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# Summary of Opinions of the Attorney General

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# SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL\*

**ADMINISTRATIVE LAW. *State Treasurer's bond: Coverage.*** Funds received by the Florida Industrial Commission, as agent of the Secretary of Labor of the United States,<sup>1</sup> are covered by the official bond<sup>2</sup> of the state treasurer.<sup>3</sup>

**BEVERAGE DEPARTMENT DIRECTOR: *Authority.*** The Director of the State Beverage Department may compromise a violation of the Alcoholic Beverage Law only when there is some minor infraction of the law relating to taxes due the state.<sup>4</sup>

**CIVIL RIGHTS. *Suffrage: Foreign felony conviction.*** A Florida citizen, convicted of a felony by another state, is deprived of the right of suffrage in Florida.<sup>5</sup> The only way that this right can be restored is by act of the legislature unless the courts decide that such power exists in the Board of Pardons.<sup>6</sup>

**COMPENSATION. *County Judge: Fees.*** A county judge is entitled to a fee of \$7.50 for conducting a delinquent tenant suit.<sup>7</sup>

The compensation paid to the judge of a juvenile court, who is also a county judge, is in addition to the excess fees collected in the capacity of county judge.<sup>8</sup>

***Small claims court: Fees.*** The judge of the small claims court assesses sheriff's fees and mileage according to what is reasonable. Such fees and jury fees are taxed as cost, and are paid by the party who pays the costs.<sup>9</sup>

**CONSTITUTIONAL LAW. *Homestead exemption: Appraisal of personalty.*** The sheriff, in ascertaining the value of a homestead, should deduct legal

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\*This issue covers selected opinions offered from Dec. 12, 1952, through Feb. 12, 1953 (OPS. ATT'Y GEN. 052-325 through 053-34, omitting OPS. ATT'Y GEN. 052-327, 052-332, 052,339, 053-2, 053-5, 053-7, 053-16, 053-27).

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1. 66 STAT. 663 (1952) (Veteran's Readjustment Assistance Act of 1952); FLA. STAT. § 443.12(11) (1951).

2. FLA. STAT. § 18.01 (1951).

3. OP. ATT'Y GEN. 052-334 (Dec. 23, 1952).

4. FLA. STAT. § 561.53 (1951); OP. ATT'Y GEN. 053-23 (Feb. 3, 1953) (in this instance, an error in the inventory of taxable items)

5. FLA. STAT. § 97.041 (1951).

6. OP. ATT'Y GEN. 053-11 (Jan. 21, 1953).

7. FLA. STAT. § 82.26 (1951); OP. ATT'Y GEN. 053-8 (Jan. 19, 1953).

8. FLA. STAT. §§ 145.01, 39.18(5) (1951); OP. ATT'Y GEN. 053-25 (Feb. 4, 1953).

9. OP. ATT'Y GEN. 052-340 (Dec. 31, 1952).

encumbrances from the exempt homestead property, unless the encumbrance is subject to, or inferior to, the homestead.<sup>10</sup>

*Head of family.* A person, maintaining a home and supporting one or more of his *minor* nephews or nieces, is said to be the head of a family for the purposes of homestead exemption.<sup>11</sup>

*Search and seizure.* The requirement of inventory and receipt<sup>12</sup> is directory and not mandatory. It does not invalidate evidence obtained in an otherwise legal search.<sup>13</sup>

COUNTIES. *Aid to indigent persons.* The board of county commissioners may exercise its discretion in granting aid to indigent persons owning property.<sup>14</sup>

*Aid to indigent persons: Reimbursement.* The county commission may not maintain a lien upon property of a person who is indigent and is in need of financial assistance in order to secure repayment thereof.<sup>15</sup>

*Commissions: Purchasing authority.* A county, required to accept competitive bids,<sup>16</sup> cannot accept a bid with an "escalator" or "posted market price" clause without showing it to be to the best interest of the community.<sup>17</sup>

*Expenses for police communication systems.* The board of county commissioners is authorized,<sup>18</sup> but not required, to pay for the cost of operation, installation and maintenance of radio equipment from excess fees returned by the sheriff to the county.<sup>19</sup>

*Hospitals: Bond issue.* A board of hospital trustees certifies to its county commission the amount of money to be expended for the construction of a hospital. If the sum certified does not exceed the maximum amount authorized by the qualified electors, the county commission will then issue the necessary bonds.<sup>20</sup>

COURTS. *Small claims: Jury.* The jury of a small claims court is selected by the sheriff of the county, in the manner provided for the selection of a jury for a justice of the peace action.<sup>21</sup> The jurors are paid at the rate of \$1 per diem.<sup>22</sup>

CRIMINAL LAW. *Bribery: Disposition of money.* Money paid to a law officer as a bribe is not subject to forfeiture under Florida law.<sup>23</sup>

10. FLA. CONST. ART. X, § 1; FLA. STAT. § 222.06 (1951); OP. ATT'Y GEN. 053-18 (Jan. 28, 1953).

11. FLA. CONST. ART. IX, § 11; OP. ATT'Y GEN. 053-14 (Jan. 26, 1953).

12. FLA. STAT. § 933.11 (1951).

13. OP. ATT'Y GEN. 053-26 (Feb. 4, 1953).

14. FLA. STAT. § 125.01 (1951); OP. ATT'Y GEN. 053-13 (Jan. 22, 1953).

15. OP. ATT'Y GEN. 053-13 (Jan. 22, 1953).

16. FLA. STAT. § 125.08 (1951).

17. OP. ATT'Y GEN. 053-30 (Feb. 10, 1953).

18. See OP. ATT'Y GEN. 051-252 (August 2, 1951).

19. FLA. STAT. §§ 125.45, 145.05 (1951); OP. ATT'Y GEN. 053-29 (Feb. 10, 1953).

20. FLA. STAT., c. 155 (1951); OP. ATT'Y GEN. 053-15 (Jan. 26, 1953).

21. FLA. STAT. § 81.08 (1951).

22. OP. ATT'Y GEN. 052-340 (Dec. 31, 1952).

23. OP. ATT'Y GEN. 053-22 (Feb. 3, 1953).

**EDUCATION. Gifts of land: Reversionary interests.** A county school board may accept a gift of real estate subject to a reversionary clause. The authority would not extend to expending school capital-outlay funds for permanent non-removable construction.<sup>24</sup>

**Married students.** A county board of public instruction may not prohibit married children from attending public schools.<sup>25</sup>

**Students: Prospective mothers.** Prospective mothers within the compulsory school attendance age limit may be exempt from school attendance for reasons of health.<sup>26</sup> Prospective mothers of any age, should not be barred from attendance by a general regulation, but each case should be judged by its own specific circumstances.<sup>27</sup>

**ESTATES. Intangible personalty subject to tax.** A Florida resident's interest in intangible personal property, owned by a partnership whose business is located and transacted wholly without the state, is subject to taxation under the Florida Estate Tax Law,<sup>28</sup> despite the possibility of "double taxation."<sup>29</sup>

**FLORIDA ELECTIONS. Commission fees: Refund.** Persons elected as justices of the peace or constables in districts abolished in the same election are not state officers. Fees paid by them for their commissions should be refunded.<sup>30</sup>

**Qualifying fees: Refund.** A person who qualified, was nominated and was elected to the office of constable in the 1952 election, at which election the voters of the county abolished the justice of peace districts in the county, is not entitled to a refund of his qualifying fee.<sup>31</sup>

**GAMING. Lotteries.** A sales promotion method of gratuitously distributing coupons, which are drawn for prizes, does not violate Florida gambling laws. When the coupons are gratuitously distributed to customer and non-customer alike, the essential element of consideration, necessary to a lottery, is lacking.<sup>32</sup>

**HIGHWAYS. County: Speed zones.** The State Road Department may regulate speeds on highways other than state roads outside of municipal limits.<sup>33</sup> County officers may also regulate speed limits on these roads to preserve them from damage.<sup>34</sup>

**INSURANCE. Agents: Authority.** A licensed insurance adjuster<sup>35</sup> may

24. FLA. CONST. Art XII, §§ 9, 13; OP. ATT'Y GEN. 053-12 (Jan. 22, 1953).

25. OP. ATT'Y GEN. 052-328 (Dec. 19, 1952).

26. FLA. STAT. § 232.06 (1951).

27. OP. ATT'Y GEN. 052-328 (Dec. 19, 1952).

28. FLA. STAT., c. 198 (1951).

29. OP. ATT'Y GEN. 052-331 (Dec. 19, 1952).

30. OP. ATT'Y GEN. 053-17 (Jan. 29, 1953).

31. OP. ATT'Y GEN. 053-28 (Feb. 6, 1953). See OP. ATT'Y GEN. 050-151, 048-104 (March 25, 1950) (March 24, 1948).

32. OP. ATT'Y GEN. 052-325 (Dec. 12, 1952).

33. FLA. STAT. § 317.24 (1951).

34. FLA. STAT. § 317.82 (1951); OP. ATT'Y GEN. 052-329 (Dec. 18, 1952).

35. FLA. STAT. § 636.02 (1951).

also act as a supervising general agent for admitted insurers in the business of fire and allied lines of insurance.<sup>36</sup>

*Commission splitting.* A life insurance agent may not agree to donate to a charitable organization a percentage of commissions on policies of its members.<sup>37</sup>

*Fraternal insurance: Voluntary.* A death fund administered for the benefit of the members of a local union, restricted solely to its members, is not a primary purpose of the local and is within the class of societies exempt from supervision by the insurance commissioner.<sup>38</sup>

**JUDICIAL ADMINISTRATION.** *Ne exeat bonds: Approval.* A judge, issuing a writ of *ne exeat*, may direct any officer of the court to approve sureties for the bond.<sup>39</sup> If no such direction is made, the sheriff or the person serving the writ, may approve of the sureties.<sup>40</sup>

**LICENSES.** *Disabled veterans' exemption.* A disabled veteran, though exempt from paying an occupational license,<sup>41</sup> is not exempt from paying an original and an annual registration fee to practice barbering.<sup>42</sup>

*Motor fuel distributors.* Licenses issued to persons not motor fuel distributors prior to March 30, 1951, (when the Attorney General clarified who are motor fuel distributors<sup>43</sup>) are void and need not be cancelled.<sup>44</sup>

*Stevedores.* A Florida Supreme Court decision seems to imply that a stevedore's license may be issued to firms and corporations as well as to individuals.<sup>45</sup>

*Wholesale dealers: Salt water fish.* Salt water fish transported by a wholesale dealer without official permit tags<sup>46</sup> may be seized and sold by the Supervisor of the Board of Conservation or his agents.<sup>47</sup>

*Wholesale distributors: Liquid fuel.* Ultimate consumers (and retailers who sell to the ultimate consumer) of appliances and equipment for the use of liquified petroleum gas, are not required to be licensed as distributors of liquid fuels.<sup>48</sup>

**MOTOR VEHICLES.** *Commission records: Public inspection.* A county tax collector acting as agent for the State Motor Vehicle Commissioner, who retains in his office copies of the "Florida Automobile Registration

36. FLA. STAT., c. 627, 636 (1951); OP. ATT'Y GEN. 053-20 (Jan. 30, 1953). See OP. ATT'Y GEN. 048-290 (Sept. 7, 1948).

37. OP. ATT'Y GEN. 052-333 (Dec. 22, 1952).

38. FLA. STAT. § 637-59 (1951); OP. ATT'Y GEN. 052-336 (Dec. 23, 1952).

39. FLA. STAT. § 62.19 (1951).

40. OP. ATT'Y GEN. 053-3 (Jan. 7, 1953).

41. FLA. STAT. §§ 205.16, 205.161 (1951).

42. OP. ATT'Y GEN. 052-330 (Dec. 19, 1952).

43. OP. ATT'Y GEN. 051-73 (March 30, 1951); 6 MIAMI L.Q. 104 (1951).

44. OP. ATT'Y GEN. 052-326 (Dec. 12, 1952).

45. Biscayne Stevedoring Company v. Turner, 143 Fla. 424, 196 So. 816 (1940). OP. ATT'Y GEN. 052-335 (Dec. 23, 1952).

46. FLA. STAT. § 374.32 (1951).

47. OP. ATT'Y GEN. 053-19 (Jan. 29, 1953).

48. FLA. STAT. §§ 526.12-526.20 (1951); OP. ATT'Y GEN. 053-21 (Feb. 2, 1953).

Card," should allow public inspection<sup>49</sup> of such records, so long as this does not interfere with the general operation of his office.<sup>50</sup>

**OFFICERS. Constables: Service of process.** A constable may serve process of all courts within the justice of the peace district for which he was elected. He may serve process of his justice of the peace court and of the county judge's court in any district of the county where the same may be lawfully served.<sup>51</sup>

**Deputy sheriff: Who can appoint.** The Board of Pilot Commissioners and Port Wardens cannot lawfully make the harbor master a deputy sheriff. Such authority rests solely with the sheriff of the county.<sup>52</sup>

**Harbor Masters: Authority.** A harbor master has authority to remove any vessel moored to a wharf if, in his opinion, it is necessary to expedite the entrance or departure of another vessel.<sup>53</sup>

The harbor master has authority over the navigable waters within his port but not over the other navigable waters within the county.<sup>54</sup>

The harbor master does not have authority to modify the rule of the Board of Pilot Commissioners and Port Wardens which prohibits vessels carrying explosives from approaching within 500 feet of a wharf.<sup>55</sup>

**Sheriff: Expenditures.** In computing necessary expenditures, the sheriff may include a \$10 assessment of the deputies' salaries for the sheriff's "Death Fund".<sup>56</sup>

**Term of office: Public officers.** Public officers, having terms that "commence on the first Tuesday after the first Monday in January next after their election",<sup>57</sup> take office at 12:01 A. M., on the designated Tuesday.<sup>58</sup>

**PENALTIES. Fines and imprisonment.** A county prisoner sentenced to pay a fine or serve a term in jail, who wishes to obtain his release by paying the fine after serving part of the term, is entitled to credit for time served plus time allowed for good behavior.<sup>59</sup>

**PROCEDURE. Small claims courts: Jury challenges.** Party litigants in a small claims court who demand a jury trial<sup>60</sup> are entitled to peremptory challenges<sup>61</sup> and challenges for cause.<sup>62</sup>

49. FLA. STAT. § 119.01 (1951).

50. OP. ATT'Y GEN. 053-32 (Feb. 11, 1953).

51. OP. ATT'Y GEN. 053-6 (Jan. 9, 1953).

52. FLA. CONST. ART. VIII, § 6; FLA. STAT. § 30.07 (1951); OP. ATT'Y GEN. 052-337 (Dec. 23, 1952).

53. FLA. STAT. § 314.07 (1951); OP. ATT'Y GEN. 052-337 (Dec. 23, 1952).

54. FLA. STAT. § 314.01 (1951); OP. ATT'Y GEN. 052-337 (Dec. 23, 1952).

55. OP. ATT'Y GEN. 052-337 (Dec. 23, 1952).

56. FLA. STAT. § 145.02 (1951); OP. ATT'Y GEN. 053-24 (Feb. 3, 1953).

57. FLA. CONST. ART. IV, §§ 2, 20, ART. V, §§ 2, 46, 47, 48, ART. XVIII, § 14.

58. OP. ATT'Y GEN. 053-1 (Jan. 5, 1953).

59. OP. ATT'Y GEN. 052-338 (Dec. 29, 1952).

60. FLA. STAT. § 42.16 (1951).

61. FLA. STAT. § 54.11 (1951).

62. FLA. STAT. § 54.12 (1951); OP. ATT'Y GEN. 053-33 (Feb. 11, 1953).

*Rules.* Common law rules, issued and amended by the Florida Supreme Court, are not applicable to small claims court actions.<sup>63</sup>

*STATUTES. Population statutes.* The provisions of the statute relative to cities of "7,500 population or more"<sup>64</sup> refer only to population established by the last preceding federal census.<sup>65</sup>

*TAXATION. Exemptions: Non-profit organizations.* A non-profit organization, whose purposes are primarily social and fraternal, cannot claim exemption<sup>66</sup> from taxation of its real property.<sup>67</sup>

*Refunds of invalid tax: Statute of limitations.* The statute of limitations<sup>68</sup> for the refund of invalid use taxes<sup>69</sup> begins to run from the payment of the tax.<sup>70</sup>

*WORKMEN'S COMPENSATION. State officers.* Constitutional officers of the state, elected at the polls, do not come within the provisions of the Workmen's Compensation Act.<sup>71</sup>

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63. Fla. Laws 1951, c. 26920; OP. ATT'Y GEN. 053-34 (Feb. 11, 1953).

64. E.g., FLA. STAT. § 469.01 (1951).

65. FLA. CONST. Art. VII, § 5; FLA. STAT. § 1.01 (1951); OP. ATT'Y GEN. 053-9 (Jan. 19, 1953).

66. FLA. CONST. Art. IX, § 1.

67. Johnson v. Sparkman, 159 Fla. 276, 31 So.2d 863 (1947); University Club v. Lanier, 119 Fla. 146, 161 So. 78 (1935); OP. ATT'Y GEN. 053-10 (Jan. 20, 1953).

68. FLA. STAT. § 215.26 (1951).

69. Fla. Laws 1949, c. 26319 (Use tax statute which was invalidated by Thompson v. Inter-county Tel. and Tel. Co., 62 So.2d 16 [Fla. 1952]).

70. OP. ATT'Y GEN. 053-31 (Feb. 11, 1953).

71. OP. ATT'Y GEN. 053-4 (Jan. 5, 1953).