SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*


ADMINISTRATIVE LAW. Citrus Commission: Tax exemptions. The Florida Citrus Commission, as an agency of the state government, supported by and authorized to spend state tax funds, is exempt from the payment of federal taxes on its telephone bill, as is any other state governmental agency.

County tax assessor: Authority. A county tax assessor, in absence of approval of the board of county commissioners, may not contract for public liability insurance at public expense for automobiles owned by him or other employees in the office, although such vehicles are used in the performance of their duties.

Housing authority bonds: Deposit security. Housing authority bonds, after compliance with statute, are eligible to secure bank deposits made by the State Treasurer.

Soil Conservation Board: Election. In the election of supervisors, it is the duty of the State Soil Conservation Board to determine the eligibility of voters and supervisors.

A supervisor of the State Soil Conservation Act may be elected by "write-in" votes.

Soil Conservation Board: Insurance on rental equipment. The renting of machinery by a District Soil Conservation Board may create liability for bodily injury or property damage incurred during transportation or operation where the rented machinery or equipment is defective. To protect itself, the board may obtain reasonable liability insurance.

Soil Conservation Board: Qualifications of supervisors. The Soil Con-

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*This issue of the Summary was prepared for publication by Edith Broida and edited by Lewis L. Cosor. We are grateful to Hon. Richard W. Ervin, Attorney General of the State of Florida, for supplying copies of these opinions.

servation Act does not require that a supervisor be a qualified elector, but he should be a resident of the district.11

State employees retirement system. Officers and employees of a county having a retirement system are not required to become members of the State County Officers and Employees Retirement System.12

State Livestock Sanitary Board: Quarantine regulations. The State Livestock Sanitary Board is authorized18 to quarantine hogs which have been fed raw garbage, if upon investigation and research it is determined that such feeding will result in disease.14

State Livestock Sanitary Board: Inspectors' overtime. Slaughter house or meat packing establishments may not pay state inspectors directly for overtime services,18 although such expenses shall be defrayed by them. However, the State Livestock Sanitary Board may contract with such establishments for payment to the Board of the necessary expenses.16

Corporations. Insurance: Stock increase. A domestic insurance company with $100,000 par value paid-in capital stock may amend its charter to authorize the issuance of $200,000 par value preferred stock, but such par value shall not exceed two-thirds of the actual paid-in capital when such preferred stock is issued.17

Counties. Budget: Unanticipated revenue. Unanticipated funds received from race track receipts, collection of ad valorem taxes and the sale of county lands, after the adoption of the county annual budget, may by amendment be added to the budget for proper budgeting and expenditure.18

Buildings: Use. Although county buildings may not be used for operating a private enterprise, common sense dictates that the needs of the public are served by the installation of a public telephone which does not interfere with the use of the building.19

Criminal Law. Amendment of sentence. Generally, the trial court's jurisdiction ceases when the defendant begins to serve a sentence, except for the enforcement of same, or in a case of necessity. However, at the instance of, or with the consent of the defendant, given during the term in which the sentence is imposed, the trial court can amend the original sentence to include the time spent in the county jail awaiting trial.20

Child Molester Law: Parole. Since under the Child Molester Law21 a person sentenced to prison shall not be paroled, such person may follow one of three courses: (1) attack the constitutionality of the statute and

then apply to the Parole Commission; (2) apply to the Pardon Board for a pardon; or (3) serve his sentence.  

**Desertion of illegitimate children.** The statute punishing desertion or non-support of wife or children does not apply to illegitimate children, since it makes no specific reference to them.

**Larceny: Revised statute.** A general statute covering the whole subject matter of an earlier act is intended as a repeal of the earlier act although no express words of repeal are used. The new statute dealing with grand and petit larceny, therefore, repeals the old.

**Lotteries.** Providing a “free chance” to win an automobile at an American Legion Convention in Florida constitutes a lottery. Necessary elements of a lottery are (1) a chance, (2) a prize, and (3) consideration. The inducement to attend and payment of the admission price constitute the consideration. The transaction is therefore illegal.

A business scheme whereby coupons would be sold for $1 to be redeemed by a $10 merchandise card with a further payment of $3 is illegal as a lottery and a public nuisance.

**Procedure: Capias.** Where an arrest for a violation of the traffic laws is made by a highway patrolman, and a bond requiring such person's appearance before the proper tribunal is accepted, a capias for the arrest for such person will be issued by the clerk only when so directed by the judge or prosecuting attorney after an information or indictment is filed against such person, and he is not in custody, or at large on bail for the offense charged. Upon failure to appear, and if the county solicitor desires to prosecute, a capias must be issued directing the sheriff to bring him before the court.

**Voluntary witness: Compensation.** A witness who voluntarily attends a criminal hearing and whose testimony is necessary for a proper presentation of the state's case is entitled to the mileage compensation he would have received had a subpoena been properly served.

**Education. Teachers' retirement: Application.** In order for a teacher to receive a retirement benefit check for the first full calendar month following termination of services, application for retirement must be filed at least

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30. Fla. Stat. § 823.01 (1951); Op. Att'y Gen. 053-46 (Feb. 27, 1953). (For details of the scheme we recommend that the Opinion of the Attorney General be consulted).
thirty and not more than ninety days before the date selected for retirement. The board must act within ninety days from receipt of application, but retirement cannot take effect sooner than thirty days from receipt.28

Where teachers' services terminate in June, application should be on file by June 1 to receive a benefit check for the month of July on the last day of July.28

**FAMILY LAW. Bastardy: Constructive service.** A suit to establish paternity may be brought by constructive service since it is a proceeding in chancery.29

**FLORIDA ELECTIONS. Electors: Criminal conviction.** An individual convicted of petit larceny by a court of any state is not entitled to vote in Florida.30

*Prior vote in another state.* An individual who has voted in another state less than a year prior to application for registration to vote in Florida cannot meet the residence requirements unless it is established that he has been a resident of Florida for the requisite period, thereby making his prior vote in the other state illegal.31

*Qualification.* To become a qualified elector in Florida legal residence must be maintained in the state continuously for at least one year prior to registration, six months of which must be spent in continuous residence in the county in which registration is desired.32

**INSURANCE. Bail bonding service.** The bonding operations of an incorporated bail bonding company come under the jurisdiction of the office of the Insurance Commissioner33 although the bonding services are offered only to those persons who are required by a particular municipal court to produce them.34

*Bonds: Refunds of excess deposit.* Florida requires each foreign insurance company to deposit with the Insurance Commissioner $20,000 in bonds.35 As an added protection to the policy holders, and to forego the filing of an annual statement, the Commissioner accepted $50,000. The excess amount, ($30,000), may be returned to the company after one year's satisfactory operation and upon fulfillment of the conditions imposed by the Insurance Commissioner.36

*Dividends assigned to company.* A foreign mutual insurance company may not lawfully37 issue a policy covering physical damage to an automobile

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34. *Fla. Stat. cc. 648, 649 (1951).*


36. *Fla. Stat. § 631.06 (1951).*


38. *Fla. Stat. c. 630 (1951).*
where the insured assigns to the company any payments or dividends payable therefrom to the insured.\textsuperscript{46}

\textit{Fraternal.} Members of a fraternal association wishing to contribute to a claims fund to be used to pay for damages sustained by their vessels, and to subscribe to re-insurance to cover losses incurred after exhaustion of this fund, come within the purview of the insurance laws of Florida.\textsuperscript{47}

\textit{Non-admitted insurer: Process.} An insurer or beneficiary seeking to litigate a claim against Lloyds of London, an unauthorized insurer,\textsuperscript{48} may secure service of process by the method described in the policy, but not in contravention of the statute;\textsuperscript{49} or by insurer entering a general appearance as prescribed by law.\textsuperscript{50}

\textbf{JUDICIAL ADMINISTRATION. Justice of Peace: Employees.} Clerks and employees of justices of the peace and constables, when employed in connection with the operation and performance of the official duties of such offices, are within the purview of the County Officers and Employees Retirement System.\textsuperscript{51}

\textbf{LICENSES. Liquor licenses: Hotels.} A hotel licensed to sell intoxicating liquors\textsuperscript{52} may dispense them from another room in a different section of the building without procuring another license when this is incidental to the operation of the main business.\textsuperscript{53}

\textit{Masseur: Itinerant practice.} A licensed masseur is required\textsuperscript{54} either to have an established place of business, or to be employed by such an establishment, and may make outside professional visits from such establishment.\textsuperscript{55}

\textbf{Occupational: Veterans.} A county tax collector may not issue a tax exempt occupational license to a disabled war veteran for the operation of more than one automobile for hire.\textsuperscript{56}

\textbf{MOTOR VEHICLES. Automobiles: Non-resident licenses.} Where a non-resident accepts employment from a Florida employer operating a Florida concern with a Florida base of operations, he will be required to buy a Florida license for his automobile.\textsuperscript{57}

\textbf{MUNICIPAL CORPORATIONS. Ordinances: Statutory duplication.} Where, by its charter, a city is authorized to do all things necessary or expedient for promoting or maintaining the general welfare, it may enact an ordinance

\begin{itemize}
\item \textsuperscript{46} Op. Att’y Gen. 053-56 (March 9, 1953).
\item \textsuperscript{47} Fla. Stat. § 625.01 (1951); Op. Att’y Gen. 053-61 (March 10, 1953).
\item \textsuperscript{48} Fla. Stat. §§ 625.28-625.33 (1951).
\item \textsuperscript{49} Fla. Stat. § 625.33 (1951).
\item \textsuperscript{50} Fla. Stat. § 625.30 (1951); Op. Att’y Gen. 053-66 (March 17, 1953).
\item \textsuperscript{51} Fla. Stat. c. 145 (1951); Op. Att’y Gen. 053-64 (March 16, 1953).
\item \textsuperscript{52} Fla. Stat. § 561.20 (1951).
\item \textsuperscript{53} State v. Noel, 124 Fla. 852, 169 So. 549 (1936); Op. Att’y Gen. 053-58 (Feb. 17, 1953).
\item \textsuperscript{54} Fla. Stat. § 480.02(3) (1951).
\item \textsuperscript{55} Op. Att’y Gen. 053-75 (April 1, 1953).
\item \textsuperscript{56} Fla. Stat. § 205.16 (1951); Op. Att’y Gen. 053-54 (March 9, 1953).
\item \textsuperscript{57} Fla. Stat. § 320.38 (1951); Op. Att’y Gen. 053-53 (March 9, 1953).
\end{itemize}
making it an offense to pass a check without sufficient funds, although the same act is prohibited by a general misdemeanor statute.\(^8\)

**Officers. Continuing duty of prosecution.** A public officer has the continuing duty to prosecute violations of the law committed during a previous term until barred by the statute of limitations and may be suspended for not so prosecuting.\(^5\)

**Penalties. Misdemeanor: Driver's license.** A driver whose license has been revoked three times for driving while intoxicated may have his license revoked for the fourth offense only for the statutory one-year period.\(^8\)

**Railroads. Employer-employee contract.** Conflicting provisions of contracts entered into between railroad employers and representatives of railroad employees providing for definite limitation of leaves of absence are controlled by statute\(^6\) only where the contract is subsequent to the enactment of such statute.\(^9\)

**Employee seniority rating.** Seniority of a railroad employee will not be reduced nor added to during his tenure in a public office.\(^8\)

**Schools and Education. Boards: Vacancies.** There is no mandatory duty of the school board to fill a vacancy of school trustee from any particular district\(^6\) so long as no more than one trustee resides in any given district.\(^3\)

**Member districts.** Re-districting county commissioner districts has no effect upon the designation of county school board member districts, which may be fixed and altered by the school board itself and may or may not coincide with the county commissioner districts. Present members will not be affected until such time as proper election or appointment to serve in proper residence districts takes place.\(^6\)

**Junior college.** A county school board may establish and conduct a junior college wholly from county funds providing it complies with the statutes,\(^7\) and the regulations of the State Board of Education.\(^8\)

**Statutes. Price-fixing: Unconstitutionality.** Where there is no public necessity for it, a statute fixing prices has been declared unconstitutional;\(^6\) therefore, the State Beverage Director does not have the authority

\(58.\) Fla. Stat. \$ 932.01 (1951); Orr v. Quigg, 135 Fla. 653, 185 So. 726 (1939); Op. Atty Gen. 053-83 (April 14, 1953).


\(64.\) Fla. Stat. \$ 230.23(13)(b) (1951).


\(69.\) Liquor Store v. Continental Distilling Corporation, 40 So.2d 371 (Fla. 1949); Scarborough v. Webb's Cut Rate Drug Co., 150 Fla. 754, 8 So.2d 913 (1942).
to set a minimum manufacturing, wholesale and retail price on the sale of alcoholic beverages.\textsuperscript{70}

\textbf{TAXATION. Delinquent tax list: Publication.} The newspaper selected to publish the delinquent tax list must be published, but not necessarily printed, within the county wherein such publication is required.\textsuperscript{71}

\textbf{Exemption of religious associations: Waiver.} A religious association entitled to certain tax exemptions under the Florida Constitution is not deemed to have waived its right by failure to file a formal claim.\textsuperscript{72}

\textbf{Homestead exemption: Life estate.} A life estate in real property is entitled to homestead tax exemption and the remaining estate is subject to tax.\textsuperscript{73}

\textbf{Qualification.} Property must qualify as a homestead on January 1st for property tax exemption for that year. Sale of the property subsequent to that date does not divest the grantor of right to file claim.\textsuperscript{74}

\textbf{Voting registration.} Registration for voting purposes is not a prerequisite to obtaining homestead exemption.\textsuperscript{75}

\textbf{Personal property: Intangibles.} Intangible personal property issued by a foreign power and prohibited from removal from such foreign situs, owned by a resident of this state, is exempt from taxation as having a separate business situs.\textsuperscript{76}

\textbf{Real property: Easements.} In the absence of such a determination by the legislature an easement is not separately taxable; however, the difference in value thereby created in the dominant and servient tenements should be considered in assessment.\textsuperscript{77}

\textbf{WORKMEN'S COMPENSATION. State Employees Retirement Act: Disability payments.} A person who has received benefits under the disability provisions of the state officers and employees retirement statute\textsuperscript{78} shall have those amounts credited against the amounts to be received under workmen's compensation.\textsuperscript{79}

\textbf{State Tuberculosis Board: Employee's waiver of benefits.} The State Tuberculosis Board may not contract with a past tubercular patient, now an employee, for a waiver of workmen's compensation should tuberculosis recur during employment.\textsuperscript{80}

\textsuperscript{72} Op. Att'y Gen. 053-43 (February 23, 1953).
\textsuperscript{73} Op. Att'y Gen. 053-45 (Feb. 23, 1953).
\textsuperscript{74} Op. Att'y Gen. 053-42 (February 23, 1953).
\textsuperscript{75} Op. Att'y Gen. 053-68 (March 24, 1953).
\textsuperscript{77} Fla. Stat. §§ 192.01, 192.02 (1951); Bancroft Investment Corp. v. City of Jacksonville, 157 Fla. 546, 27 So.2d 162 (1946); Op. Att'y Gen. 053-78 (April 9, 1953).
\textsuperscript{78} Fla. Stat. c. 121 (1951).