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Summary of Attorney General's Opinions

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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

ADMINISTRATIVE LAW. Board of Beauty Culture: Masseurs. A holder of a valid beautician's license who offers body contouring and slenderizing by means of electrical appliances does not have to comply with statutory regulations applicable to masseurs and masseuses.¹

Board of Chiropractic Examiners: Blood tests. The taking of blood by a chiropractor is authorized by statute if (1) The Board of Chiropractic Examiners decides that the taking of blood for examination and analysis is a necessary method of diagnosis,² (2) This method is taught in chiropractic schools,³ and (3) the insertion of an instrument for taking blood would not be considered surgery.⁴

Vitamin injections. A statute⁵ authorizing chiropractors to treat patients by use of food, food extracts or food concentrates allows chiropractors to administer vitamin injections, if vitamins are classified as a food or food extract and not as a medicine.⁶

Board of Medical Examiners: Fee refunds. The statutory prohibition against returning application fees⁷ will not bar a refund of such fee if no action has been taken on the application.⁸

Board of Pardons: Restoration of civil rights. Contrary to an earlier opinion,⁹ the Pardon Board has the authority to restore Florida civil rights lost by reason of a conviction in another jurisdiction.¹⁰

County Commissioners: Theft insurance. There is no express authority for county commissions to pay premiums for theft insurance covering public monies in possession of a county officer. However, such an expense can

*This issue of the Summary contains those opinions of general or public interest from Opp. Att'y Gen. 056-187 July 2, 1956, through 056-294 September 28, 1956.

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1. OP. ATT'Y GEN. 056-221 (July 31, 1956).
2. OP. ATT'Y GEN. 056-283 (Sept. 17, 1956).
3. FLA. STAT. § 460.11(2)(a) (1955).
4. *People v. Fowler*, 84 P.2d 326,333 (Cal. 1938) (holding that penetration by hypodermic is surgery within the meaning of a similar statute).
5. FLA. STAT. § 460.11(2) (1955).
6. OP. ATT'Y GEN. 056-283 (Sept. 17, 1956).
7. FLA. STAT. § 458.10 (1955).
8. OP. ATT'Y GEN. 056-219 (July 31, 1956).
9. OP. ATT'Y GEN. 052-45 (Feb. 19, 1952).
10. OP. ATT'Y GEN. 056-199 (July 5, 1956).

reasonably be presumed to be “. . . a necessary expenditure for the proper operation of said office” and therefore classified as a current operating expense.¹²

Department of Public Welfare: Increased federal grants. An increase in federal welfare grants should be passed on to recipients¹³ despite a statutory limitation on the amount of the grant.¹⁴

Payee's designation of beneficiary: A payee of welfare department benefits is required to name a beneficiary to collect payments and unpaid accruals after recipient's death.¹⁵ This requirement is inapplicable to minors, since their minority renders them incapable of such designation.¹⁶

Department of Public Instruction: Scholarships. A recipient of a state scholarship is required to practice his profession in the state for one year for each year of the scholarship.¹⁷ If the recipient withdraws from school prior to obtaining a degree, and is therefore ineligible to practice his profession, he must repay the amount of the scholarship.¹⁸

Florida Industrial Commission: Attorney's fees. In an unemployment compensation case, a decision of the Supreme Court reversing an award of a lower court vacates the entire decision of the lower court.¹⁹ The claimant's attorney must reapply to the Commission for an award of attorney's fees.²⁰

Game and Fresh Water Fish Commission: Firearms. A statute requiring a permit to carry firearms in a national forest during hunting season²¹ does not prohibit carrying firearms during the trapping season, since trapping is merely a term used to designate a method of hunting.²²

Security Commission: Exemption from regulation. Exemption from Security Commission Regulation on sales to individual purchasers of notes or bonds, which total less than \$10,000 and which are secured by mortgages,²³ applies to a single filing only. To allow a party to file for this exemption on successive transactions would permit dealing generally in securities without commission regulation. This is contrary to the legislative intent.²⁴

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11. FLA. STAT. § 145-02 (1955).
 12. OP. ATT'Y GEN. 056-226 (Aug. 1, 1956).
 13. OP. ATT'Y GEN. 056-267 (Aug. 31, 1956).
 14. FLA. STAT. § 409 (1955).
 15. FLA. STAT. § 409.30 (1955).
 16. OP. ATT'Y GEN. 056-257 (Aug. 27, 1956).
 17. FLA. STAT. 402.07 (1955).
 18. OP. ATT'Y GEN. 056-285 (Sept. 26, 1956).
 19. OP. ATT'Y GEN. 056-282 (Sept. 17, 1956).
 20. FLA. STAT. § 443.16(2)(a) (1955).
 21. FLA. STAT. § 790.11 (1955).
 22. OP. ATT'Y GEN. 056-284 (Sept. 24, 1956).
 23. FLA. STAT. 517.06 (8) (1955).
 24. OP. ATT'Y GEN. 056-270 (Aug. 31, 1956).

State Retirement System: Contributions. The amount an employee receives from workmen's compensation should not be considered in computing his contribution towards retirement, or the amount of retirement pay received.²⁵

State Treasurer: Policemen's retirement fund. Where the State Treasurer has received more than the authorized sum necessary for the administration of the police officers' retirement fund,²⁶ such money must be returned to the contributing municipalities and may not be accumulated to defray future expenses.²⁷

CIVIL PROCEDURE. *Bankruptcy: Garnishment liens.* In computing the four-month period prior to bankruptcy during which liens against a bankrupt shall be void,²⁸ the date when the bankrupt became indebted to the garnishor, not the date the writ of garnishment was issued and served, is to be used for calculation.²⁹

Jury Service Exemptions: Air line pilots. A statute exempting railroad employees from jury duty³⁰ would justify the omission of air line pilots on the county's list of eligible jurors. The very character of their business is such that the judge would excuse them from service upon individual application.³¹

Service of warrants by constable. Concerning the service of warrants, the legislature refers to "the sheriff"³² only to indicate that the warrant shall run throughout the state. A similar reference in the financial responsibility law³³ does not preclude service of warrant by the constable of the justice of the peace court.³⁴

CONSTITUTIONAL LAW. *Small Claims Court: Jurisdiction.* Proceedings supplementary to execution are considered a substitute to a creditor's bill in chancery for discovery of assets subject to judgment.³⁵ Since the Circuit Court has exclusive jurisdiction in equity,³⁶ a small claims court cannot entertain such supplementary proceedings.³⁷

CORPORATIONS. *Capital Stock Tax: Exemption.* A statute requiring payment of a capital stock tax³⁸ does not apply to dormant corporations

25. OP. ATT'Y GEN. 056-210 (July 19, 1956).

26. FLA. STAT. § 185.24 (1955).

27. OP. ATT'Y GEN. 056-193 (July 3, 1956).

28. 11 U.S.C.A. 107 (a) (1).

29. OP. ATT'Y GEN. 056-203 (July 3, 1956).

30. FLA. STAT. § 40.08 (2) (1955).

31. OP. ATT'Y GEN. 056-189 (July 2, 1956).

32. FLA. STAT. § 324.201 (1955).

33. FLA. STAT. § 901.04 (1955).

34. OP. ATT'Y GEN. 056-192 (July 3, 1956).

35. *Richard v. McNair*, 121 Fla. 733, 164 So. 836, 840 (1935).

36. FLA. CONST. ART. V, § 11.

37. OP. ATT'Y GEN. 056-212 (July 23, 1956).

38. FLA. STAT. § 608.33(1) (1955).

which have not transacted business nor owned property during the taxing period.³⁹

Co-operative Corporations: Corporate name. A Delaware corporation organized to operate an apartment building on a co-operative basis is not a non-profit organization within the meaning of Florida Statutes.⁴⁰ An attempt to use the word "club" in its corporate name bars the issuance of a permit to do business in Florida.⁴¹

Merger: Credit on charter tax. When two foreign corporations merge, only the continuing corporation having a permit to do business in Florida is entitled to a credit of the charter tax previously paid by it. A continuing corporation not having a permit to do business in Florida would not be entitled to a charter tax credit of another corporation.⁴²

CRIMINAL LAW. Illegal Spear-fishing: Confiscation of equipment. A Special Act provides that spear-fishing under certain conditions is a misdemeanor in Palm Beach County.⁴³ A general statute relating to illegal fishing provides for the confiscation of equipment⁴⁴ and "may" be applicable to the Special Act.⁴⁵

Lotteries: Private clubs. A private club which offers to its members dinner and "Bingo," at no additional charge, is conducting a lottery and violating the criminal law.⁴⁶

FLORIDA TAXATION. Assessment of platted lands. If sixty per cent of a subdivision has not been sold, the State Comptroller shall assess such unsold platted land on the same basis as unplatted land.⁴⁷ This rule does not bar the assessment of the lots already sold on the basis of platted land.⁴⁸

Documentary Stamp Tax: Notes payable in goods. A lumber mill accepted a mortgage and advanced money which was to be repaid in pulpwood. No state documentary tax is payable since the promise was for repayment in goods, not money.⁴⁹

Notes payable to the United States. A state excise tax on certificates of indebtedness is not a tax upon the transaction, but upon the execution of the note.⁵⁰ Therefore, the maker is liable for the tax, and notes

39. OP. ATT'Y GEN. 056-249 (Aug. 24, 1956).

40. FLA. STAT. §§ 617,603-62-.67 (1955).

41. OP. ATT'Y GEN. 056-198 (July 5, 1956).

42. OP. ATT'Y GEN. 056-292 (Sept. 28, 1956).

43. Ch. 31133, Special Acts of 1955.

44. FLA. STAT. 370.02 (11) (1955).

45. OP. ATT'Y GEN. 056-281 (Sept. 14, 1956).

46. OP. ATT'Y GEN. 056-272 (Aug. 31, 1956).

47. FLA. STAT. § 192.31 (1955).

48. OP. ATT'Y GEN. 056-190 (July 2, 1956).

49. OP. ATT'Y GEN. 056-269 (Aug. 31, 1956).

50. FLA. STAT. § 201.01 (1955).

executed in favor of the United States or its agencies are not exempt from the tax.⁵¹

Estate Tax: Tenancy by the entireties. An unpaid estate tax is a lien on the gross estate of the decedent, which includes real property held by the decedent, which includes real property held by the entireties. When the property is sold, the lien is not destroyed;⁵² it attaches to the property for the statutory period.⁵³

Florida Seed Law: Seed dealers. A statute imposes a tax upon the gross receipts realized from the sale of seeds, but exempts farmers selling seeds which they have produced.⁵⁴ This exemption does not apply to a registered seed dealer, even though he produces part of the seed sold.⁵⁵

Intangible Property Tax: Municipal trust funds. Although intangible property held by a trustee may be assessed in the name of the trustee for purposes of taxation, the trust estate and not the trustee is the taxpayer. If the trust estate is municipal property used for municipal purposes, it will be exempt from taxation.⁵⁶

Land Trusts: Real or intangible personal property. Whether a land trust is real or personal property depends upon the provisions of the trust. If the trustee has a duty to sell the real property, the interest of the beneficiary is an intangible one. If the trust is strictly passive and the trustee has naked title, then the interest of the beneficiary is one of realty.⁵⁷

Occupational License Tax: Interstate commerce. A person soliciting orders for an out-of-state hosiery mill, by house-to-house canvassing, is not subject to an occupational license tax.⁵⁸ Such a tax would be a burden on interstate commerce within the purview of the commerce clause of the United States Constitution.⁵⁹

Taxes Paid by Mistake: Refund. Real property taxes are assessed against the land, not the owner. When payment by a non-owner is made voluntarily, on taxes actually due, and the land is not involved in a controversy,⁶⁰ the payer is not entitled to a refund.⁶¹

Tax Certificates Redemption: Omitted taxes. A lien for taxes will not be defeated by an act of omission of the tax assessor.⁶² Upon redemp-

51. Op. Att'y Gen. 056-231 (Aug. 7, 1956) (Farmers' Home Administration); Op. ATT'Y GEN. 056-247 (Aug. 22, 1956) (Federal Credit Union).

52. Op. ATT'Y GEN. 056-277 (Sept. 6, 1956).

53. FLA. STAT. § 198.22 (1955).

54. FLA. STAT. § 578.08(4) (1955).

55. Op. ATT'Y GEN. 056-202 (July 11, 1956).

56. Op. ATT'Y GEN. 056-211 (July 19, 1956).

57. Op. ATT'Y GEN. 056-271 (Aug. 31, 1956).

58. Op. ATT'Y GEN. 056-289 (Sept. 27, 1956).

59. Real Silk Hosiery Mills v. Portland, 268 U.S. 325 (1925).

60. FLA. STAT. § 193.40 (1955).

61. Op. ATT'Y GEN. 056-234 (Aug. 8, 1956).

62. FLA. STAT. § 192.21 (1955).

tion of the tax certificate, the holder must pay all taxes encumbering the land whether the taxes have been recorded or not.⁶³

GRAND JURIES. Libel Action: Public assistance for defense. It may be assumed that a grand jury is an arm of the courts and an agency of the state.⁶⁴ The governor then, in the light of all the facts and circumstances, may consider a civil suit for libel naming a grand jury as defendant to be a suit against the state and, by statute,⁶⁵ may require the state attorney to represent the grand jury.⁶⁶

INSURANCE. Employees benefit organizations. A voluntary organization of employees which will award unemployment compensation to its members as an incident of membership, and not through the issuance of a contract, is not an insurance company under Florida insurance laws.⁶⁷

Group Insurance: Classification of insureds. A group insurance plan which excludes members who hold policies in another plan or who are over a particular age, of a particular sex or are impaired risks, violates the statutes⁶⁸ requiring coverage for all persons in the group.⁶⁹

Investment Plan Applicants. An investment plan which offers group life insurance to its applicants cannot discriminate against nor investigate the insurability of the investor. The group insurance policy must be a contract between the insurance company and the investment concern, and all investors must be covered by the policy without any contractual obligation to the insurer.⁷⁰

Warranty: Used cars. A contract of warranty against defects not arising as the result of wear is not one of indemnity and therefore not subject to the insurance laws of Florida.⁷¹

LEGISLATURE. Interim Committees: Expenses. A statute provides that interim committees of the legislature, when authorized by law, are entitled to per diem expenses and travel pay.⁷² An interim committee established by a House Resolution during a special session of the legislature will not be so entitled, since such resolution lacks the requisite statutory formalities.⁷³

MUNICIPAL CORPORATIONS. Franchise Grants: Legislative intent. A

63. OP. ATT'Y GEN. 056-287 (Sept. 26, 1956).

64. O'Regan v. Schermerhorn, 50 A.2d 10 (1949).

65. FLA. STAT. § 24.02 (1955).

66. OP. ATT'Y GEN. 056-251 (Aug. 24, 1956).

67. OP. ATT'Y GEN. 056-196 (July 5, 1956).

68. FLA. STAT. §§ 642.04(2)(d), 642.04(2)(a), 635.24(1)(a), 635.24(2)(a) (1955).

69. OP. ATT'Y GEN. 056-250 (Aug. 24, 1956).

70. OP. ATT'Y GEN. 056-224 (July 31, 1956).

71. OP. ATT'Y GEN. 056-203 (July 11, 1956).

72. FLA. STAT. § 282.01 (1955).

73. OP. ATT'Y GEN. 056-258 (Aug. 28, 1956).

municipal corporation is prohibited by statute from granting a public utility franchise (1) for a period of more than thirty years "or [(2)] without reserving the right . . . to purchase the . . . property used under or in connection with such franchise. . . ."74 The statute should be construed in the conjunctive. Or should be construed as *and*; any other construction would assume an unreasonable legislative intent.⁷⁵ (Emphasis supplied.)

STATUTORY LAW. Accident Reports: Public record. By statute, a driver's report of an accident submitted to a governmental agency is confidential and closed to public inspection.⁷⁶ Such reports are not matters of public record,⁷⁷ since public records connote a writing or record made by a public officer pursuant to his official duties.⁷⁸

Financial Responsibility Law: Deposit refund. The purpose of depositing money with the State Treasurer in compliance with section 324.061 of the Financial Responsibility Law is to insure payment of a possible claim arising out of an existent accident. Subsequent surrender of the depositor's drivers license and registration does not entitle him to a return of such deposit until all claims have been satisfied.⁷⁹

"For Hire" Vehicles: Car pools. "For-hire" license tags are required to be affixed to vehicles comprising a car pool⁸⁰ where transportation is provided on a share-expense basis, where riders are solicited through personal contact, and the car pool is not incidental to the main business or purpose of the operator of the vehicle.⁸¹

General Elections: Municipal candidates. The statutes specifically indicated what should appear on the ballot of a general election.⁸² There is no statutory indication that the election of a municipal official can be accomplished by a joint use of the ballot by state and municipality.⁸³

Government Employees: Retirement fund. Affidavits signed by a department head or county officer attesting that an employee was not advised of his statutory rights to claim prior service for the purposes of retirement,⁸⁴ does not excuse the employee's ignorance of the law.⁸⁵

Retired State Employees: Re-employment. The statute providing for

74. FLA. STAT. § 167.22 (1955).

75. OP. ATT'Y GEN. 056-191 (July 2, 1956).

76. FLA. STAT. § 317.17 (1955).

77. OP. ATT'Y GEN. 056-286 (Sept. 28, 1956).

78. OP. ATT'Y GEN. 056-102 (March 28, 1956); OP. ATT'Y GEN. 051-81 (Apr. 6, 1951).

79. OP. ATT'Y GEN. 056-223 (July 31, 1956).

80. FLA. STAT. § 320.01(16) (1955).

81. OP. ATT'Y GEN. 056-228 (July 30, 1956).

82. FLA. STAT. §§ 99.131, 100.031, 101.151, 101.25 (1955).

83. OP. ATT'Y GEN. 056-216 (July 30, 1956).

84. FLA. STAT. § 121.03 (1947), FLA. STAT. § 134.03 (1949).

85. OP. ATT'Y GEN. 056-194 (July 3, 1956).

state retirement does not expressly forbid compensated state re-employment after retirement.⁸⁶ However, such re-employment would not be in accord with state public policy nor other retirement statutes.⁸⁷

Tax Levies: Bottled gas. A statute authorizing cities and towns to levy a public utility tax upon metered or bottled gas⁸⁸ is applicable to bottled gas which is generally used for cooking or heating, but not to bottled gas used in connection with welding or medicine.⁸⁹

Worthless Check Statute: Legislative intent. A statute making it a crime to draw a check with knowledge that no funds are on deposit for payment⁹⁰ was not enacted to prevent the fraudulent obtaining of money or property. The intent of the legislature was to prevent the circulation of such fraudulent instruments.⁹¹ A person commits the crime upon issuance of a worthless check, even though nothing of value is obtained in exchange.⁹²

86. FLA. STAT. § 112.05 (1955).

87. OP. ATT'Y GEN. 056-241 (Aug. 16, 1956).

88. FLA. STAT. § 167.431 (1955).

89. OP. ATT'Y GEN. 056-291 (Sept. 27, 1956).

90. FLA. STAT. § 832.05(2) (1955).

91. FLA. STAT. § 832.05(1) (1955).

92. OP. ATT'Y GEN. 056-259 (Aug. 28, 1956).