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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
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CARL LEROY THOMAS,

Petitioner,

vs.

SUPREME COURT NO, 78,055

STATE OF FLORIDA,

Respondent.

AMICUS CURIAE ANSWER BRIEF OF
CITY OF FORT LAUDERDALE
ON BEHALF OF RESPONDENT

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PRELIMINARY STATEMENT

The City of Fort Lauderdale is appearing as a friend of the Court on behalf of the Respondent, the State of Florida.

In the brief, the parties will be referred to as they appear before this Honorable Supreme Court, except that Respondent may also be referred to as the City of Orlando.

All emphasis has been added by the Respondent unless otherwise indicated.

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SUMMARY OF ARGUMENT

1. Municipalities have been able to arrest violators of their ordinances since 1901. Ch. 4925, Laws of Fla. (1901). Municipalities are not preempted from enacting an ordinance requiring a bell or gong on bicycles in order to warn pedestrians, or drivers, of their presence. Florida Statutes section 316.008(1)(h) has authorized local authorities to regulate the operation of bicycles on its streets and roadways. In addition, Florida Statutes section 316.2065(11) requires bicyclists to make an audible sound before overtaking or passing a pedestrian.

2. The repeal of section 165.19, Florida Statutes in 1974 did not eliminate a city's previously granted power to punish violators of its ordinance by: arrest; fines; or imprisonment. In that same year, 1974, the legislature amended section 775.082 to include penalties for violations of City and County Ordinances. Among those penalties were fines and imprisonment, s775.083(5); s775.082(5) Fla. Stat. (1974). Cities have been able to arrest for violations of their ordinances since 1901. Ch. 4925, Law of Fla. (1901).

I .

WHETHER A CITY CAN ENFORCE A MUNICIPAL ORDINANCE REQUIRING THE EXISTENCE OF SAFETY EQUIPMENT ON A BICYCLE RIDDEN WITHIN THE CITY LIMITS BY ARRESTING A PERSON WHO VIOLATES THE ORDINANCE?

The power to make laws is vested primarily in the legislature. Art. I, s1, s8, U.S. Const.; Art. III, s1, Fla. Const.; State v. Barquet, 262 So.2d 431 (Fla. 1972). The role of the legislature was clearly defined by the Florida Supreme Court when it held that the legislature:

involves the exercise of discretion as to the contents of a statute, its policy or what it shall be. The judicial branch is 'constitutionally forbidden' from exercising any powers appertaining to the legislative branch... Barquet, p. 433.

In 1968 Florida's Constitution was revised and municipalities were given broad home rule powers. Art. VIII s2, 2(b), Fla. Const., s166.021(1)(2), Fla. Stat. (1973). Article VIII, section 2(b) of Florida's Constitution states all "municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." "The clear purpose of the 1968 revision embodied in Article VIII, section 2 was to give municipalities inherent power to meet municipal needs." Lake Worth Utilities v. City of Lake Worth, 468 So.2d 215, 217 (Fla. 1985). This Court recognizes the only constitutional limitation on a municipality's

power to **conduct** government is that the power be exercised for a valid municipal purpose. Lake Worth Utilities Authority v. City of Lake Worth, 468 So.2d 215 (Fla. 1985); City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983); and State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978).

Section 166.021 of the Florida Statutes was enacted in 1973 in recognition of the 1968 constitutional revision **giving municipalities the** authority to conduct municipal government. The legislature **defined municipal purpose as** "any activity or power which may **be** exercised by the state or its political subdivisions." §166.021(2), Fla. Stat. (1973).

Included **among a City's home rule powers** is that of enacting legislation more commonly referred **to as** municipal **ordinances**. Art. VIII, §2(b), Fla. Const. (1968); Fla. Stat. §166.021(3) (1973). Municipal ordinances are enforced by various **means**, A person may **be** arrested for violating a municipal **ordinance and** law enforcement officers **may** arrest a **person** without a warrant if a violation of a municipal ordinance has been committed in his presence. §901.15(1), Fla. Stat. (1943). Law enforcement officers **have** been able **to** arrest without warrants violators of municipal ordinances since 1901. Ch. 4925, Laws of Fla. (1901).

In the present **case** the Petitioner was arrested for riding a **bicycle** on the streets of the City of Orlando, without a bell or gong, in violation of Orlando's Municipal Ordinance, Chapter 10, Section 10.08. Orlando Municipal Ordinance, Chapter 10, **Section 10.08 provides:**

No person shall **ride** a bicycle on the streets **of the** City without **having** a bell or gong with which to **warn pedestrians** and drivers of vehicles **at** street crossings. Thomas v. State, 583 So.2d 336 (Fla. 5th DCA 1991).

Orlando Municipal Ordinance, Chapter 10, Section 10.08 regulates the operation of bicycles on the streets and highways under its jurisdiction.

The legislative purpose of Chapter 316 is to ensure that uniform traffic laws **apply** throughout **the** state and its counties and cities. However, Chapter **316** also provides that "The Legislature recognizes that there are conditions which require **municipalities to pass certain**, other traffic ordinances in regulation of municipal traffic that are not **required** to regulate **the** movement of traffic outside of such municipalities." s316.002, Fla. Stat. (1971). Additionally, Section 316.008 **provides** the **areas** in which local authorities can control particular traffic **movement** or parking in their respective jurisdiction, one **of** which is bicycles. **s.316.008(1)(h)**, Fla. Stat. (1989). The **State** Legislature has evidenced its intent by enacting Section 316.002 which states that provisions in s.316.008 **are** not intended to conflict with other ordinances nor **laws** in Chapter 316. Also, municipalities **have** "original jurisdiction over all **streets** and highways **located** within their boundaries... s316.006(2)(a), Fla. Stat. (1979); Coates v. Cincinnati, 402 U.S. 611, 91 S.Ct. 1686 (1971).

The Petitioner **argues** Section 316.271(4) **prevents** the City of Orlando from enforcing an ordinance that requires **a** bell or gong on **a bicycle**. (Petitioner's Brief p. 6-8 and Petitioner's

Amicus Curiae Brief p. 7-11), **Section 316.271(4)** specifically states:

No vehicle shall be equipped with, nor shall any **person** use upon a vehicle, any siren, whistle, or bell, **except as** otherwise permitted in this section.

Section 316.008(1)(h) gives the City of Orlando the authority to **enact Chapter 10**, Section 10.08. **The** Legislature has **stated that no** provision of chapter 316 shall **prevent local authorities** "with **respect to** streets and highways **under** their jurisdiction **and** within the reasonable **exercise** of the **police** power, from:...(h) regulating the operation of bicycles." **s316.008(1)(h)**, Fla. Stat. (1989). Orlando's ordinance specifically states the sounding **devices** are intended **to** warn potential pedestrians and drivers of **the** biker's presence to avoid any potential harm to its **citizens**.

Pursuant to its police power, municipalities may enact ordinances that promote the public health, safety, welfare, or **morals of their** communities. The legislative bodies have a great **deal** of discretion in determining what **measures are** necessary for the public's protection. Metro. Dade County, EBEAB v. Sunrise Village, 511 So.2d 962 (Fla. 1987); Hamilton v. State, 366 So.2d 8, 10(Fla. 1979). It is well **settled** that the **court** "is not concerned **with** the wisdom, need or appropriateness of legislation." "Courts do not substitute their social and economic **beliefs for** **the** judgement of legislative bodies, who are **elected** to pass laws." It is the legislature who determines the wisdom or utility of its legislation. Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028 (1963).

In enacting **Chapter 10**, Section **10.08** of Orlando's Municipal Ordinance, **the** legislative body for **the** City **was** acting **pursuant** to **its** police power. Section 10.08 of **Chapter 10** was intended to regulate the operation of **bicycles** in order to ensure and **protect** the public health, **safety** and **welfare**.

Pursuant to its police **power**, **a** City can enact ordinances that promote the general welfare of **the** public in using its streets and sidewalks and limit obstacles and impediments to traffic in order to insure public **safety**. Hixon v. State, 523 S.W.2d 711 (Tex. Ct. App. 1975). A City has the sole control over **its** streets, **highways** and sidewalks within its boundaries. Kleiber v. City of Idaho Falls, 716 P.2d 1273 (Idaho 1986); Coates v. Cincinnati, 402 U.S. 611, 91 S.Ct. 1686 (1971). Legislation enacted under the police **power for the protection of the public** health safety, welfare or morals is valid. Hamilton, at pg. 10.

The Petitioner further argues that Orlando's **bicycle** ordinance violates **Article VIII**, Section 2(b), of the Florida Constitution, **because** the state **passed a** contrary law through Section 316.271(4) of **the** Florida **Statutes** (1986). As stated earlier, Orlando's ordinance **regulates the operation of bicycles** on its streets and highways. It is **the** legislature's intent that no provision in Chapter 316 shall prevent local authorities from regulating bicycles on its streets. ss316.002 and 316.008(1)(h), Fla. Stat. (1989). Therefore, there is no conflict between Orlando's ordinance and s316.271(4) of the Florida Statutes,

In addition, section 316.2065 is the general provision for regulating bicycles throughout the **state**. There is no provision in section 316.2065 in conflict with Orlando's ordinance. In fact, Section 316.2065(11), specifically requires a person riding a **bicycle** to "**give** an audible sound before overtaking **and passing**" a pedestrian. Nor is there any provision in section 316.2065 preempting the **various** cities from regulating bicycles throughout the city streets. Cities are prohibited from enacting legislation on subjects **expressly** preempted to state government by general law. s166.021(3)(c), Fla. Stat. (1973); Barragin v. City of Miami, 545 So.2d 252 (Fla. 1989); Tribune Co. v. Cannella, 458 So.2d 1075 (Fla. 1984).

Another argument presented by the Petitioner is that Orlando has, through its ordinance, **made** a traffic infraction a **criminal offense** since an offender may be arrested. First, municipal ordinances are not crimes. **The** United States Supreme Court, in interpreting the U.S. Constitution, **has ruled** that the States have **the** power to **determine** how crimes will be classified, Argersinger v. Hamitt, 407 U.S. 25, 92 S.Ct. 2006, 2013, 32 L.Ed.2d 530 (1972). "It is well settled that the legislature has the power to define crimes and to set punishment." Rusaw v. State, 451 So.2d 469, 470 (Fla. 1984); State v. Bailey, 360 So.2d 772, 773 (Fla. 1978); Nation v. State, 17 So.2d 521, 522 (1944); and Kimmons v. State, 23 So.2d 523, 524 (1945). **The Florida Legislature** has specifically defined a "crime" to be a felony or a misdemeanor. s775.08(4), Fla. Stat. (1974). **The** legislature

clearly stated, "the term 'misdemeanor' shall not mean a conviction for any violation of...any municipal...ordinance." s775.08(2), Fla. Stat. (1974).

The language used by the legislature in defining a crime as a misdemeanor or felony is clear and unambiguous and conveys a clear and definite meaning. See s775.08(4), Fla. Stat. (1974). The courts have held that when a statute is unambiguous the statute must be given its straightforward and apparent meaning. Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984).

In addition, law enforcement officers have been able to arrest violators of City ordinances since 1901. ch. 4925, Laws of Fla. (1901); s901.15(1) Fla. Stat. (1943). Furthermore, the legislative body of Orlando deemed Chapter 10, Section 10.08 a proper violation to subject an individual to arrest and or imprisonment. There are other traffic violations in Chapter 316 that the legislature has deemed proper to subject an individual to arrest and or imprisonment. Those violations are as follows:

- a) Section 316.027 - Accidents involving **Death** or **Personal Injury**;
- b) Section 316.061 - Accidents Involving Damage to Vehicle or Property;
- c) Section 316.067 - False Reports;
- d) Section 316.072 - Obedience to and Effect of Traffic Laws;
- e) section 316.192 - **Reckless Driving**;
- f) Section 316.193 - Driving Under the Influence;
- g) Section 316.1935 - **Fleeing** or Attempting to **Elude** a Police Office;

h) Section 316.2045(2) - Obstruction of Public Streets, Highways, and Roads; and

i) Section 316.545(1) - Weight and Load Unlawful, etc.

Based upon a review of the legislative scheme stated above, violations far municipal ordinances that regulate traffic on its streets are arrestable offenses.

II.

WHETHER THE REPEAL OF SECTION 165.19, FLORIDA STATUTES (1974) ELIMINATES A CITY'S PREVIOUSLY GRANTED POWER TO ENACT ORDINANCES WHICH PROHIBIT VARIOUS TYPES OF CONDUCT BY INDIVIDUALS WITHIN ITS JURISDICTION, AND WHICH PUNISHES VIOLATORS BY "CRIMINAL MEANS": ARREST; FINES; IMPRISONMENT?

The power to make laws **is vested** primarily in the legislature. Art I, s1, s8, U.S. Const.; Art III, s1, Fla. Const.; State v. Barquet, 262 So.2d 431 (Fla. 1972). The role of the legislature was **clearly** defined by the **Florida Supreme Court** when it held that the legislature:

involves the **exercise of discretion as to the contents of a statute, its policy or what it shall be.** The judicial branch **is 'constitutionally forbidden'** from exercising any powers appertaining to **the legislative branch...**Barquet, p. 433.

In 1968 Florida's Constitution **was** revised and municipalities were **given broad home rule powers.** Art. VIII s2, 2(b), Fla. Const.; s166.021(1)(2), Fla. Stat. (1973). Article VIII, Section 2(b) of Florida's Constitution states all "municipalities shall have governmental, corporate **and** proprietary powers to enable them to **conduct** municipal government, **perform** municipal functions, and **render** municipal **services, and** may exercise **any** power for municipal **purposes except as otherwise** provided by law." "The clear purpose of the 1968 revision embodied in Article VIII, section 2, was to **give** municipalities inherent **power** to meet municipal needs." Lake Worth Utilities v. City of Lake Worth, 468 So.2d 215, 217 (Fla. 1985). This Court **recognizes** the only constitutional limitation on a municipality's

power to **conduct** government is that **the power** be exercised for a valid municipal **purpose**. Lake Worth Utilities Authority v. City of Lake Worth, 468 So.2d 215 (Fla. 1985), City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983); and State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978).

Section **166.021** of the Florida Statutes was enacted in 1973 in **recognition** of the **1968** constitutional revision giving municipalities the **authority** to conduct municipal government. The Legislature defined municipal **purpose** as "any activity or power which may be exercised by the state or its political subdivisions." s166.021(2) Fla. Stat. (1973).

Included among a city's **home rule powers** is that of enacting legislation more commonly **referred to as** municipal **ordinances**. Art. VIII, s2(b), Fla. Const. (1968); s166.021(3), Fla. Stat. (1973). Municipal Ordinances are enforced by various **means**. A person may be arrested for violating a **municipal ordinance**. A law enforcement officer may arrest a person without a **warrant** if he has violated a **municipal ordinance** in his **presence**. s901.15(1), Fla. Stat. (1943). Law enforcement **officers** have been able to **arrest, without** warrants, violators of municipal ordinances since 1901. Ch. 4925, Laws of Fla. (1901).

Prior to the adoption of the **1885** Constitution of Florida and under Art. VIII, s8 of the **1885** Fla. Constitution, the primary **penalty** for violating a municipal ordinance was imprisonment. Roe v. State, 119 So. 118, 121 (1928); State ex rel. Sellars v. Parker, 87 Fla. 181, 100 So. 260 (1924). When

Florida's Constitution was revised in 1968 the cities maintained their right to imprison violators of their municipal ordinances. s165.19, Fla. Stat. (1973). When sections 165.01 through 165.30 were repealed in 1974 the cities did not lose their right to imprison violators **of** their ordinances **as** alleged by the Petitioner. (Petitioner's Brief p. 9). In that same year, 1974, the legislature **amended** section **775.082** to include penalties for violations of City and County Ordinances. Among those penalties **was** imprisonment. s775.082(5), Fla. Stat. (1974).

The legislature specifically **made** an exception for City **ordinances** in recognition of cities constitutional home rule powers when it stated:

Any person who **has** been convicted **of** a (noncriminal) violation may not be sentenced to a **term** of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county. s775.082(5), Fla. Stat. (1974).

In section 775.083 the legislature authorized that **a** person convicted of an offense, other than a capital felony, may be sentenced to a fine in addition to **any** other punishment or in lieu of any punishment. The fines for violations are limited to \$500.00. s775.083(1)(e), Fla. Stat. (1974).

The legislature **repeatedly** ratified the position that penalties for violations **of** municipal ordinances include fines and imprisonment. In section 775.08(3) the legislature **noted** noncriminal violations have penalties limited **to** fines or other civil penalties. The legislature **clearly** stated:

The term 'noncriminal' violation shall not mean any conviction for any **violation** of...any

municipal...ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal...ordinance. s775.08(3), Fla. Stat. (1974).

Recently the legislature stated a municipality is not prohibited from enforcing its ordinances **by** means other than fines. s162.21(8), Fla. Stat. (1989).

The Petitioner argues s162.21(5) limits the punishment for violations of municipal ordinances to a fine. However, as denoted by the Lower court, chapter 162 provides for the enforcement of municipal and **county** ordinances by code enforcement boards and officers. Thomas v. State, 583 So.2d 336 (Fla. 5th DCA 1991). The statute further provides in s162.21(8):

the provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and 'may' be used for the enforcement of all codes and ordinances. Nothing contained in this section 'shall prohibit' a county or municipality from enforcing its codes or ordinances by any other means. s162.21(8), Fla. Stat. (1989).

It is well established by **Courts** throughout the State of Florida, as well as the **United States** Supreme Court, that the word "may" when used in a statute is a permissive term as opposed to the word "shall" which denotes a command or mandate. United States v. Rodger, 461 U.S. 677, 103 S.Ct. 2132, 76 L. Ed. 2d 236 (1983); Escoe v. Zerbst, 295 U.S. 490, 55 S.Ct. 818 (1935); United States ex. Rel. Siegel v. Thomas, 156 U.S. 353, 15 S.Ct. 378 (1895); Brooks v. Anastasia Mosquito Control District, 148 So.2d 64 (Fla. 1st DCA 1963); Fixal v. Cleveager, 285 So.2d 687

(Fla. 3rd DCA 1973); Harper v. State, 217 So.2d 591 (Fla. 4th DCA 1969); Dept. of Health & Rehab. Services v. Johnson, 504 So.2d 423 (Fla. 5th DCA 1987).

The legislative intent of having Section 162.21(5) as a supplemental means of enforcing municipal. and **county codes** is **clear** by the language in Section 162.21(8). When the language **used** by the legislature is clear and unambiguous, **the** statute **must be given** its straightforward and apparent meaning. Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984).

Clearly there is express authorization by statute to imprison **violators** of city ordinances. As stated by this Court, "where expressly authorized by statute, imprisonment **may be imposed...for** violations of municipal ordinances...". City of Ft. Lauderdale v. King, 222 So.2d 6 (Fla. 1969); Boyd v. County of Dade, 123 So.2d 323 (Fla. 1960); State ex. Rel. Sellars v. Parker, 100 So. 260 (1924).

An additional allegation of the Petitioner is that a municipality's right to imprison **violators** of tts ordinances is contrary to Art. III, s11(a)(4) of Florida's Constitution which provides: "There shall be no special **law...pertaining to...(4)** punishment for crime." (Petitioner's Brief p. 9). Sections 775.08(3), 775.082(5), and s162.21(8) of **the** Florida Statutes, are all general **laws** enacted pursuant to Art. III, section 6, of Florida's Constitutfon authorizing a municipalities right to **pre-scribe** penalties for violations of municipal ordinances. Moreover, the United States Supreme Court, in interpreting **the** U.S.

Constitution, **has** ruled that **the** States have the power to **deter-**
mine how crimes will be classified, Argersinger v. Hamlin, 407
U.S. 25, 92 S.Ct. 2006, 2013, 32 L.Ed.2d 530 (1972). "It is well
settled that the legislature has the **power** to define crimes and
to **set** punishment." Rusaw v. State, 452 So.2d 469, 470 (Fla.
1984); State v. Bailey, 360 So.2d 772, 773 (Fla. 1978); Nation v.
State, 17 So.2d 521, 522 (1944); and Kimmons v. State, 23 So.2d
523, 524 (1945). The Florida Legislature **has** specifically de-
fined a "crime" to be a felony or a misdemeanor. s775.08(4),
Fla. Stat. (1974). The legislature **clearly** stated, "the term
'misdemeanor' shall not mean a conviction for any violation
of...any municipal...ordinance." s775.08(2), Fla. **Stat.** (1974).

The language used by **the** legislature in defining a crime **as**
a misdemeanor or **felony** is **clear and** unambiguous **and** conveys a
clear and definite meaning. **See** s775.08(4) Fla. stat. (1974).
The courts have held that when a statute is unambiguous the **stat-**
ute must **be** given its straightforward and apparent meaning.
Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984).

The major difference between municipal ordinances and state
law is that a violation of a municipal ordinance is **a** violation
of a local law **within** its own territorial limits prosecuted in
the name of that particular municipality. Wallace v. State, 41
Fla. 547, 26 So. 713 (1899); **Roe** I. State, 119 So. 118, 121
(1928). A municipal ordinance is not viewed by the courts **as** an
offense against the law of the land. The Florida Supreme Court
has ruled that:

No offense is a crime...which **does** not violate the **Law** of the land; and it is well established that a conviction **for a** municipal ordinance **does** not come within **this** category...Roe p. 121.

In addition, **Art. III, s11(4)**, of the Florida Constitution, **forbids** the legislature to **pass any special law or general law of** local application pertaining to punishment for a "crime." The **decision** in Roe' stating **municipal ordinance violations do** not constitute a crime, is followed by **many** courts and is still good law today. Thomas v. State, 583 So.2d 336 (Fla. 5th DCA 1991); Pridgen v. City of Auburndale, 430 So.2d 967 (Fla. 2nd DCA 1983); Hendrick v. Strazzula, 135 So.2d 1, 2 (Fla. 1961); City of Miami v. Gilbert, 102 So.2d 818, 819 (Fla. 3rd DCA 1958); City of Ft. Laud. v. King, 222 So.2d 6 (Fla. 1969). As stated by the Florida Supreme Court:

If **offenses**, which are purely **local** in their territorial operation and effect, should be **held** to constitute **crimes**, there would be no uniformity in the criminal laws of the state, and the intent of the constitutional provision would **be defeated**. Roe, Supra p. 121.

The Petitioner further **argues**, "to permit a municipality to **arrest and** incarcerate for a noncriminal violation **violates** the Thirteenth Amendment to the United States Constitution which **prohibits** imprisonment **except as a punishment for a crime.**" (Petitioner's Brief p. 10). Section one of the Thirteenth Amendment to the United **States** Constitution specifically states:

Neither slavery nor 'involuntary servitude,' **except as** a punishment for crime **whereof** the **party** shall have been **duly convicted**, shall exist **within** the United States, or any place subject to their jurisdiction. 13 Amend. U.S. Const., Fla. Stat. Vol. 5 (1989).

The United States Supreme Court has defined "involuntary servitude" **as:**

a condition of servitude in which **the** victim is **forced** to work **for** the defendant **by** the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. U.S. v. Kozinski, 108 S.Ct. 2751 (1988).

The purpose of the Thirteenth Amendment was "to end slavery" and "to maintain a system of completely free and voluntary labor throughout the United States." Pollock v. Williams, 322 U.S. 4, 64 S.Ct. 792 (1944).

The fact that an individual **may** be imprisoned **for** violating a municipal ordinance **does** not conflict with **the** Thirteenth Amendment to the United **States** Constitution. City of Fort Lauderdale v. King, 222 So.2d 6 (1969).

The repeal of Section 165.19, of the Florida Statutes in 1974 did not eliminate the City's power to enact ordinances which prohibit various **types** of conduct **by** individuals within its jurisdiction, and which punishes **violators** by **arrest**, fines, and or imprisonment. In addition, the City would **reiterate** the lower court opinion which states:

There is no constitutional or statutory limitation on the City's **power** to prescribe incarceration **as** a penalty for violations of City Ordinances. If a statute, or its **enactment**, **does** not violate a constitutional limitation **and** if a City ordinance, or its adoption, is not **prohibited** by constitutional provision **and** is within the powers granted the **City** by **the** legislature, **by general** statutes or special **statutes** granting city charter powers, such statutes or ordinances **are** valid **and** it is **beyond** the judicial function and power for courts to declare them invalid on the

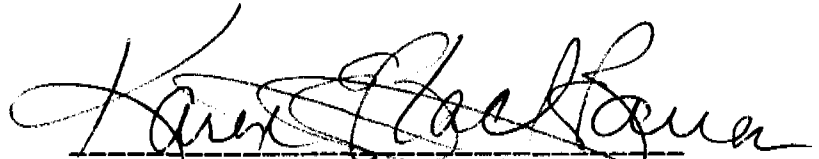
ground or belief that they are, for any reason, 'unreasonable' or 'undesirable.' Thomas v. State, 583 So.2d 336 (Fla. 5th DCA 1991).

CONCLUSION

This Court should answer the question of whether a city can **enforce** a municipal ordinance requiring the existence of safety equipment on a **bicycle** ridden within the city limits by arresting a person who **violates the** ordinance, affirmatively. **It** is significant that the legislature has authorized the arrest of violators of municipal ordinances since 1901. Furthermore, the legislature permits local authorities to regulate the operation of **bicycles within** their city limits. s316.008(1)(h), Fla. Stat. (1989).


The question of whether the repeal of section 165.19, Florida Statutes (1974), eliminated a city's previously granted power to **enact** ordinances which prohibit various types of conduct by individuals within its jurisdiction, and which punishes violators by "criminal means": arrest; **finer**; imprisonment, should be answered **as** a resounding no. When **the legislature repealed section** 165.19 of the Florida Statutes, in 1974, the legislature transferred **the** city's right to penalize violators of

its ordinances to Chapter 775 of the Florida Statutes. See Sections 775.08(3); 775.082(5) and 775.083(1)(e). Therefore, the district court's findings in the case of Thomas v. State' 583 So.2d 336 (Fla. 5th DCA 1991), should be affirmed.


MUNICIPAL PROSECUTOR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Belle B. Turner, Assistant Attorney General, Counsel for Respondent, 210 North Palmetto Avenue, Suite 447, Daytona Beach, FL 32114, Barbara L. Condon, Assistant Public Defender, Counsel for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, FL 32114 and James T. Miller, Esquire, 407 Duval County Courthouse, Jacksonville, Florida 32202, by mail, this 25th day of November, 1991.


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