

law authorized such assessment of costs and attorneys' fees. *Cf. McCord v. Smith*, 43 So.2d 704 (Fla. 1950).

As a caveat, it should be noted that retroactive laws are characterized by a lack of notice and knowledge of past conditions and such laws tend to disturb the sense of security in past transactions. *Sutherland on Statutory Construction*, 3rd ed., §§2212 and 2201. In particular, the notice aspect of such laws has come, in recent years, under strict judicial scrutiny. *See, Goldberg v. Kelly*, 397 U.S. 254 (1970).

It is elemental to due process that an individual may not be penalized until given adequate notice and an opportunity to be heard. If an ordinance in its application would circumvent these requirements, serious constitutional problems would arise. However, since in the instant case the city ordinances clearly provide for adequate notice and a hearing on the issue before any action may be taken, a denial of due process in connection with circumvented notice and hearing requirements is not presented.

073-449—November 29, 1973

MUNICIPAL HOME RULE POWERS ACT

PROCEDURE FOR AMENDMENT OF ORDINANCES

To: W. W. Caldwell, City Attorney, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Does §166.041(2), F. S. [Ch. 73-129, Laws of Florida], require that amendatory municipal ordinances shall set out the act, section, subsection, or paragraph in full as it was prior to amendment, as well as the act, section, subsection, or paragraph in full as amended?

SUMMARY:

Section 166.041(2), F. S. [Ch. 73-129, Laws of Florida], does not require that ordinances shall set out the act, section, subsection, or paragraph of a section or subsection in full as it was prior to amendment, as well as the act, section, subsection, or paragraph in full as amended.

The amendatory ordinance must set out the revised or amended section, subsection, or paragraph of a section or subsection in full, including all the language of the former section or subsection or paragraph thereof not being deleted or amended and the amendatory language. Enough of the ordinance being amended must be republished to make the meaning of the provision published complete and intelligible from its language.

Section 166.041(2), F. S., as created by §1, Ch. 73-129, Laws of Florida, states in part that "ordinances to revise or amend shall set out in full the revised or amended act, section, subsection, or paragraph of a section or subsection."

The State Constitution, Art. III, §6, has an almost identical provision relating to state statutes. The Florida Supreme Court has addressed itself to this provision several times. *See Jackson v. Consolidated City of Jacksonville*, 225 So.2d 497 (Fla. 1969); *Auto Owners Insurance Co. v. Hillsborough County Aviation Authority*, 153 So.2d 722 (Fla. 1963); *Lipe v. City of Miami*, 141 So.2d 738 (Fla. 1962). The court has stated that the purpose of such provision is "to inform both the legislature and the public of the nature and extent of proposed changes in existing laws." *Auto Owners Insurance Co.*, *supra*, at 725. The court has further held that

. . . when a section, sub-section or paragraph is amended enough of

the act being amended must be republished to make the meaning of the provision published intelligible from its language and to insure that no unexpected meaning results from the combination of that language and other language in the Act. [*Jackson v. Consolidated City of Jackson, supra*, at 508.]

Therefore, under the authority of the above-cited cases, what must be set out in an ordinance is the *revised* or *amended* section, in full, which includes all the language of the former section not being deleted or amended and the amendatory language. If a subsection or paragraph of a subsection is being amended and the language of the section, such as an unnumbered preliminary paragraph of the subsection, is necessary in order to determine and understand the effect of the amendment, then such language is required to be republished along with the amendment so that the amendment becomes an integral part of the whole. Generally, then, the amendatory enactment must be a "complete, coherent and intelligible act" in itself which does not necessitate separate research and analysis of the ordinance being amended in order to ascertain the meaning of the amendment. *Auto Owners Insurance Co., supra*, at 725.

073-450—November 29, 1973

ADULT RIGHTS LAW

PERSONS AGE SEVENTEEN CHARGED WITH CRIME NOT SUBJECT TO TREATMENT AS JUVENILE; NOT AFFECTED BY ADULT RIGHTS LAW

To: *Robert W. Rawlins, Jr., Circuit Judge, Tampa*

Prepared by: *Reeves Bowen, Assistant Attorney General*

QUESTION:

Is a seventeen-year-old person charged with a crime committed after he or she reached the age of seventeen entitled to be dealt with as a delinquent child under the provisions of Ch. 39, F. S., rather than as an adult charged with a crime, in the light of the provisions of Ch. 73-21, Laws of Florida, the Adult Rights Law?

SUMMARY:

A seventeen-year-old person charged with a crime committed after he or she reached the age of seventeen is not entitled to be dealt with as a delinquent child under the provisions of Ch. 39, F. S. The Adult Rights Law has no bearing on this question; it applies only to persons eighteen years of age or older.

Your question must be answered in the negative.

A seventeen-year-old person who commits a crime after reaching the age of seventeen is not a delinquent child within the contemplation of Ch. 39, F. S., which makes provision for dealing with juvenile offenders.

The current definition of "child", as used in Ch. 39, F. S., is contained in §39.01(4), F. S. (1972 Supp.), which reads as follows:

(4) "Child" means any married or unmarried person under the age of seventeen years, or any person who is charged with a violation of law occurring prior to the time that person reached the age of seventeen years.

The current definition of "adult," as used in Ch. 39, F. S., is found in §39.01(7) as amended by §2 of Ch. 73-231, Laws of Florida, which reads as follows: