Since city streets are not state or U. S. highways, it would appear that the streets in St. Marks, and more specifically here, those in the area of the St. Marks Port Authority, would, like the streets in any other municipality within the Leon-Wakulla Port Authority, be subject to appropriation by the Leon-Wakulla Port Authority if they were necessary for the development of port facilities by that port authority.

It is further noted that §315.04, F. S., a part of the act under which the St. Marks Port Authority was created, provides:

... Any municipality located in a county authorized by law to operate port facilities or in which there is a port district or a port authority shall exercise any powers granted by this law only if the governing body of such county, port district or port authority shall by resolution determine that the best interests of the county will be served thereby and consent thereto.

... (Emphasis supplied.)

This provision would indicate that in order to exercise the powers under Ch. 315, F. S., the St. Marks Port Authority would first have to obtain by resolution the consent of the Leon-Wakulla Port Authority which was established by special act.

To answer your question in summary, it would appear that the St. Marks Port Authority can only exercise powers granted under Ch. 315, F. S., with the consent of the Leon-Wakulla Port Authority. Even upon the granting of this consent by the Leon-Wakulla Port Authority it would still have the right to acquire by condemnation or other appropriate proceedings such property of the St. Marks Port Authority as might be needed for port facilities by the Leon-Wakulla Port Authority.

068-5—January 11, 1968

PUBLIC RECORDS

SCRIVENER'S ACT—DEFINITION OF "PERSON";
DETERMINATION OF PERSON PREPARING INSTRUMENT;
PROHIBITION AGAINST RECORDATION BY CLERK

To: Arthur H. Beckwith, Jr., President, State Association of Clerks of the Circuit Courts, Sanford

QUESTIONS:

1. Should the word "person" appearing in §695.24(1), F. S., be interpreted to include corporations and associations?
2. What determines who prepared an instrument under §695.24, F. S.?
3. Should a document be recorded where the prerequisites imposed by §695.24, F. S., are not met?

Section 695.24, F. S., provides in part:

(1) No instrument by which the title to real estate or any interest therein or lien thereon is conveyed, created, encumbered, assigned or otherwise disposed of shall be recorded by the clerk of the circuit court of any county of this state unless the name and address of the person who prepared such instrument is printed, typewritten or stamped on the face thereof in a legible manner. An instrument complies with this section if it contains a statement in substantially the following form:
"This instrument was prepared by
(name) (address)"

(2) This section does not apply to any instrument executed before the effective date of this section, nor to the following:
(a) A decree, order, judgment or writ of any court;
(b) A death certificate;
(c) An instrument executed or acknowledged outside of this state.

AS TO QUESTION 1:

It is a general rule of statutory construction that a state by adopting statutes of another state adopts the construction which has been given the statute by such other state. See Duval v. Hunt, 34 Fla. 85, 15 So. 856, and Denmark v. Ridgell Furniture Co., 117 Fla. 244, 157 So. 489.

Inquiries concerning the introduction of the Scrivener's Act reveal that it was patterned after similar acts of the states of Indiana and Ohio and there are opinions of the attorneys general of each state on this subject. Ohio has a statute like §1.01(3), F. S., Indiana does not. Based on this distinction the Indiana Attorney General in his Opinion No. 26, dated Jan. 29, 1959, concluded that the word "person" does not apply to corporations. On the other hand the Ohio Attorney General in his Opinion 5806 dated Sept. 30, 1955, said:

We may next consider the meaning of the word "person" as used in this statute. It would seem that the object of this legislation is twofold, i.e., to afford information which would disclose instances of the unauthorized practice of law, and to fix the responsibility for such defects in instruments which may later become evident. I do not consider that we are here concerned with any question of what constitutes the unauthorized practice of law, for the statute in question is directed solely at the disclosure of the identity of persons who prepare instruments, rather than the regulation of their activities. Such disclosure would, of course, be more or less ineffectual unless the natural person concerned were named in the instrument.

However, in Section 1.02, Revised Code, it is provided: "As used in the Revised Code, unless the context otherwise requires. . . (B) 'Person' includes a private corporation . . . ."

It is to be presumed that the legislature selects the language employed in new enactments with knowledge of existing statutory definitions, and where words defined by general statutory provisions are employed in new enactments, they are used in the sense thus indicated; and that if such is not the legislative intent, that intent will be evidenced either expressly or by the clearest sort of implication. (It has been held in Florida that the legislature in enacting a statute presumably acts with full knowledge of existing statutes. See Tamiami Trail Tours v. Lee, 142 Fla. 68, 194 So. 305, and Collins Investment Co. v. Metropolitan Dade Co. Fla., 164 So.2d 806.)

I perceive [sic] nothing in the context in which the term "person" is used in Section 317.111, Revised Code, which requires the adoption of a meaning other than that thus prescribed by statute. Quite clearly a mere suggestion or implication in such context would not be sufficient to avoid the application of this statutory definition. The use of the word "requires," in my opinion, makes it necessary that the context be such that the statutory definition is impossible of application therein, if
such definition is not to be applied; and I am unable to conclude that the context in the instant case presents such impossibility.

It is inherent in the nature of corporations that they may act only through agents and it necessarily follows that where a corporate "person" has prepared an instrument for its own use, it is the name of the principal rather than that of the agent which should be disclosed thereon. There could be no objection in such case, of course, if the principal concerned should elect to disclose the name of its agent on such instrument but such disclosure does not appear to be required under the act.

As to the question of the use of the name of an agent followed by the words "agent of the A.B.C. Corporation," I perceive no objection to this practice under the statute here in question although such words would appear to be surplusage if the principal elects to disclose the agent's name rather than its own.

The Ohio facts and law being more nearly analogous to Florida's than that of Indiana I feel constrained to apply the construction of the Ohio Attorney General by concluding that §1.01(3), F. S., like Section 1.02 Revised Ohio Code, defining persons as corporations, requires that the word "person" in §695.24, F. S., contemplates artificial as well as natural persons so as to include corporations and associations. This appears to conform with the previous informal expressions of this office making reference to §1.01(3), F. S., and I am therefore inclined to answer question 1 in the affirmative.

It should be pointed out in passing that in statutory construction legislative intent is the pole star by which the courts and this office must be guided. See Ervin v. Peninsular Telephone Co., Fla., 53 So.2d 647; Smith v. Ryan, Fla., 39 So.2d 281, and Fla. State Racing Comm. v. McLaughlin, Fla., 102 So.2d 574.

Although it does not appear from the face of the act that any other construction was intended, I have been advised that the opinion of the Indiana Attorney General was used as a guide by the framers of this legislation in drafting it and explaining it in legislative committees. There is some evidence, although it be unofficial, that it was the intent of the framers of the legislation to have it apply to natural persons only but that no such limitation was included in drafting the provisions of §1.01(3), F. S.

Regrettably, the rules of statutory construction require that the legislative intent be gathered from the words as promulgated in the act rather than from expressions of legislators or their committees. See Douglas v. Webber, 99 Fla. 755, 128 So. 613 p. 615, and Marchese v. United States 126 Fed. 2d 671. This accounts for the construction placed upon the statute here.

AS TO QUESTION 2:

In answer to question 2, the Ohio Attorney General said:

The preparation of a legal instrument may involve only a single step, as when it is drafted in its entirety by one person or it may involve the drafting of a form which is thereafter reproduced by printing, the filling in of such form by the addition of names, numbers, dates[,] descriptions of property, and the like. There is, therefore, a question for decision in any such case of the precise point at which the writing can be deemed ready for use by the parties. Obviously this decision can be made either by the party concerned, or by someone acting on his behalf. In
the case of a corporation, such determination must necessarily be made by an agent. In the ordinary situation, where an instrument is drafted in its entirety, it is the individual who decides upon the language to be employed therein, who makes the decision that it is ready for execution. In other situations, where printed forms are used, the decision that a particular writing is ready for use, i.e., for execution by the parties, involves not only the selection of a particular form, but the selection of suitable language to be added thereto. In either case, it is my view that whoever makes these selections, whether acting on his own behalf or as the agent of another, is the individual who has "prepared" the instrument concerned.

This conclusion is sufficient to dispose of the query as to the part of the typist or stenographer in the preparation process, for it is evident that these individuals are mere scriveners or amanuenses of the persons who have actually selected the language to be employed. They cannot be regarded, therefore, as having "prepared" an instrument where their sole contribution has been the physical task of writing or typing it. (The Florida Courts have held that with regard to real estate transactions the preparation and execution of the instruments effectuating the transfer should be under the lawyer's supervision, if the parties decide that they need expert advice and service. See Keyes Co. v. Dade County Bar Assoc., 46 So.2d 605 p. 606; Cooperman v. West Coast Title Co., 75 So.2d 818, p. 821, and Florida Bar v. McPhee, 195 So.2d 552 p. 554.)

Based on the above and foregoing the Ohio Attorney General then concluded:

(1) An instrument is deemed to have been "prepared," as this term is used in Section 317.111, Revised Code, by the person or persons who have selected the language to be employed therein. Such selection may consist (1) in part in the selection of a particular printed form as one appropriate for the purpose, and (2) in part in the selection of the language to be employed in filling up (out) such form. Where two or more persons have collaborated in the selection of the language to be employed in an instrument, the names of all should appear thereon unless one of them is authorized to approve, and does approve, the final draft thereof, in which case such person is deemed to have prepared such instrument, and only his name need be disclosed thereon.

(2) A typist or stenographer whose sole contribution to the preparation of an instrument is the physical task of typing or writing the language selected by another is not deemed to have "prepared" such instrument within the meaning of Section 317.111, Revised Code.

(3) Section 317.111, Revised Code, requires the disclosure of the name of the person or persons who have drafted a particular instrument; and where only one member of a firm of attorneys has participated in such drafting, and the firm name is disclosed on such instrument, the name of such individual member also should appear thereon.

These observations are adopted as the opinion of the Attorney General here in Florida. Question 2 is answered accordingly.

AS TO QUESTION 3:
In answer to question 3 I again refer to the provisions of §695.24(1), F. S., which provide in part: "No instrument . . . shall be recorded by the clerk of the circuit court of any county of this state unless. . . ." (Emphasis supplied.) This language would indicate that unless the requirements of §695.24, F. S., are met, the instrument should not be recorded by the clerk. I am inclined toward the position that no clerk could suffer any personal liability by refusing to record an instrument which does not meet the requirements of §695.24. In fact it would appear that if an instrument were recorded where the prerequisites of §695.24, had not been met there would be an improper and invalid recordation.

068-6—January 12, 1968

FLORIDA DEVELOPMENT COMMISSION

AUTHORITY OF COMMISSION'S EXECUTIVE DIRECTOR 
TO ENTER INTO CONTRACTS

To: Louis Wolfson, II, Legislative Council, Miami

QUESTION:

Under existing Florida Statutes, may the Executive Director of the Florida Development Commission enter into a contract obligating funds of the commission without approval by official action of the commission?

Your question is answered in the negative.

The state has the power to contract. The state is only a corporate name for all the citizens within its territorial limits. The people acting as a public corporation have a right to enter into contracts and make purchases, but in so doing they must act through some governmental agency. In the absence of constitutional restrictions, the legislature may delegate its authority to contract to boards and commissions, whose action in making contracts is the action of the state. See 49 Am. Jur. (States, etc.) 276, Sec. 63; 81 C.J.S. (States) 1084-1085, Sec. 112, 113.

The state has delegated the power to contract and be contracted with to the Florida Development Commission insofar as necessary to administer the duties within the scope of its lawful authority. Chapter 288, F. S., grants to and vests in the development commission the power to make and enter into such contracts as may be necessary in order to carry out the objectives and purposes of the statute. See §§288.06, 288.12, 288.13, 288.15, 288.24, and 288.27, F. S.

Where the state authorizes a certain officer or legal body to contract for it in regard to certain purposes and subjects, no other officer or agency can exercise the authority to contract relating to those purposes and subjects, nor exercise authority to ratify or give effect to a contract not actually made by the authorized person or body. The duty of doing and performing the essential things necessary to the creation of a contract and the acts which involve discretion cannot be delegated to another, but must be exercised by the authorized agent or agency of the state. Where the authority and power to contract is conferred upon a board or commission, such authority must be exercised by the board or commission as an entity. See Charles Scribner's Sons v. Marrs, State Supt. of Public Instruction (Tex. 1924), 262 S.W. 722, 728 (14); also see 81 C.J.S. (States) 1086-1087. The development commission as a body, and not its executive director, is the governing agency set up by law to administer Ch. 288, F. S. The sovereign power and