

that the number of such licenses within the limits of the territory of any county shall exceed one such license to each 2500 residents, or major fraction thereof, within such county, as shown by the last regular statewide census, either federal or state, of such county. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(4) The limitations herein prescribed shall not affect or repeal any existing or future local or special act relating to the limitation by population and exceptions or exemptions from such limitation by population of such licenses within any incorporated city or town or county that may be in conflict herewith.

It would therefore appear that the only delegation of powers to local governments concerning regulation of licenses by population is contained in §561.20(4), which would require local regulation be pursuant to a local or special act of the legislature.

In the instant situation the limitation by population of beverage licenses is contained in a municipal ordinance, not a local or special act of the legislature. Such regulation by municipal ordinance is not authorized by any provision of the state beverage law. No local or special law relating to the limitation by population or exceptions therefrom of beverage licenses within your city has been brought to my attention, and I assume that no such local or special law exists.

Therefore, the answer to the question presented must be in the negative.

073-55—March 13, 1973

TRAFFIC CONTROL LAW

ARRESTS IN CONNECTION WITH TRAFFIC ACCIDENTS; QUESTIONING DRIVER INVOLVED

To: Elton T. Naylor, Chief of Police, Hollywood

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTIONS:

1. When the driver of an automobile involved in an accident has already left the scene of the accident before the arrival of an investigating officer, does §316.017, F. S., authorize such officer to go elsewhere after making his investigation and arrest such driver upon probable cause to believe that he committed an offense in connection with the accident?
2. Does the amount of time that has elapsed between the time of the accident and the time that the officer finds out the identity of the driver to be arrested make any vital difference?
3. May a police officer arrest a person under §316.017 on the basis of information turned over to him by another police officer who conducted the initial investigation?
4. In the event that a police officer ascertains the whereabouts of a driver who left the scene of a property damage accident and goes to such driver's home to interview him, does the police officer prior to any questioning have to advise the suspect of his rights under Miranda v. Arizona?

SUMMARY:

Section 316.017, F. S., authorizes an officer making an investiga-

tion at the scene of an accident after a driver involved in the accident has left the scene to go to some other place and arrest such driver upon probable cause.

It makes no vital difference as to how much time elapses between an accident and the time the investigating officer discovers the identity of the driver to be arrested under §316.017, provided that the arrest is made within the statute of limitations. Of course, the arrest should be made as soon as practicable.

Section 316.017 does not authorize an arrest by an officer who has not made an investigation at the scene of the accident. In other words, he cannot arrest upon the basis of another officer's investigation.

The decision of the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), deals with "custodial interrogation" and has no application when an officer investigating an accident goes to a suspect's home and interviews him about the accident, if the suspect is not taken into custody or otherwise deprived of his freedom of action in any significant way. However, an accident report made by a driver involved in an accident, including verbal statements made at some place other than the scene of the accident, is, with certain listed exceptions, inadmissible at any trial of such driver arising out of the accident.

AS TO QUESTION 1:

Section 316.017, F. S., reads as follows:

316.017 Arrest authority of officer at scene of an accident.—A police officer who makes an investigation at the scene of a traffic accident may arrest any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter in connection with the accident.

Section 316.017 imposes no requirement as to where the arrest thereby authorized must be made; it does not even intimate that the arrest must be made at the scene of the accident.

Therefore, question 1 is answered in the affirmative. The arrest can be made by the officer anywhere within his territorial jurisdiction. *Accord*: *Ross v. State*, 215 So.2d 33 (1 D.C.A. Fla., 1968).

AS TO QUESTION 2:

Section 316.017 imposes no time limit upon the making of an arrest authorized thereby. Consequently, question 2 is answered in the negative. Of course, an arrest under said statute must be made before the statute of limitations has run and it should be made as soon as practicable after the commission of the offense.

AS TO QUESTION 3:

Section 316.017 confers no arrest power upon anyone except that "[a] police officer who makes an investigation at the scene of a traffic accident may arrest any driver"

Therefore, question 3 is answered in the negative because an officer cannot make an arrest under said statute without having made an investigation at the scene of the accident.

AS TO QUESTION 4:

Miranda v. Arizona, 384 U.S. 436 1966, deals with "custodial interrogation" by officers and has no bearing upon the interview of a suspect at his home

without taking him into custody or otherwise depriving him of his freedom of action in any significant way.

As the United States Supreme Court said in the *Miranda* case:

More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation.

By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

However, I point out that §316.066, F. S., provides that accident reports made by persons involved in accidents shall not be used as evidence in any civil or criminal trial arising out of the accident. The privilege afforded to drivers by this statutory provision applies to a verbal statement concerning the accident, made to the investigating officer by a driver involved in such accident, even though the statement is made at some place other than the scene of the accident. [*Ippolito v. Brenner*, Fla., 89 So.2d 650 (Fla. 1956); and *Nash Miami Motors, Inc. v. Ellsworth*, 129 So.2d 704 (3 D.C.A. Fla., 1961).]

Nevertheless, in some situations such a statement by a driver involved in an accident would be admissible in evidence at a trial. If the investigating officer has completed the accident report required to be made by him to the Department of Highway Safety and Motor Vehicles and has probable cause to believe that a crime has been committed by a driver involved in the accident, and goes to such driver's home and advises him that he has completed his accident report and is now investigating a crime which he has probable cause to believe has been committed in connection with the accident, then if such driver makes any incriminating statement to the officer, I think that the officer should be permitted to testify as to such statement at such driver's trial under the authority of *State v. Coffey*, 212 So.2d 632 (Fla. 1968).

073-56—March 13, 1973

SUNSHINE LAW

CONSULTATION BETWEEN SCHOOL BOARD AND ITS ATTORNEY

To: Edward J. Marko, Attorney, Broward County School Board, Ft. Lauderdale

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

May a district school board consult secretly with its attorney to consider the question of whether litigation pending against the board should be settled without such consultation constituting a violation of the Sunshine Law?

SUMMARY:

A discussion by a public body with its attorney concerning whether pending litigation should be settled does not constitute an exception to the Sunshine Law and must therefore be held openly and publicly as required by §286.011, F. S.

The question is prompted by your desire to discuss with the district school

board the attorney position a settlement wants to

Section bodies at otherwise be subject and Board (1969). Ac then is w board from your que

The dealt with held that teachers' Sunshine public en constituti also held with or in collective private m involved.

The board un Publishin that by e confidenti have enjo however, interfere v vested exc the Times meeting co public bo discussed. exercise of respect to of the app Canon Nu Responsib opinion in

Canon Should Pr 4-2 provid

The c prech after emple law. (

Disciplina

(c