

for the Petition for No Administration Necessary, all of the documents filed in the estate in connection therewith "are relevant to and would have been filed in the estate if it had originally contemplated the issuance of letters and the administration of the estate."

Under §732.29, F. S. 1971, a state agency-creditor of the estate of a decedent or an heir who is apprehensive that the administration of the estate of a decedent may be initiated without its or his knowledge may file a "caveat" in the office of the county judge (now the circuit court under revised Art. V, State Const.), entitling such agency or heir to notice when and if the decedent's will is filed for probate. But the estate of the decedent is not actually opened for the administration by the filing of the caveat. The caveat serves the purposes only of the caveator and does not constitute a part of the administration of the estate as in the case of the documents referred to in AGO 072-390. This being so, I am inclined to the view that the personal representative is not entitled to any credit for the ten dollar fee paid by a caveator and should pay the uniform filing fee prescribed by the statute—twenty-five, sixty, or seventy-five dollars—for the "filing of all documents in any estate."

Accordingly, pending legislative or judicial clarification of this matter, your question is answered in the negative.

073-74—March 22, 1973

ARRESTS

FINGERPRINTING PERSONS ARRESTED BY MUNICIPAL POLICE OFFICERS

To: Bernard Garmire, Chief of Police, Miami

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QUESTIONS:

1. Are municipal police officers permitted to fingerprint persons charged with criminal offenses to the same extent as are sheriffs pursuant to §30.31, F. S.?

2. If a person is arrested by municipal police officers and charged with a criminal offense but refuses to submit to fingerprinting, what action can be taken to secure the fingerprints?

SUMMARY:

Municipal police officers may fingerprint persons lawfully arrested and charged with criminal offenses. If the lawfully arrested person refuses to submit to fingerprinting, the fingerprints may be secured pursuant to the provisions of Rules 3.130(b) (1) and 3.220(b) (1) (iii), Florida Rules of Criminal Procedure.

The authority for sheriffs of this state to fingerprint all persons charged with any criminal offense is established by §30.31, F. S., which provides:

Fingerprinting persons charged with crime.—

(1) It is the duty of the sheriffs of the state to fingerprint all persons hereafter charged with or convicted of a felony upon so being charged or convicted and to submit such prints to the federal bureau of investigation and the department of law enforcement. The sheriffs of the state may fingerprint all persons charged with or convicted of any criminal offense when in their opinion it is necessary for the protection of the public.

(2) The sheriffs of the respective counties are hereby required to furnish a copy of all fingerprints made by them to the federal bureau of investigation.

As can be seen, §30.31, F. S., makes it a mandatory duty of the sheriffs of the state to fingerprint all persons charged with or convicted of a felony. In a prior opinion from the Attorney General, it was found that pursuant to the authority of §30.31, a sheriff in his discretion could require the fingerprinting of a person charged with a misdemeanor. Attorney General Opinion 055-110. My research reveals no general statutory authority which would give to municipal police officers the same power given to the sheriffs of this state to fingerprint persons charged with criminal offenses. However, failure to find a statutory grant of authority in this area does not lead to a conclusion that municipal police officers do not have authority to fingerprint persons charged with criminal offenses.

There is no question but that once a person has been lawfully arrested for a criminal offense, the taking of that person's fingerprints is constitutionally permissible. *Gentile v. State*, 190 So.2d 200 (3 D.C.A. Fla., 1966); *Schmerber v. California*, 384 U.S. 757 (1966); *Gilbert v. California*, 388 U.S. 263 (1967); *Anderson v. State*, 241 So.2d 390 (Fla. 1970).

A municipal police officer is also a peace officer and as such is authorized and empowered to enforce state laws and to make arrests without warrant for violations of the state criminal laws. *See* §901.15, F. S., and AGO 052-268, Sept. 4, 1952, Biennial Report of the Attorney General, 1951-1952, p. 764. Inasmuch as municipal police officers are vested with law enforcement duties, not unlike the duties of the sheriffs in this state, and inasmuch as the public purposes served by fingerprinting persons charged with criminal offenses are the same, regardless of the law enforcement agency involved, your first inquiry must be answered in the affirmative.

As to your second question concerning a person who is arrested by municipal police officers and charged with a criminal offense but refuses to submit to fingerprinting, I refer you to the Florida Rules of Criminal Procedure. Rule 3.130(b)(1) states:

(1) Prompt First Appearance.

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.

Thus, pursuant to the preceding rule, if the arrested person has not previously submitted to a fingerprinting prior to appearing before a judicial officer, when this appearance is made, the judicial officer could and would order fingerprints to be taken before allowing the arrested person to be released prior to trial, or, should release be denied, prior to returning the person to a place of confinement.

In addition, Rule 3.220, CrPR, sets out the procedures to be followed by the state and defense concerning pretrial discovery. Rule 3.220(b) (1) (iii) provides that after the filing of the indictment or information, a judicial officer may require the accused to be fingerprinted.