

legislature's desire that state buildings in Broward County be constructed in accordance with the provisions of the South Florida Building Code, but that enforcement of the code and supervision of construction be vested in the Division of Building Construction and Maintenance in accordance with their long-standing practice under existing law. This interpretation resolves the uncertainty as to the legislature's intent with respect to Ch. 72-482 in a manner which benefits the public and it allows a reasonable field of operation for both the general and special laws on the subject. *See* Sunshine State News Co. v. State, 121 So.2d 705 (3 D.C.A. Fla., 1960), and Markham v. Blount, 175 So.2d 526 (Fla. 1965).

For the foregoing reasons it is my view that until the matter is legislatively or judicially clarified, Ch. 72-482, *supra*, should not be deemed to vest in local building officials in Broward County the authority to enforce the provisions of the South Florida Building Code as to state buildings. The Division of Building Construction and Maintenance has the responsibility of assuring that all state buildings in Broward County are in compliance with the code. The division also continues to have general supervision and control over all state buildings which are constructed throughout Florida.

073-54—March 13, 1973

MUNICIPALITIES

REGULATION OF ESTABLISHMENTS LICENSED BY DIVISION OF BEVERAGE

To: Tom R. Sewell, City Manager, Winter Garden

Prepared by: Stephen F. Dean, Assistant Attorney General

QUESTION:

May a municipality, by ordinance, prohibit sale of alcoholic beverages for consumption on the premises regardless of alcoholic content within its city limits, even though a resident business has been issued a license for such purpose by the Division of Beverage?

SUMMARY:

Under the powers granted municipalities under the state Constitution and general laws of the state, including the general "home rule" provisions thereof, a Florida municipality by ordinance may not prohibit the sale of alcoholic beverages regardless of alcohol content for consumption on the premises within its city limits to a resident business establishment which has been issued a license for such purpose by the Florida Beverage Commission because the state, through a comprehensive system of regulatory laws, maintains preeminence in the regulation and control of alcoholic beverages.

Throughout this opinion, the specific ordinance enacted by the City of Winter Garden is as follows:

Section 5-15. Number of licenses allowed in city.

(a) No person, firm, or corporation engaged in or intending to be engaged in the selling or dealing in alcoholic beverages shall be issued a license or permit to sell such alcoholic beverages in the corporate limits of the city so that the number of such licenses within the limits of the city shall exceed one license to each two thousand five hundred (2,500) residents, or major fraction thereof.

(b) This section shall not apply to those licenses described in Section 561.20(2), Florida Statutes, 1959, nor shall it apply to

establishments in being as of the date of June 27, 1960.

(c) For purposes of this section, persons, firms, or corporations engaged in the business of selling alcoholic beverages shall include those establishments selling all types of alcoholic beverages regardless of their percentage of alcoholic content.

The above ordinance was enacted pursuant to the following enabling legislation found at §10(28) of Ch. 61-3004, Laws of Florida:

Powers of City; General. The City of Winter Garden hereby created, established and organized, shall have full power and authority:

* * * * *

(28) Sale, etc., of Intoxicants. To regulate the hours of sale of intoxicating liquors, wines and beers within the limits of the city. To regulate or prohibit the sale, transportation or possession of intoxicating liquors, wines and beers within the limits of the city.

The Florida Supreme Court considered the specific subject matter raised by your question in *City of Miami v. Kichinko*, 22 So.2d 627 (Fla. 1945), when it quoted at length from the order of Circuit Judge Ross Williams which it affirmed. The court, in considering the validity of a City of Miami ordinance purporting to limit the number of liquor licenses according to population, said it is elementary that municipalities have or can possess only such power as is conferred by expressed or implied provisions of law. The State Beverage Law does not impair the right of any municipality to enact ordinances regulating the hours of business and location of places of business, and prescribing sanitary regulations therefor, of any licensee under the beverage law within the corporate limits of such city or town. These powers are all given to municipalities by the State Beverage Act. Examination of the act fails to disclose any power, expressed or implied, over the subject of intoxicating liquor, other than enumerated above. Applying the familiar legal maxim, *expressio unius est exclusio alterius*, the court states it was clearly the intent of the legislature to inhibit all powers of municipalities over the subject of intoxicating liquors, except as to those powers specifically enumerated. See §562.45, F. S. Section 562.14, F. S., provides further that "[e]xcept as otherwise provided by . . . municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license . . . between the hours of midnight and 7:00 a.m. of the following day."

Section 168.07, F. S. 1971, also deals with municipal powers concerning alcoholic beverage regulation and provides as follows:

(1) The city or town council may regulate and restrain all tippling, barrooms and all places where beer, wine or spirituous liquor of any kind is sold, at retail or to be drunk upon the premises where sold . . . and taverns, hotels and other houses for public entertainment; require all such places to be kept and used subject to such reasonable regulations as the council may prescribe; require all keepers of such places to procure from the city or town a license for keeping the same, under such pains, penalties and forfeitures as the council may prescribe.

It should be noted, however, that the scope of the power granted under §168.07 was considered by the Florida Supreme Court in *Nelson v. State*, 26 So.2d 60 (Fla. 1946), in which the court reconsidered *City of Miami v. Kichinko*, *supra*, with regard to municipal powers beyond those specifically mentioned in the latter case. The court, in discussing §168.07, held that said statute gives a city broad police power to regulate and those powers should not be stricken down unless they run

afoul of some provision of the beverage laws. The corollary to this rule as stated in the case is *that a municipality may regulate areas not regulated by the state in such a manner that municipal regulation does not run afoul or infringe some provision of the state regulation.*

The most important change in the constitutional and statutory law since *Nelson v. State*, *supra*, has been in the area of general municipal governmental powers granted pursuant to Art. VIII, §2, State Const., as implemented by §167.005, F. S. 1971. Together these provisions grant "home rule" to Florida municipalities. The question therefore becomes whether the grant of home rule would modify the decisions reached in the cases cited above.

The Supreme Court, considering the question of state and local regulation with regard to Art. VIII, §2, State Const., in *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801 (Fla. 1972), relative to municipal authority to control rents said:

Local governments have not been given omnipotence by home rule provisions or by Art. VIII, §2 of the State Const. "Matters that because of their nature are inherently reserved for the State alone and among which have been the master and servant and landlord and tenant relationships, matters of descent, the administration of estates . . . and many other matters of general and statewide significance, are not proper subjects for local treatment. . . ." *Wagner v. Mayor and Municipal Council of Newark*, *supra*, at 800. Mr. Justice Cardozo in *Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705, 713 (Ct. App. 1929) made the following statement which is in support of the abovestated proposition. "There are other affairs exclusively those of the state. . . . None of these things can be said to touch the affairs that a city is organized to regulate, whether we have reference to history or to tradition or to the existing forms of charters."

Article VIII, §5, State Const., which provides as follows, should also be considered:

Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. . . . *Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.* (Emphasis supplied.)

The emphasized portion of the quoted material states that the sale shall be regulated by law, which refers to the general or special law. It is therefore clear that the state legislature is vested with the power to regulate the sale of alcoholic beverages by statute. Under the home rule powers granted to municipalities by the Constitution, as implemented by §167.005, F. S. 1971, they may exercise any power for municipal purposes "except as otherwise provided by law" [Art. VIII, §2(b), State Const.], or where "prohibited by general or special law" (§167.005). The state beverage laws do, however, as hereinabove noted, inhibit the powers of municipalities to control the licensing and regulation of the sale of alcoholic beverages (except for the enumerated exceptions therein).

With regard to general or local laws regulating alcoholic beverages pursuant to Art. VIII, §5, State Const., the legislature completely revised, amended, and reenacted the State's Beverage Law by substantial changes in Ch. 72-230, Laws of Florida. The five chapters contained therein constitute a complete plan for the state's regulation of this area with only limited authority granted to local governments. The extent of this delegated authority has been reviewed above with one exception as hereinafter discussed.

The only exception to the general law which provides for local limitation by population of beverage licenses is contained in §561.20, F. S., as amended in Ch. 72-230, *supra*, which provides in pertinent part as follows:

- (1) No license under §565.02(1)(a)-(f), inclusive, shall be issued so

that the number of such licenses within the limits of the territory of any county shall exceed one such license to each 2500 residents, or major fraction thereof, within such county, as shown by the last regular statewide census, either federal or state, of such county. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

* * * * *

(4) The limitations herein prescribed shall not affect or repeal any existing or future local or special act relating to the limitation by population and exceptions or exemptions from such limitation by population of such licenses within any incorporated city or town or county that may be in conflict herewith.

It would therefore appear that the only delegation of powers to local governments concerning regulation of licenses by population is contained in §561.20(4), which would require local regulation be pursuant to a local or special act of the legislature.

In the instant situation the limitation by population of beverage licenses is contained in a municipal ordinance, not a local or special act of the legislature. Such regulation by municipal ordinance is not authorized by any provision of the state beverage law. No local or special law relating to the limitation by population or exceptions therefrom of beverage licenses within your city has been brought to my attention, and I assume that no such local or special law exists.

Therefore, the answer to the question presented must be in the negative.

073-55—March 13, 1973

TRAFFIC CONTROL LAW

ARRESTS IN CONNECTION WITH TRAFFIC ACCIDENTS; QUESTIONING DRIVER INVOLVED

To: Elton T. Naylor, Chief of Police, Hollywood

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTIONS:

1. When the driver of an automobile involved in an accident has already left the scene of the accident before the arrival of an investigating officer, does §316.017, F. S., authorize such officer to go elsewhere after making his investigation and arrest such driver upon probable cause to believe that he committed an offense in connection with the accident?

2. Does the amount of time that has elapsed between the time of the accident and the time that the officer finds out the identity of the driver to be arrested make any vital difference?

3. May a police officer arrest a person under §316.017 on the basis of information turned over to him by another police officer who conducted the initial investigation?

4. In the event that a police officer ascertains the whereabouts of a driver who left the scene of a property damage accident and goes to such driver's home to interview him, does the police officer prior to any questioning have to advise the suspect of his rights under *Miranda v. Arizona*?

SUMMARY:

Section 316.017, F. S., authorizes an officer making an investiga-