

census) shall not be required to remain on duty for more than one hundred twenty hours in any two consecutive calendar weeks. The hours during which each shift is to be on duty shall be so divided, either by the shifts alternating from night to day, or otherwise, so that neither shift shall be discriminated against in the number of hours during which the members thereof are required to be on duty. Said section contains a proviso that firemen may be required to remain on duty twenty-four hours per day, but only on alternate days, "except when a *fire emergency* exists." (Emphasis supplied.)

The office of a proviso in a statute is not to enlarge or extend the act of which section it is a part, but is rather to be a limitation or a restraint upon the language which the legislature has employed. A proviso is to be construed strictly and limited to objects fairly within its terms or to qualify or restrain its generalities. *Farrey v. Bettendorf*, 96 So.2d 889 (Fla. 1957); 10B Fla. Digest *Statutes* §228.

Applying this rule of strict construction to the provisos in question, we must conclude that they were not intended to encompass a multitude of situations nor to enlarge their operations to include situations not reasonably contemplated nor intended to be included.

We now come to the question of what is meant by the terms "general alarm" and "fire emergency" as used in §§167.62 and 167.632, *supra*, respectively, inasmuch as the terms are not otherwise defined by Ch. 167, F. S. 1971. Strictly interpreting the term "fire alarm" as it is used in §167.62, *supra*, it is my opinion that it refers to a fire or conflagration of such magnitude, intensity, geographical dimensions, or other special characteristics that in order to effect control and extinguishment all or most fire fighting personnel and apparatus are required. Under these conditions it is customary to call off-duty firemen to the scene of the fire for additional manpower and to provide manning of reserve apparatus.

In applying the same principle of interpretation to the term "fire emergency" as it is used in §167.632, *supra*, it is my opinion that it refers to a situation in which an actual uncontrolled fire exists, as opposed to a false alarm or other circumstances in which a destructive fire is not involved.

Thus, using these terms within the context of §§167.62 and 167.632, *supra*, it is my opinion that the statutorily prescribed limitations on the number of hours municipal fire fighters may be required to remain on duty may be extended if there exists an actual uncontrolled destructive fire of such magnitude, intensity, geographical dimensions, or other special characteristics that in order to effect control and extinguishment all or most fire fighting personnel and apparatus are required. Under these conditions it is customarily expected that a fire department would call its off-duty firemen to the scene of the fire for additional manpower and to provide manning of reserve apparatus.

073-85—March 23, 1973

PUBLIC DEFENDERS

PAYMENT OF COSTS OF DISCOVERY PROCEDURES

To: Judge C. Luckey, Jr., Public Defender, Tampa

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

When costs are incurred by the public defenders in making use of the discovery procedures under Rule 3.220(k), CrPR, may the county pay such costs out of the general county operating budget, or must such costs be taxed against the public defender's operating budget?

SUMMARY:

"Reasonable costs" incurred by the public defenders in using the discovery procedures authorized by Rule 3.220, CrPR, are to be taxed as costs and paid by the county as in the case of other court costs when the defendant is insolvent.

Section 27.54(2), F. S. 1971, expressly prohibits a county or municipality from appropriating or contributing funds to the operation of the offices of the public defender "except for the purposes of defending misdemeanors." [See also Ch. 72-733, Laws of Florida, authorizing counties and municipalities to contribute additional funds to the public defenders during the period January 1, 1973, through June 30, 1973, to be used for representing indigents charged with violations of county or municipal ordinances, as well as misdemeanors.] Rule 3.220 of the Florida Rules of Criminal Procedure authorizes the taking of depositions in connection with the discovery procedures provided for therein; and paragraph (k) of this rule provides that "[a]fter a defendant is adjudged insolvent the reasonable cost incurred in the operation of these rules shall be taxed as costs against the county." The clear implication of this provision of the rule is that the "reasonable cost" of the deposition procedures authorized by Rule 3.220 is to be considered a "court cost" to be paid as provided by Ch. 939, F. S.

This conclusion is in accord with my previous opinion in AGO 072-39. It was ruled therein that the pretrial expense of preliminary hearings, criminal investigations, and grand jury hearings that do not become a part of the court costs "are payable from funds allocated to the operating expense of the state attorney's office and may not be charged against the county." However, it was noted, parenthetically, that the costs of the discovery procedures provided for by the then Rule 1.220, CrPR (the present Rule 3.220, *supra*), are payable from county funds as are other court costs when the defendant is insolvent. It was noted also that the fees of the official court reporter for reporting arguments of counsel and preparing a transcript of the proceedings to be used in the trial of the cause "are chargeable as costs in the proceedings to be paid by the defendant if he is convicted and solvent, or by the county if he is discharged or insolvent." And the purpose of the provision of Rule 3.220, here in question, must have been to make clear that the "reasonable cost" of the deposition procedures is also to be paid by the county as in the case of any other "court cost" when the defendant is insolvent.

No authority need be cited for the proposition that the rules of practice and procedure adopted by the Supreme Court take precedence over any conflicting statutes, unless and until such rules should be repealed "by general law enacted by two-thirds vote of the membership of each house of the legislature." Section 2(a) of revised Art. V, State Const. Thus, insofar as there may be any conflict between §27.54(2), *supra*, and Rule 3.220(k), *supra*, the latter will prevail.

073-86—March 28, 1973

LABOR

RIGHT TO WORK—APPLICATION, IMPLEMENTATION

To: Donald L. Tucker, Representative, 11th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Does §447.09(11), F. S., apply to all persons whether or not they are otherwise covered under §§447.01 and 447.02, *id.*?