

Article V, including municipal courts that are abolished pursuant thereto and Ch. 72-403, Laws of Florida (§168.031, F. S.). You state that the City of Gainesville has elected to abolish its municipal court. Thus, the county court of Alachua County will have the jurisdiction formerly exercised by the municipal court of Gainesville with respect to traffic offenses committed on the grounds of the University of Florida. And, so far as I can find, this is the only impact of revised Article V upon the university's traffic rules and regulations.

As to the university's student traffic court established by the board of regents pursuant to statutory authority: There is nothing in revised Article V or its implementing statute, Ch. 72-404, Laws of Florida, to indicate that the legislature intended to merge student traffic courts into the new judicial system. They are nowhere mentioned in revised Article V or its implementing statute; and, in fact, these "courts" are nothing more than administrative tribunals to deal with infractions of the university's traffic rules and regulations. The penalty may be either monetary or a restriction upon the student's privilege of operating a motor vehicle on university property, or both. The monetary proceeds are used to defray the cost of collection, for student scholarship and loan purposes, or additional parking facilities on the campus. As noted above, no change was made in the applicable provisions of law, §§239.53-239.58, *supra*, in implementing revised Article V; and the operation of an intramural student traffic court to enforce the university's on-campus traffic rules and regulations is entirely consistent with the new two-tiered trial court system for the trial of violations of law or ordinances. I have the view, therefore, that revised Article V has no impact upon the right of a student traffic court to deal with infractions of the university's traffic rules and regulations.

073-133—April 23, 1973

CRIMES AND OFFENSES

INITIATING PROCEEDINGS AGAINST ALLEGED MISDEMEANANTS

To: R.W. Weitzenfeld, Manatee County Sheriff, Bradenton

Prepared by: Enoch J. Whitney, Assistant Attorney General

QUESTION:

What procedure must be followed to institute proceedings against a person alleged to have committed a misdemeanor outside the presence of a law enforcement officer?

SUMMARY:

Under Rule 3.115, CrPR, the state attorney has the duty to formulate the procedure to be followed by persons seeking to institute a criminal prosecution.

Under §20(c)(4) of revised Art. V, State Const., the jurisdiction previously exercised by justice of the peace courts is now vested in the county courts. Rule 3.120 of the new Florida Rules of Criminal Procedure, effective February 1, 1973 [see *In Re Florida Rules of Criminal Procedure*, 272 So.2d 65 (Fla. 1972)], authorizes any circuit judge or county judge to issue arrest warrants in criminal cases. (Rule 3.130(1), CrPR, requires that a summons, instead of a warrant, be issued in a misdemeanor case unless the judge has reasonable ground to believe that the defendant will not appear in response to a summons.)

However, Rule 3.115, CrPR, commands that:

The state attorney shall provide the personnel *or procedure* for criminal intake in the judicial system. All sworn complaints charging the commission of a criminal offense shall be filed in the office of the clerk of the circuit court and delivered to the state attorney for further proceeding. (Emphasis supplied.)

Thus, it appears that said Criminal Procedure Rule 3.115, *supra*, places upon the state attorney the duty to provide the personnel or procedure "for the criminal intake" in the judicial system; and said rule goes further and directs that when a sworn *complaint* is filed with the clerk it shall be "delivered to the state attorney for further proceeding."

It might be noted, however, that it does not appear that any of the new criminal procedure rules aforesaid would preclude the sheriff's office from conducting investigations in misdemeanor cases and giving reports thereof to the state attorney's office. As noted above, your inquiry indicates that such investigative service has previously been offered to justices of the peace to assist them in deciding whether to issue warrants, and, accordingly, such service may be of benefit to the state attorney in fulfilling the responsibilities placed upon his office by Rule 3.115, *supra*. I understand that the state attorney whose jurisdiction includes Manatee County has been utilizing, in misdemeanor prosecutions, investigative information provided by sheriffs' offices within his jurisdiction.

In these circumstances, and in the light of the provisions of said Criminal Procedure Rule 3.115, *supra*, I find that you should look to the state attorney for the procedure to be followed for criminal intake in misdemeanor cases.

073-134—April 24, 1973

PENAL BOND

IN LIEU OF MECHANIC'S LIEN FOR PUBLIC WORK—APPLICABILITY TO PROFESSIONAL ENGINEERING SERVICES

To: William P. O'Malley, Safety Harbor City Attorney, Clearwater

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Is a municipality required to secure performance and payment bond pursuant to §255.05, F. S., for the amount of any contract with a professional engineering firm attributable to consultation and planning of public work as opposed to prosecution and completion thereof?

2. Is a municipality required to secure a performance and payment bond pursuant to §255.05, F. S., for that portion of such contract with a professional engineering firm as may be attributable to supervision of construction following the commencement of such construction?

SUMMARY:

Section 255.05, F. S., requiring contractors on public buildings or other public works to execute a penal bond, is not applicable to contracts for supplying engineering services to a municipality in this state.

Section 255.05, *supra*, provides that any person entering into a contract with the state, any county, city, or political subdivision thereof, or other public authority, for the construction or repair of a public building or other public works:

. . . shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the