionable whether such beneficiary, if now eighteen, can receive his property immediately or whether he must wait until he is twenty-one. I have been unable to find any authority on this particular question and I feel that a judicial determination is necessary to determine whether the Adult Rights Law affects such a situation. *Accord:* Attorney General Opinion 073-271. Until such determination is made, it would be wise for the guardian to remain in control of the property.

073-411—November 7, 1973

SHERIFFS

LIABILITY FOR DETENTION OF MENTALLY ILL PERSONS

To: John W. Collier, Okeechobee County Sheriff, Okeechobee

Prepared by: A. S. Johnston, Assistant Attorney General

QUESTIONS:

1. Does a county sheriff, under Ch. 71-131, Laws of Florida, and the Guidelines for the Implementation of the Florida Mental Health Act (the Baker Act) have the authority to detain and imprison a mentally ill person, not charged with crime, in the county jail when the designated receiving facility refuses to accept such person because of a lack of physical facilities to detain and hold such person?
2. Is a county sheriff liable, either civilly or criminally, for so detaining and imprisoning a mentally ill person, not charged with crime, in the county jail, when he has acted in good faith?
3. Is a county sheriff liable, either civilly or criminally, for so detaining and imprisoning a mentally ill person, not charged with crime, where he has acted in good faith, if he so detained and imprisoned a mentally ill person pursuant to a written order of a county judge or a circuit judge?
4. Is a written order of a county judge or a circuit judge a condition precedent to imprisonment of a mentally ill person, not charged with crime, in a county jail?

SUMMARY:

A sheriff, acting in good faith and when it is necessary for the protection of the patient or others, can detain and imprison a mentally ill person not charged with a crime in the county jail and not be civilly or criminally liable therefor.

Question 1 is answered in the affirmative when such detention is necessary for the protection of the patient or others. Question 2 is answered in the negative unless such detention is not in good faith compliance with the provisions of the act and violates or abuses any of the rights or privileges of the patient which are provided in the act. Questions 3 and 4 are answered in the negative.

In explanation of my response to all four of your questions, your attention is