

disabled." (Emphasis supplied.) However, the *only* penalty mentioned in §413.08 is for interfering with the enumerated rights of a "totally or partially *blind* person." (Emphasis supplied.) Since there is no mention of physically disabled persons in the penalty section, it would seem that §413.08(2) does not apply to the physically disabled. I can locate no other penalty provisions which would apply to such persons.

AS TO QUESTION 2:

Section 413.08(3), F. S., says that it is the policy of the state to employ the visually and physically handicapped in the service of the state and "in all other employment *supported in whole or in part by public funds.*" (Emphasis supplied.) The subsection goes on to say that "*no employer* shall refuse employment" The words "no employer" refer back to the first part of the subsection so that they mean no employer whose business is supported in whole or in part by the state. This subsection does not regulate employment by purely private businesses unsupported by any public funds.

This question is answered in the negative.

AS TO QUESTION 3:

If a person wishes to invoke the penalty provisions of §413.08, F. S., a valid complaint to a state attorney should provide grounds for a state action against the offending party. An action requesting the court to enjoin an employer from discriminating against the visually or physically handicapped might also be brought in order to compel compliance with §413.08(3).

AS TO QUESTION 4:

According to Black's Law Dictionary, 4th Ed. 1951, "a physical disability is a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation." In Webster's Seventh New Collegiate Dictionary, epilepsy is defined as:

. . . any of various disorders marked by disturbed electrical rhythms of the central nervous system and typically manifested by convulsive attacks usually with clouding of consciousness.

It has also been defined as "a symptom of a neurological disorder characterized by seizure, convulsions or temporary loss of consciousness." *People v. Maiten*, 216 N.E.2d 170 (1 D.C.A. Ill., 1966). Based on the above definitions, epilepsy is a physical disability and should be included as such under §413.08(3), F. S.

073-318—September 6, 1973

PUBLIC PROPERTY

SOVEREIGNTY LANDS NOT PUBLIC PROPERTY FOR PURPOSES OF §705.16(2)(c)

To: *Richard Stone, Secretary of State, Tallahassee*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

Does the Miami River, its feeder canals, the submerged lands under both, and the uplands adjacent to both up to and including the mean high-water mark, come within the definition of "public property" in §705.16(2)(c), F. S.?

SUMMARY:

Assuming that the title to the water bottoms of the Miami River, its feeder canals, and the adjacent foreshore below high-water mark is held by the state in its sovereign capacity in trust for the people, such sovereignty lands are not "public property" within the purview of §705.16(2) (c), F. S., authorizing local governmental officials to remove and destroy wrecked or derelict property found abandoned on public or private property. The right to remove "abandoned vessels" from the public waters or adjacent foreshore below high-water mark is vested in the state, acting through the Department of Natural Resources under §376.15, *id.*, or the Board of Trustees of the Internal Improvement Trust Fund under §253.04, *id.*

It is assumed, for the purpose of this opinion, that the title to the water bottoms of the Miami River, its feeder canals, and the adjacent uplands up to the high-water mark is held by the state by virtue of its sovereignty in trust for the people. Based upon this assumption, your question is answered in the negative. It is, therefore, not necessary to answer your other questions, which were premised upon an affirmative answer.

Section 705.16, *supra*, was adopted in 1969 [Ch. 69-324, Laws of Florida] to provide a procedure for the removal and destruction of abandoned property "supplemental to" the other procedures provided by Ch. 705, *id.* It authorizes the appropriate official of a county or city, after due notice, to remove and destroy "abandoned property" found on public or private property within its territorial limits. "Abandoned property" is defined as "wrecked or derelict property having no value other than nominal salvage value, if any, which has been left abandoned and unprotected from the elements," including specifically "wrecked, inoperative, or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture," and any other similar article. "Public property" is defined to mean

lands and improvements owned by the federal government, the State of Florida, the county, or municipalities lying within the county and includes buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property. (Section 705.16(2) (c), F. S.)

The act requires the local law enforcement official to post on the abandoned property a notice that such property is unlawfully upon public property and must be removed within ten days from the date of such notice, otherwise the property shall be presumed to be abandoned property and will be removed and destroyed. Additionally, the local law enforcement officer is required to mail a copy of such notice to the owner if his name and address are reasonably available to the officer. The statute provides also that, if the abandoned property is not removed or reasonable cause for failure to do so is not shown, the local law enforcement officer may cause the same to be removed and destroyed; and the salvage value, if any, may be retained by the local government to be applied against the cost of removal and destruction thereof.

In *State v. Massachusetts Company*, 95 So.2d 902, 907 (Fla. 1957), it was held that the wreck of a vessel resting in the territorial waters of this state is a "derelict" which belongs to the state in its sovereign capacity and that the provisions of §715.01, F. S., vesting in the finder the title to personal property found in public places, did not abrogate this prerogative right of the state derived from the common law. In so holding, the court noted that the state's prerogative right to such derelict vessels could be divested or abrogated by statute but that "unless the statute relied upon expressly so declares or unless this is a necessary inference from its provisions, we will not so interpret it."

This decision is in accord with the general rule that statutes in derogation of the common law must be strictly construed, *see Kittel v. Kittel*, 210 So.2d 1 (Fla. 1968), and will not be held to have displaced the common law any further than is clearly necessary. *Sullivan v. Leatherman*, 48 So.2d 836 (Fla. 1950). The description of public places made in §715.01, *supra*—"public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public"—is similar to the "public property" described in §705.16, *supra*. As noted in *Dunham v. State*, 192 So. 324 (Fla. 1939), the doctrine of *noscitur a sociis* in statutory construction means that general and specific words are associated with and take color from each other, restricting general words to the sense analogous to the less general. Under this doctrine, neither "public places" nor "public property" would ordinarily be interpreted as including public water bottoms held by the state in its sovereign capacity in trust for the people. And *cf.* *State ex rel. Town of Crescent City v. Holland*, 10 So.2d 577 (Fla. 1942), in which the court held that lands under navigable waters below ordinary high-water mark are not among the "public lands" of the state, a portion of the proceeds of the sale of which was required to be deposited in the State School Fund by Art. XII, §4, State Const. 1885. The court said:

The terms "public lands" or "public domain," which are regarded as synonymous, are habitually used in the United States to designate such lands of the United States or of the states as are subject to sale or other disposal under general laws, and are not held back or reserved for any special governmental or public purpose

It seems clear, therefore, that §705.16, *supra*, cannot, consistent with the rules and decisions referred to above, be interpreted as abrogating the state's prerogative rights over sovereignty lands and waters or to abandoned and derelict vessels resting in or upon the territorial waters of this state. For this reason alone, I would be inclined to the view that the public water bottoms of this state are not "public property" within the purview of §705.16(2) (c), *supra*.

But it is not necessary to rely solely upon the rule and decisions referred to above. Section 376.15, F. S. [adopted in 1970 as part of the Oil Spill Prevention and Pollution Control Act, Ch. 70-244, Laws of Florida], makes it unlawful for any person to store or leave any vessel in a "wrecked, junked, or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof" and authorizes the Department of Natural Resources—to the extent not in contravention of any applicable federal act—to remove any derelict vessel from public waters "when the vessel obstructs or threatens to obstruct navigation, contributes to air or water pollution, or in any other way constitutes a danger or potential danger to the environment." (It should be noted that this act was upheld by the United States Supreme Court in *Askew v. American Waterways Operators, Inc.*, 411 U. S. 325 (1973), as against a contention that it was an unconstitutional intrusion into the federal maritime domain.)

The clear intent of the legislature, as expressed in §376.15, *supra*, is to vest in this state agency the authority to remove wrecked and abandoned vessels from the public waters of this state in the circumstances therein described. (*See also* §§253.03 and 253.04, F. S., under which the Board of Trustees of the Internal Improvement Trust Fund has long been vested with the title and the authority to "police, protect, conserve, improve, prevent trespass, damage, or depredation upon" the sovereignty lands of this state, including public water bottoms and tidal lands.) This latest expression of legislative intent with respect to wrecked and abandoned vessels on the public waters of this state confirms my view that public water bottoms were not intended to be included as "public property" of this state or its political subdivisions and municipalities within the purview of §705.16, *supra*, authorizing local governmental officials to remove and destroy abandoned

personal property found on "public property." And, in any event, any conflict or inconsistency between §705.16, *supra*, and §376.15, *supra*, must be resolved in favor of the latter, as the latest expression of the legislative will. *See* Johnson v. State, 27 So.2d 276 (Fla. 1946); Overstreet v. Ty-tan, Inc., 48 So.2d 158 (Fla. 1950).

The authority of the Department of Natural Resources to act under §376.15, *supra*, to rid the "public waters" of this state of hazards to navigation or potential dangers to the environment would seem to include, by fair intendment, abandoned vessels lying below the high-water mark that, under the common law, constitute "purprestures" which the sovereign may remove at pleasure. *See* Williams v. Guthrie, 137 So. 682, 685 (Fla. 1931), stating that any erection on tide lands without a license is "deemed an encroachment upon the property of the sovereign, or as it is termed in the language of the law, a 'purpresture.'" (And, as noted above, the authority of the Board of Trustees of the Internal Improvement Trust Fund extends to tidal lands as well as water bottoms.) The rules of law and decisions with respect to public water bottoms referred to above would seem to be equally applicable to a decision of the question of whether the state-owned "uplands" or tidelands below the high-water mark were intended to be within the purview of §705.16, *supra*, as "public property." *Cf.* State v. Massachusetts Company, *supra*, in which the court noted that §705.01, F. S.—providing for the sale of "wrecked and derelict goods" upon order of the county judge, the proceeds of which are to be paid into the state treasury for the benefit of the state school fund—had no effect upon the existing common-law right of the state to wrecked or derelict goods, whether technically "droits of admiralty" or "wreck of the sea," that is, goods cast upon the shore. And, pending legislative or judicial clarification, I am inclined to the view that abandoned vessels or wrecked or derelict property found on the foreshore below the high-water mark would be subject to removal by the state under §376.15 or §253.04, *supra*, and not by local governmental officials under §705.16, *supra*.

Your question is answered in the negative.

073-319—September 6, 1973

CLASS ACTION

APPROPRIATENESS IN EVENT OF FRAUD INVOLVING MULTIPLE CONTRACTS

To: Robert C. Hector, Representative, 114th District, Miami

Prepared by: Victor Walsh, Assistant Attorney General

QUESTION:

May a class action in fraud be brought against either a health studio which has breached a number of distinctly separate but identical contracts or the financial institution to which the studio has assigned or negotiated the contract?

SUMMARY:

When a firm has totally breached a number of similar, but distinctly individual, contracts, a class action against either the firm or its assignee is inappropriate because of failure of the requisite community of interest of the prospective parties plaintiff.

Class actions are permitted in certain circumstances by Rule 1.220, RCP, which states:

When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to