

above, the term of years for which an exclusive franchise may be granted is a discretionary matter entrusted to the governing body of a nonchartered county unless this discretion is limited by general or special law. While the authority of municipalities to grant certain franchises is limited to a period not to exceed thirty years (*see* §§167.06 and 180.14, F. S.), I am aware of no general law which likewise limits the discretion of nonchartered counties. Because garbage collection and disposal is a proprietary function, *Smoak v. City of Tampa*, 167 So. 528 (Fla. 1936), no issue is presented as to the right of a county's governing body to bind its successors to a long-term franchise. *Accord*: Attorney General Opinion 057-76. *See also*, *Daly v. Stokell*, 63 So.2d 644 (Fla. 1953). Thus, assuming the absence of a special law which restricts the term of years for which a nonchartered county may grant an exclusive franchise, it is my opinion that this is a matter which lies within the discretion of the governing body of such a county. And it is a fundamental rule that when a public body exercises a discretionary power delegated to it by law, its actions are presumed to be correct. *City of Miami Beach v. Cummings*, 266 So.2d 122 (3 D.C.A. Fla., 1972).

073-59—March 14, 1973

### ARREST

#### POWERS OF MUNICIPAL POLICE OFFICER WHEN OUTSIDE HIS JURISDICTION

*To: Robert W. Johnston, Chief of Police, Ft. Lauderdale*

*Prepared by: Reeves Bowen, Assistant Attorney General*

#### QUESTIONS:

1. When a municipal police officer has pursued a violator to a point outside of his municipality but within the same county pursuant to §901.25, F. S., may he there arrest another person who at that point violates an ordinance of the officer's municipality as an incident to the arrest of the pursued violator?

2. When a municipal police officer acting under the authorization of §901.25, F. S., pursues a violator from within such officer's municipality to a point outside of such municipality but within the same county, may he arrest third persons for committing felonies or misdemeanors in his presence but outside of his municipality, and, if he can do so, are such arrests to be made in his official capacity as a police officer or as a private citizen?

3. Would the legal principles enunciated in the answer to question 2 apply to a municipal police officer who goes outside of his municipality to some other place in the same county to serve a municipal court arrest warrant pursuant to §168.03, F. S.?

#### SUMMARY:

Unless specially provided by statute, a municipal ordinance has no force outside of the municipality that enacted it. There does not appear to be any general statute making such provision. Therefore, in the absence of a special statute making such provision, a municipal police officer engaged in making a fresh pursuit arrest outside of his municipality has no authority to give extraterritorial force to a municipal ordinance by arresting another person for violating such municipal ordinance outside of his municipality.

When a municipal police officer is on a fresh pursuit arrest mission outside of his municipality but in the same county, he may, in his official

capacity as a police officer, arrest a person other than the pursued violator if, and only if, such third person knowingly and willfully obstructs him in the performance of his duty by doing or offering violence to his person contrary to §843.01, F. S. (a felony), or knowingly and willfully obstructs him in the performance of his duty without doing or offering violence to his person contrary to §843.02, F. S. (a misdemeanor), while he is engaged in such fresh pursuit or in making the fresh pursuit arrest or in the lawful safekeeping and transportation of the pursued violator after his arrest.

After making such an arrest of a third person, the officer should, of course, comply with §901.23, F. S., by taking such person without unnecessary delay before the most accessible magistrate in the same county and making a complaint against such person.

Such an officer, acting as a private citizen and not as an officer, may arrest a person other than the pursued violator if a felony has actually been committed and the officer has reasonable grounds to believe that such third person committed it or such third person commits a breach of the peace constituting a misdemeanor in the officer's presence.

The principles of law enunciated in the next preceding paragraph are applicable when a municipal police officer, acting under §168.03, F. S., goes to some place in the county outside of his municipality to serve an arrest warrant issued by his municipal court.

#### AS TO QUESTION 1:

Municipal ordinances have no extraterritorial force unless specially provided by statute (62 C.J.S. *Municipal Corporations* §443a, p. 855; and 56 Am.Jur.2d *Municipal Corporations* §436 pp. 481 and 482). I find no general statute so providing.

Therefore, question 1 must be answered in the negative unless the legislature has specially given extraterritorial effect to the municipal ordinance or ordinances involved in your inquiry.

#### AS TO QUESTION 2:

The general rule is that an officer has no authority, in his official capacity, to make an arrest outside of his territorial limits unless authorized by statute (6 C.J.S. *Arrest* §12b(2), p. 610; and 5 Am. Jur. 2d *Arrest* §50, p. 742).

Nevertheless, it is said in 6 C.J.S. *Arrest* §5d, p. 584 that "[i]t is the right of a peace officer to arrest without a warrant one who assaults him, or otherwise interferes with him, while he is discharging his duty as a public peace officer."

Since the legislature has enacted §901.25 to give a municipal police officer the authority to make fresh pursuit arrests outside of his municipality but within the same county, I think that the necessary implication is that the legislature intended that the pursuing officer have the authority to arrest any third person who knowingly and willfully obstructs him while in such fresh pursuit or while arresting the pursued violator or while lawfully safekeeping and transporting such violator after his arrest.

Therefore, it is my opinion that if, while a municipal police officer is engaged in such fresh pursuit or in arresting the pursued violator or in the lawful safekeeping and transportation of such violator after his arrest, a third person knowingly and willfully obstructs him by doing or offering violence to his person contrary to §843.01, F. S. (a felony), or knowingly and willfully obstructs him without doing or offering violence to his person contrary to §843.02, F. S. (a misdemeanor), then such officer, acting in his official capacity as a police officer, may arrest such third person even though he is outside of the officer's municipality.

I do not think that the pursuing municipal police officer has any authority in his official capacity to arrest a third person for any other felony or misdemeanor committed in his presence outside of his municipality.

Of course, when a municipal police officer makes an arrest of a third person outside of his municipality for either felony or misdemeanor in accordance with the above-stated legal principles, he should comply with §901.23, F. S., which provides:

**901.23 Duty of officer after arrest without warrant.**—A peace officer making an arrest without a warrant shall take the arrested person without unnecessary delay before the most accessible magistrate in the same county and shall make a complaint stating the facts constituting the offense for which the person was arrested.

However, when a municipal police officer is outside of his municipality, whether on a fresh pursuit mission or not, he may make a "citizen's arrest" for a felony other than the violation of §843.01 in accordance with the common law principles stated in 6 C.J.S. *Arrest* §8b(2)(a), at pp. 606 and 607 as follows:

*At common law*, and under the statutes of most states, although subject to statutory variations, a private person acting in good faith may arrest without a warrant one who has committed a treason or a felony on an occasion already past.

*In order to justify such an arrest, it is necessary, and also sufficient, to show that a felony was actually committed, and that there was reasonable ground for suspecting that the person arrested committed it.* . . . (Emphasis supplied.)

Also, a police officer, as a private citizen and without regard to fresh pursuit, may make an arrest outside of his municipality for a misdemeanor constituting a breach of the peace committed in his presence outside of his municipal limits. We quote from 6 C.J.S. *Arrest* §8c, at p. 607 as follows:

*At common law*, and except where the rule is changed by statute, it being the duty of every citizen to assist in preserving the peace, any private person may arrest without a warrant one who commits a breach of the peace in his presence, or where it is reasonably suspected that a person is threatening to commit a breach of the peace. *Unless modified by statute, it would seem, where the arrest is for a misdemeanor, that the offense must amount to a breach of the peace to justify a private person in arresting without a warrant.* (Emphasis supplied.)

*Accord:* *Marden v. State*, 203 So.2d 638 (3 D.C.A. Fla., 1967); *certiorari denied*, 210 So.2d 224 (Fla. 1968).

AS TO QUESTION 3:

This question is answered in the affirmative.

073-60—March 14, 1973

#### PAROLE AND PROBATION

#### SUBSEQUENT FELONY ARREST—INCARCERATION, HEARING, REINSTATEMENT

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

Prepared by: Reeves Bowen, Assistant Attorney General

#### QUESTIONS:

1. When a parole revocation hearing is held pursuant to §949.11, F. S., within ten days after a parolee's arrest on a felony charge, what effect