

attorney used it as a part of the basis for filing a rape information against the accused man. Under these circumstances, her purpose in executing the affidavit was to help to get the case into court in any available lawful manner, including its use by the state attorney as the basis or part of the basis for filing an information. Consequently, I consider that the making of the affidavit was authorized by law within the meaning of §837.021(1), F. S.

It is true that Rule 3.140(g), CrPR, requires that "[a]n information charging the commission of a felony shall be signed by the state attorney *under oath stating his good faith in instituting the prosecution.*" (Emphasis supplied.) However, the Supreme Court's order of December 6, 1972, adopting said rule and the other Criminal Procedure Rules which became effective on February 1, 1973, did not supersede the provisions of the above-quoted §923.03(2), F. S. 1971. This is so because the Supreme Court's said order (272 So.2d 65) provides in pertinent part that "[a]ll conflicting rules and statutes are hereby superseded; statutes not superseded shall remain in effect as rules promulgated by the Supreme Court." (Emphasis supplied.)

There was no conflict between §923.03(2), F. S. 1971, and Rule 3.140(g), CrPR; hence, said order left §923.03(2) in full force and effect.

073-338—September 12, 1973

SALTWATER FISHING

EFFECT OF UNIFORM REGULATION OF SPEARFISHING ON EXISTING REGULATIONS AS TO SNOOK

To: Thomas F. Lewis, Representative, 83rd District, North Palm Beach

Prepared by: Victor Walsh, Assistant Attorney General

QUESTION:

What effect does Ch. 73-141, Laws of Florida, have on Ch. 370, F. S., relating to saltwater fisheries, and particularly, what is the effect on §370.111 relating to snook?

SUMMARY:

Chapter 73-141, Laws of Florida [§370.172, F. S.], regulates uniformly throughout the state the areas in which spearfishing may or may not be conducted in the salt waters of this state and does not affect the existing provisions of general law as to what species or how, or how many of, a particular species of fish may be taken by spearfishermen.

It appears that the primary objective of Ch. 73-141, *supra* [§370.172(2) F. S.], was to provide uniform regulation of the places in which underwater spearfishing may be safely conducted in the salt waters of this state. To this end, the legislature followed the procedure of Art. III, §11 (a) (21), State Const., in adopting Ch. 73-141 by a three-fifths vote, and thereby foreclosed any special law, general law of local application, or local ordinance dealing with spearfishing in salt waters.

Section 370.172 (2), F. S., reads as follows:

(2) After October 1, 1973, it shall be lawful to spearfish in all salt waters and all saltwater tributaries located in this state except as herein provided.

Subsection (3) of §370.172, *supra*, then expressly prohibits spearfishing in the immediate area of public bathing beaches, fishing piers and catwalks beneath them, and jetties. Subsection (6), *id.*, authorizes the Department of Natural Resources to establish other restricted areas and requires the posting of notices in

the area affected. Thus, henceforth, swimmers can be confident that they are not unwittingly placing themselves in danger from overanxious spearfishermen. The spearfishermen, on the other hand, can be assured of staying within the law by avoiding those highly trafficked areas enumerated in new §370.172 (3), and otherwise by watching for those posted notices required by new §370.172 (6).

Section 370.172 (2), *supra*, should not be misconstrued to mean that spearfishermen may take all species of fish found outside the sanctuaries set out by §370.172 (3) and (6). Rather, all this section does is make uniform those areas *where* spearfishing is permitted.

Section 370.172 (4) and (5) of the new act should be noted,

(4) The taking of fish by spearfishing shall be limited to present and future bag limits as set forth by the Department of Natural Resources, *which limits shall be identical to those applicable to other sports fishermen in this state.* (Emphasis supplied.)

(5) The sale of fish taken by spearfishing shall be subject to the same regulations and limitations applicable to other sports fishermen in this state.

These subsections will put spearfishermen on an equal plane with conventional fishermen insofar as the regulations of the Department of Natural Resources relating to bag limits and the sale of fish are concerned. They do not purport to have any effect upon general laws which restrict *how, when, or how many* of a particular species may be taken. And it is a well-settled rule of statutory construction that statutes *in pari materia* should be construed, if possible, so as to give full force and effect to the provisions of each of them. *State v. Gadsden County*, 58 So. 232 (Fla. 1912); *State v. Collier County*, 171 So. 2d 890 (Fla. 1965). Accordingly, the practice of taking snook by spear or gig will continue to be prohibited, notwithstanding Ch. 73-141, *supra*. A similar analysis would apply to the other provisions of Ch. 370, F. S.

In summary, the new spearfishing law will supersede all former local and special laws, administrative regulations, and ordinances which heretofore restricted the areas in which spearfishing could be conducted. Those areas of our salt waters where spearfishing is forbidden are enumerated in new §370.172 (3), *supra*. Any future additions or qualifications to this enumeration can be made only by general law or in accordance with §370.172(6), *supra*. Those regulations of the Department of Natural Resources which formerly discriminated against spearfishermen as to the bag limits and sale of a particular fish species are no longer in effect. Those general laws which purport to regulate *what species or how, or how many of*, a particular species may be taken by spearfishermen are still in effect.

073-339—September 13, 1973

CIRCUIT COURT CLERKS

AUTHORITY TO FIX OFFICE HOURS

To: James C. Watkins, Clerk, Circuit Court, Tavares

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the clerk of the circuit court have the authority to set the hours of recording in his office to open at 8:30 a.m. and to close at 4:30 p.m. each working day?

SUMMARY:

Under §43.27 F. S., authorizing the clerks of the circuit courts to fix