

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HARDEE, HIGHLANDS AND POLK COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER NO. 2-43.0

IN RE: PROCEDURES FOR VIOLATIONS OF 386.212, Fla. Stat.

CONCERNING SMOKING TOBACCO BY JUVENILES

WITHIN 1000 FEET OF A SCHOOL

WHEREAS it has come to the attention of the Court that it is necessary to adopt procedures for the handling of violations of 386.212, Fla. Stat., concerning the smoking of tobacco by juveniles within 1000 feet of a school, it is hereby

ORDERED that:

- 1) Proceedings under 386.212, Fla. Stat., shall be initiated and decided in County Court.
- 2) All citations for violations of 386.212, Fla. Stat., shall be in the form of a Notice to Appear and shall contain the information as specified in the statute.
- 3) The Notice to Appear shall specifically inform the recipient that he or she may elect to waive a court appearance by paying a civil penalty of \$25.00 within 30 days of receipt of the citation. If the recipient makes this choice, the Clerk of the Court may impose a \$3.00 cost as provided for in Administrative Order 2-27.4. Further, the Notice shall specifically state that should the recipient wish to contest the citation or request one of the alternative penalties prescribed by the statute, the recipient must contact the Clerk of Court for the county where the citation was issued within 30 days of receipt of the citation.
- 4) Citations issued by municipal officers shall be referred to the Clerk of the Court in the same courthouse facility as civil traffic infractions, e.g., Lakeland Police Department cases in Lakeland. Citations issued by Sheriff's Deputies or other law enforcement officers shall be referred to the main county courthouse.
- 5) In the event the recipient fails to pay the ticket or request a court appearance in a timely fashion, the Court is specifically authorized by 386.12(4), Fla. Stat., to initiate contempt proceedings. Such contempt proceedings shall follow the guidelines established in Chapter 39, Fla. Stat.

The following information concerning 386.212, Fla. Stat., may prove useful in the processing of actions falling under the statute:

- 1) 386.212, Fla. Stat., effective July 1, 1996, makes it unlawful for any person under the age of 18 "to smoke tobacco" within 1000 feet of a school. The statute is limited to the hours between 6:00 A.M. and midnight and specifically exempts persons within a moving vehicle or a private residence. A violation of this statute is considered a civil infraction punishable by a fine not to exceed \$25.00, but the statute also provides two alternatives to the fine: up to 50 hours community service or a "school-approved anti-tobacco 'alternative to suspension' program", where available. A law enforcement officer may issue a citation for a violation of this statute using guidelines similar to those for a Notice to Appear.
- 2) Since the term "civil infraction" is employed repeatedly throughout the text of the statute, the Court infers that a legislative intent that such citations be processed similarly to civil traffic infractions. The Court also concludes that any recipient of a citation wishing to request community service or a school-approved diversion program in lieu of a fine is expected to appear in court to make that request.

DONE AND ORDERED on this 26th day of February, 1997, *nunc pro tunc* to July 1, 1996.

CHARLES A. DAVIS, JR.

Chief Judge

