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Summary of Opinions of the Attorney General

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SUMMARY OF OPINIONS OF
THE ATTORNEY GENERAL*


Administrative Law. Counsel for state employees. A federal grand jury indicted a number of road camp guards on a charge of violating the civil rights of prisoners under their control. The Attorney General expresses the opinion that the guards did not violate federal law and that the State Road Department may expend funds to employ counsel to defend them.¹

County commissioners. The board of county commissioners, in the absence of any statute granting such power, may not contract with a parking lot operator to provide parking space for privately owned automobiles of county employees.²

Funds wrongfully paid. Funds wrongfully paid to a prosecuting attorney must be repaid to the county. The doctrine of estoppel, waiver, or laches has but limited applicability to counties.³

Counties. Board of public instruction. The board of public instruction is a “County” within the meaning of the statute providing a uniform method for the pro-rata division of taxes accrued upon real property of “any County of this State.”⁴

Employees. A county health unit employee may also serve as plumbing inspector of a county. There is a constitutional limitation as to holding more than one office under the state government⁵ but no prohibition as to employment by more than one state or county agency.⁶

Transfer of budget funds. Funds appropriated in a county budget for roads and bridges may not be transferred to an account to be used for recreational purposes. The final adoption of a budget has the effect of a fixed appropriation and is subject to few alterations.⁷

Corporations. Charter amendment. A safe-deposit company incorporated under Chapter 611 of the Florida Statutes prior to July 15, 1925 may amend its charter only in the manner provided in sections 611.26 and 611.28.

⁵ Fla. Const. Art. XVI, § 15.

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A company incorporated after this date may not amend its charter to permit it to engage in any other business.  

Courts. Judge's bond. The judge of a small claims court is not required to post a bond in order to qualify for that office.

Criminal Law. Appeal from County Judge's court. The State Attorney has the responsibility to represent the state's interest in the circuit court when it sits as an appellate court on a conviction rendered in the county judge's court.

Elections. Campaign expenditure reports. Candidates for the election to the offices of the President and Vice-President of the United States need not comply with the campaign contribution statute since it is applicable only to political offices of the State of Florida.

Form of ballot. The new form of ballot provides for one vote for the political group of the President and Vice-President so that a vote for either will constitute a vote for both.

Florida Elections. Alcoholic beverages. The statute which prohibits the sale of alcoholic beverages within an area where an election is being held is a limitation on the statute which grants a general power to the cities and towns to regulate the hours of sale. A city ordinance contrary to this statute has no effect during the time the polls are open for an election.

Campaign funds. A candidate for election, after filing his post-election report, is no longer required to state the purpose for which he is withdrawing his campaign funds. The funds which remain in the campaign depository after the candidate has been elected or defeated may be disposed of in any manner which he deems proper.

Precinct committeeman. A precinct committeeman may no longer act as a qualified member of his former precinct when he moves his residence from such precinct. The appointee to fill the vacancy, like a candidate for election to that position, must qualify by taking the non-Communist oath and the pledge to support the party and its members.

Write-in votes. An elector may not use inked rubber stamps or gummed stickers to affix a write-in candidate's name to an election ballot.

Gaming. Lottery. A contest which requires the participants to identify the location of a photographic scene involves sufficient skill and judgment as...
to negative the element of "an award of chance" which is essential to a lottery.21

An advertising scheme in which customers of a store select a child from those nominated to win prizes is not a lottery if the promotion is conducted fairly and honestly.22

Insurance. Television service agreement. A television company's contract agreeing, for a certain sum, to replace or repair the picture tube for a one year period would be an insurance contract which can only be entered into by a company qualified to write insurance in the state.23

Licenses. Occupational tax. The statute exempting certain handicapped individuals engaged in occupations from state and county tax24 applies, in the absence of any specific exclusion, to those license taxes charged by a municipality.25

Trading stamp company. Premium stores which either restrict the purchase of premiums to trading stamps or coupons, or permit a partial use of such stamps and coupons with a cash payment, are engaged in the business of selling tangible personal property and are therefore subject to an occupational tax.26

Motor Vehicles. Driver's license: Examination. A law enforcement officer has the authority to stop any operator of a motor vehicle for the purpose of examining his driver's license.27

Driver's license: Farm vehicles. The driver's license exemption to those persons operating "implements of husbandry" upon the highways28 is to be strictly construed. Such exemption would not apply to those cases where the implement is used to a considerable extent on the public roads.29

Driver's License: Restricted. A parent or other adult who allows a minor with a restricted motor vehicle operator's license to drive alone would be guilty of contributing to the delinquency of a minor and subject to all penalties provided by law.30

Driver's License: Revocation of juvenile's license. A counselor of the juvenile court may not take away and keep a driver's permit issued to a delinquent coming before him.31 The counselor may cooperate with the Department of Public Safety in initiating a revocation or suspension of such license

in accordance with procedure\textsuperscript{38} when he thinks that such action against a

delinquent is appropriate.\textsuperscript{34}

\textit{Driver's License. Suspension.} The failure of a motor vehicle operator
to return his suspended license to the Insurance Commissioner subjects the
licensee to the costs incurred by a peace officer in collecting the license.\textsuperscript{35}
The payment of such costs is no bar to prosecution under another provision
of the statute.\textsuperscript{36}

\textit{Financial responsibility.} Accidents involving juvenile drivers must be re-
ported to the Insurance Commissioner under the Financial Responsibility
Statute.\textsuperscript{37} The penalty of license revocation applies to juveniles, there being
involved in this section\textsuperscript{38} no usurpation of the juvenile court's exclusive
jurisdiction.\textsuperscript{39}

\textit{License tags.} A serviceman registered to vote in Florida, who owns and
operates a motor vehicle in this state, is required to obtain a Florida motor
vehicle license.\textsuperscript{40}

\textit{License tag: Non-resident.} The statute requiring non-resident automo-
bile owners to purchase Florida tags if they are gainfully employed in the
state applies to the wife of a serviceman who uses her husband's car for the
purpose of transportation to and from work. The Federal Soldiers' and
Sailors' Civil Relief Act\textsuperscript{42} does not effect an exemption on personal property
that is used in or arising from a trade or business.\textsuperscript{48}

\textit{Municipal Corporations. Speed ordinances.} A municipality may not
establish a speed limit on a state or federal highway within the limits of a
municipal corporation that is in conflict with the statutory speed limit of 25
miles per hour. The regulation of speed in school zones is not included in
this statute.\textsuperscript{44}

\textit{Pensions. Teacher retirement credits.} The statute allowing retirement
credit for teachers who have been granted a leave of absence\textsuperscript{45} does not apply
to those whose leave of absence has been granted retroactively.\textsuperscript{46}

\textit{Schools and Education. Health services.} A county board of public
instruction may contract with a county health unit for educational health

\begin{itemize}
  \item \textsuperscript{33} Fla. Stat. § 322 (1951).
  \item \textsuperscript{34} Op. Att'y Gen. 052-315 (Nov. 17, 1952).
  \item \textsuperscript{35} Fla. Stat. § 324.16 (1951).
  \item \textsuperscript{37} Fla. Stat. c. 324 (1951).
  \item \textsuperscript{38} Fla. Stat. § 324.04 (1951).
  \item \textsuperscript{39} Op. Att'y Gen. 052-290 (Oct. 9, 1952).
  \item \textsuperscript{40} Op. Att'y Gen. 052-310 (Nov. 6, 1952).
  \item \textsuperscript{41} Fla. Stat. § 320.38 (1951).
  \item \textsuperscript{42} 50 U.S.C. § 574.
  \item \textsuperscript{43} Op. Att'y Gen. 052-293 (Oct. 15, 1952).
  \item \textsuperscript{45} Fla. Stat. § 238.05(3)(a) (1951).
  \item \textsuperscript{46} Op. Att'y Gen. 052-319 (Nov. 28, 1952).
\end{itemize}
services for the school. This undertaking by the board is limited to those services that would benefit a school purpose as prescribed by law.\textsuperscript{47}

**Taxation. Homestead exemption: Life estate.** The owner of a life estate is considered to have a freehold or real property interest and therefore entitled to a homestead tax exemption\textsuperscript{48} if he occupies the house. The remainder would be subject to taxation unless it is otherwise exempt.\textsuperscript{49}