

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

6. At any place where official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers:

2. At any place where official signs prohibit parking.

Your questions are answered in the affirmative as qualified below. The enforcement authority of municipalities with respect to Ch. 316, F. S., is as follows:

316.016 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(3) MUNICIPALITIES.—

(a) The police department of each chartered municipality shall enforce the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the municipality wherever the public has the right to travel by motor vehicle. However, nothing in this chapter shall affect any law, general, special, or otherwise, in effect on January 1, 1972 relating to “hot pursuit” without the boundaries of the municipality.

It follows, therefore, that municipalities have enforcement authority with respect to traffic violations and accidents occurring on “private property” where the public has the right to travel by motor vehicle. Whether this “right” does exist in any one given situation appears to be a mixed question of fact and law. However, the apparent intent of the legislature is to make Ch. 316, *supra*, applicable with regard to such privately owned “public” or “quasi-public” facilities as shopping centers, parking lots, etc. See AGO 051-183, June 28, 1951, Biennial Report of the Attorney General, 1951-1952, p. 481, and AGO’s 058-144, 066-59, and 072-383.

In providing for the enforcement of Ch. 316, F. S., the legislature did not distinguish between public roadways and private property where the public has a right to travel by motor vehicle. There does not appear to be any reasonable basis for such a distinction. Indeed, §316.051(1) provides that Ch. 316 shall apply “upon all state maintained highways, county maintained highways, and municipal streets and alleys and wherever vehicles have the right to travel.”

073-324—September 6, 1973

WARRANTS

BY WHOM SERVED; SUFFICIENCY

MUNICIPALITIES

ADOPTION OF STATE MISDEMEANORS; RULES AND COSTS
IN MUNICIPAL COURT

To: Richard A. Gordon, Chief of Police, Niceville

Prepared by: Wallace E. Allbritton, Assistant Attorney General

QUESTIONS:

1. May an arrest warrant addressed to a chief of police be served by

any of the officers under his direction although not specifically addressed to that class of officers?

2. Must an arrest warrant contain a completed "officer's return" in order for the service of the warrant to be valid?

3. May a municipality have the authority to adopt by reference all misdemeanors in the Florida Statutes?

4. Is Rule 3.130, CrPR, applicable in municipal courts?

5. Has a municipal judge the authority to assess a five-dollar fee for each case that appears on the court docket?

SUMMARY:

An arrest warrant addressed only to the chief of police may be served by any officer under his direction, although not specifically addressed to that class of officers. The absence of a completed "officer's return" on the back of a warrant will not invalidate the service of the warrant. A municipality has the statutory authority to adopt by reference all misdemeanors in the Florida Statutes. Rule 3.130 CrPR, has not been adopted by the Florida Traffic Court Rules governing practice and procedure in municipal courts. Based on a municipal ordinance providing for his compensation, a municipal judge has the authority to assess a five-dollar fee for each case that appears on the court docket.

AS TO QUESTION 1:

A municipal police officer, under the direction of the chief of police, may serve a warrant of arrest although said warrant is not specifically addressed to him. Section 168.03, F. S. 1971, provides:

168.03 Process of municipal court; by whom executed.—The process of the mayor's court, or other municipal courts, of the cities and towns within the state shall extend to and may be served anywhere within the territorial limits of the county in which said city, or town, is located, and all summons, subpoenas, warrants and other process of the mayor's court, or other municipal courts, may be served and executed by the city, or town marshal, his deputies, or other executive officer of such courts, anywhere within the territorial limits of the county within which the court issuing the same is located. Special or local acts heretofore or hereafter enacted shall not confer jurisdiction for service of such process beyond the confines of the county wherein the municipality is situate.

AS TO QUESTION 2:

The failure of an arrest warrant to have a completed "officer's return" will not invalidate the service of the warrant. Rule 3.121(7)(b), CrPR, provides:

No arrest warrant shall be dismissed nor shall any person in custody be discharged because of any defect as to form in the warrant; but, the warrant may be amended by the magistrate to remedy such defect.

The filling out of an officer's return, supplying such information as date and time of service, is a ministerial function and facilitates bookkeeping procedures. However, the service of an arrest warrant issued on legally sufficient probable cause would be invalid only if it wholly failed to charge an offense as defined by law. *State v. Emanuel*, 153 So.2d 839 (2 D.C.A. Fla., 1963).

AS TO QUESTION 3:

This question is answered in the affirmative. Section 165.191, F. S., provides in pertinent part as follows:

(2) Any municipality is hereby authorized and empowered to adopt or incorporate by reference the provisions of any code or public record, or

any portion thereof, without setting forth the provisions of such code or public record in full, provided that at least three copies of such code or public record (except Florida or federal statutes) which is adopted or incorporated by reference are filed in the office of the city clerk, and there kept available for public use, inspection and examination. The filing requirement herein required shall not be deemed to be complied with unless the required copies of such code or public record are filed with the city clerk for a period of ten days prior to the passage of the ordinance adopting or incorporating such code or public record by reference.

(3) Nothing contained in this section shall be deemed to relieve the municipality from any requirement of publishing any ordinance which adopts or incorporates any such code or public record by reference, but all provisions applicable to such publication shall be fully and completely carried out as if no code or public record was adopted or incorporated therein.

(4) Nothing contained in this section shall be deemed to permit the adoption of the penalty clauses by reference which may be established in the code or public record which is adopted or incorporated by reference, but all penalty clauses shall be set forth in full in the adopting ordinance and be published along with and in the same manner as the adopting ordinance is required to be published.

See also State ex rel. McFarland v. Roberts, 74 So.2d 88 (Fla. 1954).

AS TO QUESTION 4:

Rule 3.130(a) (b) (1), CrPR, provides:

Except when he has been previously released in a lawful manner, every arrested person shall be taken before a judicial officer within twenty-four (24) hours of his arrest. The chief judge of the circuit for each county within the circuit shall designate one or more judicial officers from the circuit court, or county court, to be available for first appearance and proceedings.

Rule 6.13, Florida Traffic Court Rules, adopts several of the Florida Rules of Criminal Procedure applicable to jury trials, but Rule 3.130(a) (b) (1) is not one of them.

I have found no rule, statute, or case law which expressly requires that a person arrested on a traffic charge be brought before a judicial officer within twenty-four hours. But when a person is arrested on one of the charges set forth in Rule 6.12, TrCR, and cannot make bond, it is suggested that the "twenty-four-hour rule" would be a good one to follow.

AS TO QUESTION 5:

This question is answered in the affirmative but requires some explanation. The present municipal charter of the City of Niceville, created by Ch. 31034, 1955, Laws of Florida, provides in pertinent part as follows:

Section 48. MUNICIPAL COURT. There shall be a court for the trial of misdemeanor offenses known as the Municipal Court, with powers and duties such as are defined and prescribed in the present City ordinances and not in conflict with this Act. The magistrate of said court shall be known as the City Judge and shall be appointed by the Council, to hold office until his successor is appointed, and *at a salary to be fixed by the Council.* (Emphasis supplied.)

Section 52. The City Council shall appoint the City Clerk, the City Attorney, and the City Judge. All other appointed officers and employees

shall be appointed by the City Manager. *The Council shall fix, by ordinance, the compensation of the City Manager, the Mayor, the City Clerk, the City Attorney, and the City Judge.* The City Manager shall fix the salaries or compensation of all other officers and employees. (Emphasis supplied.)

* * * * *

Section 60. a. The Municipal Court shall have jurisdiction for the trial of all offenses arising under the Charter and the ordinances of the City. The City Clerk shall act as Clerk of the Court, and the Judge of the said Court shall be appointed by the City Council.

b. The City Judge shall have power to try all cases involving the violation of the City Charter and ordinances and for such violations to impose such penalties or fines as may be prescribed by ordinance, and shall have power to try cases upon information filed by the City Attorney, or upon affidavit filed by the complaining witness; and shall have the right to administer oath and the power to issue warrants for arrest upon proper information or affidavits and to issue summons to compel the attendance of witnesses. All summons and warrants shall be attested by the Clerk of the Municipal Court and may be served by a police officer of the City. *The City Judge shall have the exclusive power to impose fines for the breach of any City ordinance, to estreat and reinstate bonds.* (Emphasis supplied.)

* * * * *

d. The City Judge is hereby authorized to promulgate rules and regulations for the government of such Municipal Court, and to provide for the costs of all prosecutions in said Court.

It appears that the City Council of Niceville in accordance with the pertinent charter provisions has duly enacted a municipal ordinance providing for the compensation of the city judge and other officers. The ordinance provides that the city judge will be compensated in the amount of five dollars per case. Therefore, based on the provisions of said municipal ordinance and the charter provisions authorizing it, the municipal judge does have the authority to assess a five-dollar fee for each case that appears on the court docket.

073-325—September 6, 1973

TAXATION

HOMESTEAD, WIDOWS', DISABILITY, AND DISABLED VETERANS' EXEMPTIONS

To: Lamar Jenkins, Suwannee County Tax Assessor, Live Oak

Prepared by: Winifred L. Wentworth, Assistant Attorney General and David M.
Hudson, Legal Intern

QUESTIONS:

1. May a tax exemption be applied to a parcel of land which does not join the homestead when the exemption is granted for "additional" homestead exemption granted to certain persons sixty-five years of age or older pursuant to §196.031(3), F. S.?

2. May a tax exemption be applied to a parcel of land which does not join the homestead when the exemption is granted for widows, blind