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SUMMARY OF ATTORNEY GENERAL’S OPINIONS*

Administrative Law. Barber’s Sanitary Commission: License fees. The fee required by the Barber’s Sanitary Commission from an applicant to take a fitness examination is fixed at twenty-five dollars, plus a two dollar charge for issuance of the certificate. This charge is applied to residents and non-residents alike, although only residents may hold certificates.

The residence requirement does not apply to apprentice barbers whose fee requirement is fixed at ten dollars plus two dollars for issuance of certificate.2

Board of Control: Contributions. Since the Board of Control is a public corporation of the State of Florida whose function is to manage and operate the state’s institutions of high learning, grants made to the Board by private citizens constitute charitable contributions within the meaning of the federal income tax laws.3

Board of Control: Exchange of teachers. A teacher in the demonstration school of Florida State University who exchanges positions with a British teacher under the Fulbright Act may have her pay lawfully continued by Florida State University, if the exchange teacher taking her place is approved by the Board of Control and is substantially equal to her ability.4

Board of County Commissioners: Elections. Where the Board of County Commissioners adopts for its county the permanent registration system, the registration books should not be opened until the first day of January following the adoption of the system.5

Board of County Commissioners: Sidewalk construction. The legislature has specifically conferred upon the board the power to expend county funds for construction of sidewalks on county roads adjacent to public school buildings6

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Children’s Commission: Number of appointive members. By virtue of statute the Children’s Commission must consist of not less than fifteen nor more than twenty-one members, all appointed by the Governor. In addition to the appointees, the State Superintendent of Public Instruction, the state health officer, the state welfare commissioner and the chairman of the crippled children’s commission are members ex officio.

County Housing Authority: Retirement. The County Housing Authority is a county agency and its employees are therefore eligible to be included under the County Officer’s and Employee’s Retirement Statute.

County Surplus Gasoline Taxes: Certificates. Fuel anticipation certificates issued by the State Road Department and payable solely from the county surplus gasoline taxes remitted to the Department may be used as collateral by the State Treasurer to secure deposits made in banks, if approved by the State Board of Administration.

On the other hand certificates of indebtedness issued by a county, and payable from the surplus gas taxes retained may not be used as collateral to secure such deposits.

Department of Public Welfare: State Welfare Board. By statute the State Welfare Board consists of one member from each of the congressional districts of the State of Florida as constituted on January 1, 1951, and one member from the state at large. The statute fixes the number at seven regardless of any subsequent decrease or increase in the number of congressional districts of the State of Florida.

Elections: School trustees. A candidate for school trustee must file with the county board of public instruction at least fifteen days prior to the election. If the first day of the fifteen day period falls on a Sunday, that day must nevertheless be included in computing the time elapsed.

Florida Crippled Children’s Commission: Transportation expenses. The commission may defray transportation expenses of a parent accompanying a child to the Center. In the event of the child’s death, the commission may also pay expenses incurred in preparation of the body for shipment and the return of the body to the parent’s home.

Florida Highway Patrol: Employment. The Florida Highway Patrol is authorized to employ up to three hundred patrol officers exclusive of any assigned to special departments such as the Skyway Bridge. 17

Florida Highway Patrol: Salaries. An increase in the wages of Highway Patrol officers does not affect the salary of the Director of the Highway Patrol, although he is considered a conservator of the peace along with others of the Patrol, he is not classified as an officer for the purpose of determining his salary. His salary must be the subject of separate legislation. 18

Florida Milk Commission: Audit. Results of an audit taken by the Milk Commission may be released to the public so long as the records, papers and documents defined under the law as state secrets are not included in the information. 19

Florida Milk Commission: Price fixing. The right to fix milk prices is a “permissive” right 20 and may not be exercised unless, upon proper investigation, an emergency necessitating it is held to exist. 21 Therefore, if the Commission finds control unnecessary it has no right to exercise price fixing power. 22

Florida State Racing Commission: Authority. The Commission has no authority to allow a Racing Association to use an equivalent amount of the “plus breaks” in plus pools to offset a minus pool which occurs in one of the races. 23

Game and Fresh Water Fish Commission: Definition of resident. When a conflict exists between the Florida Statutes 24 and the rules and regulations of the Game and Fresh Water Fish Commission over the definition of the term “resident,” the legislative definition prevails, since the Commission has no authority to make rules and regulations contrary to license laws enacted by the legislature. 25

Hotel and Restaurant Commission: Authority. The administrative authority of the Hotel and Restaurant Commission is limited to that set forth in Chapters 509, 210 and 511 of the Florida Statutes, to the rules and regulations adopted by the Commission within the limits of such law, and to any other provision of law specifically applicable to the Commission. The “Right-to-Work” amendment of the Florida Constitution

not being included in any of these laws cannot therefore be applied or enforced by the Commission.26

_National Association of Sheriffs: Expenses._ Expenses incurred in connection with the organization and operation of the Junior Deputy Program may be properly charged as expenses of the Sheriff's office.27

_School District Elections: Qualifications of inspectors and clerks._ There are no specific provisions in the school code relating to whether or not inspectors and clerks in a regular biennial school district election must be qualified to vote in the election. Therefore general election law applies, and under this law28 inspectors and clerks must be qualified voters in the precinct in which they are appointed.29

_State Board of Funeral Directors and Embalmers: Powers._ The State Board of Funeral Directors and Embalmers has no authority to augment its powers to the extent of charging apprentices, applying for the embalming test, a five dollar registration fee and a renewal of two dollars and fifty cents.30

_Civil Procedure. Execution: Sheriff's fee._ Where the sheriff makes a return of _nulla bona_ upon an unsatisfied levy,31 but more than two years later, a new writ of execution is issued, the sheriff is entitled to a fee for docketing and indexing the second execution.32

_Service of Process: Small Claims Court._ Proper service of process in Florida subjects the residents of foreign countries to the jurisdiction of the Small Claims Court.33

_Constitutional Law. Florida Legislature. Reapportionment of membership._ The act calling for reapportionment of the House of Representatives34 is valid. The validity of this Act depends in no way upon additional action by the legislature with respect to reapportionment of the Senate.35

_Florida Legislature: Travel and per diem expenses._ The Florida Constitution36 provides that State Legislators, during legislative session, shall be reimbursed for expenses incurred while traveling on state business away from their official residences or places of business. When the Legislature is in extended recess or has adjourned, the members cannot collect compensation for expenses incurred by them, except as involved in traveling

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34. Laws of Fla. c. 31378 (1955).
to and from the capitol. However, if there is clear and convincing evidence that a legislator has incurred other expenses during adjournment in pursuance of his official duties he may collect compensation therefor.37

*Homestead Exemption: Vested remainder.* Where the cestui que trust resides on the property in which she has a life estate, that estate is entitled to the Homestead exemption,38 but the remainder vested in the trustees cannot benefit from the said exemption because this latter estate does not conform to Homestead requirements.39

*Municipal Judges: Inherent authority.* In the absence of charter provisions or other special legislation to the contrary, a Municipal Judge has the inherent authority to withhold sentence from day to day, or term to term.40 However, the judge does not possess the inherent authority to withhold judgment.41

**Corporations.** *Cemetery corporations: Annual reports.* Cemetery corporations formed pursuant to statute42 must make annual reports to the State Comptroller43 and may be compelled to do so by Writ of Mandamus.44

*Corporate employment agencies: Licenses.* Each prospective officer of corporate applicants for an employment agency license must have had three years experience in the employment agency or related fields in the State of Florida.45 After filing an application,46 no person not named in the corporate application for a license may become an officer without written approval of the commission.47

**Criminal Law.** *Arrest without a warrant: Physical evidence.* A police officer may not arrest without a warrant48 on the basis of physical evidence, if he has not witnessed the accident.49

*Arrest without warrant: Sanitary code.* It is the duty of the sheriff, upon request from any agent of the Board, to assist in the enforcement of the state health laws and of the rules and regulations promulgated by the Board.50 It is also his duty to arrest any violator of the code, without warrant if the misdemeanor has been committed in his presence.51

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40. Carnagio v. State 143 So. 162 (Fla. 1932).
Gambling: Play money. A scheme whereby a patron, at the door, purchases a ticket for admission and is given "play" money to be used for gambling games, which "play" money is to be later used for auction bids for valuable prizes, nonetheless constitutes gambling and is illegal. The fact that no real money is used for the actual gambling does not eliminate the fact that consideration was paid at the door. The additional fact that the games and proceeds are for charity does not prevent the scheme from being illegal.

Immunity from Prosecution: Election laws. A witness, free of coercion, does not earn immunity from prosecution by freely divulging information concerning another's illegal activities. By law, only if one is compelled to testify, can he acquire immunity from prosecution resulting from his testimony, and the giving of the testimony will not act as a bar to prosecution under the election laws.

Raffles and Turkey Shoots: Legality. Generally, raffles, since they fall within the legal definition of both lotteries and gambling games, are prohibited by statute in Florida. On the other hand, turkey shoots and certain kinds of awards, such as door prizes where no consideration is paid by the participants, are legal.

Service of Subpoena: Deposit. When a witness subpoena is issued to the sheriff for service on behalf of a solvent defendant in a criminal case, the sheriff may demand that he receive a reasonable deposit on his fee before serving the subpoena.

Domestic Relations. Adoption: Records. Although a Florida Statute declares that all papers in an adoption proceeding are confidential, it was not the intention of the Legislature to prohibit access to those who have a legitimate interest in the files. Abstractors have a legitimate interest in an adoption proceeding if the title to real property depends on same. If a final decree has been handed down or the court has already impounded the records, the abstractor may have access to them only upon order of court.

Florida Taxation. Corporations: Capital stock tax. The Secretary of State, acting in his administrative capacity, may require a corporation to pay any capital stock tax owed to the state before allowing the corporation to dissolve.
Florida Militia: Bridge Tolls. Any vehicle, regardless of ownership, which is manned by a person belonging to the military forces of the State of Florida and by one who presents proper proof of that fact as prescribed by the Adjutant General, may have free toll over the toll bridges of Florida as long as the vehicle is being used to transport military personnel, stores and property.62

Homestead Benefits: County tax roll. After the county tax roll has been completed, equalized, extended, approved and delivered to the tax collector, no additional homestead benefits may be granted and entered thereon except as arising from the correction of omissions and commissions of the taxing officials.63

Intangible Personal Property Tax: Inter-American Trade Center Authority. Any and all bonds of the Authority, their transfer and the income from them shall remain at all times free from taxation within the State of Florida.64

Motor Vehicles: Licenses. Electrically propelled vehicles operated on public streets and roads must carry a license tag, and an operator of one of these vehicles must obtain a driver's license.65

Occupational license tax: Salesmen. Owners, agents, brokers or others who are engaged in "selling" tangible personal property must obtain an occupational license and pay a license tax.66 But, agents, salesmen or other employees of a manufacturing concern who merely solicit orders in counties outside of the county in which the company has its home office without power to close or complete the sale and subject always to acceptance or rejection by the home office, do not have to pay a license tax in the counties in which they solicit.67

Insurance. Fee Officers: Insurance coverage. The provisions of House Bill 1919 provides for more than one plan of insurance coverage for a fee officer and his employees. He may enter into a contract or contract with one or more insurers, to provide for any or all of the coverages on a group basis, mentioned in the bill. There must be no duplication as to any of the separately described coverages where more than one plan is involved.68

Insurance Companies: Substitution of securities. An insurance company, which has voluntarily deposited with the Insurance Commissioner a quantity of U. S. Treasury Bonds, may substitute therefor Puerto Rican bonds of the same quantity at par value, if they constitute general obligation value...
bonds of Puerto Rico, and if the U. S. bonds to be released do not exceed in present value the bonds deposited in their place.60

Workmen's Compensation: Coverage. Where Workmen's Compensation coverage is procured for employees of public officers of a county, the county is only liable for the premiums if the insurance was obtained with the knowledge and consent of the board of county commissioners.

Workmen's Compensation: Real estate salesmen. An employer-employee relationship exists between a broker and his salesmen,71 since the broker retains the right to order and control the salesmen in their work.72 Therefore, the salesmen are entitled to Workmen's Compensation.73

Municipal Corporations. Criminal Liability: Selling cigarettes to minors. The sale of cigarettes to minors is still prohibited by statute.74 A municipality is not criminally liable as a participant in selling cigarettes to minors when a minor buys them in a vending machine licensed by the municipality, since such licensing is authorized by statute.75

Liquor Licenses: Municipal control of package sales. The limitation of liquor package sales by city ordinance is proper, although the Supreme Court of Florida has stated that regulation of the method of sale is not within the statutes' scope.76 The establishment of zones for the making of package sales77 is not a regulation of method,78 but merely a restriction upon the location of package goods vendors licensed by law.79

Real Property. Granting of easements. An instrument which conveys an interest in land must contain the postoffice address of the grantee.80 An easement created by express grant is an interest in land and therefore an instrument creating an express easement must contain the post office address of the grantee.81

Statutory Law. County Judge: Fees. Service charges and fees of a county judge are set out in the Florida Statutes.82 Where a service is not covered by this statute reference should be made to Section 28.28, Florida Statutes, to determine the fee, if any, which can properly be charged.83
County School Board: Disposal of property. The Florida Statutes provide for a method of disposing of school "property." The legislature passed this act to safeguard school funds and assets. Consistent with this purpose, therefore, the act covers all property, real and personal.

Death Certificates: Validity of chiropractor’s signature. The signing of death certificates by chiropractors is permitted by statute and is therefore entirely within their province.

Elections: Registration. When a statute provides for a procedure of registration for a bond election or any other election, that procedure must be followed to the letter or the registration is invalid. Therefore, when the statute provides for the opening of special registration books 60 days prior to the election, the books may not be opened before that day.

Explosives Act: Application. Federal and State agencies, whose activities at times require the use of explosives, need not purchase a state license or blaster’s permit to use same since such agencies are not included within the regulatory provisions of the Explosive’s Act.


Financial Responsibility Law: Out of state drivers. When an automobile accident involves an out of state owner or operator, he must show within thirty days, during which time his automobile operating privileges are suspended, that he has complied with the Florida Financial Responsibility Statute. When one’s operating privileges are suspended, he loses the right to possess his car, and such right passes to the state.

Florida Militia: Retirement. When a member of the organized Florida Militia elects to retire, his retirement pay must be reduced by any other retirement income he receives from the State of Florida or the government of the United States.

88. State v. Sumter County Commissioners, 20 Fla. 859 (1884).
Government Employees: Benefits. A surviving spouse receiving benefits98 as a result of her husband's employment with State or County, may be employed by the State or County without losing said benefits.99

License to Sell Food: Country clubs. "Any place maintained and operated as a place where food is regularly prepared and sold for immediate consumption on or in the vicinity of the premises . . . shall be licensed as a public food service establishment."100 An exception to this rule allows for "fraternal organizations" to dispense food without a license from the Hotel and Restaurant Commission, because of their altruistic and charitable motives, which qualifications a country club does not meet.101

Massage: Use of mechanical apparatus. One who administers body massage with vibrating electrical apparatus is engaged in the practice of massage within the meaning of the applicable Florida Statutes.102

Non-Profit Organizations: Permit to solicit. By statute103 no non-profit corporation, organization or association is permitted to solicit funds or anything else of value for charitable purposes in any Florida county without first obtaining a permit. Selling admittance tickets to entertainments or advertising space in programs, where all the proceeds go to charity, is within the purview of this Act. Also included in the scope of the Act are situations where non-profit charitable organizations solicit funds for building purposes, even though the solicitation is confined entirely to the organization's members.104

Political Campaign Advertising: Qualifications of periodicals. No candidate or person acting in behalf of a candidate may use for political advertising any periodical which is not legally qualified for such use so long as it resembles or is similar to a newspaper.105 This prohibition does not extend to theatre or convention programs, magazines or periodicals, or occasional printed matter which in themselves do not resemble newspapers and are not capable of qualification.106

Political Conventions: Filing of delegates' reports. Delegates to national conventions are required to file campaign contributions and expense reports.107

Retired Teachers' Benefits: Holding of public office. The holding of public office is not "employment" within the meaning of the statute con-

98. LAWS OF FLA. c. 29901 (1955).
100. FLA. STAT. § 511.02, as amended by § 6 c. 29821, LAWS OF FLA. (1955).
102. FLA. STAT. § 480.01 (1955); Op. ATT'Y GEN. 055-295 (Nov. 3, 1955).
103. LAWS OF FLA. c. 29902 (1955).

ferring benefits upon retired teachers.\textsuperscript{108} Therefore, one who is receiving benefits under that act may hold office in the State Legislature or serve upon the County Board of Public Instruction without forfeiting his benefits.\textsuperscript{109}

**Service of Process: Registered mail.** Where service upon a nonresident defendant is required, under a statute,\textsuperscript{110} to be made by registered mail, no other method of service can be used.\textsuperscript{111}

**Trusts and Succession.** *Florida Banks and Trust Companies: Trust agreements.* As a general rule, banks and trust companies in Florida may not purchase or deal in their own capital stock. A Florida banking corporation with trust powers may not purchase and hold title to its own capital stock even as trustee for another unless expressly directed to do so in the trust agreement.\textsuperscript{112} Should the bank deal in its own shares without authorization, it may be held liable for any loss occurring by reason of such dealing.\textsuperscript{113}

**Wills: Construction.** Testator bequeathed a fund to be used exclusively for the support of Florida State University. The income from this fund cannot be used to finance a general survey of higher education in Florida even though the survey would incidentally benefit Florida State University as well as the other colleges throughout the state.\textsuperscript{114}

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\textsuperscript{108} FLA. STAT. 238.81 (1955); State ex rel Clyett v. Hocker, 39 Fla. 477, 22 So. 721 (1897).
\textsuperscript{109} Op. ATT’Y GEN. 056-45 (Feb. 16, 1956).
\textsuperscript{110} FLA. STAT. § 47.30 (1955).
\textsuperscript{112} 9 C.J.S. 359 § 166.
\textsuperscript{113} FLA. STAT. § 660.01(8) (1955).
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