

economic significance, the surviving corporation has not, in a technical sense, transferred to its stockholders any right to receive new stock. Thus no transfer taxes are due when the old stock of that constituent is surrendered for new, and original issue stamps are required on that phase of the transaction only if, and to the extent that, the aggregate par value of the new stock exceeds that of the surviving constituent for which it is exchanged. In a merger, however, both original issue and transfer stamps are due upon the exchange of new stock for the old stock of those constituent corporations which do not survive.

The reasoning and conclusions of this line of cases were followed by the Florida Supreme Court in *North American Company v. Green*, 120 So.2d 603 (Fla. 1959), Reh. 1960, on the question of taxation of a transfer of stock between a parent corporation and the stockholders of a subsidiary corporation, where the court determined, based on such cases as *Raybestos-Manhattan* and *Jefferson Lake Sulphur Co.*, that such a transfer of stock between the parent and the subsidiary's stockholders was a taxable transfer.

While the federal law was amended in 1958 to exempt certain merger and consolidation transactions from both federal stock issue and transfer taxes where a mere change in identity, form, and place of organization is effected [26 U.S.C.A. (I.R.C. 1954), §§4301, 4321, and 4382 (b) (1) (D), and see *Cabot Corporation v. United States*, *supra*; *Columbia Gas of Pennsylvania, Inc. v. United States*, 446 F.2d 320 (3rd Cir. 1971)], no such amendment for merely formal issues and transfers involving no change in ownership and no new dedication of capital was incorporated into the Florida Statutes. Therefore, the law of Florida would require that the issuance and transfer of stock in a merger or consolidation is subject to documentary transfer stamp taxes as summarized above in the *Fidelity-Baltimore* case.

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PAROLE AND PROBATION COMMISSION

HANDLING FUNDS FOR PROBATIONERS

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

Prepared by: *Donald K. Rudser, Assistant Attorney General*

QUESTION:

Is the Parole and Probation Commission authorized to collect and disburse moneys, including maintaining bank accounts for such purposes, for court ordered restitution, child support, court costs, cost of probation, etc. imposed upon a probationer as conditions of probation?

SUMMARY:

The Parole and Probation Commission may assist the court in the collection of moneys ordered as a condition of probation but does not have the authority to maintain a bank account to facilitate the collection and disbursement of said funds. Therefore, all funds should be deposited with the clerk of the appropriate court and disbursed through the clerk's office.

Obviously, §948.03, F. S., as liberally interpreted by the Florida courts, see *State v. Williams*, 237 So.2d 69 (3 D.C.A. Fla., 1970), is sufficiently broad to permit the court to order, as conditions of probation, restitution, child support, court costs, and costs of probation. Similarly, the duties imposed by law on the Parole and

Probation Commission through §948.02, F. S., clearly contemplate that the commission, in supervising the probationer, assist the court in the collection of any moneys imposed by the order of probation. However, the statutes delineating the duties of the Parole and Probation Commission are silent as to the authority to disburse such funds, including maintaining bank accounts for such purposes.

Inasmuch as an order of probation is a judicial order, amendable by the court (§948.03(2), F. S.), proper disbursement of funds should be handled through the clerk of said court. Indeed, a clerk of the circuit court is specifically required to be bonded to faithfully discharge his duties, including the handling of funds (§28.01, F. S.). Further, the legislature has specifically established certain funds, including the fine and forfeiture fund, requiring the clerks of the courts to report such funds to the county (§142.03, F. S.).

Therefore, all funds collected pursuant to an order of probation should be deposited with the office of the clerk of the court entering the order of probation, and disbursed through said clerk's office.

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## PUBLIC FUNDS

### LAW ENFORCEMENT EDUCATION EXPENDITURES

To: Robert L. Brown, Monroe County Sheriff, Key West

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

### QUESTIONS:

1. May the salaries of personnel of a sheriff's department attending training classes during other than normal duty hours be paid from the fund consisting of assessments collected under §23.105, F. S.?
2. May a sheriff's department purchase riot equipment for training which will also be used for normal work?

### SUMMARY

Section 23.105, F. S., does not permit the payment of salaries to law enforcement officers attending training courses during other than normal day hours to be paid from the fund derived by the assessment permitted by the statute. It will allow the purchase of riot equipment for training of personnel provided there is an organized training program to utilize such riot equipment.

I respond in the negative. There is no judicial interpretation in regard to the meaning of §23.105, F. S., and, in the absence of such a determination, the language of the statute itself must be turned to and an attempt made to arrive at the legislative intent under which the statute became law. The pertinent language of the statute relating to the purpose of the one dollar levy is that the assessment be used for "law enforcement education expenditures for their respective law enforcement officers." When this language is read *in pari materia* with the other sections of the Florida Police Academy Act or Part VI of Ch. 23, F. S., it is clear that it was the legislative intent to provide funds for law enforcement educational expenditures and not to provide additional funds to local governmental agencies for salaries. The language of §23.105 is most clear that the funds derived from the one dollar assessment permitted by said section are to be used by the local governmental agencies for the *education* of their law enforcement officers. "Education" has been defined as the "[a]cquisition of all knowledge tending to develop and train the individual." *Mitchell v. Reeves*, 196 A. 785 (Conn. 1938). It has further been held that "education" is not confined to the improvement and cultivation of the mind