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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

ADMINISTRATIVE LAW. Disposal of county-owned land. Any land owned by a county in Florida may be sold by the board of county commissioners for a price not less than 50% of the amount of the last assessed valuation appearing on the tax roll.¹

However, where the land has been held for at least two years, the board of county commissioners may sell to the highest bidder with no minimum limitation of 50% of the assessed valuation.²

Thus where land has been held by a county for more than two years, the board may elect to sell the land under either statutory provision, and if they choose the latter, may dispose of the land at any price determined by them even though such price be less than 50% of the last assessed valuation.³

Florida Citrus Commission: Sale of advertising display materials. The Florida Citrus Commission has discretionary authority to plan and conduct an advertising campaign to increase the consumption of citrus fruits.⁴

If, in the discretion of the commission, the Florida citrus industry would benefit from the sale of display material to public schools in other states, there is no statutory prohibition against their so doing.

Since there is no legal method for the commission to receive and expend the funds received from such a sale, the money would have to be deposited in the state general revenue fund.⁵

Florida Milk Commission: Setting prices. The Milk Commission acted within the scope of its authority in setting the maximum and minimum prices for milk, provided that the Commission followed the procedure for a public hearing and investigation before fixing the price of milk as set forth by statute.⁶

Racing Commission: Payment of members' salaries during suspension. The State Constitution⁷ provides that no suspended officer who shall resume

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1. FLA. STAT. § 194.55 (1953).

2. FLA. STAT. § 194.60 (1953).

3. OP. ATT'Y GEN. 055-56 (March 10, 1955).

4. FLA. STAT. § 601.15 (2) (1953).

5. OP. ATT'Y GEN. 055-58 (March 11, 1955).

6. FLA. STAT. § 501.04 (9) (1953); OP. ATT'Y GEN. 055-51 (March 7, 1955).

7. FLA. CONST. Art. IV, § 15.

the duties of his office shall suffer any loss of compensation in consequence of such suspension. However, neither the constitution nor the statutes expressly specify the fund from which the compensation is to be paid. In the past the legislature has in almost all instances provided by separate acts an appropriation for the payment of each separate claim. Therefore, Racing Commissioners who have been suspended and subsequently reinstated should look to the legislature for payment of their claims, or proceed in courts of competent jurisdiction by mandamus or other appropriate remedy to require the issuance of warrants for such claims.⁸

State Beverage Director: Power to revoke liquor licenses. Since the State Beverage Director is prohibited from issuing a liquor license contrary to a city ordinance or county resolution,⁹ he not only has the right and authority, but the duty, where a city ordinance or county resolution relating to hours of sale, location of business or sanitary conditions has been violated by a licensee, to cite said licensee to show cause why his license should not be suspended or revoked.¹⁰

State Department of Public Welfare: Suit to require support. Where the statute of limitations has already run against an action for support by the mother of an illegitimate child against the reputed father, the department of public welfare is under no duty to require that the mother bring such an action prior to seeking aid for the dependent child.

The absence of the reputed father from this state stops the running of the statute.¹¹

State Fire Insurance Fund: Reimbursement. Institutions of higher learning are excepted from the statutory provision¹² that the general revenue fund must be reimbursed for premiums paid for fire insurance on state-owned property. This proviso was intended to apply to state departments and agencies whose activities are supported by funds from designated and provided sources other than the general revenue fund.¹³

State Treasurer: Safekeeping of bonds furnished to Commissioner of Agriculture. The provision of the constitution¹⁴ that the State Treasurer shall receive and keep all funds, bonds and other securities is construed to refer to such items owned by the state or by particularly designated subdivisions or agencies. It does not apply to bonds furnished to the Commissioner of Agriculture under the statute¹⁵ which requires applicants for license as citrus fruit dealers to deliver to the Commissioner a sufficient

8. OP. ATT'Y GEN. 055-44 (Feb. 28, 1955).

9. FLA. STAT. § 561.44 (2) (1953).

10. OP. ATT'Y GEN. 055-74 (March 29, 1955).

11. OP. ATT'Y GEN. 055-80 (Apr. 6, 1955).

12. FLA. STAT. § 284.02 (1953).

13. OP. ATT'Y GEN. 055-53 (Mar. 8, 1955).

14. FLA. CONST. Art. IV, § 24.

15. FLA. STAT. § 601.61 (1953).

bond to protect the producers with whom they contract. Since neither this section of the constitution nor any other constitutional or statutory provision charge the State Treasurer with the safe keeping of such bonds, he is not authorized to accept them for that purpose and the responsibility for their safekeeping remains with the Commissioner of Agriculture.¹⁶

Turnpike Authority: Public printing. The statutory provision¹⁷ prescribing the manner in which contracts of the Turnpike Authority in excess of \$1500 shall be advertised and award apply to printing contracts. Therefore, the publication for bids on printing contracts in excess of \$1500 shall be for not less than two consecutive weeks. On printing contracts for less than that amount, another statute¹⁸ would apply which contains no reference to publication of the call. As a result publication is not required on such contracts.¹⁹

Wage rate determination. When the Secretary of State has made determination as to the prevailing wage rate as provided by statute,²⁰ such determination obtains throughout the life of the contract for the particular construction concerned.

The Secretary is under no duty to reopen cases once he has made a proper determination. However, in an unusual situation, when drastic economic changes have occurred since his original determination, it is likely that he would, upon request, reopen the matter and make a new determination.²¹

CORPORATIONS. Practice of medicine. A corporation, whether or not operated for profit, may not practice medicine or surgery in this state directly, because of its inability, as a legal entity, to obtain a license. Nor can it practice indirectly by hiring licensed member of the profession to do the actual professional work involved. It is immaterial whether the compensation to the licensed person so hired be on a straight salary basis or in the form of a contractual percentage arrangement. Were such a practice allowed, it would leave the public unprotected from the capers of ". . . quacks, charlatans and others whose greed would be masked under the practice of one of the healing arts . . ." ²²

COURTS. Breach of peace bond: Conviction. One who breaches the conditions of a peace bond is not subject to imprisonment. The individual would have to be tried for breach of the peace before he could be convicted. The appropriate procedure would be to estreat the peace bond. In the event that a new affidavit were to be filed, a new peace bond could be

16. OP. ATT'Y GEN. 055-46 (Feb. 21, 1955).

17. FLA. STAT. § 340.06 (13) (1953).

18. FLA. STAT. § 283.05 (1953).

19. OP. ATT'Y GEN. 055-45 (Feb. 28, 1955).

20. FLA. STAT. § 215.19 (1953).

21. OP. ATT'Y GEN. 055-59 (March 11, 1955).

22. OP. ATT'Y GEN. (Iowa, 1932) P. 248; OP. ATT'Y GEN. 055-71 (March 25, 1955).

ordered posted, and in the event that no bond was forthcoming, the defendant could be committed to jail for not more than 90 days.²³

Clerk of the circuit court: Duty in filing plats. It is the duty of the clerk of the circuit court to require that all taxes due and payable be paid on divided or subdivided lands before receiving for record any drawing or plat of such lands, even though approved by the board of county commissioners, since payment of same before the plat may be filed is made mandatory by statute.²⁴

Issuance of warrants: Mandatory power. The Florida statutes specifically provide that when any judge or magistrate has presented before him, among other things, an out-of-state warrant alleging a crime, he "shall issue a warrant . . ." ²⁵ By using the mandatory word "shall" rather than the discretionary word "may", the statutes clearly indicate that upon proper showing, the fugitive warrant must issue and the Justice of the Peace has no discretionary power to refuse.²⁶

Juvenile and Domestic Relations Court of Dade County: Jurisdiction. Although the circuit court has the authority to transfer cases involving commission of children for adoption to the Juvenile and Domestic Relations Court of Dade County,²⁷ it is not *required* to do so. Therefore, the jurisdiction of the Juvenile and Domestic Relations Court of Dade County is not exclusive.²⁸

CRIMINAL LAW. Arrest: Rights of officer in pursuit. As a general rule, in the case of a misdemeanor, an officer has no right, except in self-defense, to shoot or kill the offender in attempting to arrest him.²⁹

Since a traffic violation is a misdemeanor, the police officer in pursuit of a traffic violator, has no right to shoot at said violator, merely because he speeds up his vehicle after the officer has made his presence known by siren.³⁰

Convictions: Concurrent sentences. If a prisoner is convicted on two counts or cases and receives two sentences to pay a fine and costs, and it is ordered that the sentence be served concurrently, payment of the amount fixed by one of the sentences does not discharge the defendant from payment of the fines and costs in the other sentence. The only sentences which can be served concurrently are sentences to imprisonment.³¹

23. FLA. STAT. § 37.21 (1953); OP. ATT'Y GEN. 055-72 (March 28, 1955).

24. FLA. STAT. § 192.56 (1953); OP. ATT'Y GEN. 055-52 (March 8, 1955).

25. FLA. STAT. § 941.13 (13) (1953).

26. OP. ATT'Y GEN. 055-70 (March 25, 1955).

27. FLA. LAWS 1951 c. 27000.

28. OP. ATT'Y GEN. 055-65 (March 21, 1955).

29. 4 AM. JUR. 54-55, Attest, § 78.

30. OP. ATT'Y GEN. 055-79 (April 6, 1955).

31. FLA. STAT. § 921.16 (1953).

However, if the defendant elects to serve the alternative jail sentences in lieu of the costs, he is entitled to a double credit for his time spent in jail if he subsequently decides to pay out, since the time applies against both fines.³²

Driving while intoxicated: Revocation of license. Upon conviction of driving a motor vehicle while under the influence of intoxicating liquor, the driver's license must be revoked—not suspended.³³

Since the revocation is mandatory and part of the sentence, effective when rendered, there is no authority to indicate that the failure to "pick-up" the driver's license or the failure of the defendant to receive "notice revoking his license" would defeat the prosecution for driving while a license is revoked.³⁴

In fact it is unlawful to have in one's possession a revoked driver's license.³⁵

Gambling: Shooting galleries. A shooting gallery operator who offers three shots for a quarter at small red triangles on a card, and as an inducement, offers to pay \$5.00 to the shooter if he hits all three triangles violates the state gambling laws under two sections.³⁶

The remedies available against the operator are prosecution for violation of the above-mentioned sections or an injunction against the operation of a nuisance.³⁷

Mitigation of sentence. A court has no jurisdiction to modify or mitigate a valid sentence after the expiration of the term of court at which the sentence was imposed, unless steps be taken during that term to do so.³⁸ Therefore, where defendant was sentenced by the Court of Crimes to serve a county jail sentence, and six months later, in a case which was brought as a direct result of the Court of Crimes conviction, said defendant was sentenced by the United States District Court to serve a sentence in the same county jail, the Court of Crimes does not have the power to order that its sentence run concurrently with the federal sentence, when the term of court at which the Court of Crimes sentence was imposed had expired in the interim.³⁹

Moonshine: Rights of sheriffs in seizure. Any sheriff has the power to seize a moonshine still, distilling apparatus, mesh, wort, and all personal

32. OP. ATT'Y GEN. 055-73 (March 28, 1955).

33. FLA. STAT. § 322.25-6 (1953).

34. FLA. STAT. § 322.24 (1953).

35. FLA. STAT. § 322.32 (1953); OP. ATT'Y GEN. 055-77 (April 4, 1955).

36. FLA. STAT. §§ 849.01 and 849.14 (1953).

37. FLA. STAT. §§ 823.05 and 64.11 (1953); OP. ATT'Y GEN. 055-60 (March 17, 1955).

38. See *Einstein v. Davidson*, 35 Fla. 342, 17 So. 563 (1895); *Tanner v. Wiggins*, 54 Fla. 203, 45 So. 459 (1907); 24 C.J.S. 134, Criminal Law, § 1604; 24 C.J.S. 137-138, Criminal Law, § 1605-b; and 49 C.J.S. 438 Judgments, § 230-a.

39. OP. ATT'Y GEN. 055-37 (Feb. 18, 1955).

property used to facilitate the manufacture or production of moonshine.⁴⁰ In addition the sheriff may destroy any still, distilling apparatus, moonshine whiskey and other property having a value of less than \$1000, where it is impracticable to remove the same to a safe storage place from the place where it is seized.⁴¹ Such a destruction should be in the presence of at least one creditable witness. One pint of the moonshine whiskey should be preserved by the seizing officer to be used as evidence against the accused. Property seized having value of more than \$1000 is forfeited to the state.⁴²

DOMESTIC RELATIONS. *Uniform Support of Dependents Law: Use.* The Uniform Support of Dependent Law of Florida⁴³ is not applicable to enforce the provisions for support included in a decree of divorce. Such action would have to be instituted on the basis of the decree itself.

Even though the decree does not so provide, the husband procuring the divorce would still be liable for the support of his children under the statutory provision⁴⁴ which makes the husband liable for the support of any dependent child notwithstanding the fact that he has obtained a final decree of divorce or separation in any state or country. It is not necessary to re-open the case and have the decree amended to provide for support. However, where the wife has procured the divorce, she must proceed according to the terms of the decree rather than under the provisions of the Uniform Support of Dependents Law.⁴⁵

ELECTIONS. *Electors: Qualification.* An elector residing in a district in the county who owns no realty within the district but does own realty within the said county, is not entitled to vote in the coming district's bond election. To be qualified to vote in such an election, a person must be a duly registered elector in a precinct located in such district and must be possessed of an immediate beneficial interest in title to a fee simple estate in land.

Furthermore, the board of commissioners of the district can delete from the certified list of freeholders furnished by the Supervisor of Registration the names of those persons who do not own realty within the limits of the district, and bar such persons from voting as freeholders in the district bond election.⁴⁶

FLORIDA. *County Commissioners: Building contracts.* After a contract has been awarded by a Board of County Commissioners, reduced to writing and signed by the parties, and the performance bond furnished and approved,

40. FLA. STAT. § 562.27 (1953).

41. FLA. STAT. § 562.42 (1953).

42. FLA. STAT. § 562.40 (1953); OP. ATT'Y GEN. 055-75 (March 28, 1955).

43. FLA. STAT. c. 88 (1953).

44. FLA. STAT. § 88.04 (7) (1953).

45. OP. ATT'Y GEN. 055.48 (March 3, 1955).

46. OP. ATT'Y GEN. 055-55 (March 8, 1955).

the board has lost jurisdiction and may not reconsider the bids unless fraud or something sufficient to avoid the contract is present.

Where a county commissioner is employed by a person making a bid, even though he is employed in a business which is completely unrelated to the building contract, the commissioner is disqualified from considering the contract in question, since § 839.07⁴⁷ makes it unlawful for a commissioner to be in any way interested in the contract.⁴⁸

County gas taxes: Allocation to other counties. A county can not allocate a portion of its constitutional "second gas tax" for highway repair or construction in another county, because under the state constitution⁴⁹ such sums must be used for road work *within the county* to which the taxes were allocated. Since the subject matter is of constitutional origin, it cannot be changed by statute.

Nor can a county allocate a portion of its statutory "additional gas tax" for highway repair in another county, because under present statutes⁵⁰ those portions of the tax allocated for road work are restricted to work *within such county*. However, the Legislature may, by appropriate general act or amendment authorize the State Road Department to use the taxes allocated to one county for work in another county, provided that the county to which the allocation is made consents.⁵¹

INSURANCE. Warranty in insurance contract. The "National Automobile Warranty" of National Bonded Cars, Inc., of 1965 Morris Avenue, Union, N. Y. certifies the inspection of the vehicle, the good working condition of certain specified parts, and agrees to protect the retail purchaser of the vehicle and holder of the warranty for one year from date of purchase from any costs of repairs or replacements, to those parts, which may arise in the normal use of the car. Due to the great variance in the use of automobiles by different purchasers, there is an element of chance in any estimate of the durability and life of materials under conditions of ordinary usage. In addition, the contract makes no distinction between failure of materials because of wear or inherent defects. As a result, the use of this warranty would, in this state, constitute the issuance of a contract of insurance.⁵²

Change of warranty in policy. Despite the change by National Bonded Cars, Inc. of the wording of their warranty paragraph,⁵³ the contract continues to be one of insurance under Florida laws since the warranty as changed does not specifically confine its terms to failure of mechanical

47. FLA. STAT. § 839.07 (1953).

48. OP. ATT'Y GEN. 055-76 (March 31, 1955).

49. FLA. CONST. ART. IX, § 16(c).

50. FLA. STAT. §§ 208.44 (3), 341.52 (1953).

51. OP. ATT'Y GEN. 055-36 (Feb. 18, 1955).

52. OP. ATT'Y GEN. 055-43 (Feb. 23, 1955).

53. OP. ATT'Y GEN. 055-43.

parts by reason of defective materials as distinguished from parts becoming defective and failing as a result of wear.⁵⁴

LICENSES. *Intoxicating beverage license: Additional license for issuance in Springfield, Florida.* Liquor licenses may be issued so long as the number of licenses issued within the town limits does not exceed one to each 2500 residents; provided, however, that every town shall be entitled to a minimum of two licenses.⁵⁵

The fact that one of the liquor licenses now located within the municipal limits of a city was originally issued in the county outside the municipality, is immaterial and such license is included in determining if the municipality has its entitled minimum of licenses.⁵⁶

MOTOR VEHICLES. *Financial Responsibility Law: Covenant not to sue.* A "covenant not to sue" is not a "... duly acknowledged written instrument providing for release of liability by all parties injured" as a result of a motor vehicle accident and is therefore insufficient to circumvent the provisions of the Financial Responsibility Law.⁵⁷

Revocation of Driver's Licenses: Supersedeas on appeal. An appeal from a municipal court to a circuit court from a conviction of driving while intoxicated operates as a supersedeas on the statutory provision⁵⁸ requiring the mandatory revocation of the driver's license.⁵⁹

MUNICIPAL CORPORATIONS. *Granting franchises.* A municipality may grant a franchise to operate a bus service over the streets of the municipality without first submitting the same to a referendum of the voters of the municipality, since neither of the statutes⁶⁰ authorizing the power of municipalities to grant a franchise requires that a franchise be submitted to the electors of the municipality before the same may become operative.⁶¹

Police officers. Municipal police officers are "officers with state police power granted by the Legislature," and are within the provisions of the statute⁶² prohibiting such officers from engaging in or being in any way connected with the sale or distribution of alcoholic beverages.⁶³

PROCEDURE. *Recording of instruments: Necessity of clerk's personal signature.* Although the Clerk of the Circuit Court need not manually sign instruments filed for public record, it is wise to authenticate the

54. OP. ATT'Y GEN. 055-68 (March 24, 1955).

55. FLA. STAT. § 561.20 (1953).

56. OP. ATT'Y GEN. 055-57 (March 11, 1955).

57. FLA. STAT. § 324.04 (2) (f) (1953); OP. ATT'Y GEN. 055-61 (March 18, 1955).

58. FLA. STAT. § 322 (1953).

59. OP. ATT'Y GEN. 055-64 (March 21, 1955).

60. FLA. STAT. §§ 167.22, 180.14 (1953).

61. OP. ATT'Y GEN. 055-40 (Feb. 23, 1955).

62. FLA. STAT. § 561.25 (1953).

63. OP. ATT'Y GEN. 055-39 (Feb. 23, 1955).

facsimile signature with the manual signature of the duly authorized deputy who actually does the verification.⁶⁴

PUBLIC OFFICERS. *Chief of Statistics of the Workmen's Compensation Division: Classification.* The position of Chief of Statistics of the Workmen's Compensation Division of the Florida Industrial Commission does not fall in the category of a position in the field of "professional and scientific services" as such words are used in a statute⁶⁵ providing preference points for veterans, their wives or widows, under competitive examination systems, and which except positions in professional and scientific services for which the entrance salary is over \$3,000. per annum.⁶⁶

Chief of Rehabilitation: Classification. The position of Chief of Rehabilitation is not a "professional or scientific position" within the statutory meaning of the words.⁶⁷

TAXATION. *Ad valorem taxes: Exemption of little theatre organization.* A corporation's property which is used exclusively for religious, scientific, municipal, educational or charitable purposes is exempt from ad valorem taxation.⁶⁸

The mere fact that a corporation has been organized as a nonprofit corporation, even though its charter may declare that it has been organized for religious, scientific, educational or charitable purposes, will not for that reason alone entitle it for exemption from ad valorem taxation. There must be an actual utilization of the property for one of the exempted purposes.⁶⁹ The question then is one of fact and not of law.⁷⁰

Exemptions: Churches. Churches are not entitled to exemption from a utility excise tax imposed upon utilities under a statute⁷¹ which provides that the municipal ordinance imposing the tax may exempt from payment federal, state, county, and municipal governments and their agencies. However, the municipality may expressly grant such an exemption by valid ordinance.⁷²

Exemptions: Public housing authorities. The statute⁷³ providing that the debentures of a housing authority shall be exempt from taxes is ambiguous as to whether it applies only to debentures of public housing authorities organized under Florida laws or to those organized under the laws of other states as well. To construe the statute as applying to such securities issued by housing authorities in other states would place its constitutionality

64. OP. ATT'Y GEN. 055-66 (March 22, 1955).

65. FLA. STAT. § 295.08 (1953).

66. OP. ATT'Y GEN. 055-41 (Feb. 23, 1955).

67. FLA. STAT. § 295.08 (1953); OP. ATT'Y GEN. 055-63 (March 21, 1955).

68. FLA. CONST. Art. XVI, § 16; Fla. Stat. § 192.06 (1953).

69. *Riverside Academy v. Watkins*, 155 Fla. 283, 19 So.2d 870 (1944).

70. OP. ATT'Y GEN. 055-81 (April 7, 1955).

71. FLA. STAT. § 167.431 (1953).

72. OP. ATT'Y GEN. 055-54 (March 10, 1955).

73. FLA. STAT. § 423.03 (1953).

in doubt. This being true the statute should be construed as having application only to securities issued by Florida housing authorities.⁷⁴

Homestead exemption: Beneficiary of trust. The owner of a tax exempt homestead died testate and vested title to her estate, including the said homestead, in trustees to exercise an active trust thereover. The income was to be paid to a specified beneficiary during her life, and the said beneficiary now resides in the said dwelling house and makes the same her permanent home. The house cannot be granted a homestead tax exemption, because the beneficiary does not possess any right or title to the trust property, but only a right to receive the income from the administration of the estate.⁷⁵

Homestead tax: Exemption for members of armed forces. A member of the armed forces who elects to remain for a further tour of duty when he has the right to leave the service completely, is voluntarily in the service after the expiration of his tour of duty under the draft or as a reserve, and is thus ineligible for the homestead tax exemption.⁷⁶

Tangible personal property: Tax liens. The tangible personal property lien provided by statute⁷⁷ is against the personal property of the taxpayer within the county, including but not limited to the property assessed. The lien attaches as of January first of the tax year and continues until the taxes are paid. This lien may be enforced against such property, so long as it may be identified, even in the hands of a purchaser. However, the purchaser is not liable for the payment of such unpaid taxes since the lien is against the property itself and is not a personal liability of the taxpayer. For the same reason, where a taxpayer sells the property on which the taxes are unpaid, such unpaid taxes do not become a personal liability of the taxpayer.⁷⁸

74. *Florida Sugar Distributors v. Wood*, 135 Fla. 126, 184 So. 641 (1938); *Ex parte White*, 131 Fla. 83, 178 So. 876 (1938); *OP. ATT'Y GEN.* 055-38 (Feb. 23, 1955).

75. *OP. ATT'Y GEN.* 055-78 (April 5, 1955).

76. *OP. ATT'Y GEN.* 050-574 (Dec. 21, 1950); *OP. ATT'Y GEN.* 055-67 (March 24, 1955).

77. *FLA. STAT.* § 200.02 (1953).

78. *OP. ATT'Y GEN.* 055-47 (March 3, 1955).