

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

additional obligations that such contractor shall promptly make payments to all persons supplying him labor, material, and supplies, used directly or indirectly by the said contractor or subcontractors in the prosecution of the work provided for in said contract . . . .

As noted in *City of Fort Lauderdale v. Hardrives Company*, 167 So.2d 339 (2 D.C.A. Fla., 1964), this statute was patterned after the federal Miller Act, 40 U.S.C.A. §§270a *et seq.*, and has for its purpose "the protection of materialmen, laborers and the like, whose labor and materials are put into public works projects, upon which they can acquire no lien, by substituting a penal bond for the lien allowed by other statutes on private construction projects." *Accord*: *State v. Clutter Construction Corporation*, 132 So.2d 21 (3 D.C.A. Fla., 1961), *aff'd*, 139 So.2d 426 (Fla. 1962).

In light of the purpose of §255.05, *supra*, to fill the void resulting from the inapplicability of the Mechanics' Lien Law to public works contracts, it seems clear that it is not applicable to a professional contract for the supplying of architectural or engineering services to a public agency. The services performed by such a professional person are personal and nondelegable; and the only lien provided by our Mechanics' Lien Law for such services is in favor of the professional person himself for preparing the plans and specifications or drawings used in carrying out his contract or in supervising the construction of the building in accordance with such plans and specifications. His employees have no lien for their services in assisting him in performing his contract. *See* §713.03, F. S. As the bond which the general contractor is required to execute under §255.05, *supra*, serves as a substitute for the liens which the contractor's laborers and materialmen (and subcontractors) could have acquired against the improved property under a private construction contract, it necessarily follows that the purpose for such a bond would fail in the case of a contract for engineering or other professional services. It must be assumed that the legislature intended a legislative act to serve a useful purpose. *Arnold v. Shumpert*, 217 So.2d 116 (Fla. 1968). As no useful purpose would be served, it must be concluded that the legislature did not intend to require an engineer or other similar professional person to execute the penal bond referred to in §255.05, *supra*.

Accordingly, your questions are answered in the negative.

073-135—April 25, 1973

#### RECORDED INSTRUMENTS

#### ELEMENTS TO BE ENDORSED OR STAMPED THEREON

To: *Sal Geraci, Clerk, Circuit Court, Fort Myers*

Prepared by: *Henry George White, Assistant Attorney General*

#### QUESTION:

What essential elements must be endorsed or stamped on an instrument presented to a circuit court clerk for recording?

#### SUMMARY:

The essential elements which must be endorsed or stamped on an instrument presented to the clerk of a circuit court for recording are the official register number of the instrument, the date and time of filing, the words "record verified," and the manual signature of the authorized official who actually verified the proper recording of the instrument.

At the outset I note that I have been unable to discover any statute which requires that an official seal, whether impressed or imprinted, be affixed on the