

SUMMARY:

Under Ch. 73-21, Laws of Florida, a person eighteen years of age and older is qualified to act as an executor or administrator.

Section 732.46(1), F. S., provides in part that "[n]o person who is less than twenty-one years of age shall be qualified or permitted to act as an executor or administrator."

Section 2 of Ch. 73-21, Laws of Florida [§743.07(1), F. S.], the Adult Rights Law, provides in part that:

The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older and they shall enjoy and suffer the rights, privileges and obligations of all persons 21 years of age or older except as otherwise excluded by the Constitution of the State of Florida immediately preceding the effective date of this act. . . .

Further, §4 of Ch. 73-21, *supra*, states: "Any law inconsistent herewith is hereby repealed to the extent of such inconsistency."

Thus, inasmuch as the Adult Rights Law gives persons eighteen years of age and older all the rights, privileges, and obligations of persons twenty-one years of age or older, and since the only exceptions are those areas excluded by the Constitution, it must be concluded that a person eighteen years of age or older can now be qualified to act as an executor or administrator.

073-299—August 22, 1973

ADULT RIGHTS LAW**CAPACITY TO CONSENT TO MEDICAL TREATMENT**

To: *Louis H. Ritter, Secretary, Department of Professional and Occupational Regulation, Tallahassee*

Prepared by: *Jan Dunn, Assistant Attorney General*

QUESTION:

Is an individual between the age of eighteen and twenty-one who is living at home and who is fully dependent upon his parents considered an adult for purposes of giving a physician consent to medical treatment?

SUMMARY:

A person eighteen years of age or older may be considered an adult for the purposes of granting consent to medical treatment by a physician.

Your question must be answered in the affirmative.

The Adult Rights Law, §1, Ch. 73-21, Laws of Florida [§1.01(14), F. S.], defines a "minor" as "any person who has not attained the age of 18 years." As stated in AGO 071-220:

In the 1971 Cumulative Supplement to Volume 41 of the American Jurisprudence, in the treatment of Physicians and Surgeons, §111, I find the following: "As a general proposition, *except in the event of an emergency*, a surgeon will be liable for an assault where he operates on a child without the the consent of the latter's parents." (Emphasis supplied.)

Since the definition of "child" or "minor" has been changed to a person under eighteen years of age, it would follow that persons eighteen years of age or older can

now legally consent to medical treatment. The fact that a person is living at home and is fully dependent upon his parents should have no effect on his legal capacity to consent to medical treatment.

073-301—August 23, 1973

MUNICIPALITIES

AMENDING OR REPEALING ORDINANCES UNDER MUNICIPAL HOME RULE POWERS ACT

To: W. W. Caldwell, Jr., City Attorney, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Does §166.031(1), F. S. [created by Ch. 73-129, Laws of Florida], limit the governing body of a city from amending or repealing by ordinance provisions of the existing charter which by §166.021(5), F. S., are deemed to be ordinances?

SUMMARY:

Section 166.031(1), F. S., created by Ch. 73-129, Laws of Florida, does not limit the governing body of a city from amending or repealing by ordinance provisions of the existing charter which by §166.021(5), F. S., are deemed ordinances.

Chapter 73-129, Laws of Florida, effective October 1, 1973, is the Municipal Home Rule Powers Act. The sections of this act pertinent to a discussion of your question are as follows:

Section 166.021(4), F. S.:

. . . Provided, however, that nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extra-territorial powers or an area which includes lands within and without a municipality; or a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors, as provided in section 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

Section 166.021(5), F. S.:

All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) of this section shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.

Section 166.031(1), F. S.:

The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by ten percent (10%) of the registered electors, submit to the electors of said municipality a proposed