

1968 Constitution as §22 of Art. I, *supra*). In upholding the provision the court, speaking through the late Mr. Justice Terrell, said:

We do not think there is any merit to this contention. The act imposes the same requirement on the plaintiff and the defendant to secure a jury. The prerequisite for securing a jury is the payment of such costs as the Court may fix by reason of a jury trial. Costs should not be such as to make it difficult or impossible to secure a jury but we think the court has the discretion to fix costs in such a manner as to prevent this.

In *State v. Taylor*, 145 So.2d 751, 755 (2 D.C.A. Fla., 1962), the same challenge, *i.e.*, of impairment of right to a jury trial, was made. In fact, the same statute, Ch. 25574, 1949, Laws of Florida, was in issue. The court held as did the court in *State v. Parks*, *supra*, that there "is no constitutional impairment of a litigant's right to trial by jury where the cost deposit is reasonable."

A somewhat analogous situation is found in the requirement of the Florida Rules of Civil Procedure that a jury trial is deemed to be waived if not demanded in accordance with the procedure therein prescribed. (1973 Rule 1.430, RCP, formerly Rule 2.1.) In *Shores v. Murphy*, 88 So.2d 294, 296 (Fla. 1956), the court sustained the rule as against the same attack made on Rule 7.150 in *State v. Parks*, *supra*, at 347. In upholding the rule the court said that the purpose to be accomplished by rules of this nature "is to expedite the disposition of cases where possible by enabling the trial courts to clear congested dockets." It was noted also that, even though not expressly so provided in our Florida Rules as in the Federal Rules of Civil Procedure, a trial judge had the discretion to order a jury trial, even though not demanded by the parties, where justice requires it (Rule 1.430, *supra*, expressly so provides.) And it was concluded that, as so interpreted, the rule in question did not violate the constitutional mandate that "the right to trial by jury shall remain inviolate." Similarly, to avoid a collision with this constitutional mandate, the cost deposits assessed by the trial judge in response to the request for jury trial as required by Rule 7.150, *supra*, must be reasonable and not such "as to make it difficult or impossible to secure a jury." *State v. Parks*, *supra*, at 349; *State v. Taylor*, *supra*, at 755.

In light of the authorities cited, it is clear that Rule 7.150, RSP, does not impair or unduly restrict the right to trial by jury, is presumptively valid under revised Art. V, State Const., and is controlling in proceedings filed in the county courts of this state in which the claim or property involved does not exceed one thousand five hundred dollars, exclusive of costs, interest, and attorney's fees. As to suits other than small claims filed in the county courts, the provisions of Ch. 40, F. S., relating to the responsibility of the state for the payment of jurors, are still in full force and effect, as noted in AGO 073-21.

073-322—September 6, 1973

PRISONERS

PAYMENT OF MEDICAL BILLS INCURRED WHILE PRISONER ESCAPED

To: Louie L. Wainwright, Director, Division of Corrections, Tallahassee

Prepared by: Andrew W. Lindsey, Assistant Attorney General

QUESTION:

Is the Division of Corrections responsible for hospital bills incurred by an escaped prisoner during the time of his escape?

SUMMARY:

The answer to your question is that the absence of specific legislative grants giving you the authority to disburse state funds to pay the medical expenses incurred by an escaped state prisoner would prohibit the disbursement of such funds by your office.

The only statutory authority the Division of Corrections has for the treatment of state prisoners is §945.12, F. S. Section 945.12(1), in addition to several specified categories, provides that the Division of Corrections is authorized to transfer other prisoners requiring specialized medical treatment to an appropriate institution. Then again, §945.12(3) provides that the division is authorized to reimburse the institution furnishing treatment at a figure agreed upon by the division and the controlling authority of such institution.

Your question does not pose the situation of an inmate being transferred, but rather the situation where an inmate has escaped from the custody of the Florida state prison system. There is no statutory authority authorizing your department to disburse funds for treatment of injuries sustained by an escaped prisoner during the period he is outside the custody and control of the Florida state prison system.

073-323—September 6, 1973

TRAFFIC CONTROL

**APPLICABILITY OF UNIFORM TRAFFIC CONTROL LAW
TO PRIVATE PROPERTY**

To: Donald Parton, Chief of Police, Sea Ranch Lakes

Prepared by: Wallace E. Allbritton, Assistant Attorney General

QUESTIONS:

1. Is §316.160, F. S., regulating automobile parking applicable to a shopping center?
2. Does Ch. 316, F. S., the Florida Uniform Traffic Control Law, control traffic at a shopping center within a municipality?

SUMMARY:

Local police authorities are authorized to enforce the Uniform Traffic Control Law on private property, including shopping centers, where the public has a right to travel by motor vehicle. The Uniform Traffic Control Law is applicable to shopping centers within a municipality.

The statutory provision mentioned in your telegram was repealed by Ch. 71-135, Laws of Florida, effective January 1, 1972. However, similar statutory provisions are found in Ch. 316, more particularly as follows:

316.160 Stopping, standing or parking prohibited in specified places.—

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

- (a) Stop, stand or park a vehicle:

9. At any place where official signs prohibit stopping.