

entertainers, who are under seventeen years of age, in dinner theaters in which alcoholic beverages are served.

The answer to your question requires a brief examination of the statutes concerning both the licensing of dinner theaters which serve alcoholic beverages and the employment of minors in such establishments.

Chapter 28117, 1953, Laws of Florida, now appears, with subsequent amendments, as §561.20(2), F. S. This statute permits the issuance of "special" liquor licenses to restaurants which have at least twenty-five hundred square feet of service area, are equipped to serve one hundred fifty persons full course dinners at one time, and which derive at least 51 percent of their gross revenue from the sale of food and nonalcoholic beverages. The dinner theaters to which you refer in your letter are presumably the type which are issued "special" licenses under §561.20(2). Minors are legally permitted to be on the premises of establishments which have been issued "special" licenses when their presence is for the purpose of dining, dancing, or listening to music, but they may not lawfully be served or be allowed to consume alcoholic beverages. *Taylor v. State Beverage Department*, 194 So.2d 321 (2 D.C.A. Fla., 1967). *Accord*: Attorney General Opinion 072-105.

Under the original beverage law, the employment of minors on licensed premises was prohibited. However, in 1955, the legislature enacted §562.13, F. S., which reads in pertinent part as follows:

It is unlawful for any vendor licensed under the beverage law to employ any person under twenty-one years of age. However, this section shall not apply to professional entertainers between the ages of seventeen and twenty-one years who are not in school

No distinction is made concerning either the type of entertainment provided or the location of entertainers (*i.e.*, on or off stage) during a performance.

It will be noted that §561.20(2), *supra*, which authorizes "special" liquor licenses for bona fide food service establishments, was already a part of the beverage laws at the time that §562.13, *supra*, was enacted. The legislature is presumed to have knowledge of existing law when it enacts a statute. *Collins Investment Co. v. Metropolitan Dade County*, 164 So.2d 806 (Fla. 1964). Accordingly, it must be assumed that had the legislature intended to make a special exception for the employment of professional entertainers under the age of seventeen in establishments holding "special" licenses pursuant to §561.20(2), *supra*, such an intention would have been clearly expressed in §562.13, *supra*. The exception in §562.13, *supra*, with respect to the employment of professional entertainers is clearly limited to minors between seventeen and twenty-one years of age. In AGO 059-207 it was held that the provisions of §562.13, *supra*, should not, by implication, be given an interpretation which is broader than that warranted by the language of the beverage laws. Thus, while minors under seventeen years of age may frequent establishments holding "special" liquor licenses as long as they are not served alcoholic beverages, such establishments may not employ entertainers who are less than seventeen years of age.

073-40—March 5, 1973

COUNTIES

OLDER AMERICANS ACT—CONTRIBUTION OF COUNTY FUNDS TO NONPROFIT CORPORATION

To: Emmett S. Roberts, Secretary, Department of Health and Rehabilitative Services, Tallahassee

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

QUESTIONS:

1. Has a county the power under its home rule authority to expend or otherwise contribute public funds of the county to a nonprofit corporation which provides local services to the aged and which is qualified under the Older Americans Act to be a recipient of federal, state, and local matching funds?
2. Would such an expenditure of public funds violate Art. VII, §10, State Const., which prohibits a county from pledging its credit or taxing power in behalf of a nonprofit corporation or association?

SUMMARY:

A county, under its home rule powers pursuant to a duly enacted ordinance, *may* lawfully contribute county funds to a qualified nonprofit corporation providing services pursuant to the Older Americans Act, when such services are rendered to accomplish a specified county purpose in behalf of the aged citizens of the county.

AS TO QUESTION 1:

Regarding the responsibility of the governing authority of a county to contribute county funds to support activities, programs, or services provided under the Older Americans Act of 1965 (42 U.S.C.A., §3001, *et seq.*), a review of the state's general law on this subject (*see* §§409.360 and 409.362, F. S.), merely indicates a legislative intent that elderly citizens of this state shall be assisted and protected to the fullest extent possible. These federal and state laws do not indicate any responsibility on the part of the Department of Health and Rehabilitative Services, or the Bureau of Aging under the Division of Family Services, to require the expenditure of county funds for this purpose.

The mere authority to act does not necessarily carry with it the corresponding authority to expend public funds. A board of county commissioners expending county funds may be likened in many respects to the legislature in regard to the expenditure of state funds; and county commissioners are not authorized to expend county funds except for the purposes and in the manner expressly provided by law, notwithstanding that a county purpose may have been expressed or implied by various provisions of a statute. This legislative declaration or determination is merely persuasive or a guideline upon which the governing authority of a county is afforded the opportunity to exercise its discretionary responsibility regarding the appropriation of county funds. *Cf. Prescott v. Board of Public Instruction*, 32 So.2d 731 (Fla. 1947); *City of Lynn Haven v. Bay County*, 47 So.2d 894 (Fla. 1950). *See* 8 Fla. Jur. *Counties* §§107, 111, and 112.

In the absence of some type of specific mandate, the general authority given a county to provide various programs, facilities, and services for its citizens (*i.e.*, health, welfare, recreational and cultural programs and facilities) which may be contemplated by the Older Americans Act, *supra* [*see* §125.01, F. S., and 45 Code of Federal Regulations (CFR), Ch. XI, §901, *et seq.*], merely secures to the governing authority of a county the power of deciding how, when, and for what purpose the public funds of the county may be applied. This authority does not preclude the constitutional requirement that funds may be withdrawn pursuant to law. *Cf.* 25 Fla. Jur. *Public Funds* §17; Art. VII, §1(c), State Const.; and Art. XIII, §3, State Const. 1885.

Considering the constitutional and statutory "home rule" authority which counties now possess, a county ordinance takes the place of a special legislative act in regard to matters of strictly local concern. Such an ordinance now is considered to constitute sufficient authority for the expenditure of county funds. *See* AGO 070-134.

In providing funds for various local programs, facilities, and services for the aged, there is no question that the county itself may directly provide these services

to accomplish the county purpose declared in the duly enacted ordinance. However, the proposed method of providing these services through a nonprofit corporation or association is questionable due to the fact that county funds are being expended in part to assist a nongovernmental entity which may violate the provisions of Art. VII, §10, State Const.

AS TO QUESTION 2:

Article VII, §10, State Const., summarily provides, in part, that no county shall become a joint owner with, or give, lend, or use its taxing power, or pledge its credit to aid any corporation or association. In one sense, the expenditure of county moneys contributed to a senior citizens' group may well be considered an aid to such an organization.

However, if the nonprofit corporation is a quasi-public organization, that is, if its programs, facilities, and services are merely operated and managed for the convenience of the public which it serves, it will be rendering a public service, subject always to the ultimate control of the county commissioners in regard to such a contribution and the county purpose to be attained thereby. *Cf. O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967) at pp. 4-10. The fact that the county, under its home rule ordinance, proposes to utilize the services of a voluntary, nonprofit, quasi-public organization to handle the operating details of a facility, program, or service for the elderly citizens of the county does not destroy the public nature and objectives of the expenditure made for that specific county purpose. *Cf. Burton v. Dade County*, 166 So.2d 445 (Fla. 1964), approving expenditure of county funds for a county planetarium operated by a nonprofit quasi-public corporation; *Sunny Isles Fishing Pier v. Dade County*, 79 So.2d 667 (Fla. 1955), approving a county lease for recreational purposes. *Accord: State v. City of Miami*, 72 So.2d 655 (Fla. 1954), municipal warehouse lease to a nonprofit organization; *Raney v. City of Lakeland*, 88 So.2d 148 (Fla. 1956), leasing for library purposes; *Hanna v. Sunrise Recreation*, 94 So.2d 597 (Fla. 1957), state leasehold for park purposes; *State v. City of Tampa*, 146 So.2d 100 (Fla. 1962), construction of a convention center on leased property.

In conclusion, based upon the previously cited authorities, I am of the opinion that the governing authority of a county, under its home rule powers, may contribute county funds to a nonprofit corporation providing services in compliance with the provisions of the Older Americans Act by a duly enacted ordinance which specifies the particular county purpose to be served and the manner in which payment and receipt of such services shall be made. *Cf. AGO's* 056-151, 070-134, 071-150, and 071-169.

073-41—March 5, 1973

MOTOR VEHICLES

**DETENTION IN JAIL NOT PREREQUISITE TO VALID CHARGE
OF DRIVING UNDER INFLUENCE OF ALCOHOL**

To: Walter V. Dantzler, Chief of Police, St. Cloud

Prepared by: Wallace E. Allbritton, Assistant Attorney General

QUESTION:

When a person has been arrested for driving while intoxicated, is it necessary that such person be placed in jail for any specified period of time in order to have a valid charge?

SUMMARY:

When a person has been arrested for driving while intoxicated, neither §316.028, F. S., 1971, nor any other statute requires that such