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## Summary of Attorney General's Opinions

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# SUMMARY OF ATTORNEY GENERAL'S OPINIONS\*

**ADMINISTRATIVE LAW. Department of Public Welfare: Grant.** The Department of Public Welfare has the authority to accept a private grant of money for a survey of the Florida Adoption Program.<sup>1</sup> Although adoption records are confidential,<sup>2</sup> the researchers would have access to them since their work would be, in effect, the work of the department.<sup>3</sup>

**Florida State Turnpike Authority: Relocation.** In almost all cases the Turnpike Authority must bear the cost of removal or relocation of public or private utilities facilities, such as trucks, pipes, mains, conduits, cables, wires, towers, etc.<sup>4</sup> The exceptions are in those instances where there are public or private facilities on an existing public roadway or street which is to be incorporated into the Turnpike, and such facilities are subject to prior agreements or statute to be removed or adjusted where necessary.<sup>5</sup>

**Purchases: Competitive bids.** Even though delivered in small lots, term purchases are such purchases as to require competitive bids where the total amount of such purchases exceeds one thousand dollars.<sup>6</sup>

**State Beverage Department supervisor.** A supervisor of the State Beverage Department is a police officer having authority to serve a search warrant in the state when the crime or crimes alleged in the affidavit are violations of the State Beverage Laws.<sup>7</sup>

**Teacher training: Scholarships.** A student holding a scholarship for teacher training need not work toward a degree in education. Any course of study that is approved by the head of the school of education in accordance with the State Board regulations for teacher education and certification will meet the requirements.<sup>8</sup>

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\*This issue of the Summary contains those opinions of general or public interest from OP. ATT'Y GEN. 054-66 March 17, 1954, through 054-224 September 20, 1954.

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1. FLA. STAT. § 409.02 (1953).
  2. FLA. STAT. § 72.27 (1953).
  3. OP. ATT'Y GEN. 054-149 (June 18, 1954).
  4. Fla. Laws 1953, c. 28128, § 4(2).
  5. OP. ATT'Y GEN. 054-112 (May 7, 1954).
  6. FLA. STAT. § 287.05 (1953); OP. ATT'Y GEN. 054-208 (Aug. 24, 1954).
  7. *Harvey v. Drake*, 40 So.2d 214 (Fla. 1949); *Boynton v. State*, 64 So.2d 536 (1953); OP. ATT'Y GEN. 054-211 (Aug. 30, 1954).
  8. FLA. STAT. § 239.42 (1953); OP. ATT'Y GEN. 054-80 (April 9, 1954).

**BANKS AND BANKING.** *Estates by the entirety: Credit Unions.* Estates by the entireties may be created in moneys deposited or invested in Credit Unions in this State so long as the contract setting up such deposit or investment contains any language sufficient to show such intent on the part of the depositor or investor and acceptance of such intention by the Credit Union.<sup>9</sup>

**COURTS.** *Constable of the Justice of the Peace Court: Service.* A constable has authority on a warrant based on a felony or a misdemeanor, issued from a justice of the peace court of the district where the crime was committed, to serve such warrant on accused in another district within the same county.

A constable from one district may serve in a second district at the request of the justice of the peace of this second district where the local constable is disqualified or unable to act.<sup>10</sup>

*County Judge's Court: Prosecuting attorneys.* The prosecuting attorney in the County Judge's Court has no authority to prosecute any offenses other than misdemeanors,<sup>11</sup> nor is there any constitutional or statutory authority for the aforementioned prosecutor to summon witnesses before him for any purpose.<sup>12</sup>

*Criminal Court of Record: Judge's authority to appoint county solicitor.*

During a term of court, a judge of the Criminal Court of Record has authority to appoint a county solicitor pursuant to the provisions of Fla. Stat. § 32.17 when the county solicitor, for any reason, is not present at the term of court.<sup>13</sup>

*Justices of Peace Courts: Expert witnesses' fees.* In civil actions before a justice of the peace, expert witnesses may receive reasonable fees, taxed as costs, as determined by the justice of the peace, provided that the amount does not exceed the sum prescribed by statute.<sup>14</sup>

In criminal actions before a justice of the peace, expert witnesses will be paid the same fees, taxed as costs, as are paid ordinary witnesses.<sup>15</sup> But in the trial of a misdemeanor where the mental condition of the defendant is at issue, expert witnesses shall be paid, such fees taxed as costs, as the court in its discretion deems reasonable.<sup>16</sup>

*Juvenile Courts: Traffic violations.* The Juvenile Court has exclusive original jurisdiction of persons under seventeen years of age who violate traffic ordinances. Such violation makes the defendant a delinquent child, and the Juvenile Judge, even at the request of the juvenile offender, cannot waive jurisdiction and transfer the case to the municipal court.<sup>17</sup>

9. OP. ATT'Y GEN. 054-71 (March 19, 1954).

10. OP. ATT'Y GEN. 054-183 (August 2, 1954).

11. FLA. STAT. § 36.01(4) (1953).

12. OP. ATT'Y GEN. 054-83 (April 14, 1954).

13. *Pelaez v. State*, 107 Fla. 50, 144 So. 364 (1932); OP. ATT'Y GEN. 054-216 (Sept. 8, 1954).

14. FLA. STAT. § 90.231 (1953).

15. FLA. STAT. § 917.03 (1953).

16. OP. ATT'Y GEN. 054-221 (Sept. 14, 1954).

17. FLA. STAT. § 39 (1953); OP. ATT'Y GEN. 054-156 (July 7, 1954).

*Municipal courts: Jurisdiction.* The jurisdiction of a municipal court is constitutionally limited to the punishment of offenses established by municipal ordinances.<sup>18</sup> But such ordinances may punish actions which also constitute a state offense.<sup>19</sup> Thus, under a general statute<sup>20</sup> granting municipalities the right to preserve the public peace and morals, an ordinance suspending or revoking a driver's license for drunken driving may be enacted and enforced.<sup>21</sup>

**CRIMINAL LAW.** *Censorship of prisoner's mail: Use of confession.* The prison warden has complete administrative authority as to the censorship and posting of outgoing prisoner mail. Such action is not under court jurisdiction. Therefore, a confession voluntarily placed in a letter by the prisoner may be given to the prosecution by the warden for use against the accused.<sup>22</sup>

*Municipal police officers: Arrests.* Municipal police officers have the authority to enforce state laws even though such authority is not expressly granted by the city charter or a city ordinance.<sup>23</sup>

*Procedure: Judgment and sentence.* A defendant guilty of driving while intoxicated and fined \$500 and sentenced to six months may not be sentenced to additional time for failure to pay.<sup>24</sup> The fine may be imposed by judgment in a civil action,<sup>25</sup> but if the defendant has no assets, the collection of the fine cannot be enforced.<sup>26</sup>

*Search and seizure: Legality.* It is well-established that a reasonable search and seizure may be made incident to a lawful arrest.<sup>27</sup> Any evidence obtained thereby, although unrelated to the offense which resulted in detention, may be used in evidence to support an entirely different criminal charge.<sup>28</sup>

*Worthless checks.* A person knowingly writing and issuing a check with insufficient funds on deposit, and thereby securing money, property or other things of value therefore has committed a criminal offense.<sup>29</sup> The fact that he later stops payment on the check has no bearing on his guilt or innocence.<sup>30</sup>

**DOMESTIC RELATIONS.** *Marriage ceremony: Municipal judge.* Judicial officers have the statutory authority to perform a marriage ceremony.<sup>31</sup> The

18. FLA. CONST. Art. 1, § 34.

19. State v. Quigg, 154 Fla. 448, 17 So.2d 697 (1944); Orr v. Quigg, 135 Fla. 653, 185 So. 726 (1938).

20. FLA. STAT. § 165.19 (1953).

21. FLA. STAT. Ch. 322, §§322.25, 322.26, 322.27 (1953); OP. ATT'Y GEN. 054-209 (Aug. 27, 1954).

22. OP. ATT'Y GEN. 054-78 (April 5, 1954).

23. FLA. STAT. § 901.15 (1953); OP. ATT'Y GEN. 054-135 (June 8, 1954).

24. Lyle, Sheriff, v. Walter, 100 Fla. 1457, 131 So. 383 (1903).

25. FLA. STAT. 922.02 (1953).

26. OP. ATT'Y GEN. 054-189 (August 6, 1954).

27. Mixon v. State, 54 So.2d 190 (Fla. 1951).

28. Weeks v. U.S., 232 U.S. 383 (1914); OP. ATT'Y GEN. 054-126 (May 25, 1954).

29. FLA. STAT. § 832.01 (1953).

30. OP. ATT'Y GEN. 054-91 (April 19, 1954).

31. FLA. STAT. § 741.07 (1953).

judge of a municipal court is a judicial officer<sup>32</sup> and is therefore a recipient of said authority.<sup>33</sup>

**ELECTIONS.** *Failure of primary candidate to file report of expenses and contributions.* The Board of County Commissioners has no authority to remove the name of a candidate from the primary ballot even though such candidate violates the statute<sup>34</sup> requiring a report of all expenses and contributions.<sup>35</sup>

*Primary ballot: Unopposed party executive committee candidate.* The name of a candidate for the party executive committee who is unopposed need not appear on the primary ballot, and in accordance with the election code<sup>36</sup> he shall be deemed elected.<sup>37</sup>

**INSURANCE.** *Foreign mutual insurance corporation: Admission.* A foreign mutual insurance company that intends to make investments in this state but will not do any local insurance business need not comply with the requirements of the regulatory laws<sup>38</sup> pertaining to the admission of foreign insurance corporations.<sup>39</sup>

*Out-of-state group life policy: Unlicensed agents.* The agents of a foreign insurer, authorized to do business in Florida, need not be licensed in order to sell shares in a master group policy which was issued in another state since the group life laws of Florida are not applicable to such policy issuing in Tennessee.<sup>40</sup>

**JURIES.** *Criminal case: Women jurors.* In any criminal case in which there is a female person sitting on the jury the statute requires that a female bailiff or deputy sheriff be provided to attend the jury.<sup>41</sup>

*Grand jury: Attorney's compensation.* The Board of County Commissioners may pay a reasonable attorney's fee incurred by members of a grand jury in defending a libel action resulting from comments in their official report. Such reimbursement is to come from unearmarked funds of the general fund.<sup>42</sup>

**LICENSES.** *Occupational license tax.* A business concern operating an office in this state with its personnel engaged solely in promotional and franchising activities is not "doing business" in the state within the purview of the statute<sup>43</sup> requiring occupational licenses for business activities.<sup>44</sup>

**PROCEDURE.** *Uniform Support of Dependents: Enforcement.* It is the duty of each state attorney in his judicial circuit to represent dependents who

32. FLA. CONST. Art. V, § 1.

33. OP. ATT'Y GEN. 054-129 (May 31, 1954).

34. FLA. STAT. § 99.161(8) (1953).

35. OP. ATT'Y GEN. 054-67 (March 17, 1954).

36. FLA. STAT. § 99.041 (1953).

37. OP. ATT'Y GEN. 054-72 (March 19, 1954).

38. FLA. STAT. § 626.02 (1953).

39. OP. ATT'Y GEN. 054-118 (May 14, 1954).

40. OP. ATT'Y GEN. 054-76 (March 25, 1954).

41. FLA. STAT. 40.01(7) (1953); OP. ATT'Y GEN. 054-98 (April 21, 1954).

42. OP. ATT'Y GEN. 054-206 (August 23, 1954).

43. FLA. STAT. § 205.01 (1953).

44. OP. ATT'Y GEN. 054-105 (April 28, 1954).

are residents of Florida in their actions under the Uniform Support of Dependents Law. Whether or not the respondents are also residents of this state has no bearing on such representation, except procedurally. The state attorney has no such duty however where the petitioner engages a private attorney.<sup>45</sup>

**PUBLIC HEALTH.** *Florida Crippled Children's Commission: Reimbursement.* There is no statutory provision for reimbursement to the Crippled Children's Commission of funds expended on treatment of a child whose guardian is subsequently able to pay. However, the Commission can enter into a contract with the parents or legal guardian for repayment in whole or in part for services rendered.<sup>46</sup>

*Hotels and restaurants: Sanitary facilities.* Hotels and restaurants are required by statute<sup>47</sup> to maintain suitable water closets and public washrooms for guests. A reasonable number of such facilities in any given establishment may be coin-operated, but the Hotel and Restaurant Commissioner can prohibit the use of such locks on *all* the facilities provided.<sup>48</sup>

**TAXATION.** *Exemption: Future cemetery.* Property held by a cemetery association for use as a burial ground at some indefinite future time would not generally be entitled to tax exemption. However, there might be special circumstances under which the local taxing authorities, at their discretion, might grant such an exemption.<sup>49</sup>

*Florida: Homestead exemption.* Where real property is used for business purposes on the ground floor and as a permanent home on the top floor, homestead exemption will extend to the home and so much of the business area as is used by the home owner for his own business.<sup>50</sup>

*Homestead exemption.* The Florida Constitution<sup>51</sup> does not require that the homestead claimant have record title to the property claimed as his tax-exempt homestead. However, the Tax Assessor has the right to demand from the claimant proof of the bona fides of the title instruments not of record.

A person holding a life estate in land on which he makes his permanent home is eligible for the Homestead exemption. However, only the life estate is so eligible with the remainder being subject to taxation. In such a case separate valuations must be made for both estates. The value of the life estate on any particular day depends upon the value of the property measured by the life expectancy of the life tenant.<sup>52</sup>

*Homestead exemption: Alien.* United States citizenship is not a requisite for a valid claim of the homestead tax exemption.<sup>53</sup> However, the property

45. FLA. STAT. §§ 88.08, 88.09 (1953); OP. ATT'Y GEN. 054-142 (June 10, 1954).

46. FLA. STAT. § 391.07 (1953); OP. ATT'Y GEN. 054-134 (June 8, 1954).

47. FLA. STAT. §§ 511.15, 511.17 (1953).

48. OP. ATT'Y GEN. 054-108 (May 4, 1954).

49. OP. ATT'Y GEN. 054-143 (June 14, 1954).

50. *Smith v. Guckenheimer*, 42 Fla. 1, 27 So. 900 (1900); OP. ATT'Y GEN. 054-219 (Sept. 9, 1954).

51. Art. X, § 7.

52. OP. ATT'Y GEN. 054-81 (April 12, 1954).

53. *Smith v. Voight*, 158 Fla. 366, 28 So.2d 426 (1946).

in question must be the *permanent* home or residence of the claimant.<sup>54</sup> An alien on a temporary visa does not meet this requirement of permanence.<sup>55</sup>

*Intangible personal property: Corpus of trust estate.* Where intangible personal property is held in this state by a trustee with the income therefrom being used by beneficiaries for some educational, literary, scientific, religious or charitable purpose within the purview of the statute,<sup>56</sup> the income is exempt from ad valorem taxation.<sup>57</sup> However, unless the beneficiaries have some power of appointment over the corpus, or future estate in the remainder, or present interest in the corpus of the trust estate aside from their right in equity to performance of the trust, the *corpus* of such estate is not entitled to ad valorem tax exemption if the trustee itself is not an educational, literary, scientific, religious or charitable association.<sup>58</sup>

*Intangible personal property: Resident and nonresident trustees.* Intangible personal property held by two or more trustees as joint tenants, some residents of Florida and some nonresidents, is not subject to taxation in Florida, in whole or in part, where the trust is active and the situs of the trust property is not within this state.<sup>59</sup>

*Lands: Eleemosynary lessor.* Structures built by a lessee, upon land leased by him from a religious or eleemosynary corporation for a term of years are subject only to tangible personal property tax to be paid by the lessee and are not assessable for ad valorem tax purposes against said lessee.<sup>60</sup>

*Property exemption: Disabled persons.* A tax exemption on property up to the value of five hundred dollars is provided for "... every person who is a bona fide resident of this State and who has lost a limb or been disabled in war or by misfortune."<sup>61</sup> There is no fixed percentage or degree of disability necessary to entitle a person to the exemption so provided. The question is left to each tax assessor to be determined for himself as a question of fact in each particular case.<sup>62</sup>

*Railroad lands: Leasehold interests.* Leasehold interests, in lands assessed to railroads, granted to third persons for business purposes, should be locally assessed if the lease is for long periods.<sup>63</sup> But if a short term lease (i.e. shortly needed by the railroad for operative purposes) it should be included in the state railroad unit returns.<sup>64</sup>

*Tax deed sales: Requirements.* As a pre-requisite to advertising and holding a tax deed sale, the holder of a county tax sale certificate, or a municipal tax sale certificate when municipal tax deeds are required to be issued

54. FLA. CONST. Art. X, § 7.

55. OP. ATT'Y GEN. 054-158 (July 9, 1954).

56. FLA. STAT. § 192.06 (1953).

57. FLA. CONST. Art. IX, § 1; Art. XVI, § 16.

58. OP. ATT'Y GEN. 054-139 (June 10, 1954).

59. OP. ATT'Y GEN. 054-218 (Sept. 9, 1954).

60. OP. ATT'Y GEN. 054-111 (May 5, 1954).

61. FLA. CONST. Art. IX, § 9 (Italics supplied).

62. OP. ATT'Y GEN. 054-95 (April 20, 1954).

63. FLA. STAT. § 195.01 (1953).

64. OP. ATT'Y GEN. 054-171 (July 14, 1954).

by the clerk of the circuit court, is required to "pay to the clerk the proper amount fixed by law for the redemption or purchase of *other outstanding tax certificates* covering said lands. . . ."65 Special assessments are not "*outstanding tax certificates*" within the meaning and intent of the statute.66

*Tax sale certificate: Limitation upon enforcement.* There is a 20 year limitation, reckoned from the date of issuance, upon the enforcement of a tax sale certificate held by the state, county or municipality.67

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65. OP. ATT'Y GEN. 054-90 (April 16, 1954) (Italics supplied).

66. FLA. STAT. § 194.12 (1951); OP. ATT'Y GEN. 054-101 (April 26, 1954).

67. FLA. STAT. § 196.12 (1953); OP. ATT'Y GEN. 054-210 (August 28, 1954).