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Summary of Attorney General's Opinions

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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

Administrative Law. Board of Commissioners of State Institutions: Hunting and fishing rights on Indian reservations. Under the laws of Florida the Seminole reservations are held in trust and therefore the Indians have the exclusive beneficial use, including hunting and fishing rights. It is the duty of the Board of Commissioners of State Institutions to exclude all others from the reservations. Since the duties of the Board are more policy making than ministerial, they may be delegated, where appropriate, to the Game and Fresh Water Fish Commission, which is in a better position to administer them.

Board of Public Instruction: School-bus driver contracts. There is nothing in the statutes that prohibits or makes it mandatory for a school board to contract for the exclusive services of a school bus driver and his equipment. An independent contractor who transports school children under contract with a county school board may enter into other transportation contracts so long as the contracts do not interfere with each other. The advisability of such contracts is left to the sound discretion of the county school board.

Game and Fresh Water Fish Commission: Authority of conservation agents. Conservation agents have the authority to enforce the game and fish laws and to arrest for probable cause without warrant. Since a violation of the fish and game laws is a misdemeanor, the agent may use such force as is usually authorized in making arrests for misdemeanors. In addition they may search and seize without warrant upon probable cause, but it should be noted that the question of probable cause is a judicial one, and the agent is therefore required to act most prudently.

Hotel and Restaurant Commissioner: Suspending of license for sales tax law violation. The Hotel and Restaurant Commissioner cannot revoke


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or suspend the license of an establishment because of the licensee’s failure to comply with the Sales Tax Law. The role of the Commissioner in relation to the tax is merely a passive one. That is, to supply the appropriate information to the Comptroller, and to refuse to issue a license to a business that has not obtained a certificate of registration from the Comptroller.

Pensions and War Veterans: Florida Merit System. There is nothing in the Florida Merit System that would require a disabled veteran to reveal the nature of his disability. It is only necessary that he establish the fact of his disability in the manner provided for by law. The System is not compelled to approve a veteran for employment if his disability would interfere with the particular type of employment that he is seeking. Therefore, it would appear that this type of information would have to be obtained from the application for a specific position.

State Beverage Department: Liquor licenses. Liquor licenses may be issued under the exception law since it is felt that the liquor business is a mere incident to the main business of the hotel or restaurant. However, when the hotel or restaurant is closed, the bar cannot operate separately and independently.


Since the terms of the new legislators begin on the day following their election, their compensation would begin on that date. However, this compensation would not be paid unless and until they have qualified as members of the legislature, at which time they would be paid their salary as of the date of their election.

Since the members of the legislature now receive monthly compensation, they are full time employees under the State Officers and Employees Retirement Act.

The compensation that the Acting Governor receives is for the additional duties that he performs. Since he retains his office as a legislator, and performs the functions of both offices, he should receive the compensation for both offices.

Members of the legislature may be employed by the State or any of its agencies, but may not hold another state or county office.\textsuperscript{16}

\textbf{Criminal Law. Bail bonds: Forfeiture.} A bail jumper who forfeits his bond by reason of non-appearance is subject to prosecution regardless of whether the bond is one executed by a surety or a cash bond.\textsuperscript{17}

\textbf{Criminal trespass: Parking in private lots.} Where a private parking lot is marked as such it is a trespass to use it without the consent of the owner. The Florida Statute\textsuperscript{18} requires that the trespass be “malicious” and “mischievous.” Under ordinary circumstances one parking in a private lot would be guilty of a criminal trespass, but individual circumstances may vitiate the intent elements.\textsuperscript{19}

\textbf{Elections. Write-in votes.} A valid vote for a write-in candidate on the general election ballot requires that the voter place an “X” mark in the blank space on the ballot following the name of the candidate written in by the voter.\textsuperscript{20}

\textbf{Estates of Decedents. Order of administration unnecessary.} When an order of administration unnecessary is entered by the county judge, it has the effect of vesting title \textit{eo instante} in any assignees of properties of the decedent.\textsuperscript{21}

\textbf{Landlord and Tenant. Lien and ejection for unpaid rent.} Florida law\textsuperscript{22} authorizes a lien in favor of hotel and apartment house keepers upon the chattels and goods of the guest or tenant within the rented premises, for failure to pay for his lodgings. Ejectment of such person is authorized and the method is discretionary. Padlocking the apartment or room of the delinquent tenant constitutes a lawful lien upon the property therein and effectively ejects the tenant by a reasonable method.\textsuperscript{23}

\textbf{Motor Vehicles. Title certificates.} Florida law\textsuperscript{24} provides that the sale of a motor vehicle must be accompanied by the delivery to the purchaser of the title certificate thereto. It is also provided that, for the purposes of the act, a house trailer drawn by a motor vehicle, is included in the term “motor vehicle.”\textsuperscript{25} Therefore, a trailer that is not or has not been drawn by a motor vehicle, is not within the definition.\textsuperscript{26}

\begin{enumerate}
\item[] 18. Fla. Stat. § 821.18.
\item[] 22. Fla. Stat. §§ 85.18, 85.19.
\item[] 24. Fla. Stat. §§ 319.21, 319.34.
\item[] 25. Fla. Stat. § 319.20.
\end{enumerate}
Municipal Corporations. Liquor licenses: Transfer fee. A city cannot charge any fee for the transfer of a liquor license.  

Mayor as judge. All municipal corporations in the State of Florida have a "mayor's court." This court is created by the legislature and its judicial authority is vested in the mayor of the particular municipality. No provision is found in the general laws for the divestment of this authority, and therefore pending action by the legislature, no judges may be appointed to this court.

Real Property. Jetties. Any kind of structure which is built out into a sea, lake or river and which effectively influences the currents or tides is a jetty. If such a structure does not effectively serve this purpose then it is not a jetty.

Taxation. Documentary tax. A written agreement between a bank and a corporation wherein the bank agrees to lend and the corporation to borrow money, which does not in itself constitute an obligation to pay any money, is not taxable under the documentary tax statute.

Homestead and exemptions: Liability of homestead property for municipal bonded indebtedness. Homestead property annexed by a municipality does not become liable to ad valorem taxation for pre-existing bonded indebtedness nor for the maintenance of municipal improvements.

License taxes: Professional bondsmen. Professional bondsmen must be licensed under the law requiring licenses for those acting as sureties for bail bonds. Those who issue bonds on their own account are licensed and taxed under the general law, while those acting as agents for companies are subject to license taxes as insurance agents or solicitors.

Tax exemption status. The property of all corporations is subject to taxation unless it is used exclusively for religious, scientific, municipal, educational, literary, or charitable purposes. The use of the property is the criterion for determining its tax status. Up to 75% of the

33. Fla. Stat. § 903.11.
property may be rented and still be tax exempt, provided the property is used for one or more of the above stated purposes.\(^{38}\)

**Tax deed sale: Invalid certificate.** The refund of taxes paid for an invalid tax sale certificate is a matter of legislative grace and not a matter of right.\(^{39}\) Upon the cancellation of the certificate, in accordance with law,\(^{40}\) the amount paid for the certificate and the taxes is refundable as provided for. However, there is no provision for refunding the amounts advanced for costs that have been incurred or paid. Any unused funds so advanced, may be refunded.\(^{41}\)

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38. FLA. STAT. § 192.06 subsec. 3; Op. ATT’Y GEN. 054-226 (Sept. 24, 1954).
39. 84 C. J. S. 1263, § 631.
40. FLA. STAT. §§ 194.35, et seq.