

Parking enforcement, private university

Number: INFORMAL

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Ms. Elizabeth M. Hernandez
Coral Gables City Attorney
Post Office Box 141549
Coral Gables, Florida 33114-1549

Dear Ms. Hernandez:

On behalf of the City of Coral Gables Chief of Police, you ask whether the Chief of Police of the City of Coral Gables may delegate or authorize parking enforcement responsibilities to employees of the University of Miami.

The Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes,[1] was adopted "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." [2] While the Legislature has recognized that there are instances in which municipalities may control traffic movement or parking,[3] section 316.002, Florida Statutes, provides that "[i]t is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter." [4] Thus, this office has previously concluded that absent express authorization under the Uniform Traffic Control Law, Chapter 316 constitutes a prohibition on local legislation on the subjects of traffic control or enforcement.[5]

Section 316.640, Florida Statutes, addresses the enforcement of the traffic laws in this state. Section 316.640(1)(a)1.b., Florida Statutes, permits state university police officers "to enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, except that traffic laws may be enforced off-campus when hot pursuit originates on or adjacent to any such property or facilities." The University of Miami, however, is a private university, and thus not covered under this provision.[6]

You refer to Attorney General Opinion 98-51 which concluded that a district school board may enter into a mutual aid agreement with the law enforcement agency having jurisdiction over the curtilage and roadways adjacent to and abutting school district property authorizing school safety officers to enforce the traffic laws on such property. Part I, Chapter 23, Florida Statutes, the "Florida Mutual Aid Act," creates a state law enforcement mutual aid plan that provides for the coordination of law enforcement planning, operations, and mutual aid across jurisdictional lines.[7] To carry out this plan, the Legislature has found it necessary to "allow a law enforcement agency to enter into a mutual aid agreement with another law enforcement agency of this state or any other state or with any law enforcement agency of the United States or its territories." [8] Section 23.1225(1)(d), Florida Statutes, defines the term "law enforcement

agency" to mean "any agency or unit of government that has authority to employ or appoint law enforcement officers, as defined in s. 943.10(1)." Such a definition would not encompass the employees of a private nonprofit corporation.

Section 316.640(3)(c)1., Florida Statutes, provides:

"A chartered municipality or its authorized agency or instrumentality may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under s. 943.12.

2. A parking enforcement specialist employed by a chartered municipality or its authorized agency or instrumentality is authorized to enforce all state, county, and municipal laws and ordinances governing parking within the boundaries of the municipality employing the specialist, by appropriate state, county, or municipal traffic citation.

3. A parking enforcement specialist employed pursuant to this subsection may not carry firearms or other weapons or have arrest authority."

The term "instrumentality" is generally defined as "a means or agency through which a function of another entity is accomplished, such as a branch of a governing body,"[9] "something by which an end is achieved, . . . something that serves as an intermediary or agent through which one or more functions of a controlling force are carried out: a part, organ or subsidiary branch esp. of a governing body." [10]

"Agency" generally refers to a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions,[11] or "a person or thing through which power is exerted or an end is achieved . . . a department or other administrative unit of a government." [12] The existence of an agency relationship is determined by the degree of control exercised by the principal over the agent.[13]

While private nonprofit corporations have been considered to be acting as agents or instrumentalities of public agencies,[14] the legislative history records regarding the adoption of the provisions currently contained in section 316.640(3)(c), Florida Statutes, state that the legislation "authorizes the police department of a chartered municipality to employ parking enforcement specialists who meet Police Standards and Training Commission requirements, provided that the specialists are not authorized to carry a firearm or other weapon, do not have arrest authority, and are authorized only to issue traffic citations." [15]

Moreover, a question exists as to whether a municipality may delegate its police power to a private entity. For example, in Attorney General Opinion 84-100 this office recognized that while a municipality could contract with a private corporation to provide fire protection services, any such contract between the municipality and a private corporation could not delegate to the corporation or its officers or employees any authority to enforce the municipal and state fire prevention codes or any local ordinance or state law pertaining to the prevention and control of fires; nor could the municipality delegate the authority to enforce the laws and rules of the State

Fire Marshal. In *Dean v. Rouillier*,^[16] the court held that traffic control is strictly within the police power of a governmental entity; thus, an auxiliary deputy sheriff was performing "nondelegable police power function" in directing traffic at the intersection of a state highway and a road privately owned by utility.

In light of the above, it may be advisable to seek legislative or judicial clarification regarding the city's authority to delegate its parking enforcement authority to the University of Miami and its employees. The city, however, may designate university employees as City of Cape Coral parking enforcement specialists, provided such individuals have successfully completed a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists. Such individuals would be under the direction of the city's police department in carrying out their parking enforcement duties.

I trust that the above informal comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] See s. 316.001, Fla. Stat., providing the short title for the act.

[2] See s. 316.002, Fla. Stat., setting forth the Legislature's intent in adopting Chapter 316, Fla. Stat.

[3] See s. 316.008, Fla. Stat., enumerating the powers of local authorities.

[4] See *also* s. 316.007, Fla. Stat., which states that the provisions of Ch. 316 are to be applicable and uniform throughout the state and in all political subdivisions and municipalities therein and that "no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized."

[5] See Ops. Att'y Gen. Fla. 03-58 (2003), 01-06 (2001), 98-62 (1998) and 98-15 (1998).

[6] See s. 1000.21(6), Fla. Stat., generally defining "State university," except as otherwise specifically provided, to include the following institutions and any branch campuses, centers, or other affiliates of the institution: The University of Florida, The Florida State University, The Florida Agricultural and Mechanical University, The University of South Florida, The Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, The Florida International University, The Florida Gulf Coast University, and New College of Florida.

[7] Section 23.121(1)(a), Fla. Stat.

[8] Section 23.121(1)(g), Fla. Stat.

[9] Black's Law Dictionary (8th ed.) p. 814.

[10] Webster's Third New International Dictionary, p. 1172 (unabridged ed. 1981).

[11] Black's Law Dictionary (8th ed.) p. 67.

[12] Webster's Third New International Dictionary, p. 40 (unabridged ed. 1981).

[13] *Collins v. Federated Mutual Implement and Hardware Insurance Company*, 247 So. 2d 461 (Fla. 4th DCA 1971), *cert. denied*, 249 So. 2d 689 (Fla. 1971).

[14] See, e.g., s. 768.28, Fla. Stat., which applies to "corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities."

[15] See House Transportation Committee Work Sheet on HB 3301 (1976 session). House Bill 3301 was passed as Ch. 76-270, Laws of Florida, amending s. 316.016, Fla. Stat. (1975), now s. 316.640, Fla. Stat.

[16] 597 So. 2d 961 (Fla. 5th DCA 1992), *review denied*, 606 So. 2d 1165 (Fla. 1992).