

special or local act does not apply where the general act is a general revision of the whole subject, as is the situation with regard to the matter before me for consideration. *City of Miami v. Kichinko*, 22 So.2d 627 (Fla. 1945).

In summation, it is my opinion that the legislature intended Ch. 71-224, *supra*, to be a general revision of the whole field of regulating and examining electrical contractors who wish to engage in business *statewide* and prevails over those sections contained in any special law that are clearly incompatible and repugnant to those of Ch. 71-224.

073-28—February 20, 1973

MOTOR VEHICLES

DAMAGE RELEASE STICKERS—REPAIRMAN REPORTS REQUIRING POLICE INSPECTION—AUTHORIZED REPAIRS—DESIGN, ATTACHMENT, ISSUANCE

To: *Ralph Davis, Executive Director, Department of Highway Safety and Motor Vehicles, Tallahassee*

Prepared by: *James M. Wallace, Assistant Attorney General*

QUESTIONS:

1. Must the report required under §316.065(5), F. S. (1972 Supp.), be written?
2. When a garageman or repairman reports to the nearest police authority a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime, pursuant to §316.065(5), F. S. (1972 Supp.), is that police authority required to inspect the motor vehicle and, if appropriate, affix a damage release sticker thereto?
3. When a motor vehicle has been damaged in an accident, struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, and does not bear a damage release sticker, is a damage release sticker required in order to perform repairs not related to the damage arising from said accident or crime, e.g., new brakes, new muffler, etc.?
4. Are damage release stickers to be uniform in appearance?
5. Are damage release stickers to be affixed in a designated location?
6. Are damage release stickers to be permanently affixed?
7. Will the Department of Highway Safety and Motor Vehicles furnish report forms to garagemen or repairmen for motor vehicles not possessing damage release stickers?
8. Are garagemen or repairmen required to retain file copies of such reports?
9. Are damage release stickers to be centrally issued by the Department of Highway Safety and Motor Vehicles?

SUMMARY:

When a garageman or repairman is in receipt of a motor vehicle which does not bear a damage release sticker and which has been damaged in an accident, struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, such garageman or repairman must, within twenty-four hours, report or cause a report to be made to the nearest local police station or Florida Highway Patrol office. The report shall contain the year, license number, make,

model, and color of the damaged motor vehicle and the name and address of the owner or person in possession of the vehicle. Section 316.065(5), F. S. (1972 Supp.), does not require that such report by garagemen or repairmen be made in writing.

When such a report has been made to the appropriate police authority, that police authority is under a duty to inspect the reported motor vehicle and to attach a damage release sticker, if warranted.

After an inspection by the appropriate police authority, if a damage release sticker is not attached to the motor vehicle, it is unlawful for any person to perform any repairs to the said vehicle. When a motor vehicle has been damaged by accident or the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, no repairs of any nature whatsoever may be made, including repairs for "wear and tear," unless and until a damage release sticker has been attached to said vehicle by the appropriate police authority pursuant to §316.065, F. S.

Section 316.065(3), F. S. (1972 Supp.), sets forth only that the damage release sticker shall describe the motor vehicle by year, make, model, and license number. Neither this section nor any other provision of law sets forth the appearance of the damage release sticker in regard to color, size, or other characteristics.

Chapter 72-164, Laws of Florida [§316.065, F. S.], does not require that damage release stickers be permanently attached to the motor vehicle in question, nor does said chapter designate a specific location for attachment.

The Department of Highway Safety and Motor Vehicles is neither authorized nor under a duty to issue damage release stickers for the use of the various police authorities throughout the state, with the exception of the Florida Highway Patrol which is a division of the department.

The provisions of Ch. 72-164, Laws of Florida [§316.065(3)-(6), F. S. (1972 Supp.)], generally require that a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime be reported to the nearest police authority, and that repairs may not be performed unless the vehicle bears a "damage release sticker" which has been affixed by the police authority.

AS TO QUESTION 1:

Section 316.065(5), F. S. (1972 Supp.), provides, in part, that any person in charge of a garage or repair shop must, within twenty-four hours, report the receipt of a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime to the nearest local police station or Florida Highway Patrol office *before performing any repairs thereon*. This section further provides that "[t]he report shall contain the year, license number, make, model and color of the vehicle and the name and address of the owner or person in possession of the vehicle." The report is to be made to the nearest local police station or Florida Highway Patrol office within twenty-four hours after the motor vehicle is received and before any repairs are made to the vehicle.

The mandate of §316.065(5), *supra*, does specify the information in particular which must be supplied to the appropriate police authority; but this section does not specify that the information must be submitted in written form.

In the above-quoted section the word "contain" could possibly give rise to the presumption that the information must be "contained in a written report"; however, the judicial interpretations of the word "contain" do not necessarily lead to that conclusion. The word "contain" has been held to be synonymous with such words as "include," "comprise," "comprehend," "embrace," "involve," and such

other words which relate to actions, emotions, physical matter, objects, structures, and a good many things other than written reports. *See Miller v. Johnston*, 91 S. E. 593 (N.C. 1917); *see also* 9 Words and Phrases, p. 29, *et seq.* Within this context it would appear that the mandate of §316.065(5), *supra*, is to require garagemen or repairmen to supply those particular items of information set out above to the nearest local police station or Florida Highway Patrol office within twenty-four hours from the receipt of a motor vehicle not bearing a damage release sticker which shows evidence of having been damaged in an accident, or from having been struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime. The reporting of this information alone is that which is required; and there is no requirement in §316.065, F. S., that such information must be supplied in written form.

AS TO QUESTION 2:

I believe that §316.065(3) and (4), F. S. (1972 Supp.), fairly suggests the answer to your second question:

(3) *Upon the completion of his investigation, each officer investigating an accident resulting in damage to a vehicle shall attach to said damaged vehicle a damage release sticker authorizing repairs to be made thereon. Said sticker shall describe the vehicle by year, make, model, and license number. (Emphasis supplied.)*

(4) *It is unlawful for any person in charge of any garage or repair shop, or any other person repairing any motor vehicle, to make repairs upon any damaged motor vehicle not possessing a damage release sticker authorized by and issued pursuant to this section when the external condition of the vehicle gives notice that the vehicle has been involved in an accident or struck by the discharge from any type of firearm. (Emphasis supplied.)*

By its plain language, §316.065(3), *supra*, applies only to accidents investigated by an officer and only there directs the attachment of a damage release sticker by the officer to the damaged motor vehicle. The absence of such a direct expression regarding a police officer's duty to inspect a motor vehicle damaged by the discharge of a firearm or otherwise showing evidence of having been involved in the commission of a crime should not be enough to destroy the legislative intent or rational operation of the chapter. Absent such an implied duty, the express duties of the chapter become useless and the chapter's operation becomes negatory. If at all possible, such an unreasonable and absurd construction should be avoided. *Simmons v. State*, 36 So.2d 207 (Fla. 1948); *Rodriguez v. Jones*, 64 So.2d 278 (Fla. 1953).

An examination of §316.006 (jurisdiction) and §316.016 (enforcement), F. S., demonstrates conclusively that the provisions of this chapter *shall be enforced* by the state, municipalities, and counties within their jurisdictional limits. Section 316.016, *supra*, applies with the same force and effect to the provisions of Ch. 72-164, *supra*.

Therefore, I conclude that upon a report (as required by Ch. 72-164, *supra*) to the appropriate police authority, such police authority is under a duty to inspect the motor vehicle in question and to attach a damage release sticker, if warranted.

AS TO QUESTION 3:

Section 316.065(5), F. S. (1972 Supp.), expressly provides, in part:

Any person in charge of any garage or repair shop to which is brought any damaged motor vehicle which shows evidence of having been involved in an accident, or which shows evidence of having been struck by a bullet or involved in the commission of a crime, or any other person to whom is brought for the purpose of repair a damaged motor vehicle showing such evidence, shall make a report, or cause a report to be made,

to the nearest local police station or Florida highway patrol office *within twenty-four hours after the motor vehicle is received and before any repairs are made to the vehicle.* . . . (Emphasis supplied.)

This statement is clear and unambiguous and therefore should not require any construction. *Wagner v. Botts*, 88 So.2d 611 (Fla. 1956). It is noteworthy that this is the only sentence in Ch. 72-164, *supra*, using the word "repairs" as a noun with the word "any" preceding it as an adjective, for the legislature may well have intended an extra emphasis for this phrase. The judicial construction of the word "any" when used as an adjective has been synonymous with the words "all," "each and every of the class" modified by that adjective, "every," and such other definitions which would give the adjective a plenary modification of the noun. See 3A Words and Phrases, p. 53, *et seq.* Therefore, I must conclude that a garageman or repairman may not lawfully perform any repairs on a vehicle which does not bear a damage release sticker when such vehicle has been damaged in an accident, or struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime.

AS TO QUESTION 4:

Section 316.065(3), F. S. (1972 Supp.), specifies only the information to be contained on the damage release sticker and does not set forth its appearance in regard to size, color, or other characteristics: "[s]aid sticker shall describe the vehicle by year, make, model, and license number." Therefore, I must conclude that the appearance or design of damage release stickers is not set out in §316.065, F. S., nor in any other provision of law.

AS TO QUESTION 5:

Chapter 72-164, *supra*, does not prescribe any particular place or location on the motor vehicle for the placement of a damage release sticker. I assume such direction has not been included in the statute because any area that might be so designated might prove to be unsuitable for such a sticker due to damage to or partial destruction of the vehicle or parts thereof. I would presume, however, that the police authorities throughout the state would conspicuously attach to or display the damage release sticker on such parts of the damaged motor vehicle as would make the same readily visible to, and aid, owners, operators, and repairmen.

AS TO QUESTION 6:

Your sixth question apparently anticipates that some owners of damaged motor vehicles may delay repairs for a substantial period of time after a damage release sticker has been affixed to the vehicle pursuant to Ch. 72-164, *supra*, during which time the sticker may become loose, lost, or subject to vandalism.

Chapter 72-164, *supra*, makes no provision for permanent attachment of the damage release sticker. I assume that if a sticker were duly attached but lost, a duplicate could be obtained from the police authority which investigated and authorized repairs to the damaged motor vehicle. In any event, no repairs may be lawfully made unless and until a damage release sticker is attached.

AS TO QUESTION 7:

Question 1 has been answered in the negative in that reports by garagemen or repairmen under §316.065(5), F. S. (1972 Supp.), are not required to be in writing to the appropriate police authority. Therefore, your seventh question, which relates to the furnishing of report forms to garagemen and repairmen, is moot.

AS TO QUESTION 8:

Your eighth question relates to the retention of file copies of report forms by garagemen or repairmen. Since written reports are not required to be submitted by such garagemen or repairmen as per question 1, question 8 has been mooted thereby.

AS TO QUESTION 9:

Neither §316.065, *supra*, nor any other provision of law authorizes the Department of Highway Safety and Motor Vehicles to centrally issue damage release stickers to be used by county and municipal police authorities. The department is a creature of its enabling legislation only and is strictly limited in its powers and duties. Where the authority of such a legislative entity is subject to reasonable doubt, the exercise of such an authority should be arrested immediately. *State v. Atlantic Coastline R. Co.*, 47 So. 969 (Fla. 1908). *Accord: State ex rel. Burr v. Jacksonville*, 71 So. 474 (Fla. 1916); *State ex rel. Wells v. Western U. Tel. Co.*, 118 So. 478 (Fla. 1928); *Gessner v. Del-Air Corp.*, 17 So.2d 522 (Fla. 1944); *Crandon v. Hazlett*, 26 So.2d 638 (Fla. 1946); *Edgerton v. International Co.*, 89 So.2d 488 (Fla. 1956).

However, it must be noted with regard to Ch. 316, F. S., that the jurisdiction and enforcement thereof by the state is the responsibility of the Florida Highway Patrol and the Florida Public Service Commission. *See* §316.016(1)(a) and (b), F. S.

The Florida Highway Patrol is a division of the Department of Highway Safety and Motor Vehicles under the Governmental Reorganization Act of 1969 [*see* §20.24(2)(a), F. S.], and as such it is the responsibility of the department to make available such damage release stickers as may be necessary for the Division of Florida Highway Patrol to execute its duties under Ch. 72-164, *supra*.

20.05 Heads of departments; powers and duties.—Each head of a department, except as otherwise provided herein, *shall*:

(1) *Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department shall not be construed to be a limitation upon this authority and responsibility. (Emphasis supplied.)*

Therefore, I conclude that the Department of Highway Safety and Motor Vehicles is neither under a duty nor does it have the authority to issue damage release stickers for the use of any police authority except the Division of Florida Highway Patrol.

073-29—February 22, 1973

CONFLICT OF INTEREST**COUNTY TAX ASSESSOR RETAINING PRIVATE BUSINESS
AS REAL ESTATE APPRAISER**

To: County Tax Assessor

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a county tax assessor retain his private practice as a real estate appraiser if he engages in his private practice on his own time, uses his own employees, and devotes his full time to the duties of his elected office?

SUMMARY:

Under the Standards of Conduct Law, §§112.311-112.318, F. S., a county tax assessor should not engage in the business of real estate appraiser of property located in the county.

In §112.311, F. S., the legislature has declared as the policy of this state that no public officer or employee