

but may consist of the cultivation of one's physical faculties. Commissioners of District of Columbia v. Shannon, 17 F.2d 219 (D.C. Cir. 1927). With this examination of the exact language of the statute, I must advise you that salaries of law enforcement officers attending training classes during other than normal duty hours cannot be paid to law enforcement personnel attending training classes from funds derived from the assessment permitted by §23.105.

Your second question is answered in the affirmative provided, however, that there is an existing training program that will utilize the riot equipment for the training and development of the department personnel as a part of the department's overall educational training program. This response does not approve the purchase of riot equipment for use by the department if the same is not a part of an organized training program.

073-285—August 15, 1973

REPLEVIN

REPOSSESSION OF PERSONAL PROPERTY

To: E. A. Doug Hendry, Collier County Sheriff, Naples

Prepared by: Enoch J. Whitney, Assistant Attorney General

QUESTION:

Does a reposessor, licensed pursuant to §§493.01-493.27, F. S., have the authority under §493.25(1) to repossess personal property (motor vehicles, goods, and chattels) without seeking a writ of replevin pursuant to Ch. 78, F. S.?

SUMMARY:

An individual or agency licensed to repossess personal property is required by §493.25(1), F. S., to receive authorization to act as reposessor from the legal owner or mortgagee of the property. The repossession is to be accomplished under the replevin law, Ch. 78, F. S., as created by Ch. 73-20, Laws of Florida, and the possessor of the property is ordinarily entitled to a court hearing before the property is repossessed.

Section 493.25(1), F. S., provides:

Licensees and employees acting as repossessors shall be prohibited from: . . . [r]ecovering personal property including personal property registered under the motor vehicle code, which has been sold under a conditional sales agreement or under the terms of a chattel mortgage *before authorization has been received from the legal owner of such property or from the mortgagee* when such personal property is subject to the terms of a chattel mortgage. (Emphasis supplied.)

The above-quoted statutory provisions must be construed *in pari materia* with all other laws on the same or similar subjects, *State v. Hayles*, 240 So.2d 1 (Fla. 1970); and *State ex rel. McClure v. Sullivan*, 43 So.2d 438 (Fla. 1950). In this respect, Ch. 73-20, Laws of Florida, pertains to §§78.01-78.21, F. S., providing procedures for the recovery of personal property wrongfully detained, and authorizing the issuance of a writ of replevin to accomplish such purpose. It is important to note that the possessor of personal property is entitled to a court hearing before a writ of replevin may issue, unless an emergency exists which might endanger the property. See §§78.065, 78.067, and 78.073, *supra*.

When the foregoing statutes are construed *in pari materia*, as discussed above,

so as to find a reasonable field of operation which preserves the force and effect of each statute, it seems clear that a reposessor licensed pursuant to §§493.01-493.27, *supra*, must first receive authorization from the legal owner or mortgagee of the property before proceeding to repossess said property. Upon obtaining such authorization, the reposessor should comply with the statutory requirements for obtaining a writ of replevin (§§78.01-78.21, *supra*).

073-286—August 15, 1973

PAWNBROKERS

RECOVERY OF STOLEN PROPERTY

To: K. C. Alvarez, Chief of Police, Ocala

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

QUESTIONS:

1. Is a pawnbroker a "buyer in the ordinary course of business" within the meaning of §671.201, F. S., of the Uniform Commercial Code?
2. How may §705.06, F. S., apply to the recovery of property from pawnbrokers?
3. May §§671.201(9) and 705.06, F. S., confer upon a police department the power to seize stolen personal property from a pawnbroker?
4. What legal process is required to seize stolen property from a pawn shop whenever it is not necessary to enter a suit for said property?
5. What legal process is required to seize stolen property from another county or state from the pawn shop and return it to the law enforcement agency handling the theft of said property in the other county or state?
6. To whom is the property returned after the trial is over or after the case is closed if the seized stolen property is not used as evidence in court or if the case is not prosecuted: the pawn shop or the person from whom it was stolen?
7. Does the owner of a pawn shop have any legal right to withhold possession of stolen property from the rightful owner and to demand as a condition to delivery of possession that the rightful owner pay the pawn broker's pledge for the amount advanced to the pledgor?
8. Does the owner of a pawn shop have any legal recourse against any person other than the person who wrongfully pawned the stolen property when the property is lawfully seized by a law enforcement agency?

SUMMARY:

Seizure of stolen property found in the hands of a pawnbroker who is to be charged with a crime must be pursuant to the law of search and seizure as it now exists in this state. Property in the hands of pawnbrokers which has been stolen by a third party and either sold or pledged to the pawnbroker in the ordinary course of his business and without his knowledge that the property was either stolen or embezzled can only be lawfully seized through lawful court process. Seized property in the hands of a trial court, used or in use as evidence in the trial, should be returned to the true owner by the trial court under such procedure or processes as determined by the trial court.