

beyond the limits of this state, together with the same mileage for his prisoner, and in addition thereto he shall receive the actual and necessary expense on account of returning the prisoner to the state.

It has been held under §30.24 that it is the duty of the sheriffs of the several counties of Florida to return prisoners charged with a violation of the criminal laws of Florida. *Davis v. Keen*, 192 So. 200 (Fla. 1939). *See also* AGO 045-314, Oct. 8, 1945, Biennial Report of the Attorney General, 1945-1946, p. 111, AGO 047-148, May 21, 1947, Biennial Report of the Attorney General, 1947-1948, p. 42, and *Foley v. State*, 50 So.2d 179 (Fla. 1951).

Inasmuch as it is the duty of the sheriff to return fugitives from this state from our sister states, and inasmuch as §30.24, F. S., prescribes compensation for the sheriff in performing this duty, it necessarily follows that the expenses and costs of this activity are properly submitted to the board of county commissioners or budget commission as part of the sheriff's budget as provided for under §30.49, F. S., which, as pertinent, states:

(1) At the time fixed by law for preparation of the county budget, each sheriff shall certify to the board of county commissioners a proposed budget of expenditures for the carrying out of the powers, duties, and operations of his office for the ensuing fiscal year of the county. The fiscal year of the sheriff shall henceforth commence on October 1 and end on September 30 of each year.

(2) The sheriff shall submit with the proposed budget his sworn certificate, stating that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the office for the ensuing year. Each proposed budget shall show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail other than construction, repair, or capital improvement of county buildings during the said fiscal year. The expenditures shall be itemized as follows:

- (a) Salary of the sheriff.
- (b) Salaries of deputies and assistants.
- (c) Expenses, other than salaries.
- (d) Equipment.
- (e) Investigations.
- (f) Reserve for contingencies.

The county is responsible for the costs and expenses incurred by the sheriff in returning fugitives from this state as defined in and required by §30.24, F. S.

073-307—August 31, 1973

HOUSING AUTHORITIES

DISCRETION OF LOCAL GOVERNMENT WHEN PETITIONED TO FROM AUTHORITY

To: *Edward J. Trombetta, Secretary, Department of Community Affairs,
Tallahassee*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

QUESTION:

May a city or county refuse to declare by proper resolution that there is need for a housing authority to function within said city or county under §§421.04 and 421.27, F. S., when a formal petition asserting such

need and requesting the governing body to so declare has been signed and filed by more than twenty-five residents?

SUMMARY:

The governing body of a city or county may refuse to affirmatively declare by resolution that there is need for a housing authority to function within said city or county if it finds that the conditions enumerated in §421.04(2)(a) or (b), F. S., do not exist, even when a formal petition asserting such need has been signed and filed by more than twenty-five residents.

Your question is answered in the affirmative.

Section 421.27(1), F. S., states that:

In each county of the state there is hereby created a public body corporate and politic to be known as the "housing authority" of the county; provided, however, that such housing authority shall not transact any business or exercise its powers hereunder until or unless the governing body of such county, by proper resolution shall declare at any time hereafter that there is need for a housing authority to function in and for such county, which declaration shall be made by such governing body for such county in the same manner and subject to the same conditions as the declaration of the governing body of a city required by §421.04 for the purpose of authorizing a housing authority

Further, §421.04, F. S., provides in part that:

(1) In each city . . . there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city by proper resolution shall declare that there is need for an authority to function in such city. The determination as to whether there is such need for an authority to function:

(a) May be made by the governing body on its own motion; or
(b) Shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

(2) The governing body may adopt a resolution declaring that there is need for a housing authority in the city if it shall find that:

(a) Insanitary or unsafe inhabited dwelling accommodations exist in such city; or

(b) There is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford.

Thus, there are two methods by which the governing body of a city may determine and declare that there is need for a housing authority. First, by the authority of §421.04(1)(a), F. S., the governing body may make such a determination at its own discretion. If this method is used, the governing body must find that the conditions set forth in §421.04(2) (a) or (b), F. S., exist.

The second method is provided for by §421.04(1)(b), F. S. Here, the determination as to whether there is need for a housing authority *shall* be made by the governing body upon receiving a petition signed by twenty-five residents of the city asserting such need and requesting that the governing body so declare. The word "shall" when used in a statute or ordinance has, according to its normal usage, a mandatory connotation. *Florida Tallow Corp. v. Bryan*, 237 So.2d 308 (4 D.C.A. Fla., 1970). In *Brooks v. Anastasia Mosquito Control District*, 148 So.2d 64 (1 D.C.A. Fla., 1963), the court said at p. 66:

It must be assumed that the Legislature of this state must know the plain and ordinary meaning of words and that the word "may" when given its ordinary meaning, denotes a permissive term rather than the mandatory connotation of the word "shall."

Clearly, the legislature intended that there were to be two methods for the establishment of a housing authority—one at the discretion of the governing body and the other mandatory. However, it is my opinion that the determination of the need for a housing authority or the lack of any need therefor—rather than the passage of a resolution—is made mandatory by §421.04(1) (b), *supra*. Upon receipt of such petition signed by twenty-five residents, the governing body by appropriate mode of action must determine whether there is such a need. The petition itself should allege that the conditions described in §421.04(2) (a) or (b), *supra*, exist. Then the governing body must determine if these conditions do, in fact, exist.

Further proof for such a conclusion is found in the language of §421.04(3), F. S., which says in part that:

Such resolution . . . shall be sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms . . . that either or both of the above enumerated conditions exist in the city. . . .

Therefore, the governing body can refuse to pass the resolution affirmatively declaring that there is a need for a housing authority if it determines that the conditions enumerated in §421.04(2) (a) or (b), *supra*, do not exist. This is so even when the governing body receives the proper petition under §421.04(1) (b), *supra*.

073-308—September 4, 1973

UNIVERSITIES

EXTENSION OF FEE DEADLINE FOR VETERANS NOT APPLICABLE TO COMMUNITY COLLEGES

To: Thomas H. Johnson, Senator, 28th District, West Palm Beach

Prepared by: Victor Walsh, Assistant Attorney General

QUESTION:

Does the benefit of Ch. 73-184, Laws of Florida, waiving registration fee deadlines for veterans attending institutions in the "state university system," run to those veterans attending public junior colleges?

SUMMARY:

Chapter 73-184, Laws of Florida, providing a 60-day waiver of registration fee deadlines for veterans attending institutions within the "state university system," does not apply to veterans attending community colleges.

Chapter 73-184, *supra* [§240.052(4), F. S.], was a legislative response to the hardships veterans often faced in having to satisfy their registration fees several months before they received their first federal veterans' educational benefits checks. Accordingly, under this act, a veteran availing himself of the educational benefits provided by Ch. 34 or Ch. 35 of Title 38 U.S.C. in attending "any institution within the state university system, shall have an additional sixty (60) days after any period otherwise provided during which he may make timely payment of registration fees for such program."