Legislative Highlights—1953

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The statutes discussed in the "Legislative Highlights" section were enacted during the recent legislative session. They are selected from those felt to be of general interest to The Florida Bar. Since lack of space prevents a more comprehensive treatment, the criticism and research are not exhaustive; these statutes may be subjected to more thorough analysis in subsequent issues.

THE JUDICIAL COUNCIL OF FLORIDA

The 1953 Legislature has enrolled Florida in the increasing class of forward-looking states by establishing a judicial council.¹ Thirty-four states have some type of similar organization, with parallel functions and objectives.²

The Judicial Council of Florida will be composed of seventeen members, who will serve staggered three-year terms. To insure a cross-sectional view of our judicial problems the council will be composed of a present or retired Supreme Court justice, who will always serve as chairman, a circuit court judge, a judge of a court having probate jurisdiction, the Attorney General or one of his assistants, four members of The Florida Bar, and nine laymen. All are to be appointed by the Governor.

The duties of the council are varied and numerous. One of the more important is to make a study of our court system, including organization, practice, procedure, and general operation of all the courts of the state. The council is also to collect, assimilate, and publish reports concerning these facets of our judicial system and make recommendations to the Legislature and to the courts. An annual report is required to be filed with the Governor. The council is authorized to require officials of the various courts to make any desired reports.

Section 3 of the act³ appears broad enough to establish the council

¹Fla. Laws 1953, c. 28062.
³Sec. 3: "To receive, consider, and in its discretion investigate criticisms and suggestions from any source pertaining to the administration of justice and to make
as a grievance committee to hear wrongs or alleged wrongs from any source. It is conceivable that membership on the council will be a full-time job if the public takes due advantage of this provision.

A prospective view of the act shows Florida taking a much-needed step toward "a more efficient administration of justice." The population of the state has increased by leaps and bounds. Court calendars are overcrowded, and our Supreme Court is perhaps the busiest in the nation. The law and the methods of administering the laws are constantly changing. Though often appearing abstruse and mystic to the layman, the purpose of laws is to facilitate life in a complex society. An organization unblemished by political influence and able to act independently to best meet the needs of the public by investigating, analyzing, and overhauling our court system is an absolute necessity.

**REVISIONS IN FLORIDA ESTATE TAX LAW**

Section 198.03 of Florida Statutes 1951, relating to taxes upon estates of nonresident decedents, has been amended and now imposes a tax upon "Intangible personal property having a business situs in this State and upon stocks, bonds, debentures, notes and other securities or obligations of corporations organized under the laws of this State." A Florida estate tax return is to be filed whenever the personal representative is required to make a federal return. Prior to these amendments the personal representative was required to make such a return when the gross estate exceeded $50,000. Under the present statute the key figure is $60,000, this being the requisite amount the estate must exceed before a federal tax return is required.

The date upon which the Florida estate tax becomes due and payable has been changed from one year after decedent's death to fifteen months—the same period as under the federal tax. Under recommendations pertaining thereto."

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4Increase in population for years 1940-1950, 46.1%, U.S. Census of Population 1950, U.S. Dep't of Commerce.
5See 9 IND. L.J. (1934) for a brief discussion of the functions of a judicial council.
6Fla. Laws 1953, c. 28031, §198.03.
8Fla. STAT. §198.13 (1951).
9INT. REV. CODE §935 (c), U.S. Treas. Reg. 105, §81.57.
10Fla. Laws 1953, c. 28031, §198.15.
11INT. REV. CODE §822.
the old twelve-month provision\textsuperscript{12} the Florida tax became due before the federal tax. This fact placed the personal representative in an awkward position, since the amount available under the federal tax as a credit was in many cases not finally determined until after the state tax became due. The Florida estate tax is constitutional only when levied for the purpose of taking advantage of the credit allowed by the federal estate tax laws.\textsuperscript{13} The present statute allows the personal representative to pay both federal and state taxes simultaneously, thus apprising him of the amount of federal tax that may be taken as a credit, which in effect is the maximum amount the Florida estate tax can reach.

The provision affecting interest payments on deficiency penalties for negligent or willful disregard of the provisions of the law\textsuperscript{14} has been changed to coincide with the federal law,\textsuperscript{15} which does not require the payment of interest on penalties of this nature.\textsuperscript{16}

The amended statute also changes the period of limitations in regard to assessments to four years from the date the return was filed.\textsuperscript{17} This allows Florida a full year after the final date for assessments has expired on the federal level.\textsuperscript{18}

The limitation period for the collection of taxes is changed from five years after the date of death of the decedent\textsuperscript{19} to ten years from the date of filing with the commissioner notice of the decedent's death or ten years from the date of filing an estate tax return, whichever is earlier.\textsuperscript{20} The Florida and federal limitation periods on collection are now the same.\textsuperscript{21} This provision should prove an incentive for the personal representative to file notice of a decedent's death as soon as possible in order to start the running of the statute.

Our estate tax laws have been sorely in need of revision. The Legislature has taken a step forward, but much is yet to be done. Perhaps the next session will bring forth a completely new estate tax statute.

\textsuperscript{12}FLA. STAT. §198.15 (1951).
\textsuperscript{13}FLA. CONST. ART. IX, §11 (1885).
\textsuperscript{14}FLA. STAT. §198.16 (1951).
\textsuperscript{15}Fla. Laws 1953, c. 28031, §198.16.
\textsuperscript{16}INT. REV. CODE §894.
\textsuperscript{17}Fla. Laws 1953, c. 28031, §198.28.
\textsuperscript{18}INT. REV. CODE §874.
\textsuperscript{19}FLA. STAT. §198.33 (1951).
\textsuperscript{20}Fla. Laws 1953, c. 28031, §198.33, "... exception in the event notice of lien recorded."
\textsuperscript{21}INT. REV. CODE §827.
THE UNIFORM SUPPORT OF DEPENDENTS ACT

Special reciprocal legislation providing for interstate proceedings for the support of dependents has been enacted in thirty-two states.\textsuperscript{22} The Florida Legislature has enacted a statute that, while different from those currently in use in the great majority of jurisdictions having such legislation, is sufficiently similar to permit reciprocity.\textsuperscript{23} Eight other jurisdictions have acts that are in large part the same as the Florida statute.\textsuperscript{24}

The Florida Uniform Support of Dependents Act has made available a more effective method of enforcing the duty of support of the wife or child of a spouse who is not within the territorial jurisdiction of his dependents. With the increasing mobility of the American population the duties of interstate support have become acute. The abandoned wife has to seek out her husband and proceed against him wherever he can be found. This act provides an expedient and relatively inexpensive procedure for enforcing support of the family.

The procedure is novel and appears to be exceedingly practical. The act allows each party to plead in the courts of his own state.\textsuperscript{25} The state's attorney is required to represent the petitioner unless she engages private counsel.\textsuperscript{26} For purposes of illustration let us assume that the husband abandons his wife and child, who reside in this state, and deserts to Georgia. Since Georgia has a reciprocal act, the wife files a petition for support in the court of the county in which she resides.\textsuperscript{27} Since the husband is not within the jurisdiction of Florida, the court forwards the petition and summons to the appropriate Georgia tribunal, accompanied by a statement that in the court's opinion the husband should be compelled to answer.\textsuperscript{28} The Georgia court personally serves the husband and a hearing is held. If at the hearing the husband denies or controverts the allegations in the petition, the hearing is stayed and the transcript mailed to the Florida

\textsuperscript{22}A U.L.A. $35$ (Supp. 1982). This type of act was approved by the Commissioners on Uniform State Laws in 1950 and was extensively amended in 1952.

\textsuperscript{23}Fla. Laws 1953, c. 27996.

\textsuperscript{24}Conn., Ga., Ill., Iowa, Ky., Okla., S.C., Virgin Is.

\textsuperscript{25}Id. §3.

\textsuperscript{26}Id. §8.

\textsuperscript{27}Id. §7 (1). The Attorney General has recently ruled that only circuit courts have jurisdiction under the provisions of this act, and further that costs are to be paid by the petitioner, with the right to seek reimbursement from the respondent, Ops. Att'y Gen. Fla. July 17, 1953.

\textsuperscript{28}Fla. Laws 1953, c. 27996, §3.
court. At this point the judge in Florida conducts a hearing and forwards the transcript to Georgia, along with the court's recommendation. The parties have the right to cross-examination by means of depositions or written interrogatories. If the judge in Georgia sees fit he can enter a support order directing that payments be made to the clerk of the court, who will remit the funds to the Florida court for distribution.

It is clearly evident that this type of act is of great benefit to those unfortunate enough to be dependent upon a perfidious provider. Further, this act is essential to the continued prosperity of the state. The burden thrown upon state welfare agencies because of those people who refuse to take care of their dependents demands an efficient and effective means of compelling such individuals to recognize their obligations and perform them.

The United States Supreme Court has not as yet had the opportunity to test the constitutionality of this type of legislation, but at least one jurisdiction has held its act constitutional. The Florida statute is welcomed most heartily, even though it is not the most modern legislation in force on the subject.

**INVESTMENT OF FIDUCIARY FUNDS**

The Legislature has amended Chapter 518 of Florida Statutes 1951 concerning the investing by a fiduciary of funds entrusted to his care. Prior to this amendment executors, administrators, trustees, and guardians holding funds without any limitation of their power of investment were permitted to choose only from an inflexible statutory list of approved investments. The enactment changes this to permit

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29Id. §6.
30Id. §7.
31Id. §9.
32Id. §§12, 16.
35The act recommended by the Commissioners on Uniform State Laws, 9A U.L.A. 35 (Supp. 1952), provides for criminal prosecution in addition to civil proceedings and also affords the state an opportunity to recover for aid advanced to dependents.
36Fla. Laws 1953, c. 28154.
37FLA. STAT. §518.01 (1951).
fiduciaries to act as "men of prudence, discretion and intelligence" would act in regard to their own investments of a permanent and nonspeculative nature.

The prudent-man rule was first enunciated in Massachusetts in 1830 in the now famous case of Harvard College v. Amory. Mr. Justice Putnam's opinion has formed the core of the more liberal legislation on the subject:

"All that can be required of a trustee to invest, is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."

In 1942 the Committee on Fiduciary Legislation of the American Bankers Association prepared and recommended a model statute which has formed the basis for much of the legislation that has been enacted since that time. The changes embraced in the Florida enactment are an almost verbatim copy of this statute.

The historic rival of the liberal prudent-man, or Massachusetts, rule has been the legal list, or New York, rule. Although the first enunciation of the rule paid substantial lip service to Harvard College v. Amory, the similarity has since been frittered away by judicial interpretation until today the rules stand diametrically opposed to each other. Advocates of each view have proposed substantial arguments in support thereof, but it appears that the more liberal Massachusetts rule has been gaining in favor throughout the country.

Massachusetts has developed a substantial body of case law defining the prudent man and prudent conduct. In view of the fact that our statute is so similar to the model statute, which in turn is based upon an early Massachusetts case, it seems probable that this great lore of precedent will be extremely helpful in interpreting the Florida statute.

389 Pick. 446 (Mass. 1830).
39Id. at 461.
40Trust Bulletin, Nov. 1943.
41Compare §§518.11-518.14 with the model statute, Trust Bulletin, Nov. 1943.
42King v. Talbot, 40 N.Y. 76 (1869).
43See 3 BOGER, TRUSTS AND TRUSTEES §§611-664 (1946) for a comparative survey of state law.
Whether this change from a conservative attitude toward fiduciary investments to a more liberal outlook is wise has already been the subject of spirited debate — only time will tell.

DEATH PENALTY FOR UNLAWFUL SALE OF NARCOTICS TO MINORS

Section 398.22 of Florida Statutes 1951, as amended by the 1953 session of the Legislature, makes it a capital offense to unlawfully give or sell narcotic drugs to minors. Other states are attempting to discourage sales of narcotics to minors by punishing such sales with special severity. Georgia has made it a capital offense upon the second conviction, but Florida is the only jurisdiction that has imposed the death penalty for the first offense. Under the present enactment the death penalty is mandatory unless a majority of the jury recommend mercy. In the event that mercy is recommended the judge in his discretion can impose a sentence ranging from ten years to imprisonment for life.

In keeping with the policy of tightening up our narcotic regulations, the Legislature has further amended Section 398.22 to disallow suspension or deferment of a sentence imposed for a second or subsequent conviction. In addition, the person so convicted can never be placed on probation.

Florida through this current legislation appears determined to maintain its place as a leader in the fight against the unlawful sale and distribution of narcotics.

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307 (1945), for ready annotations to the Massachusetts law.
45 Fla. Laws 1953, c. 28097.
48 Fla. Laws 1953, c. 28233.
49 In 1951 the Commissioner of Narcotics considered California, Florida, and Pennsylvania the only states where the local narcotic enforcement agencies were "adequate." N.Y. Times, July 2, 1951, p. 10, col. 6.