

person be placed in jail for any specified length of time as a prerequisite to a valid charge or prosecution.

The offense of driving a motor vehicle when intoxicated to the extent that normal faculties are impaired is denounced by §316.028, F. S. 1971. This statute in its entirety reads as follows:

316.028 Driving while under the influence of alcoholic beverages, narcotic drugs, barbiturates or other stimulants.—

(1) It is unlawful and punishable as provided in subsection (2) for any person who is under the influence of alcoholic beverages, marijuana or narcotic drugs, as defined in chapter 398, model glue, or barbiturates, central nervous system stimulants, hallucinogenic drugs, or any other drugs to which the drug abuse laws of the United States apply, as defined in chapter 404, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Any person who is convicted of a violation of this section shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 6 months or by a fine of not less than \$25 or more than \$500, or both such fine and imprisonment.

(b) For a second conviction within a period of three years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than \$500.

(c) For a third or subsequent conviction within a period of five years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than \$500.

The above statute does not require that a person be placed in jail for any period of time in order to be properly charged with its violation. I have found no other statute requiring such action be taken as a prerequisite to a valid charge under §316.028.

Your letter indicates that an authorized bondsman had posted bond and a responsible adult was present to take custody of the accused. This being true, you have no right to detain the accused in jail for any length of time. A person accused of a noncapital crime has an absolute right to bail prior to trial. *Varholý v. Sweat*, 15 So.2d 267 (Fla. 1943); *Matera v. Buchanan*, 192 So.2d 18 (3 D.C.A. Fla., 1966); *Hoskins v. State*, 217 So.2d 852 (1 D.C.A. Fla., 1969); and Art. I, §14, State Const.

Accordingly, your question is answered in the negative.

073-42—March 5, 1973

CAPITOL CENTER PLANNING DISTRICT

**STATE AUTHORITY TO CONTRACT FOR COMPETITION
TO OBTAIN URBAN PLANNING SERVICES**

*To: Chester F. Blakemore, Executive Director, Department of General Services,
Tallahassee*

Prepared by: Arthur C. Canaday, Assistant Attorney General

QUESTIONS:

Concerning participation by the state in a competition to obtain

urban planning services for the Capitol Center Planning District:

1. May the state participate in a competition which is restricted to the classification of participants permitted by the American Institute of Architects Code?
2. May the governor and cabinet delegate to a jury the power to select a planner or plan for the district?
3. May the governor and cabinet employ the services of a "Professional Advisor" as required by the AIA Code?
4. What comment may generally be made on the power of the Department of General Services to contract with an adviser and to conduct such a competition and expend funds for these purposes?

SUMMARY:

Section 272.121, F. S., gives the state authority to contract for a contest to obtain planning services or to hire such other professionals as they determine would assist in their statutory duties, assuming the legislature has appropriated money for this purpose.

Our earlier information had been that the American Institute of Architects Code for architectural competition was rigid in its requirement that the winning plan from such a competition be accepted by the State of Florida. This raised legal problems as to whether state offices could so delegate their decision-making responsibilities. Your letter of February 21, 1973, indicates that the rules for "Class B" competitions are not quite this rigid although they certainly envision the winning plan as being adopted by the state; certainly, at least, they would not allow the state to utilize one of the losing plans in the Capitol Center Project. As a technical legal matter, however, the fact is that under the AIA Code the state would not be legally bound to use the winning plan but only to award a prize and this fact would obviate problems stemming from a delegation of statutory decision-making authority. In short, the state would be technically using the competition or contest method to commission an agent to present his proposed plan to be accepted or rejected by the cabinet. Under these circumstances I see no legal prohibition against a contest.

It would seem clear, however, that the Department of General Services might be embarrassed by this method if the winning design were not acceptable to the head of the department. Certainly, serious policy questions would be presented unless it were agreed in advance that the winner would be willing to sit down and work out modifications to his design which would be acceptable to the department, if that were necessary. To have only the extreme alternatives of rejecting or approving the entire plan would not seem to be in the best interest of the state. The AIA Code is not entirely clear on this point.

Section 272.121(3), F. S., gives the Division of Building Construction and Maintenance, Department of General Services, clear authority to develop a comprehensive plan for the Capitol Center and authorizes it to "request the cooperation of those state and private architects, engineers and interior designers determined by the division to possess expertise or information helpful to the development of a capitol plan" Under this broad authority, the division can decide which professional firms and services in the field shall assist in developing the plan. These professional services could include the analysis of numerous plans in order to recommend the best to the state. Whether these services would come from architects, engineers, "professional advisers" or professional planners, or a combination of all would be up to the division based upon its considered opinion as to the professional qualifications and contributions of each. Obviously, it would appear from the provisions of the code, the AIA feels that its members are fully qualified to undertake such planning work. As indicated above, the broad provisions of the statute would authorize employment of a "professional adviser" if the division determined it to be an expeditious way of accomplishing its statutory responsibilities.

It should be finally pointed out that, at this time, the legal authority of the department to actually contract for either a planner or a contest is limited to the precise amount of presently available funds, if any, which have been appropriated for this purpose.

073-43—March 5, 1973

AUTOMOBILES

LAW ENFORCEMENT OFFICER AUTHORITY TO IMPOUND AND INVENTORY AUTOMOBILE UPON ARREST OF OPERATOR—ADMISSIBILITY OF EVIDENCE OF CRIME DISCOVERED UPON INVENTORY

ATTORNEY GENERAL OPINIONS

LEGAL EFFECT

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

Prepared by: A. S. Johnston, Assistant Attorney General

QUESTIONS:

1. Does a law enforcement officer upon arresting the driver of an automobile have the authority to cause the towing and storage of a defendant's vehicle for safekeeping when there is no other alternative but to tow the vehicle and place it in safekeeping or leave it beside the road, subject to larceny and vandalism, due to the fact that the driver must be booked into jail?
2. Prior to the pickup and storage of the vehicle, may the officer inventory the vehicle for the protection of the owner, for the protection of the vehicle's operator, for the protection of the tow truck operator, as well as the protection of the arresting officer?
3. When it is the practice of the law enforcement agency to always inventory each and every vehicle towed in because of being unable to make other disposition of the vehicle and an inventory is conducted and contraband discovered, may the contraband legally be used against the defendant in a court of law?
4. What effect does the attorney general's opinion have at law?

SUMMARY:

The impounding of vehicles after the arrest of the operator may be required to protect the property of the suspect. The vehicle may be seized if there is probable cause to believe that it is being used in violation of certain specific statutes.

When the vehicle is impounded to protect the property, an inventory of the vehicle may be conducted to complete this protection. Additionally, an active search for contraband may be conducted when it is reasonably suspected.

Contraband found in the course of an inventory is admissible if the impoundment and inventory were necessary, and there is no evidence indicating that an intent to uncover incriminating evidence was the motivation for the inventory. When a search is conducted reasonably incident to an arrest or based upon probable cause to suspect contraband, any contraband found would be likewise admissible.

Attorney general opinions, while not binding on the courts, are