

073-342—September 13, 1973

## CRIMINAL PROCEDURE

ISSUANCE OF NOTICE TO APPEAR FOR VIOLATION OF  
MUNICIPAL ORDINANCE*To: John T. Brennan, City Attorney, Fort Pierce**Prepared by: Andrew W. Lindsey, Assistant Attorney General*

## QUESTION:

Does §901.28 (1), F. S., apply to a violation of a municipal ordinance triable only in a municipal court as well as a violation of a municipal or county ordinance triable in the county court?

## SUMMARY:

The answer to your question is that a police officer of a municipality, pursuant to §901.28 (1), F. S., cannot issue a notice to appear for an offense that is triable only in a municipal court. However, he may issue a citation pursuant to §316.008 (1) and (2), F. S.

Section 901.28 (1), F. S. [Ch. 73-27, Laws of Florida.], provides:

**901.28 Notice to appear for misdemeanors or violations of municipal or county ordinances; forms and requisites.—**

(1) If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or for a violation of a municipal or county ordinance triable in the county court and does not demand to be taken before a magistrate, the arresting officer or booking officer may issue such person a notice to appear unless:

The plain language of this section of the Florida Statutes limits its application to an arrest for an offense that is triable in the county court and does not apply to those violations of municipal ordinances which are triable only in municipal courts.

However, §901.28 (7), F. S., provides:

(7) Nothing contained herein shall prevent the operation of a traffic violations bureau, the issuance of citations for traffic violations, or any procedure pursuant to chapter 316.

Section 316.008, F. S., establishes the power of local authorities under the State Uniform Traffic Control Laws and specifically provides in subsection (1):

**316.008 Powers of local authorities.—**

(1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

and in subsection (2) provides:

(2) The municipality, through its duly authorized officers, shall have jurisdiction over the prosecution, trial, adjudication, and punishment of violations of this chapter when a violation occurs within the municipality and the person so charged is charged by a municipal police officer. The disposition of such matters in the municipality shall be in accordance with that municipality's charter. . . .

Section 316.018 (1), F. S., provides the procedure to be followed by a municipal officer acting under the authority of §316.008 (1) and (2). This procedure would allow a municipal officer to issue a notice to appear for a violation of a municipal

traffic ordinance triable only in a municipal court and is substantially the same as the provisions of §901.28 (1), F. S., which authorizes notice of appearance in those cases triable in county courts.

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### MUNICIPALITIES

#### UNIFORM FISCAL YEAR—EFFECT ON PREVIOUSLY ESTABLISHED FISCAL YEARS

*To: Robert B. Cook, Palm Springs Village Attorney, North Palm Beach*

*Prepared by: Jan Dunn, Assistant Attorney General*

#### QUESTION:

What effect do Ch. 73-349 and 73-129, Laws of Florida, which require local governmental units to establish a fiscal year beginning October 1, have on a previously established fiscal year set up within the governmental unit by virtue of a validated revenue bond issue?

#### SUMMARY:

Municipalities which have outstanding revenue bond issues with a fiscal year of other than October 1 through September 30 have to comply with Ch. 73-349 and 73-129, Laws of Florida, which require municipalities to establish a fiscal year beginning October 1 and to submit a financial report at the end of this fiscal year.

Section 218.32(1), F. S., created by Ch. 73-349, Laws of Florida, provides that:

Every unit of local government shall submit a copy of a financial report covering their operations during the preceding fiscal year within ninety days after the close of the fiscal year. . . .

Section 218.33(1), F. S., provides that "[e]very unit of local government shall begin its fiscal year on October 1 of each year and end on September 30." (Chapter 73-349, Laws of Florida, became effective July 1, 1973. Current informal administrative construction of §218.33 (3), F. S., by the Department of Banking and Finance adopts the apparently reasonable position that units of local government having fiscal years beginning before September 30, 1973, can have until September 30, 1974, to conform to the mandate of the act, upon proper notification to the department.) The purpose of Ch. 73-349, Laws of Florida, is to establish a uniform fiscal year and uniform accounting practices and procedures for all local governments. It repeals all inconsistent special acts, municipal charters, or other laws to the extent of the conflict. Section 218.33 (4) [Ch. 73-349, Laws of Florida]. Also repealed are Ch. 128, F. S., and §§145.12, 167.61, and 216.111 (2), F. S., which relate to annual financial reports by municipalities and counties. Section 166.214, F. S., as added by Ch. 73-129, Laws of Florida, effective October 1, 1973, also requires a municipality to establish a fiscal year beginning October 1 of each year. There is no provision for allowing, and no intent or need to allow, each municipality a different fiscal year or a separate financial reporting date based upon fiscal periods coinciding with the calendar year, reporting dates, or maturities and coupon payment periods established under various revenue bond issues. In AGO 073-233 it was said that:

Many bond contracts, maturity dates, coupon payment dates, and single and multi-year construction and service contracts and franchises begin and end on dates and for periods corresponding with the calendar year rather than on the statutorily prescribed fiscal year.