

073-472—December 18, 1973

MUNICIPAL FUNDS

CLOTHING AND SHOES FOR POLICE AND FIRE DEPARTMENTS—
PROPRIETY OF BUDGETING THEREFOR*To: Emily Jackson, Mayor, Boynton Beach**Prepared by: Sharyn Smith, Assistant Attorney General*

QUESTION:

May a city budget for shoes and clothing for the police and fire departments?

SUMMARY:

A city may budget for shoes and clothing for the police and fire departments pursuant to the new Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, so long as such an expenditure serves a municipal purpose.

Although your letter does not state precisely what type of shoes and clothing your question is in reference to, it is assumed that the question refers only to clothing which is or could be worn on the street and not to police and firemen's uniforms which have, as a matter of custom, been purchased by the local governing bodies through the years. *Accord:* Attorney General Opinion 062-18.

Although AGO's 073-148 and 062-18, which prohibit paying plain clothes officers a clothing or maintenance allowance, appear initially to answer your question, such is not the case since both opinions were rendered prior to the new Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, effective October 1, 1973. Attorney General Opinion 073-148 expressly recognized that such an expenditure by a local governing body would be allowed if legislatively authorized. Thus, the legislature has the power to direct such an expenditure of moneys by the local governing body, so long as it serves a municipal purpose. *Cf. O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967); AGO 071-28.

An expenditure of municipal funds must benefit the public and be incurred in, and necessitated by, the unique nature of the policemen's and firemen's official duties and functions. For example, damages to clothing from accident, excessive wear, etc., if incurred while the police and firemen are discharging official duties, relate to a public function and the police and firemen may be compensated for such damages. If a special mode of dress is required by the employment, this, too, relates to a public function and may be purchased. Only the particular employees to whom such conditions as the above would apply may be so compensated. Before such compensation may be paid, it is imperative that the governing body find that such an expenditure serves a municipal purpose and, in fact, is a municipal purpose.

Pursuant to the new Municipal Home Rule Powers Act, Ch. 73-129, *supra*, the legislature recognized and declared that municipalities shall have the governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services as provided in Art. VIII, §2(b) of the State Constitution, and may execute any power for municipal purposes, except when expressly prohibited by law. Section 166.021(1), F. S.

Chapter 73-129, *supra*, defines municipal purposes to mean "any activity or power which may be exercised by the state or its political subdivision," §166.021(2), F. S.; and, thereby, the legislature recognized that pursuant to the constitutional grant of power, municipalities have the power to enact any legislation concerning any subject matter upon which the state legislature may

act except, *inter alia*, any subject expressly prohibited by the Constitution, any subject expressly preempted to state or county government by the Constitution or by general law, and any subject preempted to a county pursuant to a county charter adopted under Art. VIII, §§1(g), 3 and 6(e) of the State Constitution. Section 166.021(3). It was the legislative intent to extend to municipalities the exercise of powers for municipal purposes not expressly forbidden by the Constitution, general law, county charter, or special law and to remove any limitations on the exercise of such powers other than those so expressly prohibited. Any limitations of power, except for those specifically enumerated and excepted in the act, contained in any municipal charter enacted or adopted prior to July 1, 1973, were nullified and repealed. Section 166.021(4). Since no constitutional, statutory, or charter provisions applicable to your municipality prohibit the governing body of the city from budgeting municipal funds for shoes and clothing—including ordinary street clothing—for such personnel of the police and fire departments as the legislative body of the city may determine the official duties, functions, and services performed and rendered by the particular employee or officer of the city may require and which will serve a municipal purpose, I am of the opinion that the governing body of the city *may* authorize such expenditures of municipal funds.

073-473—December 19, 1973

PAROLE

EFFECT OF ARREST OF PAROLEE ON FELONY CHARGE—PERSON RELEASED ON EARNED GAIN TIME

To: *Armond R. Cross, Chairman, Florida Parole and Probation Commission,
Tallahassee*

Prepared by: *Reeves Bowen, Assistant Attorney General*

QUESTION:

Do the provisions of §§949.10, 949.11, 949.12, F. S., which, among other things, provide that the arrest of a parolee on a felony charge in this state shall be prima facie evidence of the violation of the terms and conditions of his parole and require a parole revocation hearing within ten days after such arrest, apply to a prisoner released under §944.291, F. S., after he has served his term or terms, less allowable statutory gain time deductions and extra good time allowances?

SUMMARY:

When a prisoner is released under §944.291, F. S., after he has served his term or terms, less allowances for statutory gain time deductions and extra good time allowances, he is subject to the provisions of §§949.10, 949.11, and 949.12, F. S., which, among other things, provide that the arrest of a parolee on a felony charge in this state shall be prima facie evidence of the violation of the terms and conditions of his parole and require a parole revocation hearing within ten days after such arrest.

Sections 949.10, 949.11, and 949.12, F. S., read as follows:

949.10 Subsequent felony arrest of felony parolee or probationer prima facie evidence of violation.—The subsequent arrest on a felony charge, in this state, of any person who has been placed on parole or