

STATE OF NEVADA

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

1895

ROBT. M. BEATTY, ATTORNEY-GENERAL



CARSON CITY, NEVADA:

STATE PRINTING OFFICE, : : : J. G. MCCARTHY, SUPERINTENDENT

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PRINTED AND BOUND BY THE STATE OF NEVADA



REPORT.

OFFICE OF THE
ATTORNEY-GENERAL OF THE STATE OF NEVADA, }
CARSON CITY, December 31, 1895.

To His Excellency JOHN E. JONES, Governor of the State of Nevada:

HONORED SIR: Pursuant to law in such case, I hereby submit to you my annual official report of the important business transacted in the office of the Attorney-General during the fiscal year, ended this day, since my incumbency of said office.

CASES DECIDED AND NOW PENDING IN THE SUPREME COURT OF THE STATE WHEREIN THE STATE WAS OR IS A PARTY.

STATE OF NEVADA, *Respondent*, vs. ALPHEUS VAUGHN, *Appellant*.

Charge—Murder.

Appealed from District Court of Lander county from judgment upon verdict of guilty of murder in the first degree and order overruling appellants motion for new trial.

Case fully argued on briefs and orally by James F. Dennis, Esq., and J. H. MacMillan, Esq., for appellant, and W. D. Jones, Esq., District Attorney of Lander county, D. S. Truman, Esq., and myself for respondent.

Judgment and order of the District Court reversed and cause remanded for a new trial.

Appealed from District Court of Lander county from second judgment on second verdict of guilty of murder in the first degree on re-trial and order overruling motion for new trial.

Submitted on briefs by James F. Dennis, Esq., and J. H. MacMillan, Esq., for appellant, and W. D. Jones, Esq., District Attorney of Lander county, and D. S. Truman, Esq., and myself for respondent.

THE STATE OF NEVADA, *Plaintiff and Respondent*, vs. WONG FUN, *Defendant and Appellant*.

Appealed from District Court of White Pine county from judgment

on verdict of guilty of murder in the first degree and order overruling defendant's motion for new trial.

Case argued by Henry Rives, Esq., and F. X. Murphy, Esq., for appellant, and myself for respondent, both orally and on briefs.

Judgment and order of District Court reversed and cause remanded for a new trial.

THE STATE OF NEVADA, *Plaintiff and Respondent*, vs. ALICE M. HARTLEY, *Defendant and Appellant*.

Appealed from District Court of Washoe county from judgment on verdict of guilty of murder in the second degree and order overruling defendant's motion for new trial.

Appeal argued orally and on briefs by General Robert M. Clarke and E. R. Dodge, Esq., for appellant, and Hon. W. E. F. Deal and myself for respondent.

Judgment and order of the District Court affirmed.

THE STATE OF NEVADA, *ex rel. G. D. PYNE, Relator*, vs. C. A. LA GRAVE, *State Controller, Respondent*.

Application for peremptory writ of mandamus to compel respondent to draw warrant in favor of relator for armory rent of military company.

Argued orally and on briefs by Hon. J. Poujade for relator, and myself for respondent.

Writ denied on the ground of insufficiency of petition.

In the matter of the application of AH KEE, AH TI and AH GATE for habeas corpus.

Applicants alleged to be illegally in custody by order of A. E. Cheney, District Judge of the Second Judicial District.

Argued orally by D. S. Truman, Esq., for applicant, and myself in opposition.

Writ granted and ordered to issue.

THE STATE OF NEVADA, *ex rel. W. J. WESTERFIELD, State Treasurer, Relator*, vs. G. A. TYRRELL, *County Treasurer of Ormsby County, Respondent*.

Mandamus to test the right of a county to retain from State moneys, part of the salaries of certain county officers.

Argued orally and on briefs by myself for relator, and A. J. McGowan, District Attorney of Ormsby county, for respondent.

Writ denied.

THE STATE OF NEVADA, *ex rel. GEO. D. PYNE, Relator*, vs. C. A. LA GRAVE, *State Controller, Respondent*.

Renewal of application for peremptory writ of mandamus to compel respondent to draw warrant for armory rent of military company.

Argued orally and on briefs by Hon. J. Poujade for relator, and myself for respondent.

Writ denied on ground of no legislative appropriation for payment of claim.

THE STATE OF NEVADA, *ex rel.* H. C. CUTTING, *Relator*, vs. C. A. LA GRAVE, *State Controller, Respondent.*

Application for writ of mandamus to compel respondent to draw warrant for three (\$3) dollars claimed for board and lodging of relator while traveling and visiting officially as State Superintendent of Public Instruction.

Submitted on briefs by Alf. Chartz, Esq., for relator, and myself for respondent.

Writ denied.

THE STATE OF NEVADA, *Plaintiff*, vs. CHARLES MARTIN, *Appellant.*

Appealed from District Court of Storey county from judgment upon verdict of guilty of attempt to rob and order overruling motion for new trial.

Appeal dismissed on my motion, under stipulation of attorneys of record, F. M. Huffaker, Esq., and George D. Pyne, Esq., for appellant, and I for respondent.

THE STATE OF NEVADA, *Plaintiff and Respondent*, vs. JOHN O'KEEFE, *Defendant and Appellant.*

Appealed from District Court of Storey county from judgment on verdict of guilty of attempt to rob and order overruling motion for new trial.

Argued orally by F. M. Huffaker and George D. Pyne for appellant, and E. D. Knight for respondent, and on briefs by same and myself for respondent, and submitted.

THE STATE OF NEVADA, *ex rel.* H. C. CUTTING, *Relator*, vs. C. A. LA GRAVE, *State Controller, Respondent.*

Proceeding in Supreme Court to secure peremptory mandamus to compel respondent to draw his warrant in favor of relator for \$200, salary as Superintendent of Public Instruction and Curator of State Museum for the month of November, 1895.

Relator in proper person, myself for respondent.

Argued orally and on briefs by same, and submitted December 23, 1895.

REINHOLD SADLER *vs.* THE STATE OF NEVADA.

Action in the First Judicial District Court, Ormsby county, to recover judgment for mileage in traveling to take the oath of office as Lieutenant-Governor, and for per diem as acting Governor during the absence of Governor Jones in the month of November, 1895, and for mileage in traveling to and from Carson as acting Governor.

Claims for all of which have been regularly presented and disallowed by the State Board of Examiners.

J. R. Judge for plaintiff, myself for defendant. Defendant appearing voluntarily.

Action still pending.

OFFICIAL OPINIONS AND ADVICE GIVEN.

During the year there have been given the following official opinions by this office, which were deemed of sufficient importance to be noted:

January 9, 1895, advised your Excellency that the appointment of General C. H. Galusha as Adjutant-General in the State militia, made by Governor Colcord, could remain in force since your incumbency as Governor.

January 29th, advised your Excellency concerning official inquiry of Hon. Walter Q. Gresham, Secretary of State of the United States, that all property in the State of Nevada is by the laws of such State subject to taxation, except such as is specially exempted and "inheritances or property of aliens," whether they be heirs outside of the United States or not, unless widows or orphans bona fide residents of the State, are not among the exceptions, citing

State Const., Art. VIII, Sec. 2, and Art. X, Sec. 1.
Stat. 1885, p. 117.

March 22d, advised your Excellency that under the Constitution of Nevada, Art. IV, Sec. 9, a postmaster receiving less than five hundred (\$500) dollars per annum salary can be appointed a Notary Public. This was occasioned by application of the Postmaster of Carlin for appointment.

April 3d, advised your Excellency that you could not at that time legally appoint a member of the Legislature of 1895 to a membership in the "Board of Honorary Visitors of the Nevada State University," as created by Statute of 1895, p. 40, for the reason that such Board was created by the Legislature of 1895, and a membership thereon would be a civil office "of profit," in so far, at least, as expenses being paid.

State Const., Art. IV, Sec. 8.

May 14th, advised your Excellency that the Board of State Prison Commissioners can legally cause stone to be furnished from the prison quarry for use in building at the State Orphans' Home free of charge, except for expense incurred in quarrying and dressing the stone; that is to say, the labor and stone free, but the other expense incurred in furnishing the stone must be paid for by the Home's authorities, in order that the respective appropriations may not be improperly infringed upon.

March 15th, advised your Excellency that the Board of Commis-

sioners for insane or mentally diseased has full and the only authority and control over the State grounds, property, etc., at the asylum or home at Reno, under Stat. 1881, p. 61, Sec. 13, and for that reason can do what it may determine concerning all such property, including "walls, etc."

April 17th, advised your Excellency concerning the dispute between J. P. Dooley and William DeFriez, Notaries Public, that you as Governor had no power or interest in the matter, but that the subject was controlled by Secs. 342 and 2247, Compiled Laws, providing for punishment of Notaries Public for official misconduct.

April 10th, advised your Excellency, in conjunction with the Honorable the State Treasurer, that the check for twenty-one thousand (\$21,000) dollars received by such Treasurer from the General Government is held by him and to be disposed of in pursuance of the U. S. Stat. at large of 1882, p. 1050, concerning State educational institutes, and that he, the said Treasurer, should deposit the same in pursuance of said statute, and subject to the order of the Regents of the State University.

October 4th, advised your Excellency that under the laws of this State prize fighting is prohibited, and persons convicted of the offense of prize fighting are guilty of a *felony* and liable to imprisonment in the State Prison for not less than two or more than five years, and should death ensue from a prize fight, etc., etc., the person causing such death shall be deemed guilty of manslaughter.

Act concerning crimes and punishments, Sec. 39.

First Compiled Laws, Sec. 2345.

As amended, Stats. 1877, p. 75.

February 13th, advised your Excellency that there are no "fees" connected with your office as Governor, but the Secretary of State must attest extradition papers, and for doing so must charge and collect "\$5 for each time the Great Seal of the State is necessarily used."

Stats. 1893, pp. 80, 81.

LEGISLATIVE.

January 29th, advised Hon. Andrew Maute, Senator from Nye county, that a proposed Senate bill for the relief of Nye county, by the terms of which the State was to be made to in effect pay an indebtedness of said county, was unconstitutional under Art. IX, Sec. 4, which is: "The State shall never assume the debts of any county, etc.," and that in my judgment to *pay* a debt is the most effective manner of assuming it.

February 2d, advised the Special Committee of the Assembly appointed on the contest of Hardin vs. Francis for a seat in the Assembly, and if possible to get the ballots cast in Humboldt county for Assemblymen, that the best course for the committee to pursue was to have the Assembly pass a resolution to that effect, and then

have the honorable Speaker issue a subpoena *duces tecum* for the ballots to the custodian thereof, naming him, to be served personally upon such custodian by the Sergeant-at-Arms of the Assembly.

On the same day advised Assembly Committee on Elections to the same effect in the matter of contested seat for Ormsby county.

February 6th, advised Hon. F. O. Gorman, Assemblyman for Eureka county, that a law authorizing the appointment of women as Notaries Public would be unconstitutional under State Const., Art. XV, Sec. 3, Notaries Public being in my judgment "officers."

February 7th, advised Senate Ways and Means Committee that a bill then under consideration by that committee, known as the "Keeley Cure Bill," as presented to me had no constitutional objections.

February 8th, advised Senator McCone, of Senate Committee on Claims, that the Legislature had the right, if in its wisdom it thought proper to do so, to pass a "relief bill" to compensate Tremor Coffin, Esq., for legal services in case of Sawyer vs. Dooley, notwithstanding the Supreme Court had decided his claim to be uncollectable by action in Court.

February 8th, advised Senator McCone, for Senate Committee on Claims, that the late ex-State officers have no legal claims against the State for services rendered between January 1 and January 7, A. D. 1895, inclusive, because their only legal pay is, or was, a yearly salary for four complete consecutive years from the first Tuesday after the first Monday in A. D. 1891 to and including the first Monday in A. D. 1895, for by any other construction they could not have served four full years, and illustrated the fact by a supposition that if one of the ex-State officers had succeeded himself and the query, could he have legally received *extra pay* for the days between January 1 and 8, 1895?

February 8th, advised Assemblyman Wieland, of Ways and Means Committee, concerning constitutionality of proposed "Sheep License Law," declaring it to be without any constitutional objection.

February 17th, advised Senate Judiciary Committee concerning proposed exemptions from jury service and amending the then existing jury law, and drew a bill which afterwards passed and was approved.

February 19th, advised Senate Judiciary Committee that Assembly Bill No. 61 was unconstitutional, being in conflict with Art. IV, Secs. 20 and 21, State Const.

February 19th, advised Assemblyman Gorman, Chairman Committee on Counties and County Boundaries, as to the advisability of repealing the then existing Act and formulating a new bill concerning the formation of County Commissioner districts and the election of such Commissioners by districts, and drew a bill, which is now Chapter XLI, Laws of 1895, Stats. 1895, p. 39.

February 20th, advised with Hon. M. S. Bonnifield, Associate Justice of the Supreme Court, concerning and gave him a prepared legislative bill, amending the old law so as to allow a taxpayer to answer in a tax suit that the assessment is higher than the actual cash value of the property assessed, which bill afterward became a law. Stats. 1895, p. 39.

February 20th, advised Senate Judiciary Committee and drew a bill to amend the Act of February 20, 1885, and providing that any elector in a county, not exempted, may be selected in making up the annual jury list, which became a law, Stats. 1895, p. 51. Previously some persons escaped jury duty by not registering, but under this law, whether an elector registers or not, he is liable to be put on the jury list each year.

February 23d, advised Senate Judiciary Committee that Assemblyman Allen's bill, which, however, became a law. Stats. 1895, p. 22, Chap. XXVI, was special legislation and would be unconstitutional.

March 1st, advised Senate Judiciary Committee concerning pay of Bailiff of the Supreme Court, and drew a bill which became a law, Stats. 1895, p. 65.

March 1st, advised Senate Judiciary Committee concerning Curator of State Museum, and drew a bill, at the request of the committee, repealing Section 4 of the Stats. of 1887, pp. 59, 60, and the same became a law, Stats. 1895, p. 65.

March 1st, advised Assembly Judiciary Committee concerning bill limiting powers of members of Boards of County Commissioners, recommending favorable report thereon, and it became a law, Stats. 1895, p. 88.

March 13th, gave written opinion to Lyon county delegation, through Senator Gignoux, that an Act to release the official bondsmen of J. A. Huntoon, late County Clerk and *ex officio* County Treasurer of Lyon county, would be unconstitutional and absolutely void, under Art. IV, Sec. 20, State Const.

March 6th, Senate having under consideration in Committee of the Whole a bill for the licensing of so-called Pullman cars as hotels and lodging houses, and declaring them to be such, I was invited to "address" the committee and give my views on the bill. Not having any desire to address and no views on the subject, I so stated, but assured the committee that I would answer, if in my power, any questions that members saw proper to ask me; many were propounded and answered, among others that the proposed bill would be unconstitutional, because of its application to a class of a class only, thereby being "special" legislation; also, that a *car* was neither a hotel, lodging house nor restaurant, nor even an eating stand, but it could be made so in law by law; also, that as liquor sellers the company managing the cars has always been liable to the

payment of a liquor license, but as "hotels, etc.," not. In answer to a question of Senator Summerfield, I illustrated my position by declaring that a donkey is not a canary bird, but that this Legislature could by statute make it so in law.

March 6th, gave written opinion to Chairman Assembly Judiciary Committee that Assembly Bill No. 129, to admit a certain will to probate, was unconstitutional under Section 20, Art. IV, State Const. as amended February 11, A. D. 1889, and that the case of *In re Henry Sticknoth*, 7 Nev., p. 233, was not applicable, because that decision was rendered under the same section of the Constitution it is true, but before it was amended and when the inhibition concerning wills was not embraced in the section.

March 7th, advised Senate Ways and Means Committee concerning State Board of Equalization Bill, and suggested changes for a substitute, which were made.

March 7th, advised Senate Ways and Means Committee that an income tax would not be unconstitutional under the Constitution of the State of Nevada.

March 8th, advised Senator Comins, Chairman Senate Ways and Means Committee, that if the Legislature remained in session over fifty days the members of the Legislature could legally receive no pay for services after the expiration of that time.

March 13th, advised Senate Ways and Means Committee against the passage of a bill providing for a semi-annual payment of taxes, for the reason that without amending the revenue law in many other material respects such a law as the one proposed would lead to many now unforeseen complications, and might result in certain unconstitutionality by reason of leaving the revenue laws so ambiguous and uncertain that no part of the law concerning taxes would be enforceable.

March 12th, advised Hon. Reinhold Sadler, President of the Senate, concerning a question by him as to whether the vote of the Senate upon concurring or refusing to concur in an Assembly amendment to a Senate bill requires a simple majority vote of the Senators voting or a "constitutional majority," that a constitutional majority, or a majority of all the Senators elected, for the reason that the vote under the circumstances is equivalent to a vote upon final passage and governed by Sec. 17, Art. IV, State Const.

March 13th, advised Senate Ways and Means Committee regarding the bill providing for semi-annual payment of taxes to the same effect as former advice given the Assembly committee on the same subject.

March 13th, gave a written opinion to the Douglas county delegation of the Assembly to the effect that the decision of the District Court of Storey county does not determine that any line is the county boundary line, but decides simply the question of compensation of

the surveyors who ran the line. That a boundary line cannot be judicially determined in a collateral proceeding, but must be arrived at and determined, if by a Court, in a direct proceeding brought for the purpose of establishing it.

March 14th, advised Senate Judiciary Committee that a bill to compel any common carrier to unload goods at a place to be named by their owner upon his paying \$5, would be an attempt to regulate interstate commerce, in so far at least as it would relate to freight from outside the limits of the State, and would be in conflict with subdivision 3, Sec. 8, Art. I of the Constitution of the United States, conferring powers upon Congress.

During the session I advised orally various members on numerous subjects of which I made no note at the time, but I desire to compliment the members by saying that each and all of them who consulted with me ever showed a marked regard for my opinions and a courteous deference to them, which I endeavored to make them deserve by carefully considering all questions submitted to me or even asked in casual conversation.

STATE OFFICERS.

January 26th, advised Hon. C. A. LaGrave, State Controller, that the garnishment served upon him by the Sheriff of Ormsby county, in a case wherein a sitting member of the Assembly was defendant, intended to garnish the per diem and mileage of such defendant, would, if a valid garnishment, be controlled by Stats. 1883, p. 26, as amended Stats. 1889, p. 118, but that the garnishment in this case was irregular, invalid and void for want of proper form and authentication.

January 28th, advised Hon. W. J. Westerfield, State Treasurer, that the law of 1883, Stats. 1883, pp. 78-9, by Section 5 of which the Honorable the Secretary of State is allowed \$600 per annum as reporter of decisions of the Supreme Court, has never been repealed and is still in force.

March 12, advised the Honorable Controller that he could not legally draw a warrant on an order for the per diem of Assemblyman Francis for services from March 12 to March 13, 1895, presented to him at about noon on March 12th, for the reason that the Assembly was still in session at the time of the presentment of the order on that day. The services had not therefore at noon been fully rendered, and the law does not authorize the payment of Assemblymen in advance.

March 16th, gave the following opinion :

HON. C. A. LAGRAVE, *State Controller of Nevada* :

DEAR SIR: Answering your query, "Am I authorized by law to draw warrants in payment of per diem of members and for services rendered by attaches of the Legislature in excess of fifty days for the Seventeenth Session?" I answer: The question embraces two distinct propositions, each wholly controlled by a different

section of the same article of the Constitution of the State of Nevada, and must be considered accordingly. Thus divided the matter presents:

First—Are the officers and employes of the Legislature of Nevada at its seventeenth session entitled to compensation for their services rendered as such after the fiftieth day of said session? This necessitates the construction and interpretation of Sec. 28, Art. IV of said Constitution in the light of existing statutes. There was and is no law limiting their salary or compensation, except as to the amount per day of each, and that as fixed by Act of January 31, 1893, Stats. 1893, p. 130, and in force at the time of their election or appointment has been neither increased nor diminished since their election or appointment. They were all elected or appointed for the whole of the session, and an extension by law of the term of such session cannot affect them, therefore they are entitled to full pay, and if the legislative appropriation for said session is sufficient, I hereby advise the State Controller to draw his warrant for the payment of, and the State Treasurer to pay each of them the sums to which he or she may be entitled.

Second—Are the Senators and members of the Assembly entitled to compensation for services rendered by them as such subsequent to the fiftieth day of said session? This involves a construction and interpretation of Sec. 33, Art. IV of said Constitution and the statutes relating to the subject in force at the time of the election of said Senators and members of the Assembly and those since enacted. By this section "the members of the Legislature shall receive for their services a compensation to be fixed by law, but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected."

The said session had been fixed by law at fifty days' duration, but by repeal this time was extended. The compensation of members had been fixed at \$8 per day, Stats. of Nev., 1893, p. 73; approved March 2, 1893, and by the same Act, in force at the time of the election of the present members, except "hold-over" Senators, the compensation of Senators and members of the Assembly was limited to a maximum of four hundred dollars and mileage for each regular session.

I therefore advise you that by no possible legal process could the compensation of members for the present session be "increased" to any sum in excess of four hundred (\$400) dollars for each Senator or member of the Assembly.

The State Controller should, therefore, refuse to draw any warrant in favor of any Senator or member of the Assembly for any sum or amount in excess of a total of four hundred (\$400) dollars for all of the services rendered by him as a member of the Legislature during the seventeenth regular session of said Legislature. And it necessarily follows that the State Treasurer could not legally pay any sum or amount so in excess. If either of said State officers disregards this advice, he will lay himself and his official bondsmen legally liable to the State for any sum or amount paid contrary to such advice.

I have the honor to be very respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

March 26th, advised State Controller that he can legally draw no warrants in payment of claims for "armory rent" or other military purposes under Act of March 8, 1895, Stats. 1895, p. 108, *et seq.*, for the reason that the Legislature failed to make any appropriation for the purpose thereof.

In consequence of this opinion arose the several proceedings for mandamus in the Supreme Court, entitled *State ex rel. Pyne vs. LaGrave*.

May 11th, advised State Treasurer Westerfield for Board of Directors of Orphans' Home that no person can secure an orphan from the Home for adoption except through the Courts and in a regular proceeding instituted for the purpose.

May 16th, advised the honorable Surveyor-General that in case of land heretofore listed to Nevada by the United States, but now, by subsequent survey placed in California, and still under contract for sale by Nevada, he should continue the contract and issue patents for such land; also, to accept applications for such land, but not for any portion of land similarly situated, which has not been already selected and listed.

May 28th, advised Board of Examiners that there is no authority for printing the "Register of the University" by the State, but owing to a misunderstanding through advice of the former Board to President Stubbs, I believed it advisable to stretch a point and permit it to be so printed with the concurrence of the Board of Printing Commissioners. *Pro bono publico.*

June 8th, advised the Controller that he could issue pro rata license to insurance companies.

June 25th, gave the following opinion to the State Controller:

OFFICE OF ROBERT M. BEATTY, ATTORNEY-GENERAL, }
CARSON CITY, NEVADA, JUNE 25, 1895. }

HON. C. A. LA GRAVE, *State Controller of Nevada:*

DEAR SIR: Answering your official query of this date concerning allowance by you of claims against the State for a portion of the salaries of the Auditor, Assessor and Treasurer of Ormsby county, contained in the semi-annual settlement of said county, I answer that from the year A. D. 1865 to March 23, 1891, such claims were legally allowable under the so-called "Revenue Law" (an Act to provide revenue for the support of the government of the State of Nevada, approved March 9, 1865) as it existed between those dates. *Vide* Gen. Stats., Sec. 1163. But that Act was repealed wholly and by title on March 23, 1891. Stats. 1891, p. 187, Sec. 154. This repealed Act also provided for the payment of part of the salaries of County Auditors, Assessors and Treasurers out of moneys belonging to the State. Gen. Stats. 1148 to 1163, inclusive; and though the Act of 1891 re-enacts many of the provisions and sections of that of 1865, it does not re-enact any sections between said Sections 1148 and 1163, except 1149 and 1161, and 1149 does not relate to salaries or compensation of officers, and 1161, as re-enacted in 1891, p. 182, Sec. 133, simply authorizes the Sheriff, as *ex officio* License Collector, to retain six per cent (6 per cent) on licenses sold.

The Act of 1891, or any other existing law of this State, does not authorize payment out of the State's money of any part of the salaries of either an Auditor, Assessor or Treasurer of any county, but the said Act of 1891, Stats. 1891, p. 107, Sec. 133, according to the enrolled bill thereof, reads as follows: "For services rendered under the provisions of this Act County Assessors, Auditors and Treasurers, except as specified in the Act, shall receive no compensation to themselves other than the salaries fixed by law."

Hence, my opinion is that you are not authorized by law to accept any settlement by which to allow any claim out of moneys belonging to the State for any part of the salaries of either the Auditor, Assessor or Treasurer of Ormsby or any other county. Respectfully,

ROBT. M. BEATTY,
Attorney-General of Nevada.

This opinion caused action on the part of the Controller out of which arose the proceedings for mandamus in State *ex rel.* Westfield vs. Tyrrell, before mentioned, in which proceeding the writ was denied, as I understand it, on the theory that the allowances to counties provided for in the Revenue Act repealed March 23, Stats.

1891, by the repealing clause on pp. 187-8, are rendered immortal by Section 21 of an Act regulating the compensation of county officers, approved March 11, Stats. 1885, p. 98, the Court declaring that the counties are still entitled to compensation proportioned to the salaries allowed by said *repealed* Revenue Act for services rendered under said repealed Act by the Auditor, Assessor and Treasurer of said counties and their deputies. And while I bow as of course to the decision, yet I cannot refrain from stating that the repealed Revenue Act *fixed* the salaries and compensation to be paid to said officers and the *existing* Act does not.

July 12th, advised Board of Commissioners for insane or mentally diseased to present claim for care of one Kate Welch, an insane inmate of the Nevada Hospital for Mental Diseases, to Ben Fitch, her legal guardian, it being rumored that quite a sum of money had been credibly ascertained to be in the Hibernia Bank at San Francisco, California, belonging to said Kate Welch.

July 18th, advised Controller that the honorable, the Superintendent of Public Instruction, was not entitled to receive reimbursement for expense of board and lodging under the law allowing him "traveling expenses." Out of this matter arose the proceeding for mandamus in the Supreme Court, entitled State of Nevada, *ex rel.* H. C. Cutting vs. LaGrave, in which the Court sustained my position.

August 9th, advised Controller through his Deputy, T. N. Stone, that the Controller could legally issue warrants on an allowed claim of a deceased person to the duly and regularly appointed and acting administrator or executor of such deceased person, upon production of his letters testamentary or of administration and that, too, without any copy of such letters being left with the Controller.

October 16th, advised the Board of Commissioners of the State Orphans' Home that although there is no law in terms permitting the admission of certain children then at Osceola, White Pine county, to the Home, still under precedent of former cases on the subject, the Board might exercise its best discretion in the matter, and if of opinion, after proof of the facts concerning such children as is alleged by the citizens of Osceola, that right, justice and the exigencies of the case warranted, I would advise that the children be admitted.

November 13th, advised State Treasurer and President of the University that of the four thousand (\$4,000) dollars insurance money received for loss of building and personal property at the late University fire, the Treasurer should receive twenty-five hundred (\$2,500) dollars and at once place it in bank as Treasurer of the Honorable the Board of Regents, and receive the remaining fifteen hundred (\$1,500) dollars for the State direct. The twenty-five hundred (\$2,500) being payment for loss of United States property, and the fifteen hundred (\$1,500) dollars for loss of State property, and

those sums therefore legally belong to the United States of America and the State of Nevada, respectively.

November 22d, the following correspondence passed between myself and Surveyor-General Pratt:

STATE OF NEVADA, LAND DEPARTMENT, }
CARSON CITY, November 22, 1895. }

R. M. BEATTY, *Attorney-General of State of Nevada*:

SIR: Notice to make contract on Application No. 11,188, and contract papers thereon, were mailed the applicant, Patrick James Conway, in registered letter addressed to his postoffice, Sweetwater, Nevada, August 23, 1895, as per Postmaster's receipt, and were received by P. J. Conway (per E. E. Green), August 27, 1895, per registry return receipt filed with said application.

The 90 days allowed by law for signing and returning said duplicate contract papers expired November 21, 1895. (See notice to Conway to sign contract.)

At 10 o'clock A. M., November 22, 1895, I received in the State Land Office envelope containing said duplicate contract papers, correctly signed by Patrick James Conway. Said envelope bears postmark of having been mailed at Bridgeport, California, November 19, 1895, and of having passed through the postoffice at Bodie, California, November 19, 1895, and of being received in the postoffice in Carson City, Nevada, at 7 o'clock P. M., November 21, 1895.

Had said letter come via Wellington stage instead of as above it should have reached Carson November 20, and been delivered at the State Land Office during office hours, November 21, 1895, but, as a matter of fact, it did NOT arrive in Carson until AFTER office hours on November 21, to-wit.: 7 o'clock P. M., November 21, and was NOT RECEIVED BY ME UNTIL 10 O'CLOCK A. M., NOVEMBER 22, 1895.

Have I the legal right, as agent for the State, to sign and certify a contract on said application on this 22d day of November, or ONE DAY AFTER the 90 days' limit has expired?

All papers concerning said application are submitted herewith. Respectfully,

A. C. PRATT,
State Land Register.

OFFICE OF ATTORNEY-GENERAL, }
CARSON CITY, NEVADA, November 22, 1895. }

HON. A. C. PRATT, *Surveyor-General and ex officio State Land Register of Nevada*:

DEAR SIR: Answering yours of this date concerning legal right to execute contract on Application No. 11,188 with Patrick James Conway, my opinion is that the matter is controlled by Section 10, Stats. 1889, p. 127, which in part reads: "If at the expiration of ninety days from the date of mailing of such notices and contracts * * * the person so notified * * * shall fail * * * or to sign and return to the Register such contract he * * * shall forfeit," etc. Now, as I understand the situation in this instance, the applicant, Mr. Conway, had "signed" the contract prior to the expiration of the ninety days, and had, so far as in his power lay, "returned" the same to you as Register. The signed contract reached Carson City by regular mail within or before the expiration of the ninety days, and although it did not reach your hands officially till the ninety-first day, still, that being no fault of his, and he, the applicant, being guilty of no laches, I am compelled to determine that the applicant is entitled to have his contract with the State. Hence, if you are satisfied that the applicant did "sign" the contract in proper time and according to law, I advise you officially hereby to proceed and enter into the contract on behalf of the State. Respectfully,

ROBT. M. BEATTY,
Attorney-General of the State of Nevada.

November 29th, by request, gave Controller a written opinion

concerning salary of State Superintendent of Public Instruction as follows:

OFFICE OF THE ATTORNEY-GENERAL OF NEVADA,
CARSON CITY, November 29, 1895.

HON. C. A. LAGRAVE, *State Controller of the State of Nevada:*

RESPECTED SIR: Yours of this day received, in which you ask as follows: "First--To what amount of salary is the State Superintendent of Public Instruction entitled? Second--From what fund and how can such salary be drawn?" and in answer thereto will say: On March 9, 1891, a consolidation of certain State offices was made, in which the Superintendent of Public Instruction was made *ex officio* Clerk of the Supreme Court, State Librarian and Curator of the State Museum. Stats. 1891, p. 32.

On March 21st, same year, the annual salaries of certain State officers were fixed, among which that of Superintendent of Public Instruction as such, was made \$1,000, "payable out of the General School Fund," and that of Superintendent of Public Instruction as *ex officio* Clerk of the Supreme Court, *ex officio* State Librarian, *ex officio* Curator of the State Museum and Secretary of the Board of Directors of the State Orphans' Home was made \$1,400. Stats. 1891, p. 104.

On February 20, 1893, the Act of March, 1891, was repealed and the office of Superintendent of Public Instruction was relieved of both the *ex officio* offices of Clerk of the Supreme Court and State Librarian, and they were both imposed upon the office of Secretary of State, Stats. 1893, p. 32, but no change was made in the salaries of either the office of Secretary or Superintendent or any of the *ex officio* offices named.

On March 15, 1895, the Legislature appropriated for the fiscal years 1895 and 1896, for salary of Superintendent of Public Instruction and Curator of State Museum, \$4,800, "payable out of the General School Fund," or attempted so to do. Stats. 1895, p. 70.

One day later, on March 16, 1895, Section 4 of the Act of 1877, (Stats. 1877, pp. 59, 60), the only law fixing a salary of Curator of State Museum was repealed. Stats. 1895, p. 76.

From the foregoing it will be seen that at present the Superintendent of Public Instruction is by law *ex officio* Curator and Secretary of the Board of Commissioners of State Orphans' Home. That as Superintendent of Public Instruction his salary is fixed by law at the sum of \$1,000 per annum, payable out of the General School Fund. Stats. 1891, p. 104.

There is no salary fixed by law for his *ex officio* duties as either Curator or Secretary of the Board of Orphans' Home Commissioners, except by the one approved March 21, 1891, and that fixes it only in conjunction with the salary fixed for the other *ex officio* duties of Clerk of the Supreme Court and State Librarian as at that time attached to his principal office.

When the salary was fixed at \$1,000 per year for the principal office and \$1,400 per year for all the *ex officio* offices legally payable out of different funds, the *ex officio* duties embraced those of four distinct offices, but afterward two, and those the most important of these *ex officio* offices, were taken from the Superintendent and given to the Secretary of State, the salary remaining the same for all. When the present appropriation was made it was evidently based upon the salary as established for the principal and all four *ex officio* offices of the Superintendent with, however, but one of them named in the appropriation. Therefore the appropriation in excess of \$1,000 per year for the principal office is void, because the other \$1,400 per year is appropriated *in solido* and no one can ascertain how much of it can be paid for salary of Curator, the appropriation having been made *in solido* and not being *specific*. 19 Nev. 372, citing 65 Cal.

The Superintendent cannot receive any pay for *ex officio* offices which have been taken from him, and nothing by reason of being Secretary of the Orphans' Home Commissioners, because there is no salary fixed for that office nor appropriation made for it, and the salary of Curator having been abolished by repeal of the Act of 1877, there is no salary legally payable for services as Curator.

This would effectually dispose of the first question of itself, but there is still a

stronger reason why you cannot draw a warrant for more than at the rate of \$1,000 per year for salary of Superintendent embraced in your second question, which is, that that is the maximum of salary allowed to that officer, to be paid out of the General School Fund, and any greater appropriation than that sum is absolutely void, for the reason that the Legislature has no power to appropriate any part of the school moneys for salary of Curator or for any other purpose than an educational one. Nevada State Const., Art. XI, Sec. 3, original, and as amended to the present time.

From all of the foregoing it is my opinion that the Superintendent of Public Instruction, having already drawn the sum of \$2,000 from the appropriation made for the purpose of paying his salary for two years, he is entitled to receive no further salary from that appropriation, for all of it that is or can be a legal appropriation from the General School Fund has been and is now entirely exhausted. I am, with respect, yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

Superintendent Cutting brought mandamus proceedings to compel Controller to draw warrant for \$200 for November, 1895, which has been argued and submitted in the case, Cutting vs. La Grave, noted hereinbefore.

November 30th, advised Deputy State Controller that a State bond to borrow money from the School Fund under Acts of March 6, 1893, Stats. 1893, p. 111, and March 16, 1895, Stats. 1895, p. 79, must "be signed by the Governor, countersigned by the State Controller, indorsed by the State Treasurer and authenticated by the Great Seal of the State."

December 4th, advised Dr. S. L. Lee, Chairman State Board of Health, that the expenses of board, etc., of quarantined students and the value of clothes of such student destroyed by order of the Board during the smallpox scare at the University should be borne and paid as a charge in the enforcement of "regulations for the better preservation of the public health in contagious and epidemic diseases." Stats. 1893, p. 118, Sec. 5.

December 4th, advised the Board of Examiners that Lieutenant-Governor R. Sadler, who presented a claim to it for allowance for "mileage" from Eureka to Carson and return at thirty cents per mile, "as acting Governor," is entitled to no mileage as Lieutenant-Governor or acting Governor, there being no mileage provided for any person connected with the gubernatorial office, and the only mileage provided for Lieutenant-Governor Sadler is "such mileage as is paid to the members of the Legislature" for attendance on the Legislature as President of the Senate (Stats. 1891, p. 104, Sec. 2), and that he has already been paid for the year 1895, under which advice said Board rejected said claim *in toto*. — 0 —

December 4th, Lieutenant-Governor Sadler also presented a claim against the State for per diem at the rate of \$8 per day from November 14th to November 30, 1895, inclusive, during the absence of his Excellency Governor Jones from the State. On this I advised the Board of Examiners to the effect that Lieutenant-Governor Sadler is entitled to per diem only when "acting as Governor," and though

the State Constitution, Art. V, Sec. 17, provides that "in case of impeachment of the Governor or his * * * absence from the State the powers and duties of the office shall devolve upon the Lieutenant-Governor," it does not provide any pay because the powers and duties devolve, and the Statute of 1891, p. 104, Sec. 2, provides for pay of "eight dollars per day when *acting* as Governor," still it does not mean that every time the Governor is absent from the State or too ill to come to his office that the Lieutenant-Governor shall receive \$8 per day, no matter in what part of the State he is or what doing.

The real facts being that in the month of November, 1895, Lieutenant-Governor Sadler was, during the absence of Governor Jones from the State, in the Capital and prepared to act as Governor, if there had been anything for him to do, as such four days, the Board allowed his claim at the rate of \$8 per day for such four days, and no more.

After the above action by the Board of Examiners Lieutenant-Governor Sadler commenced action in the First Judicial District Court, Ormsby county, on three counts: First, for \$122 40 for mileage when coming from Eureka to Carson and return for the purpose of taking the oath of office as Lieutenant-Governor; second, for thirteen days' salary in the month of November, 1895, at the rate of \$8 per day for services as Governor during the absence of Governor Jones from the State; third, for \$122 40 as mileage in coming from Eureka to Carson and return in November, 1895, when acting as Governor, as he alleges, during the absence of Governor Jones from the State, which said action is still pending.

December 7th, advised Lieutenant-Governor Sadler, acting as Governor, and the Secretary of State that said Secretary of State must collect \$5 for attesting with the Great Seal of State a Governor's warrant for arrest within this State, on the requisition of the Governor of another State, under Section 1 of Stats. 1893, pp. 80, 81, amending Act of 1865, C. L's., Sec. 2782.

December 9th, the following correspondence was had by this office:

CARSON CITY, December 9, 1895.

To the HONORABLE ROBT. M. BEATTY, Attorney-General of the State of Nevada:

DEAR SIR: The Secretary of State asks your official opinion in regard to an Act entitled "An Act to provide for the publication and distribution of Nevada Reports," approved March 1, 1883, and to be found on page 67 of the Gen. Stats., Section 2556; said Act concerning the reporting and distribution of the Supreme Court decisions of the State of Nevada.

Is it the duty of the Secretary of State as *ex officio* Clerk of the Supreme Court to report and compile said decisions in compliance with the above-named law?

If so, is the Secretary of State allowed under the law a salary for reporting said decisions of the Supreme Court?

Is that salary as Supreme Court Reporter a salary in addition to the salary appropriated by the Legislature for Secretary of State?

How much is the salary of Supreme Court Reporter under the law as it at present exists?

Is the Supreme Court Reporter allowed to employ a competent attorney to assist him in the preparation of said decisions for official distribution, and what amount is paid to such attorney for his services?

Did the former Clerks of the Supreme Court receive through appropriation by Legislature salary as Supreme Court Reporter, in addition to their regular salary as Clerk of the Supreme Court?

The Secretary of State has been and now is, since his term of office as *ex officio* Clerk of the Supreme Court, acting also as Supreme Court Reporter and performing the duties relating to that office, and desires official information in regard to the law and what his compensation is for attending to said duties. Respectfully submitted,

EUGENE HOWELL,
Secretary of State and *ex officio* Clerk of the Supreme Court.

OFFICE OF THE ATTORNEY-GENERAL, }
CARSON CITY, NEVADA, December 9, 1895. }

HON. EUGENE HOWELL, *Secretary of State and ex officio Clerk of the Supreme Court of the State of Nevada:*

RESPECTED SIR: Yours of this date received, and in answer will say:

It is my opinion that the Secretary of State, as *ex officio* Clerk of the Supreme Court of Nevada, is entitled to \$600 per annum from the State as "Reporter," for preparing the decisions, in proper form, of the Supreme Court for publication, as designated by law, and transferring them to the State Superintendent of Printing for publication. Stats. 1883, pp. 78-9, Secs. 2 and 5; Gen. Stats., Secs. 2556, *et seq.*

By the same statute it is made your duty as such officer to so prepare and transfer such decisions and by said Section 5 you are authorized, in your "discretion," to employ a competent attorney to assist you in such preparation, who shall be allowed a reasonable compensation for his services, not to exceed seven hundred dollars.

It is generally understood that there will be one volume of the reports completed every two years, but the Act quoted, Sec. 1, allows the publication of a volume only when the decisions will make a book "of the size as nearly as may be of the volumes heretofore published and containing not less than five hundred pages," therefore the employment and pay of an attorney to assist you is limited to each volume, but you are entitled to your pay of six hundred dollars per annum as such Reporter, be there few or many decisions, one, more or no volumes published in any one or more years.

The Legislature of 1895 made no appropriation for these services, as they had not been completed and scarcely begun so far as you are individually concerned, when it adjourned.

But the Legislature of 1897 will be bound by law to appropriate the sum of twelve hundred dollars for your two years' services as Reporter in preparing the decisions, and also a reasonable compensation for the attorney whom you may have employed to assist you, for by that time another volume of reports will have been completed, or made ready for publication.

The salary of six hundred dollars is in addition to your other salary as Secretary of State, Clerk of the Supreme Court and State Librarian, fixed by Statute 1891, p. 104, at twenty-four hundred dollars per annum, as that statute does not exclude the six-hundred-dollar salary as Reporter allowed by the unrepealed Statute of 1883, page 78.

I would advise you, therefore, to present your claim regularly for allowance for salary as Reporter for the year A. D. 1895, in January next, and the same for 1896, in January, 1897, and the Legislature will undoubtedly pass an appropriation bill in your favor for the sum of twelve hundred dollars.

Each and all of your predecessors in the office of Clerk of the Supreme Court have received this extra or additional salary.

Believing that I have answered all of your queries, I am with sincerity, yours truly,

ROBT. M. BEATTY,
Attorney-General of Nevada.

December 14th, advised Superintendent of Public Instruction, as member of the Board of Directors of the State Orphans' Home, that a boy twelve years of age with a living father and mother, though the mother may be civilly dead, cannot be considered a half orphan, even by the discretion of the Board, and more especially if the father of such boy is able to support him, so as to entitle such boy to admission to the State Orphans' Home.

At the proper time this office advised the Board of State Prison Commissioners that there is no law by which the nursing infant son of Mrs. Alice M. Hartley, a convict confined in the Nevada State Prison, can be incarcerated with his mother, but that the State would be relieved of any liability to the child if, while an infant, he remained at the State Prison by request of his mother. The mother made the request and the child was allowed to remain with her, but shortly afterward the Hon. George H. Thoma was, by the Second Judicial District Court, Washoe county, appointed guardian of the person and estate of said minor child, then and in such appointment designated by said Court as Vernon Harrison Hartley, and said guardian was thereupon notified by the said Board of Prison Commissioners, in writing, to remove his said minor ward from the State Prison, or file written request, as guardian of such child, to have him remain with his mother at said prison. Said guardian having filed such written request with the Board, upon my advice said Board allowed said infant to remain with his mother at said prison.

The expense to the State being but nominal, and common humanity dictating such a course, especially when the State is relieved from all liability for damages on the part of said infant, I consider the action of said Board to be the only proper course to pursue.

Advised Board of Examiners that State officers are not entitled to any pay from the State on account of subscriptions to newspapers, the question having arisen from Lieutenant-Governor Sadler's causing a claim to be presented to the Board for allowance of \$8, being one year's subscription by him as Lieutenant-Governor to the Morning Appeal.

December 20th, advised Surveyor-General A. C. Pratt, as *ex officio* Land Register, that of any lands selected under the two-million-acre grant of June 16, 1880, the State can sell no tract greater than 640 acres to any one applicant; that, as a rule, no lands less than the smallest legal subdivision can be sold; that a sale of 640 acres can be made of such selection to a person though such person may have previously purchased 320 acres of lands selected under other grants. Stats. 1889, p. 128, Sec. 10, amending Section 14, Stats. 1885, p. 106.

December 20th, advised Surveyor-General A. C. Pratt, as *ex officio* State Land Register, that a contract made by the State of Nevada for the sale of State lands is held and considered to be one entire contract

for *all* the land described in the contract, and if the purchaser fails to pay interest upon the balance due on any part of the land described in the contract, he forfeits all of the land. The Legislature intended contracts for the sale of lands to be an entire and indivisible one. *State ex rel. C. C. Powning vs. J. E. Jones, State Land Register, et al., 21 Nev. 510, et seq.*

December 21st, the ex-State officers of the last administration having failed to forward the official commission or credentials of Hon. Francis G. Newlands as a member of the present House of Representatives, and Hon. Eugene Howell, present Secretary of State, having asked my advice as to his duty, a demand having been made upon him for such credentials, I advised him to send on a certificate of the official canvass for Member of Congress of votes cast at the last election, and of Governor Colcord's proclamation concerning the last election, as the startling discovery was made that there is no record, or law requiring any to be made, in any department, except the simple tally of the official returns as signed by two of the Supreme Court Justices, namely, Bigelow and Belknap, and the official election proclamation of ex-Governor Colcord. I further advised said Secretary of State to have his Excellency, Governor John E. Jones, issue a commission to said Mr. Newlands as a Member of Congress, and for him, said Secretary, to attest the same.

This correspondence occurred :

STATE OF NEVADA, LAND DEPARTMENT, }
CARSON CITY, December 27, 1895. }

ROBT. M. BEATTY, *Attorney-General, Carson City, Nevada:*

DEAR SIR: On the 24th inst. I received from C. C. Powning, Reno, Nevada, withdrawals describing certain lands in Application Nos. 6,166 and 6,175, filed May 25th, 1885, in names of Christopher C. Powning and Joseph Powning, respectively, which withdrawals are submitted herewith.

Referring to Section 15 of the General Land Law, approved March 12, 1885 (as amended March 11, 1889), I find that compliance therewith was made by State selection in the Eureka District U. S. Land Office, May 29, 1885, as per certified copy of list No. 59, "2-M. A. Grant," filed in said U. S. Land Office June 4, 1885, describing the lands in question. Since then said selection has remained unapproved to the State. In consideration of this fact and of an "order of suspension" hereinafter referred to, said applicants desire to withdraw the 20 per cent deposit (25 cents per acre) heretofore paid on the 552.90 acres described in said withdrawals. Referring to Section 18 of said General Land Law, as amended March 11, 1889, I desire your advice concerning what action I shall take in response to the request of said applicants, viz.: that I certify to the Controller and Treasurer that such applicants are entitled to the amount paid by them. Referring to page 66 of the reports of this office for 1887-8 you will ascertain that, by order of the General Land Office at Washington, D. C., "all entries of and filings for land in * * * T. 39 N, R. 46 E. were suspended until further orders." You are also referred to a copy of a letter of November 12, 1895, from the Commissioner of said General Land Office to the Register and Receiver of the Carson City U. S. Land Office, as also to my letter to the State's Land Agent, Washington, D. C., and said C. C. Powning, dated December 3 and 18, 1895, together with various other correspondence of record in this office, including a letter of December 13, 1895, addressed to me by ex-State Land Register C. S. Preble. All of which correspondence I shall be pleased to present to your inspection. Respectfully,

A. C. PRATT,
State Land Register.

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, NEVADA, December 28, 1895. }

HON. A. C. PRATT, *State Land Register, Carson City, Nevada:*

DEAR SIR: In answer to your communication and desire for advice of yesterday concerning request of C. C. and Joseph Powning to be allowed to withdraw deposits paid on applications to purchase lands Nos. 6,166 and 6,175, filed May 25, 1885, and what action you shall take in the matter, I can only say that I can find no law to justify you in complying with the request.

As I understand from the documents and records submitted to me, the lands described in said application, though "suspended" from further "entries and filings" since February 6, 1886, "until further orders," still are subject to all entries and filings made prior to said last named date. The *suspension* concerning such lands may be removed at any time and rights already accrued cannot be disturbed.

Section 18 of an Act to provide for the selection and sale of lands, etc., approved March 12, 1885, as amended March 5, 1887, and further amended March 11, 1889, has ever permitted you to "withdraw" from local or general Land Offices of the United States selections of such lands *only* as "have been or may be *erroneously* made."

There is no claim in the instance under consideration of any *error* in the selections.

I therefore, advise you that you have no authority to comply with the request made of you.

In matters of like nature, and in all instances where there is no law authorizing action on the part of your office, you have no right to inquire as to the hardship or equity of the case. If the party deeming himself aggrieved considers the matter of sufficient importance, and his claim well founded in law, it would seem to be his duty to establish his right by judicial determination, and when once so established you would be protected in complying with such request, but not otherwise. I am, with respect, yours to command,

ROBT. M. BEATTY,
Attorney-General of Nevada.

DISTRICT ATTORNEYS AND OTHER OFFICERS.

Here I beg leave to state that I have always declined to advise county officers officially on public matters, unless such officers had first applied to their respective District Attorneys, or given sufficient reason for not doing so, as I consider that I am in duty bound, so far as in my power lies, to see that county affairs are submitted to the proper county officer, i. e., the District Attorney, before any question of a county nature should leave the county.

January 18th, advised John Shier, County Recorder of Lincoln county, that an appointment by him of a woman as Deputy Recorder would be null and void, for the reason that every public officer, except Superintendent of Public Schools and School Trustees, must be a qualified "elector" under the State Constitution, 8th Amendment, Art. XV, Sec. 3, as ratified February 11, 1889, and that deputies must have the same qualifications as their principals.

February 26th, advised Ira H. Kent, District Attorney Churchill county, that being absent ninety days from the State did not of itself oust a Justice of the Peace from office, and if he returned and his office had not been declared vacant by the proper authority he was still Justice of the Peace, and would so remain until his successor is elected or appointed and qualified.

March 8th, advised J. A. Danielson, Assessor of Churchill county,

at request of District Attorney, that property under attachment should be taxed by assessment to the owner, whether personal or real, the same as if in possession of the owner himself.

March 17th, received information from F. H. Norcross, District Attorney of Washoe county, that a certain case of the C. P. R. R., plaintiff in error, against the State of Nevada, involving a question of taxes, had never been decided by the United States Supreme Court. I at once investigated and ascertained that in the matter a writ of error had been pending since it was sued out, in 1889, and had never been determined, and at once gave notice to the plaintiff in error and its attorneys, Messrs. Baker and Wines, and local agent, Hon. Evan Williams, that I would move in the Supreme Court of the United States to have the writ dismissed on a certain day. After considerable backing and filling on the part of the plaintiff in error, it, through its attorneys, agreed with me that if they found the facts to be as I stated them they would settle and pay up all moneys due under the judgment of the District Court as obtained in 1889, and also the amount of taxes claimed by Washoe county which had remained in abeyance subject to the decision and disposition of the writ of error named, and after a trip to San Francisco and consultation with Hon. G. W. Baker, attorney for plaintiff in error, plaintiff in error settled the whole controversy by paying in full to Mr. Norcross, as District Attorney of Washoe county, all claims of the State and county in the matter, as follows:

Original tax	\$1,146 86
Ten per cent penalty	114 68
Additional penalty	286 72
Advertising costs	101 85
Interest on judgment at 7 per cent	751 76
Total	\$2,401 87

And I thereupon ordered all proceedings in the Supreme Court of the United States dismissed and discharged, without expense to the State of a trip to Washington or one dollar's outlay, except my fare to San Francisco. Thus was collected the taxes from the railroad company due ever since the year 1887.

April 5th, advised A. E. Harris, District Attorney of Lyon county, as follows:

OFFICE OF ROBERT M. BEATTY, ATTORNEY-GENERAL,
CARSON CITY, NEVADA, April 5, 1895.

A. E. HARRIS, Esq., *District Attorney of Lyon County, Dayton, Nevada:*

DEAR SIR: Yours of yesterday just received. You refer to "Senate Bill No. 81," which I find on investigation of enrolled bills in the Secretary of State's office, has become a law, and is to be found in the advance sheets of Statutes of 1895 on page 107, Chapter XV.

Your general query seems to be: "Is the *Act* constitutional?" and as you do not ask the question upon any special ground, I must say that all Acts of the Legislature are presumed to be constitutional until declared to be otherwise by the Courts.

But as you ask for my "opinion," which, of course, has not any force except, perhaps, as a guide or reference for your own opinion as District Attorney, I will

say that the Act on its face is a proper amendment of the Act of 1865 in so far as the transfer of authority to "subscribe" for a newspaper from the Commissioners to the Recorder is concerned, and also in so far as it designates and limits the character of the paper that may be subscribed for, but that portion of the Act of 1895 prescribing that the Commissioners shall designate the paper subscribed for to be the official paper of the county, and limiting the legal printing and advertising to that paper is, in my judgment, directly in conflict with Sec. 17, Art. IV of the Constitution of the State of Nevada, declaring that the subject "shall be briefly expressed in the title." The title of the Act under consideration, or the one of which it is amendatory, "expresses" nothing in its "title" concerning the designation of official papers nor legal or any sort of advertising. This section of the Constitution has been so often passed upon judicially by the Courts of our own State and California, that even this Act now under consideration may be termed almost *res adjudicata*. *Vide* inclosed list of *nine* cases in which the subject is discussed, or that bear directly upon the point from our own Supreme Court.

Hoping that this will be satisfactory and meet all the requirements of yourself and your Board, I am, with respect, yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

May 10th, advised A. P. Johnson, District Attorney Nye county, that Section 1988, Gen. Laws, and the case of Lander county vs. Humboldt county, 21 Nev. p. 417, covers the cases of expense of paupers of one county supported by another county.

May 31st, advised A. E. Harris, District Attorney of Lyon county, concerning suit on bond of late Treasurer of said county, that such suit would be covered by Sections 2917 and 3077, Com. Laws, subdivision 12th, and 2941 and 2774 and 2778, Com. Laws.

That I, as Attorney-General, am not supposed to commence suit in this matter, as the State is or will be paid by the county any portion of money due to the State, but that the Board of County Commissioners has control and it is its duty to order action, and then the District Attorney should commence action and prosecute in the District Court, and if there is an appeal it is my duty to prosecute in the Supreme Court, with the District Attorney's assistance, if he choose to render it.

That if the Board of Commissioners refuses or fails to act concerning a defaulting officer it is the duty of the District Attorney to bring the matter before the Grand Jury for their action, and hinted that if mandamus proceedings are necessary any citizen taxpayer of Lyon county may cause such proceedings to be instituted.

June 12th, advised A. P. Johnson, District Attorney Nye county, that Section 137, Revenue Act of 1891, Stats. 1891, p. 193, is uninterpretable, etc., having fallen in re-enactment of old law by inadvertence, and that I think the Legislature, or rather the promoters of the law, intended to do away with all process for the State paying any part of county officers' salaries.

But the Supreme Court has effectually remedied this matter by its decision in *State ex rel. Westerfield vs. Tyrrell*, referred to hereinbefore.

August 9th, advised Robert Hogan, Chairman Board of County Commissioners Lander county, that under the present law Auditors

are not allowed any pay for extending assessment roll. Gen. Stats., Sec. 2388, repealed by Stats. 1891, p. 187-8, Sec. 153, old Revenue Act, Com. Laws, 3209.

August 14th, advised A. P. Johnson, District Attorney of Nye county, that it is the duty of the Sheriff to enforce "The Sheep License Law" as he finds it, and not to question its validity, that being alone for the Courts to do. (This was before Judge Cheney's decision.)

September 2d, advised Ira H. Kent, District Attorney Churchill county, that a lessee of land is not exempted from paying license under sheep license law. (This, too, was before Judge Cheney's decision.)

October 16th, the following correspondence passed between myself and A. J. McGowan, District Attorney Ormsby county:

CARSON CITY, NEVADA, October 15, 1895.

HON. R. M. BEATTY, *Attorney-General, Carson City, Nevada:*

HON. SIR: Will you please give an opinion touching upon the following statement of facts: A merchant doing business in Carson City, Ormsby county, Nevada, was assessed by the Assessor of Ormsby county, Nevada, for \$8,000 on goods, wares and merchandise. The tax was paid immediately, as the merchant had no real estate. The Board of Equalization raised the value of the stock to \$12,000.

Now, whose duty is it to collect the tax due upon the additional \$4,000, the Assessor's or the Tax Collector's, *i. e.* Tax Receiver's?

The Assessor has settled with the Treasurer for taxes assessed and collected by him on personal property for the year, and the assessment roll is in the hands of the Clerk of the Board of Equalization and will in five days be given to the Auditor for extension.

When must the additional tax be collected, and if the merchant refuse to pay, what procedure must be followed? Yours most respectfully,

A. J. MCGOWAN.

P. S.—The Assessor wants your opinion, as it affects the State as well as the county.

OFFICE OF ROBT. M. BEATTY, ATTORNEY-GENERAL, }
CARSON CITY, NEVADA, October 16, 1895. }

A. J. MCGOWAN, Esq., *District Attorney Ormsby County, Carson City, Nevada:*

DEAR SIR: Yours of yesterday just received, and in answer will say that although there might be a question concerning the right of the Board of Equalization to act as it has, the present situation has nothing to do with that, and answering your queries.

The collection of taxes upon the \$4,000 assessment or "raise" should be made, under the circumstances, as if the Assessor had discovered additional property of the taxpayer to that amount since his original assessment, and the taxes should be collected *immediately*, in the same manner as other assessments upon personal property where the party assessed has no real estate. Stats. 1891, p. 159, Sec. 66, *et seq.*

The Sheriff as *ex officio* Assessor is the only officer authorized by law to collect in such cases, and for his own protection I should advise immediate action on the part of the Assessor. Stats. 1891, p. 161, Sec. 69.

The Assessor should act under and be guided by Section 68, pp. 160, 161, Stats. Nev., 1891. Respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

November 9th, advised W. D. Jones, Esq., District Attorney of Lander county, by letter as follows:

CARSON CITY, NEVADA, November 9, 1895.

W. D. JONES, Esq., *District Attorney and ex officio Superintendent of Public Schools Austin, Nevada:*

MY DEAR SIR: In reply to yours of the 6th instant must say that your data is rather too incomplete for me to base a full opinion upon, owing to its silence on *area* of districts. However, having carefully and "prayerfully gone to the Statutes," as Judge Ashley used to say, will say in one view the matter is covered by Act of 1895, pp. 43-4, for although there is no law for consolidation of school districts, the Board of Commissioners may "abolish" when in "their" (?) judgment, etc., and may *create new* and change boundaries of existing districts in cases where the legal number of children (*viz.*, five, Stats. 1887, p. 19) are not within the, or either, district, as appears to be the case in this instance. Now, if your Board abolishes both existing districts, it can establish a *new one*, provided it does not exceed in size sixteen miles square and has the required number of children. If this be done, I think the Act of 1887, 140, would apply; if not, you could appoint Trustees.

Now, as to the money. If abolished, the money of the abolished district should go back to the General School Fund, to be apportioned anew, under the provisions of the Act of 1885, 111. But by Section 30 of the General School Law, Gen. Stats., Section 1312, among the powers conferred on Boards of School Trustees, there is authority to cover your case. It is true that this section was amended, Stats. 1891, p. 99, and though by the amendment as printed the section applies only to counties of twenty-five hundred or more voters, still the powers being unchanged, it seems that unless the County Commissioners have the authority under the Act of 1895, and those of which it is amendatory, then the School Trustees have the full power and authority to even consolidate districts regardless of its boundary area. Respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

December 1st, forwarded the following letter to District Attorney of Nye county:

CARSON, NEVADA, December 1, 1895.

W. N. GRANGER, Esq., *for A. P. JOHNSON, District Attorney of Nye County, Belmont, Nevada:*

MY DEAR SIR: Yours of the 27th ult. just to hand. The statutes, as I understand them concerning *finer* are, *i. e.*, were and are as follows: The first one, Com. Laws, Sec. 2291, being Section 666 of the Crim. Prac. Act, approved 1861, permits the appropriation of "finer" to the payment of costs and has never been repealed in terms. The Revenue Act of 1867, as amended in 1869, p. 96, Com. Laws, Sec. 3288, being specially in reference to "finer," declares that the same *shall* be paid into the State Treasury to be applied to educational purposes as provided by the State Constitution, Art. XI, Sec. 3, 5th amendment.

This Act of 1867, as amended 1869, is repealed in terms by the third and last Act on the subject, Stats. 1887, p. 122, referred to by you. Hence the Act of 1887, being of later date of approval and specially concerning "finer," I should consider that it supersedes Section 666, Crim. Prac., Act of 1861, and in effect repeals or renders it void. Respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

December 7th, advised District Attorney Lander county that the Clerk of the District Court is authorized and commanded to collect a court fee or docket tax on the commencement of a civil action by Constitution, Art. VI, Sec. 16, and Gen. Stats., Sec. 2369, and although the Act applies to county officers in counties of eight hun-

dred or more votes by Section 2382, Gen. Stats., yet a court fee or docket tax is not a fee of any officer.

December 8th, the following correspondence occurred :

RENO, NEVADA, December 6, 1895.

HON. R. M. BEATTY, *Attorney-General, Carson City, Nevada:*

DEAR SIR: The State Board of Health has adopted the following order and served the same on all school officials in the State: "It is hereby ordered that all persons attending public schools in this State, either as teachers or pupils, shall present to the Principal thereof a certificate from some reputable practicing physician that said person has been vaccinated within the period of five years, and no person shall be permitted to attend without such certificate." The notice accompanying a copy of the said order reads as follows: "Please consider this your official notification thereof, and you are hereby instructed and empowered to enforce the same."

A copy of the above order was served on me as Superintendent of Schools of Washoe county, since which time I have had numerous inquiries from parents as to whether the Board of Health had the authority to make such an order and whether it is necessary to obey it. As the order is one that affects the entire State I have not deemed it proper to act in the matter, at least until I could get your opinion as the Attorney-General of the State, whether or not the Board of Health has the power to make the above order so that it has the force and effect of law.

The powers and duties of the State Board of Health are found in that Act of the Legislature entitled "An Act to prevent the spreading of contagious diseases and to establish a State Board of Health," Stats. of 1893, page 117. Section 4 (as amended Stats. 1895, p. 92) and Section 5 of said Act prescribe the powers of the Board of Health and whatever powers it exercises must be sanctioned by one or the other of the two sections. The question then is, can the power to pass such an order as the one in question be found within the section mentioned? There is nothing in Section 4 that would give the Board of Health power to pass such an order, for that section only provides that the Board of Health "shall take cognizance of the interest of life and health among the inhabitants of the State; shall make or cause to be made sanitary investigations in inquiries respecting causes of diseases, especially of epidemic and contagious diseases, and the means of prevention." They are further given power in the same section to "advise" with municipal officers with regard to certain sanitary conditions and measures. Section 5, however, seems to give the Board of Health certain powers, and it is doubtless under this section that the order was issued.

Section 5 provides that "The Board of Health shall have authority to promulgate and enforce such regulations for the better preservation of the public health in contagious and epidemic diseases as they shall judge necessary." The section then continues and fixes a penalty for the failure or neglect to comply with the requirements of such regulation, after being duly notified of the same, declaring a person guilty of misdemeanor, and liable to pay a fine of from one hundred to five hundred dollars or imprisonment for fifty to two hundred and fifty days.

Now, does Section 5 confer upon the State Board of Health power to pass an order like the one in question, covering the entire State, at a time when but a small portion of the State has been visited with a contagious disease, and that, too, of a mild form, and confined to a single individual? I think it very doubtful. If the power exists in this case, what, if any, are the limits, beyond which the Board of Health may not go, in declaring orders for the public to obey?

If the statute can be construed into giving the Board of Health power to pass such an order, there is still a very important question touching the validity of the statute itself. Has the Legislature the power to pass such a statute delegating such powers to a body that itself is but the creature of the statute? I have not been able to find a decision of our Supreme Court on the point, but the Supreme Court of California has a number of times decided that the Legislature cannot delegate its powers. There are two cases which seem to me very much in point: *Harbor*

Commissioners vs. Excelsior Redwood Company, 88 Cal. 491, 26 Pac. Rep. 375, and *Ex parte* Cox, 63 Cal. 21. In the latter case the Legislature of California had provided that the viticultural health officer, with the approval of the Board of Viticultural Commissioners, was empowered to declare and enforce rules in the nature of quarantine to prohibit the importation of diseased vines, etc.; and further provided that any willful violation of these rules should constitute a misdemeanor. The petitioner, Cox, was discharged upon *habeas corpus* by this Court, he having been convicted of violating certain of these rules and regulations. The Court said: "For the purpose of local legislation, legislative functions may be conferred upon and exercised by municipal corporations; but the Act before us is in no sense a conferring of powers for municipal purposes. The Legislature had no authority to confer upon the officer or Board the power of declaring what acts should constitute a misdemeanor." Other cases on this point: *People vs. Parks*, 58 Cal., 624. *Ex parte McNulty*, 77 Cal. 164. From a consideration of the foregoing and other cases I am of the opinion that the Legislature of this State cannot delegate to the State Board of Health the authority to pass the order recently issued by them, compelling the vaccination of all school children in the State.

I do not wish to be understood as questioning the wisdom or necessity of the order. The majority of pupils in Reno have already obeyed the order, but there are some who do not care to obey it and will not unless they have to. The question then is, can they be made to?

I will esteem it a great favor if you will give this question your earliest possible attention, and inform me of your conclusion in the matter. Very respectfully,

F. H. NORCROSS,

District Attorney and *ex officio* Superintendent Schools, Washoe County.

OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, NEVADA, December 8, 1895. }

F. H. NORCROSS, *District Attorney and Superintendent of Public Schools, Reno, Nevada:*

DEAR SIR: Yours of the 6th instant not received till this A. M.

It is my opinion that Section 5 of the Act quoted by you does confer the power upon the Board of Health to make the order complained of, and I, like you, "do not question the wisdom or necessity of this order."

As to the power of the Legislature to delegate this authority to the Board I have nothing to say at present: the law, as it stands, in my judgment, gives the Board the power to make the order, hence it has the power to and has made it, and there has been no arrest or attempt to punish for disobedience of it, so a question of the Board's power to *enforce* the law has not arisen.

My official character being but an executive one in this regard, I think it my, as well as your, and School Trustees' duty to enforce the laws as we find them, unless on their face they are void, until judicial authority declares them null. Sincerely yours,

ROBT. M. BEATTY,

Attorney-General of the State of Nevada.

Out of this matter arose a mandamus proceeding in the Second Judicial District Court, entitled *Julien vs. Bray*, to compel respondent Bray to admit an unvaccinated child to the Reno public schools. And after full discussion of all the questions involved in this correspondence by F. H. Norcross, for relator, and Torreyson & Summerfield, for respondent, the Court decided in favor of respondent, sustaining the action of the Board of Health in every particular.

The following correspondence occurred:

BELMONT, NEVADA, December 20, 1895.

HON. R. M. BEATTY, *Attorney-General, Carson, Nevada:*

DEAR SIR: Allow me to state a case which came before the Board of County Commissioners with myself as Acting District Attorney:

A died in June or July, 1895, special letters of administration were issued to B, summary proceedings had, and in October the estate declared settled and closed, distribution decreed, etc.

Then comes a Justice of the Peace, as *ex officio* Coroner, with a bill against the county for holding an inquest,

I told our Board to lay the matter over one month, cite our Justice of the Peace, claimant, to the statute wherein his claim must be paid out of the estate, provided there was sufficient estate with which to pay, etc. Now, I may be in the wrong, but if so I want to know it.

The facts are the man was found dead, an inquest held; verdict of the jury: "died from heart failure."

I hold that the inquest was an *incident* of the last sickness and funeral expenses. I would not do our Justice of the Peace any injustice, nor would I wink at any wrong being done against the county. I shall demand the rejection of the claim at the meeting of the Board in January, 1896, unless I previously hear from you that I am in the wrong. * * * Very truly yours,

W. N. GRANGER.

P. S.—Bear in mind there was sufficient money in the estate with which to pay his claim, but not enough with which to pay the creditors in full.

OFFICE OF ATTORNEY-GENERAL, }
CARSON, December 25, 1895. }

W. N. GRANGER, Esq., *Acting District Attorney Nye County, Nevada:*

DEAR SIR: Yours of the 20th instant just received. In answer will say if the Justice of the Peace, acting as Coroner, did his duty according to Sections 11, 14 and 15 of "An Act concerning Coroners," approved November 28, 1861, Comp. Laws, Vol. 2, Secs. 3045, 3048, 3049, he has a collectable claim against the county for any just balance of his fees of inquest or burial; but if he did not and there was sufficient property of deceased at the time of inquest, and he failed to secure his fees under the provisions of that Act, his laches in that particular would be a legal bar to his right to collect fees from the county, for these reasons: That if he had performed his duties under the Act, though his fees would have been (except such as he might have paid himself out of money of deceased) a legitimate charge against the county, because the county would have had the means and been in position to reimburse itself from the property of deceased while in the hands of the County Treasurer, as placed there by the Acting Coroner himself; while if the Acting Coroner did not follow the law it was by his act that the county would lose its right and opportunity to reimbursement, and the axiom applies, "the loss must fall upon him who is in fault." Respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

The following correspondence occurred:

HAWTHORNE, NEVADA, December 27, 1895.

HON. R. M. BEATTY, *Attorney-General, Carson City, Nevada:*

DEAR SIR: Our delinquent list shows but one person and parcel of property upon which the tax exceeds \$300, it is a quartz mill owned by E. Brown, of which the Assessor returned a valuation of \$7,500. The Board of Equalization raised the valuation to \$10,000.

The answer will probably be (under the fifth subdivision alone of the Act of 1895, page 39), fraud on the part of the Board and that the valuation by the Board is in excess of the "actual cash value" of the property.

May we not succeed in having the last mentioned ground stricken from the answer on motion for the following reasons? among others:

That it conflicts with the provisions of the Constitution, Art. X, Sec. 1, wherein it is expressed that laws shall be enacted providing "for a uniform and equal rate of assessment and taxation." Such results can only be obtained by uniform laws. Law which provides that certain parties may have an assessment made by the

Court, while as to others it is determined by the action of the Board of Equalization, cannot be said to be uniform.

Further, it is provided by law, Stats. 1893, page 47, Sec. 8, that the assessment of property shall be determined by the action of the Board of Equalization. Further, there is no law providing for an appeal from the conclusion of the Board of Equalization, and the provision that the defendant may recite and prove the conclusion of the Board to be incorrect is but an indirect provision for an appeal from the decision of the Board. Further, it is impossible to arrive at exact certainty as to the "actual cash value" of a piece of property. For the Court to decide relative thereto would be but an opinion of a third party.

I would be glad to have you give me a memorandum of points and authorities in support of the motion I have suggested, provided you think there is any merit in the suggestion. I am particularly desirous to succeed in that line if I have to bring suit, as the strong probability is that if defendant is permitted he will be able to prove the raise made by the Board to be in excess of the "actual cash value" of the property.

I think the Board of Commissioners at the present time is of the same opinion, and would, if law permitted, make some compromise with the defendant, and thereby avoid a suit.

Under the views expressed in the 10th Nev. 84, and referring to 9th Nev. 88 and 5th Nev. 319, it would seem the Board has no authority to effect a compromise. Now, while this might be true if the action of the Board should be held to be conclusive, as it was at the time in the cases referred to, is not the situation changed if it be held that the action of the Board in making the assessment can be reviewed by the Court? If it be true that the Board is convinced that it made a mistake in placing the valuation at \$10,000, can it not cure that mistake at any time before the final determination as to the "actual cash value" of the property?

I am particularly anxious as to the result of a suit to recover said delinquency, as a failure to succeed in obtaining judgment for all of the demand would almost surely produce endless law suits a year hence, and prevent any considerable part of the taxes being collected except at the end of a law suit. I therefore prefer to effect a compromise, unless there is a strong probability of success in motion to strike out the portion of the answer I have alluded to.

In any event I am willing, and I think the Board of Commissioners is also willing, to compromise at a less valuation than \$10,000.

Does not the provision, Section 63, p. 158, Stats. 1891, where it says the District Attorney shall make a statement in detail, showing why he has not commenced suit, contemplate that for good and legal reasons he should refrain from commencing suit?

We have but little time to decide if we may delay the suit, as the twenty days elapse on January 7, 1896. Very respectfully,

A. W. CROCKER,
District Attorney Esmeralda County, Nevada.

OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, NEVADA, December 28, 1895. }

A. W. CROCKER, *District Attorney of Esmeralda County, Hawthorne, Nevada:*

DEAR SIR: Answering yours of yesterday, I can only say I do not think that the Act of 1895, page 39, referred to by you is unconstitutional. The amendment was made after thorough investigation and for the purpose of giving the taxpayer an opportunity, when an injustice had been done him by the Board of Equalization and could be easily proven, to maintain his rights.

The uniformity of taxation is not interfered with, but the power of a Board composed of three persons to unalterably and eternally fix values according to its own unrestrained will has been taken away, and every citizen can now, if he deems his assessment too high, appeal to the Courts and have the value of his property determined after full, fair, impartial and unprejudiced investigation.

Of course, the action of the Board was held to be conclusive by the decisions you cite, and that was the very reason for the enactment of the amendment of 1895.

There is no danger of a multiplicity of law suits for the collection of taxes, for the taxpayer must ultimately pay all percentages and penalties for delinquency, etc., and this will deter any person from standing suit unless, he is fully satisfied that he has been wronged as to value by the Board of Equalization and that he is all but certain of success before the Courts.

As regards the matter of compromise spoken of by you, I know of no law authorizing it. The Board of County Commissioners, if it has as a Board of Equalization made a mistake, can no more remedy the error after adjournment of the Board of Equalization than a Sheriff can amend his return, after having made it, without the aid of a Court.

I think the part of Section 63, Stats. 1891, cited by you, refers to cases wherein property has been destroyed and the owner disappeared, or some case in which it would be impossible to collect either with or without suit, or even after suit is brought. Respectfully yours,

ROBT. M. BEATTY,
Attorney-General of Nevada.

DISTRICT ATTORNEYS' ANNUAL REPORTS.

Following are the reports of the different District Attorneys as they have been received by me, and I must say, like my predecessor, that it is a very difficult matter to get these gentlemen to forward the statistics required by law or at the time they should, but in the absence of anything better I herewith report to your Excellency what I have received:

HUMBOLDT COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada:*

In compliance with the provisions of Section 1 of the Act approved March 1, 1889, entitled "An Act to require District Attorneys to make certain reports to the Attorney-General." I have the honor to submit the following:

January 14, 1895, a Grand Jury was empaneled, at a cost of \$211 20. A trial jury was empaneled March, 1895, at a cost of \$658 80. A Grand Jury was empaneled May 20, 1895, at a cost of \$62 10. Grand Jury, July 15, 1895, at a cost of \$192. Grand Jury, October, 1895, at a cost of \$387 90.

Indictments were found by the Grand Jury as follows:

State of Nevada vs. Menicucci Conditio, charging murder, was tried on plea of "not guilty" and convicted of manslaughter, sentenced to imprisonment in the State Prison for the term of seven years.

State vs. Willie Doc Jim, a Piute Indian, indicted for murder, plead "guilty of murder in the second degree," sentenced to confinement in the State Prison for the term of his life.

State vs. George Turner, indicted for grand larceny, plead "guilty as charged in the indictment," sentenced to three years' confinement in the State Prison.

State vs. J. Sullivan and George Rongon, indicted for housebreaking; each defendant pleaded "guilty as charged in the indictment," and were sentenced, each, to two years' confinement in the State Prison.

There have been no acquittals of any person indicted and no case dismissed. There is one indictment for grand larceny now (November 13, 1895) pending. There have been no fines imposed. The sum of \$55 has been paid to attorneys for defending persons tried on indictments. There has been paid to indigent witnesses the sum of \$85.

I omit the statement of the salaries of the officers of the Court, as they are not paid exclusively for services in criminal cases, and the amounts thereof, being fixed by law, are known.

All of which is respectfully submitted.

This report embraces the period of time intervening from November 1, 1894, to the 1st day of November, 1895.

L. A. BUCKNER,
District Attorney of Humboldt County.

STOREY COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

SIR: I herewith submit my report relative to criminal prosecutions in Storey county, Nevada, for the year included between October 31, 1894, and November 1, 1895, as required by law:

IN THE DISTRICT COURT.

Actual number of prosecutions submitted to the Grand Jury, 13; indictments found, 8; demurrers confessed, 0; demurrers sustained, 0; cases resubmitted to Grand Jury, 0; cases dismissed (for fast driving appealed from Justice Court), 1; defendants bound over and awaiting action of Grand Jury, 0; indictments pending (defendants not in custody), 5; bills ignored, 5; convictions, 3; acquittals, 1; fines paid, 0; costs (exclusive of salaries), to Storey county, \$1,548 20; average punishment and conviction, 3.666 years; whole number of prosecutions instituted, 13.

CHARACTER OF OFFENSES.—Burglary, 2; robbery, 6; assault with intent to kill, 2; felony (illegal voting), 3.

IN JUSTICE COURT.

Prosecutions, 44; convictions, 12; average punishment, \$76 66 $\frac{2}{3}$ fine or 1 day imprisonment for each \$2 of fine unpaid; bound over on examination, 6; discharged on examination, 1; felonies dismissed without examination for failure of evidence, 1; cases complained of and submitted to Grand Jury without examination, 4; acquittals, 6; dismissals, 10; pending misdemeanors (2 on personal recognizance and 2 not arrested), 4; pending felonies, 0; fines paid, \$125; costs paid by Storey county, usual salaries.

CHARACTER OF OFFENSES.—Assault, 2; assault and battery, 15; misdemeanors, 6; felony 5; petit larceny, 2; malicious mischief, 2; assault with intent to kill, 2; vagrancy, 2; disturbing the peace, 4; robbery, 3; burglary, 2.

I make no report of the numerous cases arising under the city and town ordinances of Virginia City and Gold Hill, deeming such report uncalled for.

Respectfully submitted, this 1st day of December, A. D. 1895.

F. P. LANGAN,
District Attorney of Storey County.

ESMERALDA COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: Below please find report, made in conformity with the provisions of the Act of 1889:

State of Nevada vs. Cockeye (Indian)—Examination on charge of housebreaking; held to appear before the Grand Jury; in a few days escaped from jail; costs, March 14, 1895, \$17 25.

State of Nevada vs. Jeff (Chinaman)—Charge, selling opium; failure to convict; costs, \$10, March 14, 1895.

State of Nevada vs. Frank Robbins—April 1, 1895, examination, which was discontinued before magistrate made any order; costs, \$9.

State of Nevada vs. Joe Merritt—Assault, March 4, 1895; costs paid, \$5.

State of Nevada vs. A. L. Daniels—Petit larceny; charge dismissed March 4, 1895; costs paid, \$2.

State of Nevada vs. Sam (Chinaman)—In Justice Court, Township 20, Hawthorne, June 22, 1895; trial on charge of keeping an opium resort; conviction; judgment of imprisonment and fine; fine not collected; costs, \$10.

State of Nevada vs. China Sam—In Justice Court, Township 20, Hawthorne, August 28, 1895; selling whisky to Indians; failed to obtain jury; Justice's costs, \$10; Constable's costs, \$14; total, \$28.

Boarding sundry prisoners September 2, 1895, \$4 30; November 4, 1895, \$15 30; total, \$19 60.

State of Nevada vs. Richard Roe—October 4, 1895; peddling without license; costs, \$6.

State of Nevada vs. Charlie Gee—November 4, 1895; examination on charge of murder; held to answer before Grand Jury; \$6.

Received in the following cases: December 31, 1894, State vs. Henry Warner, assault, \$5; September, 1895, State vs. Charles Merritt, assault, \$16 50; October 4, 1895, State vs. Richard Roe, peddling without license, \$3; total, \$24 50. Respectfully submitted,

A. W. CROCKER,
District Attorney of Esmeralda County.
Hawthorne, Nevada, November 21, 1895.

WASHOE COUNTY.

RENO, NEVADA, November 22, 1895.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

In compliance with law I have the honor to present the following report of the criminal proceedings had in Washoe county for the year ending November 1, 1895:

Number of convictions: Felonies, 15; misdemeanors, 496. Number of acquittals: Felonies, 0; misdemeanors, 29. Number of dismissals: Felonies, 5; misdemeanors, 38. Charges of felony ignored by Grand Jury, 5. Total number of cases considered, 588. Convictions were had for the following felonies: Assault with intent to kill, 3; grand larceny, 3; burglary, 3; housebreaking, 5; attempt to break jail, 1.

The following are the charges, one each, of the felonies ignored by the Grand Jury: Abortion, assault with intent to kill, grand larceny, burglary, abduction and embezzlement.

Preliminary examinations on charges of felony, 14.

Cases for felony dismissed by District Attorney were as follows: Two defendants charged with burglary and two charged with robbery were allowed to plead guilty to petit larceny, the evidence not being sufficient to convict or warrant the expense of a trial. One defendant, after indictment for burglary, was in the interest of justice allowed to plead guilty to petit larceny.

The following table shows the number of misdemeanors considered by offenses: Vagrancy, 262; disturbing the peace, 148; assault and battery, 48; assault, 8; petit larceny, 49; malicious mischief, 19; false pretenses, 3; selling and smoking opium, 9; illegal fishing, 2; other misdemeanors, 15; number of prosecutions pending at the time covered by reports, 2; charges, poisoning and embezzlement.

Average sentence: Felony, 2 years 10 months; misdemeanor, about 15 days. Sentences for misdemeanors vary from 2½ to 120 days.

Amount of penal fines collected, \$195 75.

Expense to Washoe county due to crimes and the prosecution thereof, as near as can be calculated, \$9,396 48. The following table shows the expense itemized:

Fees of Justice of the Peace, Reno	\$1,664 95
Fees of Justice of the Peace, Wadsworth	579 75
Fees of Justice of the Peace, Verdi	15 40
Fees of Constable, Reno	2,080 60
Fees of Constable, Wadsworth	691 60
Fees of Constable, Verdi	42 20
Total for Justices and Constables	4,883 50
Expenses of grand and petit juries	1,352 60
Sheriff's traveling and other expenses	455 25
Witnesses' expenses	138 50
Reporting and typewriting	213 10
Attorneys furnished criminals	195 00
Attorney to conduct case in Justice Court during trial of criminal case in District Court	25 00
Cost of boarding prisoners	1,729 03
Mrs. Hartley's expenses, 2½ months, covered by report	276 00
Miscellaneous expenses	128 50
Total	\$9,396 48

There are other expenses due to criminal prosecutions, but which cannot be separated from expenses due to other causes, which would add several hundred dollars to the above figures. Very respectfully yours,

F. H. NORCROSS,
District Attorney of Washoe County.

NYE COUNTY.

To HON. R. M. BEATTY, Attorney-General of Nevada:

DEAR SIR: Following is a statement of all the prosecutions in Nye county for the criminal year ending October 31, 1895:

The State of Nevada vs. Jack O'Toole, John O'Toole and John F. Miller—Charge, murder. Upon preliminary examination the said John O'Toole and John F. Miller were discharged by the magistrate, and the said Jack O'Toole bound over to appear before the next Grand Jury. Against the protest of the District Attorney the said Jack O'Toole was admitted to bail in the sum of \$7,000. The Grand Jury found a true bill against both Jack O'Toole and John O'Toole, and they were tried jointly. The trial jury found a verdict against Jack O'Toole of "guilty of manslaughter," and for John O'Toole of "not guilty." Sentence of the Court, six years' imprisonment in the Penitentiary. Time to commence, from and after the delivery of the said defendant to the Warden of said Penitentiary. Sentence rendered, December 7, 1894. The costs properly applicable to said prosecution, so far as they can be segregated from other costs naturally connected with a term of Court, amount to \$4,731 61. This case came under the official career of my predecessor, Mr. C. L. Deady, and I have no doubt has been fully reported by him. In order, however, to make a complete report I will state the facts as I understand them. [Here follows a long statement of circumstances.]

The State of Nevada vs. George Cook—Charge, assault with intent to kill. This case also came under the administration of my predecessor, but within the criminal year this report is intended to embrace. Defendant Cook was arrested September

sth upon the above charge. Counsel for defendant offered to plead guilty to assault, to which the District Attorney consented, and urged the magistrate to receive the plea. He refusing to do so, defendant waived an examination and was bound over to appear before the next Grand Jury. The Grand Jury indorsed the bill "Ignored." The facts were: [Here follows a long statement of circumstances.] Costs were a portion of the costs of the Grand Jury which indicted O'Toole.

The State of Nevada vs. D. W. Mitchell—Upon April 10, 1895, a charge was laid against defendant Mitchell of assault with intent to kill. The defendant left the State before he could be arrested, and the matter has been dropped.

The State of Nevada vs. W. M. Hall—May 17, 1895, W. M. Hall went into the office of the County Clerk, with whom he had some words. Becoming angry, Hall raised a chair and struck the Clerk with it over the head. Defendant found guilty and fined \$1 and costs, which he paid.

The State of Nevada vs. John Doe Birk (Indian)—Misdemeanor; assault; convicted; fined \$50 and costs; paid \$32, and was discharged September 28, 1895.

The State of Nevada vs. William Moyer.—Charge, drawing and exhibiting a deadly weapon, etc.; convicted; fined \$450 and costs taxed at \$154 60, or be imprisoned in County Jail at the rate of one day for each two dollars of fine, not to exceed six months in all; sentenced October 1, 1895. Fine paid by imprisonment and \$340 balance.

The State of Nevada vs. A. J. Longstreet.—Same charge; defendant convicted and fined \$300 and costs, taxed at \$154 60. Defendant appealed to the District Court and is out on bail. Judgment rendered October 1, 1895.

The State of Nevada vs. George Morris.—Same charge; defendant convicted and sentenced to pay a fine of \$25 and costs, taxed at \$154 60. Defendant served — days and paid — and was discharged.

[Here follows a statement of facts in the last three cases.]

The State of Nevada vs. John Doe Birk, an Indian.—Charge, drunk and disorderly; fined \$60 and costs, taxed at \$12, or be imprisoned; defendant is being employed on the streets and roads at Belmont; date of conviction, ——. Respectfully,

A. P. JOHNSON,
(per GRANGER.) District Attorney of Nye County.

WHITE PINE COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

Annual report of the District Attorney of the county of White Pine, Nevada, for the year ending November 1, A. D. 1895:

CONVICTIONS.

Wong Fun.—Murder, first degree, December 12, 1894, sentenced to be hanged by the neck until dead.

Patrick Dolan.—Murder, second degree. December 15, 1894, sentenced to imprisonment in State Prison for term of natural life.

Wong Fun.—Murder, second degree. Rehearing after appeal to Supreme Court. May 24, 1895, sentenced to imprisonment in State Prison for term of natural life.

The costs to the county of the above cases are, as nearly as I can compute them, \$2,653 80. It is impossible to segregate the costs in the first two cases as the trial jurymen for both were summoned at the same time under one venire. There was no jury trial at the second hearing of the Wong Fun case, the defendant pleading guilty.

ACTIONS IN JUSTICE COURT, TOWN OF ELY.

State of Nevada vs. Thomas Freehill and John Freehill.—Preliminary examination. Charge, marking and branding one neat foot animal, not their own property; held to await action of Grand Jury; Thomas Freehill admitted to bail, John Freehill not giving required bond remained in jail till meeting of Grand Jury. Case ignored by Grand Jury. Costs to county, \$120 50.

State of Nevada vs. Lew Yuen, Chinaman.—October 21. Charge, selling spirituous liquor to Indians; defendant convicted; penalty, forty days in County Jail. Expense to county, \$41.

No prosecutions reported from other parts of the county. No cases pending. Respectfully submitted,

A. T. STEARNS,
District Attorney of White Pine County.

Dated Ely, November 23, 1895.

ELKO COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: I herewith submit my report, giving number, character, cost, etc., of all prosecutions within Elko county for the year ending on this day, in accordance with an Act of the Legislature of Nevada, entitled "An Act to require District Attorneys to make certain reports to the Attorney-General," approved March 1, 1889:

Charged with assault, 2; convicted, 2; fines assessed, \$260; fines paid, none.
 Charged with petit larceny, 9; convicted, 9; fines assessed, \$165; fines paid, none.
 Charged with selling liquor to Indians, 5; convicted, 5; fines assessed, \$110; fines paid, none.
 Charged with drunkenness, 3; convicted, 3; fines assessed, \$160; fines paid, none.
 Charged with malicious mischief, 4; convicted, 2; acquitted, 2; fines assessed, \$90; fines paid, \$50.
 Charged with assault and battery, 6; convicted, 3; acquitted, 3; fines assessed, \$400; fines paid, none.
 Charged with assault with intent to kill, 1; discharged by the examining magistrate, 1.
 Charged with murder, 1; discharged by the examining magistrate, 1.
 Charged with killing fish, 2; cause dismissed.
 Total prosecutions, 33; convictions, 24; acquitted, 5; discharged by magistrate, 2; dismissed, 2.
 Total fines assessed, \$1,185; average fine assessed, \$49 37; total costs all prosecutions to county (estimated), \$1,389 70.
 Prosecutions pending—Murder, 1; assault with intent to rob, 1; assault with intent to kill, 2; breaking open car, 2; malicious mischief, 2; burglary, 1. Very respectfully submitted,

W. A. MASSEY,
 District Attorney of Elko County.

Elko, Nevada, November 30, 1895.

EUREKA COUNTY.

EUREKA, NEVADA, November 5, 1895.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: The following is my report of prosecutions, etc., for the year ending October 31, 1895, within the territory embraced in the limits of the office of District Attorney in and for Eureka county, State of Nevada:

District Court.—None.

Justice Courts of the county.—Whole number of cases prosecuted, 17; whole number of convictions, 12; whole number of acquittals, 2; jury failed to agree and dismissed at the instance of the prosecution, 3; average punishment by imprisonment, 22 days; average punishment by fine, \$48; fines paid, \$88; costs paid, \$128 05; total costs and fines paid, \$216 05.

Character of offenses: Assault and battery, 11; petit larceny, 1; disturbing the peace, 3; discharging firearms in public street, 1; vagrancy, 1; total, 17. Misdemeanors dismissed without trial, 2; preliminary examinations upon charge of felony, 4; held before Grand Jury, 2; dismissed, 2.

The actual cost to the county of the foregoing business, as well as I can ascertain from the bills allowed and paid, amounted to the sum of \$488 98. Respectfully submitted,

PETER BREEN,
 District Attorney of Eureka County.

DOUGLAS COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: Pursuant to an Act entitled "An Act to require District Attorneys to make certain reports to the Attorney-General," approved March 1, 1889, I have the honor to submit the following statement:

There were no criminal prosecutions pending on November 1, 1895. Between November 1, 1894, and November 1, 1895, the criminal business of Douglas county, Nevada, was extremely light; in fact, I believe much less than during any previous years, and consisted of the following cases only: There was one charge of murder. Defendant examined by committing magistrate and discharged. There was one charge of rape commenced, but no arrest was made and the charge was subsequently abandoned. There were seven charges of assault and battery, disposed of as follows: Convicted, 4; acquitted, 2; dismissed, 1. There were three cases of petit larceny, disposed of as follows: Tried and acquitted, 1; dismissed, 2. There was one case of threats against life; defendant held and put under \$500 bond to keep the peace. There was one case of peddling without license; defendant tried and convicted; fined \$25 and costs; fine paid. There was one case of furnishing spirituous liquor to Indians (Chinaman); tried and convicted and sentenced to pay a fine of \$100, without the alternative of imprisonment, and the fine was never paid or collected.

The foregoing embraces all the criminal cases within the period above named. The cost of the above criminal business to Douglas county was, directly and indirectly, \$734 85; amount of money paid in as fines, \$37.

Number of convictions, 6; acquittals, 2; dismissals, 5; aggregate amount of fines paid, \$37; aggregate expense to county, \$734 85.

Number of cases of each kind: Murder, 1; rape, 1; petit larceny, 3; assault and

battery, 7; threats against life, 1, peddling without license, 1; furnishing liquor to Indians, 1. Respectfully submitted,

D. W. VIRGIN,
District Attorney of Douglas County.

CHURCHILL COUNTY.

STILLWATER, NEVADA, December 4, 1895.

To R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: There has been no criminal business whatever in this county during the past twelve months; no prosecutions. I do not know if you furnish blank reports to be filled out, if so I have never seen one. I have the honor to be respectfully yours,

I. H. KENT,
District Attorney of Churchill County.

LANDER COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: I herewith submit my annual reports for the years 1894 and 1895, as follows:

1894.

January 16.—Shepard Gates, malicious mischief; dismissed; Justice cost, \$10; Sheriff, \$3 50; total, \$13 50.

Robie Steiner, malicious mischief; dismissed; Justice of the Peace, \$8; Sheriff, \$3 50; \$11 50.

Nellie Dunham, malicious mischief; dismissed; Justice of the Peace, \$8; Sheriff, \$7; total, \$15.

February 17.—Thomas Holley, assault and battery; withdrawn; costs paid by complainant; Justice of the Peace, \$8; Sheriff, \$8.

June 15.—George Francis, using a horse without first obtaining the consent of the owner; jury; not guilty; Justice of the Peace, \$10; Sheriff, \$10.

June 22.—Indian Charlie, disturbing the peace; Court; fined \$10; served three days and paid \$4 of said fine; Justice of the Peace, \$4; Sheriff, \$6 50.

July 7.—George Dickson, embezzlement; preliminary examination; dismissed; Justice of the Peace, \$10; Sheriff, \$38 50.

October 18.—William Taylor, disturbing the peace; Court; fined \$5; served 2½ days in jail; Justice of the Peace, \$9 50; Sheriff, \$3 50.

B. F. Burns, disturbing the peace; fined \$5; served 2½ days; Justice of the Peace, \$8 25; Sheriff, \$3 50.

George B. Francis, disturbing the peace; Court; fined \$20; served four days in jail and paid \$12; balance of fine applied to pay costs.

Same, threat to kill W. Easton; withdrawn; Justice of the Peace, \$6 50; Sheriff, \$3 50.

Same, threat to kill Thomas Smith; still pending; Justice of the Peace, \$8 75; Sheriff, \$3 50.

W. O'Brien, *et al.*, search warrant; Justice of the Peace, \$7.

November 14.—Whisky Jack, assault and battery; Court; fined \$60; served out in jail; Justice of the Peace, \$10; Sheriff, \$8.

November 24.—Sore-hand Jack, assault and battery; Court; fined \$10; paid; applied to pay costs; Justice of the Peace, \$10; Sheriff, \$7.

December 27.—D. C. and James Robinson, search warrant; nothing found; Justice of the Peace, \$4; Sheriff, \$3 50.

June—Alfred Vaughan, murder; jury; death; new trial; \$10, about.

June—Charles Vaughan, murder; dismissed; \$50.

June—Nick Rast, murder; dismissed; \$50.

1895.

January 12.—Whisky Jack, disturbing the peace; Court; fined \$30; served in jail; Justice of the Peace, \$10; Sheriff, \$7.

January 14.—George Otter, assault and battery; complaint withdrawn; costs paid by complainant; Justice of the Peace, \$10; Sheriff, \$8.

February 21.—Frank E. Williams, assault and battery; no arrest; case pending; Justice of the Peace, \$4.

February 28.—Charlie Dam, smoking opium, etc.; Court; fined \$30; fine and costs paid, amounting to \$56.

February 28.—Ah Chip, smoking opium; Court; fined \$4; fine and costs paid, amounting to \$56.

March 5.—Crooked Eye, murder of Charlie Cox; preliminary; held to answer before Grand Jury; Justice of the Peace, \$10; Sheriff, \$27 50. Same, murder, killing Daisy Cox; preliminary; case pending; Justice of the Peace, \$4 25; Sheriff, \$3 50. Same, murder of Minnie Cox; preliminary; case pending; Justice of the Peace, \$4 25; Sheriff, \$3 50; defendant declared insane, committed to the Asylum.

April 11.—Sam Smith, having opium pipe in possession; dismissed; Justice of the Peace, \$7 75.

April 12.—George B. Francis, assault with deadly weapon; no arrest; case pending, fugitive; Justice of the Peace, \$4 50.

July 4.—Indian Harry, disturbing the peace; Court; fined \$5, paid, applied to costs; Justice of the Peace, \$3 75; Sheriff, \$5 50.

July 5.—Joe Gilbert, disturbing the peace; Court; fined \$5, paid, applied to costs; Justice of the Peace, \$3 50; Sheriff, \$3 50.

Bill Hall, disturbing the peace; Court; fined \$6, paid, applied to costs; Justice of the Peace, \$3 25; Sheriff, \$5 50.

August 4.—Joe Gilbert, assault and battery; Court; fined \$10, paid, applied to costs; Justice of the Peace, \$2; Sheriff, \$8.

August 18.—Indian Tom, assault and battery; Court; fined \$5, paid \$3 and served one day; applied to costs; Justice of the Peace, \$10; Sheriff, \$11 50.

September 3.—Indian George, grand larceny; preliminary; held to answer before Grand Jury; costs, \$80 95.

October 18.—John Legertan, *et al.*, vending without license; Court; fined \$25, for Legertan; fine paid; costs to county, \$75.

October 19.—Joseph Phillips, perjury; still pending; costs, \$57 20.

October 22.—Indian Bill, grand larceny; preliminary; dismissed; \$3 50.

April.—Alfred Vaughan, murder; jury; death; now on appeal; costs, about \$5,000.

November.—J. D. and M. E. Heider, murder; indictment pending. Respectfully,

W. D. JONES,

District Attorney of Lander County.

ORMSBY COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: Herewith I submit to you my annual report for the year 1895:

JUSTICE COURT, CARSON TOWNSHIP.

Prosecutions, 87; convictions, 68; acquittals, 3; dismissals, 10; bound over to Grand Jury, 4; pending, 2.

CRIMES—Selling goods without license, 2; visiting opium joint, 1; keeping opium joint, 1; obtaining goods under false pretenses, 1; malicious mischief, 1; selling liquor without license, 4; selling liquor to Indians, 10; vagrancy, 18; petit larceny, 6; assault to kill, 1; grand larceny, 4; burglary, 1; selling liquor to minors, 1; exhibiting deadly weapon, 1; contempt of Court, 1; embezzlement, 1; assault and battery, 11; disturbing the peace, 20.

Amount of fines collected, \$296 50; costs paid by Ormsby county, \$1,000.

CITY RECORDER'S COURT.

Cases prosecuted, 6; cases convicted, 6; being selling goods without license, 2; discharging firearms city limits, 2; drunkenness, 2. Costs paid by Carson City, \$12; costs paid by defendants, \$15.

DISTRICT COURT.

Cases, 4; convicted, 2; acquitted, 2; grand larceny, 2; burglary, 1; assault to kill, 1. Costs paid by Ormsby county, \$235. Respectfully,

A. J. MCGOWAN,

District Attorney of Ormsby County.

Carson City, Nevada, December 12, 1895.

LINCOLN COUNTY.

To HON. R. M. BEATTY, *Attorney-General of Nevada*:

DEAR SIR: Under the provisions of the Statutes of 1889, page 54, requiring certain reports to the Attorney-General, I beg leave to submit:

That the only prosecution reported to me for the year ending on the 1st day of November, 1895, is one charge of disturbing the peace; result, conviction; fine, \$1 and costs. This case was from the Justice Court at DeLamar.

No prosecutions were had in the District Court during the said period, to wit: year ending 1st of November, 1895.

No prosecutions during said period have been abated or dismissed in the District Court. Yours truly,

T. J. OSBORNE,

District Attorney of Lincoln County.

Piöche, Nevada, December 18, 1895.

The foregoing embraces the reports of District Attorneys from every county in the State except Lyon.

The District Attorney of Lyon county resigned some months ago,

and though I have heard that Senator Gignoux had been appointed to fill the vacancy, very singularly I have never received official, or any, notification of the fact.

I desire to state now to my friends, the District Attorneys, that hereafter I will forward to them blanks for their reports at the time of serving them with notices for the same.

RECOMMENDATIONS.

In view of the matter of the commission or credentials of Hon. Francis G. Newlands, as a Member of the House of Representatives from the State of Nevada, hereinbefore referred to, and in order to avoid such a condition of affairs hereafter, and to make the title to office a matter of record, I recommend that the next Legislature amend Section 31 of the Act of 1873, as amended by Section 1 of the Act of 1881, entitled "An Act relating to elections," so as to form a Board of State Canvassers, to consist of the Chief Justice and Associate Justices of the Supreme Court as now provided by law, and to make the Secretary of State, or his deputy, the Clerk of such Board of Canvassers, and make it the duty of such Board of Canvassers, or a majority of the members thereof, to meet in the office of Secretary of State and open and canvass the votes as now provided by law, and that such Clerk of said Board shall make a complete record in a proper book to be provided for the purpose and to be known as "State Election Canvass Record" of the abstract of the votes so canvassed, the same to be signed by the members of said Board acting, and certify the said record, and when the canvass is completed and signed said Clerk to forthwith deliver to the Governor a certified copy of such record, who shall thereupon commission the officer-elect by written certificate or commission, signed by him in duplicate, and making it the duty of said Clerk, upon attesting such duplicate certificates of election or commission so given by the Governor, to file one of the same at once in his office as Secretary of State and deliver the other to the person entitled thereto.

I recommend that the next Legislature amend Section 2 of the Act of February 27, 1883, entitled "An Act to regulate fees and compensation for official and other services in the State of Nevada, and to repeal all other Acts in relation thereto," by adding to said section the words: "*Provided*, that none of said fees shall be demanded or charged of or to the State of Nevada, or any county of said State, or any person in any criminal case or proceeding."

Further, that the next Legislature amend Section 13 of the Act of 1865, as already amended by Section 1 of the Act of 1893, entitled "An Act concerning the office of Secretary of State," by inserting after the words "or other document signed by the Governor and

attested by the Secretary of State," the words "except extradition papers, Governor's warrant for arrest of fugitives from justice and Governor's commission or certificate of election to an elected State officer," and by striking out the words "for attesting extradition papers, \$5 for each time the State's seal is necessarily used." My reason for this is that few, if any, of our sister States make the same charge as we now do in these particulars, and it seems an absurdity to charge an elected State officer for his commission or certificate of election. The fact is that the present law concerning such commissions has heretofore been more frequently honored in the breach than the observance.

I would recommend the amendment of Section 2 of "An Act relating to the Board of Examiners, to define their duties and powers, and to impose certain duties on the Controller and Treasurer," approved February 7, 1865, by inserting after the words "last counting prior thereto," the words "stating separately therein the amount and respective denomination of silver, gold and currency." If this had been the law in 1893-4 there could never have any controversy arisen as to when and how so many silver dollars of the Carson mintage of 1893 found their way into the State Treasury, or, if they got there illegitimately, the time could be ascertained to within at least one month.

Whereas, the State Treasurer is compelled by law to make annual reports to his Excellency the Governor, in pursuance of Statutes 1881, p. 147, Sec. 14, as amended Stats. 1893, p. 31, and such reports must be published and bound with the State Statutes; and, whereas, for over eighteen years there has been so published and bound only such report of the last year preceding the legislative session, which certainly is no compliance with said law:

I, therefore, as in duty bound, hereby call the attention of your Excellency to this law, but in justice to the present incumbent of the office of Secretary of State, I will state that this custom had been so long, over eighteen years, in vogue, that the present Secretary of State would be justified in taking it for granted that his predecessors had complied with the law, if without investigation he followed their course. Moreover, I am informed that there had been no reports of the Treasurer for the year 1893 preserved by the last Secretary of State to be bound with the Statutes of 1895, as required by law.

I recommend that a law be passed providing for the payment and advancement of costs by the State in actions wherein it is a party, including the expense of typewriting in State cases for this office, and that a small appropriation be made at each session to pay the same of, not to exceed, say, \$400 per annum. My reason for this is that during the past year the Honorable the State Controller and I have been compelled to advance fees and costs, or to become personally responsible for the same in State cases, and the expense of typewriting in litigation for the State in this office has been consid-

erable, which, at the present low salary, the office can but ill afford.

I would further recommend that the next Legislature enact a statute making it the duty of the State Board of Examiners to cause to be published, during the last week of each month, in some newspaper published at the Capital, the amount of all bills against the State allowed by said Board during the current week, together with the names of the persons to whom allowed and what for. Also, of all bills presented to said Board and disallowed or laid over by it, with the name of the person presenting the same and for what. The price of the printing should be limited by law, of course.

There has been a similar law in regard to claims against counties in force for many years, and it has been found to be of great efficiency in preventing outrageous claims from being presented, and deterring the County Commissioners from allowing excessive, unjust or illegal claims.

If there had been such a law in force as I recommend there never would have been a bill allowed to State officers of \$50 each for subscriptions to newspapers.

Nor would the Secretary of State, in 1893, have been allowed \$63 10 as a charge for going to San Francisco to get the enrolled bills bound, at a cost of \$19 for the binding, when the actual expense chargeable by law to the State was but \$5 for the binding and \$27 10, charges of Secretary of State in 1895, and all that was claimed by the present Secretary of State for exactly the same work and services. Besides, the publication concerning "laid over" claims would give the public an opportunity to advise the Board concerning claims of the justness of which the Board might be in doubt.

I would recommend the passage of a law making it the duty of every outgoing State, county and township officer, when changes in office occur, to make a complete inventory in duplicate of all public property in his hands at the time of his ceasing to hold the office, which inventory in duplicate shall be signed by the incoming officer as a receipt upon taking possession of the office and property, and said outgoing officer, if a State officer, shall file one of such duplicate inventories so signed in the office of the Secretary of State, and if a county or township officer in the County Clerk's office of his county, and retain the other as his personal receipt for the property named therein; neglect to make or sign or file such inventory as above upon demand, by the person required to do so to be deemed a misdemeanor with proper penalty fixed.

My reason for this is that heretofore there have been many complaints by new officers that they have not the books or other necessary furniture, etc., appertaining to their office, and therefore make requisition on the proper source of supply for the same. In many instances the State or county, as the case may be, has been compelled to furnish the new officer with office property and paraphernalia that must, in the nature of things, have been theretofore

furnished to the outgoing officer, but which has unaccountably disappeared.

I believe that by making this law uniformly operative throughout the State it will be generally, if not entirely, observed.

I recommend the passage of an Act by the terms of which all officers using a seal in the certifying to any written or printed instrument, whether on a separate blank form of certificate or not, must so use such seal that the impression thereof on the certificate shall at the same time be made plainly and in full upon the instrument itself, and in such a manner that the certificate cannot be removed from the instrument without seriously defacing the latter, and this, too, whether a wafer be used in making such impression or the papers alone. And further, making the failure to comply with such law a misdemeanor, with proper punishment affixed.

I suggest this for the reason that it has become a common practice with Notaries Public and other officers to impress a separate blank form of certificate with their seal, and attach this separate piece of paper with mucilage, easily detached, to an instrument, which itself bears no impress of the seal or other evidence of the certificate. And in some instances I have known of the separate certificate, properly sealed, it is true, being delivered by the officer to the person executing an instrument. In either of such cases a dishonest person could himself paste the certificate with mucilage to any instrument at his own unrestrained will. In such cases many hardships might arise, and great property interests be seriously involved by fraud, and titles be made to lie in persons other than those intended by grantors.

Besides this, if ever the subject of judicial determination, these separate certificates would be, to say the least, doubtful and almost certainly entirely void.

With such a law as I suggest the temptation even to perpetrate such fraud would be greatly lessened.

I would recommend that the next Legislature amend Section 138 of our Civil Practice Act, Gen. Stats., Sec. 3160, by inserting between the words "recover" and "judgment" the word "final," and after the word "judgment" the words "after determination of motion for new trial and appeal and on new trial, or when no motion for new trial is made or appeal taken within the time prescribed by this Act."

That the said section as it now reads has been interpreted by the Supreme Court of this State in the case of *Ev. 401*, to mean that when a defendant is liable, in whatever manner, the lien of attachment ceases. The Legislature would fix the law certainly as it was at that decision, and if a plaintiff desired to secure a new trial he could, by taking proper steps, the attachment would remain in force and he would be able to enforce it in the event of his securing a new trial.

CORRECTION

THE DOCUMENT IMMEDIATELY PRECEEDING
THIS CORRECTION TARGET HAS BEEN
REPHOTOGRAPHED TO ASSURE LEGIBILITY.
THE REPHOTOGRAPHED DOCUMENT APPEARS
IMMEDIATELY FOLLOWING THIS TARGET.

CORRECTION

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The reason for this is that the said section as it now reads has been construed by the Supreme Court of this State in the case of *Rauft vs. Young*, 21 Nev. 401, to mean that when a defendant recovers judgment, no matter how, the lien of attachment ceases.

The proposed amendment would fix the law certainly as it was considered to be prior to that decision, and if a plaintiff desired to appeal or seek to obtain a new trial he could, by taking proper steps, proceed, and his attachment would remain in force and he have the certainty of enforcing it in the event of his securing a judgment in his favor on new trial.

As the law now stands a defendant, by corruption, fraud or mistake of jury or Court, might obtain a judgment, and the plaintiff with ever so just a claim, though never so certain of obtaining a new trial and final judgment in his favor, must lose his attachment lien and all security for the payment of his final judgment upon such just claim, when, by the amendment I propose, the security of attachment would remain intact and the defendant could not unjustly suffer, because he is fully secured already.

In view of this, if we are to have any attachment laws at all, I ask that they be made entirely effective for good.

COMPILATION OF STATUTES.

I most earnestly recommend to the next Legislature the passage of a law for the compilation of the Statute Laws of the State at the earliest possible moment, for the reason, among others, that twelve years will have elapsed since the last compilation was made, and our Statute Laws are now in a very confused and almost unintelligible state, so many alterations and amendments having been made during the time, many of which alterations being made without any reference to the then existing laws, and the difficulties of finding the existing laws on many subjects, involving the necessary labor of whole days at a time. I believe that the sale of the new compilation would nearly, if not entirely, pay the cost of its preparation and publication, and if properly made such compilation would save litigants much trouble and citizens generally many, to them, very costly mistakes concerning the Statute Laws of this State.

All of which I have the honor to submit, with greatest respect, this 1st day of January, A. D. 1896.

ROBT. M. BEATTY,
Attorney-General of Nevada.

SUGGESTIONS INVITED.

OFFICE OF ATTORNEY-GENERAL,

CARSON CITY, NEVADA, December 26, 1895. }

It being the duty of the Attorney-General to "make such suggestions as shall appear to him calculated to improve the laws of this State" (Stats. 1867, p. 106, Com. Laws, Sec. 2777), I have made the suggestions and recommendations set forth in my foregoing report, and it being my first annual report is from my own personal observation of the needs of the State, but in order that my next report, which will be forthcoming before the next session of the Legislature, may be "up to date," I hereby most respectfully invite suggestions concerning needed amendments and alterations of existing statutes and meritorious propositions for new enactments from the Honorables, the Bench, the Bar, the State and county officials and citizens generally, promising that any suggestions will meet with my earnest and careful attention.

ROBT. M. BEATTY.

SUGGESTIONS RECEIVED

OFFICE OF ATTORNEY-GENERAL

CARSON CITY, NEVADA, December 20, 1895.

It being the duty of the Attorney-General to "make such sug-
gestions as shall appear to him calculated to improve the laws of
this State" (State 1897, p. 100, Laws, Sec. 2777), I have
made the suggestions and amendments set forth in my forgo-
ing report and it being my duty to report them in order that my
personal observation of the needs of the State, but in order that my
next report which will be forthcoming before the next session of
the Legislature may be "up to date," I hereby most respectfully
submit suggestions concerning needed amendments and alterations
to existing statutes and sections in provisions for new enactments
from the following the bench, the State and county
officers and citizens generally, promising that my suggestions will
meet with the earnest and careful attention of the Legislature.



ROBT. M. BEATTY.