or not the division was authorized or required to make the answer to the question, "Have you ever been arrested or charged for any violation of the law other than a traffic violation?" part of the sworn application for license. It is my opinion that the question was authorized.

It is a statutory requirement that licenses be issued only to persons of good moral character and that same should not be issued to persons who, *inter alia*, have been convicted in the last past fifteen years of any felony in this state. Indeed, to insure that a license would issue only to qualified applicants, §561.17(1) requires the applicant to submit a set of fingerprints. Can there be any doubt but that this is for the purpose of facilitating an investigation into the applicant's background to determine whether or not he meets the statutory qualifications? I think not.

Section 561.18 mandates that an application for a beverage license be fully investigated as to the qualifications of the applicants. The beverage law confers on the Division of Beverage discretion and authority to approve or disapprove, according to statutory requirements, applications for alcoholic beverage licenses. Dade County v. Overstreet, Fla. 1952, 59 So.2d 862. What constitutes good moral character within the meaning of the statutory requirements is a matter to be developed by facts evaluated by the Division of Beverage, White v. Beary, Fla. 1 D.C.A. 1970, 237 So.2d 263, in the exercise of its discretion to approve or disapprove applications for licenses and during the course of its investigation of the applicant's qualifications as required by §561.18.

It is my firm opinion that it is the statutory duty of the division to ascertain the qualifications of those persons making application for the issuance of a beverage license. It follows that the question stated above was authorized as a means of determining an applicant's qualifications and that the false swearing thereto would constitute a violation of §837.01.

072-201—June 20, 1972

**RESIGN-TO-RUN LAW**

**EFFECTIVE DATE OF RESIGNATION**

To: Richard Stone, Secretary of State, Tallahassee

Prepared by: Rebecca Boules Hawkins, Assistant Attorney General

**QUESTIONS:**

1. When a "holdover" municipal judge is entitled to serve the remainder of his elected term as a county court judge but desires to qualify and run for the office of circuit court judge, upon what date should his resignation be made effective?

2. How will the vacancy in the office of county court judge that would have been served by him be filled and for what term?

**SUMMARY:**

Ordinarily, an officeholder's resignation under the resign-to-run law should be made effective as of the date when he would assume the duties of the new office, if elected. However, if the officeholder is serving in an appointive or elective office whose term regularly begins and ends on a date prior to the date upon which he would assume the duties of the new office, his resignation should be made effective on the earlier date.

A "holdover" municipal judge should resign effective at midnight January 1, 1973, to run for the office of circuit judge. His successor to
to fill the vacancy in the county court judgeship created by his resignation should be elected in the September nonpartisan judicial election for a four-year term beginning January 2, 1973.

The resign-to-run law (§99.012(2), F. S.) provides that the officeholder's resignation shall be made effective

... not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earliest. (Emphasis supplied.)

The italicized portion of the statute, when considered alone, indicates that the officeholder should resign as of the general election day upon which his successor is elected without regard to the expiration date of the term of the office he presently holds—that is, the date upon which his successor would ordinarily assume the duties of his old office—and without regard to the date upon which, if elected, he would assume the duties of the other office and would have been required to resign from his present office (or would be deemed to have surrendered such office) in the absence of the resign-to-run law. See Holley v. Adams, Fla. 1970, 238 So.2d 401.

The legislature must have considered the date last named above—that is, "the date upon which he would assume office if elected"—to be of prime importance, as it listed it first in the order of dates upon which a resignation should be made effective. It must have intended also that some consideration should be given to the date upon which the term of the office presently held would ordinarily expire, as that date is listed second. A literal interpretation of the italicized portion of the statute appears to be inconsistent with such a legislative intent. And it is well settled that if a literal interpretation of a particular part of a statute would be inconsistent with other provisions thereof the entire statute should be examined to ascertain the overall legislative intent. See Florida State Racing Commission v. McLaughlin, Fla. 1958, 102 So.2d 574; State v. State Racing Commission, Fla. 1959, 112 So.2d 825. See also Johnson v. State, Fla. 1946, 27 So.2d 276, 282 in which the court affirmed the rule that

... where the last sentence in one section of a statute is plainly inconsistent with the preceding sentences of the same section and preceding sections which conform to the legislature's obvious policy and intent[,] such last sentence, if operative at all, must be so construed as to give it effect consistent with such other sections and part of sections and with the policy they indicate.

Accord: Sharer v. Hotel Corporation of America, Fla. 1962, 144 So.2d 813; Arvida Corporation v. City of Sarasota, Fla. 2 D.C.A. 1968, 213 So.2d 756.

There can be no doubt as to the overall purpose and intent of the resign-to-run law. One of the "whereases" of the act (Ch. 70-80, Laws of Florida) states that

... it is generally agreed that by providing for prospective resignations the people of the State of Florida would not be compelled to bear unnecessary cost of special elections occasioned by elected or appointed officials who, while holding one office, seek and obtain another elective office....

And in Holley v. Adams, supra, the court referred to the law as a "prospective resignation" law and pointed out that:

The acceptance of an incompatible office by one already holding office
operates as a resignation of the first. In the absence of Ch. 70-80 [Section 99.012, Florida Statutes], Holley would have been required to resign as circuit judge in the event he were elected and assumed the duties of a Justice of the Supreme Court. ... Ch. 70-80 simply extends the rule of resignation or abandonment of office to those who become candidates for another office when they already hold one office, the term of which or any part thereof runs concurrent to the term of office for which he seeks to qualify. . . .

The clear import of the court’s description of the law as a “prospective resignation” law and the language quoted above is that a candidate is required to file in advance a resignation that he would have been required to file if successful in his bid for election to another office. In the absence of the resign-to-run law, the officeholder’s present term would become “concurrent” with that of the office to which he was elected and his resignation would have been filed at the moment that he assumed the duties of the new office, and not until that date (unless, of course, his successor was elected or appointed and assumed the duties of his old office prior to that date, as discussed hereafter).

There is nothing in the law to indicate that an officeholder who runs for another office is to be penalized for so doing by losing a portion of the term to which he was appointed or elected and which, in the absence of the resign-to-run law, he would ordinarily be entitled to serve until he assumed the duties of his new office. On the contrary, subsection (2) of the law, after providing for the effective date of the resignation quoted above, states:

With regard to elective offices, said resignation shall create a vacancy in said office thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire . . . .

(Emphasis supplied.)

It goes without saying that the members of our state legislature know that vacancies in most of our state and county offices are filled at the November general election in even-numbered years but that the terms of the offices to which they were elected do not begin until the first Tuesday after the first Monday in January after said election. See §§100.031 and 100.041, F. S. Exceptions to this general rule are state legislators, who take office “upon election,” Art. III, §15(d), State Const.; and county commissioners and members of district school boards, whose terms of office begin on the Tuesday two weeks following the day of the general election. Section 100.041(2), id. It might be noted also that under revised Art. V and its implementing statutes, Chs. 72-403 and 72-406, Laws of Florida, vacancies in judicial offices are filled in a nonpartisan judicial election (occurring this year in September) for terms of office that begin in January of 1973. See also revised Art. V, §11(a), which provides, in effect, that an election to fill a vacancy in a judicial office shall be for the term of the office beginning on the first Tuesday after the first Monday in January of the year following the election.

To hold that the legislature intended a resignation to be effective at the general election at which a county or state official’s successor was elected, even though the term of the office to which he was elected would not begin until the following January, would ascribe to the legislature an intent to create a vacancy in the office for the period between the general election day and the day in January upon which the successor would assume the duties of the office. This is so because the successor would not automatically assume the duties of the office on the election day as under the statute the vacancy is filled “in the same manner as if the term of such public officer were otherwise scheduled to expire . . . .” Section 99.012(2), supra. See also Art. III, §13, State Const., prohibiting the legislature from creating offices “the term of which shall exceed four years except as provided
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herein." Thus, a successor who is elected for the full term of the office (as is the case in filling vacancies in judicial office and many other state and county offices) could not constitutionally serve in the interim period except as an appointee of the governor. And it seems to me that an intent to create a vacancy in the office for this interim period, to be filled by appointment by the governor, should be ascribed to the legislature only when so provided in clear and unambiguous terms. The legislature obviously has not so done.

When construed in the light of its purpose and intent, it seems clear that the legislature intended that the resignation should be made effective as of the date upon which, in the absence of the resign-to-run law, the incumbent officeholder would be required to resign his present office if successful in his bid for election to the other office. In the case of most elected officeholders that date would be the first Tuesday after the first Monday in January of an odd-numbered year, as that is the date upon which he would assume the duties of his new office, if elected, and upon which the term of the office presently held by him would ordinarily expire and his elected successor would assume the duties of his old office. However, as noted above, legislators, county commissioners and district school board members hold offices whose terms begin on other dates, as do the terms of office of many appointive and elective municipal officers and of some appointive boards or commissions. And the provisions of the resign-to-run law requiring consideration to be given to the “expiration date of the term of the office which he presently holds” must have been intended to apply to an appointive official who is serving a term of office that would regularly expire prior to the time the officeholder would assume his new office, if elected thereto. For example, an officeholder may be serving as the appointee of an appointive office whose term regularly begins and ends in October and whose appointment will expire in October of 1973. Assuming that such an appointive officer would be required to resign to run for an elective office (see §99.012(5), supra, excluding appointive officers who serve without salary from the requirements of the law), he would be required to resign as of the date in October 1972, upon which the term of the appointive office would ordinarily expire and a new term begin, as that is the date of the beginning of the term to which his successor would be appointed by the governor (or other appointing body) and the duties of the office assumed by the new appointee (see State ex rel. Hodges, Fla. 1931, 133 So. 623)—thereby ousting the present officeholder from their performance—even though, if elected, he would not assume the duties of his new office until a later date.

Similarly, the provision that the resignation should be effective as of the “general election day at which his successor is elected” must have been intended to apply to legislators and to elective municipal officers who take office immediately upon their election. As in the case of an appointive officer whose term of office necessitates the appointment of a successor prior to the time that he would be required to assume the duties of his new office, if elected, a legislator or such an elective municipal official could not continue to serve as such after his successor is elected on the appropriate “general election” day; thus, his resignation must, perforce, be effective as of that day.

When so construed, full force and effect is given to each and every provision of the statute in accordance with the rule that a statute should be so construed as to give meaning and effect to each of the statute’s provisions. See In re Estate of Horner, Fla. 3 D.C.A. 1966, 188 So.2d 386; Vocelle v. Knight Brothers Paper Company, Fla. 1 D.C.A. 1960, 118 So.2d 664. This interpretation is in accord with the spirit and intent of the act as a “prospective resignation” law only and does not penalize a duly elected or appointed officer by requiring him to give up a portion of the term which, in the absence of the resign-to-run law, he would be entitled to serve, in order to run for another office—a construction which, in the absence of a clear and compelling legislative mandate, should, in my opinion, be avoided. I am advised that the statute has been so construed by administrative officers who have some duty with respect to its administration.
In the case of a "holdover" municipal judge who desires to run for the office of circuit judge, the date upon which he would assume office, if elected, is the first Tuesday after the first Monday in January of 1973. See Ch. 73-403, Laws of Florida [§168.031, F. S.]. As noted in AGO 072-144, a vacancy in the office of county court judge should be filled in the nonpartisan judicial election for the full four-year term of the office beginning the following January. Thus, the point at which the terms of the office presently held by the municipal judge in question and the office sought by him would become "concurrent" is January 2, 1973; and, in my opinion, his resignation should be made effective as of midnight, January 1, 1973; and he should continue to serve as municipal judge until that date.

I have not overlooked the decision of the Supreme Court in In re Advisory Opinion to Governor, Fla. 1970, 239 So.2d 247, in which the court uses language that might be interpreted as holding that the resignation date of a circuit judge who desires to seek election as a supreme court judge should be the general election day. However, the records of the office of the secretary of state show that the circuit judge in question actually resigned as of January 5, 1971, the date upon which his term of office as supreme court justice would begin and upon which his successor circuit judge would take office under the then "cycle" terms of office of circuit judges; and I am advised that he served as circuit judge until that date. These facts give meaning to, and clarify, the court's statements that a successor to Judge Dekle "will take office simultaneously with the effectiveness of his resignation" and that his successor "succeeds to the office at the precise moment that the resignation of the incumbent takes effect." As so clarified, it seems clear that the court intended the effective date of the resignation to be in accord with its view of the law as a "prospective resignation" law—that is, that the resignation should be effective as of the date when the terms of the two offices would become "overlapping" or concurrent. And, as noted above, this is the contemporaneous administrative construction given the law.

Your second question has been answered by what has been said before. Specifically, the office of county judge vacated by the resignation of the holdover municipal judge will be filled in the September nonpartisan judicial election for a four-year term beginning on the first Tuesday after the first Monday in January 1973.

072-202—June 27, 1972

SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND

LIMITATIONS ON EXPENDITURES

To: Tom Adams, Lieutenant Governor, Tallahassee

Prepared by: Art Canaday, Assistant Attorney General

QUESTION:

What limitations exist with respect to the utilization of moneys in the Special Employment Security Administration Trust Fund in the administration of Ch. 443, F. S., other than the requirement that these moneys not be used for costs for which federal funds are available?

SUMMARY:

The expenditure of moneys from the Special Employment Security Administration Trust Fund must be for costs not payable from federal sources, but as long as costs are proper ones in administering the Un-