

mandatory that such offices or meetings be within the courthouse itself. *See* AGO's 061-86, 061-89, and 062-42.

The particular building at the county seat of a county which is designated as the "courthouse" is the usual and best facility for the holding of courts, even though such a facility per se will not be a factor in the validity of the court's proceedings. *Beville v. State*, 55 So. 854 (Fla. 1911).

The fact that office space may have been assigned to a particular county officer or governmental authority at the time that the courthouse was constructed, gives no continued or perpetual use of such office space to the particular officer or authority so that reassignment of such space is prevented at a subsequent date when the requirements of governmental services require a change in space allotments. *See* AGO 064-63.

The construction of a county courthouse is an essential governmental requirement of the county and the responsibility to furnish and equip certain space within a courthouse in a particular manner or for a particular purpose is a discretionary function of the governing authority of a county exercised pursuant to §125.01(1)(c), *F. S. Posey v. Wakulla County*, 3 So.2d 799 (Fla. 1941) and *Mathis v. Lovett*, 215 So.2d 490 (1 D.C.A. Fla., 1968); *See also* 8 Fla. Jur. *Counties* §§79 and 80.

I previously held in AGO 071-275 that the board of county commissioners has the sole responsibility for allocating the available office space within a courthouse and, in regard to this instant situation, I am of the opinion that the Jacksonville City Council has the sole responsibility to resolve the discretionary matters of courthouse office space allotments in order to meet the necessities of its county as the council sees them.

073-100—April 2, 1973

COURT COSTS

CRIMINAL CASES UNDER CHAPTER 939, F. S.

To: *B. Paul Pettie, Jr., Broward County Court Judge, Fort Lauderdale*

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

QUESTION:

What effect has subsequent legislation implementing revised Art. V, State Const., had upon the conclusions you rendered in AGO 072-60?

SUMMARY:

The constitutional and statutory changes made subsequent to the rendering of AGO 072-60 require updating to provide that all references to justice of the peace courts, criminal courts of record, county judges' courts, and county courts be construed to now mean the county court system as provided for in Ch. 34, F. S., as amended by Ch. 72-404, Laws of Florida. The assessment of costs in a criminal case against a solvent convicted defendant is specifically provided for in Ch. 939, F. S., and the assessment and disbursement of said costs are provided for in §§34.041, 34.191, and 939.17. Sheriffs' costs previously permitted under the statutory authority of §30.23, F. S., can no longer be assessed as court costs or considered as a cost item in any manner. However, all other items of cost assessed still need to be itemized.

In updating AGO 072-60 your attention is directed to the fact that such

opinion relates to court costs to be assessed in criminal cases under the provisions of Ch. 939, F. S., and to those costs alone. Nothing in this opinion or in the original opinion should be construed as relating to any court costs involved in civil litigation. In this narrow context then, AGO 072-60 is updated taking into consideration the effect of the provisions of new Article V of the Constitution of the State of Florida (effective January 1, 1973) and any statutory changes made subsequent to or becoming effective after the date of the original opinion.

The former opinion related in most instances to criminal costs assessed by criminal courts of record, county judges' courts, county courts, and justice of the peace courts, all of which courts in some way and at some time had criminal preliminary hearing or trial jurisdiction. Such references must now be construed as referring to the newly created county court system as provided for in Art. V, §6, State Const., and Ch. 34, F. S., as amended by Ch. 72-404, Laws of Florida. All references to assessment of costs in circuit court cases, of course, remain.

Chapter 32, F. S. (Criminal Courts of Record); Ch. 36 (County Judges' Courts); and Ch. 37 (Justice of the Peace Courts) were repealed by Ch. 72-404, Laws of Florida. Certain other sections of Chapter 37 were likewise repealed by Ch. 72-358, Laws of Florida. Chapter 34, F. S. (County Courts) was completely revised by Ch. 72-404, Laws of Florida.

An examination of revised Art. V, State Const., and Ch. 72-404 (Judiciary Reorganization Act) reveals several changes in the organic law which require a change in the language used in the opinion expressed in AGO 072-60.

Section 34.041(3), F. S., makes certain the language used in AGO 072-60 with the following statement:

(3) In criminal proceedings in county courts, costs shall be taxed against a person in county court upon conviction or estreatment pursuant to chapter 939. The provisions of §28.241(2) shall not apply to criminal proceedings in county court. [Circuit Court criminal filing fees].

It is again specifically pointed out that the text of this opinion relates only to those criminal costs provided for in Ch. 939, F. S.

Question 5 in AGO 072-60, the answer to which must be amended, was: "In event costs are taxed and collected, to whom are they paid over and to what fund?" Its answer must be updated in keeping with the new provisions contained in revised Art. V, and §34.191, F. S.

Article V, §20(c)(8), provides:

All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively. *If any costs are assessed and collected in connection with offenses tried in county court, all court costs shall be paid into the general revenue fund of the state of Florida and such other funds as prescribed by general law.* (Emphasis supplied.)

This constitutional subsection is further qualified by the general law found in §34.191(2) and (3), F. S.:

(2) *All court costs assessed in county court shall be paid to and retained by the county except as provided in §§23.103 and 23.105 and subsection (3) of this section.*

(3) *If a municipality incurs any cost of operation of the county court, including any cost of prosecution, it may apply to the chief*

judge of the circuit for an order directing the county to *distribute reasonable court costs to the municipality*. If not satisfied with the order of the chief judge, the municipality may apply to the supreme court for an order apportioning the costs. (Emphasis supplied.)

Another new statutory provision was also added to Ch. 939 in 1972 relating to the application of costs by the passage of Ch. 72-235, Laws of Florida, as follows:

939.17 Application of cash deposit to fine and costs.—In any prosecution for an offense against the state or any political subdivision thereof, when money has been deposited by or on behalf of the defendant upon a judgment for the payment of a fine and costs, the clerk shall, under the direction of the court, apply the money deposited in satisfaction of such fine and costs and return the remainder to the depositor.

The answer then to question 5 is updated from the original opinion to provide that all court costs assessed by county courts, except those provided for in §§23.103 and 23.105, F. S. (police academy assessments), shall be paid to and retained by the county unless, upon an application by a municipality, the chief judge of the circuit court orders the county to distribute reasonable court costs to the petitioning municipality which is incurring court costs in the operation of the county court.

A considerable portion of the original opinion dealt with the method of computing compensation for sheriffs as costs after the abolishing of the fee system of Ch. 57-368, Laws of Florida. The legislature repealed §30.23, F. S., by the passage of Ch. 72-92, effective July 1, 1972, and removed from the Florida Statutes any provision for sheriffs' costs occurring in criminal prosecutions. Certain sheriffs' charges in civil litigation still remain as §30.231, F. S. Since then, as stated in the first opinion, allowable criminal costs are those permitted and allowed by statute. It must follow that by repealing §30.23, F. S., it was the legislature's intent to eliminate as a cost item in criminal prosecutions those fees as set by the statutes before their repeal. Sheriffs' charges previously allowed should not now be taxed as costs against a solvent defendant upon conviction of a crime, or against the county upon the discharge of a solvent defendant or the conviction or discharge of an insolvent defendant.

Question 7 of the prior opinion was: "In the assessing of costs, is the court required to itemize such costs in aiming at the amount to be paid?" The answer must be amended to eliminate reference to §37.15, F. S., as authority for requiring itemization of assessed court costs. However, itemization must still be made. *Lindsey v. Dykes*, 175 So. 792 (Fla. 1937).

073-101—April 2, 1973

STATE WARRANTS

NEGOTIABILITY UNDER UNIFORM COMMERCIAL CODE—HOLDER IN DUE COURSE

To: *Fred O. Dickinson, Jr., Comptroller, Tallahassee*

Prepared by: *Henry George White, Assistant Attorney General*

QUESTIONS:

- I. Are state warrants in their present form, payable to the order of a named individual, negotiable within the purview of the Uniform Commercial Code?