

judge of the circuit for an order directing the county to *distribute reasonable court costs to the municipality*. If not satisfied with the order of the chief judge, the municipality may apply to the supreme court for an order apportioning the costs. (Emphasis supplied.)

Another new statutory provision was also added to Ch. 939 in 1972 relating to the application of costs by the passage of Ch. 72-235, Laws of Florida, as follows:

939.17 Application of cash deposit to fine and costs.—In any prosecution for an offense against the state or any political subdivision thereof, when money has been deposited by or on behalf of the defendant upon a judgment for the payment of a fine and costs, the clerk shall, under the direction of the court, apply the money deposited in satisfaction of such fine and costs and return the remainder to the depositor.

The answer then to question 5 is updated from the original opinion to provide that all court costs assessed by county courts, except those provided for in §§23.103 and 23.105, F. S. (police academy assessments), shall be paid to and retained by the county unless, upon an application by a municipality, the chief judge of the circuit court orders the county to distribute reasonable court costs to the petitioning municipality which is incurring court costs in the operation of the county court.

A considerable portion of the original opinion dealt with the method of computing compensation for sheriffs as costs after the abolishing of the fee system of Ch. 57-368, Laws of Florida. The legislature repealed §30.23, F. S., by the passage of Ch. 72-92, effective July 1, 1972, and removed from the Florida Statutes any provision for sheriffs' costs occurring in criminal prosecutions. Certain sheriffs' charges in civil litigation still remain as §30.231, F. S. Since then, as stated in the first opinion, allowable criminal costs are those permitted and allowed by statute. It must follow that by repealing §30.23, F. S., it was the legislature's intent to eliminate as a cost item in criminal prosecutions those fees as set by the statutes before their repeal. Sheriffs' charges previously allowed should not now be taxed as costs against a solvent defendant upon conviction of a crime, or against the county upon the discharge of a solvent defendant or the conviction or discharge of an insolvent defendant.

Question 7 of the prior opinion was: "In the assessing of costs, is the court required to itemize such costs in aiming at the amount to be paid?" The answer must be amended to eliminate reference to §37.15, F. S., as authority for requiring itemization of assessed court costs. However, itemization must still be made. *Lindsey v. Dykes*, 175 So. 792 (Fla. 1937).

073-101—April 2, 1973

STATE WARRANTS

NEGOTIABILITY UNDER UNIFORM COMMERCIAL CODE—HOLDER IN DUE COURSE

To: *Fred O. Dickinson, Jr., Comptroller, Tallahassee*

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QUESTIONS:

1. Are state warrants in their present form, payable to the order of a named individual, negotiable within the purview of the Uniform Commercial Code?

2. Can a holder in due course compel the state to honor an original warrant even though a duplicate warrant had been issued after a stop payment order has been issued to the state treasurer stopping payment on the original warrant?

SUMMARY:

For reasons of public policy, state warrants are not negotiable instruments even though such warrants may comply with the form prescribed by the Uniform Commercial Code for negotiable instruments. Accordingly, a bona fide purchaser or assignee of a state warrant, for value, is not a holder in due course in the sense of the law merchant so as to cut off inquiries as to the warrant's validity or preclude defenses or setoffs which the state might assert against the original payee of such warrant. But this rule does not affect the rights of such bona fide purchaser or assignee as against the assignor.

A brief examination of the meaning and use of "warrants," is desirable before answering your questions.

The term warrant is defined in 64 Am. Jur.2d *Public Securities and Obligations* §19, as follows:

Warrants are evidence of indebtedness . . . and are orders issued by the officer or body entrusted with the examination and approval of claims, to the treasurer, clerk, or other officer entrusted with the disbursement of the funds of the state, county, municipality, etc., to pay a specified sum . . . to a specified person, to a specified person or assigns, to a specified person or order, or to bearer, usually out of a particular fund or appropriation or out of funds not otherwise appropriated.

Accord: Town of Bithlo v. Bank of Commerce, 110 So. 837 (Fla. 1926). See §§18.02, 215.35, and 216.331, F. S.

A warrant is characterized as a chose in action, payable when funds are available for that purpose, but it does not represent a pledge of the general credit of the issuing body. [See] 64 Am. Jur.2d *Public Securities and Obligations* §20. The courts have been careful to distinguish warrants and bonds. As a general rule, the former is an order to pay while the latter is a promise to pay.

[T]he most noteworthy distinction between bonds and warrants is that the former generally, but not universally, constitute an absolute promise to pay, while warrants generally are an order to pay out of a particular fund or to pay when in funds. Also, prior to the Uniform Commercial Code, the point of distinction between bonds and warrants most often emphasized by the courts was the negotiability of the former and the nonnegotiability of the latter. . . .

Id., Section 21. See, Hubert v. City of Vero Beach, 112 So. 52 (Fla. 1927); Marshall v. State *ex rel.* Sartain, 102 So. 650 (Fla. 1924); and National Bank of Jacksonville v. Duval County, 34 So. 894 (Fla. 1903).

The Uniform Negotiable Instruments Law governed the negotiability of commercial paper in Florida (Ch. 674-676, F. S. 1965) and other jurisdictions prior to the adoption of the Uniform Commercial Code. The general rules regarding warrants under the pre U.C.C. law is set forth in 81 C.J.S. *States* §173, as follows:

A warrant drawn by the proper officer on the state treasurer is assignable so as to authorize the assignee to demand payment and bring suit thereon, as under statutes expressly so providing. It is not, however, a negotiable instrument in the sense of the law merchant so

as to shut out as against a bona fide purchaser inquiries as to its validity or preclude defenses or set-offs which could be asserted as against the original payee, particularly where it is payable only out of a particular fund, and the innocent purchaser for a value of a stolen state warrant acquires no title thereto.

As against the state the assignee acquires no greater rights than the party to whom the warrant was originally issued; but he succeeds to all the rights of his assignor, and under statute the indorser of a nonnegotiable warrant has been held liable to the indorsee to the same extent as the endorser of a negotiable instrument. As between the assignor and assignee, the former, in selling warrants purporting to be drawn on a special fund pursuant to statutory authority, impliedly warrants that the instruments are valid existing obligations of the state. One purchasing a warrant or certificate of indebtedness from a holder takes subject to the rights of the true owner if the instrument is in such form as to put the purchaser on notice of the possibility of the existence of rights in others than the holder.

Accord: 64 Am. Jur.2d *Public Securities and Obligations* §§22; 59 C.J. *States* §407; AGO 051-54, March 4, 1951, *Biennial Report of the Attorney General, 1951-1952*, p. 27; and AGO 052-66, March 5, 1952, *Biennial Report of the Attorney General, 1951-1952*, p. 228. See Annot. 36 A.L.R. 949 (1925).

There are several reasons for the rule, under the N.I.L., that warrants were not negotiable instruments in the sense of the law merchant. The first and most obvious reason was that warrants were normally payable only from a particular fund. The Negotiable Instruments Law provided that an instrument must contain an unconditional promise to pay in order to be negotiable. [See], e.g., §674.02(2), F. S. 1965. It is further provided that an order or promise to pay out of a particular fund was not unconditional. [See], e.g., §674.04, F. S. 1965. However, even warrants which were in negotiable form under the N.I.L. were denied negotiability in many jurisdictions for reasons of public policy or for lack of authority in the governmental entity to issue warrants in negotiable form. See 64 Am. Jur.2d *Public Securities and Obligations* §22, and Annot., 36 A.L.R. 949 (1925).

Florida was among those jurisdictions which, for reasons of public policy, followed the rule that governmental warrants were not to be regarded as negotiable commercial paper so as to cut off the equities of the issuing governmental entity when its warrants were in the hands of a holder in due course, even though such warrants may have been in negotiable form under the N.I.L. The reasons for this public policy have been stated as follows in 2 Dillon on *Municipal Corporations* §856 (5th ed. 1911), at 1295:

This result is arrived at as much by reason of the purpose or object intended to be attained by these instruments as by a consideration of the lack of power, inherent or implied, on the part of municipalities to make and issue negotiable instruments without clear statutory authority therefor. Such warrants or orders, drawn for ordinary municipal expenses, *are not intended to have the qualities of commercial paper*, but are instruments authorized for convenient use in conducting the current and ordinary business of the corporation and as a means of anticipating its ordinary revenue. It would overwhelm municipalities with ruin to hold that such warrants or orders have the qualities of negotiable paper, especially that quality which protects an innocent holder for value from defenses of which he has no notice, actual or constructive. All holders of such warrants or orders, even when payable to order or bearer, stand in the shoes of the payee, and their rights and remedies are often essentially different from those of the

holders of authorized negotiable municipal bonds. Such is the sound doctrine, and such is the doctrine of the authorities without exception.

Accord: Town of Bithlo v. Bank of Commerce, *supra*, and AGO 051-54, *supra*.

The fact that this declaration of public policy is not embodied in a statute does not diminish its persuasiveness. It is not necessary that public policy be specified by statute for it has long been recognized that "[p]ublic policy is the cornerstone—the foundation—of all Constitutions, statutes, and judicial decisions; and its latitude and longitude, its height and depth, greater than any or all of them." *City of Leesburg v. Ware*, 153 So. 87 (Fla. 1934), quoting from *Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co. v. Kinney*, 115 N.E. 505 (Ohio 1916). *Accord:* *City of Miami v. Benson*, 63 So.2d 917 (Fla. 1953). And although this policy was stated in reference to municipal warrants, in Florida it is equally applicable to county and state warrants. Attorney General Opinion 051-54, *supra*.

The Uniform Commercial Code changed the law as it existed under the Uniform Negotiable Instruments Law with respect to the negotiability of *commercial paper*. Compare §673.105, F. S., with §674.04, F. S. 1965. Under the U.C.C. a promise to pay is not conditional merely because payment is restricted to a particular fund if the instrument is issued by a governmental body. Section 673.105(1)g, F. S. It can thus be seen that for those jurisdictions which held governmental warrants nonnegotiable solely because of the "particular" fund limitations found in the N.I.L., the change in the statutory definitions of an unconditional promise to pay contained in the U.C.C. produced a concomitant change in the negotiability of governmental warrants. However, the adoption of the U.C.C. did not affect §§18.02, 215.35, and 216.331, F. S., which prescribe the form of and require the use of warrants for the disbursement of all moneys in the state treasury. Nor did enactment of the U.C.C. change the public policy considerations which in the past led many jurisdictions, including Florida, to deny negotiability to governmental warrants. In fact, §671.103, F. S., provides that the principles of law and equity, including the law merchant, shall supplement the provisions of the U.C.C. unless otherwise required by particular provisions of the code. Accordingly, until legislatively or judicially determined to the contrary, and in the absence of any statute clearly providing otherwise, it is my opinion that state warrants are not negotiable instruments, the provisions of the Uniform Commercial Code notwithstanding. Your first question is, therefore, answered in the negative.

In answering your second question it is assumed the duplicate warrant was issued in the manner prescribed by §17.13, F. S. When the situation suggested by your second question is viewed in the light of the authorities and conclusion discussed above, it becomes apparent that the holder of the original warrant would not be a holder in due course in the sense of the law merchant so as to cut off the equities of the state. "As against the state the assignee [of the original warrant] acquired no greater rights than the party to whom the warrant was originally issued." [See] 81 C.J.S. *States* §173. When the party to whom the original warrant was issued received a duplicate warrant in satisfaction of the claim represented by the original warrant, the rights of the holder of the original warrant were extinguished. *State ex rel. Ackerman v. Meath*, 152 P. 536 (Wash. 1915). However, this result does not affect the rights and remedies of the holder of the original warrant, as assignee, vis-a-vis the assignor, assuming that the assignee is a bona fide purchaser for the value of the original warrant. It follows, then, that your second question must be answered in the negative.