

to accomplish the county purpose declared in the duly enacted ordinance. However, the proposed method of providing these services through a nonprofit corporation or association is questionable due to the fact that county funds are being expended in part to assist a nongovernmental entity which may violate the provisions of Art. VII, §10, State Const.

**AS TO QUESTION 2:**

Article VII, §10, State Const., summarily provides, in part, that no county shall become a joint owner with, or give, lend, or use its taxing power, or pledge its credit to aid any corporation or association. In one sense, the expenditure of county moneys contributed to a senior citizens' group may well be considered an aid to such an organization.

However, if the nonprofit corporation is a quasi-public organization, that is, if its programs, facilities, and services are merely operated and managed for the convenience of the public which it serves, it will be rendering a public service, subject always to the ultimate control of the county commissioners in regard to such a contribution and the county purpose to be attained thereby. *Cf. O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967) at pp. 4-10. The fact that the county, under its home rule ordinance, proposes to utilize the services of a voluntary, nonprofit, quasi-public organization to handle the operating details of a facility, program, or service for the elderly citizens of the county does not destroy the public nature and objectives of the expenditure made for that specific county purpose. *Cf. Burton v. Dade County*, 166 So.2d 445 (Fla. 1964), approving expenditure of county funds for a county planetarium operated by a nonprofit quasi-public corporation; *Sunny Isles Fishing Pier v. Dade County*, 79 So.2d 667 (Fla. 1955), approving a county lease for recreational purposes. *Accord: State v. City of Miami*, 72 So.2d 655 (Fla. 1954), municipal warehouse lease to a nonprofit organization; *Raney v. City of Lakeland*, 88 So.2d 148 (Fla. 1956), leasing for library purposes; *Hanna v. Sunrise Recreation*, 94 So.2d 597 (Fla. 1957), state leasehold for park purposes; *State v. City of Tampa*, 146 So.2d 100 (Fla. 1962), construction of a convention center on leased property.

In conclusion, based upon the previously cited authorities, I am of the opinion that the governing authority of a county, under its home rule powers, may contribute county funds to a nonprofit corporation providing services in compliance with the provisions of the Older Americans Act by a duly enacted ordinance which specifies the particular county purpose to be served and the manner in which payment and receipt of such services shall be made. *Cf. AGO's* 056-151, 070-134, 071-150, and 071-169.

**073-41—March 5, 1973**

**MOTOR VEHICLES**

**DETENTION IN JAIL NOT PREREQUISITE TO VALID CHARGE  
OF DRIVING UNDER INFLUENCE OF ALCOHOL**

*To: Walter V. Dantzler, Chief of Police, St. Cloud*

*Prepared by: Wallace E. Allbritton, Assistant Attorney General*

**QUESTION:**

**When a person has been arrested for driving while intoxicated, is it necessary that such person be placed in jail for any specified period of time in order to have a valid charge?**

**SUMMARY:**

**When a person has been arrested for driving while intoxicated, neither §316.028, F. S., 1971, nor any other statute requires that such**

person be placed in jail for any specified length of time as a prerequisite to a valid charge or prosecution.

The offense of driving a motor vehicle when intoxicated to the extent that normal faculties are impaired is denounced by §316.028, F. S. 1971. This statute in its entirety reads as follows:

**316.028 Driving while under the influence of alcoholic beverages, narcotic drugs, barbiturates or other stimulants.—**

(1) It is unlawful and punishable as provided in subsection (2) for any person who is under the influence of alcoholic beverages, marijuana or narcotic drugs, as defined in chapter 398, model glue, or barbiturates, central nervous system stimulants, hallucinogenic drugs, or any other drugs to which the drug abuse laws of the United States apply, as defined in chapter 404, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Any person who is convicted of a violation of this section shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 6 months or by a fine of not less than \$25 or more than \$500, or both such fine and imprisonment.

(b) For a second conviction within a period of three years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than \$500.

(c) For a third or subsequent conviction within a period of five years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than \$500.

The above statute does not require that a person be placed in jail for any period of time in order to be properly charged with its violation. I have found no other statute requiring such action be taken as a prerequisite to a valid charge under §316.028.

Your letter indicates that an authorized bondsman had posted bond and a responsible adult was present to take custody of the accused. This being true, you have no right to detain the accused in jail for any length of time. A person accused of a noncapital crime has an absolute right to bail prior to trial. *Varholy v. Sweat*, 15 So.2d 267 (Fla. 1943); *Matera v. Buchanan*, 192 So.2d 18 (3 D.C.A. Fla., 1966); *Hoskins v. State*, 217 So.2d 852 (1 D.C.A. Fla., 1969); and Art. I, §14, State Const.

Accordingly, your question is answered in the negative.

073-42—March 5, 1973

#### CAPITOL CENTER PLANNING DISTRICT

#### STATE AUTHORITY TO CONTRACT FOR COMPETITION TO OBTAIN URBAN PLANNING SERVICES

To: *Chester F. Blakemore, Executive Director, Department of General Services,  
Tallahassee*

Prepared by: *Arthur C. Canaday, Assistant Attorney General*

#### QUESTIONS:

Concerning participation by the state in a competition to obtain