

state in connection with and for the purposes of the promotion, development, and support of research activities directed toward the more effective and efficient control of aquatic plants. It might also be noted that all or any part of any functions vested in the Department of Natural Resources under §372.925(3), *supra*, may be delegated by it to the Division of Game and Fresh Water Fish and that pursuant to §372.925(4), the department may contract with public or private agencies or corporations for research and development of aquatic plant control methods or for the performance of aquatic plant control activities.

The aforesaid amendments to §§372.26 and 372.265, *supra*, excepting the Department of Natural Resources from the restrictions therein prescribed when acting under the authority of §372.925(4), *supra*—to promote, develop, and support research activities directed toward the more effective and efficient control of aquatic plants—were presumably within the power of the legislature to enact and are presumptively valid. It is settled in this state that a statute found on the statute books must be presumed to be valid and must be given effect until it is judicially declared unconstitutional. *Evans v. Hillsborough County*, 186 So. 193 (Fla. 1938). It might be noted, however, that to the extent said amendments to §§372.26 and 372.265 may be deemed to abridge, impair, and infringe upon the regulatory powers vested in the Game and Fresh Water Fish Commission by Art. IV, §9, State Const., I have heretofore concluded in AGO 072-41, that the commission “is a law unto itself,” in the areas of wild animal and fresh water aquatic life, and no statute of the legislature could prescribe otherwise,” except for the prescription by the legislature of license fees for the taking of wild animal life and fresh water aquatic life and penalties for violating regulations of the commission as authorized by Art. IV, §9, State Const. In recapitulation, that opinion holds:

The legislature is powerless, in view of Art. IV, §9, State Const. 1968, to transfer any of the powers, duties, or functions of the Game and Fresh Water Fish Commission to the supervision of any other department in the executive branch. Only by constitutional amendment can the legislature regain such authority.

073-127—April 19, 1973

#### SERVICE OF PROCESS

#### SHERIFF'S FEES

To: Doug Willis, Marion County Sheriff, Ocala

Prepared by: Andrew W. Lindsey, Assistant Attorney General

#### QUESTION:

Does the prohibition in §30.231, F. S., to the effect that no additional fees will be required for an alias or pluries document when service was not effected on the original document, prohibit a county in which such a document is served from charging a service fee to the county referring the document for service?

#### SUMMARY:

It is my opinion that your office can charge the office forwarding the alias and pluries document to you, if you complete service on the document. The office forwarding the alias or pluries document would remit to you the seven dollar and fifty cent prepaid fee and would not

charge an additional seven dollars and fifty cents to the party requesting service.

The answer to your question is that you may charge the referring county. Section 30.231(2), F. S., states:

(2) All fees collected under paragraphs (a), (b), (c) and (d) of subsection (1) shall be nonrefundable, and no additional fees shall be required for alias and pluries documents when service was not effected on the original document.

Attorney General Opinion 071-299 held that the seven dollar and fifty cent prepaid fee was not considered income of the sheriff's office until services were rendered by the office. It is at that time the fees become earned income and are subsequently remitted to the county.

Section 30.51, F. S., provides, in part, for a collection of fees in a civil case from another governmental agency.

073-128—April 19, 1973

#### RULES OF COURT

#### CIRCUIT COURT RULE DOES NOT SUPERSEDE CONFLICTING PROVISIONS OF LAW

*To: J. Clint Brown, Hillsborough County Attorney, Tampa*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Does a local circuit court rule relating to practice and procedure adopted prior to the revision of Article V of the State Constitution supersede conflicting provisions of law relating to probate and guardianship proceedings?

#### SUMMARY:

A local circuit court rule relating to practice and procedure adopted prior to the revision of Article V of the State Constitution does not supersede conflicting provisions of law relating to probate and guardianship proceedings formerly cognizable in the county judge's court.

Section 732.07, F. S. 1971, is a part of the Florida Probate Law. It designates specifically the records that are to be kept by the county judge in probate proceedings and states:

(8) No county judge shall permit any paper, instrument, document, pleading or file to be removed from his office or custody except under circumstances named in this law or for purposes of taking testimony.

The Florida Supreme Court's Transition Rule No. 3(1) provides that:

(1) In the Rules of Court promulgated by this Court and in the Florida Statutes, all references to the juvenile court, probate court, or other court which court's function has been vested in the circuit court by Florida Constitution, Rev. Article V, effective January 1, 1973, shall be deemed to refer to the circuit court effective January 1, 1973.

The circuit court rule here in question authorizes the removal of court files