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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

Administrative Law. Competitive bids: Use of brand names. Where only the commodity manufactured by a particular manufacturer will meet the needs for which such item is to be used, the brand name may be used in advertising therefor.¹

County employee retirement. Workers employed by a county officer, board, or agency and paid on an hourly basis for work done, are not such county officers and employees as to be within the purview of the county officers and employees retirement system.²

Florida Securities Commission: Sale of securities. The Securities Commission may require that an investment company, before it can qualify its securities for sale in Florida, possess sufficient liquid assets to ensure that securities sold by it do not constitute constructive fraud upon the public. The amount of security required in each instance is to be determined by the commission from the particular circumstances.³

Florida State Racing Commission. The statute specifically forbids the hiring of any party who has been convicted of a felony.⁴ Therefore, no discretion is left to the Florida State Racing Commission to mitigate circumstances for employment of one who has been so convicted.⁵

Game and Fresh Water Fish Commission. The Commission has authority⁶ to enter into cooperative agreements with the United States Forest Service for wild-life projects on United States forest lands in Florida, without obtaining the consent of the Board of County Commissioners of the county in which the forest lands lie.⁷

Hotel and Restaurant Commission: Guest registration. The Hotel and Restaurant Commissioner is required to carry out all laws relating to inspection and also to make all rules and regulations necessary to

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¹This issue of the Summary contains those opinions of general or public interest from Op. ATT'Y GEN. 053-248 Sept. 22, 1953, through 054-65 March 17, 1954.

²The Summary of Opinions was prepared for publication by Milton S. Marcus to Op. ATT'Y GEN. 054-04, by F. Stewart Elliott from 054-5 to 054-65, and was edited by Lawrence J. Meyer. We are grateful to Hon. Richard W. Ervin, Attorney General of the State of Florida, for supplying copies of these opinions.


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carry out the true intent of the law. The commissioner can demand within his authority to regulate, that hotels and motels require all guests to register and to keep said register for a reasonable time thereafter.

Hotel and Restaurant Commission: Investigation. The Hotel and Restaurant Commissioner is not empowered to investigate whether effected businesses are actually offering accommodations at the advertised rates. It can only enforce compliance with statutory requirements as to the content of such advertising by exercise of its power to revoke the license of an operator for violations of the statute.

Hotel and Restaurant Commission: License requirement. An establishment offering accommodations and dining facilities to a particular group, as distinguished from the general public, is not within the statutory definition of “hotel,” “rooming house” or “restaurant” and need not be licensed as such.

Hotel and Restaurant Commission: Rooming house-nursing home. A rooming house becomes a nursing home when the management undertakes to provide maintenance, personal care or nursing for two or more persons unable to care for themselves. The distinction is based on care for the room as opposed to care for the person.

Motor Vehicles Commissioner: Non-resident license requirements. To compel purchase of a Florida motor vehicle license by a non-resident civilian, it must be shown that the primary use of the vehicle is by a resident, or by a person employed in Florida, or by one whose children are enrolled in Florida schools; and that use of an out of state license is designed to circumvent Florida licensing laws.

State Anatomical Board: Loan of cadaver. The Anatomical Board is not authorized to furnish a cadaver to be used in a school of nursing as such school is neither a “medical or dental school” nor “teaching hospital” within the meaning of the statute.

State Purchasing Commission: Competitive bids. The provisions of Chapter 28056 requiring competitive bids for state purchases of over one thousand dollars apply to all purchases not excepted therefrom, and establish minimum requirements except where such application would defeat the purposes of a valid statute.

State Purchasing Commission: Competitive bids. The requirement that "competitive bids" be received contemplates more than one bid and is not met unless two or more bids are received.20

State Tuberculosis Board: Residence. Time spent by a state resident in a state tuberculosis hospital is included in determining whether such patient comes within the terms of the statute entitling residents to hospitalization.21

Courts. Clerk of the circuit court: Fees. When property is taken under eminent domain proceedings and the petitioners deposit double the appraised value in the register of the court, the clerk of the court is entitled to such fees and commissions so provided for by statute.22

Foreclosure of mortgage fees. The clerk of the circuit court is entitled to the fee of five dollars and no more for the duties performed in the foreclosure of a mortgage. This includes all acts in regard to said foreclosure.23

Foreclosure sales. The clerk of the circuit court is the prescribed party to sell foreclosed property, issue certificate of sale, and distribute the proceeds.24

Certificate of title shall be recorded in the Chancery Order Book and indexed in the general index of the county under the name of the purchaser.25

Criminal Law. Bail bonds: Defendant's attorney as agent. An attorney cannot sign bail bonds as agent for a surety company and still represent the person on whose bond he is surety at trial.26

Fine and cash bonds: Constables. Fines imposed by justices of the peace and county judges' courts may not be paid to a constable, but should be paid to the justice, judge or sheriff.27

Where a constable has properly taken a cash appearance bond he may hold it until it is demanded by the court. The court will then deposit it in the county fine and forfeiture fund.28 Although a constable collects and deposits fines to the fine and forfeiture fund he is not entitled to a five per cent commission thereon unless authorized by law to so collect and deposit.29

Jail sentence: Commutation. A prisoner is granted the right to gain time for good conduct without regard to whether the sentence being served is the minimum penalty imposed by law for the offense.\textsuperscript{31}

Trespassing. When land is not posted as required by statute, hunters will not be prosecuted for trespassing.\textsuperscript{32}

Witnesses: Aid of counsel. A witness is not entitled to have the aid of counsel when testifying before a county solicitor.\textsuperscript{33}

Elections. Candidates: Requirements. Candidates for election to membership on county, state, and national party executive committees and candidates for election as delegates to national party conventions should file reports and comply with the conditions of the statute as “candidates for political office.” The statute also applies to candidates for election to a county hospital board.\textsuperscript{34}

Election of party delegates. Each political party which cast twenty percent of the total votes cast for governor in the last election shall elect delegates to the national convention.\textsuperscript{35} The words “in the last election” mean the last general election at which a governor is elected for any term, regardless of the length. Therefore, the election in November 1954 to fill the unexpired term of the late governor is within the purview of the statute.\textsuperscript{36}

Presidential Electors. A change of legal residence by a member of the County Party Executive Committee, from the precinct in which he was elected to another precinct, results in the vacancy of the committee office in such person.\textsuperscript{37} However, such officer may convene a lawful meeting of the committee by signing the notice of meeting with all other duly elected and functioning officers of the committee.\textsuperscript{38}

Term of office: Political party committee members. The four year term of office provided for political party county executive committee members\textsuperscript{39} may not be varied by a committee change of its constitution fixing a different term of office for its members.\textsuperscript{40}

Time for closing registration books. Registration books will be closed 30 days preceding the election date irrespective of the fact that the day may be a Sunday.\textsuperscript{41}

\textsuperscript{31} FLA. STAT. § 954.06 (1951), as amended, Fla. Laws 1953, c. 28300; Op. ATT’Y GEN. 053-316 (Nov. 25, 1953).
\textsuperscript{32} FLA. STAT. § 588.10 (1953); Op. ATT’Y GEN. 054-61 (Mar. 11, 1954).
\textsuperscript{34} FLA. STAT. § 99.161 (1951); Op. ATT’Y GEN. 053-333 (Dec. 18, 1953).
\textsuperscript{35} FLA. STAT. § 103.101 (1)(2) (1953).
\textsuperscript{36} Op. ATT’Y GEN. 054-10 (Jan. 21, 1954).
\textsuperscript{38} Op. ATT’Y GEN. 053-248 (Sept. 28, 1953).
\textsuperscript{39} FLA. STAT. §§ 103.111, 103.121 (1951), as amended, Fla. Laws 1953, c. 28156, §§ 40, 41.
\textsuperscript{40} Op. ATT’Y GEN. 053-249 (Sept. 22, 1953).
\textsuperscript{41} FLA. STAT. §§ 98.011 and 98.051 (1953); Op. ATT’Y GEN. 054-66 (Mar. 17, 1954).
EVIDENCE. Prima facie: Alcoholic Beverage Federal Tax Stamp. The possession of an Alcoholic Beverage Federal Tax Stamp issued by the internal revenue authorities is prima facie evidence that the possessor is a dealer in intoxicants. This statute is applicable to wet counties as well as dry counties.42

FLORIDA. County bureaus and departments: Commissions. Commissions for assessing and collecting intangible personal property taxes,43 state licenses,44 and motor vehicle license fees45 are income of the office and not separate income of the officer.

The fees and commissions therein contemplated become a part of the income of the office and should be disposed of as such.46

County commissioners: Investment of surplus public funds. By statute, the county commissioners are empowered "...to invest and reinvest any surplus public funds in their control or possession in negotiable, direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by the United States government at the then prevailing market price for such security."47

Shares of both savings and loan, and building and loan associations are neither negotiable nor fully secured by the government, therefore are not within the purview of this statute.48

County hospitals: Extensions and improvements. Upon the proper vote of the people of the county, state funds may be used to improve existing hospitals. Local acts providing for improvement do not have to be in complete agreement with legislative enactments. An election to put forth a bond issue is the proper legal action, and special legislation is unnecessary.49

County tax assessor: Compensation. The tax assessor's compensation is based on the amount of money received by his office and not on the amount earned.50

Deposits of state monies: Excess collateral. Excess collateral pledged by a bank to the state treasurer for the deposit of state monies51 cannot be used also as security for deposits of state agencies, boards, bureaus, etc.52

Highways: Four wheel trailers. It is illegal to operate a four wheel

43. Fla. Stat. § 199.06 (1953).
47. Fla. Stat. § 125.31 (1953).
trailer weighing more than sixteen thousand pounds and equipped with pneumatic tires on the public highway.\textsuperscript{53}

**Officers: Deputy sheriff.** A deputy sheriff is within the provisions of the statute\textsuperscript{54} prohibiting a sheriff and other designated employees and officers from engaging in or being in any way connected with the sale or distribution of alcoholic beverages. Although not technically a public officer, a deputy is considered the alter ego of the sheriff.\textsuperscript{55}

**Officers: Sheriffs.** The Florida Constitution\textsuperscript{56} does not prohibit a sheriff or deputy from holding an appointment as Deputy United States Marshal, as the latter is a mere appointee subject to removal by the United States Marshal, and so does not hold office under the government of the United States.\textsuperscript{57}

**Gaming. Lottery law violations: Pinball machines.** It is illegal for the proprietor of a coin-operated pinball machine to allow minors to operate the machine if it dispenses free games to the player on the basis of score. It is lawful to allow minors to use such machines for amusement only if free games, prizes or rewards are not dispensed.\textsuperscript{58}

**Infants. Driver's license: Suspension.** The Department of Public Safety is authorized to suspend a driver's license without a preliminary hearing.\textsuperscript{59} An infant's license may be suspended without bringing the infant before the Juvenile Court as such suspension is not considered punitive.\textsuperscript{60}

**Insurance. Agents: Officers and employees of insurance companies.** Officers and employees of a casualty or fire insurance company, with the exception of service representatives, may be licensed as the insurance agents of such company or as the agents of a casualty or fire insurance company with which they are not so affiliated.\textsuperscript{61}

**Business of insurance: Limited membership benefit program.** A benefit program, limited to "firms" engaged in a particular kind of business, providing for payments to the survivors of a deceased member of a "firm" by the trustees of a fund made up of contributions which are a prerequisite to membership, constitutes the business of insurance. That no policy or certificate is issued is not determinative as contractual rights are created when the program is put into operation.\textsuperscript{62}

**Licenses: Partnership agency.** All members of a partnership operating

\textsuperscript{54} Fla. Stat. § 561.25 (1951).
\textsuperscript{56} Fla. Const. Art. XVI, § 15.
\textsuperscript{59} Fla. Stat. §§ 322.16, 322.27 (1951).
an insurance agency and sharing in commissions received for business are not required to be licensed as agents. However, only licensed agents may solicit, negotiate and effect contracts of insurance.\textsuperscript{63}

\textit{Registration of securities.} A Florida insurer, not selling securities in Florida or to residents of Florida, need not register such securities under the act regulating sale of securities.\textsuperscript{64} Nor need the insurer register as a "dealer" for such sale of its securities in a foreign state, as an extra-territorial effect will not be given to a statute by implication.\textsuperscript{65}

\textit{Term care contracts: Church home for the aged.} A church sponsored non-profit corporation providing board and lodgings to aged persons for life on payment of a sum based on life expectancy and an estimate of future expenses (any deficit to be met by the church) is not within the statute regulating the business of providing care for a period of years or for life.\textsuperscript{66}

\textit{University teaching staff: Laboratory hazards.} Instructors are not liable for injuries to students unless they are negligent in supervising the conduct of the students. State funds may not be used to pay insurance premiums on non-existent state liability. As a safety practice, insurance might be bought with premiums paid by the instructor, as it is his liability the policy will be covering.

A plan might be devised to cover the student by insurance premiums being paid out of the laboratory fee that the student pays.\textsuperscript{67}

\textbf{LANDLORD AND TENANT. \textit{Termination of lease: Government agency as lessee.}} The performance of a lease by the Florida Industrial Commission depends on the availability of federal funds for that purpose. The legal authority of the commission to pay such lease rental, and its liability therefore, ceases when the office maintained on the leased premises is discontinued in accordance with the duty of the commission.\textsuperscript{68}

\textit{Licenses. \textit{Hunting and fishing: Residence requirements.}} A resident, for purpose of hunting and fishing license application, is a party who has located in this state with a bona fide intention of living at a fixed place of abode indefinitely and is so located for a period of six months prior to application.\textsuperscript{69}

\textit{Liquor license transfer fees.} County tax collectors may require a beverage license transfer fee\textsuperscript{70} only when there has been a bona fide sale of the business in accordance with statutory provisions.\textsuperscript{71}

\textsuperscript{64} Fla. Stat. c. 517 (1951).
\textsuperscript{70} Fla. Stat. § 561.32 (1951), as amended, Fla. Laws 1953, c. 28123.
Occupational tax: Grapho analyst. Graphology being the divination of mental and physical peculiarities by inspection of a person's handwriting, a grapho analyst is a "character reader" within the purview of the licensing statute and so is subject to a licensing tax.

State Board of Conservation: Veteran's exemptions. The Salt Water Fisheries and Conservation Act contemplates no exemption from licensing requirements because of age, disability, veteran, or other status.

Municipal Corporations. Appropriations: Volunteer fire department. The appropriation of municipal funds for a volunteer fire department does not contravene the Florida Constitution provided the association has no claim or interest therein, but only the use thereof. It is difficult to visualize a situation where a city can render greater service to its citizens than by protection from fire.

Bondsmen: Concurring regulation. A city may regulate an occupation also regulated by the state licensing professional bondsmen provided the city regulation is not inconsistent with, or repugnant to, that of the state.

Employees: Military service. A city is required to pay an employee his full salary, regardless of any other income or compensation he receives from other sources, during periods of leave for military service as within the provisions of the act.

Ordinance: Conflict with statute. A city can pass regulations governing the conduct and operation of pool halls. However, when such regulations conflict with a general legislative enactment the city ordinance must fall.

Taxing power: Telegraph service. A municipality may levy a tax on each purchase of a telegraph service within its corporate limits.

Schools and education: Deposits of funds. When funds exempted from deposit in the state treasury are deposited in private banks, the collateral securing such deposits shall be pledged to the state treasurer.

Taxation. Alcoholic beverage: Distiller's fee. The actual manufacturer or distiller, whether or not he is licensed to do business in this state is

74. Fla. Laws 1953, c. 28145, §§ 6, 7.
77. Fla. Const. Art. 9, § 10.
79. Fla. Laws 1953, c. 28153.
required, under the state's police powers, to pay a registration fee to sell said product within the state.87

**Conveyancing taxes: Corporate dissolution.** The documentary stamp statute88 does not apply where there is no actual monetary consideration or where there is no consideration with reasonably determinable value. Therefore, real property distributed to a corporate stockholder (pro rata, and in exchange for, stockholdings) in a corporate dissolution is not subject to the stamp tax.89

**Documentary stamp tax: Conveyance of interest in real property.** A stamp tax is computed on the monetary consideration transferred for the conveyance of property90 when the consideration is love and affection, the grantee is not a purchaser nor is there any transfer of monetary consideration upon which to compute the tax.91

**Documentary stamp tax: Conveyance of real property.** Real property conveyed to a "straw" corporation, then conveyed to the original grantor without consideration passing either time is not subject to the documentary stamp tax because it lacks the element of a pecuniary consideration.92

**Documentary stamp tax: Loan agreements.** The statute providing for a tax on written obligations to pay money83 does not apply to the agreement or contract of a bank to make further loans to a corporation. However, the taxing statute does apply to the instrument given the bank when advances are made in accordance with the contract.94

**Exemptions: Widows and disabled persons.** A person qualifying as both a widow and a disabled person85 is entitled to both exemptions. The constitution contemplates an exemption for each disability.96

**Homestead exemption: Long term lease.** To be entitled to homestead tax exemption, a person must have "the legal title or beneficial title in equity to real property" within the state.87 A long term lease, being personal property, cannot serve as basis for the exemption.98

**Homestead exemption: Municipal tax day.** The tax year runs from the day fixed by law as the tax day of a municipality, and that date determines questions of taxability or tax exemption.

Persons establishing homesteads in a municipality prior to its tax day

90. Fla. Stat. § 201.02 (1953).
should be permitted to file for exemption directly with the municipal tax assessor during the time allowed for the filing of tax returns with him.99

Intangible personal property. A promissory note that is taken for the balance of the purchase price of real property is a mortgage lien.100 The note so held as a lien is subject to the intangible personal property tax.101

Intangible personal property: Accounts receivable. Accounts receivable owed to professional persons for professional services are not income and are not distinguishable from the accounts receivable of a merchant. They are subject to assessment as intangible property.102

Occupational license taxes. Persons who are licensed and pay a fee as insurance adjusters103 are also liable for the payment of an occupational license.104

State gasoline tax: Exemption for bulb farming. The actual growing and cultivating of nursery plants, bulbs and the like for replanting have generally fallen under the classification of agriculture. Therefore, gasoline used in the operation of tractors and other farm equipment are exempt from the state gasoline tax.105

State occupational license tax: Television station. A state occupational license is required only of those doing business intrastate. A television station which televises interstate as well as intrastate will not be subject to the license tax.106

ZONING. Municipalities: State parks. A state park located wholly within the boundaries of a municipality is subject to the valid zoning regulations of that municipality.107

100. FLA. CONST. Art. IX, § 1; FLA. STAT. § 199.02 (1953); Wilson v. Davis, 80 Fla. 727, 86 So. 686 (1920).
102. FLA. STAT. c. 199 (1951); Op. ATT'Y Gen. 053-301 (Nov. 5, 1953).