

state, and certainly would require additional expense in checking on the status of a particular credit card customer in order to minimize such loss, in the absence of statutory authority, express or necessarily implied, to do so.

I have not overlooked the fact that some state and county officials customarily accept checks in payment of certain licenses and taxes, contrary to the general rule that, in the absence of a statute so providing, taxes must be paid in cash or money or legal tender. *See* 84 C.J.S. *Taxation* §623, p. 1242. *Accord:* *Peninsula Land Co. v. Howard*, 6 So.2d 384 (Fla. 1942); *Wadsworth v. State*, 142 So. 529 (Ala. 1932). This custom and usage is apparently recognized by statute as to occupational and beverage licenses and sales taxes. *See* §832.06, F. S., providing for the refund to the tax collector of occupational and beverage license and sales tax funds forwarded to the departments concerned by the tax collector when paid by a check that turns out to be worthless. *And see* §215.34, *id.*, providing the procedure, as between the state treasurer and the state agency making the deposit, for handling a worthless check given in payment of any "licenses, fees, taxes, commissions or charges of any sort authorized to be made under the laws of the state and deposited in the state treasury" It might be noted that there is nothing in such statutes to indicate that the acceptance of the check by the official constitutes anything other than a conditional payment and that if the check is never presented or is dishonored, the tax or fee remains a charge. *See* 84 C.J.S. *Taxation* §623, p. 1243.

In any event, I find nothing in the statutes referred to above—or in any other statute—from which it may be inferred that a state agency or official may enter into an agreement with a credit card bank providing for the payment of "goods and services"—or license fees or taxes—under the bank's credit card system, agreeing that any loss incurred through the use of the system would be borne by the state, and providing for the establishment in such bank of a separate bank account for the purpose of depositing the credit card invoices. And in the absence of any such authority, express or necessarily implied, I must advise against the use of such a system by a state agency.

Accordingly, your first question is answered in the negative. This answer makes it unnecessary to reply to your second and third questions.

073-27—February 16, 1973

ELECTRICAL CONTRACTORS

COUNTY COMPETENCY EXAMINATION AND REGULATION OF CONTRACTOR CERTIFIED BY FLORIDA ELECTRICAL CONTRACTORS' BOARD PROHIBITED

To: Ray Mattox, Representative, 57th District, Winter Haven

Prepared by: Richard Bennett, Assistant Attorney General

QUESTIONS:

1. Has the legislature by enacting Ch. 71-224, Laws of Florida (part VII, Ch. 468, F. S.), creating the Florida Electrical Contractors' Licensing Board, acted to preempt the field?
2. Does Ch. 71-224, Laws of Florida, prevail over any conflicting special laws?

SUMMARY:

To the extent that the building trade code of Pinellas County, as authorized by Ch. 57-1727, Laws of Florida, is inconsistent with Ch. 71-224, Laws of Florida, said code is void and of no effect, the legislature having preempted the field of regulation and licensing of electrical contractors by Ch. 71-224, *supra*.

Chapter 71-224, Laws of Florida, effective September 1, 1971, creates the Florida Electrical Contractors' Licensing Board. The purpose of the board is to protect the life, health, property, and public welfare of the state's citizens by requiring that "any person desiring to obtain a certificate to engage in the business (of electrical contracting) as herein defined *on a statewide basis* shall be required to establish his competency and qualifications to be certified as herein provided." (Emphasis supplied.) Chapter 71-224, *supra* [§468.180, F. S.]. Section 5(6) of the act [§468.184(6), F. S.] provides:

When a certificate holder desires to engage in contracting *in any area of the state*, as a prerequisite therefor, he shall *only* be required to exhibit to the local building official, tax collector or other authorized person in charge of the issuance of licenses and building permits in the area, evidence of holding a current state certificate of competency accompanied by the fee for the occupational license and permit required of other persons. (Emphasis supplied.)

The language of §5(6) makes it abundantly clear that the legislature intended that the presentment of a certificate issued by the board accompanied by the proper fee for the occupational license and permit would be the only additional requirement for engaging in business in *any part* of the state.

The legislature provided in §13(2) of the act [§468.192(2), F. S.] that a municipality, city, or county may collect occupational license and inspection fees for engaging in contracting or examination fees "from persons who are registered with the *local* boards pursuant to local examination requirements." (Emphasis supplied.) And §13(6) provides that "[m]unicipalities, cities or counties may continue to provide examinations *for their territorial area*, provided that a certificate has not been issued by the board." (Emphasis supplied.)

In my opinion, it appears beyond a doubt that the legislature has acted in this area to preclude cities, counties, and municipalities from regulating and examining for competency those persons issued a certificate by the State Board of Electrical Contractors. Therefore, by enacting Ch. 71-224, *supra*, the legislature has acted to preempt the field.

Your first question is answered in the affirmative.

In 1957, the legislature, by passing Ch. 57-1727, Laws of Florida, authorized the Board of County Commissioners of Pinellas County to enact the building trade code that is the subject of this opinion. By the provisions of said building trade code all electrical contractors are required to take and pass an examination and be issued a certificate of competency as a prerequisite to engaging in business in the county.

It is true that ordinarily a special act is an exception from and prevails over a conflicting general law. However, one of the fundamental rules of construction is that the legislative intent must be ascertained and effectuated. *City of St. Petersburg v. Siebold*, 48 So.2d 291 (Fla. 1950). And in this instance it is clear from the language of Ch. 71-224, *supra*, that the legislature intended to regulate and license electrical contractors and authorized such licensed individuals to engage in business in any part of the state.

In *Siebold*, *supra*, the question before the Supreme Court was whether a general act repealed a special act. The court stated the following rule of construction:

A general Act may operate to repeal repugnant local or special laws, though containing no general repealing clause, where the Legislature intended to repeal all conflicting local or special laws, is made plain by the terms and purposes of the general Act. [*City of St. Petersburg v. Siebold*, 40 So.2d 291 (Fla. 1950) at 292 and 293.]

And the rule that a general act will not be held to impliedly repeal or modify a

special or local act does not apply where the general act is a general revision of the whole subject, as is the situation with regard to the matter before me for consideration. *City of Miami v. Kichinko*, 22 So.2d 627 (Fla. 1945).

In summation, it is my opinion that the legislature intended Ch. 71-224, *supra*, to be a general revision of the whole field of regulating and examining electrical contractors who wish to engage in business *statewide* and prevails over those sections contained in any special law that are clearly incompatible and repugnant to those of Ch. 71-224.

073-28—February 20, 1973

MOTOR VEHICLES

DAMAGE RELEASE STICKERS—REPAIRMAN REPORTS REQUIRING POLICE INSPECTION—AUTHORIZED REPAIRS—DESIGN, ATTACHMENT, ISSUANCE

To: *Ralph Davis, Executive Director, Department of Highway Safety and Motor Vehicles, Tallahassee*

Prepared by: *James M. Wallace, Assistant Attorney General*

QUESTIONS:

1. Must the report required under §316.065(5), F. S. (1972 Supp.), be written?
2. When a garageman or repairman reports to the nearest police authority a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime, pursuant to §316.065(5), F. S. (1972 Supp.), is that police authority required to inspect the motor vehicle and, if appropriate, affix a damage release sticker thereto?
3. When a motor vehicle has been damaged in an accident, struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, and does not bear a damage release sticker, is a damage release sticker required in order to perform repairs not related to the damage arising from said accident or crime, e.g., new brakes, new muffler, etc.?
4. Are damage release stickers to be uniform in appearance?
5. Are damage release stickers to be affixed in a designated location?
6. Are damage release stickers to be permanently affixed?
7. Will the Department of Highway Safety and Motor Vehicles furnish report forms to garagemen or repairmen for motor vehicles not possessing damage release stickers?
8. Are garagemen or repairmen required to retain file copies of such reports?
9. Are damage release stickers to be centrally issued by the Department of Highway Safety and Motor Vehicles?

SUMMARY:

When a garageman or repairman is in receipt of a motor vehicle which does not bear a damage release sticker and which has been damaged in an accident, struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, such garageman or repairman must, within twenty-four hours, report or cause a report to be made to the nearest local police station or Florida Highway Patrol office. The report shall contain the year, license number, make,

model, and color of the damaged motor vehicle and the name and address of the owner or person in possession of the vehicle. Section 316.065(5), F. S. (1972 Supp.), does not require that such report by garagemen or repairmen be made in writing.

When such a report has been made to the appropriate police authority, that police authority is under a duty to inspect the reported motor vehicle and to attach a damage release sticker, if warranted.

After an inspection by the appropriate police authority, if a damage release sticker is not attached to the motor vehicle, it is unlawful for any person to perform any repairs to the said vehicle. When a motor vehicle has been damaged by accident or the discharge of a firearm, or shows evidence of having been involved in the commission of a crime, no repairs of any nature whatsoever may be made, including repairs for "wear and tear," unless and until a damage release sticker has been attached to said vehicle by the appropriate police authority pursuant to §316.065, F. S.

Section 316.065(3), F. S. (1972 Supp.), sets forth only that the damage release sticker shall describe the motor vehicle by year, make, model, and license number. Neither this section nor any other provision of law sets forth the appearance of the damage release sticker in regard to color, size, or other characteristics.

Chapter 72-164, Laws of Florida [§316.065, F. S.], does not require that damage release stickers be permanently attached to the motor vehicle in question, nor does said chapter designate a specific location for attachment.

The Department of Highway Safety and Motor Vehicles is neither authorized nor under a duty to issue damage release stickers for the use of the various police authorities throughout the state, with the exception of the Florida Highway Patrol which is a division of the department.

The provisions of Ch. 72-164, Laws of Florida [§316.065(3)-(6), F. S. (1972 Supp.)], generally require that a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime be reported to the nearest police authority, and that repairs may not be performed unless the vehicle bears a "damage release sticker" which has been affixed by the police authority.

AS TO QUESTION 1:

Section 316.065(5), F. S. (1972 Supp.), provides, in part, that any person in charge of a garage or repair shop must, within twenty-four hours, report the receipt of a motor vehicle damaged in an accident, struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime to the nearest local police station or Florida Highway Patrol office *before performing any repairs thereon*. This section further provides that "[t]he report shall contain the year, license number, make, model and color of the vehicle and the name and address of the owner or person in possession of the vehicle." The report is to be made to the nearest local police station or Florida Highway Patrol office within twenty-four hours after the motor vehicle is received and before any repairs are made to the vehicle.

The mandate of §316.065(5), *supra*, does specify the information in particular which must be supplied to the appropriate police authority; but this section does not specify that the information must be submitted in written form.

In the above-quoted section the word "contain" could possibly give rise to the presumption that the information must be "contained in a written report"; however, the judicial interpretations of the word "contain" do not necessarily lead to that conclusion. The word "contain" has been held to be synonymous with such words as "include," "comprise," "comprehend," "embrace," "involve," and such

other words which relate to actions, emotions, physical matter, objects, structures, and a good many things other than written reports. *See Miller v. Johnston*, 91 S. E. 593 (N.C. 1917); *see also* 9 Words and Phrases, p. 29, *et seq.* Within this context it would appear that the mandate of §316.065(5), *supra*, is to require garagemen or repairmen to supply those particular items of information set out above to the nearest local police station or Florida Highway Patrol office within twenty-four hours from the receipt of a motor vehicle not bearing a damage release sticker which shows evidence of having been damaged in an accident, or from having been struck by the discharge of a firearm, or which shows evidence of having been involved in the commission of a crime. The reporting of this information alone is that which is required; and there is no requirement in §316.065, F. S., that such information must be supplied in written form.

AS TO QUESTION 2:

I believe that §316.065(3) and (4), F. S. (1972 Supp.), fairly suggests the answer to your second question:

(3) *Upon the completion of his investigation, each officer investigating an accident resulting in damage to a vehicle shall attach to said damaged vehicle a damage release sticker authorizing repairs to be made thereon. Said sticker shall describe the vehicle by year, make, model, and license number. (Emphasis supplied.)*

(4) *It is unlawful for any person in charge of any garage or repair shop, or any other person repairing any motor vehicle, to make repairs upon any damaged motor vehicle not possessing a damage release sticker authorized by and issued pursuant to this section when the external condition of the vehicle gives notice that the vehicle has been involved in an accident or struck by the discharge from any type of firearm. (Emphasis supplied.)*

By its plain language, §316.065(3), *supra*, applies only to accidents investigated by an officer and only there directs the attachment of a damage release sticker by the officer to the damaged motor vehicle. The absence of such a direct expression regarding a police officer's duty to inspect a motor vehicle damaged by the discharge of a firearm or otherwise showing evidence of having been involved in the commission of a crime should not be enough to destroy the legislative intent or rational operation of the chapter. Absent such an implied duty, the express duties of the chapter become useless and the chapter's operation becomes negatory. If at all possible, such an unreasonable and absurd construction should be avoided. *Simmons v. State*, 36 So.2d 207 (Fla. 1948); *Rodriguez v. Jones*, 64 So.2d 278 (Fla. 1953).

An examination of §316.006 (jurisdiction) and §316.016 (enforcement), F. S., demonstrates conclusively that the provisions of this chapter *shall be enforced* by the state, municipalities, and counties within their jurisdictional limits. Section 316.016, *supra*, applies with the same force and effect to the provisions of Ch. 72-164, *supra*.

Therefore, I conclude that upon a report (as required by Ch. 72-164, *supra*) to the appropriate police authority, such police authority is under a duty to inspect the motor vehicle in question and to attach a damage release sticker, if warranted.

AS TO QUESTION 3:

Section 316.065(5), F. S. (1972 Supp.), expressly provides, in part:

Any person in charge of any garage or repair shop to which is brought any damaged motor vehicle which shows evidence of having been involved in an accident, or which shows evidence of having been struck by a bullet or involved in the commission of a crime, or any other person to whom is brought for the purpose of repair a damaged motor vehicle showing such evidence, shall make a report, or cause a report to be made,

to the nearest local police station or Florida highway patrol office *within twenty-four hours after the motor vehicle is received and before any repairs are made to the vehicle.* . . . (Emphasis supplied.)

This statement is clear and unambiguous and therefore should not require any construction. *Wagner v. Botts*, 88 So.2d 611 (Fla. 1956). It is noteworthy that this is the only sentence in Ch. 72-164, *supra*, using the word "repairs" as a noun with the word "any" preceding it as an adjective, for the legislature may well have intended an extra emphasis for this phrase. The judicial construction of the word "any" when used as an adjective has been synonymous with the words "all," "each and every of the class" modified by that adjective, "every," and such other definitions which would give the adjective a plenary modification of the noun. See 3A Words and Phrases, p. 53, *et seq.* Therefore, I must conclude that a garageman or repairman may not lawfully perform any repairs on a vehicle which does not bear a damage release sticker when such vehicle has been damaged in an accident, or struck by the discharge of a firearm, or shows evidence of having been involved in the commission of a crime.

AS TO QUESTION 4:

Section 316.065(3), F. S. (1972 Supp.), specifies only the information to be contained on the damage release sticker and does not set forth its appearance in regard to size, color, or other characteristics: "[s]aid sticker shall describe the vehicle by year, make, model, and license number." Therefore, I must conclude that the appearance or design of damage release stickers is not set out in §316.065, F. S., nor in any other provision of law.

AS TO QUESTION 5:

Chapter 72-164, *supra*, does not prescribe any particular place or location on the motor vehicle for the placement of a damage release sticker. I assume such direction has not been included in the statute because any area that might be so designated might prove to be unsuitable for such a sticker due to damage to or partial destruction of the vehicle or parts thereof. I would presume, however, that the police authorities throughout the state would conspicuously attach to or display the damage release sticker on such parts of the damaged motor vehicle as would make the same readily visible to, and aid, owners, operators, and repairmen.

AS TO QUESTION 6:

Your sixth question apparently anticipates that some owners of damaged motor vehicles may delay repairs for a substantial period of time after a damage release sticker has been affixed to the vehicle pursuant to Ch. 72-164, *supra*, during which time the sticker may become loose, lost, or subject to vandalism.

Chapter 72-164, *supra*, makes no provision for permanent attachment of the damage release sticker. I assume that if a sticker were duly attached but lost, a duplicate could be obtained from the police authority which investigated and authorized repairs to the damaged motor vehicle. In any event, no repairs may be lawfully made unless and until a damage release sticker is attached.

AS TO QUESTION 7:

Question 1 has been answered in the negative in that reports by garagemen or repairmen under §316.065(5), F. S. (1972 Supp.), are not required to be in writing to the appropriate police authority. Therefore, your seventh question, which relates to the furnishing of report forms to garagemen and repairmen, is moot.

AS TO QUESTION 8:

Your eighth question relates to the retention of file copies of report forms by garagemen or repairmen. Since written reports are not required to be submitted by such garagemen or repairmen as per question 1, question 8 has been mooted thereby.

AS TO QUESTION 9:

Neither §316.065, *supra*, nor any other provision of law authorizes the Department of Highway Safety and Motor Vehicles to centrally issue damage release stickers to be used by county and municipal police authorities. The department is a creature of its enabling legislation only and is strictly limited in its powers and duties. Where the authority of such a legislative entity is subject to reasonable doubt, the exercise of such an authority should be arrested immediately. *State v. Atlantic Coastline R. Co.*, 47 So. 969 (Fla. 1908). *Accord: State ex rel. Burr v. Jacksonville*, 71 So. 474 (Fla. 1916); *State ex rel. Wells v. Western U. Tel. Co.*, 118 So. 478 (Fla. 1928); *Gessner v. Del-Air Corp.*, 17 So.2d 522 (Fla. 1944); *Crandon v. Hazlett*, 26 So.2d 638 (Fla. 1946); *Edgerton v. International Co.*, 89 So.2d 488 (Fla. 1956).

However, it must be noted with regard to Ch. 316, F. S., that the jurisdiction and enforcement thereof by the state is the responsibility of the Florida Highway Patrol and the Florida Public Service Commission. *See* §316.016(1)(a) and (b), F. S.

The Florida Highway Patrol is a division of the Department of Highway Safety and Motor Vehicles under the Governmental Reorganization Act of 1969 [*see* §20.24(2)(a), F. S.], and as such it is the responsibility of the department to make available such damage release stickers as may be necessary for the Division of Florida Highway Patrol to execute its duties under Ch. 72-164, *supra*.

20.05 Heads of departments; powers and duties.—Each head of a department, except as otherwise provided herein, *shall*:

(1) *Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department shall not be construed to be a limitation upon this authority and responsibility. (Emphasis supplied.)*

Therefore, I conclude that the Department of Highway Safety and Motor Vehicles is neither under a duty nor does it have the authority to issue damage release stickers for the use of any police authority except the Division of Florida Highway Patrol.

073-29—February 22, 1973

CONFLICT OF INTEREST**COUNTY TAX ASSESSOR RETAINING PRIVATE BUSINESS
AS REAL ESTATE APPRAISER**

To: County Tax Assessor

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a county tax assessor retain his private practice as a real estate appraiser if he engages in his private practice on his own time, uses his own employees, and devotes his full time to the duties of his elected office?

SUMMARY:

Under the Standards of Conduct Law, §§112.311-112.318, F. S., a county tax assessor should not engage in the business of real estate appraiser of property located in the county.

In §112.311, F. S., the legislature has declared as the policy of this state that no public officer or employee