

Sheriff, warrantless searches of pawnbroker's premises

Number: INFORMAL

Date: August 31, 1999

Ms. Patricia T. Gross
General Counsel
Lake County Sheriff's Office
360 West Ruby Street
Tavares, Florida 32778

RE: SHERIFFS--SEARCH AND SEIZURE--PAWNBROKERS--authority of sheriff to conduct warrantless search pursuant to pawnbrokers act. s. 539.001, Fla. Stat.

Dear Ms. Gross:

As the legal advisor for the Lake County Sheriff's Office, you ask substantially whether the Florida Pawnbroking Act limits the authority of the sheriff to conduct warrantless searches of a pawnshop for violations of the act. Specifically, you ask whether deputy sheriffs, without a warrant, are limited to inspecting only pledged and purchased goods, as well as related records, presented to them by the pawnbroker pursuant to their authority to conduct an "inspection" under section 539.001(9), Florida Statutes.

Section 539.001(9), Florida Statutes, requires pawnbrokers to maintain copies of each completed pawnbroker transaction and to deliver the original pawnbroker transaction forms to the appropriate law enforcement official at the end of each business day. All goods delivered to the pawnbroker in a pawn or purchase transaction must be securely stored and maintained within the jurisdiction of the law enforcement official for a period of thirty days. Moreover, "[t]he pawnbroker shall make all pledged and purchased goods and all records relating to such goods available for inspection by the appropriate law enforcement official during normal business hours throughout such period." [1]

Section 539.001(2)(b), Florida Statutes, defines "[a]ppropriate law enforcement official" to mean

"the sheriff of the county in which a pawnshop is located or, in case of a pawnshop located within a municipality, the police chief of the municipality in which the pawnshop is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. *Nothing in this subsection limits the power and responsibility of the sheriff.*" (e.s.)

Thus, the regulatory scheme in Chapter 539, Florida Statutes, governing pawnbroking activities, clearly does not otherwise limit the authority of a sheriff to carry out his or her law enforcement powers as may be necessary to detect or confirm illegal activities by a pawnbroker.

While courts have long recognized that the Fourth Amendment's guarantee against

unreasonable searches and seizures applies to commercial premises,[2] the expectation of privacy in commercial premises does not rise to the same level as that of a private home.[3] In commercial establishments involving "closely regulated" industries, the expectation of privacy is even more reduced,[4] but a warrantless search of such premises must still be reasonable within the context of the business activity being carried on.[5]

The Supreme Court in *New York v. Burger*,[6] provided a three-pronged test to determine if a warrantless search of a highly regulated business is reasonable. First, there must be a substantial governmental interest underlying the regulatory scheme pursuant to which the inspection is made.[7] Second, the warrantless inspections must be necessary to further the regulatory scheme. Third, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." [8] The Court simplified the impact of this third prong by stating that the regulatory statute "must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." [9]

However, any determination of whether a warrantless search is reasonable would depend upon the specific factual circumstances of each case and cannot generally be commented upon by this office. The lawfulness of a warrantless search must be determined by an objective view of the facts.[10]

I trust these informal comments will assist you in resolving the questions you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] Section 539.001(9)(c), Fla. Stat.

[2] *See See v. City of Seattle*, 387 U.S. 541, 543, 546 (1967).

[3] *Donovan v. Dewey*, 452 U.S. 594, 598-599 (1981).

[4] *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-313 (1978) (certain industries have such a history of government oversight that no reasonable expectation of privacy could exist).

[5] *See United States v. Biswell*, 406 U.S. 311, 316 (1972) (warrantless inspection of pawnshop premises licensed to sell sporting weapons pursuant to federal law would "pose only limited threats to the dealer's justifiable expectations of privacy").

[6] 482 U.S. 691 (1987).

[7] *Burger* at 702, citing, *Donovan v. Dewey*, *supra.*, *United States v. Biswell*, *supra.*, and *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 75 (1970).

[8] *Burger* at 702, citing, *Donovan v. Dewey* at 603.

[9] *Burger* at 702.

[10] See *State v. Starkey*, 559 So. 2d 335 (Fla. 1st DCA 1990) (lawfulness of warrantless search determined by an objective view of facts, not subjective view of person conducting search).