SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*

Due to the expanded activities of the Attorney General in recent months it has been found necessary to limit the opinions hereafter noted to those of general interest. This issue covers Op. Att'y Gen. 051-69 (Mar. 27, 1951) through Op. Att'y Gen. 051-313 (Sept. 12, 1951).

Administrative Law. Administrative costs. A state agency may fix an assessment to be paid by each political subdivision of the state that elects to come under its authority as a cost of administering the agency. The funds derived from these assessments may be deposited in the state treasury to be disbursed by the agency.

Budget commission. The state budget commission is authorized to release funds under Florida law for the use of an interim committee of the House of Representatives (Haley Committee) which was created by House Resolution 49 of the 1951 legislature. The funds to be used were reserved for an unforeseen emergency. The Attorney General, in a well written opinion, holds "that an 'unforeseen emergency' such as contemplated by the law does exist in the field of crime and corruption in this state" and that the budget committee must act where there is a need for action.

Alcoholic Beverages — definition of beer. Florida law defines beer as follows: "the term 'beer' or the words 'malt beverage' shall extend to and include all beverages that include malt. . . . The term 'intoxicating beverage' shall include only those liquors . . . that contain more than 3.2% of alcohol by weight. A resolution forbidding the sale of intoxicating liquids includes beer if it contains more than 3.2% of alcohol by weight.

Legislative council. Members. The members of the legislative council are appointed by the respective houses of the legislature and only those houses may effect a removal. A position on the legislative council is not an office. It is merely an additional duty imposed upon the members of

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*This summary was prepared by Lloyd J. Bennett, Jr. and edited by Allan S. Kushen. We are grateful to Hon. Richard W. Ervin, Attorney General of the State of Florida, for supplying copies of these opinions.

1. Fla. Laws 1951, c. 26841.
3. Fla. Laws 1951, c. 26859 §§ 1, 15.
5. Supra note 4.
the House and Senate. When successors to the council are appointed they serve for the remainder of the unexpired term.

**Milk Commission.** It is within the authority of the Florida Milk Commission to withdraw its supervision from a marketing area once the area has been established and properly supervised.

**Private employment agencies.** When, from time to time, agents for private employment agencies come to this state to secure positions for their applicants in this state, although they are not licensed to do business under Florida law they are nevertheless not required to secure such licenses. The Attorney General indicated that if the visits became too frequent an opposite ruling would prevail.

**Compensation. Compensation of supreme court justices upon retirement.** Retirement pay of Florida Supreme Court justices is equal to the current salary of active justices.

**Compensation for special services.** The compensation of the clerk of the circuit court for duties not provided for in the statutes is left to the discretion of the county commissioners provided county work is performed. The amount paid for the extra duties may equal the regular fees paid or it may be a reasonable portion of the clerk's stated salary.

**Judges — Compensation.** Judges for the juvenile courts are paid on a population basis with 120 dollars being paid for each 1000 persons in the judge's district or county. The sum may not, however, exceed certain set maximums. The counsellor is paid on the same basis.

**Jury — Compensation.** The pay of jurors in the county judge's court in a county which has no county court, criminal court or court of record is fixed at $3.00 per day. It is $1.00 per day in counties where there is a criminal court, a county court or a criminal court of record.

**Workmen's Compensation. Director.** The Florida Industrial Commission may allocate to the director of the Workmen's Compensation Division additional part time duties incident to the administraton of the commission at reasonable additional pay.

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9. Amos v. Matthews, 99 Fla. 65, 126 So. 308 (1930); State v. Gordon, 138 Fla. 312, 189 So. 437 (1939); Flood v. State, 100 Fla. 70, 129 So. 861 (1930).
17. 1946-47 Biennial Rep. 27.
Trust funds. The following is a reaffirmance of Op. Att'y Gen. 050-66:24

(1) Monies and fees collected by the Florida Industrial Commission were intended for regulatory and not revenue purposes when collected under chapter 399.25

(2) The budget committee may set these funds aside for the commissions agency to be used in performance of its duties under the above named statutes.26

Counties. Computation of service on yearly salary. When a county employee terminates his employment during a pay period the amount of payment is computed by dividing the number of days allowed per year into the maximum annual salary and multiplying that amount by the number of days worked.27

Donation. County commissioners are not permitted to make donations with county funds that are not for a public purpose since they have only such powers as granted by the constitution and statutes28 and neither grant the necessary power.29

County seat. County commissioners may set up branch offices in which to conduct county business provided that all official business that concerns the county and which the public is entitled to attend is held at the place required by law. The establishment of branch offices engaged in ministerial functions only is well within the law.30

Expenses of tax assessor. Under a general Florida law county tax collectors are paid on a commission basis and expenses of their office must be paid out of these commissions. Where, however, these commissions are inadequate the compensation must be provided for by special act. If that special act does not provide for the payment of office expenditures they must be paid from the collector's gross salary, as the county commission is powerless to assist by financial aid.31

State official as county prosecutor. By using the reasoning that the county prosecutor is not a county officer but a mere employee whose employment is subject to the continued approval of the county commissioners the Attorney General ruled that the position of county prosecutor could be held by an elected state official.32

County attorney. The county attorney is not under a duty to draft affidavits or other proceedings, including search warrants, or to search

SUMMARY ATTORNEY GENERAL'S OPINION

for stolen property unless the offense is one which falls within the criminal jurisdiction of the county judge's court where the accused could be tried and convicted.  

Competitive bids. Competitive bids are not necessary where individual purchases over a period of time exceed $1,000.00. When separate orders are made as material becomes necessary, in the absence of fraud, competitive bids may be dispensed with.  

Purchases From Commissioners. Purchases from commissioners are not permitted under Florida law when the commission itself is doing the purchasing. When, however, the budget of the county office is submitted to the state comptroller and he makes the purchase this does not apply.  

Sheriffs, Service of Warrants. Where a warrant is issued by a justice of the peace for a crime which is triable as a state offense only the sheriff or deputy sheriff of the appropriate county may serve such warrant.  

Sheriffs, Employment of Jailer. The statutes do not provide for the employment of a county jailer. It is permissible and customary, however, for a sheriff to hire an additional guard and to assign him to jailer's duty.  

Entitlement To Fees. Where a sheriff is assisted in an arrest by a highway patrol officer the sheriff is entitled to his fees provided that he has made the arrest. He is not entitled to fees when he is merely present at the arrest. The fact that the patrolman makes the necessary report to his department in the first instance does not preclude the sheriff's collection of fees.  

Reinstatement. Where a sheriff is removed and then reinstated under the Constitution by the governor the person filling the position vacated is entitled to compensation from the time he started to act in that capacity until he terminates his activities. The effective date of the appointment and reinstatement is not in point unless it coincides with the time above.  

Regulation of trade, small loans. A county board of public instruction is not required to honor an assignment of wages which has been served on it by a small loan company.  

33. FLA. STAT. § 125.03 (1949), Op. ATT'Y GEN. 051-200 (July 6, 1951).  
35. FLA. LAWS 1947, c. 24821, Op. ATT'Y GEN. 051-145 (June 6, 1951); see also 1949-50 BIENNIAL REP. 392.  
36. FLA. STAT. § 839.09 (1949) provides that boards are not to purchase supplies from members of the board; § 200.41 provides that assessors must get approval from State Comptroller.  
40. FLA. STAT. § 30.19 (1949), Op. ATT'Y GEN. 051-172 (June 19, 1951); see also 047-256 in 1947-48 BIENNIAL REP.  
41. FLA. CONST. ART. IV, § 15.  
Courts. Clerk of Court. Judgment Lien Record. judgments rendered by the circuit court and entered in the minute book kept by the clerk are not to be entered in the judgment lien record without a specific request by the judgment creditor or his attorney.

Branch Offices. A branch office of the clerk of the circuit court in a place not the county seat may not issue directly any process in common law, equity or statutory proceedings; neither may it receive nor file same.

Juvenile Court Act. The Juvenile Court Act of 1951 is mandatory legislation and all counties must comply with its provisions. The act requires that each court be comprised of a judge, a counselor and other personnel that may be required by the individual counties to carry out the provisions of the act.

All local acts which are in contravention with the uniform juvenile court law passed to apply to all counties in the state are repealed and are not to be continued in effect.

Jurisdiction. When a chancery court has taken jurisdiction over the welfare of a child it is not proper for the juvenile court to issue a temporary protective order awarding the child to a children's home society pending outcome of the divorce action. When, however, the life of the child is endangered it is the duty of the juvenile court to protect the child.

Miscellaneous. Juvenile Court Opinions. The following opinions were issued:

(a) The juvenile courts retain jurisdiction until a child reaches its 18th birthday;
(b) When counselors transport children from the court to industrial schools the fees are to be paid out of the county fine and forfeiture fund;
(c) The purchase of office equipment for a juvenile court may not be made with court funds.

Official court reporters. The county solicitor does not have the authority to bind the county to pay the official court reporter for the
criminal court of record for services in reporting the proceedings in a misdemeanor case, as this is not provided for by law.\textsuperscript{56}  

**Small Claims Court; establishment.** Where a small claims court is established in one of the counties of this state the judge and clerk may be appointed rather than elected.\textsuperscript{57} These offices may be filled by the ex officio appointment\textsuperscript{58} of the judge and clerk of the county court.\textsuperscript{59}  

**Small Claims Court; jurisdiction.** Small claims courts have jurisdiction in all cases at law and proceedings in attachment, garnishment, replevin, enforcement of liens and distress for rent, where the value of the property involved does not exceed one hundred dollars. They have the same civil jurisdiction as justice of the peace courts except as to such matters over which the justice of the peace has exclusive jurisdiction.\textsuperscript{60}  

**CRIMES.** *Carrying concealed weapons.* Florida law makes it a crime to carry a concealed weapon without a permit issued by the county commission.\textsuperscript{61} The issuance of permits is left entirely within its discretion, the only requirements being that the applicant be 21 years old and “of good moral character.”\textsuperscript{62}  

**Dry county violations.** Members of social or fraternal clubs with clubhouses located in “dry” counties may purchase whiskey in “wet” counties, bring it into the “dry” county, and store it in clubhouse lockers. When it is served by club attendants at no cost the “dry” laws are not violated.\textsuperscript{63}  

**Hotel check-out time.** “Where a person checks out of a motel after the displayed check-out time and refuses to pay the additional charge the operator may swear out a warrant for this misdemeanor.”\textsuperscript{64}  

**Traffic violations.** A duly elected constable has the authority, within his district, to arrest for misdemeanors committed in his presence. It will in all cases devolve upon the trial judge to determine if there was a violation and if that violation took place before the arresting officer.\textsuperscript{65}  

**ELECTIONS.** *Aid to blind voters.* When a blind person wishes to vote in an election two separate statutes govern the procedure, depending upon whether a paper ballot or a voting machine is used.\textsuperscript{66} If a paper ballot is in use the voter may have an inspector of the election board execute the
ballot or he may choose an individual to do it. If, however, a machine is being used only a clerk or inspector of the election boards may operate the machine.

**Custody of voting machines.** In counties of population of 250,000 or more the county commissioners are custodians of the voting machines. In counties of less than 250,000 custody is in the supervisor of registration.

**Referendum and general combined.** Under the existing statutes there seems to be no reason why a referendum election concerning a consolidation or merger could not be held at the same time as the general election in any municipality. Procedural matters outlined in the statutes must not be dispensed with.

**Signature identification slips.** A county solicitor may inspect signature identification slips executed in a municipal election where voting machines were used. The procedure of having the slips delivered by the custodian to the solicitor and his signing a receipt for them must be followed, since the statutes require preservation of the lists for a period of one year.

**Family Law. Dependent children.** The purpose of the section which requires steps to be taken to provide support for dependent children is to force those seeking support for the children to use the available legal remedies before calling on the state. This section contemplates only the use of civil actions.

**Tests and license.** The Florida statutes provide for a blood test to be given within 30 days of an application for a license to marry. It is further provided that the license, when issued, remains valid for thirty days. It is therefore possible that a blood test may be taken, under the law, as many as sixty days prior to the marriage.

**Gaming. Bingo.** Where guests of a hotel play bingo for small prizes furnished by the hotel, and where no charge is made to the guests for playing there is a violation of the gambling laws. The reasoning behind the opinion is that by running these games the hotel gains the consideration of favorable publicity, thereby completing the requirements for a lottery, viz., a prize, award by chance and consideration.

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67. FLA. STAT. § 99.56 (1949).
68. FLA. STAT. § 100.36 (1949).
74. FLA. STAT. §§ 100.34, 100.38 (1949).
75. FLA. LAWS 1951, c. 26937, § 12.
78. Op. Att'y Gen. 051.255 (Aug. 2, 1951); Little River Theater Corp. v. State,
Free play pinball machines. The award of free games on pinball machines is in violation of the gaming laws. The cases holding that such a game is a lottery and illegal under our laws where chance is the element replacing skill have been neither modified nor overruled.\(^9\)

Insurance. Agents license suspension, bond. An insurance agent is permitted to appeal the revocation of his license to the circuit court.\(^8\) While the appeal is pending a supersedeas bond that is "good and sufficient"\(^8\) may be filed with the insurance commissioner but a personal check will not suffice as bond.\(^8\)

Assured home ownership plans. The assured home ownership plans function as follows: the insurance company lends a sum of money to the borrower on a standard mortgage with provision that life insurance in the amount of the loan exists. Insurance already in force may be used. The theory is that if the insured should die before the mortgage is paid the policy would pay off the debt. The opinion holds that such a plan does not appear to be contra to Florida law, as it does not appear that the loans are being made as an inducement to buy insurance.\(^8\) Since the plan has been used in this state for some time the Attorney General is inclined to hold that the plan is more in the interest of public welfare than against it.\(^8\)

Commissioner's duties. The duties of the insurance commissioner do not extend to deciding the ultimate disposition of proceeds of an insurance policy. They go only to seeing that valid claims are paid when the courts have decided them to be valid and to discipline for failure to comply with the statutes, not to act as a mediator.\(^8\)

Death benefits. The maximum amount an insurance company may pay out in death benefits is governed by statute. The policies are necessarily divided into two categories, viz., those granting sickness and accident benefits as well as death benefits,\(^8\) and those giving death benefits only.\(^8\) The extent of benefits under each type is governed by the appropriate statute. The capitalization of the insurer under the death benefit statute

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135 Fla. 854, 185 So. 855 (1940). (Held that since a theater drew larger attendance the consideration element was met). See also Op. Atty Gen. 051-67 (Mar. 27, 1951).
79. Op. Atty Gen. 051-162 (June 14, 1951); Sinclair v. Benton 10 So.2d 917 held that free games are prizes; Weathers v. Williams, 133 Fla. 367, 182 So. 764 (1938); Eccles v. Stone 134 Fla. 113, 183 So. 628 (1938), held that pinball machines have an "unpredictable nature that render them implements of chance."
86. Fla. Laws 1949, c. 642.
87. Fla. Stat. § 642.03 (2) (1949).
is the determining factor, the maximum payment being $500 if there is capitalization of $50,000 or more.

**Fleet rate coverage.** Where a group of taxi owners form a non-profit corporation for the protection of each other they may not apply for a fleet rate insurance policy.

**Mutual policy for public property.** It is provided in the Constitution that the credit of the state shall not be pledged or loaned. A statute provides that the state may not participate in the profits of any insuring corporation. A public building may be insured by a mutual company provided that the state is not subject to assessment and does not participate in the profits.

**Limited surety companies.** Florida law provides that no limited surety company shall execute a bond in excess of $500.00. However, where a person is charged with three different offenses and is required to post three $500.00 bonds the opinion held that this is not a violation of the statute since there are three different and separate bonds.

**Revocation of company charter.** Where an insurance company refuses to pay a claim to the insured on the grounds that the cause of the damage was not covered by the policy and such a refusal seems to be based on honest beliefs on the part of the insuror, the decision is for the courts and no grounds exist for the revocation of the insuror's charter by the insurance commissioner. It is well recognized that the commissioner in the interest of public welfare may revoke charters only where no relief may be granted by the courts.

**Stock and mutual companies.** Where a mutual company is dissolved and the members insured by a stock company the officers of the mutual company lose all relationship with the stock company. By following the theory that in a mutual company the members and not the officers have the last word, the opinion held that a contract for employment between the officers of the mutual company and the stock company was not a violation of the laws prohibiting officers of mutual companies from dealing with their policy holders since the policy holders themselves had terminated the officers' employment.

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89. Op. Att'y Gen. 051-176 (June 21, 1951) and 051-155 (June 11, 1951); 1943-44 Biennial Rep. DGC, see Lykes Brothers v. Bigby, 155 Fla. 580, 21 So.2d 37 (1945) for effect of conflict of above statutes.
Justice Of The Peace. Acting as coroner. Where no county judge exists the justice of the peace is to act as the coroner and is to conduct and hold all inquests. A justice of the peace in districts of population of less than 4,000 does not have criminal jurisdiction.

Deputy constable. Where the population of a district is great enough the justice of the peace may appoint one deputy constable. It was advised that a declaratory judgment as to the constitutionality of the act should be obtained before an appointment is made final.

Expenses. Opinions of two prior Attorneys General were affirmed by the ruling that all expenses of a justice of the peace are his own and must be paid out of his fees.

Licenses and Fees. License fees. Where the federal housing administrator, as insurer of a mortgage on default, forecloses and purchases at the foreclosure sale his agency is liable to the state hotel commission for license fees.

Harbor fees. The harbormaster of a port is entitled to a fee for each vessel that visits his port even though no special services are performed for it. The mere fact that the harbormaster polices the harbor to provide a degree of safety is sufficient to merit the fee.

License to erect electric poles. Where a special act allowed a municipality to provide electricity for the remainder of the county, that municipality must be issued a license by each and every connecting municipality. Since the act requiring the licenses to be issued was passed last, any repugnancies in earlier acts must give way to it.

Fees in garnishment actions. The clerk of the criminal court of record and the county court may charge an additional filing fee upon the filing of an action to garnish on a judgment since the action is a new action and not a mere continuance of the former.

Motor Vehicles. Accidents. State highway patrolmen may properly be called upon to investigate and report accidents occurring on roads, which

101. Fla. Laws 1941, c. 24270.
although privately owned, are in public use. Such officers may take any precautionary steps required to control the flow of traffic in and out of these private roads even though it may be necessary for the officer to leave the public highway to accomplish this end.113

Auto transportation companies, taxes. An auto transportation company to which has been issued a certificate of public convenience and necessity or permit under the statutes114 is exempt from paying the filing fee required by statute.115 Further, where mileage tax is provided for it must be collected despite any other exemptions that might exist.116

Licenses. House trailers, occupied by members of the armed forces of the United States, although located off military or naval bases but not used on the public highways are subject to one of three taxes; (1) a personal property tax must be paid to this state117 or (2) the license fee for trailers must be paid to this state or118 (3) the license tax must be paid to a sister state which is the domicile or legal residence of the owner.119

Wrecker service. Where it is necessary to move a motor vehicle that has been disabled from the highways of this state a highway patrolman may cause a wrecker to remove it if the wrecker was called from a recognized list of companies. The owner of the vehicle is liable for reasonable charges.120

Municipal corporations. Assessments on contiguous property. A municipality may assess property outside of its limits for benefits received by improvements without holding the election required by law,121 provided that the improvements are paid for in full out of the general funds and the credit of the city is not relied upon.122

Effect of consolidation upon assessments. When two municipalities merge, the assessments of the dissolved corporation become the assessments of the consolidated municipality. Where the dissolved town has failed to assess and the statute of limitations has not run, the new municipality may make the assessments.123

Firemen's pension funds. Once a firemen's pension fund has been set up under the statute and funds have been deducted pursuant to the

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121. Fla. Stat. § 169.01 (1949).
plan the municipality may not abolish the fund, even though the majority of the fire department consists of volunteers.\textsuperscript{124}

Where a fireman covered under the Firemen's Relief and Pension Fund terminates his employment before benefits accrue the trustees of the fund are not authorized to return the sums paid in by him prior to the termination of the employment.\textsuperscript{125}

\textit{Performance bonds}. The clause "no claim, suit or action by reason of any default shall be brought against the principal or surety after two years from date hereof. If this limitation is made void by any law controlling the construction hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law" appearing in a surety bond given in compliance with a contract to build a water supply for a municipality is annulled\textsuperscript{126} by a Florida statute.\textsuperscript{127}

\textit{Taxations: Discrimination}. A municipality does not have the power under the commerce clause of the United States Constitution to enact an ordinance to tax only itinerant photographers while local photographers are exempted.\textsuperscript{128}

\textbf{PROCEDURE}. \textit{Absentee docket}. The keeping of an absentee docket is not compulsory; therefore the judge of the criminal court of record may discontinue its use. Its use, however, does not necessarily violate the speedy trial statute\textsuperscript{129} as the trial is merely suspended. If the suspension becomes unreasonable the statute may be applied.\textsuperscript{130}

\textit{Arrest}. When a constable, outside of his district, arrests a drunken driver upon the public highway without a warrant he is acting without his authority as a peace officer but within his authority as a private citizen. When he follows the procedure for arrest designated for peace officers he has acted in a lawful manner.\textsuperscript{131}

\textit{Double jeopardy}. A defendant, after pleading guilty to a charge of aggravated assault in the county court, paid his fine. He was not placed in double jeopardy when the victim later died and the defendant was charged with murder in the circuit court. The county court ordered repayment of the fine to the defendant after the indictment in the circuit court. The Attorney General feels that once a trial court's session ends

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\item 126. \textit{Fla. Stat.} § 95.03.
\item 129. \textit{Fla. Stat.} § 915.01 (1949).
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it loses jurisdiction except as to enforcement of the sentence\(^{132}\) and may not reverse itself.

**Execution on bond.** Where a person had a ninety day fine and cost bond posted for him in one county by a surety company and he is then arrested and held in confinement in another county the sheriff of the former county must force the surety company to pay the bond regardless of the conditions existing. The statute is clear and concise and leaves no room for conditions or circumstance.\(^{133}\)

**Search warrants.** Any judge, justice of the peace or committing magistrate having jurisdiction within the district where a place, vehicle or thing to be searched is located has the power to issue a search warrant returnable to the criminal court of record of the appropriate county. For most purposes the judge of a court of crimes is a committing magistrate.\(^ {134}\)

**Settlement of judgments.** Where the law provides that all appearance bonds which are forfeited shall go by judgment to the particular county\(^ {135}\) the only way that county commissioners may settle for a lesser amount would be to show that the collection is "utterly hopeless". When bail is posted collection can never be "utterly hopeless."\(^ {136}\)

**Professions. Advertising.** Disabled veterans are exempt from payment of the license tax to engage in the business of out-door advertising.\(^ {137}\)

**Chiropractors.** Persons licensed to practice chiropracty in this state may administer foods, food concentrates, food substitutes and extracts other than orally.\(^ {138}\)

**Embalmers.** There is no reason why a person holding a license as a funeral director or embalmer cannot also be licensed as a fire and casualty insurance agent.\(^ {139}\)

**Masseurs.** The secretary-treasurer of the Florida board of massage is required by law to furnish a copy of any of its office records to persons requesting them.\(^ {140}\) These records are to be kept open so that they may be examined or inspected at any time by the public.\(^ {141}\)

**Medicine.** The requirement\(^ {142}\) that a person to be eligible to take the basic sciences sections of the medical examination be a citizen of the United States does not control over the section\(^ {143}\) that permits persons

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\(^{135}\) F. L. Stat. § 142.03 (1949).


\(^{142}\) F. L. Stat. § 456.10 (1949).

\(^{143}\) F. L. Stat. § 458.05 (1949).
who have declared an intention to become a citizen to take the entire medical examination under statute.\footnote{144. FLA. STAT. c. 455 (1949); Op. ATT’Y GEN. 051-152 (July 8, 1951).}

Provisions in general. Where a professional man holding a license has been convicted of a felony and his license has been suspended or revoked, the professional board, upon application, may restore the license and all privileges.\footnote{145. FLA. STAT. § 461.03 (1949), Op. ATT’Y GEN. 051-180 (June 25, 1951).}

**Public Health.** Competitive bids. The state tuberculosis board received competitive bids for the construction of proposed building projects. Each bid exceeded the estimated cost and funds available. The board may negotiate with the low bidder only and revise its plans and specifications in order to come within the available funds. It may thereafter contract with the low bidder without again calling for bids.\footnote{146. Op. ATT’Y GEN. 051-96 (Apr. 27, 1951), see also: 1949-50 BIENNIAL REP. 419.}

Revenue certificates. It is within the authority of the state tuberculosis board to issue revenue certificates for the purpose of constructing, equipping and improving state tuberculosis sanatoriums when such revenue certificates are to be secured by the funds collected from sources other than funds received from the state of Florida.\footnote{147. FLA. STAT. c. 392 (1949), Op. ATT’Y GEN. 051-257 (Aug. 31, 1951), see Brash v. State Tuberculosis Board, 824 Mla. 167, 167 So. 827 (1936).}

**State Attorney.** Private practice. It is unethical for an assistant state attorney to accept employment to defend a person charged with a misdemeanor in a county court. The fact that he defends the case in a county other than that in which he acts as the assistant state attorney is not considered, as the state and not the county pays his salary.\footnote{148. Op. ATT’Y GEN. 051-20 (May 16, 1951).}

**Taxation.** Assessments. Property acquired and used for a public school within the corporate limits of a municipality may not be subjected to special assessments imposed by the municipality for the paving of streets upon which such property abuts.\footnote{149. Op. ATT’Y GEN. 051-235 (July 23, 1951). For the rule that there must be special legislation to pay an assessment see Blake v. City of Tampa, 115 Fla. 348, 156 So. 97 (1934).}

Beverage license tax.\footnote{150. Op. ATT’Y GEN. 051-193 (July 3, 1951).} No municipality has the authority to levy any tax on the transfers of alcoholic beverage licenses either from person to person or from place to place.\footnote{151. Miami v. Kichinko, 156 Fla. 128, 22 So. 2d 627 (1945).}

Eminent domain. The tax sale certificates that exist upon land should be cancelled by eminent domain proceedings in the federal courts, by the United States or an agency thereof.\footnote{152. FLA. STAT. § 561.36 (1949).}

Highways, countywide tax levy. Two separate levies for highway improvement are made under separate sections of the statutes. One

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\footnote{144. FLA. STAT. c. 455 (1949); Op. ATT’Y GEN. 051-152 (July 8, 1951).}
\footnote{145. FLA. STAT. § 461.03 (1949), Op. ATT’Y GEN. 051-180 (June 25, 1951).}
\footnote{146. Op. ATT’Y GEN. 051-96 (Apr. 27, 1951), see also: 1949-50 BIENNIAL REP. 419.}
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\footnote{152. FLA. STAT. § 561.36 (1949).}
\footnote{153. FLA. STAT. § 192-38, 194.64 (1949), Op. ATT’Y GEN. 051-272 (Aug. 14, 1951).}
\footnote{154. FLA. STAT. §§ 193.32 (3), 343.17 (1949).}
section provides for payment to municipalities of one half of all the sums collected within their limits. That provision does not apply to sums collected under the other section\textsuperscript{155} which has no such provision.

*Homesteads: contracts to purchase.* Where two parties enter into a contract for the transfer of real property upon which there is a homestead exemption the vendee may not claim the exemption until he has resided upon it for one year.\textsuperscript{156} Once the vendor surrenders possession his exemption falls.\textsuperscript{157}

*Homesteads, residence qualifications.* Under the constitution\textsuperscript{158} one must be a resident of this state and reside on the property claimed as homestead or the property must be in the hands of someone legally dependent on the claimant before a homestead exemption may be applied for. The law requires a one-year period of residence before a person may file for an exemption.\textsuperscript{159} That year must be complete by January 1st of the tax year and the claim must be filed by April 1st of the same tax year.\textsuperscript{160}

*License taxes. Disabled veterans.* When a municipality requires a separate license to run each of two businesses and a disabled veteran combines the two under one enterprise he is exempt from paying the tax on both businesses provided that there is a relationship between the two.\textsuperscript{161}

*Life insurance.* An insured died with certain life insurance upon his life, in which his wife was named as beneficiary and his brother as contingent beneficiary, with power in the wife, should she survive the brother, to elect to take either the proceeds of the policy or income from it with the remainder due her nominee. She elected to receive interest. Neither these installments nor any part of them are subject to taxation.\textsuperscript{162}

*Motor fuel distributors.* To be classed as a motor fuel distributor\textsuperscript{163} one must import\textsuperscript{164} or cause to be imported that fuel which is being sold.\textsuperscript{165}

*Property for religious purpose.* Real property in this state owned by an individual but used for a religious purpose is not exempt from taxation.\textsuperscript{166}

\begin{footnotes}
\footnotetext[155]{155. Op. Att'y Gen. 051-216 (July 17, 1951); See Lee County v. City of Fort Myers, 52 So. 2d 792 (1950); 6 Miami L. Q. 85 (1951) Dade County v. Miami, 77 Fla. 786, 86 So. 354 (1915).}
\footnotetext[156]{156. See Residence Qualifications}
\footnotetext[158]{158. Fla. Const. Art X § 7.}
\footnotetext[159]{159. Fla. Laws 1951, c. 26899.}
\footnotetext[163]{163. Fla. Stat. c. 207.208 (1949).}
\footnotetext[164]{164. Fla. Stat. § 271.01 (1949).}
\end{footnotes}
Refunds of over payments. Where a beverage license is issued to a vendor for the unlimited sale of alcoholic beverages and the local zoning limited the sale to "packaged goods only" the vendor is entitled to a refund of the difference between payments for limited and unlimited sales. 167

Tangible property tax. The tax on tangible personal property leased by and in the possession of a resident of one county but owned by a resident of another county should be assessed in the county where the property is located but in the name of the true owner. 168

Tax certificates. Where public lands are sold by the state trustees on an installment sales plan those lands are subject to the ad valorem taxes. When the property is placed upon the tax rolls and the tax not paid tax certificates may be issued and sold as though the state had not been a party to the contract. 169

Who is freeholder. A good general definition of a freeholder reads as follows: "Any person shall be a freeholder who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple in land". 170 If the title to realty is vested solely in one spouse the other is not a freeholder. 171

Zoning. Regulation of trade. The holder of a license issued by the state hotel commission may not operate at a location in a municipality which is zoned against such operations. 172

Single purpose zoning. The county commissioners have the authority to zone those areas without the incorporated limits of cities or towns whereby the sale of wine and beer for consumption could be prohibited without zoning the same area as to other businesses. 173

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172. See Dean v. State, 74 Fla. 277, 77 So. 107.
173. Op Att’y Gen. 051-269 (Aug. 10, 1951) and 051-12 (July 12, 1951).