and rehabilitative services may enter into cooperative payment and referral arrangements with other state agencies responsible for, or involved in, health and rehabilitative services as required by § 1902(a) (11)(A)(B) of the federal social security act.

On Oct. 22, 1969, by letter addressed to U. S. Department of Health, Washington, D. C., the Attorney General advised that pursuant to Ch. 69-106, Laws of Florida, the department of health and rehabilitative services is the single agency of the state designated to administer resulting departments under programs of Title XIX of the social security act, as amended.

Programs of reorganization of the executive branch of state government authorized by the 1969 Legislature are the recipients of appropriations necessary to accomplish the purposes of such reorganization, § 16, Ch. 69-100, Laws of Florida. With reorganization of the executive branch, all health and medical care programs administered by the state department of public welfare under Ch. 409, F. S., were transferred to the department of health and rehabilitative services, § 19, Ch. 69-106, Laws of Florida (§ 20.19, F. S.)

Since the function of all agencies of the State in providing health and medical care programs to recipients under Ch. 409, F. S., by the state department of public welfare has been transferred to the department of health and rehabilitative services, the department as reorganized is the sole agency authorized to make payments for such services, and need for contract between the department of health and rehabilitative services and any other state agency to provide such services no longer exists. Question 1 is answered in the affirmative.

AS TO QUESTION 2:

When doubt exists as to the meaning of a statute, the purpose for which it was enacted is of primary importance in its interpretation. United Bonding Ins. Co. v. Tuggie, 216 So.2d 80.

In construing statutes, a court will consider not only language or words used in a statute, but also its history, its legislative setting, subject matter on which statute operates, the evil to be corrected and the objects to be obtained, all of which are as much a part of the law as the words themselves. Dade Federal Sav. & Loan Ass'n v. Miami Title & Abstract Division of American Title Ins. Co., 217 So.2d 873.

The obvious purpose of the legislature was to assure that funds appropriated were used to provide necessary medical treatment for the sick, infirm, and disabled persons qualified for assistance under applicable state laws implementing Title XIX of the federal social security act.

It is my opinion that the legislature intended to limit the use of funds appropriated for physicians' services to the payment for such services in connection with diagnostic or therapeutic treatment, as distinguished from the routine annual physical checkup had by many individuals, and thus channel appropriated funds to provide physicians' services most needed by recipients under the program. Question 2 is answered in the negative.

069-124—December 9, 1969

PUBLIC HEALTH, WELFARE, AND MORALS

SUNDAY CLOSING LAWS—AUTHORITY TO ENACT—STATE, COUNTIES, AND MUNICIPALITIES

To: Bill Gunter, State Senator, Orlando
QUESTION:

What is the constitutional authority of a state to enact Sunday closing laws?

It is almost universally held that a state—or its political subdivisions, with proper constitutional or statutory authority—may adopt a Sunday closing law. The right to do so does not derive from the state constitution, which, after all, is only a limitation on the exercise by a state of its sovereign powers, but from the inherent power of the state to legislate concerning the health, safety, and general welfare of its citizens.

A landmark case concerning Sunday closing laws is McGowan v. Maryland, 1960, 366 U.S. 420, 6 L.Ed.2d 393, 81 Sup. Ct. 1101, in which the validity of the Maryland Sunday closing law was upheld. In that case the court pointed out that Sunday closing laws go far back into American history, having been brought to this country by the colonists from England, where Sunday closing laws existed from the 13th century. Noting that Sunday closing laws were unmistakably religious in their origin in this country, but that they are now evidence of the state’s concern for the health, safety, recreation, and general well-being of its citizens, the court said at p. 445:

Sunday closing laws ... have become part and parcel of this great governmental concern wholly apart from their original purposes or connotations. The present purpose and effect of them is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals.

Our research reveals that in the period 1956 to 1966, the Sunday closing laws of the following states were upheld as against various constitutional attacks upon them: Arkansas, Colorado, Connecticut, Florida, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Wyoming, West Virginia, Virginia, Texas, and Tennessee. See the Seventh Decennial Digest, under the topic “Sunday,” Key 2 et. seq.

Florida’s Sunday closing law, Ch. 855, F. S., was repealed by Ch. 69-87, Laws of Florida. However, prior to its repeal, in Henderson v. Antonacci, Fla. 1952, 62 So.2d 5, the court noted that:

... the closing of all business houses on Sunday, except in cases of emergency, bears a rational and reasonable relationship to the public health, safety, morals or general welfare because thereby protection is afforded all citizens from the evils attendant upon uninterrupted labor.

The court did, however, strike down a 1951 amendment to the Act because of exemptions made therein based on nebulous, wholly arbitrary distinctions without a reasonable basis for upholding them. See also Moore v. Thompson, Fla. 1960, 126 So.2d 543, upholding the validity of Sunday closing laws in general, but striking down Ch. 59-295, Laws of Florida, a Sunday closing law applicable only to new and used car dealers. A municipal ordinance of the City of St. Petersburg prohibiting the opening of motion picture theaters, cabarets and dance halls on Sunday was upheld in Gilhooley v. Vaughn, Fla. 1926, 110 So. 653, the court noting that municipalities of this state are authorized “... to pass all such ordinances and laws as may be expedient and necessary for the preservation of the public peace and morals.” § 1839, RGS, now appearing as § 165.19, F. S.
Under these decisions, Florida is clearly and unambiguously aligned with the almost universal holding that a Sunday closing law is a proper exercise of the police power of the state and its political subdivisions that will be upheld unless it violates the equal protection or due process of law clauses of the federal and state constitutions.

As noted above, in 1969 the Legislature repealed the general statewide Sunday closing law, Ch. 855, F. S. During the same 1969 term it enacted Ch. 69-234, Laws of Florida(§§ 125.65, 125.69, F. S.), and Ch. 69-33, Laws of Florida(§ 167.005, F. S.), implementing the so-called "home rule" provisions of the State Const. for counties and cities, respectively. See Art. VIII, §§ 1, 2, State Const. Under said Ch. 69-234(§ 125.65(1), F. S.), the counties of this state "...shall have all powers of local self-government ...and may exercise any such power for county purposes, and the health, safety or welfare of its citizens not inconsistent with general or special law.”

And under Ch. 69-33(§ 167.005, F. S.), as well as §§ 165.19 and 167.05, F. S., the municipalities of this state are authorized to adopt ordinances for the preservation of the public health, public peace and morals. It seems, therefore, that the 1969 Legislature intended to and did abdicate its right to legislate in the field of Sunday closing laws and turned over to each of the counties and cities of this state the right to make its own decision, based on local conditions and the best interests and desires of its own citizens and businesses, as to whether or not a Sunday closing ordinance should be adopted and, if so, the types of businesses and other establishments that should be closed—keeping in mind the constitutional requirements of equal protection and due process of law discussed in Henderson v. Antonacci, supra, 52 So.2d 5.

069-126—December 10, 1969

RETIREMENT

TEACHERS' SICK LEAVE—TERMINAL PAY—CONSTRUCTION OF TERM "NORMAL RETIREMENT"

To: Floyd T. Christian, Commissioner of Education, Tallahassee

QUESTIONS:

1. Is the Brevard County board of public instruction authorized to pay one half of accumulated sick leave under § 231.40(1)(c), F. S., to a teacher who "retires" after ten years of service at the age of 55 to enter business? The teacher will not start retirement benefits at this time.

2. If so, is a retired teacher eligible for the remaining one half should he return to the teaching profession before the age of 70?

Section 231.40(1)(c), F. S., states:

A school board may establish policies to provide terminal pay to a member of the instructional staff at normal retirement...; provided, however, that such terminal pay shall not exceed an amount determined by the daily rate of pay of the member of the instructional staff at retirement... multiplied by one half the total number of accumulated sick leave days credited to the member of the instructional staff at time of retirement.... (Emphasis supplied.)