

division of ad valorem taxation. A conflict might also occur if a pay item or job classification as set out in the tax assessor's budget request is consistent with the civil service pay schedule, but the division deems it to be either inadequate, excessive or "unreasonable in light of the workload of the assessor's office." On the other hand, an assessor might present a budget request which includes a pay item or job classification which is inconsistent with the civil service pay schedule and the division or the administration commission might determine that the budget request is inadequate, excessive, or unreasonable and amend it to reflect the civil service schedule, in which case there would be no conflict.

The Division of Ad Valorem Tax and the Assessment Administration Review Commission are, in effect, vested with the authority to supersede those civil service standards. Section 6 of Ch. 73-172, *supra*, does not in terms or by apparent intent require that the budget reviewing authorities defer to regulatory standards set by the civil service board pursuant to Ch. 67-1370, and §22 would, as noted above, infer to the contrary at least as to "compensation of any employee."

It should be emphasized that Ch. 73-172, *supra*, does not abrogate the decision-making authority conferred by law upon the Civil Service Board of Escambia County. Chapter 73-172 does, however, modify the finality of decisions made by the board under certain circumstances. This construction of Chs. 67-1370 and 73-172 comports with the apparent legislative goals of insuring uniform control over assessors' budgets at the state level without sacrificing initial control at local levels of government.

The foregoing treatment of question 1 obviates an answer to question 2.

073-390—October 16, 1973

PROBATION

PAROLE AND PROBATION COMMISSION HAS NO AUTHORITY TO SUPERVISE PERSON NOT VALIDLY PLACED ON PROBATION

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

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

Is the Florida Parole and Probation Commission either required or authorized to supervise a defendant as a probationer after a trial court has adjudged him not guilty of the crime charged against him by reason of insanity and has thereupon made an order of probation in the same case, placing him on probation under supervision of the commission?

SUMMARY:

After a defendant in a criminal case is adjudged not guilty, whether by reason of insanity or for another reason, the trial court has no authority to place him on probation and an order purporting to do so is void. Therefore, even if such an order of probation specifies that such defendant be under the supervision of the Parole and Probation Commission during probation, said commission has no duty or authority to supervise him as a probationer.

Probation is a statutory creation and a court has no authority to place a defendant on probation unless he meets one of the criteria set forth in §948.01 (1), F. S., which specifies when a defendant is eligible for probation consideration and which reads as follows:

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case *has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury*, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant. (Emphasis supplied.)

Also §948.01 (5), F. S., says:

(5) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said commission.

A defendant who has been adjudged not guilty, whether by reason of insanity or for some other reason, cannot be placed on probation because he does not meet any of the criteria of said §948.01(1), *supra*. Therefore, an order purporting to place him on probation is void and the Parole and Probation Commission has no duty or authority to supervise such defendant as a probationer even though the order of probation says that he shall be under the supervision of the commission.

073-391—October 16, 1973

FIREARMS

POSSESSION OF FIREARM AT PLACE OF BUSINESS

To: J. G. Littleton, Chief of Police, Tampa

Prepared by: Wallace E. Allbritton, Assistant Attorney General

QUESTION:

Is an owner or employee of a business place which is open to the public, such as a gas station, who wears a nonconcealed firearm during the normal course of business without a permit or license in violation of §790.05, F. S., or does he fall within the exception provided by §790.25 (3)(n), F. S.?

SUMMARY:

A person openly carrying a firearm at his place of business is not protected from violating §790.05, F. S., because of §790.25 (3) (n), F. S. It is permissible, however, to keep a weapon at one's home or place of business, without a permit or license, for the purpose of protection of person or property. In a place of business, the weapon could be properly kept, for example, in a desk drawer, under a counter, in the cash register, or in another similar location.

Section 790.05, F. S., provides:

790.05 Penalty for carrying pistol or repeating rifle without first obtaining license.—Whoever shall carry around with him, or have in his *manual possession*, in any county in this state, any pistol, winchester rifle or other repeating rifle, without having a license from the county commissioners of the respective counties of this state shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083; provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, or United States marshals or