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Summary of Opinions of the Attorney General

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SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*

The *Summary* contains those recent opinions of the Attorney General of Florida which are of public or general, rather than purely local interest. Worthy of particular attention at this time are those opinions construing provisions of the recently amended election code, discussed under ELECTIONS, *infra*. Some significant statements concerning the powers and jurisdiction of small claims courts are noted under COURTS, *infra*. This issue covers OP. ATT'Y GEN. 051-410 (Nov. 14, 1951) through OP. ATT'Y GEN. 052-37 (Feb. 11, 1952).

ADMINISTRATIVE LAW. *Game and Fresh Water Fish Commission.* Conservation agents of the Game and Fresh Water Fish Commission have authority to enforce all Florida laws pertaining to game and fresh water fish. In carrying out their duties they may enter private property without a search warrant.¹

Industrial Commission. If the Florida Industrial Commission adopts an industrial survey made by a local chamber of commerce, it may, subject to federal approval, reimburse the chamber for the costs of making the survey.²

Railroad and Public Utilities Commission. Sales at wholesale by a corporation whose only sales are to regulated public utilities are not sales to the public and the public is not necessarily affected thereby. Therefore, the corporation is not under the regulation of the Florida Railroad and Public Utilities Commission.³

ARREST. *To release surety on bail bond.* A surety on a criminal bond has statutory authority to surrender the defendant in exoneration of his liability as surety, and may empower any peace officer to arrest him.⁴ However, a peace officer of one county may not arrest the defendant in another county. A peace officer making such an arrest nevertheless does not violate any criminal statute and the defendant is left to his remedy by suit for damages.⁵

COMPENSATION. *Florida Hotel and Restaurant Commissioner.* The governor and his cabinet have the authority to employ a Florida Hotel and

*This issue of the *Summary* was prepared for publication by George A. Buchmann, Jr., and edited by Charlotte J. Barkan. We are grateful to Hon. Richard W. Ervin, Attorney General of the State of Florida, for supplying copies of these opinions.

1. FLA. STAT. § 372.07 (1951), OP. ATT'Y GEN. 052-35 (Feb. 8, 1952).
2. FLA. STAT. § 443.12(6) (1951), OP. ATT'Y GEN. 052-8 (Jan. 19, 1952), *modifying* OP. ATT'Y GEN. 051-367 (Oct. 18, 1951).
3. Fla. Laws 1951, c. 26545, § 2, OP. ATT'Y GEN. 051-440 (Dec. 5, 1951).
4. FLA. STAT. § 903.22 (1951).
5. OP. ATT'Y GEN. 051-484 (Dec. 31, 1951).

Restaurant Commissioner and to fix his salary at an amount they consider reasonable.⁶

Judges of the Eleventh Circuit. The passing of a 1951 statute raising the state salaries of circuit judges to \$10,000 a year⁷ raises the question of its effect on special acts providing for supplemental pay in some counties. In Dade County there are three such special acts to be considered. The first provides that salaries of circuit judges shall be increased by an amount necessary to bring their annual pay to \$8,500.⁸ This was an increase of \$1,000 per year over the \$7,500 then being paid. The second special act provided for further additional supplemental compensation at \$2,500 a year.⁹ The third provides for supplemental pay in an amount equal to twenty per cent of the circuit judge's state salary.¹⁰ The effect of the 1951 legislation is to fix the amount of supplementation paid under the first special act at the amount being paid prior to its enactment. The last two special acts remain in full force and effect. The twenty per cent supplementation is computed upon the basis of the new state salary of \$10,000.¹¹

Statutory salary restrictions. The salary restrictions imposed on the Department of Public Welfare¹² apply to attorneys and physicians who are paid on a yearly contractual basis.¹³

Unused vacation time of ex-employees. A board of county commissioners is without authority to remunerate an ex-employee for vacation time which he did not utilize during the term of his employment.¹⁴

CORPORATIONS. Fictitious names. A corporation which operates a business under a name other than its incorporated name is required to register its fictitious name with the clerk of the circuit court.¹⁵ The requirement that an affidavit must be signed by all interested parties of the corporation¹⁶ is satisfied if it is signed by corporate officers empowered to act for the stockholders. Apartment houses operated under a fictitious name and doing business under such name are required to register. A distinction should be made between the foregoing and cases in which the apartment house name is *not* used in the making of contracts, execution of leases, etc.¹⁷

Registration by announcement. Pre-organization subscriptions for shares of capital stock of a corporation which are sold to not more than twenty-five subscribers without expenses being incurred or remuneration being paid in

6. Fla. Laws 1951, c. 26945, OP. ATTY'S GEN. 052-36 (Feb. 11, 1952).

7. FLA. STAT. § 26.51 (1951).

8. Fla. Laws 1945, c. 22631.

9. Fla. Laws 1947, c. 24004.

10. Fla. Laws 1947, c. 24246.

11. OP. ATT'Y GEN. 051-453 (Dec. 13, 1951). Thus, the salary of Dade County circuit judges is \$10,000 plus \$1,000 plus \$2,500 plus \$2,000 or a total of \$15,500 a year.

12. FLA. STAT. § 409.111 (1951).

13. OP. ATT'Y GEN. 051-446 (Dec. 6, 1951).

14. FLA. CONST. Art. XVI, § 11, OP. ATT'Y GEN. 051-428 (Nov. 27, 1951).

15. FLA. STAT. § 865.09 (1951), see OP. ATT'Y GEN. 050-379, 1949-50 BIENNIAL REP. 588.

16. FLA. STAT. § 865.09(3) (1951).

17. OP. ATT'Y GEN. 051-472 (Dec. 19, 1951).

connection with the sale of the securities,¹⁸ the corporation being organized and the stock issued, does not constitute a "prior original marketing" which will entitle the corporation to registration by announcement.¹⁹

COUNTIES. Budget amendment. A county budget may be amended after it has been adopted and become final in order to provide for expenses for road and bridge equipment not contemplated at the time of adoption.²⁰

General funds. County commissioners have only those powers expressly vested in them by statute or which must be necessarily implied to carry them into effect.²¹ They are without authority to advance money from the county's general funds to a local health unit for use as petty cash.²²

COURTS. Inspection of registry record book. The book kept by a clerk of the circuit court showing amounts received and paid out from the registry of the court is a public record open to inspection by any citizen of Florida.²³

Small claims: Location. A small claims court need not be located in the county courthouse.²⁴ It must, however, be located at the county seat and hold all its hearings there.²⁵

Small claims: Execution of judgments. There is inherent authority in a small claims court to issue executions for the enforcement of its judgments even though the enactment creating the court does not specifically provide for the issuance thereof.²⁶

Small claims: Jurisdiction. A small claims court does not have jurisdiction in rent eviction cases.²⁷ However, it may take jurisdiction of the statutory remedy of distress for rent²⁸ so long as the amount claimed does not exceed \$250.²⁹

Small claims: Contempt of court. There is authority in small claims court to cite for criminal and constructive contempt. Courts and judges have an inherent power to punish a contempt irrespective of statutory authority.³⁰

Unauthorized use of court's name. There is no specific statutory prohibition against an individual or company using the name of a county small claims court to simulate legal process on a notice styled "Ultimatum Final

18. FLA. STAT. § 517.06(10) (1951).

19. FLA. STAT. § 517.091 (1951), OP. ATT'Y GEN. 051-455 (Dec. 14, 1951).

20. Fla. Laws 1951, c. 26874 amending FLA. STAT. c. 129 (1951), OP. ATT'Y GEN. 051-434 (Nov. 29, 1951).

21. *Crandon v. Hazlett*, 157 Fla. 574, 26 So.2d 638 (1946); *Gessner v. Del-Air Corp.*, 154 Fla. 829, 17 So.2d 522 (1944).

22. OP. ATT'Y GEN. 051-418 (Nov. 20, 1951).

23. FLA. STAT. § 119.01 (1951), OP. ATT'Y GEN. 052-28 (Jan. 31, 1952).

24. See *Beville v. State*, 61 Fla. 8, 55 So. 854 (1911).

25. See *Mack v. Carter*, 133 Fla. 313, 183 So. 478 (1938), OP. ATT'Y GEN. 051-429 (Nov. 27, 1951).

26. FLA. STAT. §§ 55.16, 55.17 (1951), OP. ATT'Y GEN. 051-436 (Nov. 30, 1951); OP. ATT'Y GEN. 049-476 (Oct. 7, 1949).

27. FLA. STAT. § 83.20 *et seq.* (1951).

28. FLA. STAT. § 83.11 (1951).

29. OP. ATT'Y GEN. 051-466 (Dec. 19, 1951).

30. *Ex parte Earman*, 85 Fla. 297, 95 So. 755 (1923), OP. ATT'Y GEN. 051-477 (Dec. 21, 1951).

Notice Before Suit." It is a practice to be discouraged by any means available, however, and as a last resort the court whose name is being used without authority should seek an injunction.³¹

CRIMINAL LAW. Parole of child-molesters. The "child molester law"³² provides for three alternative methods of dealing with the offender. That alternative which provides for a sentence from which there can be no parole takes the prisoner out of the jurisdiction of the Parole Commission.³³ It is a matter of grave doubt whether the legislature can constitutionally take away the Commission's power to parole and proceedings for a declaratory decree are suggested.³⁴

Procedure: Return of evidence. Personal property which was obtained as the result of a search conducted incident to a lawful arrest by virtue of a sufficient search warrant should remain in the custody of the law until the disposition of the criminal case for which the property is being held as evidence. The property cannot be reached by replevin while in *custodia legis* and its owner should file a claim with the court for its return after disposition of the criminal action.³⁵

Reckless driving. Any law officer or private citizen may file charges of reckless driving against the driver of an automobile involved in an accident even though there are no witnesses. The magistrate to whom the charge is presented is the officer who determines if there is reasonable ground to believe the offense has been committed. If he feels the evidence is sufficient to show reasonable ground he will issue a warrant for the driver's arrest.³⁶

Wearing hoods and masks in public. A parade to promote public safety, members of which are to be dressed in hoods and masks to represent traffic fatalities, falls within the exemptions contemplated by the statute making the wearing of hoods and masks in public illegal.³⁷

ELECTIONS. Acceptance of personal services by candidate. A candidate for public office may accept the personal services of his friends and supporters and employ them in the furtherance of his candidacy provided no provisions of the law in regard to the conduct of elections or political campaigns are violated by the method in which the personal services are employed. Such contributions of personal services do not come within the statutory prohibition.³⁸ Permissible personal services are those which an individual may personally perform on behalf of the candidate without the expenditure of anything of value except his time and energies and such

31. OP. ATT'Y GEN. 052-13 (Jan. 21, 1952).

32. Fla. Laws 1951 c. 26843.

33. *Id.* at §§ 3(1), 3(2), 12.

34. FLA. CONST. ART. XVI, § 32, OP. ATT'Y GEN. 051-450 (Dec. 7, 1951).

35. FLA. STAT. c. 78 (1951), OP. ATT'Y GEN. 051-425 (Nov. 26, 1951).

36. FLA. STAT. § 901.02 (1951), OP. ATT'Y GEN. 052-29 (Feb. 5, 1952).

37. Fla. Laws 1951, c. 26542, OP. ATT'Y GEN. 051-481 (Dec. 21, 1951).

38. FLA. STAT. § 99.161(2) (1951).

travelling expenses as are incidental to the rendition of his services.³⁹ No other expenses may be incurred unless they are within a category specifically authorized by another statute.⁴⁰

Billboard advertising. The use of billboards by one campaigning for public office is a lawful expenditure of campaign funds.⁴¹

Campaign contributions by corporations. The statute prohibiting "any corporation whatsoever" from contributing anything of value to the support of a candidate for public office⁴² must be construed to extend to non-profit corporations such as "Florida for Eisenhower, Incorporated." Such corporation may not purchase advertising space in a newspaper and a newspaper may not accept such advertising without being subject to the penalties prescribed.⁴³

Campaign contributions by individuals. Expenditures made or expenses incurred by a citizen not connected with a candidate or the management of his candidacy are prohibited⁴⁴ unless authorized by the campaign treasurer of the candidate and paid in pursuance of the prescribed procedure.⁴⁵ Neither a broadcasting company nor a newspaper may lawfully accept any money from such a citizen for advertising under such circumstances. This is not to be construed as prohibiting newspapers from publishing editorials friendly to a candidate.⁴⁶

Candidate for superintendent of public instruction. A person need not own real property in the county in which he is a registered voter in order to become a candidate for superintendent of public instruction of that county.⁴⁷

Date to qualify. The logical conclusion seems to be that candidates for judge and prosecuting attorney of a county court are governed by the statute that makes noon on March 15th the deadline to qualify.⁴⁸ However, to avoid the embarrassment of a different interpretation by the courts it is suggested that candidates qualify by noon on February 1 prior to the first primary election as required by the statute⁴⁹ regarding candidates for nomination by a political party for the office of judge or solicitor of any inferior court.⁵⁰

In those counties in which the county judge acts also as judge of juvenile court or judge of small claims court he occupies the latter two offices in an ex officio capacity. Therefore a candidate for such office

39. FLA. STAT. § 104.061(2) (1951).

40. FLA. STAT. § 99.172 (1951), OP. ATT'Y GEN. 052-22 (Jan. 28, 1952).

41. FLA. STAT. § 99.172(14) (1951), OP. ATT'Y GEN. 051-432 (Nov. 29, 1951).

42. FLA. STAT. § 104.091 (1951).

43. OP. ATT'Y GEN. 051-445 (Dec. 6, 1951).

44. FLA. STAT. § 99.161, 99.161(4) (a) (1951), Fla. Laws 1951, cc. 26819, 26870.

45. FLA. STAT. § 99.161(7) (1951).

46. OP. ATT'Y GEN. 051-437 (Nov. 30, 1951). This opinion is conditioned upon there being no conflicting rule of the Federal Communications Commission.

47. OP. ATT'Y GEN. 051-415 (Nov. 16, 1951).

48. FLA. STAT. § 99.061 (1951).

49. FLA. STAT. § 99.071 (1951).

50. OP. ATT'Y GEN. 052-16 (Jan. 23, 1952).

should qualify for election primaries by the time required for a candidate for county judge.⁵¹

Filing fees. The following formulas aid in determining filing fees for candidates in political offices having no established rate of compensation:

(1) When a newly created office has collected no fees prior to the time a candidate for the office is required to pay his filing fee, an estimate shall be made of the probable income of the office for the coming year. In making the estimate any evidence may be used which is reasonably calculated to reflect the approximate volume of the fees which may be collected by the new office during its first year of operation. The method indicated will be used also in instances where any office has been vacant for a period longer than twelve months preceding the election year.

(2) If the fee office has been operating for any portion of the year preceding the election year, or any portion of the election year itself, then the net fee receipts of those months may be used as evidence to determine the annual volume of business. The Attorney General suggests that care be taken in applying this standard, as fees taken in immediately following the formation of a new office are usually greater than the average for the entire term of office.

(3) If the office has an incumbent and has been in existence for at least one year prior to the election year, and if there have been no fees charged or collected during such time, no filing fee need be paid.⁵²

All funds which are received as filing fees from candidates required to qualify with the Secretary of State⁵³ become state funds and are remitted to the State Treasurer. The filing fees of candidates for county offices become county funds.⁵⁴

Gifts by candidates. The giving of free blotters, pencils, bookmatches, etc., with campaign advertising printed thereon constitutes the giving of a thing of value and is prohibited. These items, though of little intrinsic value, are things that the donee would otherwise have to purchase.

Printing of a calendar or similar item of convenience on the back of a card or handbill of the type usually distributed by candidates for public office does not constitute the giving of a thing of value as prohibited by statute.⁵⁵

Distribution of campaign lapel buttons by political candidates is not prohibited by statute.⁵⁷

Holding dual offices. There is no express *statutory* or *constitutional*

51. FLA. LAWS 1951, c. 26870, OP. ATT'Y GEN. 051-417 (Nov. 19, 1951).

52. FLA. STAT. § 99.031 (1951), OP. ATT'Y GEN. 052-9 (Jan. 11, 1952).

53. FLA. STAT. § 99.061(1)(2) (1951).

54. FLA. STAT. §§ 99.061(3), 103.121 (1951), OP. ATT'Y GEN. 052-14 (Jan. 21, 1952), OP. ATT'Y GEN. 051-435 (Nov. 27, 1951).

55. FLA. STAT. § 99.172 (1951), OP. ATT'Y GEN. 051-471 (Dec. 19, 1951).

56. FLA. STAT. § 99.172 (1951), OP. ATT'Y GEN. 051-421 (Nov. 23, 1951).

57. FLA. STAT. § 99.172 (1951), OP. ATT'Y GEN. 052-12 (Jan. 17, 1952).

prohibition which would prevent a person from holding the office of deputy sheriff and city court judge concurrently. At *common law*, however, one person could not hold two offices which were incompatible. The duties of the deputy sheriff and the city judge are inconsistent within the meaning of the common law rule.⁵⁸

Independent voters. If a county has adopted the single permanent registration system,⁵⁹ records available for use by primary election officials will include the names of registered independent voters. If such a system has not been adopted, copies of the registration books provided for⁶⁰ will be available to such officials and will include the names of independent voters. Under either system an applicant for registration as an independent voter should be registered by the supervisor. In no event may an independent elector vote in a primary election.⁶¹

Justice of the peace: Residence requirements. There seems to be no statutory requirement to the effect that a candidate for justice of the peace must reside in the district in which he seeks office at the time of qualifying. It is required, however, that he be a resident of that district at the time he is to take office if elected. It is recommended that candidates seek office only in the district in which they reside rather than face a subsequent possibility of attack on their qualifications.⁶²

Preferential primary. The resolution of a state executive committee declaring for the nomination of candidates for President and Vice President of the United States should be filed with the Secretary of State of Florida by noon on March 15 prior to the primary election. Candidates nominated by the resolution need not file sworn oaths or pay filing fees.⁶³

The Secretary of State should provide an additional heading upon the Democratic primary election ballot under the title "National" or some other suitable designation in order to carry out the purpose of the resolution adopted by the State Democratic Executive Committee which provides for nomination of candidates for President and Vice President of the United States.⁶⁴

Procurement of campaign funds. A candidate who operates free movies and charges local merchants for advertising during showings may use the funds so received to pay his campaign expenses. This is conditioned on the premise that such an operation is conducted as a regular business for the profit of the operator and is not a scheme devised for procuring campaign funds from otherwise prohibited sources.⁶⁵

58. OP. ATT'Y GEN. 051-416 (Nov. 19, 1951).

59. FLA. STAT. §§ 98.041-98.151 (1951).

60. FLA. STAT. § 98.351 (1951).

61. OP. ATT'Y GEN. 051-480 (Dec. 21, 1951).

62. FLA. STAT. § 114.01(4) (1951), OP. ATT'Y GEN. 052-27 (Jan. 31, 1952).

63. FLA. STAT. § 103.121 (1951), OP. ATT'Y GEN. 052-30 (Feb. 5, 1952).

64. FLA. STAT. §§ 101.141, 103.121(9) (1951), OP. ATT'Y GEN. 052-20 (Jan. 25, 1952).

65. FLA. STAT. § 99.161(1)(2) (1951), OP. ATT'Y GEN. 051-431 (Nov. 28, 1951).

Registration books. The statute prescribing the hours during which registration books are to be kept open⁶⁶ makes it mandatory that the books be open during the prescribed times, but it is not to be construed as prohibiting the opening of the books at an earlier hour provided the general intent of the statute is accomplished.⁶⁷

EMPLOYER. Voluntary contributions for unemployment insurance. The Florida Industrial Commission may accept a voluntary contribution from an employer based on an assumed annual payroll in order to give him an annual payroll for a three-year period that would produce a lower premium rate. This is based upon the assumption that federal law does not require a state to have a positive law to that effect. Florida statutes permit this only by implication.⁶⁸

FAMILY LAW. Dependent children. The statute requiring that persons seeking support for dependent children take appropriate legal action to require the child's parents to give that support within 30 days after applying for relief from the Department of Welfare⁶⁹ is not to be strictly construed. In those instances where the parents are financially unable to support the child it would be fruitless to file a suit and it was not intended that such be required. The Department of Welfare should determine the advisability of filing a suit and if filed the prosecuting attorney of the county is required to assist as one of his regular duties.⁷⁰ The costs of the court can properly be paid by the Department of Welfare. It was not intended that the child should suffer from lack of funds until legal process forced its parents to support it.⁷¹

GAMING. Merchandise awards by drawings. The essential elements of a lottery are a prize, an award by chance and a consideration. In an advertising scheme whereby chances are given on free merchandise to be awarded by a drawing, the first two elements are present. It may be that the advertising benefit and the increased attendance at the store, even though the recipients of the tickets are not required to make purchases, is sufficient consideration to satisfy element number three and place the situation under the rule applied to theater "bank nights."⁷² This also applies to drive-in theaters which award free tickets or prizes to patrons by selecting license numbers of entering cars.⁷³

66. FLA. STAT. §§ 98.011, 98.021 (1951).

67. OP. ATT'Y GEN. 052-5 (Jan. 7, 1952).

68. 49 STAT. 639 *et seq.* (1938), 26 U.S.C. §§ 1600 *et seq.* (1946), FLA. STAT. § 443.08 (1951), OP. ATT'Y GEN. 052-015 (Jan. 21, 1952).

69. Fla. Laws 1951, c. 26937, § 12.

70. *Ibid.* (The opinion states that the constitutionality of requiring the county prosecuting attorney to undertake the handling of these suits is the subject of a suit filed by one such officer for a declaratory judgment.)

71. OP. ATT'Y GEN. 051-414 (Nov. 15, 1951), OP. ATT'Y GEN. 051-279 (Aug. 17, 1951).

72. *Little River Theatre Corp. v. State*, 135 Fla. 854, 185 So. 855 (1939), OP. ATT'Y GEN. 051-459 (Dec. 17, 1951) (a proceeding for a declaratory decree is recommended).

73. OP. ATT'Y GEN. 051-478 (Dec. 21, 1951).

Prizes for high score. A pool room operator who gives a weekly award for the highest score is not violating the gambling laws if the players pay no charge except the price of the games played and the operator does not enter the competition himself. Under such circumstances pool is a game of skill rather than chance.⁷⁴

INSURANCE. *Cancellation clause: Sufficiency of notice.* In computing the expiration of time under a standard five-day cancellation clause in an insurance policy, the day on which the insurer mailed the notice is not included. Time is counted from after midnight of the day of mailing.⁷⁵

Employees' mutual benefit associations. An employees' mutual benefit association which receives subscriptions by voluntary contribution and does not carry any promise, agreement or understanding guaranteeing the subscriber a definite amount in benefits is not subject to the insurance laws.⁷⁶

JUSTICE OF THE PEACE. *Holding another office.* A person may not hold and perform the functions of the offices of justice of the peace in a Florida county and United States Commissioner at the same time.⁷⁷

LEGISLATION. *Contributions to "Haley Committee."* The House of Representatives' "Haley Committee," whose function it is to investigate law enforcement in the state, may accept public contributions to defray its operating expenses. There is no statutory prohibition against this provided the funds do not constitute something in the nature of a reward, compensation or remuneration.⁷⁸ Public policy requires that the contributing party be not allowed to specify a particular activity to be investigated as a condition of his contribution.⁷⁹

LICENSES. *Elevator inspection.* A mechanical device consisting of a car or chair supported on a roller track running within a special type of steel channel along one side of a stairway and which is used for transporting persons up and down the stairs is subject to inspection as an elevator. However, elevator inspection is for the protection of the public and it is customary to except private homes from the inspection requirement.⁸⁰

Hotels of the same name. The Florida Hotel and Restaurant Commission ordinarily has jurisdiction to refuse to license any person to operate under a trade name already in use by an established business. However, when the name is a family name, e.g., "Smith Apartments," the Commission should leave the parties to their remedy at law unless it is clearly apparent that it is

74. FLA. STAT. §§ 849.07, 849.08, 849.11 (1951), OP. ATT'Y GEN. 051-469 (Dec. 19, 1951).

75. *Blanton v. State*, 156 Fla. 694, 24 So.2d 232 (1945), OP. ATT'Y GEN. 052-25 (Jan. 30, 1952). It may be that the mails are the agent of the insurer rather than the insured, in which case the time would be computed from the time of receipt rather than of mailing.

76. FLA. STAT. § 625.01, c. 640 (1951), OP. ATT'Y GEN. 052-23 (Jan. 25, 1952).

77. FLA. CONST. Art. XVI, § 15, OP. ATT'Y GEN. 051-468 (Dec. 19, 1951).

78. FLA. STAT. § 838.06 (1951).

79. OP. ATT'Y GEN. 051-411 (Nov. 15, 1951).

80. FLA. STAT. § 399.01(2) (1951), OP. ATT'Y GEN. 052-31 (Feb. 6, 1952).

being used for the express purpose of taking away the business of a competitor or of misleading the public.⁸¹

Insurance agents convicted of felony. Although the conviction of a felony is not ground for the denial of a life or an accident and health insurance agent's license, it is an element to be taken into consideration by the Insurance Commissioner in determining the trustworthiness and competence of the applicant for a license, since it is his duty to protect the public from unscrupulous agents.⁸²

Liquor license for caterers. A caterer who is engaged to serve at a private party and who undertakes, as part of his duties, to serve liquor from a portable bar is not required to have a liquor license. This is based on the assumption that the person giving the party has title to the liquor and that the caterer is being paid for his services as such rather than on the basis of the number of drinks he serves. The caterer stands in a servant-master relationship to the person giving the party.⁸³

Liquor license for private clubs. A city is required by law to issue a beer and wine license to a private club such as an American Legion post even though the club is located in an area zoned for residences only.⁸⁴ Such a club is not a vendor of alcoholic beverages when operating under a club license as authorized by statute.⁸⁵

Liquor license in vicinity of school. A liquor license may not be issued to a vendor for a location within 2500 feet of a school.⁸⁶ Instruction given crippled children in a hospital by teachers under the control of the County Board constitutes a school within the meaning of the statute.⁸⁷

Plasmatic physicians. A "plasmatic physician" who proposes to give treatment by electricity for arthritis and rheumatism is presumably contemplating the practice of medicine within the meaning of the statute⁸⁸ and must comply with the requirements for a medical practitioner or submit positive proof that his treatments do not constitute the practice of medicine before he may be issued an occupational license.⁸⁹

Life insurance agent's license to undertaker. A person who holds a current license from the state as an undertaker or funeral director may be issued a life insurance agent's license so long as he does not engage in or attempt to engage in the business of conducting funerals or any of the activities incident thereto.⁹⁰

81. OP. ATT'Y GEN. 051-461 (Dec. 17, 1951); see *McGhan v. McGhan*, 115 Fla. 414, 155 So. 653 (1934).

82. FLA. STAT. cc. 627, 634 (1951), OP. ATT'Y GEN. 052-24 (Jan. 30, 1952).

83. FLA. STAT. c. 561 (1949), OP. ATT'Y GEN. 051-438 (Dec. 3, 1951).

84. U.S.S. Tampa Post No. 5 v. *Schleman*, 53 So.2d 302 (Fla. 1951).

85. FLA. STAT. § 561.34(11) (1951), OP. ATT'Y GEN. 051-462 (Dec. 17, 1951); see also FLA. STAT. § 561.44 (1951).

86. FLA. STAT. § 561.44(2) (1951).

87. OP. ATT'Y GEN. 052-37 (Feb. 11, 1952).

88. FLA. STAT. § 458.13 (1951).

89. FLA. STAT. § 205.051 (1951), OP. ATT'Y GEN. 052-2 (Jan. 3, 1952).

90. FLA. STAT. § 638.16(1) (1951), OP. ATT'Y GEN. 052-11 (Jan. 15, 1952).

Veterinarians. The Board of Veterinary Examiners may not grant a license to any person who has not successfully passed a satisfactory examination. There is no provision for emergency appointment prior to passing the examination.⁹¹

MOTOR VEHICLES. *Accident reports.* The driver of an automobile who is involved in any accident in which someone is injured, however slightly, must report the accident to the proper authorities.⁹²

MUNICIPAL CORPORATIONS. *Tax sale certificates.* The life of a tax sale certificate, issued by a municipality and held by a private individual, is twenty years from the date of its issuance. This limitation does not seem to be applicable to certificates held by the issuing municipality. "When a tax sale certificate issued and held by a municipality is assigned to an individual holder the limitation becomes applicable so long as the said certificate is not twenty years old at the time of its issuance, and the certificate becomes barred by the statute upon its becoming twenty years old reckoned from the date of issuance. If the certificate was twenty years old at the time of its assignment by the municipality then there is a five year limitation reckoned from the date of the assignment by the municipality."⁹³

PUBLIC LANDS. *Grazing leases in public parks.* The Board of Parks and Historic Memorials may grant grazing leases or permits encumbering its park lands when the use of such lands will in no way interfere with the proper and orderly use of the parks by the public and will violate no board contract.⁹⁴

SCHOOLS AND EDUCATION. *County board member residence districts.* A county school board which adopts a resolution dividing the county into five county board member residence districts may subsequently change the boundaries of those districts to conform with population shifts and changes.⁹⁵

Lease of school property. The county school board may lease school property that has not been used as a school for one year and is unlikely to be so used to an individual who proposes to operate it as an apartment house.⁹⁶ It is not recommended that the board operate the building as an apartment house itself, as this would be contrary to public policy.⁹⁷

Minimum foundation funds. If, in the discretion of the State Superintendent of Public Instruction, all major capital outlay needs in the county have been met, or will be met by a proposed program of raising funds, minimum foundation funds for capital outlay can be used for debt service on bonds already outstanding.⁹⁸

Safeguarding children on public streets. The responsibility of safeguarding school children on public streets and highways while they are traveling

91. FLA. STAT. § 474.02 (1951), OP. ATT'Y GEN. 052-32 (Feb. 7, 1952).

92. FLA. STAT. § 317.12(1) (1951), OP. ATT'Y GEN. 051-460 (Dec. 17, 1951).

93. FLA. STAT. § 196.12 (1951), OP. ATT'Y GEN. 052-10 (Jan. 14, 1952).

94. FLA. STAT. c. 592 (1951), OP. ATT'Y GEN. 051-439 (Dec. 4, 1951).

95. FLA. STAT. § 230.07 (1951), OP. ATT'Y GEN. 052-19 (Jan. 25, 1952).

96. FLA. STAT. § 235.04 (1951).

97. OP. ATT'Y GEN. 051-449 (Dec. 7, 1951).

98. FLA. STAT. § 236.07(6) (1951), OP. ATT'Y GEN. 051-413 (Nov. 16, 1951).

to and from school at public expense rests on the municipal or county authorities. In the event that they cannot or do not act to safeguard a crossing, the county superintendent of public instruction should take or cause to be taken the necessary steps to protect the children.⁹⁹ A temporary arrangement is recommended whereby a regular employee of the school board would be assigned to guard the crossing in addition to his regular duties.¹⁰⁰

TAXATION. *Boats and yachts as personal property.* For purposes of taxation the term "personal property" is construed to include boats and yachts.¹⁰¹ Boats of non-resident ownership which are taxed in the state in which they are registered are exempt from Florida taxation.¹⁰² Boat owners claiming the exemption must present proof of payment of the tax in another state.¹⁰³

Church property. Church-owned property is entitled to tax exemption when it is used for religious, educational, charitable or similar purposes.¹⁰⁴

Documentary stamps. A written instrument in the nature of a bond for title to real estate which obligates the purchaser, upon fulfillment of certain conditions, to buy and the seller to sell real property is subject to the imposition of the documentary stamp tax. The amount of the tax is computed at the statutory rate¹⁰⁵ upon the amount of money paid by the purchaser at the time the instrument is executed.¹⁰⁶

Homestead exemption. In the absence of a judicial decree of separation or divorce, a wife whose husband is domiciled in another state must satisfy the tax assessor that she is residing in this state with her husband's full consent (unless there exist grounds entitling the wife to a divorce or legal separation) to receive homestead exemption. Further, she must establish that she intends to make this state her permanent home.¹⁰⁷

Intangible personal property. Security instruments assigned to a non-resident bank for a valuable consideration may be subject to the Florida intangible personal property tax.¹⁰⁸ If the use of the securities is merely for collection and remittance to the home office and therefore having no taxable situs in this state, or if the assignee is a federal bank, the securities will not be taxed in this state.¹⁰⁹

WELFARE. *Aid to blind.* A blind child who has been the recipient of aid to the blind does not lose his eligibility upon reaching the age of

99. FLA. STAT. §§ 234.12, 234.13 (1951).

100. OP. ATT'Y GEN. 051-456 (Dec. 14, 1951).

101. FLA. STAT. §§ 192.03, 193.10, 200.01 (1951).

102. FLA. STAT. § 200.44 (1951).

103. OP. ATT'Y GEN. 052-18 (Jan. 24, 1952).

104. FLA. CONST. Art. IX, § 1, Art. XVI, § 16; FLA. STAT. §§ 192.06, 192.07 (1951), OP. ATT'Y GEN. 051-464 (Dec. 18, 1951).

105. FLA. STAT. c. 201 (1949).

106. OP. ATT'Y GEN. 051-444 (Dec. 6, 1951).

107. FLA. CONST. Art. X, § 7, FLA. STAT. § 192.14 (1951), OP. ATT'Y GEN. 051-467 (Dec. 19, 1951).

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

109. OP. ATT'Y GEN. 051-474 (Dec. 20, 1951).

twenty-one although he may not have resided in Florida for five of the immediately preceding nine years.¹¹⁰

WORKMEN'S COMPENSATION. *Stock-car racing drivers.* Whether or not stock-car racing drivers are covered by workmen's compensation depends on the factual situation in each case. It must be determined whether the driver is an employee or an independent contractor. The factors used to determine this are set out in *Magarian v. Southern Fruit District*.¹¹¹ Ordinarily the drivers would not be excluded from compensation benefits as "casual employees,"¹¹² although their work might come under the statutory definition of "casual."¹¹³

110. Fla. Laws 1951, c. 26937, § 14(1), OP. ATT'Y GEN. 051-483 (Dec. 31, 1951).

111. 146 Fla. 773, 1 So.2d 858 (1941).

112. FLA. STAT. § 440.02(2) (1951).

113. FLA. STAT. § 440.02(3) (1951), OP. ATT'Y GEN. 051-479 (Dec. 21, 1951).