

to be deemed guilty of a crime punishable by fine or imprisonment, or both. (Emphasis supplied.) [44 So.2d at 902.]

Accordingly, the first part of question 1 is answered in the affirmative.

As to the second part of question 1: A union (or an employer on behalf of a union) cannot constitutionally exact union dues from nonunion employees—either under Art. I, §6, *supra*, or basic principles of due process of law—as a condition of employment. *See Schermerhorn v. Local 1625 of Retail Clerks Int. Ass'n*, 141 So.2d 269 (Fla. 1962), holding that an “agency shop” provision of a collective bargaining agreement which required nonunion employees, as a condition of employment, to pay to a labor union a sum equal to the initiation fees and monthly dues for union members violated the “right to work” provision of the Constitution and should be enjoined. And I am of the opinion that this type of exaction would be held by the courts to be an unlawful coercion or intimidation of a nonunion employee in the “enjoyment of his legal rights” contrary to the prohibition of §447.09(11), *supra*, the violation of which would subject the union (and employer) to the sanctions of §447.14, *supra*. Accordingly, the second part of question 1 is also answered in the affirmative.

AS TO QUESTION 2:

As noted in *Kaiser v. Price-Fewell, Inc.*, 359 S.W. 2d 449 (Ark. 1962), hiring halls maintained by building and construction trades “serve as a beneficial purpose not only for their trades but for the entire industry, and, certainly they have a perfect right to offer this service” It was held, however, that a hiring-hall agreement that, in effect, gave the union the right to control employment in a particular trade to the exclusion of all others, including the employer, violated the Arkansas right-to-work constitutional and statutory provisions so that picketing to compel the adoption of such an agreement could be enjoined. But in *Williams v. Arthur J. Arney Company*, 398 S.W. 2d 515 (Ark. 1966), the same court upheld a hiring-hall agreement under which the union agreed merely to “furnish at the request of the contractor duly qualified workmen in the various classifications covered by this Agreement” and which did not require the workmen to be or become union members. The court noted that the agreement required the union to supply workmen “at the request of the contractor, but nowhere does the agreement provide that the contractor *must* request workmen from the union.” These cases might be persuasive upon the Florida courts insofar as the validity of a hiring-hall contract is concerned, if and when such a question should be presented to them in an appropriate proceeding. However, no case has been found in which it was held that a hiring-hall contract that limited the employment of workmen to union members would subject an employer and the union to criminal penalties. I have some hesitancy in ruling that such a hiring-hall contract would subject them to the criminal penalty prescribed by §447.14, *supra*; and it is suggested that the legislature may wish to clarify its intent in this respect.

073-103—April 4, 1973

CONSTITUTIONAL AMENDMENT

VOTE REQUIRED FOR ADOPTION AND SUBMISSION FOR REFERENDUM AT PRIMARY ELECTION—RIGHTS OF NOMINEE TO AN OFFICE ABOLISHED BY SUCH AMENDMENT

To: Roger H. Wilson, Representative, 48th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. What vote is required in the legislature to adopt a proposed amendment to the Constitution and provide for its submission to the voters for approval or rejection at the first primary election?

2. Would a person have any rights, claims, or interests in or to the office of lieutenant governor if nominated to the office at the primary election at which an amendment to the Constitution abolishing such office was adopted, or if elected to the office at the general election at which such an amendment was adopted?

SUMMARY:

A joint resolution proposing an amendment to the Florida Constitution which is to be submitted to the electorate for approval or rejection at the next general election may be adopted by the affirmative vote of three-fifths of the membership of each house of the legislature. The legislature may provide for the submission of the proposed amendment to the electorate at an earlier date by adopting a law, approved by three-fourths of the membership of each house of the legislature, calling a special election for that purpose.

A person who ran for the office of lieutenant governor at the primary or general election at which a constitutional amendment abolishing the office was adopted would have no right, claim, or interest in and to the office.

AS TO QUESTION 1:

Article XI, §1, State Const. provides that

Amendment of a section . . . of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. . . .

And Art. XI, and §5, *id.*, provides that the proposed amendment shall be submitted to the electors

. . . at the next general election held more than ninety days after the joint resolution . . . proposing it is filed with the secretary of state, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision it is submitted at an earlier special election held more than ninety days after such filing.

These provisions quite clearly contemplate that a proposed amendment adopted by a three-fifths vote of the membership of each house of the legislature is ordinarily to be submitted for approval or rejection at the next general election, when the greatest number of the electors may be expected to go to the polls. However, if the circumstances are such that it is deemed advisable to submit the proposition to the electorate at an earlier date, the legislature may provide for a special election for that purpose, by a law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature. Thus, a law calling for a special election on the proposed constitutional amendment to be held on the same date as the first primary election following the adoption of the proposed amendment must be approved by the affirmative vote of three-fourths of the membership of each house of the legislature.

AS TO QUESTION 2:

While I can find no case exactly in point, two cases from Ohio decided somewhat similar questions. In *State v. Greene*, 114 N.E.2d 922 (Ohio App.

1953), candidates for nomination to a municipal office ran for the nomination in the September 29, 1953, primary election; and at this same election a proposition was submitted to and approved by the voters to change the charter provision relating to the nomination of officers. The amendment was filed with the secretary of state and took effect on October 3, 1953. In holding that the amended charter controlled in determining the candidates who were entitled to run in the general election, the court disposed of the plaintiffs' argument that they had vested rights under the former law, as follows:

That principle of law has no application here for the reason that no person holding office under our system of government has any vested right to the same. Any office created by the will of the people can be abolished at any time by the will of the people. There being no vested right in a public office, can there possibly then be a vested right in the mere nomination to office? The people have the power to give and the people have the power to take away. This, in effect, they did by voting up the amendment to Section 10 of the charter at the same time at which they nominated officers under Section 10 as it existed prior to said charter amendment. [114 N.E.2d at 927.]

The court cited with approval *State ex rel. Weller v. Schirmer*, 3 N.E.2d 352 (Ohio 1936), holding that a candidate for a judicial post who circulated a petition that would have been sufficient to place his name on the ballot had no right to run for the judicial office when the legislature subsequently, but prior to the general election, abolished the office. Here, again, the decision was based on the rule that there is no vested right to an office. *See also* 67 C.J.S. *Officers* §10, p. 121, stating that any public office, including a constitutional office, may be abolished by a new constitution or by an amendment to an existing one.

Florida's courts have consistently followed this same general rule. In *State v. County of Duval*, 3 So. 193 (Fla. 1887), the court held that, in adopting the 1885 Constitution (which did not provide for the office of lieutenant governor), the framers of the constitution did not intend to abolish the office until the end of the current term of the incumbent. This conclusion was required by the express terms of the "Schedule" to the 1885 Constitution, providing that "[n]othing contained in this constitution shall operate to vacate the office of lieutenant governor until the expiration of his present term." The court noted, however, that the terms of Supreme Court justices and some circuit court judges had been cut short by the new 1885 Constitution and observed that, had it not been for the express provision quoted above, the office of lieutenant governor also would have been vacated upon the appointment of a president of the senate. *See also* *Hall v. Strickland*, 170 So.2d 827 (Fla. 1965), quoting with approval *City of Jacksonville v. Smoot*, 92 So. 617 (Fla. 1922), as follows:

. . . the power of removal from office is incident to power of appointment and office created by legislature may be abolished by legislature, even during term for which incumbent was elected or appointed, without violating his constitutional rights, in absence of any constitutional limitation on the subject.

And in *DuBose v. Kelly*, 181 So. 11, 17 (Fla. 1938), it was said that:

. . . any person who is elected or appointed to an office is presumed to accept the same with the condition annexed that his tenure of the office may be terminated at any time in the manner prescribed by the charter.

Similarly, any person who qualified for the nomination for the office of lieutenant governor knowing that an amendment proposing to abolish the office was to be submitted to the electorate at the primary election would be presumed

to accept the nomination with the condition annexed that any right to the office thereby acquired would be terminated if the electorate approved the amendment abolishing the office. The same presumption would be applicable to a person who was nominated *and elected* to the office, knowing that the office might be abolished by vote of the electorate on the proposed constitutional amendment at the same general election at which he was elected to the office. *Cf. In re Advisory Opinion to the Governor*, 192 So.2d 757 (Fla. 1966), holding that a candidate for the office of circuit judge who had been a member of The Florida Bar for four years and who was elected to the office at the November 1966 general election was not eligible to assume the duties of the office in January 1967 in view of the fact that, at the same general election, an amendment to the Constitution changed from four to five years the bar membership requirement for circuit judges. Just as the elected circuit judge in that case could not validly be sworn in and commissioned to assume the duties of an office to which he was not eligible, a person nominated or elected to the office of lieutenant governor at a primary or general election at which the office was abolished could not be sworn in and commissioned to assume the duties of a nonexistent office.

In sum: The state would have no obligation to a nominee or an incumbent whose office is abolished in accordance with due process of law—which, in this case, would be a constitutional amendment duly adopted in accordance with the procedures prescribed by law. The proposed amendment should expressly provide for the date upon which it is to become effective and for the date upon which the office of lieutenant governor shall stand abolished, so that there can be no doubt that it was intended to apply retroactively to abrogate the rights, if any, acquired at a preceding primary or general election. The proposed amendment should also be in the proper form to comply with the requirements of Art. XI, §§1 and 5, *supra*, and should contain language that will effectively resolve or clarify any questions or ambiguities that might arise under Art. IV, §§3 and 5, State Const., relating to the office of lieutenant governor.

073-104—April 5, 1973

REGISTERED NURSES

U. S. CITIZENSHIP REQUIREMENT

To: Tom Tobiassen, Representative, 3rd District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a statute validly require that, in order to obtain a license as a nurse, a person must be a United States citizen or submit proof of an intention to become a United States citizen?

SUMMARY:

Under the decisions of the United States Supreme Court, a United States citizenship requirement will be upheld in some contexts when a state can show a compelling special public interest. Thus, unless and until this requirement has been struck down by the courts in an appropriate proceeding as to a particular profession or occupation, including that of nursing, the statutory requirement is presumptively valid.

The Florida Supreme Court in *Hill v. State*, 19 So.2d 857 (Fla. 1944), upheld a statutory citizenship requirement as to a business agent of a labor union in this state and, in so doing, noted that