

2-1-1952

Summary of Opinions of the Attorney General

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

Recommended Citation

Summary of Opinions of the Attorney General, 6 U. Miami L. Rev. 238 (1952)

Available at: <http://repository.law.miami.edu/umlr/vol6/iss2/9>

This Report is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*

ADMINISTRATIVE LAW. Access of Inter-American Center Authority to deficiency appropriation. The statute¹ creating the Inter-American Center Authority made it a state agency and imposed upon it duties and obligations which require the expenditure of funds. No appropriation of funds having been voted for it, the authority may have access to the Deficiency Appropriation of the General Appropriation Act of 1951.²

Agency funds. No state agency may spend funds entrusted to it for any purpose other than one directly connected with its official business.³ When the Florida Industrial Commission wished to pay for an industrial survey it was exceeding the limits of its authority.

Compensation of general counsel. The Florida Railroad and Public Utilities Commission may employ its general counsel to perform non-legal services in addition to his legal services as general counsel, and pay him additional compensation therefor, so long as such employment is not incompatible with his services as general counsel.⁴

Mosquito control contributions. The statutes authorize state contribution to federal mosquito control districts.⁵ Therefore the state may transfer title to trucks and equipment to such districts as well as make cash contributions thereto.⁶

Racing commission. While not specifically answering the propounded question of whether the Florida State Racing Commission has authority to compel a stockholder in a corporation having a racing permit in this state to sell his stock, the Attorney General was of the opinion that the Commission has the power to establish a uniform rule requiring all persons owning, directing or controlling race tracks to meet certain standards of financial responsibility, moral character and reputation.⁷ If after a fair hearing it is determined that stockholders, officers or directors of such corpora-

*This issue of the SUMMARY was prepared for publication by Charlotte Joy Barkan and Lloyd J. Bennett, Jr., and edited by Allan S. Kushen. We are grateful to Hon. Richard W. Ervin, Attorney General of the State of Florida, for supplying copies of these opinions.

Continuing the policy of presenting only those opinions of general or public interest, this issue of the SUMMARY covers OP. ATT'Y GEN. 051-314 (Sept. 13, 1951) through OP. ATT'Y GEN. 051-409 (Nov. 14, 1951).

1. Fla. Laws 1951, c. 26614.
2. OP. ATT'Y GEN. 051-321 (Sept. 17, 1951).
3. OP. ATT'Y GEN. 051-367 (Oct. 18, 1951).
4. Fla. Laws 1951, c. 26859 § 1, FLA. STAT. § 350.02 (1949), OP. ATT'Y GEN. 051-347 (Oct. 4, 1951).
5. FLA. STAT. § 381.72 (1949).
6. OP. ATT'Y GEN. 051-379 (Oct. 24, 1951).
7. FLA. STAT. § 550.01 *et seq.* (1949).

tions are actually criminals, bookmakers, gangsters or in league with such persons, or are not persons of good moral character, or have violated any laws or regulations affecting racing, the permit of any such racing corporation may be cancelled or denied by the Commission.⁸

COUNTIES. Competitive bids. The statutes⁹ provide that county commissioners shall accept the bid of the lowest responsible bidder where public bids are asked unless they shall reject all bids because they are too high. Since the responsibility of the bidder is in point, the commission may use its discretion in determining the lowest *responsible* bidder, and the lowest dollar bid is not absolutely controlling.¹⁰

Competitive bids must be requested when the service to be performed for the county costs over \$300.00.¹¹ Therefore, where a county wishes to contract with an individual for school bus service without competitive bidding the contract may not be for more than \$300.00 exclusive of the costs of hiring a driver.¹²

While no statute exists which would force county commissioners to advertise for bids for the *sale* of personal property the Attorney General recommends such procedure to arrive at a fair price.¹³

COURTS. Municipal court process. A municipal court may not serve a warrant for arrest outside of the county in which it is situated.¹⁴ It cannot issue process to run throughout the state, nor can it try misdemeanors based solely upon violations of state law.¹⁵

Witness and mileage fees. State employees are entitled to witness and mileage fees when they testify for the state in any case.¹⁶ When a county rather than the state is a party to the suit the county should pay those fees.¹⁷

CRIMINAL LAW. Civil rights regained. A person convicted of a felony who pays the fine assessed may regain his civil rights only through action of the Board of Pardons.¹⁸

Concealed weapons. A pocket knife, clasp knife or jack knife with a blade approximately four inches long is "a common pocket knife" within the meaning of the statute¹⁹ providing punishment for the concealed carrying of certain weapons and excepting therefrom "a common pocket knife," in the absence of evidence that it was used or was carried for use as a weapon. An ice pick in the absence of such evidence is not a "weapon."²⁰

8. OP. ATT'Y GEN. 051-324 (Sept. 21, 1951).

9. FLA. STAT. § 125.08 (1949).

10. OP. ATT'Y GEN. 051-371 (Oct. 23, 1951).

11. FLA. STAT. § 237.02(2) (1949).

12. OP. ATT'Y GEN. 051-341 (Oct. 2, 1951).

13. OP. ATT'Y GEN. 051-396 (Nov. 2, 1951).

14. OP. ATT'Y GEN. 051-374 (Oct. 24, 1951).

15. *Ott v. Quigg*, 135 Fla. 653, 185 So. 726 (1939); see also FLA. STAT. § 168.03 (1949).

16. 1935-36 BIENNIAL REP. 686, 1939-40 BIENNIAL REP. 89.

17. OP. ATT'Y GEN. 051-344 (Oct. 2, 1951).

18. FLA. STAT. § 97.041 (1949), see *Singleton v. State*, 38 Fla. 297, 21 So. 21 (1896), OP. ATT'Y GEN. 051-360 (Oct. 13, 1951).

19. FLA. STAT. § 790.01 (1949).

20. OP. ATT'Y GEN. 051-358 (Oct. 11, 1951).

Habitual drunkards. A Florida statute provides for the punishment of habitual drunkards.²¹ After each conviction new acts of drunkenness must be established to uphold new convictions. No evidence of former convictions should be admitted.²²

Procedures: search warrants. No search warrant is necessary to enable an officer to search a licensed beer and wine establishment for moonshine whiskey. However, before a search of a private residence is made, a warrant must be issued directed to the searching officer.²³

ELECTIONS. Absentee ballot. Upon request for an application blank for an absentee ballot, the ballot itself, if available, shall be sent to the applicant along with the application blank.²⁴ Separate application for absentee ballots must be made for first and second primary elections.²⁵

Campaign treasurer. Since reports of expenditures made in behalf of a person's candidacy for office are required to be filed by his campaign treasurer, a candidate in the general primaries must appoint a campaign treasurer (or designate himself as such) at or before the time he qualifies.²⁶

Communist party. ". . . the Communist Party is not a political party within the purview of our election laws. Hence, should any applicant for registration be possessed of the temerity to request that the record designate him as a member of such party, the supervisor of registration should refuse to register him."²⁷

Federal felony conviction. Conviction of a person in a federal court of a crime constituting a felony under federal statutes is conviction of an "infamous crime" and as such disqualifies the convicted person from voting.²⁸

Gubernatorial candidates. A candidate for the office of governor of this state who will have resided in Florida for five years, as required by statute,²⁹ prior to the general elections but subsequent to the primaries, may sign the oath which says that the candidate *will* be qualified to hold the office for which he is nominated.³⁰

Holidays. Elections prescribed by special acts are usually mandatory and must be held as prescribed. The fact that the election date specified by the act³¹ falls on a legal holiday does not change the rule.³²

Party candidates. To qualify in a primary a candidate is required by statute³³ to make an affirmation "that he voted for a majority of the nominees

21. FLA. STAT. §§ 856.02, 856.03 (1949).

22. OP. ATT'Y GEN. 051-342 (Oct. 2, 1951).

23. OP. ATT'Y GEN. 051-348 (Oct. 4, 1951).

24. OP. ATT'Y GEN. 051-387 (Oct. 30, 1951).

25. Fla. Laws 1951, c. 26870, § 101.62.

26. Fla. Laws 1951, c. 26870, OP. ATT'Y GEN. 051-333 (Sept. 25, 1951).

27. OP. ATT'Y GEN. 051-387 (Oct. 30, 1951).

28. FLA. CONST. Art. VI §§ 4, 5, Fla. Laws 1951, c. 26870 § 97.041, OP. ATT'Y GEN. 051-387 (Oct. 30, 1951).

29. FLA. CONST. Art. IV, § 3.

30. OP. ATT'Y GEN. 051-368 (Oct. 22, 1951).

31. Fla. Spec. Acts 1947, c. 24387.

32. OP. ATT'Y GEN. 051-406 (Nov. 13, 1951).

33. Fla. Laws 1951, c. 26870.

of the party of which he is a member at that last general election" The statute is construed as meaning the last Florida general election *at which the party member voted*. The quoted portion of the statute does not apply to a party candidate or elector who has moved to this state from another state and who has become a citizen and qualified elector subsequent to the "last general election," nor to a citizen of this state who became a qualified elector upon reaching majority subsequent to the last general election.³⁴

Registration laws. Local registration laws remain effective at least until January 1, 1954, by which time the regular session of the Florida Legislature may have reconciled by amendment the apparently conflicting provisions of the Election Code of 1951³⁵ which repeal such laws after January 1, 1960.³⁶

Segregation at polling places. There is no provision in the statutes for separate polling places for white and colored voters within one precinct. Therefore only one such polling place may be set up. It is further provided³⁷ that there be only one entrance and one exit.³⁸

Titles of candidates on ballots. Although the nickname of a candidate may be printed on election ballots, descriptive matter such as "Dr." is permissive only when two persons of the same name of whose names are so similar as to reasonably cause confusion seek the same office.³⁹

HIGHWAYS. State acceptance of federal funds. The State Road Department may accept an advancement of federal aid highway funds so long as they are received to be used either in compliance with the requirements of the federal statutes or to be returned to the federal government if not used, and not as a loan of money from the federal government.⁴⁰

INFANTS. Federal aid. A child born outside of Florida is eligible for assistance under the Federal Social Security Act, although Florida law requires that he be born here.⁴¹

INSURANCE. Group insurance. The group life insurance statute⁴² provides that certain percentages of the premiums must come from the individual members of the group covered. Where a group has funds set aside for burial of its members and such funds are comprised of assessments made upon the members themselves, that fund may not be used as premiums for the policies.⁴³

Release of funds deposited with Insurance Commissioner. The Insurance Commissioner may release the statutory deposit⁴⁴ delivered to him by an insurer to qualify to engage in the surety business when the Commissioner

34. OP. ATT'Y GEN. 051-394 (Nov. 2, 1951).

35. Fla. Laws 1951, c. 26870, §§ 98.381, 104.44.

36. OP. ATT'Y GEN. 051-387 (Oct. 30, 1951).

37. FLA. STAT. § 101.71 (1949).

38. OP. ATT'Y GEN. 051-378 (Oct. 24, 1951), see 1947-48 BIENNIAL REP. 72.

39. Fla. Laws 1951, c. 26870, OP. ATT'Y GEN. 051-343 (Oct. 2, 1951).

40. FLA. CONST. Art. IX, § 6, OP. ATT'Y GEN. 051-317 (Sept. 14, 1951).

41. Fla. Laws 1951, c. 26937, § 15, OP. ATT'Y GEN. 051-395 (Nov. 2, 1951).

42. FLA. STAT. § 635.24 (1949).

43. OP. ATT'Y GEN. 051-366 (Oct. 18, 1951).

44. FLA. STAT. § 648.02 (1949).

is satisfied that no claim, absolute or contingent, exists which might be asserted against said deposit, and upon issuance to the insurer of an amended certificate of authority from which has been deleted the insurer's authority to engage in the surety business.⁴⁵

JUDGES. Concluding law practice. There appears to be no legal impediment to an appointee to the office of Judge of the Civil Court of Record from bringing to a conclusion in the courts chancery cases he was handling as attorney at the time of his appointment.⁴⁶

LICENSES. Disabled veterans' exemptions. The statute⁴⁷ granting license tax exemptions to disabled veterans does not require that the occupation for which the license is sought require manual labor on the part of the licensee. It does require that the occupation be a primary interest of the veteran and that he work at it. The fact that the veteran has other sources of income will not affect the exemption.⁴⁸

If a veteran is honorably discharged because of a service-connected disability he is entitled to the license tax exemption provided for in the statutes.⁴⁹ Technical distinctions between types of disabilities should not be determining factors.⁵⁰

The exemption from payment of a motor vehicle license tag fee to disabled veterans⁵¹ upon proof that his motor vehicle was acquired through the financial assistance of the Veterans' Administration is limited to the specific vehicle in the acquisition of which such financial assistance was rendered. It does not extend to replacement vehicles acquired by the veteran without such financial assistance.⁵²

Fishing and hunting. Children under fifteen years of age, whether residents or non-residents of Florida, are exempt from the payment of fishing and hunting license fees. However, only *residents* who are over sixty-five are so exempt.⁵³

Fishing. A person is required to purchase a fishing license to fish for fresh water fish with a rod and reel, which is baited with worms or live bait and which is used in "still fishing."⁵⁴

"*Goats*". A vehicle used for the transportation of citrus fruit within groves is known as a "goat." Such a vehicle operates on a minimum license fee⁵⁵ which restricts its use of the state highways to incidental travel between groves.⁵⁶

Occupational. An agent of an out-of-state concern who conducts clinics

45. OP. ATT'Y GEN. 051-355 (Oct. 10, 1951).

46. OP. ATT'Y GEN. 051-318 (Sept. 14, 1951).

47. FLA. STAT. § 205.16 (1949).

48. OP. ATT'Y GEN. 051-390 (Oct. 26, 1951).

49. FLA. STAT. § 205.16 (1949).

50. OP. ATT'Y GEN. 051-375 (Oct. 24, 1951).

51. Fla. Laws 1951, c. 26839.

52. OP. ATT'Y GEN. 051-365 (Oct. 16, 1951).

53. FLA. STAT. § 372.57 (1949), OP. ATT'Y GEN. 051-332 (Sept. 25, 1951).

54. FLA. STAT. § 372.57 (1949), OP. ATT'Y GEN. 051-373 (Oct. 24, 1951).

55. FLA. STAT. § 320.082 (1949).

56. OP. ATT'Y GEN. 051-388 (Oct. 30, 1951).

with respect to the treatment of ruptures and who fits and sells trusses is not engaged in the practice of medicine and therefore not subject to the basic sciences law or other laws with respect to the practice of healing arts. He is required, however, to secure an occupational license.⁵⁷

MOTOR VEHICLES. Signal devices. The statute⁵⁸ requiring signal devices on motor vehicles applies to them wherever they may be operated.⁵⁹

Signal devices on "goats". The Department of Public Safety can adopt a special signal device for use by "goat" vehicles (used principally for the transportation of citrus fruit within groves) when on a highway.⁶⁰ Since they are more than fourteen feet long from the center of the top of the steering post to the rear limit of the body they fall within the statute requiring direction signals.⁶¹

Title certificates. A certificate of title may not be issued for a motor vehicle where the ownership is based upon purchase at a sale of abandoned property authorized by a municipal ordinance, except upon surrender of the outstanding certificate of title duly assigned by the registered owner or, if such is impossible, proof of ownership and right of possession.⁶²

MUNICIPAL CORPORATIONS. Public utilities. A city which owns and operates its own water works need not pay interest on deposits required of subscribers to its services⁶³ since those deposits are required to protect the company or city and are a part of the consideration paid for the service.⁶⁴

PROFESSIONS. Optometry. There is no law that authorizes licensed optometrists to prescribe medicines used in the treatment of the eyes.⁶⁵

SCHOOLS AND EDUCATION. Contract of county school board. It is doubtful that a bank loan would be defined as being either goods, supplies or services, as contemplated by the statutes⁶⁶ forbidding contracts for same to be made by a county school board with any of its members or with any business organization in which such members have any financial interest. The Attorney General states that although it might reasonably appear that a loan negotiated between a school board and a bank of which a member is a stockholder might be against public policy, he does not believe that the legislature intended that the statutory safeguards should be carried to the unreasonable extent of discouraging local businessmen and women from serving on the school board simply because they might own stock in a business concern which necessarily must do business with the board. He suggests that a logical solution, which would remove doubt as to the pro-

57. FLA. STAT. § 205.52 (1949), OP. ATT'Y GEN. 051-338 (Sept. 27, 1951).

58. Fla. Laws 1951, c. 26719.

59. OP. ATT'Y GEN. 051-334 (Sept. 26, 1951).

60. OP. ATT'Y GEN. 051-319 (Sept. 14, 1951).

61. Fla. Laws 1951, c. 26719.

62. FLA. STAT. §§ 319.28, 705.01 *et seq.* (1949), OP. ATT'Y GEN. 051-361 (Oct. 16, 1951).

63. FLA. STAT. § 180.13 (1949).

64. OP. ATT'Y GEN. 051-383 (Oct. 25, 1951).

65. OP. ATT'Y GEN. 051-337 (Sept. 27, 1951); see OP. ATT'Y GEN. 049-109 (Mar. 18, 1949).

66. FLA. STAT. §§230.23(12)(i), 839.09 (1949).

priety of such a loan from the standpoint of public policy, would be for the board to secure the loan on a competitive bid basis.⁶⁷ It is submitted, however, that the statute applicable to this problem, after barring specifically any member of the county board, the superintendent or any trustee, states as an exception that *any trustee* may submit sealed competitive bids and be awarded a contract. It seems that the statute thus limits the sealed bid exception to trustees alone and not to school board members.

Teacher retirements. A retired school teacher who is not seventy years old may re-enter the school system and receive additional credit toward a higher retirement pay basis.⁶⁸

Traffic guards. A board of county commissioners may employ traffic guards for the purpose of preventing accidents near schools on busy thoroughfares during hours of the day when children are either leaving or arriving at school.⁶⁹

Veteran's teaching preference. A veteran who is eligible for a teaching preference, but is unable to qualify for any position because of disability may have his preference transferred to his wife.⁷⁰

SECURITIES. Oil and gas mining leases. The Florida Securities Commission should consider and treat leases of undivided interests in oil and gas mining rights and similar interests as securities⁷¹ so as to require registration of them as a condition to their sale in this state.⁷²

SHERIFFS. Residence. In the absence of a special local act to the contrary, a sheriff may reside anywhere in the county in which he was elected to serve, provided he employs a deputy who resides at the county seat or within two miles thereof.⁷³

Work done by prisoners. Prisoners in county jails may be required to keep the jail clean and sanitary but they may not be forced to do any "other kindred tasks" that the sheriff is being paid to perform.⁷⁴

TAXATION. Failure to remit sales tax. A "dealer" who collects sales taxes from purchasers but fails and refuses to remit such taxes to the State Comptroller and converts them to his own use is liable for fine and punishment as provided by law⁷⁵ for conviction of a misdemeanor. The Attorney General suggests that the "dealer" also may be guilty of statutory embezzlement.⁷⁶

Personal property. Failure to pay a prescribed aircraft registration fee⁷⁷ will not subject an aircraft to an ad valorem personal property tax, since

68. OP. ATT'Y GEN. 051-352 (Oct. 8, 1951).

67. OP. ATT'Y GEN. 051-335 (Sept. 26, 1951).

69. FLA. STAT. § 234.13 (1949), OP. ATT'Y GEN. 051-329 (Sept. 24, 1951).

70. FLA. STAT. § 295.07 (1949). OP. ATT'Y GEN. 051-397 (Nov. 5, 1951).

71. FLA. STAT. § 517.02 (1949).

72. OP. ATT'Y GEN. 051-393 (Nov. 2, 1951).

73. FLA. CONST. Art. XVI, § 4, FLA. STAT. § 30.11 (1949), OP. ATT'Y GEN. 051-324 (Sept. 20, 1951).

74. OP. ATT'Y GEN. 051-351 (Oct. 5, 1951).

75. FLA. STAT. § 212.12(2) (1949).

76. FLA. STAT. § 812.01 (1949), OP. ATT'Y GEN. 051-391 (Nov. 1, 1951).

77. FLA. STAT. § 330.01 *et seq.* (1949).

aircraft are defined as motor vehicles, which are by the Constitution⁷⁸ exempt from all personal property taxes.⁷⁹

Personal property exemption. It is doubted that a sales tax warrant and execution creates a lien upon the personal property of a taxpayer which is exempt from taxation by the Florida Constitution.⁸⁰

Service contracts. If a race track in this state contracts with a corporation for the use of certain equipment used in the operation of the track the contract is a service contract and not subject to the sales tax.⁸¹

WORKMEN'S COMPENSATION. *Self-insurers.* An agreement entered into by a group of employers whereby they have become self-insurers under the Workmen's Compensation Law⁸² does not seem to violate any of the insurance laws of Florida if it is in compliance with the rules and regulations of the Florida Industrial Commission and approved by it.⁸³

78. FLA. CONST. Art. IX, § 13.

79. OP. ATT'Y GEN. 051-323 (Sept. 20, 1951).

80. FLA. CONST. Art. X, § 1, OP. ATT'Y GEN. 051-389 (Oct. 31, 1951).

81. FLA. STAT. c. 12 (1949), OP. ATT'Y GEN. 051-370 (Oct. 23, 1951); see OP. ATT'Y GEN. 051-55 (Mar. 15, 1951), 5 MIAMI L. Q. 589 (1950).

82. FLA. STAT. § 440.57 (1949).

83. OP. ATT'Y GEN. 051-322 (Sept. 19, 1951).