

Unlawful use of police badges & indica of authority

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Mr. Mark P. Brewer
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Dear Mr. Brewer:

You ask whether the decision of the Florida Supreme Court in *Sult v. State*,^[1] invalidated section 843.085, Florida Statutes, or only subsection (1) of the statute. According to your letter, the Court's decision has caused some confusion in the field regarding the continued effectiveness of subsection (2) of section 843.085.

Section 843.085, Florida Statutes, addresses the unlawful use of police badges and other indicia of authority. Subsection (1) prohibits, with certain exceptions, the wearing or display of any authorized indicia of authority of a law enforcement agency or criminal justice agency or the words "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by any of the above agencies for use by the person wearing or displaying it. Subsection (2) of the statute contains a similar prohibition against a person owning or operating a motor vehicle identified by the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or by any lettering, marking, or insignia, or colorable imitation thereof, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a criminal justice agency, which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies above for use by the person operating the motor vehicle, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to chapter 354. Subsection (5) of the statute makes a violation of the statute a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes.

As you are aware, the Florida Supreme Court in *Sult* was presented with a certified question from the Second District Court of Appeal asking whether section 843.085, Florida Statutes, was unconstitutional as overbroad, vague or a violation of the right to substantive due process.^[2] The Supreme Court answered the certified question in the affirmative. In so holding, it did not distinguish between the various subsections of the statute but stated that "section 843.085 is unconstitutionally overbroad, vague, and violates substantive due process." In its decision, however, the Court did not discuss the provisions of subsection (2) but focused on the provisions of subsection (1). In its decision, the Court on several occasions specifically referred to subsection (1) as being unconstitutional.

The Court found that the statute, with no specific intent-to-deceive element, extended its prohibitions to the innocent wearing and displaying of specified words and was not sufficiently tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The Court held that the "could deceive a reasonable person" element, in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, resulted in a "virtually boundless and uncertain restriction on expression" and thus reached a substantial amount of constitutionally protected conduct. In addition, the Court concluded that there was no logical way to read a specific intent into the statute as currently written.

"The plain language of the statute indicates that any individual who wears or displays any indicia of authority which could deceive a reasonable person into believing that such item is authorized has committed a misdemeanor of the first degree. As written, the statute plainly requires the individual to merely possess the general intent to wear or display the item. . . . [W]e could not construe section 843.085(1) otherwise 'without effectively rewriting it, and we decline to "legislate" in that fashion.'"[3]

While this office understands the confusion that exists, it must rely on the holding of the Florida Supreme Court which answered the certified question in the affirmative and stated that the statute is unconstitutional. Until this matter is clarified by the courts, this office cannot state that the Court's decision in *Sult* is limited to the provisions of subsection (1). This office would urge the Legislature to address the concerns raised by the Court in striking down the statute. Until such time, however, this office would note, as the *Sult* Court did, that section 843.08, Florida Statutes, criminalizes the false impersonation of an officer when such individual "takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer." [4] In addition, there may be other statutes which are applicable.[5]

I hope that the above informal advisory comments may be of some assistance. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] 2005 Fla. LEXIS 1343; 39 Fla. L. Weekly S 470 (Fla. June 26, 2005).

[2] The certified question presented by the trial court to the Second District Court of Appeal asked whether s. 843.085, Fla. Stat. was violative of the U.S. and Florida Constitutions in that it criminalized what could be innocent conduct, specifically the wearing of paraphernalia that could be purchased through commercial channels by the public and could be misconstrued as indicia of authority. The Second District Court of Appeal asked the Florida Supreme Court whether the

statute was unconstitutional as overbroad, vague or a violation of the right to substantive due process.

[3] The *Sult* Court quoted the language from its decision in *Wyche v. State*, 619 So. 2d 231 (Fla. 1993), which held that Tampa's loitering ordinance was unconstitutional.

[4] Section 843.08, Fla. Stat., which provides:

"A person who falsely assumes or pretends to be a sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Environmental Protection, officer of the Department of Transportation, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; however, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; except that if the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

[5] See, e.g., s. 843.081(1) and (2), Fla. Stat., which provides:

"(1) The Legislature finds and declares that Florida's citizens are vulnerable to becoming the victims of criminal acts through the illegal use of blue lights by the criminal elements. It is the intent of the Legislature to reduce this vulnerability to injury and loss of life and property by prohibiting the use of certain blue lights by any person other than an authorized law enforcement officer.

(2) It is unlawful for a person to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light unless such person is a law enforcement officer employed by a federal, state, county, or city law enforcement agency or is a person appointed by the Governor pursuant to chapter 354."