

Traffic, civil traffic infraction citations

Number: INFORMAL

Date: August 31, 1999

Mr. Tegan Slaton
Traffic Infraction Hearing Officer
513 Whitehead Street
Key West, Florida 33040

RE: CIVIL TRAFFIC INFRACTION HEARING OFFICERS--TRAFFIC INFRACTIONS--
CONSTITUTIONALITY--constitutionality of citing under general prohibition for specific infraction.
ss. 316.003, 316.074, 316.075, 316.123, 316.189, 318.14 and 318.32, Fla. Stat.

Dear Mr. Slaton:

You ask whether there is a lack of due process when a person is cited under section 316.074, Florida Statutes, for alleged violations of speeding or failing to obey a red light or a stop sign, all of which are specifically proscribed in other sections in Chapter 316, Florida Statutes. Section 316.074, Florida Statutes, makes it a noncriminal traffic infraction to disobey the instructions of an official traffic control device.

This office must presume the constitutionality of a duly enacted statute. With this in mind, the following informal comments are offered in an effort to be of assistance.

Section 316.183, Florida Statutes, prescribes speed limits that must be followed under specified circumstances. There is no penalty, however, provided in that section for violations of its terms. Violations of speed limits established under section 316.187, Florida Statutes, must be cited as a moving violation, punishable as provided in chapter 318.[1] Likewise, violations of municipal and county speed limits under section 316.189, Florida Statutes, are cited as moving violations, punishable in the same manner.[2] Section 316.075, Florida Statutes, which addresses the failure to obey a traffic control signal, and section 316.123, Florida Statutes, which covers the failure of a motorist to obey a stop sign, do not contain penalties within the individual sections.

Section 316.074, Florida Statutes, requires the driver of any vehicle to obey the instructions of any "official traffic control device." [3] "Official traffic control devices" are defined as "[a]ll signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic." [4] Violation of section 316.074, Florida Statutes, has recently been made a noncriminal traffic infraction, punishable as a moving violation as provided in Chapter 318, Florida Statutes.[5]

While certain provisions in Chapter 316, Florida Statutes, do not contain specific mention of the penalty that may be imposed for violation of their terms, section 318.14(1), Florida Statutes, provides, with limited exceptions,[6] that any person cited for a violation of Chapter 316, Florida Statutes, is "charged with a noncriminal infraction and must be cited for such infraction and cited

to appear before an official." A person cited for an infraction may elect to appear before a designated official or to pay the civil penalty and any applicable delinquent fee within thirty days of receiving the citation.[7] If the person elects to appear before the official, he or she is deemed to have waived the right to the civil penalty provisions in section 318.18, Florida Statutes.[8] After a hearing, the official must make a determination as to whether an infraction has been committed.[9] However, the commission of a charged infraction must be proved beyond a reasonable doubt.[10]

There has been no appellate review of section 316.074, Florida Statutes, addressing whether individuals cited thereunder have received sufficient notice to ensure due process. The Department of Highway Safety and Motor Vehicles has been contacted and indicated that this issue has not been raised previously. This office must presume the constitutionality of a duly enacted statute and that such statute will be given effect until judicially determined otherwise.[11] Ultimately, you as the traffic infraction hearing officer must make such a determination when the question is properly raised in a proceeding.[12]

In this instance, it would appear that the concern is that an individual cited for violation of section 316.074, Florida Statutes, when the infraction involves speeding or running a red light or stop sign, would not have adequate notice of what conduct was illegal. Due process will not tolerate a statute that forbids or requires an act set forth in terms so vague that a person of common intelligence must necessarily guess at its meaning.[13] The fundamental concern of the vagueness doctrine is that people are placed on notice of what conduct is illegal.[14] "The requirements of due process are not fulfilled unless the language of a penal statute is sufficiently definite to apprise those to whom it applies of the conduct it prohibits." [15]

While this office cannot pass on the constitutionality of a statute and, as stated above, will presume its validity absent a judicial determination otherwise, there is no apparent constitutional problem with the use of section 316.074, Florida Statutes, to cite an individual for failing to obey posted speed limits or running a stop sign or red light. All of these infractions involve a failure to obey an official traffic control device and section 316.074, Florida Statutes, gives notice that the driver of a vehicle must obey the instructions of any such device.

I trust these informal comments will assist you in clarifying this matter.

Sincerely,

Lagran Saunders

Assistant Attorney General

ALS/tgk

[1] Section 316.187(3), Fla. Stat.

[2] Section 316.189(4), Fla. Stat.[3] Section 316.074(1), Fla. Stat.

[4] Section 316.003(23), Fla. Stat.

[5] See s. 316.074(6), Fla. Stat., added by s. 94, Ch. 99-248, Laws of Fla.

[6] Section 318.14(1), Fla. Stat., notes specific exceptions provided in s. 318.17, Fla. Stat., from the coverage of Ch. 318, Fla. Stat., one of which is "[a]ny other offense in chapter 316 which is classified as a criminal infraction."

[7] Section 318.14(4), Fla. Stat.

[8] Section 318.14(5), Fla. Stat. Section 318.18, Fla. Stat., prescribes penalties required for noncriminal disposition of citations.

[9] Section 318.14(5), Fla. Stat.

[10] Section 318.14(6), Fla. Stat.

[11] See generally *Jetton v. Jacksonville Electric Authority*, 399 So. 2d 396 (Fla. 1st DCA 1981) (presumption that legislative enactments are constitutional); *Evans v. Hillsborough County*, 186 So. 193 (Fla. 1938); *White v. Crandon*, 156 So. 303 (Fla. 1934) (statutes are presumptively valid and must be given effect until judicially declared invalid or inoperative).

[12] See s. 318.32, Fla. Stat., stating:

"(1) Hearing officers shall be empowered to accept pleas from and decide the guilt or innocence of any person, adult or juvenile, charged with any civil traffic infraction and shall be empowered to adjudicate or withhold adjudication of guilt in the same manner as a county court judge under the statutes, rules, and procedures presently existing or as subsequently amended, except that hearing officers shall not:

(a) Have the power to hold a defendant in contempt of court, but shall be permitted to file a motion for order of contempt with the appropriate state trial court judge;

(b) Hear a case involving an accident resulting in injury or death; or

(c) Hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense.

(2) This section does not prohibit a county court judge from exercising concurrent jurisdiction with a civil traffic hearing officer.

(3) Upon the request of the defendant contained in a Notice of Appearance or a written plea, the case shall be assigned to a county court judge regularly assigned to hear traffic matters."

[13] See *Commission on Ethics v. Barker*, 677 So. 2d 254 (Fla. 1996) (statute is unconstitutionally vague if it does not give notice of the prohibited act).

[14] *Bertens v. Stewart*, 453 So. 2d 92, 93 (Fla. 2d DCA 1984).

[15] *State v. Rawlins*, 623 So. 2d 598, 600 (Fla. 5th DCA 1993).