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SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL*

With this issue the Miami Law Quarterly is beginning a new service for the Florida lawyer. Opinions of the Attorney General of Florida frequently provide important or interesting rulings on problems which confront the practitioner but are unlikely to be decided by the Supreme Court. While the opinions are not precedent for the court, they do have a binding effect upon public officials of the state. A summary of the Opinions will, we believe, be of much value to the attorney in guiding the interests of his clients.

The cooperation of Attorney General Richard W. Ervin, in providing copies of the opinions, is gratefully acknowledged.

AUTOMOBILES. Driver’s license. The license to drive expires at midnight on the first day of October.

Tax collection agency. A tax collection agency may act for others to pay motor vehicle licenses, as taxes imposed for revenue only, but not for the payment of drivers’ licenses, which are imposed for regulation.

COMPTROLLER. State warrants. A warrant issued by the Comptroller must show the amount, and “shall be stated in words at length.” However, the purpose of the second requirement is to avoid uncertainty, and does not prohibit the amount from being expressed only in Arabic numerals rather than in both words and numerals.

CORPORATIONS. Limited partnership. A limited partnership must annually renew its certificate of authority to engage in business. From the provisions of the statute, it appears that failure to renew results in cancellation of the certificate and of the limited partnership agreement. And, the Secretary of State having cancelled the agreement, the members of the partnership can continue the association only by again organizing the limited partnership, by filing a new agreement and receiving a new certificate of authority.

CRIMINAL LAW. Alcoholic beverages. An offense may be charged under three separate sections of the beverage law. Concerning a beverage on which a tax is imposed or would be imposed if it were manufactured in or brought into this state according to the regulatory provisions, under § 16 the posses-

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sion is a felony and under § 32 the removal, deposit or concealment is a felony. But with respect to a beverage not manufactured according to the regulatory provisions, under § 451 the possession is a misdemeanor. Inasmuch as §§ 16 and 32 apply to liquor taxes and § 451 applies to manufacture, the opinion is that § 451 did not impliedly repeal the other sections. Further, while an information is defective for alleging that a tax is imposed on moonshine whiskey, it is valid in charging that the tax would be imposed if it were manufactured according to the regulatory provisions, and thus should be valid in stating that the tax would be imposed if it were manufactured in or brought into the state according to the regulatory provisions.

COUNTIES. Afflicted children. A county is empowered by the Florida Constitution and by statute to enter into the field of child welfare to the extent deemed financially practicable by the county commissioners. This care should be extended to the needy without a specific requirement of length of residence in a county, so long as the applicant is a bona fide resident. Although the opinion felt that it was not mandatory upon the county commissioners to assume such a responsibility, this view seems to be in direct conflict with Art. XIII, § 3 of the Florida Constitution, which states “the respective counties of the State shall provide ... for those of the inhabitants who ...” need aid.

COUNTY COMMISSIONER. Military leave of absence. A county commissioner called to active military service may make application to the governor for military leave of absence. Should the application be granted, the governor is then empowered to appoint someone to act in the place of the commissioner for the unexpired term. If the commissioner resigns, the governor can appoint a replacement to hold office only until the next general election, at which time the balance of the unexpired term would be filled. The opinion refused to state the situation that would arise were the governor to refuse an application for military leave.

Although the question propounded sought the status of the commissioner who had been called to active duty, rather than the powers of the governor, no direct answer was given. By implication, it appears that if the governor has granted a military leave of absence, the commissioner would be entitled to return to office should he return before his term had expired.

Powers and duties. The board of county commissioners has the duty and the expressly granted power to purchase maps necessary in order that a

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county tax assessor may properly and fully perform the duties imposed upon him by law, subject only to another statute which provides that if the total cost of the expenditures exceeds three hundred dollars, competitive bids must be invited and received.

ELECTIONS. Qualification and registration of voters. If a voter represents to the supervisor of registration that the information set forth on the registration records of his county concerning the voter is erroneous, and he desires that the records be changed, the supervisor of registration should permit the voter to re-register at any time during which the registration books are open for registration.

Local option. This opinion was somewhat lengthy, possessing information that would be of value only to a few. It discussed the questions confronting the supervisor of registration with respect to a petition for local option elections, and his duties in relation thereto.

FINES AND IMPRISONMENT. Reduction for partial service. A person sentenced to pay a fine or costs and, in default of such payment to serve a period of time in prison, who serves a portion of the alternative prison sentence, is entitled by statute to credit upon the fine or costs in proportion to the time he was imprisoned.

GAME. Gun-prohibited areas. Under rule 5 of the Wildlife Code, it is a misdemeanor to enter, with a gun, any hatchery, sanctuary, refuge or reservation where hunting and/or trapping is prohibited by the Game and Fresh Water Fish Commission. There is no necessity to show an intent actually to use the gun. No opinion was expressed concerning the validity of this rule under § 20 of the Declaration of Rights.

Fresh water fish—retail dealer. A non-resident who purchases fresh water fish in Florida, for sale to a wholesaler or direct to the consumer, must obtain a license. However, the requirement concerns only the privilege of selling within this state, and does not apply to one who transports the fish to another state for sale there.

GAMING. Prize or reward. The possession of a coin-operated amusement device which dispenses free plays as a prize or reward is unlawful, but the possession of a machine which does not give any prize or reward is legal.

Following New York decisions construing a similar statute, the opinion was given that the device must actually be a gambling device, not one merely capable of being converted into one; so that a pin-ball machine on which the free play mechanism has been made inoperative is not an illegal device.

**Highways. Live stock fences.** The recently enacted prohibition of livestock roaming at large applies to animals found on the right-of-way of state maintained roads. The statute expressly imposes a duty, on the sheriff and any other county law enforcement officer and on the state highway patrolmen, to impound livestock running at large. This is in contrast to local laws, effective if adopted on a referendum by the people of the county, which either prescribed a legal fence for large animals but could be enforced only by civil action, or created “no fence districts” in which the sheriff was required to impound cattle found running at large. If the local laws were not adopted they would not be effective; yet it would seem that the later general statute had replaced the earlier local provisions even if they were in effect.

**Insurance. Foreign insurer.** An insurer domiciled in a foreign country must obtain a permit to transact business in Florida, but is not expressly required to obtain a certificate of authority to do business in this state for only the issuance of reinsurance. Whether the certificate of authority should be obtained by satisfying the minimum investment requirements, and whether the Florida primary insurers with which it does business may receive credit against the unearned premium reserve for the reinsurance, are problems having little relationship. However, the granting of reinsurance credit would depend upon reserves of the reinsurer which are available in this country for the risks. Accordingly, a certificate of authority may be issued upon compliance with the statutory investment requirements, coupled with an agreement between the Insurance Commissioner and the insurer that its domestic manager shall maintain an instantly available fund equal to the unearned premium reserve with respect to the direct writings.

**Intoxicating Liquors. Forfeitures of property.** Even though a city has an ordinance making it unlawful to sell, barter, exchange, manufacture, possess or transport any illegal liquor, and providing a penalty for its violation, the city may not confiscate by means of forfeiture an automobile or vehicle.

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34. Fla. Laws 1931, c. 15204 (Flagler County).
35. Fla. Laws 1929, c. 14039 (Flagler County).
transporting the illegal liquor. It is the duty of its officers, however, to apprehend persons for violating state laws by transporting illegal liquor, and to surrender vehicles seized to the sheriff, who in turn can turn them over to the State Beverage Director for proper forfeiture proceedings.

Licenses. A liquor licensee who has a bar license for both package and on-premises sales is not allowed to separate the places for the sale of liquor as package goods in one location and by the drink in another location under the same license. If it is the desire of the licensee to operate two places of business, he must obtain two appropriate licenses.

Justices of the Peace. Peace bond procedure. This opinion sets forth the statutes which govern the judicial procedure followed by a justice of the peace in case an individual who is bound to keep the peace violates the terms of his peace bond.

Landlord and Tenant. Safety regulations. A landlord's license may be revoked by the State Hotel Commission for failure of the heating equipment to meet the safety regulations. The power applies to equipment owned by the tenant, as well as to that owned by the landlord. Since the purpose of the regulation is to protect the safety of the building and its occupants, the ownership of the defective equipment is of no concern.

Municipal Corporations. Police power. Several problems of the scope of the municipal police power may be raised by a proposed ordinance, which would forbid the appearance on public streets or property of persons wearing a mask or other device to conceal identity. It would make an exception in favor of people wearing holiday costume, actors, or persons less than 16 years old. While the opinion did not attempt to determine the validity of the ordinance, it indicated that the regulation of wearing disguises in public is within the power of the city, and that a reasonable law would not violate the constitutional guarantees of freedom of assembly or of due process and equal protection.

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42. Long v. Capital Gardens, 142 Fla. 261, 194 So. 625 (1940); Fla. Stat. § 561.34 (1949).
48. Another provision of the same ordinance would make unlawful the erection or burning of a cross upon public or private property, without the prior permission of the owner. The protection of property from trespass is within the police power of a city. See Pineville v. Marshall, infra note 49. See Pineville v. Marshall, supra note 30; cf. Bryant v. Zimmerman, 278 U.S. 63 (1927); see Satan Fraternity v. Board of Public Instruction, 156 Fla. 222, 22 So.2d 892, 894 (1945).
A municipality cannot confiscate, by means of forfeiture, a vehicle transporting illegal liquor in violation of an ordinance of the city.  

**Physicians and Surgeons. Masseurs.** The license of a masseur may be revoked for the conviction of a felony by a court of competent jurisdiction. The Civil Service Board of a municipality is not a court, so its finding that a registrant is guilty of a moral charge is not a conviction within the statute. A charge under the Civil Service Rules and Regulations must be a felony according to state law in order to afford ground for revocation of a license.  

**Schools. School purposes.** An expenditure of funds by a school board must be for a school purpose, not possibly for other uses by private parties. Accordingly, a board cannot purchase busses and resell them to the contract carriers at the same price, in order to effect a saving on the contract rates. Also, part of the plan, for the school board to pay the federal excise taxes and in turn to collect them from the contractors, would be illegal, it appearing to be a subterfuge to evade taxes through the exemption of the board.  

**Sheriffs and Constables. Constables.** A constable is an executive officer of the county judge’s court, and is under a duty to serve all summonses and warrants placed in his hands. Thus, a constable may serve the process of a county judge in a judicial inquiry of the insane.  

**Sheriffs.** A county traffic officer has the power to serve criminal process, incidental to the duty to enforce traffic laws, and is a qualified deputy sheriff. Civil process may be served by a regular deputy sheriff, who is also employed by the county as a traffic officer, in his capacity as deputy during the hours he is not working as a traffic officer.  

**State Employees. Leaves of absence with pay.** A state employee who has received seventeen days leave of absence with pay for National Guard Service, as provided by one statute, is eligible to receive an additional thirty days leave of absence with pay by virtue of another statute when and if he is inducted into active military service. These statutes relative to military leaves of absence are intended by the legislature to apply only to permanent employees. The distinction between regular and casual, or permanent and temporary employees, is not necessarily based upon the method

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52. Op. Att’y Gen. 050-466 (Sept. 27, 1950); see Intoxicating Liquors, supra.  
55. Fla. Const. Art. 12, § 13 (“No law shall be enacted authorizing” the appropriation of school funds to other than school purposes).  
of compensation, but rather on the type of position, especially the anticipated tenure of employment.64

**Taxation.** _Collection agency._ A tax collection agency is defined as a person who collects or pays the taxes of another.65 A fee which is exacted solely for revenue, without other conditions, is a tax; but a fee imposed for regulation, with a required performance of other conditions, is a license.66 Accordingly, a tax collection agency authorized by the statute would appear to be restricted to acting as an agent for the payment of revenue taxes, not for licensing or regulatory fees.67

**Documentary stamp tax.** A certificate of membership in a country club, organized as a non-profit corporation, states that the member is entitled to a pro rata interest in the property and assets of the club, but does not fix any value for it. While the Florida documentary stamp tax is levied on a certificate of an "interest in property,"68 the opinion is that the club membership certificate is not within the meaning of the statute, because of the lack of actual monetary value.69 This conclusion is based on a case construing an identical federal documentary stamp tax.70

A promissory note executed by an insured to his insurer, as evidence of a loan made by the insurer on an outstanding policy, is subject to the documentary stamp tax.71

**Occupational license.** The occupational license fee72 which has accrued from the beginning of the license year, but has not been paid at the time the business is placed in receivership, is a claim against the property in the hands of the receiver. Its collection cannot be enforced by warrant or injunction, in the absence of court consent; and payment cannot be required in order for the receiver to obtain the license to operate the business from the time it is put into receivership.73

**Tax Deed.** It is the duty of the clerk of the circuit court to accept the application for tax deed, so long as the tax rolls or the face of the certificate do not show a fatal defect, even though he has learned from the mortgage records that the tax sale certificates were purchased by the holder of a mortgage on the property at the time. The clerk should give notice of the application, for a tax deed which is based on that possible infirmity,74 to the owner of the property.75

**Tax sale.** Although the statutory minimum interest for redeeming a tax

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68. Fla. Stat. § 201.05 (1949).
74. Hillsborough Inv. Co. v. Tampa, 149 Fla. 7, 5 So.2d 256 (1941).
sale certificate is five per cent of the face of the certificate,76 an individual purchaser may have bid, for the first year, either no or a rate less than five per cent. The opinion is that the interest should be awarded at the rate of the bid, because of the ambiguity of the statute, and following the administrative construction by the Comptroller and more than three-fourths of the clerks of the circuit courts.77 It was stated that in at least eleven countries the minimum five per cent is charged upon a bid of less than the minimum, and in at least eight of those same counties the minimum is charged upon a bid of no interest.

76. Fla. Stat. § 194.02 (1949).