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Summary of Opinions of the Attorney General

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SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*

In the statement of editorial policy of the first issue of the Miami Law Quarterly it was set down that, "Law is not a static thing and it is the hope of the editors of the Quarterly that it will not only provide accurate discussions and analyses of the law as it now exists, but will also make some contribution toward the orderly and progressive development of our system of law to meet changing economic and social conditions." The Attorney General's opinions presented here are merely an outgrowth of that policy.

The Attorney General is required by law¹ to give opinions on legal matters to certain public officials when requested by them. The questions that arise generally concern statutes which have not been previously construed. The answers are advisory and many times in the form of prediction. It is with these predictions that the very purpose of this section arises. Our hope, in presenting the interpretations by the Attorney General, is that the practicing attorney may find some practical assistance through this additional source of statutory construction.

CONSTABLES. Appointment of deputy. There is no common law or statutory provision for a constable to appoint a permanent deputy, although he may summon such persons as he may need to make a lawful arrest.²

Arrest of non-resident operating motor vehicle with foreign registration.³ While a constable may make arrests within his territorial district, any doubts as to whether the offense justifies arrest with or without a warrant should be resolved by first obtaining a warrant.⁴ It is doubtful that violation of the statute⁵ concerning operation of a motor vehicle with non-resident registration would constitute such a breach of the peace as to justify arrest without a warrant.

CORPORATIONS. Refund of filing fee. The fee required by statute⁶ at the time of filing certificate of incorporation is not refundable even though the corporation is dissolved prior to doing business.⁷ While this may not be an

*This issue covers selected opinions from Jan. 1, 1951 to March 27, 1951. Ops. Att'y Gen. 051-1 - 051-66, omitting Ops. Att'y Gen. 051-2, 051-7, 051-10, 051-14, 051-17, 051-23, 051-27, 051-30, 051-39, 051-41, 051-42, 051-44, 051-45, 051-49, 051-58, 051-63, 051-66.

The Summary of Opinions was prepared for publication by Howard A. Meyers and William R. Neblett.

1. FLA. STAT. § 16.01 (1949).
2. OP. ATT'Y GEN. 051-53 (March 12, 1951); FLA. STAT. § 901.18 (1949); 1945-46 BIENNIAL REP. 147.
3. See MOTOR VEHICLES, *infra*.
4. OP. ATT'Y GEN. 051-53, *supra* note 2.
5. FLA. STAT. § 320.38 (1949).
6. FLA. STAT. § 612.58 (1949).
7. OP. ATT'Y GEN. 051-20 (Jan. 22, 1951).

equitable solution, the comptroller cannot pay out funds in the absence of an enabling statute.

COUNTIES. Attorney's fees. A county tax assessor who stuck to his guns in the face of illegal reduction of an assessment by the Board of County Commissioners, incurring legal fees in the process of an appeal to the Supreme Court, may have such legal fees paid from the excess fees of his office at his disposal, if any, or by the Board of County Commissioners. Since the county attorney, in the situation presented to the Attorney General,⁸ had represented the Commissioners, it was necessary for the tax assessor to obtain different counsel. The assessor's determined stand resulted in a benefit to the county, in the collection of higher taxes. In the instant case, the Board of County Commissioners has agreed to pay the legal fees, provided there is no legal prohibition against it, so the question of what recourse the assessor would have, if the Board refused so to do, and the fees of the assessor's office were insufficient, is not decided.

Appointment of relatives by county commissioner. It is unlawful for a county commissioner to appoint a relative to any position when such person is within the fourth degree of consanguinity or affinity.⁹

Compensation of officials on fee basis. While concerned primarily with the compensation of two county officials in one county, recent opinions reach some interesting general conclusions.¹⁰ Minimum salary of such officials is usually fixed by special acts, however, a statute¹¹ prescribes an upper limit on net income. It appears that the minimum salary is considered compensation only for the performance of the *usual and ordinary* functions of the office. If additional duties are performed, additional compensation may be paid from the general revenue fund of the county, not to exceed the upper limit. The Attorney General notes that there has been departmental construction of some of the previous laws, which rulings are of persuasive force, especially since the legislature has made no effort to counteract them in subsequent legislation.

Duty of county commissioners to insure. Adhering to the doctrine that county commissioners have no power other than those enumerated by statute or necessarily implied to further an express power,¹² the Attorney General found¹³ sufficient implication to protect public property by insurance deriving from the broader power to maintain bridges.

Effect of census on population statutes. Since the Florida Constitution provides¹⁴ that the federal census shall control in all population acts, inter-

8. OP. ATT'Y GEN. 051-8 (Jan. 11, 1951).

9. OP. ATT'Y GEN. 051-62 (March 26, 1951).

10. OP. ATT'Y GEN. 051-22 (Jan. 30, 1951); OP. ATT'Y GEN. 051-32 (Feb. 16, 1951); OP. ATT'Y GEN. 051-51 (March 14, 1951).

11. FLA. STAT. § 145.01 *et seq.* (1949).

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

13. OP. ATT'Y GEN. 051-5 (Jan. 11, 1951).

14. FLA. CONST. Art. VII, § 5.

esting questions arise due to the rapid growth of the state. In two recent opinions¹⁵ the Attorney General reaches the conclusion that the *effective* date of changes brought about by the federal census in many instances is as of April 1, 1950. More difficult is the matter of deciding whether the preliminary count, released October 9, 1950, is sufficient authority to effect the retroactive changes. Since census procedure includes such a preliminary report about six months after actual count, although final official tabulation may not be forthcoming for an additional six months, the difference in the two is usually minor, the final tabulation being usually slightly in excess of the preliminary report. It is further considered that the announcement made by the Bureau of the Census is an *official* announcement, which may be relied upon.

Employment of jailer and servant by sheriff. While there appears to be no legal prohibition against employing one person both as jailer and servant, such a practice is against the established custom in the state, as both positions are considered to be full time ones.¹⁶

Leave of absence for military service. Authority to grant leaves of absence to county or state officials under the statute¹⁷ extends only to those officials serving in the military forces, and would not be applicable in the case of a county commissioner employed as a civilian on a military air base in North Africa.¹⁸

Taxing districts—Port Authority. Port Authority and other taxing district bonds are not municipal bonds, and should not be received, under the statute,¹⁹ as security for the safekeeping and prompt payment of county funds on deposit with county depositories.²⁰

CRIMINAL PROCEDURE. *County judge's courts.* While one provision of the statutes²¹ says that the criminal procedure law shall govern procedure in all cases, another statute²² makes specific provisions for justice of the peace procedures to regulate proceedings of county judges in criminal cases. The Attorney General feels²³ that in the case of conflict, the specific provisions should control.

Default of payment on bond. An individual in default of payment of a fine and cost bond imposed by a county judge's court may still be reached with the same papers in another Florida county.²⁴ Although the commit-

15. OP. ATT'Y GEN. 051-4 (Jan. 10, 1951); OP. ATT'Y GEN. 051-36 (March 1, 1951).

16. OP. ATT'Y GEN. 051-1 (Jan. 2, 1951).

17. FLA. STAT. § 115.08 (1949).

18. OP. ATT'Y GEN. 051-64 (March 26, 1951).

19. FLA. STAT. § 136.01 (1949).

20. OP. ATT'Y GEN. 051-65 (March 27, 1951).

21. FLA. STAT. § 925.02 (1949).

22. FLA. STAT. § 937.01 (1949).

23. OP. ATT'Y GEN. 051-60 (March 22, 1951).

24. OP. ATT'Y GEN. 051-46 (March 7, 1951).

ment is addressed to the sheriff of the county in which the fine was imposed, it has full force and effect throughout the state.²⁵

Use of municipal jail by county. There is no obligation on the part of a municipality to allow the county to use municipal jail facilities. However, the municipality may enter into such a lease agreement with the county, permitting use of a portion of its jail for agreed fees. Normally, county prisoners would remain under the custody of a deputy sheriff or county jailer. If an agreement contained provisions for the municipal jailer to receive county prisoners, the Attorney General advises²⁶ that proper commitment papers accompany each prisoner so received, to comply with the requirement that persons arrested should have been taken before a proper magistrate, and complaint made, with opportunity for bail. This would guard the municipality against suits for false imprisonment.

ELECTIONS. Qualifications of voters. Under the statute²⁷ as construed by the Attorney General,²⁸ only voters who were qualified to vote in the primary elections and remain so qualified may vote in special elections for state senators and representatives.

Qualification of voters — civil rights. A person convicted in federal court of a felony under a federal statute loses his civil rights and may not vote, testify as a witness, or serve as a juror in Florida, until such rights are restored.²⁹ The constitution³⁰ and enabling statutes³¹ speak both of "felonies" and of "infamous crimes," terms which the Supreme Court considers practically synonymous.³² These terms do not, however, include misdemeanors, so in the event of conviction by federal statute, it is necessary to determine whether the offense is classified as a felony or a misdemeanor. A previous opinion,³³ following the same rationale, discussed a case of conviction in federal court of embezzlement, finding this offense to be a misdemeanor by statute, and a sentence of five years in a federal penitentiary did not deprive the person convicted of his civil rights.

Salary of the supervisor of registration. When the salary of the supervisor of registration of a county is fixed by special law, he may not draw additional compensation as custodian of voting machines.³⁴ The latest law³⁵ provides that the supervisor shall be the custodian of voting machines, and is construed to supersede an earlier law, otherwise still in force,³⁶ providing

25. FLA. STAT. §§ 932.01, 932.02 (1949).

26. OP. ATT'Y GEN. 051-12 (Jan. 12, 1951).

27. FLA. STAT. § 98.09 (1949).

28. OP. ATT'Y GEN. 051-28 (Feb. 7, 1951).

29. OP. ATT'Y GEN. 051-56 (March 16, 1951).

30. FLA. CONST. Art. 6, §§ 4, 5 and Art. 16, § 25.

31. FLA. STAT. §§ 98.01(4), 98.01(5) (1949).

32. *Adams v. Elliott*, 128 Fla. 79, 174 So. 731 (1937).

33. 1945-46 BIENNIAL REP. 771.

34. OP. ATT'Y GEN. 051-13 (Jan. 18, 1951).

35. FLA. STAT. § 100.42 (1949).

36. FLA. STAT. § 100.10 (1949).

for authorities in charge of elections to employ "custodians" of voting machines.

Write-in ballots. Although the right of electors to use write-in votes is guaranteed in general elections³⁷ this does not apply in primary elections.³⁸ The purpose of primary elections is entirely different. Under control of the state, primary elections are political party elections affording party candidates the opportunity of nomination for public office.³⁹

EDUCATION. Exceptional children. Indicating the well directed emphasis on education, a recent opinion⁴⁰ liberally construes two statutes⁴¹ to authorize a county to take over and operate a school for mentally and physically retarded children. Although it appears that the legislature may have intended state control, and that strict classification of "exceptional children" and the qualifications for their teachers is set forth in the statutes,⁴² this is construed to apply only when state funds are involved. When county funds alone are used, the Attorney General recommends, as a matter of sound policy, that the county be guided by general provisions applicable to qualified teachers, and calls attention to limitations on the age of children eligible for instruction in public schools.

Federal grants. The State Department of Education is the only agency authorized to apply for and administer federal funds provided for school building surveys and school construction. The State Treasurer disburses such funds.⁴³

Construction contracts obtained by bribes. Several architects admitted before a grand jury that construction contracts they had received from a school board were obtained through bribery. The problem facing the Attorney General was the determination of the status of such contracts. The conclusion⁴⁴ was that the contract was merely voidable. If the school board elected to enforce the contract, it could do so, but the right to void it does exist although, solely on the part of the board.

HOMESTEAD EXEMPTIONS. Husband and wife living apart. In a well-reasoned opinion⁴⁵ the Attorney General concludes that where a wife has established, in good faith, a permanent home separate from her husband, there is no constitutional bar⁴⁶ to the granting of homestead exemptions both to the husband and to the wife, where each meet the requirements. It is still up to the Tax Assessor to determine whether the wife has just grounds for establishing such separate residence, the apparent limitations being separate legal residence for the purpose of divorce, or separate maintenance.

37. FLA. STAT. §§ 99.18, 100.18 (1949).

38. OP. ATT'Y GEN. 051-57 (March 16, 1951).

39. FLA. STAT. § 102.01 *et seq.* (1949).

40. OP. ATT'Y GEN. 051-37 (Feb. 27, 1951).

41. FLA. STAT. §§ 230.44, 236.61 (1949).

42. FLA. STAT. §§ 236.61, 236.62 (1949).

43. OP. ATT'Y GEN. 051-40 (Feb. 28, 1951).

44. OP. ATT'Y GEN. 051-43 (March 1, 1951).

45. OP. ATT'Y GEN. 051-34 (Feb. 21, 1951).

46. FLA. CONST. Art. X, § 7.

INSURANCE.⁴⁷ *Hospital service plans.* A recent opinion⁴⁸ concludes that a hospital service corporation operating under Florida law⁴⁹ may legally contract for the payment of hospital services where the hospital is owned and operated by osteopathic physicians and surgeons. While citing a previous opinion the present Attorney General does not discuss the services as physicians and surgeons of such osteopaths, although the older opinion⁵⁰ could find nothing in the statute⁵¹ to limit such medical and surgical services to duly licensed doctors of medicine.

JUDGES. *Disqualification.* Participation in preparation of cases as an assistant in the County Solicitor's office is sufficient to disqualify the assistant from trying these same cases when he was subsequently appointed as judge of the Criminal Court of Record.⁵²

Executive officer of Justice of the Peace Court. The executive office of the Justice of the Peace Court may be either the sheriff, sheriff's deputy, or a constable.⁵³ However, there is only one fee payable for this duty,⁵⁴ so that if more than one officer is present in court, the Justice of the Peace must designate the one who is to discharge the duty. Statutes⁵⁵ appear to require that when the Justice of the Peace acts as coroner, the warrant to impanel a jury is directed to the constable, although warrants for arrest⁵⁶ are directed "to any lawful officer of said county."⁵⁷

Justice of the Peace. The county may not pay the office rent for a Justice of the Peace, but he may maintain an office and pay for it from fees accruing to his office.⁵⁸

MOTOR VEHICLES. *Non-residents.* Permission to use motor vehicles registered in other states ceases under the statute⁵⁹ when the owner's child enrolls in a public school, or when the owner is employed within the state. Florida registration is then required, whether the vehicle be owned by the individual or by someone in his family.⁶⁰ Where the vehicle is owned by a third party, and loaned to the individual, foreign registration is permissible if the owner meets statutory conditions, however, if the owner is a non-resident, or a scheme to defraud the state appears, then Florida registration is required.⁶¹

Liability insurance — boats. The provisions of a statute⁶² providing for insurance of motor vehicles may be lawfully extended to include motorboats

47. See MOTOR VEHICLES, *infra*.

48. OP. ATT'Y GEN. 051-16 (Jan 16, 1951).

49. FLA. STAT. § 641.01 *et seq.* (1949).

50. 1947-48 BIENNIAL REP. 562.

51. FLA. STAT. § 641.01(1) (1949).

52. OP. ATT'Y GEN. 051-25 (Feb. 2, 1951).

53. FLA. STAT. § 37.16 (1949).

54. FLA. STAT. § 30.23 (1949).

55. FLA. STAT. §§ 936.03, 936.19 (1949).

56. FLA. STAT. §§ 936.15, 936.22 (1949).

57. OP. ATT'Y GEN. 051-15 (Jan. 16, 1951).

58. OP. ATT'Y GEN. 051-26 (Feb. 5, 1951).

59. FLA. STAT. § 320.37 (1949).

60. OP. ATT'Y GEN. 051-45 (March 2, 1951).

61. See CONSTABLES, *supra*.

62. FLA. STAT. § 243.022 (1949).

which are the property of the Educational Board of Control and used under its supervision. However, the insurer may not plead governmental immunity except as to the amount of a claim in excess of the insurance coverage for personal and property damage, as the purpose of the statute is to permit claims to be paid up to the amount of this coverage only.⁶³

MUNICIPAL CORPORATIONS. *Express grants.* The power of a city to acquire property within or outside the city limits, specifically authorized by the city charter, is an *express grant*.⁶⁴

Redevelopment projects. Redevelopment projects of a city may be extended to areas outside the city limits, but within a reasonable distance.⁶⁵

PUBLIC HEALTH. *Tuberculosis.* The state looks to the county for payment when the county sends tubercular indigents to state hospitals, so that if it is found that the person is able to pay it is up to the county to reimburse itself by arrangements with the individual.⁶⁶ While compulsory confinement is provided for in the statute⁶⁷ the procedure for collection from the patient is not, so it may be that the county's only recourse, after appropriate investigations of the individual's resources, would be to withdraw its financial support. Even this procedure may not be available to the county if the statute is construed to the effect that the county is obligated to pay for all of its patients. While the legislature may not have intended to provide free treatment for those able to pay, it did set forth provisions for compulsory commitment to hospitalization without correlative provisions for collecting payment from such persons.

PUBLIC OFFICERS. *Purchases.* The fact that one member of a school board is the wife of the president of a corporation from which the board purchases supplies is not evidence of the wife's interest in the business of the corporation.⁶⁸ Unless the wife, herself, owned stock in the corporation, she could not be said to have such a direct or indirect interest as would bring her within the prohibition of the statute⁶⁹ and bar her from voting to approve bills for payment.

SECURITIES. *Capitalization.* Finding at least two types of capital possible in a corporation organized under Florida laws⁷⁰ the Attorney General concluded⁷¹ that no registration with the securities commission is necessary as long as the total of the issued and outstanding stock sold does not exceed \$10,000, and the resulting number of shareholders does not exceed twenty.⁷²

Registration. Whether the registration of securities is accomplished completely by the act of filing with the securities commission, or whether

63. OP. ATT'Y GEN. 051-19 (Jan. 22, 1951).

64. OP. ATT'Y GEN. 051-61 (March 27, 1951).

65. OP. ATT'Y GEN. 051-59 (March 20, 1951).

66. OP. ATT'Y GEN. 051-21 (Jan. 29, 1951).

67. FLA. STAT. §§ 392.17, 392.18 (1949).

68. OP. ATT'Y GEN. 051-52 (March 14, 1951).

69. FLA. STAT. § 839.09 (1949).

70. FLA. STAT. § 612.01 *et. seq.* (1949).

71. OP. ATT'Y GEN. 051-6 (Jan. 11, 1951).

72. FLA. STAT. § 517.06 (1949).

registration is not complete until action by the commission may depend upon the type of security and its classification under one of two sections of the statute.⁷³ It appears that the legislature contemplated automatic registration by filing in the case of special classes of presumably sound securities, to expedite the free flow of commerce, but an assumption that the commission must accept all securities filed, without investigation, is obviously unsound,⁷⁴ as this would reduce the commission to a recording agency, and prevent one of its major purposes, the protection of the public, from being carried out.

STATE FLAGS AND INSIGNIA. Replicas. There is no prohibition in the state constitution or statutes which would bar the sale by a charitable organization of replicas of the Great Seal of the state, or of state or United States flags.⁷⁵

STATE WARRANTS. Non-negotiable. A state warrant is a non-negotiable instrument, therefore a thief does not pass title, and the person from whom it was stolen, unless estopped by negligence, still has legal title to the warrant.⁷⁶

TAXATION. Cancellation of tax sale certificates. The law⁷⁷ which provided for cancellation of tax sale certificates issued prior to 1940 applies only to private holders of such certificates, and municipalities may not use this authority to cancel such certificates.⁷⁸

Cigarette tax. The purpose of the cigarette tax⁷⁹ was to provide an actual reduction in the overall millage of the county, so that an actual saving to taxpayers would result. Therefore, to be eligible to receive such funds, the county must effect a bona fide reduction in ad valorem operating taxes, and may not, while reducing the operating millage, at the same time raise the debt service millage beyond debt service requirements.⁸⁰

Exemptions of church property. The exemption of church property from taxation may be for the reason of use for religious purposes⁸¹ or may be considered under another provision of the constitution⁸² if the church is incorporated, as an exception to taxation of corporate property. The latter extends the exemption beyond the actual church building, parsonage, and burial grounds to property "held and used exclusively for religious purposes." Thus, where a church owns an undivided one-third interest in a lot, the other two-thirds being owned by individuals, whether the church's interest is taxable depends upon whether the property is used. If the lot is vacant

73. FLA. STAT. §§ 517.08 or 517.09 (1949).

74. OP. ATT'Y GEN. 051-24 (Feb. 1, 1951).

75. OP. ATT'Y GEN. 051-47 (March 8, 1951).

76. OP. ATT'Y GEN. 051-54 (March 14, 1951).

77. FLA. STAT. § 194.59 (1949).

78. OP. ATT'Y GEN. 051-11 (Jan. 11, 1951).

79. FLA. STAT. § 210.21(e) (1949).

80. OP. ATT'Y GEN. 051-18 (Jan. 19, 1951).

81. FLA. CONST. Art. IX, § 1.

82. FLA. CONST. Art. XVI, § 16.

and unused, the church must pay taxes. If it is used for religious purposes, the church is not liable for its undivided interest.⁸³

Income tax. With an eye on various decisions of the Florida Supreme Court,⁸⁴ which has been careful to guard against tax schemes which in effect violate constitutional provisions,⁸⁵ the Attorney General classifies as "highly controversial" a proposed act to levy a tax on employees which would, in effect, require a compulsory health and accident insurance for them.⁸⁶ It is conceded that a respectable argument can be made in favor of such a scheme, under the state's police power in general welfare, or as an excise tax for the privilege of engaging in business. At least one other state has held a similar tax on employees not to offend the constitutional bar against income taxes,⁸⁷ but a prediction as to our own state Supreme Court's reaction would be entirely speculative. Only the passage of such legislation, and a court test could decide the matter.

Inheritance and estate taxes — reciprocity. There can be no reciprocity in the matter of estate and inheritance taxes between Indiana and Florida, as Indiana levies an inheritance or estate tax against intangible personal property of a non-resident decedent, when such property has a business situs in Indiana. Florida does not have a similar tax⁸⁸ as the two sections of the statute⁸⁹ which apply do not mention intangible personal property of non-resident decedents.

Rental of race track equipment. Under a lease agreement a Florida corporation furnishes race tracks computing machines, starting gates and photographic service. The question arose whether the fees paid were rental or service fees, and whether they were taxable under the appropriate statute.⁹⁰ The Attorney General found⁹¹ that the agreements providing for starting gates and photo finishes were clearly service contracts, and not contracts for the rental of equipment, as control and operation of the equipment involved was entirely in the corporation, the track furnishing only a camera room, water and electricity. However, the computers, or "totalisors," are operated by race track employees. There being doubt as to whether this particular agreement was a service or a rental contract, the Attorney General suggested that it be treated as a rental agreement until the courts should determine otherwise. This will have the effect of making the totalisator machine arrangement subject to tax.⁹²

83. OP. ATT'Y GEN. 051-38 (Feb. 27, 1951).

84. Mahan v. Lummus, 160 Fla. 564, 33 So.2d 725 (1948); Owen v. Fosdick, 153 Fla. 17, 13 So.2d 700 (1943); State ex rel. McKay v. Keller, 140 Fla. 346 (1939); State ex rel. Kurz v. Lee, 163 So. 859 (Fla. 1935).

85. FLA. CONST. ART. IX, § 11.

86. OP. ATT'Y GEN. 051-50 (March 9, 1951).

87. Beeland Wholesale Co. v. Kaufman, 174 So. 516 (Ala. 1937).

88. OP. ATT'Y GEN. 051-35 (Feb. 21, 1951).

89. FLA. STAT. §§ 198.02, 198.03 (1949).

90. FLA. STAT. § 212.01 et seq. (1949).

91. OP. ATT'Y GEN. 051-55 (March 15, 1951).

92. FLA. STAT. § 212.02(e) (1949).

Sales by non-resident firms. A foreign corporation which accepts orders from Florida residents and then delivers tangible personal property to the purchaser in this state, using the corporation's own motor vehicles, may have those vehicles seized under the statute⁹³ if it does not collect the use tax imposed by the state.⁹⁴ The fact that the corporation is not licensed to do business in Florida does not prevent it from engaging in such interstate commerce, however, its frequent deliveries to residents indicate that it is, in fact, doing business in the state. The theory of this type of taxation is that one may not tax transactions in interstate commerce, but a use tax may be imposed upon an article after it has come to rest in the state, if it does not continue in interstate commerce. The tax is not levied on the seller, but on the consumer, but under Florida law the seller is required to collect the tax.

The rationale of the opinion⁹⁵ includes an argument that since the foreign corporation operates in a state where the Uniform Sales Act is in effect, the "property does not pass until the goods have been delivered" because the seller is required to deliver the goods or to pay the freight.⁹⁶ This argument appears weak in the light of interpretations of the Act which indicate that the sale is made, title passing, at the seller's place of business, the seller rarely being found to actually absorb the cost of freight. Title may even pass where payment by the buyer has not yet been made, the seller retaining only such an interest in the property to protect the purchase money, and title being said to "revest" if the condition of payment is not met. However, the control exercised by the seller in delivering the property in its own vehicles rather than by common carrier may be sufficient to infer a retention of title in the seller, if coupled by an agreement in the sales contract that goods are at the seller's risk until actual delivery to the buyer at a particular address.

The opinion⁹⁷ admits doubt, but reaches the conclusion that there is sufficient authority to attempt to collect the taxes by seizing the corporation's vehicles.

Veteran's exemption from license taxes. A disabled veteran who operates his own barber shop is entitled to a municipal exemption of \$50.00.⁹⁸ Where the rate of the municipal license is predicated on a basis of \$5.00 per chair, this does not mean that the exemption is limited to the particular chair which seats the veteran's personal customers, but extends to the chairs of his employees.⁹⁹

WORKMEN'S COMPENSATION. *Street risks.* Continuing a liberal policy with regard to compensation, and noting that other states are doing likewise, the

93. FLA. STAT. § 212.16 (1949).

94. OP. ATT'Y GEN. 051-31 (Feb. 16, 1951).

95. *Ibid.*

96. UNIFORM SALES ACT § 19, rule 5.

97. See note 94 *supra*.

98. FLA. STAT. § 205.16 (1949).

99. OP. ATT'Y GEN. 051-48 (March 8, 1951).

Attorney General advises the Commission¹⁰⁰ that compensation may be paid to an employee on the streets of a city, in the performance of his duties, if he is injured by a stray rifle bullet. Two requirements of the statute, that the injury "arise out of" and "in the course of" employment,¹⁰¹ must be met. It is not so difficult to find an employee "in the course of employment" as long as he is performing some task for the employer, but it does require liberality to hold "street risk" injuries to have causal connection with the employment. The new rationale appears to have been established by the California court¹⁰² which theorizes that had the employee not been where he was in the course of his duties, he would not have been injured.

100. OP. ATT'Y GEN. 051-29 (Feb. 9, 1951).

101. FLA. STAT. § 440.09 (1949).

102. *Industrial Indemnity Co. v. Industrial Acc. Comm'n*, 95 Cal. App. 2d 443, 214 P.2d 41 (1950).