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# Summary of Opinions of the Attorney General

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# SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL\*

This issue of the *Summary* contains those opinions of general or public interest from OP. ATT'Y GEN. 052-38 (Feb. 13, 1952) through OP. ATT'Y GEN. 052-131 (Apr. 22, 1952).

**ADMINISTRATIVE LAW.** *Game and Fresh Water Fish Commission.* The Constitution<sup>1</sup> places the power to regulate methods of taking fresh water fish from Florida waters in the Game and Fresh Water Fish Commission<sup>2</sup> and a board of county commissioners is without authority to interfere with this power.<sup>3</sup>

**COMMERCE REGULATIONS.** *Weights and measures.* It is unlawful to offer for sale packages of notebook filler paper where the net amount of individual sheets is not plainly marked on the outside wrapper.<sup>4</sup>

**CONSERVATION.** *Gig-fishing.* The rules of the Game and Fresh Water Fish Commission prohibit taking fresh water fish by means of a gig.<sup>5</sup>

**CORPORATIONS.** *Dissolution.* By statute<sup>6</sup> "the holders of record of stock entitled to exercise two-thirds of the voting power" can pass a resolution to dissolve the corporation, as the applicable statutes become by implication a part of each corporate charter. Where the charter contains a provision requiring a unanimous vote it conflicts with the statutory provision and is void.<sup>7</sup>

**COUNTIES.** *Competitive bids.* Although the clerk of a board of county commissioners is not a member of the board and escapes the effect of statutes<sup>8</sup> prohibiting public officers from taking advantage of their positions to sell supplies to agencies which they control, it is in the better spirit of the law to require competitive bids for materials and not to accept the clerk's sole bid.<sup>9</sup>

*Fee officials.* County fee officials must account for excess fees over

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1. FLA. CONST. Art. IX, § 30.  
2. State *ex rel.* Griffin v. Sullivan, 30 So.2d 919 (1947).  
3. OP. ATT'Y GEN. 052-59 (Feb. 29, 1952).  
4. FLA. STAT. §§ 531.26, 531.27 (1951), OP. ATT'Y GEN. 052-104 (March 24, 1952).  
5. OP. ATT'Y GEN. 052-109 (March 28, 1952).  
6. FLA. STAT. § 612.46 (1951).  
7. OP. ATT'Y GEN. 052-51 (Feb. 25, 1952).  
8. FLA. STAT. §§ 839.07, 839.08, 839.09 (1951).  
9. OP. ATT'Y GEN. 052-50 (Feb. 21, 1952).

their compensatory amount on or before December 31st of each year,<sup>10</sup> but are allowed a grace period of fifteen days.<sup>11</sup>

County fee officers are employers within the meaning of the Workmen's Compensation Law<sup>12</sup> and as such are liable to their employees for personal injury. They are liable to the public to the same extent as private citizens except for torts committed within the scope of their official authority.<sup>13</sup>

*Free law library.* The statute<sup>14</sup> providing for the creation of free county public libraries contemplates that such libraries shall be for the general public. A board of county commissioners, therefore, cannot establish a free law library in the absence of a special act.<sup>15</sup>

*Stolen warrants.* The county may stop payment on a stolen warrant and issue a duplicate to the person from whom it was stolen,<sup>16</sup> as the warrant is non-negotiable and the thief cannot pass title.<sup>17</sup>

**CRIMINAL LAW.** *Holding driver of vehicle for other law enforcement agency.* A Florida highway patrolman, finding contraband liquor in a vehicle which he stopped because of knowledge which would give a reasonable man probable cause to investigate,<sup>18</sup> may hold the driver of the vehicle for another state law enforcement agency.<sup>19</sup>

*Juveniles.* The statutory provision<sup>20</sup> prohibiting use of the word "arrest" as applied to juveniles, applies only to the child's court record and does not require an officer to obtain a specific court order from the juvenile judge to take the child into custody when he violates a law. However, a special order is required to hold a juvenile in the same place with an adult criminal.<sup>21</sup>

*Kidnapping.* If a parent takes children legally in the custody of the other parent, against the will of the latter and without court consent, the parent may be prosecuted for false imprisonment and kidnapping.<sup>22</sup>

*Pardons.* The Florida Board of Pardons has no power to restore civil rights, the loss of which resulted from the conviction of a felony in another state,<sup>23</sup> where the effect of the foreign state's pardon does not wipe out the fact of the conviction. The only remedy is by a special act of the Legislature.<sup>24</sup>

10. FLA. STAT. § 145.03 (1951).

11. FLA. STAT. § 145.04 (1951), OP. ATT'Y GEN. 052-74 (March 10, 1952).

12. FLA. STAT. § 440.02(1) (1951).

13. OP. ATT'Y GEN. 052-53 (Feb. 26, 1952).

14. FLA. STAT. § 150.01 (1951).

15. OP. ATT'Y GEN. 052-88 (March 17, 1952).

16. Summary, 5 MIAMI L.Q. 588 (1951); OP. ATT'Y GEN. 051-54 (March 14, 1951).

17. OP. ATT'Y GEN. 052-66 (March 5, 1952).

18. FLA. STAT. § 901.21(2) (1951), Carroll v. United States, 267 U. S. 132 (1925).

19. OP. ATT'Y GEN. 052-125 (April 15, 1952).

20. FLA. STAT. § 39.03(6) (1951).

21. FLA. STAT. § 39.03(3) (1951), OP. ATT'Y GEN. 052-115 (April 4, 1952).

22. FLA. STAT. § 805.01 (1951), OP. ATT'Y GEN. 052-78 (March 12, 1952).

23. FLA. STAT. §§ 40.01, 40.07, 97.06, 112.01 (1951), OP. ATT'Y GEN. 052-45 (Feb. 19, 1952), overruling OP. ATT'Y GEN. 042-427 (See 1941-42 BIENNIAL REP. 784, 785).

24. See e.g., Fla. Laws 1947, c. 23620.

**ELECTIONS. Absentee ballots.** A request for an absentee ballot, if not on the form supplied by the supervisor of registration, must still conform with the statute;<sup>25</sup> that is, it must be signed under oath and attested by two witnesses.<sup>26</sup>

**Candidates: Campaign contributions.** A candidate for public office who holds a license to sell intoxicating beverages is not prohibited from using his own personal funds to further his candidacy, provided that such funds are not derived from contributions from prohibited classes.<sup>27</sup>

Any contribution received less than five days before the election must be returned to the donor and cannot be used in behalf of the candidate.<sup>28</sup> All funds must be deposited, within twenty-four hours after receipt thereof, in the campaign depository of the candidate.<sup>29</sup>

Contributions of office space, signs and food must be reduced to a monetary value and reported as campaign contributions.<sup>30</sup>

A candidate is subject to fine or imprisonment<sup>31</sup> if he accepts contributions from prohibited classes and his nomination or election is further subject to being automatically vacated<sup>32</sup> if he *knowingly* does so. He should exercise the standard of care of a reasonable man to ascertain if the contributor is of the forbidden class and is not exonerated by having contributors sign statements to the effect that they are not within such prohibited classes.<sup>33</sup>

**Candidates: Campaign expenses.** The Legislature intended that the authorized campaign expense of "newspaper advertising"<sup>34</sup> be a general term so as to permit a candidate for political office to legally expend funds to purchase advertising space in a bulletin, program, newsheet, magazine or pamphlet prepared by an organization, club or association.<sup>35</sup>

The statute<sup>36</sup> authorizing campaign expenditures for radio time also applies to television expenditures.<sup>37</sup>

Payments to a hill-billy band for entertainment furnished at political rallies are allowable campaign expenses.<sup>38</sup>

Obviously, a candidate cannot use campaign funds to defray the ordinary living expenses of himself and his family at his residence but he may defray such expenses while campaigning away from his residence.<sup>39</sup> How-

25. FLA. STAT. § 101.62 (1951).

26. OP. ATT'Y GEN. 052-129 (April 22, 1952).

27. FLA. STAT. § 99.161(1)(b) (1951), OP. ATT'Y GEN. 052-65 (March 5, 1952).

28. FLA. STAT. § 99.161(4)(b) (1951).

29. FLA. STAT. § 99.161(5) (1951), OP. ATT'Y GEN. 052-127 (April 16, 1952).

30. OP. ATT'Y GEN. 052-76 (March 11, 1952).

31. FLA. STAT. § 104.271 (1951).

32. FLA. STAT. § 99.161 (1951).

33. OP. ATT'Y GEN. 052-40 (Feb. 15, 1952).

34. FLA. STAT. § 99.172 (1951).

35. OP. ATT'Y GEN. 052-123 (April 11, 1952).

36. FLA. STAT. § 99.172(15) (1951).

37. *State v. Jacksonville*, 50 So.2d 53 (1952); OP. ATT'Y GEN. 052-40 (Feb. 15, 1952).

38. FLA. STAT. § 99.172 (1951), OP. ATT'Y GEN. 052-49 (Feb. 21, 1952).

39. FLA. STAT. §§ 99.161, 99.172 (1951).

ever, funds donated outright as living expenses are not contributions as contemplated by the statute.<sup>40</sup>

*Candidates: Party delegates.* Reasoning that the Legislature intended the election code<sup>41</sup> to apply to all candidates, unless a special act otherwise specifies, a candidate for party delegate to a national convention must comply with the code in order to have his name on the ballot.<sup>42</sup>

*Candidates: Qualifications.* If there is more than one vacancy for an office, the candidate must specify the group in which he chooses to run and until he does he is not fully qualified.<sup>43</sup>

*Officials: Supervisor of registration.* The supervisor of registration may personally go to the bedside of an invalid to register or reregister such person so that he may qualify to vote.<sup>44</sup>

*Vacancy in nomination.* When a vacancy in nomination for an office occurs by death or other means, the proper party executive committee (if a state office, the state executive committee; if a county office, the county executive committee) may elect either to nominate a person or to call a special primary.<sup>45</sup>

*Voters: Qualification.* School district electors may vote if they pay a tax on real or personal property located within the district.<sup>46</sup> The new statute defining freeholders does not apply to qualifications of voters in school elections.<sup>47</sup>

The right to vote is governed by the laws of the state<sup>48</sup> and if one cannot register to vote in state elections<sup>49</sup> he is precluded from registering to vote in the national elections.<sup>50</sup>

In order to register to vote, a person must be twenty-one years or over at the date of registration<sup>51</sup> and the fact that he may become twenty-one before the primary date is immaterial.<sup>52</sup>

In order to register to vote for the first time, one must take the elector's oath in person before the supervisor of registration of the county of his residence.<sup>53</sup>

**FOREIGN PARTNERSHIPS.** *Qualifications.* Foreign partnerships are not required to register with the Secretary of State<sup>54</sup> but they must comply with the fictitious name act and the licensing acts.<sup>55</sup>

40. OP. ATT'Y GEN. 052-111 (March 28, 1952).

41. FLA. STAT. § 99.061 (1951).

42. OP. ATT'Y GEN. 052-113 (April 1, 1952).

43. FLA. STAT. § 99.051 (1951), OP. ATT'Y GEN. 052-106 (March 25, 1952).

44. OP. ATT'Y GEN. 052-61 (March 3, 1952).

45. FLA. STAT. § 100.11 (1951), OP. ATT'Y GEN. 052-131 (April 22, 1952).

46. FLA. CONST. ART. XII, § 10; FLA. STAT. § 236.32(2) (d) (1951).

47. OP. ATT'Y GEN. 052-94 (March 20, 1952).

48. U. S. CONST. ART. I, § 2, ART. II, § 1.

49. FLA. STAT. §§ 97.031, 97.041 (1951).

50. OP. ATT'Y GEN. 052-112 (March 25, 1952).

51. FLA. CONST. ART. VI, § 3; FLA. STAT. § 98.111 (1951).

52. OP. ATT'Y GEN. 052-68 (March 6, 1952).

53. FLA. STAT. § 97.051 (1951), OP. ATT'Y GEN. 052-105 (March 25, 1952).

54. FLA. STAT. § 865.09 (1951).

55. OP. ATT'Y GEN. 052-84 (March 14, 1952).

**GAMING. Coin-operated devices.** If the winning of free plays on coin-operated machines is more dependent upon chance than skill, the possession of such machines is unlawful.<sup>56</sup>

**Lotteries.** A theater operator, to increase attendance, awarded a prize based on a drawing from the ticket sales. This scheme in which a customer is given a chance to win a prize is a lottery.<sup>57</sup>

Whether a merchant, who gives a prize to any person guessing the correct number of pennies in a jar, conducts a lottery, depends upon the Florida courts' interpretation of what constitutes sufficient consideration to support a simple contract.<sup>58</sup>

If a person whose name was drawn at a chance drawing is also required to answer questions, the answers to which are obvious, then skill, judgment and knowledge are not called into play, the element of chance is present and the drawing illegal.<sup>59</sup>

A plan by a civic group to distribute tickets bearing duplicate numbers to all registered voters, to have them deposit one end of the ticket in a container near the polling places, and to award a war bond to the holder of the number drawn is not violative of the lottery law. The containers should be placed more than fifteen feet from the polling place.<sup>60</sup>

Where every purchaser of a theater ticket receives in addition a ticket redeemable in free gasoline, the element of chance is missing and such scheme is not a lottery.<sup>61</sup>

**INSURANCE. State employees.** As the statutes<sup>62</sup> fail to provide for employer contributions of state institutions for group life insurance, state employers are limited to voluntary insurance plans.<sup>63</sup>

**Voluntary fraternal insurance.** Although the plan of voluntary fraternal insurance is a meritorious one, it is regulated by law<sup>64</sup> and unless the organization is exempt<sup>65</sup> it must comply with the regulatory insurance laws.<sup>66</sup>

**INTEREST. Rate of determination.** If interest coupons are silent as to rate of interest after maturity, they bear interest at the legal rate. The Legislature can change the legal rate of interest before payment without interfering with contractual obligations, as statutory interest after maturity is in the nature of damages for breach of contract.<sup>67</sup>

56. FLA. STAT. §§ 849.15, 849.16 (1951), OP. ATT'Y GEN. 052-85 (March 14, 1952).

57. OP. ATT'Y GEN. 052-42 (Feb. 15, 1952).

58. OP. ATT'Y GEN. 052-72 (March 10, 1952).

59. OP. ATT'Y GEN. 052-56 (Feb. 27, 1952).

60. FLA. STAT. §§ 101.121, 101.131 (1951), OP. ATT'Y GEN. 052-120 (April 9, 1952).

61. OP. ATT'Y GEN. 052-93 (March 19, 1952).

62. FLA. STAT. §§ 112.08, 112.09 (1951).

63. OP. ATT'Y GEN. 052-75 (March 11, 1952).

64. FLA. STAT. § 625.01(6) (1951), *State v. Jones*, 108 Fla. 613, 147 So. 230 (1933).

65. FLA. STAT. § 637.59 (1951).

66. OP. ATT'Y GEN. 052-124 (April 14, 1952).

67. FLA. STAT. § 687.01 *et seq.* (1951), OP. ATT'Y GEN. 052-100 (March 17, 1952).

**LICENSES. Liquor.** A statute<sup>68</sup> limits the number of liquor licenses in each "wet" county to one license for each 2500 residents, except that hotels of fifty or more guest rooms are not limited.<sup>69</sup> "Motels" are covered by the tourist court statute<sup>70</sup> and therefore do not enjoy the unlimited liquor license grant.<sup>71</sup>

**Medicine shows.** Operators of medicine shows, who do not charge admission fees, are nevertheless required to pay a license tax for the operation of a business.<sup>72</sup>

**Non-resident veteran beauticians.** The State Board of Beauty Culture may not license non-resident veterans without examination, as the statute applies only to Florida veterans.<sup>73</sup>

**Occupational tax.** Hostesses, who on single occasions have parties, solicit orders and remit them to a single firm, are not dealers within the meaning of the statute<sup>74</sup> requiring such permits to obtain an occupational license.<sup>75</sup>

**MOTOR VEHICLES. Financial responsibility law.** The Insurance Commissioner may not act to suspend an operator's license for failure to comply with the financial responsibility law until thirty days after he has received notice of the accident. The purpose of the thirty-day period is to give operators of vehicles involved in accidents a chance to submit evidence that they are exempt from the statute.<sup>76</sup>

A statute<sup>77</sup> limits any combination of vehicular units to fifty feet in length, requires any semi-trailer in excess of thirty-five feet to have three axles and limits any one vehicle in the unit to forty feet regardless of the number of axles.<sup>78</sup>

**Liens.** By statute<sup>79</sup> liens on motor vehicles must be filed in the Tallahassee office of the Motor Vehicle Commissioner in order to be enforceable and a filing with his agent is not effective until recorded in Tallahassee.<sup>80</sup>

**MUNICIPAL CORPORATIONS. Occupational licenses.** A municipality may not impose an occupational license tax on a real estate broker who completes a sale in another city, where he has his principal place of business.

68. FLA. STAT. § 561.20 (1951).

69. FLA. STAT. § 561.02(2) (1951).

70. FLA. STAT. § 513.01 (1951).

71. OP. ATT'Y GEN. 052-90 (March 18, 1952).

72. FLA. STAT. §§ 205.49, 205.59 (1951), OP. ATT'Y GEN. 052-48 (Feb. 21, 1952).

73. FLA. STAT. §§ 205.16, 205.161 (1951), OP. ATT'Y GEN. 052-83 (March 13, 1952).

74. FLA. STAT. § 205.59 (1951).

75. OP. ATT'Y GEN. 052-60 (March 3, 1952).

76. FLA. STAT. § 34-04(2) (1951), OP. ATT'Y GEN. 052-130 (April 22, 1952).

77. FLA. STAT. § 317.76(3) (1951).

78. OP. ATT'Y GEN. 052-55 (Feb. 27, 1952).

79. FLA. STAT. § 319.15 (1951).

80. OP. ATT'Y GEN. 052-82 (March 12, 1952).

The power to tax commerce between two cities can only be exercised by the state.<sup>81</sup>

**PROFESSIONS.** *Dental internships.* The Florida State Board of Dental Examiners cannot allow dental internships in county health units, but must restrict them to state maintained and operated hospitals.<sup>82</sup>

**PUBLIC HEALTH.** *Removal permits.* A removal permit must issue from the registrar of the county in which a body is interred before an undertaker can remove the body.<sup>83</sup>

**PUBLIC OFFICIALS.** *Holding two offices.* It is not contrary to the Constitution<sup>84</sup> for one person to hold two public offices at the same time if they are not incompatible with each other. The only limitation might be found in a municipal ordinance or charter containing such a prohibition.<sup>85</sup>

**SCHOOLS AND EDUCATION.** *Teaching applicants.* The principal is required to recommend teaching applicants to the board of school trustees<sup>86</sup> who in turn recommends applicants to the school board. It is mandatory that the trustees consider only applicants recommended by the principal and they are powerless to consider anyone else.<sup>87</sup>

*Teacher training.* The State Vocational Board may legally designate institutions of higher learning, in addition to those enumerated by the statute,<sup>88</sup> as schools for vocational teacher training.<sup>89</sup> To say that the statute<sup>90</sup> is exclusive would defeat both the state and federal intent.<sup>91</sup>

**SECURITIES.** *Investment regulations.* An agreement to pay a bonus in addition to the legal interest on a loan secured by mortgage notes is a security within the meaning of the statute<sup>92</sup> and unless certain facts place it under the exempt transactions section<sup>93</sup> it is violative of the usury law.<sup>94</sup>

*Registration.* A mutual benefit fraternal society was reorganized into a stock insurance company in another state. The Attorney General opined that the stock exchanged with member residents of Florida for their rights and interests in the fraternal society is exempt from registration in this state if it is made in the process of a bona fide reorganization, merger or consolidation.<sup>95</sup>

81. *Farris v. Hall*, 115 Fla. 433, 156 So. 114 (1934); *Duffin v. Tucker*, 113 Fla. 621, 153 So. 298 (1933), OP. ATT'Y GEN. 052-97 (March 20, 1952).

82. FLA. STAT. § 466.41 (1951), OP. ATT'Y GEN. 051-119 (April 9, 1952).

83. FLA. STAT. § 382.06 (1951), OP. ATT'Y GEN. 052-43 (Feb. 9, 1952).

84. FLA. CONST. Art. XVI, § 15.

85. OP. ATT'Y GEN. 052-96 (March 20, 1952).

86. FLA. STAT. §§ 230.33(7)(c), 230.33(7)(d) (1951).

87. OP. ATT'Y GEN. 052-114 (April 8, 1952).

88. FLA. STAT. § 239.09 (1951).

89. FLA. STAT. § 236.20 (1951), OP. ATT'Y GEN. 052-126 (April 15, 1952).

90. FLA. STAT. § 239.09 (1951).

91. 39 STAT. 929 (1917), 20 U.S.C. § 11 (1946) (Smith-Hughes Act); 60 STAT. 775, 20 U.S.C. §§ 11, 17 (1946) (George-Barden Act).

92. FLA. STAT. § 517.02(1) (1951).

93. FLA. STAT. §§ 517.05, 517.06 (1951).

94. OP. ATT'Y GEN. 052-38 (Feb. 13, 1952).

95. FLA. STAT. §§ 517.06(4), (6) (1951), OP. ATT'Y GEN. 052-103 (March 24, 1952).

**SHERIFF'S SALE.** *Oral statement of publication.* A sheriff's sale held upon oral statement of publication without actual proof of publication in hand is only as legal as the validity of the statement of oral publication.<sup>96</sup>

**TAXATION.** *Aircraft.* Aircraft are classified as motor vehicles and subject to license taxes which are in lieu of personal property taxes.<sup>98</sup>

*Homestead exemption.* When the tax assessor discovers he has erroneously granted a homestead exemption when it should have been refused, he should prepare a notice of rejection,<sup>99</sup> serve it upon the applicant and file the original notice with proof of service with the clerk of the county commission in order that they may set a hearing.<sup>100</sup>

One who owns a lot and places a house trailer thereon may qualify for the homestead exemption<sup>101</sup> if he intends to make the premises his permanent home.<sup>102</sup>

*Religious property.* Property owned and used exclusively for religious purposes is exempt from taxation.<sup>103</sup> The rental of rooms in a parsonage does not take away the exempt character of the property, so long as the rental is incidental to and not the main use of the property.<sup>104</sup>

*Social and fraternal organizations.* Social and fraternal organizations are not allowed the constitutional<sup>105</sup> and statutory<sup>106</sup> exemption from ad valorem taxation, unless the primary purpose for which the property is used is of a religious, scientific, municipal, educational, literary or charitable character.<sup>107</sup>

**UNEMPLOYMENT COMPENSATION.** *Voluntary contributions.* The Florida Industrial Commission may accept voluntary contributions from employers but cannot use them to reduce benefit ratios and contribution rates of unemployment compensation taxes.<sup>108</sup>

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96. FLA. STAT. § 49.04 (1951), OP. ATT'Y GEN. 052-47 (Feb. 20, 1952).

97. FLA. CONST. ART. IX, § 13; FLA. STAT. § 330.06 (1951).

98. FLA. STAT. § 330.11 (1951), OP. ATT'Y GEN. 052-121, (April 10, 1952).

99. FLA. STAT. § 192.21 (1951).

100. OP. ATT'Y GEN. 052-89 (March 17, 1952).

101. FLA. CONST. ART. X § 7; FLA. STAT. § 192.12 (1951).

102. OP. ATT'Y GEN. 052-108 (March 26, 1952).

103. FLA. CONST. ART. XVI, § 16; FLA. STAT. § 192.06 (1951).

104. OP. ATT'Y GEN. 052-108, March. 26, 1951).

105. FLA. CONST. ART. IX, § 1.

106. FLA. STAT. § 192.06(10) (1951).

107. OP. ATT'Y GEN. 052-101 (March 21, 1952).

108. FLA. STAT. § 443.08(3) (1951), OP. ATT'Y GEN. 052-128 (April 21, 1952).