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Summary of Attorney Generals Opinions

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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

ADMINISTRATIVE LAW. Legislative Reference Bureaus: Educational television survey. Funds appropriated to the Legislative Council for a survey of educational television must be budgeted separately from other funds. A qualified specialist may receive compensation for supervising the survey, but members of the Council will not be allowed expenses. Expenses of publishing the report may be paid from the appropriation.¹

Milk Commissions: Price fixing. The Florida Milk Commission cannot fix the price of milk sold to public schools or to charitable organizations, either governmental or private, who regularly buy milk for free distribution. The term public school includes all nursery, elementary, secondary school grades and special classes; adult, part-time, vocational and evening schools operated under the control of county boards. This excludes colleges and universities.²

Municipal Utility Boards: Collective bargaining agreement. A Municipal Utility Board cannot enter into a collective bargaining agreement which might alter working conditions, change rates of pay, or submit labor disputes to arbitration.³

Purchases by state agencies. No state purchase in excess of one thousand dollars can be made without competitive bids. If in excess of two thousand dollars the bid must be advertised.⁴

State Advertising Commissions: Use of television. Television is a form of radio and within the scope of the statute⁵ authorizing the State Advertising Commission to purchase radio advertising⁶

State Hotel and Restaurant Commissions: Deputies. The Hotel and Restaurant Commissioner may appoint as deputies without compensation, employees of the State Board of Health whose duties require them to inspect the same facilities as inspected by the Commissioners. They, in turn, may be appointed to make inspections for the State Board of Health in con-

*This issue of the Summary contains those opinions of general or public interest from OP. ATT'Y GEN. 053-85, April 20, 1953 through 053-247, September 17, 1953.

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1. OP. ATT'Y GEN. 053-213 (Aug. 24, 1953).
2. FLA. STAT. § 501.04 (1951), as amended, Fla. Laws 1953, c. 28137; OP. ATT'Y GEN. 053-98 (Aug. 11, 1953).
3. OP. ATT'Y GEN. 053-94 (May 6, 1953).
4. Fla. Laws 1953, c. 28056, § 8; OP. ATT'Y GEN. 050-537 (Nov. 27, 1950); OP. ATT'Y GEN. 053-240 (Sept. 15, 1953).
5. FLA. STAT. § 286.19 (1951).
6. OP. ATT'Y GEN. 053-109 (May 26, 1953).

nection with their own duties. This interchange must not result in additional expense or substantial deviation from their required work.⁷

State Hotel and Restaurant Commissions: License suspension. The Hotel and Restaurant Commissioner may suspend the license of a hotel or motor court operator who publishes an illegal advertisement in another state.⁸

State Improvement Commission: Agent for eleemosynary institutions. Tax supported⁹ or non-profit tax exempt health or educational institutions may appoint the State Improvement Commission as their agent in acquiring surplus property of the Federal government. However, the non-profit and tax exempt institutions must bear the expenses of the agency.¹⁰

State Racing Commission: Limitations of racing dates. Horse race meetings shall be held only from December 1st through April 20th. Dog race meetings shall be held from November 15th through May 31st.¹¹

The order of choice of racing dates shall be allocated to the tracks producing the largest amount of revenue the previous year.¹²

No license shall be granted for longer than 50 days for horse racing and 90 days for dog racing. However, the State Racing Commission can grant one additional day for each period for scholarship purposes and one day for charitable purposes.¹³ If the added days are requested by the tracks involved, the Racing Commission may attach the six additional racing days to the regular horse racing season either prior to December 1st, or subsequent to April 20th so as not to exceed the total of 126 racing days for the season. Each track requesting the additional two days shall designate any two days it sees fit in the 42 days allotted to it as its additional days.¹⁴

State Racing Commission: Public records. Annual racing applications filed with the Florida Racing Commission are public documents open to the inspection of the public. Records of an investigative nature containing personal and privileged information may be withheld.¹⁵

State Racing Commission: Summer operation of jai alai frontons. Dade County is not within the geographical purvey of a statutory provision regulating racing in counties wholly east of St. Johns River, and as such, the statute has no application to the operation of jai alai frontons in Dade County.¹⁶

CONSTITUTIONAL LAW. *Search and seizures: Admissibility of evidence.* A person challenging the validity of a search and seeking the suppression of

7. OP. ATT'Y GEN. 053-209 (Aug. 20, 1953).

8. FLA. STAT. § 511.45 (1951); OP. ATT'Y GEN. 053-200 (Aug. 17, 1953).

9. FLA. STAT. § 420.06 (1951).

10. OP. ATT'Y GEN. 053-120 (June 5, 1953).

11. FLA. STAT. § 550.04 (1951).

12. FLA. STAT. § 550.081(3) (1951).

13. FLA. STAT. § 550.08 (1951).

14. OP. ATT'Y GEN. 053-101 (May 13, 1953).

15. OP. ATT'Y GEN. 053-223 (Sept. 1, 1953).

16. FLA. STAT. § 550.04 (1951); OP. ATT'Y GEN. 053-159 (July 17, 1953).

evidence gained by it must claim a proprietary interest in the premises searched.¹⁷

CORPORATIONS. *Debenture preference stocks: Annual report and fees.* Although there is some doubt, "debenture preference stock" containing provisions of both preferred stock and bonds will be treated as preferred stock subject to annual reports and filing fees.¹⁸

Tax reports. A new act¹⁹ prescribing certain tax reports and deleting limitations on the proration of tax is repealed by a concurrent act²⁰ which requires the filing of reports by all corporations including those exempted by the new act.²¹

COUNTIES. *Liquor: Regulation.* In the absence of county or city regulation, state law²² governs hours of sale of alcoholic beverages. Although cities and counties can regulate hours of sale, state regulation as to consumption and service applies and the term "alcoholic beverages" includes intoxicating beverages.²³

Retirement benefits. A retired county employee cannot accept compensation from a county for services rendered without forfeiting his county retirement benefits. This does not include goods, wares, merchandise or other things of value sold to the county.²⁴

COURTS. *Bail.* A sheriff is guilty of a misdemeanor if he knowingly takes insufficient bail or accepts an unqualified surety.²⁵ He cannot release a defendant to his lawyer and not require the posting of any bail where the defendant has been admitted to bail. An attorney is disqualified from acting as a surety.²⁶

Bail. A sheriff cannot release a justice of the peace and constable prisoner without bond in care of an attorney. If the constable has arrested the prisoner without a warrant, he must take the prisoner before a magistrate and make complaint even if the prisoner has been lodged in the county jail.²⁷ After the warrant is sworn out, either the sheriff or the constable may be directed to bring the prisoner before the justice for hearing, or be issued the commitment papers.²⁸

Bail: Release of obligor by justice of the peace. A justice of the peace cannot discharge the obligor from the defendant's bond when the preliminary examination has been made and the defendant bound over to a court with proper jurisdiction.²⁹

17. OP. ATT'Y GEN. 053-124 (June 8, 1953).

18. OP. ATT'Y GEN. 053-246 (Sept. 18, 1953).

19. FLA. STAT. § 610.07 (1951), as amended, Fla. Laws 1953, c. 28248.

20. Fla. Laws 1953, c. 28170; proposed FLA. STAT. § 608.32.

21. OP. ATT'Y GEN. 053-219 (Aug. 31, 1953).

22. FLA. STAT. § 562.14 (1951).

23. OP. ATT'Y GEN. 053-225 (Sept. 1, 1953).

24. FLA. STAT. § 134.14 (1951); OP. ATT'Y GEN. 053-178 (July 31, 1953).

25. FLA. STAT. § 903.35 (1951).

26. FLA. STAT. § 903.07 (1951); OP. ATT'Y GEN. 053-170 (July 24, 1953).

27. FLA. STAT. § 901.23 (1951).

28. OP. ATT'Y GEN. 053-208 (Aug. 20, 1953).

29. FLA. STAT. §§ 903.20, 903.21 (1951); OP. ATT'Y GEN. 053-116 (June 2, 1953).

Clerks: Fees. Where the satisfaction of a mortgage is recorded, the clerk may be entitled to a fee in addition to that for recording.³⁰ The charge for recording includes the cost of indexing regardless of the number of entries.³¹

Compensation of justice of the peace. A justice of the peace may receive the same compensation as a circuit court clerk for clerical services which are similar to those performed by the clerk and only when the clerk is compensated by separate fees for each service performed.³²

Constitutionality of statutes. A county judge has authority to pass on the constitutionality of a statute challenged by motion to quash complaint.³³

Costs: Discharge of defendant. When a defendant is discharged by a committing magistrate after preliminary examination, the county is required to pay all reasonable costs of the proceeding.³⁴

County judge as committing magistrate. The county judge as committing magistrate is precluded from conducting a preliminary examination in a case over which he has trial jurisdiction.³⁵

Expenses of nonresident witnesses. A voluntary nonresident witness whose appearance is necessary for prosecution of a criminal case is entitled to ten cents per mile to and from the court plus five dollars for each day of travel and attendance. Before procuring the witness, an order should be obtained stating that he is a material witness, specifying the number of days required and ordering the expenses paid if he appears voluntarily.³⁶

Municipal judge: Immunity of witness. A municipal judge does not have authority to grant immunity to a witness under subpoena.³⁷

Small claims court: Jury trials. A jury for a small claims court should be procured in the same manner as in a justice of the peace court.³⁸ Compensation for jurors is at the rate of five dollars per day plus five cents per mile for each mile necessarily traveled to and from the court.³⁹

CRIMINAL LAW. *Arrest: County traffic officers.* County traffic officers have authority to serve criminal process and make arrests with or without warrants within the corporate limits of cities and towns.⁴⁰

Arrest: Delinquent parolee. The Florida Parole Commission may cause the arrest of a delinquent parolee under its supervision when such parolee is on parole in another state. The procedure requires affidavits from a creditable citizen of the sending state and from a citizen of Florida. The sending state may either extradite the parolee or send an agent for such parolee under the Parole Compact.⁴¹

30. FLA. STAT. § 28.24 (1951).

31. OP. ATT'Y GEN. 053-238 (Sept. 11, 1953).

32. FLA. STAT. § 81.26(2) (1951); OP. ATT'Y GEN. 053-166 (July 20, 1953).

33. OP. ATT'Y GEN. 053-192 (Aug. 6, 1953).

34. OP. ATT'Y GEN. 053-154 (July 17, 1953).

35. OP. ATT'Y GEN. 053-172 (July 27, 1953).

36. OP. ATT'Y GEN. 053-91 (May 5, 1953).

37. OP. ATT'Y GEN. 053-211 (Aug. 21, 1953).

38. FLA. STAT. § 81.08 (1951).

39. Fla. LAWS 1953, c. 28427; OP. ATT'Y GEN. 053-175 (July 29, 1953).

40. FLA. STAT. § 146.04 (1951); OP. ATT'Y GEN. 053-234 (Sept. 9, 1953).

41. FLA. STAT. § 949.07 (1951), OP. ATT'Y GEN. 053-127 (June 19, 1953).

Arrest. Pick up notices. A peace officer may arrest without a warrant when a felony or misdemeanor has been committed in his presence or when he has reasonable ground to believe that a felony has been committed and that the person arrested has committed it.⁴² A "pick up notice" from another Florida officer sent out for a felony will be reasonable grounds for such belief. An arrest can be made on the basis of an out of state "pick up notice" only if the person is actually charged in another state with a felony.⁴³ An arrest can be made on a federal "pick up notice" when the officer has reasonable ground to believe that a federal felony has been committed and that the person arrested committed it, or when a federal warrant has been issued and placed in his hands. An officer arresting without authority will be guilty of false imprisonment, although a municipal corporation will not be liable in the absence of specific provisions.⁴⁴

Autopsy. A coroner's jury, a state attorney or a county solicitor can call for an autopsy only when necessary to determine whether death was caused by a criminal act, or when required by law for other reasons.⁴⁵

Child Molester Act: Commitment. A person convicted under the Child Molester Law may be committed to the State Hospital. If found sane, the court should further dispose of the case.⁴⁶

Military bases: Jurisdiction. The state courts have no jurisdiction over crimes committed on lands where exclusive jurisdiction has been ceded to the United States⁴⁷ regardless of whether military or non-military personnel are involved as offenders or victims. The question as to who has jurisdiction over crimes of a continuing nature has not been settled.⁴⁸

Procedure: Witness fees for deputy sheriff. A deputy sheriff or constable may be entitled to a witness fee and mileage for appearing as a witness before a prosecuting attorney or state attorney prior to the filing of an indictment in a criminal case although he is not entitled to receive fees for testifying in any court of his county.⁴⁹

Sale of certain flowers and plants. Certain plants native to Florida⁵⁰ cannot be bought or sold regardless of by whom, or when, or where they were raised.⁵¹

Worthless checks. A person who knowingly gives a worthless check in payment of Florida Sales Tax is liable for prosecution. The new

42. FLA. STAT. § 901.15 (1951).

43. FLA. STAT. § 941.14 (1951).

44. OP. ATT'Y GEN. 053-190 (Aug. 6, 1953).

45. FLA. STAT. §§ 936.02, 936.11 (1951); Fla. Laws 1953, c. 28019; OP. ATT'Y GEN. 053-183 (August 4, 1953).

46. OP. ATT'Y GEN. 053-144 (July 8, 1953).

47. FLA. STAT. § 6.04 (1951).

48. OP. ATT'Y GEN. 053-203 (Aug. 19, 1953).

49. FLA. STAT. § 902.19(4) (1951); OP. ATT'Y GEN. 053-184 (Aug. 4, 1953).

50. FLA. STAT. § 865.061 (1951).

51. OP. ATT'Y GEN. 053-237 (Sept. 11, 1953).

statutory⁵² provision does not require the check to be given for something of value.⁵³

ELECTIONS. *Ascertainment of freehold electors.* The regular registration book should be used for a freehold election. The Supervisor of Registration may send out return postcards to freeholders. If not returned, and it appears that such electors are no longer freeholders, they may be removed from the registration as such.⁵⁴

Freeholders: Requirements. An individual may qualify as a freeholder even though his property is exempt from taxation. If a husband holds the fee simple title of property, the wife cannot qualify as a freeholder unless her interest is judicially established.⁵⁵

Sale of alcoholic beverages. The statutory provisions⁵⁶ requiring the closing of retail liquor establishments during elections apply only to the general state and municipal elections and their primaries.⁵⁷

INFANTS. *Employment where alcoholic beverages are sold.* A filling station licensed for the consumption of liquor on the premises cannot employ a minor to work exclusively outside the building servicing automobiles.⁵⁸ It is not within the exemption afforded professional entertainers; employees of drug or grocery stores where consumption is off the premises, or hotel employees working in a different portion of the property where beverages are sold.⁵⁹

INSURANCE. *Liability of county school board for premiums receipt tax.* A county school board is not liable for the payment of the 2% premiums receipts tax imposed on buyers of insurance written by non-admitted insurers.⁶⁰

Premium tax. When a foreign insurance company subject to certain taxes⁶¹ has established a home office in this state, it will be entitled to credits of fifty per cent of the amount of the tax, and an amount equal to all ad valorem taxes paid in the year preceding on any property occupied within the state.⁶² The net amount of the tax of fire and tornado insurance companies may be payable in the pursuance of the municipal excise one per cent gross premiums tax for the benefit of Firemen's Relief and Pension Funds⁶³ and the one per cent tax for the benefit of Police Officers Retirement

52. Fla. Laws 1953, c. 28096.

53. OP. ATT'Y GEN. 053-182 (August 4, 1953).

54. OP. ATT'Y GEN. 053-239 (Sept. 15, 1953).

55. OP. ATT'Y GEN. 053-244 (Sept. 16, 1953).

56. FLA. STAT. § 104.381 (1951), as amended, Fla. Laws 1953, c. 28194.

57. OP. ATT'Y GEN. 053-160 (July 17, 1953).

58. FLA. STAT. § 562.13 (1951).

59. FLA. STAT. § 450.23 (1951); OP. ATT'Y GEN. 053-167 (July 23, 1953).

60. FLA. STAT. § 627.63 (1951); OP. ATT'Y GEN. 053-156 (July 17, 1953).

61. FLA. STAT. § 205.43(2) (1951).

62. Fla. Laws 1953, c. 27989.

63. FLA. STAT. c. 175 (1951).

Fund.⁶⁴ The amount of the tax contemplated shall be the credited amount less any the insurer is required to pay to the municipality.⁶⁵

JUDGMENTS. *Lien: Necessity of certified transcript.* A certified transcript must be recorded to create a lien on real property.⁶⁶ The original judgment or decree is not sufficient.⁶⁷

JUDICIARY ADMINISTRATION. *Circuit court: Fee for mailing process.* The clerk of the circuit court is entitled to a flat filing fee of \$7.50 plus twenty five cents for each defendant in excess of five.⁶⁸ He can charge for postage to mail the initial pleading,⁶⁹ except where the cost is nominal.⁷⁰

LICENSES. *Fishing boats.* Boats equipped to take products from Florida salt waters must be licensed when plying Florida waters or using Florida dock facilities, although the catch is taken outside territorial waters.⁷¹

Installation of plumbing by owner. An owner of a newly constructed business who is not a licensed plumber cannot personally install the plumbing or hire non-licensed workers to do so. However, persons may make minor repairs to their own property or install plumbing in their own residences.⁷²

Liquor license: Veterans organization. Veterans organization can not serve or distribute liquor to its members on Sunday in the absence of city or county regulation.⁷³ Service to persons who are non-members but use the club's privileges for a fee is a sale and not within the scope of a club liquor license.⁷⁴

Outdoor advertising. A beverage concern is not engaged in outdoor advertising when it gratuitously donates signs to retail dealers which are displayed within 100 feet of such business and relate solely to services furnished at such place of business.⁷⁵

MOTOR VEHICLES. *Registration.* Auto transportation companies may continue to register their commercial vehicles semi-annually. "For hire" and private trucks will be registered under the same series license tag at the same rate per cwt.⁷⁶

Revocation of driver's licenses. Forfeiture of bail on three charges

64. Fla. Laws 1953, c. 28230.

65. OP. ATT'Y GEN. 053-97 (Aug. 11, 1953).

66. FLA. STAT. § 55.10 (1951).

67. OP. ATT'Y GEN. 053-106 (May 21, 1953).

68. FLA. STAT. § 28.241(1) (1951).

69. Fla. Equity Rule 5(g)(h) (1950).

70. OP. ATT'Y GEN. 053-122 (June 8, 1953).

71. Fla. Laws 1953, c. 28145; *proposed* FLA. STAT. c. 370, OP. ATT'Y GEN. 053-228 (Sept. 3, 1953).

72. FLA. STAT. §§ 553.11(2), (4) (1951); OP. ATT'Y GEN. 053-196 (Aug. 11, 1953).

73. FLA. STAT. § 562.14(2) (1951).

74. FLA. STAT. § 561.34(11) (1951); OP. ATT'Y GEN. 053-92 (May 5, 1953).

75. FLA. STAT. §§ 479.04, 479.07, 479.16 (1951); OP. ATT'Y GEN. 053-230 (Sept. 4, 1953).

76. FLA. STAT. §§ 320.07, 320.08 (1951), as amended, Fla. Laws 1953, c. 28186; OP. ATT'Y GEN. 053-193 (Aug. 7, 1953).

of reckless driving within a twelve month period constitute the basis for revocation of a driver's license.⁷⁷

If the three forfeitures occur in same court, the court may revoke the license. If not, the Department of Public Safety may do so.⁷⁸

Title certificates. A Florida title certificate is not required of automobiles operated temporarily in this state, although a Florida license tag may be required.⁷⁹

Title certificates: Extra fees. The motor vehicle commissioner is authorized to charge an extra fee of one dollar if the application for transfer is filed more than ten days after delivery of the vehicle.⁸⁰

Title certificates: Liens. The method of acceptance and recordation of notices of lien upon motor vehicles prior to July 1, 1953 was by notation and endorsement on the face of the official certificate of title.⁸¹

Used car dealers: Licenses. A secondhand dealer's license⁸² and registration plates are not transferable.⁸³

MUNICIPAL CORPORATIONS. *Authority to punish for contempt of investigative committee.* It is questionable whether the state legislature may delegate authority to a city commission to punish for contempt of an investigative committee, where it is possible that an investigative committee may not be composed of commission members. If an order of contempt against a witness is void, the sheriff may be liable in an action for false imprisonment. However, the sheriff can petition for a declaratory decree, or refuse to enforce the order unless by an action of mandamus, the commission's order is upheld.⁸⁴

OFFICERS. *Assignment of retirement fund.* A state employee cannot assign any benefits refunded from the State Officers and Employees Retirement Act.⁸⁵

Assignment of salary. The general appropriation act⁸⁶ prohibits the issuing of a state warrant to an assignee of a state officer or employee of any part of his compensation.⁸⁷

Dual employment. No person may hold more than one employment or receive compensation simultaneously from more than one appropriation of state funds unless with the consent of five members of the State Budget Commission.⁸⁸

State officers on state business are allowed per diem and transportation

77. FLA. STAT. § 322.26(6) (1951).

78. OP. ATT'Y GEN. 053-117 (June 3, 1953).

79. FLA. STAT. § 320.38 (1951); OP. ATT'Y GEN. 053-233 (Sept. 9, 1953).

80. FLA. STAT. § 319.23(5) (1951); OP. ATT'Y GEN. 053-111 (May 27, 1953).

81. OP. ATT'Y GEN. 053-227 (Sept. 2, 1953).

82. FLA. STAT. § 320.27 (1951).

83. OP. ATT'Y GEN. 053-123 (June 8, 1953).

84. OP. ATT'Y GEN. 053-125 (June 18, 1953).

85. FLA. STAT. § 121.13 (1951); OP. ATT'Y GEN. 053-105 (May 21, 1953).

86. Fla. Laws 1951, c. 26859, § 19.

87. OP. ATT'Y GEN. 053-138 (June 29, 1953).

88. Fla. Laws 1953, c. 281.15, § 9(4).

expenses. However, this is in the nature of a reimbursement and not compensation for services.⁸⁹

Retirement benefits: County hospital employees. Officers and employees, excluding day laborers, of a hospital created by the establishment of a special hospital district⁹⁰ are county employees and within the County Officers and Employees Retirement Act.⁹¹

Retirement benefits: Day laborers. Previous services of day laborers, recently brought into the county and state officers retirement system,⁹² may be included if contributions are made for the period from July 1, 1945 or from date of subsequent employment. Contributions may be made in installments although no credit will be given until paid.⁹³

Sale of materials to board by board member. State boards, and county boards in counties of more than 100,000 population are not within the scope of the statutory provision⁹⁴ permitting the purchase of merchandise from a board member who is low bidder.⁹⁵

State Attorney: Duties. The state attorney is required to appear in the circuit court only in the state's behalf.⁹⁶ He is under no duty to represent either a municipality or a person taking an appeal from a municipal court to the circuit court.⁹⁷

Veteran's preference points. Certain veterans, their wives or unmarried widows if bona fide residents for a certain period are entitled to a ten point preference in public employment. A five point preference may be granted regardless of the length of Florida residence.⁹⁸

PROCEDURE. Appeal as supersedeas: Court costs. For an appeal to be a supersedeas, the appellant must pay all costs accrued up to that time, and must make bond to cover future costs which may be assessed in the appellate court.⁹⁹ The defendant is not required to pay costs unless his appeal is a supersedeas. He must pay the cost of appeal record if not insolvent. The payment of accrued costs by an appealing defendant is not required for an appeal to act as a supersedeas unless costs are assessed against him in the judgment appealed from.¹⁰⁰

PUBLIC HEALTH. County responsibility for tuberculosis patients. The county must assume financial responsibility for resident patients sent to the tuberculosis sanatoria. However, the county may provide its own machinery

89. FLA. STAT. § 112.061 (1951); OP. ATT'Y GEN. 053-139 (June 30, 1953).

90. Fla. Special Acts 1925, c. 11272; Fla. Special Acts 1951, c. 27949.

91. OP. ATT'Y GEN. 053-89 (April 30, 1953).

92. FLA. STAT. §§ 121.02, 134.02 (1951), as amended, Fla. Laws 1953, cc. 28174, 28175.

93. OP. ATT'Y GEN. 053-231 (Sept. 4, 1953).

94. FLA. STAT. § 839.091 (1951).

95. OP. ATT'Y GEN. 053-164 (July 20, 1953).

96. FLA. STAT. § 27.02 (1951).

97. OP. ATT'Y GEN. 053-158 (July 17, 1953).

98. FLA. STAT. §§ 295.06, 295.07, 295.08 (1951); OP. ATT'Y GEN. 053-226 (Sept. 2, 1953).

99. FLA. STAT. § 920.02(4) (1951).

100. OP. ATT'Y GEN. 053-189 (Aug. 6, 1953).

for reimbursement if the patient is financially able to pay.¹⁰¹ The county cannot force the release of patients financially able to pay for failure to pay the per diem cost, and the State Tuberculosis Board can force the county to fulfill its agreement to pay for voluntary patients committed and all patients committed under the compulsory isolation statute.¹⁰²

Examining committee for incompetency proceedings. The new act¹⁰³ providing compensation for the physician and committee in incompetency proceedings does not repeal the previous enactments relating to compensation paid to medical and non-medical committeemen.¹⁰⁴

Recalcitrant tuberculosis patients. The State Tuberculosis Board has authority to forcibly detain a patient committed to the State Tuberculosis Hospital under the recalcitrant patient law,¹⁰⁵ and may provide guards to keep such persons isolated or confined. Fire arms may be used by the guards only in self-defense or for the protection of others.¹⁰⁶

REAL PROPERTY. *Cancellation of tax deeds.* Tax titles vested in the state prior to 1877 are cancelled unless the land was conveyed by the state pursuant to a valid statute.¹⁰⁷

Murphy Act lands: Recovery by former owner. A former owner recovering land¹⁰⁸ must make payment to the clerk of the circuit court whose receipt is sufficient evidence of payment of taxes, although the trustees may determine what evidence they desire. The price offered for the lands is the only amount to be considered by the trustees in accepting or rejecting the bid.¹⁰⁹

Public lands: Topsoil. The state does not retain an interest in "topsoil," "muck," "peat" and "humus" material on land sold by trustees of the Internal Improvement Fund and the State Board of Education.¹¹⁰

Sale of public lands: Mineral reservation. Where one-half of oil and gas and three-fourths of mineral rights have been reserved in the sale of state land,¹¹¹ only the remaining interest is subject to taxation and future forfeiture for delinquency.¹¹²

SCHOOLS AND EDUCATION. *County Board: Attorneys.* A county school board may hire an attorney to represent the County Superintendent of Public Instruction in a court action to resolve an honest difference of opinion between the board and the superintendent as to their legal authority.¹¹³

101. FLA. STAT. § 392.07 (1951).

102. FLA. STAT. § 392.29 (1951); OP. ATT'Y GEN. 053-148 (July 9, 1953).

103. FLA. STAT. § 394.23 (1951), as amended, Fla. LAWS 1953, c. 28155.

104. Fla. LAWS 1945, c. 22956, as amended by Fla. LAWS 1947, c. 24286; OP. ATT'Y GEN. 053140 (June 30, 1953).

105. FLA. STAT. §§ 292.25, 292.26 (1951).

106. OP. ATT'Y GEN. 053-180 (August 3, 1953).

107. FLA. STAT. § 194.30 (1951); OP. ATT'Y GEN. 053-100 (May 13, 1953).

108. Fla. LAWS 1953, c. 28317.

109. OP. ATT'Y GEN. 053-224 (Sept. 1, 1953).

110. FLA. STAT. § 270.11 (1951); OP. ATT'Y GEN. 053-98 (May 11, 1953).

111. FLA. STAT. § 270.11 (1951).

112. OP. ATT'Y GEN. 053-235 (Sept. 10, 1953).

113. OP. ATT'Y GEN. 053-119 (June 4, 1953).

County Board: Compensation of teachers. A county school board cannot decrease a salary schedule of a teacher under a continuing contract after the contract has been renewed.¹¹⁴

County Board: Transfer of teachers. Final authority for the transfer of a teacher from one grade to another is vested in the school board.¹¹⁵

SECURITIES. Combination of agreements. The sale of a business franchise or the sale of a business display stand with offers to lease and repurchase constitute a security within the scope of statutory provisions.¹¹⁶

Commissions. "Trust certificates" issued by an investment company are a security within the meaning of the Florida Securities Law¹¹⁷ and commissions cannot exceed twenty per cent of the sale.¹¹⁸ An agreement which allows a higher rate in event of liquidation is illegal.¹¹⁹

SURETY BOND. Effect of renewal with notice of default. A corporate surety may be liable for more than the sum of a non-cumulative bond¹²⁰ if it is renewed with notice of default.¹²¹

TAXATION. Certificates of title. Certificates of title issued by a clerk of the circuit court require documentary stamp taxes, computed on the amount bid for the property plus costs if paid by the purchaser.¹²² The party liable for stamps on a master's deed continues to be liable for such expenses and such expenses should be paid from the proceeds of the sale. The clerk must ascertain the mailing address of the purchaser and include it in the schedule furnished the tax assessor and is required to assess a fee of ten cents against the person offering the instrument for record.¹²³

The costs of publication of the notice of sale should be included as an expense of such sale to be paid from the proceeds of the sale. Special masters have required the plaintiff to pay the cost in advance when the proceeds of the sale might not pay the costs.¹²⁴

Collection of intangible tax by clerk. It is mandatory for the clerk of the circuit court to collect taxes levied on mortgages presented for recording.¹²⁵ There is no specific provision made for compensating the clerk, but the tax collector may divide his compensation with the clerk, which income if paid will constitute income of the clerk's office.¹²⁶

Documentary stamp tax exemptions. Conveyances of lands, tenements,

114. OP. ATT'Y GEN. 053-212 (Aug. 21, 1953).

115. OP. ATT'Y GEN. 053-97 (May 8, 1953).

116. FLA. STAT. § 517.02 (1951); OP. ATT'Y GEN. 053-95 (May 8, 1953).

117. FLA. STAT. § 517.02 (1951).

118. FLA. STAT. § 517.09 (1951).

119. OP. ATT'Y GEN. 053-99 (May 12, 1953).

120. FLA. STAT. § 601.15(6)(b) (1951).

121. OP. ATT'Y GEN. 053-103 (May 18, 1953).

122. FLA. STAT. § 201.2 (1951).

123. FLA. STAT. §§ 695.21-695.23 (1951).

124. FLA. STAT. § 702.02 (1951), as amended, Fla. Laws 1953, c. 28093; OP. ATT'Y GEN. 053-207 (Aug. 19, 1953).

125. FLA. STAT. § 199.11(3) (1951), as amended, Fla. Laws 1953, c. 28272.

126. OP. ATT'Y GEN. 053-188 (Aug. 6, 1953).

realty or any other interest are exempt from the documentary stamp tax if the sole consideration is love and affection or if the conveyance is a gift.¹²⁷

Exemption of hotel operated by Catholic Church. A hotel operated by a church for charitable purposes is exempt from ad valorem taxes by the Florida Constitution.¹²⁸ However, not more than 75 per cent of the space may be rented and the profits must be used for educational, literary, fraternal or charitable purposes.¹²⁹

Exemption of treasury certificates as personal property. United States stocks, bonds, treasury notes and certificates of indebtedness are exempt from state, municipal or local taxation. As to individuals, public securities of the United States are exempt from ad valorem or personal property taxation by the state.¹³⁰

Foreign corporations: Accounts receivable. A state tax¹³¹ may be levied on accounts receivable arising from business transactions at the business domicile of a non-resident corporation even though the transactions are subject to approval of the principle office in another state.¹³²

Intangible personal property: Mortgage guaranteeing annuity. A mortgage given to secure the payment of a monthly annuity subject to the continuation of the lives of both parties may be taxed on the value of the right based on the life expectancy of the parties.¹³³

Motor fuel tax: Method of refund. Applications for gasoline tax refunds must be made within six months after purchase. To be eligible for a refund, 125 gallons of gasoline must have been purchased in amounts of twenty-five gallons or more during any consecutive three-month period.¹³⁴

Securities held in escrow by the Florida Securities Commission. Securities held by the Securities Commission in escrow¹³⁵ are assessable as intangible personal property. Their value is to be computed from the true cash value at the first day of January of each tax year. The cash value may be determined by the value listed on a recognized stock exchange, par, exchange, book or actual intrinsic value.¹³⁶

Situs of intangible personal property. When a foreign corporation designates a principle place of business in the state, but maintains branch offices, the situs of its intangible personal property will be in the county where controlled. It is the duty of the corporation to make a return of such property to the tax assessor of each county where it exercises corporate functions. Each county tax assessor must enter it on the tax roles and impose on the tax collector the duty of collection.¹³⁷

127. OP. ATT'Y GEN. 053-179 (Aug. 3, 1953).

128. FLA. CONST. ART. XVI, § 16.

129. FLA. STAT. § 192.06(3) (1951); OP. ATT'Y GEN. 053-104 (May 20, 1953).

130. OP. ATT'Y GEN. 053-85 (April 20, 1953).

131. FLA. STAT. c. 199 (1951).

132. OP. ATT'Y GEN. 053-121 (June 8, 1953).

133. OP. ATT'Y GEN. 053-157 (July 17, 1953).

134. Fla. Laws 1953, c. 28098, § 2; OP. ATT'Y GEN. 053-217 (Aug. 31, 1953).

135. FLA. STAT. § 517.18 (1951).

136. OP. ATT'Y GEN. 053-147 (July 10, 1953).

137. FLA. STAT. c. 199 (1951); OP. ATT'Y GEN. 053-202 (Aug. 17, 1953).

Tax sales and interest rates. A rate of eighteen percent per annum will be charged for delinquency of taxes between April first and the date of tax sale. After such sale, interest will be charged at the rate of twelve percent until the end of the first year and thereafter at the rate of eight percent per annum. Unless the tax sale certificates are dated prior to June 15, 1953, the rate will be determined by the 1953 amendments.¹³⁸

The new amendment¹³⁹ regulating interest on tax sale certificates applies to all purchasers.¹⁴⁰

UNIFORM SUPPORT DEPENDENTS LAW. *Court costs for indigents.* Insolvent persons having actionable claims under the Uniform Support Dependents Law may receive the services of the courts, sheriffs, clerks, and constables of certain counties without charge or cost.¹⁴¹ This applies to actions against respondents residing in the counties, or in other states having reciprocal laws. This also applies to actions commenced in other states against respondents living in Florida counties.¹⁴²

Fees. The petitioner, unless insolvent or living in a county with a population of 180,000 or more, must pay the fees incurred in cases instituted under the Uniform Support Dependents Law.¹⁴³ However, the court may order the respondent to reimburse the petitioner for such fees and costs.¹⁴⁴

Jurisdiction. Only the circuit courts in Florida have jurisdiction of proceedings under the Uniform Support of Dependents Law.¹⁴⁵

Petition for support. A copy of the Uniform Support Dependents Law should be attached to petition for support.¹⁴⁶

WELFARE. *Exclusion of certain income.* There is no limit as to the size of a garden or number of domestic animals to be excluded from computation of the income of an applicant for state aid when the proceeds of the garden and animals are used exclusively for the support of the applicant and his family.¹⁴⁷

Filing list of recipients. Lists of public assistance recipients are to be filed with the clerk of the circuit court, but need not be recorded.¹⁴⁸

When public funds are used, the names of all welfare and public assistance recipients should be listed. When payment is made to other than the recipient, the payee should be listed. If there is no readily definable

138. FLA. STAT. § 193.51 (1951), as amended, Fla. Laws 1953, c. 28286, § 1; FLA. STAT. § 194.02 (1951), as amended, Fla. Laws 1953, c. 28254, § 1; OP. ATT'Y GEN. 053-168 (July 24, 1953).

139. FLA. STAT. § 194.02 (1951), as amended, Fla. Laws 1953, c. 28254.

140. OP. ATT'Y GEN. 053-204 (Aug. 19, 1953).

141. Fla. Laws 1953, c. 27996; FLA. STAT. § 58.09 (1951).

142. OP. ATT'Y GEN. 053-145 (July 8, 1953).

143. Fla. Laws 1953, c. 27996.

144. OP. ATT'Y GEN. 053-162 (July 17, 1953).

145. Fla. Laws 1953, c. 27996; OP. ATT'Y GEN. 053-163 (July 17, 1953).

146. Fla. Laws 1953, c. 27996, § 12; OP. ATT'Y GEN. 053-131 (June 24, 1953).

147. FLA. STAT. § 409.37 (1951); OP. ATT'Y GEN. 053-181 (August 3, 1953).

148. OP. ATT'Y GEN. 053-152 (July 17, 1953).

specific expenditure solely for the recipient's benefit, then the name of the recipient and value should be listed.¹⁴⁹

Forfeiture of assistance to the blind. The conveyance of a homestead with the reservation of a life interest by a recipient of blind assistance and his wife may cause a forfeit of the assistance even though the mortgage taken back will bear no interest and payments will not begin until the death of the homesteader and his wife.¹⁵⁰

Nursing homes operated by fraternal organizations. Fraternal organizations having been in existence more than twenty-five years are exempt from the new act¹⁵¹ regulating old age homes.¹⁵²

149. Fla. Laws 1953, c. 27993; OP. ATT'Y GEN. 053-141 (July 2, 1953).

150. OP. ATT'Y GEN. 053-112 (May 27, 1953).

151. Fla. Laws, 1953, c. 28140; *proposed* FLA. STAT. c. 400.

152. OP. ATT'Y GEN. 053-161 (July 17, 1953).