

Florida distributors which, as of June 3, 1947, were in a position similar to that occupied by the respective parties in the *Vocelle* case. That the legislature intended the grandfather clause to be strictly applied is indicated by §8 of Ch. 23899, which presently appears as §561.24 (8), F. S., and reads as follows:

(8) Any maneuver, shift or device by any applicant whereby any provision of this section, in any manner, is sought to be avoided or evaded shall constitute a felony of the third degree . . . .

In the light of the apparent purpose and intent of the legislature when it enacted §561.24 (5), *supra*, it appears that the Division of Beverage was correct in concluding that B did not come within the provisions of the grandfather clause. This determination is not clearly erroneous and is therefore entitled to great weight. *Gay v. Canada Dry Bottling Co., supra*.

In conclusion, it should be pointed out that the foregoing interpretation of §561.24, *supra*, is not affected by the fact that the spirituous liquors produced by C will not be sold by B in Florida. The only exception to the provisions of the statute are those contained in §561.24 (5). As has already been noted, B does not qualify for that exception. It is also important to understand that §561.24 does not give the division authority to regulate the manufacture or distribution of alcoholic beverages beyond this state, or to prevent the acquisition of C by A. The statute merely establishes the requirement that an individual or corporation desiring to obtain or renew a license for distribution of alcoholic beverages within the State of Florida must not be controlled by a corporation which engages directly or indirectly in the rectifying of spirituous liquors in a state other than Florida.

The companies involved have submitted a brief to this office in which they argue that the Florida law is limited by federal constitutional considerations to the conduct, management, and operation of the sale of alcoholic beverages within the state. They argue that since none of the beverages manufactured in California will be distributed in Florida the subject transaction must be considered exempt from §561.24 (2) and (4), *supra*.

We have reviewed the cases cited in support of the above proposition and we find them to be factually distinguishable. While we recognize the possibility that the proposition discussed in those cases might, in the future, be judicially extended to cover the present fact situation, we are not prepared to presume such an extension at this time. The language of the statute is unambiguous and, until judicially or legislatively determined to the contrary, we do not perceive it to be within the scope of our authority to read exceptions into that language.

073-139—May 2, 1973

#### LANDLORD AND TENANT

##### EJECTMENT OF UNDESIRABLE GUEST OR TENANT

To: Groter C. Robinson III, Representative, 1st District, Tallahassee

Prepared by: Henry George White, Assistant Attorney General

#### QUESTIONS:

1. Is §509.141, F. S. 1971, applicable for the purpose of ejecting apartment leaseholders?
2. Is there a conflict between the conclusion in AGO 071-152 and that in AGO 072-134?

#### SUMMARY:

The provisions of §509.141, F. S. 1971, concerning the ejectment of



undesirable occupants from a public lodging establishment, are available to the management of such an establishment whether its occupants are guests or tenants. The management of a public lodging establishment is authorized to determine whether a person or group of persons is undesirable as that term is used in the statute.

#### AS TO QUESTION 1:

Section 509.141, F. S. 1971, deals with the ejectment of undesirable guests from hotels, apartments, and other establishments providing public lodging, and details the procedure by which such ejectment may be accomplished. In AGO 072-134, the provisions of §509.141 were discussed at length. The views expressed therein are now reaffirmed.

With respect to the applicability of §509.141, *supra*, to a situation involving a landlord-tenant relationship, I refer you to the recent case of *Kent v. Wood*, 235 So.2d 60 (1D.C.A. Fla., 1970). The *Kent* case specifically dealt with the application of §509.141 in a landlord-tenant context, and the opinion clearly indicates that the court considered the statute to be applicable to both host-guest and landlord-tenant relationships. However, the opinion includes the following caveat, at 63:

It is not the intent of the statute that it be used as a convenient vehicle for circumventing the notice requirements to which a tenant is entitled under the provisions of F. S. Section 83.03, F.S.A. If a landlord deems a tenant to be undesirable within the purview of F. S. Section 509.141, F.S.A., and therefore elects to avail himself of the benefits conferred by that statute, the landlord must demand the tenant or guest to immediately depart the premises and refund him whatever unearned rent he has previously paid.

It should be noted that the prerequisites for invoking the provisions of §509.141, *supra*, are the same whether used against a tenant or a guest. The conduct of a tenant or guest upon the premises of the landlord or innkeeper must be of such an unlawful, aggravating, and reprehensible nature as to be offensive to others who are lawfully on the premises and to harm the reputation and name of the establishment in which the disturbance occurs. *Kent v. Wood*, *supra*, at 62. *Accord*: Attorney General Opinion 072-134. As I noted in AGO 072-134, §509.141 authorizes the management of an establishment to be the judge of whether the conduct of an individual comes within the purview of the statute. It logically follows that in case of multiple occupancy of a room or apartment the management has the discretionary authority to determine whether it is necessary to eject any or all of the occupants in order to effectively put an end to the type of disturbances contemplated by §509.141.

#### AS TO QUESTION 2:

The apparent conflict between AGO's 072-134 and 071-152 results from the statement on page two of the latter opinion to the effect that "the exclusive remedies for a landlord to dispossess an unconsenting tenant are found in Chapter 83, Florida Statutes." While this statement is admittedly ambiguous in the light of the foregoing interpretation of §509.141, *supra*, the confusion can be eliminated by examining the statement in the context in which it was made.

The issue dealt with in AGO 071-152 was whether a landlord could resort to a self-help method of enforcing his landlord's lien under §§713.67 and 713.68, F. S. 1971. In discussing this issue reference was made to Ch. 83, F. S., and the judicial interpretations of its provisions. Thus, it was noted that "the policy of Florida law is to protect the interests of the party in present possession in order to prevent criminal disorders which often accompany self-help reentry." Attorney General Opinion 071-152. Cited in support of this proposition was the case of *Ardell v. Milner*, 166 So.2d 714 (3 D.C.A. Fla., 1964), wherein the following statement is found at p. 716:

It appears that Ch. 83, Fla. Stat., F.S.A., provides for summary remedies



by which a landlord may speedily regain possession and said remedy is *exclusive* of the right of the landlord to make a forcible entry . . . .

The statement in AGO 071-152 which is quoted above was not intended to be broader than the above-quoted statement from the *Ardell* opinion. Both stand for the proposition that the remedies provided in Ch. 83, F. S., are exclusive of the previously existing common-law right of forcible reentry by a landlord. See *Adelhelm v. Dougherty*, 176 So. 775 (Fla. 1937). But the provisions of Ch. 83 are not exclusive of other statutory remedies given to landlords, including the remedies provided in §509.141, *supra*. See *Kent v. Wood*, *supra*. Viewed in this light, there appears to be no real conflict between AGO's 072-134 and 071-152.

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#### CIRCUIT COURT CLERK

##### APPOINTMENT OF DEPUTY—METHOD, ACCEPTANCE

To: *Philip S. Shailer, State Attorney, Fort Lauderdale*

Prepared by: *Reeves Bowen, Assistant Attorney General*

#### QUESTION:

When the clerk of a circuit court writes a letter to an attorney appointing him a deputy clerk, does this place such attorney in the position of being a deputy clerk?

#### SUMMARY:

An attorney may be a deputy clerk of the circuit court but he is forbidden to practice law in this state while he is such deputy.

An attorney, or other person, may be appointed as deputy clerk by letter of appointment addressed to him by the clerk. However, the addressee of such a letter must take some action which indicates his acceptance of the appointment before he actually becomes a deputy clerk.

To begin with, it is noted that §454.18, F. S., says with reference to attorneys that "No sheriff, or clerk of any court, or deputy of either, shall practice in this state . . . ." and that §454.23, F. S., says:

**454.23 Penalties.**—Any person other than those entitled to practice on June 25th, 1925, who shall practice law or assume or hold himself out to the public as qualified to practice in this state, without first having obtained his certificate from the state board of law examiners as required by this chapter, *and any person entitled to practice then or thereafter who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.* (Emphasis supplied.)

These statutory provisions do not bar an attorney from being a deputy clerk. They do prohibit an attorney from practicing law in this state while he is a deputy clerk and provide criminal penalties if he does so.

We next consider the effect of a letter written by a clerk to an attorney, appointing him deputy clerk.

Section 28.06, F. S., reads as follows:

**28.06 Power of clerk to appoint deputies.**—The clerk of the circuit court may appoint a deputy or deputies, for whose acts he shall be liable,