

073-81—March 23, 1973

MUNICIPALITIES

MAINTENANCE OF DETENTION FACILITIES

*To: Richard C. Fellows, City Manager, Green Cove Springs**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

When a municipality has abolished its municipal court and all violations of municipal ordinances are tried in the county court, should a sentence of imprisonment be served in the county jail or the municipal jail?

SUMMARY:

Pending legislative or judicial clarification, a municipality which has abolished its municipal court should continue to maintain or provide detention facilities for housing persons charged with, or convicted of, violations of municipal ordinances.

In establishing the new two-tier judicial system at the trial level, the framers of revised Art. V, State Const., abolished all existing courts in which violations of state law were tried and required municipal courts to be "phased out" in the period between January 1, 1973 (the effective date of the article), and January 3, 1977. *See* §20(d)(4), revised Art. V. However, I do not read into revised Art. V, or in the statutes adopted to implement its provisions, an intent to relieve a municipality of any responsibility for the enforcement of its municipal ordinances when it abolishes its municipal court, other than the actual trial of the offense in the county court by the county court judge. On the contrary, §43.28, F. S. (1972 Supp.), and §168.031, *id.*, require a municipality, when it abolishes its court, to provide courtroom facilities for the trial of violations of its ordinances or violations of the Uniform Traffic Code committed within the municipality if the county does not have adequate facilities to try such cases. *See also* §27.51(1), F. S. (as amended by Ch. 72-722, Laws of Florida), authorizing (but not requiring) public defenders to represent indigent defendants charged with violations of municipal ordinances in the county court and providing that funds for such purpose "may be provided by the . . . municipality having jurisdiction of said offense."

Nowhere in the implementing statutes is there a provision expressly requiring a municipality to continue to maintain its detention facilities to house persons charged with or convicted of violations of municipal law or ordinances. But neither is there a provision expressly authorizing municipalities to discontinue maintaining such facilities and providing that violators of municipal ordinances shall be imprisoned in the county jail. And I have heretofore ruled in AGO 072-259 that, even though its municipal court has been abolished, a municipality might have some obligation to provide facilities for the detention of persons accused of violations of municipal ordinances prior to their conviction in the county court, so that it should not plan to discontinue its municipal jail, pending legislative or judicial clarification of the question. It was noted therein that all fines and forfeitures received from violations of municipal ordinances committed within a municipality and tried in a county court must be remitted monthly to the municipality. *See* §34.191, F. S., originally adopted in substantially the same form as §20 (c) (8) of revised Art. V, State Const. And I observed that it is reasonable to infer that the legislature expected the city to have some expense in connection with the enforcement of its ordinances; otherwise, it would not have "earmarked" these fines and forfeitures for the city. This observation is equally relevant in attempting to resolve the question here presented.

It is worthy of note, also, that §951.23, F. S., providing for the regulation of county and municipal detention facilities, was left on the statute books by the legislature without change. This statute makes a clear distinction between these two types of detention facilities and, among others, defines a "county detention facility" as "a county jail . . . used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor." The violation of a city ordinance is neither a misdemeanor nor a felony. (*Cf.* §125.69, F. S., declaring violations of county ordinances to be misdemeanors.) Thus, a finding of a legislative intent that persons convicted of violations of municipal ordinances in a county court should serve out their terms in a county jail or other county detention facility would be inconsistent with the definitions of county and municipal detention facilities made in §951.23, *supra*.

It is well settled that statutes should be interpreted, if possible, so as to give full force and effect to the provisions of each of them. *Markham v. Blount*, 175 So.2d 526 (Fla. 1965). A finding that persons convicted of violations of municipal ordinances should serve their sentences in municipal detention facilities, even though the trials for such offenses are required to be held in a county court under the new two-tier judicial system, is not inconsistent with any constitutional or statutory provision presently in effect, so far as I can find. On the other hand, a contrary conclusion would be inconsistent with §951.23, *supra*, and with the apparent intent of the framers of §20 (c) (8) of revised Art. V, *supra*—and the legislature in reenacting this constitutional provision as §34.191, *supra*—to provide funds to the municipalities to finance the enforcement of their municipal ordinances, which could include, by fair intendment, the providing of municipal detention facilities for persons charged with, and convicted of, violations of municipal ordinances.

Accordingly, I can only advise—as I did in AGO 072-259, *supra*—that pending legislative or judicial clarification, the municipalities of this state who have abolished their municipal courts should continue to maintain detention facilities for housing persons charged with and convicted of violations of municipal ordinances.

073-82—March 23, 1973

PUBLIC FUNDS

COMMISSION ON RECEIPTS OF COIN-OPERATED PUBLIC TELEPHONE—INCLUDED AS VENDING MACHINE COLLECTION

*To: Charles E. Miner, Jr., General Counsel, Florida Board of Education,
Tallahassee*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General and Victor
Walsh, Legal Research Assistant*

QUESTION:

Are funds derived from the 10 percent commission on all cash receipts deposited in coin-operated public telephones on university campuses required to be deposited in the state treasury?

SUMMARY:

Commissions on the cash receipts of public coin-operated telephones located on university campuses are "vending machine collections" within the enumerated exceptions of §240.095, F. S., and as such may, with the approval of the board of regents, be collected and deposited outside the state treasury.