

act except, *inter alia*, any subject expressly prohibited by the Constitution, any subject expressly preempted to state or county government by the Constitution or by general law, and any subject preempted to a county pursuant to a county charter adopted under Art. VIII, §§1(g), 3 and 6(e) of the State Constitution. Section 166.021(3). It was the legislative intent to extend to municipalities the exercise of powers for municipal purposes not expressly forbidden by the Constitution, general law, county charter, or special law and to remove any limitations on the exercise of such powers other than those so expressly prohibited. Any limitations of power, except for those specifically enumerated and excepted in the act, contained in any municipal charter enacted or adopted prior to July 1, 1973, were nullified and repealed. Section 166.021(4). Since no constitutional, statutory, or charter provisions applicable to your municipality prohibit the governing body of the city from budgeting municipal funds for shoes and clothing—including ordinary street clothing—for such personnel of the police and fire departments as the legislative body of the city may determine the official duties, functions, and services performed and rendered by the particular employee or officer of the city may require and which will serve a municipal purpose, I am of the opinion that the governing body of the city *may* authorize such expenditures of municipal funds.

073-473—December 19, 1973

PAROLE

EFFECT OF ARREST OF PAROLEE ON FELONY CHARGE—PERSON RELEASED ON EARNED GAIN TIME

*To: Armond R. Cross, Chairman, Florida Parole and Probation Commission,
Tallahassee*

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

Do the provisions of §§949.10, 949.11, 949.12, F. S., which, among other things, provide that the arrest of a parolee on a felony charge in this state shall be prima facie evidence of the violation of the terms and conditions of his parole and require a parole revocation hearing within ten days after such arrest, apply to a prisoner released under §944.291, F. S., after he has served his term or terms, less allowable statutory gain time deductions and extra good time allowances?

SUMMARY:

When a prisoner is released under §944.291, F. S., after he has served his term or terms, less allowances for statutory gain time deductions and extra good time allowances, he is subject to the provisions of §§949.10, 949.11, and 949.12, F. S., which, among other things, provide that the arrest of a parolee on a felony charge in this state shall be prima facie evidence of the violation of the terms and conditions of his parole and require a parole revocation hearing within ten days after such arrest.

Sections 949.10, 949.11, and 949.12, F. S., read as follows:

949.10 Subsequent felony arrest of felony parolee or probationer prima facie evidence of violation.—The subsequent arrest on a felony charge, in this state, of any person who has been placed on parole or

probation following a finding of guilt of any felony, or a plea of guilty or nolo contendere to any felony, shall be prima facie evidence of the violation of the terms and conditions of such parole or probation. Upon such arrest the parole agreement or probation order shall immediately be temporarily revoked, and such person shall remain in custody until a hearing by the parole and probation commission or the court.

949.11 Hearing.—Any person whose parole or probation agreement is revoked pursuant to §949.10 shall be given a hearing pursuant to §947.23 or §948.06. The hearing shall be held within ten days from the date of such arrest, the provisions of §947.23 or §948.06 notwithstanding. Failure of the commission or the court to hold the hearing within ten days from the date of arrest shall cause the immediate release of such person from incarceration on the temporary revocation.

949.12 Immediate temporary revocation; bail not allowed.—A person whose parole or probation has been temporarily revoked pursuant to §949.10 shall not be admitted to bail prior to the hearing provided for in §949.11.

Section 944.291(1)(a) and (2), F. S., provides that:

(1)(a) A prisoner who has served his term or terms, less allowable statutory gain time deductions and extra good time allowances as provided by law, *shall, upon release, be deemed as if released on parole* until the expiration of the maximum term or terms for which he was actually sentenced or such lesser time as may be determined by the Florida parole and probation commission pursuant to §947.13. (Emphasis supplied.)

* * * * *

(2) A prisoner so released shall be under the supervision and control of the parole and probation commission in accordance with the appropriate provisions of Chapter 947, pertaining to paroles and parolees and their supervision, disposition, and control.

What did the legislature mean when in §944.291(1)(a) it said: “. . . shall, upon release, be *deemed* as if released on parole” (Emphasis supplied.)? In 26A C.J.S. 122, it says with respect to the meaning of the word “deemed”:

Following the definitions given for the present tense and, of course, depending upon the connection or circumstances of its use, “*deemed*” has been variously defined as meaning accounted, adjudged, conclusively considered, *considered*, declared, decreed, determined, judged or presumed; *accepted as an established fact; construed or interpreted; held; regarded or treated as; taken and considered.* . . . (Emphasis supplied.)

In the light of these pronouncements, I conclude that when the legislature enacted §944.291, it intended that a prisoner released thereunder should be regarded and treated as a parolee.

Consequently, your question is answered in the affirmative.