STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1899-1900

W. D. JONES, Attorney-General

CARSON CITY, NEVADA
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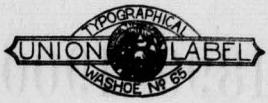
TYPOGRAPHICAL
UNION
LABEL
WASHOE No 65

LETTER OF TRANSMITTAL.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 2, 1901.

To His Excellency, REINHOLD SADLER, *Governor of the State of Nevada:*

SIR: I herewith submit to you my report as Attorney-General for the years 1899-1900, giving a synopsis of State cases decided by the Supreme Court, opinions rendered by me, and a synopsis of the reports of District Attorneys of the various counties. Very truly,

W. D. JONES,
Attorney-General.

REPORT OF THE ATTORNEY-GENERAL.

STATE, EX REL. WILLIAM MCMILLAN, *Relator*, vs. REINHOLD SADLER, *Respondent.*

Contest for office of Governor.

This was an original proceeding commenced in the Supreme Court on the —— day of January, 1899. Before bringing his action relator made application to the Attorney-General that he bring the action in his official capacity on behalf of the State to oust respondent from the office of Governor. The Attorney-General refused to bring the action as requested, or to permit the use of his name in his official capacity in the commencement or prosecution of any action having for its object the ousting of respondent from the office of Governor, believing that respondent had been duly elected to said office and was entitled to hold and enjoy the said office and to exercise the duties thereof for the term for which he had been so elected. Another reason strongly impelling the Attorney-General to this course, after a careful examination of the facts upon which relator relied for recovery, being the probable liability of the State for costs to respondent in the event of relator's failure to establish his title to the office, or to recover a judgment of ouster against respondent. Leave to bring the action by relator in his own name on behalf of the State was granted by the court without objection, as set forth in the opinion of the Supreme Court in 25th Nevada Reports, September 20, 1899. (58 Pac. 284).

No. 1562—EX PARTE H. A. GAFFORD, *Petitioner.*

Application for a writ of habeas corpus.

Petitioner alleged that he was illegally restrained of his liberty by the Warden of the State Prison. The petitioner was sentenced by the District Court of Washoe county to serve a term of four years in said Prison for the crime of an attempt to break jail. Second, the petitioner and one Seward Leeper, upon a joint indictment, trial and conviction for the crime of an assault with intent to kill, were jointly sentenced by said Court to serve a term of seven years in said Prison, and that it was not specified when said second term should begin, and that the petitioner has fully served said first term.

The writ was dismissed and the prisoner remanded to the custody of the Warden of the State Prison upon the ground that an erroneous judgment cannot be determined on habeas corpus.

No. 1577—EX PARTE JOSEPH DELA, *Petitioner.*

Application for a writ of habeas corpus.

The petitioner was indicted by the grand jury of Lincoln county on

October 31, 1895, for the crime of murder, committed on the 13th day of October, 1895. He was tried therefor on the 13th day of November, 1895, in the District Court of the Fourth Judicial District of the State of Nevada, County of Lincoln, and convicted of the crime of rape, and on the 13th day of November was sentenced to serve a term of twenty years in the State Prison under a judgment based upon said verdict convicting him of the crime of rape.

The judgment was held to be void because the court had no jurisdiction of the subject matter—that is, of the crime for which the prisoner was convicted—for the reason that he was neither indicted or tried for the crime of rape, and the execution of the judgment deprived the petitioner of his liberty without due process of law.

The prisoner was discharged.

No. 1589—Ex parte Arnold Maher, *Petitioner.*

Application for a writ of habeas corpus.

The petitioner was indicted, tried and convicted in the First Judicial District Court, Ormsby county, for the crime of grand larceny, and was thereupon sentenced by the Court to imprisonment in the State Prison of the State of Nevada for a term of five years "at hard labor." and he brought this proceeding for his discharge, basing his right thereto upon the claim that the judgment was absolutely void, for the reason that the Court exceeded its jurisdiction in imposing "hard labor" as a part of the penalty. The Court held that the sentence of the District Court added nothing to the severity of the punishment and nothing to the infamy of the prisoner; it was harmless so far as the petitioner was concerned, and the words "at hard labor" should be treated as surplusage, and in no manner affected the validity of the judgment.

The writ was dismissed.

No. 1588—Ex parte Leslie E. Douglass.

Application for a writ of habeas corpus.

The petitioner was committed to the custody of the Sheriff of Churchill county by the Justice of the Peace upon a preliminary examination for the crime of grand larceny. The order of commitment fixed the amount of bail in the sum of five thousand dollars. The petitioner contended that the bail was excessive, and brought habeas corpus to obtain a reduction thereof.

Under well-settled rules and the showing made, the Court held that the amount of bail fixed was excessive, and reduced the amount of bail from $5,000 to $3,000, the bail to be approved by the officer duly authorized to take such bail.

No. 1580—The State of Nevada, *Respondent*, vs. George Simas, *Appellant.*

The defendant was convicted in the Second Judicial District Court, in and for Washoe county, of the crime of burglary, and by the judgment of the Court was sentenced to imprisonment in the State Prison

for the term of one year. He appeals from the judgment and from the order denying his motion for new trial.

The order and judgment appealed from are affirmed.

No. 1584—THE STATE OF NEVADA, *Respondent*, vs. ARNOLD MAHER, *Appellant.*

The appellant was charged by indictment with the crime of grand larceny in the First Judicial District Court, Ormsby county, and upon trial therefor was convicted and sentenced to imprisonment for a term of five years. He appealed from the judgment.

The judgment is affirmed.

No. 1581—THE STATE OF NEVADA, *Respondent*, vs. PETER GUILIERI, *Appellant.*

The appellant was convicted of murder of the second degree in the Third Judicial District Court, in and for Lander county. He appealed from the judgment and relied upon the following specifications of error: (1) Insufficiency of the evidence to support the verdict. (2) Error of law in not requiring the prosecution to use as part of its case in chief the record of the proceedings taken at the preliminary examination. (3) Error in giving fifteen of the instructions (numbered) asked for by the prosecution.

The judgment is affirmed.

No. 1585—THE STATE OF NEVADA, *Respondent*, vs. VICTOR BOUTON, *Appellant.*

The appellant was convicted of the crime of grand larceny in the Fifth Judicial District Court, in and for Humboldt county, and was sentenced to the State Prison for a term of seven years. He appealed from the judgment and the order of the Court denying his motion for new trial.

The judgment and order appealed from are affirmed.

No. 1571—EX PARTE ARNOLD MAHER AND ROBERT MACKENZIE, *Petitioners.*

Application for writ of habeas corpus.

Petition denied in open Court.

OFFICIAL OPINIONS.

OFFICIAL OPINIONS.

I have given very many opinions in the two years, some of which were and are comparatively unimportant, and have been omitted, the following being of the most interest:

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 20, 1899.

HONS. JAMES R. JUDGE, D. M. RYAN AND SAM P. DAVIS, *Board of State Capitol Commissioners, Carson City, Nevada:*

GENTLEMEN: Your official communication of this date, relative to the authority of the State Capitol Commissioners, on the request of the Clerk of the Supreme Court, and with the consent of the Superintendent of Public Instruction, to remove the office of the latter from the Capitol building to the State Printing Office building, is before me.

It appears from the statement of the case, as submitted by your Honorable Board, that Mr. Howell, who is State Librarian and ex officio Clerk of the Supreme Court, made application to the then Board of Capitol Commissioners for additional room in the Capitol building, to be used and occupied as the office of the Clerk of the Supreme Court, and for storing therein the files and records pertaining to that office, giving as a reason that, owing to the crowded condition of the State Library, additional room was required for storing books, and at the same time calling attention of the Board to the fact that many books had been taken from the Library on account of lack of room therein and stored in the dome of the Capitol building, until the weight thus placed in the dome had become a menace to the safety of the building, and particularly to that portion occupied by the Supreme Court room and the chambers of the Justices of the Supreme Court. On this showing a majority of your Board, as then constituted, advised Mr. Howell to consult with the then Superintendent of Public Instruction, and if that official consented that the room then occupied by the said Superintendent should be turned over for the use of the Clerk of the Supreme Court, that the furniture then in the said office be removed to such rooms as the Superintendent of Public Instruction should select for an office. It further appears that the Superintendent gave up his office to Mr. Howell, to be used as the office of the Clerk of the Supreme Court, and that the Superintendent of Public Instruction moved his office to Rooms 10 and 11 in the State Printing Office building, and so stated to the Board of Capitol Commissioners, who then made an order turning the room theretofore occupied in the Capitol building by the Superintendent of Public Instruction over to Mr. Howell, and assigning to the Superintendent of Public Instruction for offices Rooms 10 and 11 in the State Printing Office building.

On this statement of the case your Board asks the question: Was the action of the Board in directing said change legal and within the scope of the authority conferred upon the Board by the Act of the Legislature prescribing the duties and powers of said Board?

By an Act of the Legislature, approved November 25, 1861, p. 54, the Town of Carson City was made and declared the permanent seat of government of the State of Nevada (General Statutes, sec. 4950).

Sec. 12 of Art. XV. of the Constitution requires the Clerk of the Supreme Court to keep his office at the seat of government.

I fail to find any provision of law fixing the seat of government, or the State Capitol building as the place where the Superintendent of Public Instruction is required to keep his office.

Under an Act of the Legislature of this State, to create a Board of Capitol Commissioners and to define its duties, etc., approved February 8, 1887, I think the action of your Board in directing the changes made was within the scope of the authority of the Board of Capitol Commissioners, under section 2 of that Act, which reads as follows:

"Said Board shall have the supervision over and control of the State Capitol building, the Capitol grounds and water works, the State Printing Office building and grounds, and all other State buildings, grounds and property not otherwise provided for by law."

I have the honor to be, respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 23, 1899.

HON. GEORGE S. GREEN, *District Attorney of Esmeralda County, Hawthorne, Nevada:*

SIR: Your letter of the 21st instant is before me. It is clear to my mind that the Sheriff and District Attorney in counties where those officers are receiving salaries, fixed by law, before the Statutes of 1895 and 1897 referred to by you, are authorized to retain to their own use, the former $10 and the latter $15 of the $25 collected as liquidated damages in civil actions under sections 3 and 6 of the Statutes of 1895, page 53. The Statutes of 1897, p. 114, in no wise conflicts with the Statutes of 1895, p. 53, on that point. The latter simply provides that the Sheriff may retain 20 per cent of all moneys collected for licenses under the provisions of this (that) Act, the latter Act giving the Sheriff not only the $10 under the former but 20 per cent of the licenses collected. In other words, the Sheriff is entitled to $10 of the liquidated damages, and also to 20 per cent of all moneys collected for licenses, and the District Attorney to $15 of the liquidated damages, both in addition to the salary allowed to those officers. Very truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 25, 1899.

TIM O'CONNELL, *Deputy Sheriff, Lander County, Nevada:*

DEAR TIM: Your letter of the 21st instant came yesterday, but owing to the excitement over the Senatorial fight I deferred answering till now. You ask me the question: "Has the Drummer's License Law been declared unconstitutional by the Supreme Court, and whether drummers are entitled to pay such licenses or not?"

In answer I have to say that our Supreme Court has so declared such law, and drummers are not required to pay such licenses.

I refer you to Ex parte M. W. Rosenblatt, 19 Nev. p. 439.

The statute under which drummers were required to pay the licenses under discussion was approved and became a law February 23, 1885. (See Gen. Stats. 1269.) Rosenblatt resisted the law on the ground that it was unconstitutional, and in April, 1887, the Supreme Court sustained the contention in these words:

"The principles of the decision of the Supreme Court in the Robbins case (Robbins vs. Taxing Dist. Shelby Co., 120 U. S. 489) must be accepted as establishing the unconstitutionality of the statute under which the petitioner (Rosenblatt) was convicted." (19 Nev. 441.)

Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA.
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 30, 1899.

HON. JAS. L. BUTLER, *District Attorney of Nye County, Nevada:*

SIR: Your letter of the 24th instant is before me, and I have to inform you that your inquiry raises a rather complicated question for me to decide definitely. However, after giving the matter considerable consideration I advise the following course:

Since the check delivered to the Treasurer to pay the taxes was not honored and paid by the bank on which it was drawn, it remains that the *taxes have not been paid*, notwithstanding the issuance of the receipt by the Treasurer, and the property assessed for those taxes is delinquent for those taxes, and a lien exists in law against the property so assessed, if it be real estate, and it is the duty of the Treasurer, Auditor, and District Attorney of your county to proceed speedily and diligently to enforce the lien and recover against the real property in your county so assessed to collect the money that should have been paid before the taxes became delinquent.

To do this the Treasurer of Nye county should, at once, enter the property on the delinquent list of Nye county of the day that it became delinquent—that is, on the date that the Treasurer would have done so had not he have received the check and issued the receipt.

This is on the theory that nothing that anyone can do pays State and county taxes, except the actual payment of the taxes legally assessed

and levied. No *officer* or *officers* can do or perform any act or acts that will destroy a valid lien against real property for State and county taxes. It was thus held in a tax case by our Supreme Court some years ago where the officers of Storey county tried to relieve the Bonanza Company of the penalties in a suit for State and county taxes; and all the Courts have held that the only relief from the payment of lawfully levied and assessed taxes is the payment of them. It will not be contended by any one that the payment of a check that is afterwards protested for want of funds, and is never paid, will release the lien on the property. If, however, it should turn out that the lien cannot be enforced at law by reason of the Treasurer having accepted the worthless check, and issued the receipt, then the only thing left would be for the Treasurer and his sureties to pay into the treasury of the county the sum lost by his accepting a worthless check instead of requiring the money. But no such contingency is likely to arise, as I have no reasonable doubt but that the property will be and is holden for the taxes the same as if the worthless check had never been received, or the receipt issued.

After the Treasurer has entered the property on the delinquent list of the time he would have done so had no attempt been made to pay the taxes, the Auditor should notify the District Attorney in the usual way, and publish his notice in the *Courier* in the usual way, and at the earliest time thereafter that the law will permit, the District Attorney should bring a suit against the property assessed for the taxes, penalties and costs. As before stated, if such procedure should by any means fail, the Treasurer would have nothing to do but pay the amount himself, unless, in the meantime, the parties pay the taxes. I have no doubt, however, that the proceedings that I have suggested will result in forcing the payment out of the property, if the property is worth the money. Yours truly.

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 7, 1899.

HON. SAM P. DAVIS, *State Controller:*

SIR: In answer to the inquiry of W. E. Dalton, Auditor of Churchill county, to wit: "Whether the county has to pay the State's portion on delinquent taxes bought in by the County Treasurer?" I cite you to the Statutes of 1891, p. 155, sec. 55, and to the following language found therein: "And such Treasurers, and their successors in office, shall hold the property so bought in by them *in trust* for the use and benefit of the *State and county.*"

From this language it seems clear to me that the county does not have to pay the State any of the delinquent taxes on property bought in by the Treasurer for the taxes until the county collects the money. The county is under no obligation to the State to advance delinquent taxes, but is under obligation to assist the State, as the law directs, in collecting them.

The obligation extends, in this case, to buying in, holding in trust

until the property can be converted into money, and then paying to the State its portion of the proceeds. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 8, 1899.

HON. ORVIS RING, *Superintendent of Public Instruction:*

SIR: In answer to your inquiry of this date as to "What steps can be taken when the Trustees, through their own boys who are minors, take contracts of the district, and what procedure can be instituted to correct the trouble?" I direct you to page 16, section 3, of the School Laws, as compiled by your predecessor, wherein it is forbidden for any Trustee to be "pecuniarily interested in any contract made by the Board of Trustees of which he is a member, * * * and any contract made in violation of this section shall be null and void." (Stats. 1895, p. 27.)

I recommend that the District Attorney of that county be requested by you to at once bring suit against the Trustee, on the "null and void" contract, and recover the money back from he who obtained it unlawfully, and return the money, when collected, to the District School Fund, from whence it was unlawfully taken, and punishing the wrongdoer by inflicting the costs of the suit upon him, and the loss of his labor.

I am, sir, very truly, W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 12, 1899.

J. L. BUTLER, ESQ., *District Attorney of Nye County, Nevada:*

SIR: In answer to inquiry as to whether peddlers are exempt from paying a license in the respective counties that they travel through, I refer you to section 123, page 178, of the Statutes of 1891, which clearly requires a license from peddlers in every county in this State, where he or they attempt to do any peddling. Your question was: "In the respective counties that they *travel through*." Of course a peddler may *travel through* without paying a license, provided he does not attempt to peddle. I am not aware of any decision of our Supreme Court relieving the peddler from the payment of the license required by the statute above cited. Very respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 21, 1899..

HON. E. D. KELLEY, *Register State Land Office:*

SIR: In answer to your inquiry of yesterday, as to whether the State Land Office is warranted by law in receiving applications for lands outside of the Central Pacific Railroad grant, at $1 25 per acre, I have to say: There is no doubt in my mind but that all lands outside the limits of the railroad grant are subject to application at $1 25 per acre, and the State Land Office is warranted in receiving applications for such lands at $1 25 per acre. There is nothing in section 3 of the Act of 1891 (Statutes 1891, p. 100) to the contrary, as I interpret that section. Very respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 11, 1899.

HON. CHAS. A. WALKER, *District Attorney of White Pine County, Ely, Nevada:*

SIR: In reply to your letter of the 8th instant, for an official opinion in relation to fees of the Sheriff of White Pine county, I take it for granted that the fees relate to a criminal case.

You say: "An original subpena with several names on is handed our Sheriff for service. For copies he takes the regular blanks, fills in the date, name, etc., and in his bill to the Commissioners * * * he charges for the filling out of these subpenas, counting two folios to the subpena. The blanks he uses are furnished by the county. The Sheriff claims he is allowed to charge by virtue of a clause in section 2321." (I suppose you refer to Sec. 2321, Gen. Stats. Nev.)

On the above statement you ask:

1. "Can he charge for two folios if the county furnishes the blanks?
2. "Can he charge if he furnishes his own blanks?
3. "Can he charge for the actual filling in that he does on each subpena—that is, at the rate of *one* folio to the subpena?
4. "Or, is this a part of his official duty to be done without charge?
5. "Can a Sheriff charge mileage for trying to serve a subpena, if he is unable to find his party?"

Section 2321 of the General Statutes above referred to are the fees to which your Sheriff is entitled, as per section 1 of the Statutes of 1895, page 66.

Section 4422 of the General Statutes defines how a subpena in a criminal case shall be served, as follows:

"The service of the subpena *shall* be by showing the original to the witness personally, and informing him of the contents."

1. If the subpena shall be served as directed by the statute as cited, then the Sheriff is not entitled to folio work at all for making copies of the subpenas that he uses in serving the subpenas. The Sheriff is

not required to serve the witness by copy of the original. He is required to serve it "by showing the original subpena to the witness personally, and informing him of the contents." So he is not required to use a copy at all, and is not, therefore, entitled to pay for a copy, or for folio work in making a copy to serve.

2. If he cannot charge for the folio work at all, then he cannot charge if he furnishes his own blanks, any more than if the blanks were furnished to him. If the Sheriff was required to serve the subpenas by copy, then he would be entitled to pay for the entire copy, whether any printed matter was on it or not, the same as if he had written it all, no difference whether the county furnished the blanks or not.

3. This question is answered by the two answers above.

4. And so is this one.

5. Section 2321 of the General Statutes provides: "For traveling, per mile, in serving such subpena or venire, in going only, fifty cents for the first ten miles, and for each additional mile, forty cents; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant." I am of the opinion that the Sheriff is entitled to pay for the miles necessarily traveled in trying, in good faith, to serve a subpena, whether he is successful in finding the party to be served or not. The law never contemplates an impossibility; nor is it the policy of the law to make an officer perform a service for which he may not receive reasonable compensation; and reasonable compensation is presumed to be that which the law allows. Yours respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 13, 1899.

HON. SAM P. DAVIS, *State Controller:*

SIR: In answer to your inquiry of the 11th inst. as to where, under the Act of the Legislature, entitled "An Act relating to the publication of Supreme Court decisions and advertising required by the State of Nevada," approved March 25, 1897, it was the intention to have the work done? The Supreme Court, as is well known, is located at Carson City. The Board of State Printing Commissioners is located at the same place. The Act above referred to also provides, in addition to the publication of the Supreme Court decisions, that all other advertising required by the State shall be done.

The State Board of Examiners is also located at Carson City, and is required by law to count the money in the State treasury once every month, and to publish a statement of such money in a newspaper published at the Capitol. (Gen. Stats. 1893.)

This Act also requires the publication of the Governor's proclamations, rewards for criminals, all bids for proposals for supplies required by the State, or other public institutions, and such other advertising as may be required by law. In addition to all this the Act requires that each decision of the Supreme Court be printed in its entirety in a

single issue of the paper, and fifty copies shall be furnished the State free of charge, and delivered to the Clerk of the Supreme Court, and printed proofs of the decision shall be submitted to the Clerk of the Board of Examiners before the publication. If the Board of State Printing Commissioners could have this printing and advertising done outside of the City of Carson, it might, so far as the law is concerned, have it done at Delamar, Tuscarora or Belmont, and thereby render the work done of little or no value to the State.

The real intention of the Legislature in passing the law must have been to have the work done at the most convenient point to all the State Boards, officers and institutions that have to do with such printing and advertising. You will notice that fifty copies of the paper in which the Supreme Court decisions are printed shall be furnished to the Clerk of the Supreme Court. These copies are used by the Clerk as a speedy means of informing the litigants and their attorneys, as early after the publication of the decision as possible, the result of the case.

Another requirement of the law is that printed proofs of the decisions shall be submitted to the Clerk of the Board of Examiners before publication, that the proof may be corrected before the decision is published, to avoid mistakes and errors in the printed decision. If the publication was done at any other point than at Carson City, the greatest delay, inconvenience, inaccuracy, and difficulties of various kinds, would be encountered. All proposals for bids for supplies is published in the paper to be selected by the Board of State Printing Commissioners. Each notice so published must be in a paper where the Board may read proof on its notices, or else take the chances that there will be some errors in the first few issues that would do irreparable injury to all concerned. In State matters the greatest care should be taken, and is taken, to have every item of business accurate. To maintain this standard at the minimum the printing and advertising of the State should be kept as near the State Departments as is possible, and we are at liberty to believe that the Legislature had all the things I have mentioned in view when it passed the law referred to.

It is my opinion, therefore, that the Legislature intended that the work should be done at Carson City. Respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 13, 1899.

HON. EUGENE HOWELL, *Secretary of State:*

SIR: Your request for an opinion from this office in relation to Substitute for Senate Bill No. 67—An Act to disincorporate the City of Reno—is before me. The case may be better understood by a statement of it as submitted by your office.

You say that "An Act entitled 'Substitute for Senate Bill No. 67, An Act to disincorporate the City of Reno,' was deposited in my office bearing the signature and approval of the Governor upon the 4th day of March, 1899. Said bill was upon the same day, and at the same

time it was deposited in my office, handed by me to the Governor, who returned it to my office upon the 7th day of March following, with his signature partly missing, it having been cut out of said enrolled bill with a pair of scissors by himself. Though the said bill does not bear the filing mark of my office, is it to be considered as filed, and if so, when? Shall I furnish the Superintendent of State Printing a certified copy of the bill for printing as it now exists?"

The rule is that when an instrument is delivered to the officer whose duty it is to file the same, at the office where it is required to be filed, and the instrument is in such shape and condition as to entitle it to filing, it is the duty of the officer to file it—that is, to place his file mark upon it. There is another rule in such cases that applies with equal force, which is, that, when an instrument, as above, is left at the office of the officer whose duty it is to file it, the instrument *is filed* from the time it is left, although no file mark is placed upon it. To illustrate: If the law requires you to file in the office of the County Clerk the articles of incorporation of a corporation that you have formed, and you prepare and deposit in the Clerk's office the articles, in due form, such articles are deemed to be filed from the time they are deposited in the Clerk's office, whether the Clerk places his file mark upon the articles or not.

In the case of Tregambo vs. Comanche M. & M. Co., 57 Cal. 506, the Court said: "A paper in a case is said to be filed when it is delivered to the Clerk and received by him, to be kept with the papers in the cause." (Tregambo vs. C. M. &. M. Co., 57 Cal. 506; Engleman vs. State, 2 Ind. 91.)

"Filing a paper consists in presenting it at the proper office, and leaving it there, deposited with the papers in such office. Endorsing it with the time of filing is not a necessary part of filing." (Bishop vs. Cook, 13 Barb. 326; Smith vs. Biscailuz, 83 Cal. 358; Howell vs. Slauson, 83 Cal. 545; 10 Montana, 437.)

"Where a paper is deposited with the Clerk of a Court for the purpose of making it a part of the records in the case, it is filed." (Hanover F. Insurance Co. vs. Shrader, Tex. 1895, 33 S. W. Rep. 112.)

"Where a notice required by rule of Court is actually filed and placed among the other papers in a case, the fact that the Clerk has omitted to mark it as filed will not invalidate the notice." (Hohmann vs. Eiterman, 83 Ill. 92.)

In our Supreme Court it has been tacitly decided in accord with the above decisions. In the case of Brooks vs. The Nevada Nickel Syndicate Limited, 52 Pac. Rep. 576, Massey, J., said: "The filing contemplated by the statute is the actual delivery of the notice to the Clerk, and the placing thereon of the proper endorsement. It must, at least, be actually delivered to the Clerk."

If the bill was a valid one at the time it was first deposited with you, it is my opinion that it is still valid, and that whatever may have happened to it since, in the way of mutilation, if the bill is still as intelligent as when first brought to and deposited with you, the mutilation amounts to nothing.

So far as the action of the Governor was concerned, the bill was as much a law the moment he signed it, and has been ever since, as if he had never taken it to your office, or had not removed a part of his signature therefrom.

The Constitution provides that "Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it," etc.

This bill, according to its history, passed both branches of the Legislature, and was presented to the Governor, and he approved and signed it, and thereupon it became a law. (The State of Kansas v. Robert Whisner, 35 Kan. 271; 10 Pac. 858.)

Whether a good one or a bad one is for the Courts to determine.

This being my conclusion, I advise you to present the bill to the Superintendent of State Printing to be printed.

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 16, 1899.

DANIEL W. SCANLAN, *Chicago, Ill.:*

SIR: Your letter of the 9th instant *in re* the Chicago Portrait Company, and in relation to the subject of interstate commerce, is before me. I have read the statement of your case as made, and also the copy of decision enclosed.

In answer to your question: "Does your State still demand the enforcement of your statute?" I can only refer you to the decision of our Supreme Court on that point.

In the case of Ex parte Rosenblatt, 19 Nev. 441, the petitioner "was convicted of a violation of an Act of the Legislature of the State, approved February 23, 1885, entitled 'An Act providing for the licensing of traveling merchants, and merchants doing business through soliciting agents, commonly known as drummers,' in acting as soliciting agent or drummer without procuring a license therefor. He is held in custody under a commitment issued upon the judgment."

"In his petition he alleges that he is a resident of the State of California, and was, at the time of his arrest, a traveling merchant, soliciting agent, and drummer offering goods, wares, and merchandise for sale in the Town of Reno (Nevada), to be delivered at a future time from the State of California by his principals, residents of that State."

In this case our Court cites Robbins vs. Shelby Taxing District, 120 U. S. 489, and followed it in this language:

"The principles of the decision of the Supreme Court in the Robbins case (Robbins vs. Taxing Dist. Shelby Co., 120 U. S. 489) must be accepted as establishing the unconstitutionality of the statute under which the petitioner was convicted." (19 Nev. 441.)

Our Court further said: "The statute of Tennessee and that of this State do not materially differ. Neither imposes a tax upon citizens of other States that does not equally apply to its own citizens, nor is there any discrimination in either statute against other States or their products."

And again:

"An unconstitutional law is no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.

"It is ordered that the prisoner be discharged."

From the foregoing you will no doubt be convinced that Nevada is directly in line with the Supreme Court of the United States, and also with the Supreme Court of the State of Tennessee.

I have on file in my office a copy of an opinion written by me for the Deputy Sheriff of Lander county, Nevada, dated January 25, 1899, in which I cited and copied from the Rosenblatt case, and advised him of the action of our Supreme Court. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 22, 1899.

To His Excellency, R. SADLER, *Governor:*

SIR: In reply to your inquiry of this date, in which you ask: "Could the Live Stock Inspector, to be appointed under Senate Bill No. 53, appoint a Deputy to perform the work, or must he do it in person?" it is my opinion that the Inspector will not have the authority to appoint a Deputy Inspector, but will have to perform the duties of such Inspector personally. The bill does not authorize the appointment of a Deputy, and the rule is that where there is not a provision for the appointment of a Deputy, one cannot be appointed. Deputies as well as principals must be provided for by the statute. Very respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 31, 1899.

To the Commissioners for the Care of the Indigent Insane:

GENTLEMEN: Your request for an opinion on the validity of Dr. Patterson's credentials as a physician and surgeon, and as to whether he could hold the position of Superintendent of the Asylum, is before me.

The facts of the case are as follows: From 1864 to 1868 Dr. Patterson attended the McGill University at Montreal, Canada, and received credentials therefrom. In 1876 he applied to the Board of Examiners of the Medical Society of the State of California for a license to practice medicine and surgery, and October 12, 1876, received his license to practice medicine and surgery in California, and practiced under that license in that State from 1876 until he came to Nevada, and in this State since.

A similar case has been thoroughly discussed and decided by the Supreme Court of California in the case of The People, ex rel. Attorney-General, vs. W. E. Eichelroth, 78 Cal. 141. In the Eichelroth case the question was whether he was eligible to hold the office of county physician of Tuolumne county. Eichelroth had attended the University

of Yena, Germany, one year, and had been superintendent of hospitals in different parts of this country, but had never received a diploma from any source which conferred the degree of Doctor of Medicine.

Eichelroth went before the same Board of Examiners of California that issued to Dr. Patterson his license, and received from that Board, on December 13, 1876, a license, to practice medicine and surgery, and the Supreme Court, without dissent, held, after careful examination of the law, that "a satisfactory examination before the Board" was equivalent to holding a diploma from a medical college or incorporated society. The Court in that case further said: "The words 'suitable graduate in medicine,' we think, as used in the Act before us, *means one legally licensed to practice medicine and surgery under the laws of this State.*"

Under the law, as interpreted by the Supreme Court of California, the license held by Dr. Patterson is equivalent to a diploma from any reputable school or college of medicine and surgery; and in my opinion entitles him to legally hold the position applied for. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 24, 1899.

JAMES L. BUTLER, *District Attorney of Nye County, Nevada:*

SIR: In answer to your inquiry: "Can the Commissioners change the rate of the tax levy that has been levied for the year? If so, give me a few points as to time and place," I respectfully call your attention to the Statutes of 1893, page 119, which expressly authorizes the Board of County Commissioners of any county immediately to meet, after the Board of Equalization have equalized the taxes, and *either reduce* or raise the rate of taxation, so *previously levied*, etc.

It is plain, therefore, that the Commissioners have the right, and it is their duty, if it appears, after the Board of Equalization has met and gone over the assessment roll, that from the property assessed and the rate fixed that there will be more money collected than is required for the county for the current year, to meet and reduce the rate, before levied, to a figure as will insure the collection *only* of enough money to pay the required expenses for the current year. The Commissioners should meet at their office, and should make their record show all the facts, as in any other matter that they have to deal with. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 4, 1899.

HON. MARION S. WILSON, *District Attorney of Elko County, Nevada:*

SIR: Your letter of the 2d instant inquires if a bill for U. S. Post-office box rent contracted by a county officer, with the consent of the

County Commissioners, is a lawful charge against the county. I have the honor to say that, in my opinion, there is no law making such charge a lawful claim against a county. Before such a claim can be made a lawful charge against a county there must be found in the statute express or implied authority for it, and, as I am not aware of any such legislative authority, such a claim cannot be lawfully paid. County Commissioners are limited, in their official acts, by the express will of the Legislature. The Commissioners have no more authority to pay the box rent referred to, for themselves, out of the county funds, than for any other officer of the county, and, in my opinion, have not the authority to pay such a claim for any county officer out of the county funds. I know that it has been the custom of counties to pay such claims, but, nevertheless, there is no authority for it. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 4, 1899.

S. L. LEE, M. D., *Secretary State Medical Board of Examiners, Carson City, Nevada:*

SIR: In your communication of this date you inquire as to my opinion, to wit:

First—Does the Act of the Legislature of March 15, 1899, relative to State Board of Medical Examiners, exact a fee of twenty-five dollars of those physicians who had resided in this State for a period exceeding five years, and who had complied with the law of 1875?

Second—Can the Board of Medical Examiners compel a physician to pay a fee of twenty-five dollars for a certificate to practice medicine in this State, even though he has resided here less than thirty days preceding the passage of the Act, approved March 15, 1899, if he has complied with the Act of 1875?

On an examination of the Act of March 15, 1899, I find that it does not, in any way, apply to physicians who were entitled to practice in this State, by virtue of its laws, on the 15th day of March, 1899.

That being so, you cannot exact anything from those physicians who, on the 15th of March, 1899, were authorized by the laws of Nevada to practice medicine.

By section 15 of the Act of March 15, 1899, the law of 1875 was repealed on that day, and no one could qualify as a physician, under the law of 1875, after the 15th of March, 1899.

The only way any one could qualify to practice medicine in Nevada, after the approval of the law of March 15, 1899, is defined in the last-named Act. Therefore, if one has attempted to comply with the Act of 1875 since its repeal, he has done a useless thing, and has no better standing as a physician than if he had not acted at all.

Those who had not complied with the law of 1875 on the 15th of March, 1899, and have not complied with the law of 1899, may be compelled under the latter to qualify, and pay the fee of twenty-five dollars to the State Board of Medical Examiners.

Physicians who had complied with the law of this State up to March

15th, last, have a contract with the State that they shall practice medicine in this State, based on consideration, and the Legislature, under the Constitution, cannot make a law to impair that contract; and it has not attempted to do so, in the Act of March 15, 1899. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 6, 1899.

S. L. LEE, M. D., *Secretary State Board of Medical Examiners, Carson City, Nevada:*

SIR: In answer to your inquiry of this date, as to whether the State Board of Medical Examiners has a legal right to call for and examine the credentials of a physician where there is a doubt as to their legality, even though he has recorded the same and has been practicing his profession for months or years in this State, I have to say:

There is nothing in the statute that authorizes your Board to take any such proceedings.

Under section 9 of the Act of March 15, 1899, page 90, of the Statutes of 1899, the Board may revoke the certificate of a physician guilty of unprofessional or dishonorable conduct, subject to his appeal to the Courts. And under section 13 of the Act above referred to any person practicing medicine or surgery in this State without first complying with the provisions of that Act shall be punished as provided therein; and any one who is practicing in violation of the Act of 1875 may be punished as provided in that Act.

So, if the party complained of is practicing, illegally, the remedy is for some one to prefer the proper charges against him and have him dealt with by the Courts as the law and the facts may justify.

Whilst your Board would have no authority to issue process, and upon it compel any one to appear before you for any purpose, yet if it be the duty of any one to come to your Board for authority, that it can give on application, and such person fails to do so, the remedy is to punish him, by process in Court, for his failure.

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 27, 1899.

HON. A. H. GREENHALGH, *School Trustee Blue Springs School District, Junction, Nye County, Nevada:*

SIR: Your favor of the 12th instant was on my desk on my return home yesterday, after an absence of two weeks, and I hasten to reply.

You say that you are "instructed by Mr. Orvis Ring not to marshal Indian children that do not pay taxes." And you ask me if your

"Indian boy who has been attending your school regularly for two terms is barred?"

The statute of 1897 (p. 115, sec. 1) reads as follows:

"The School Census Marshals in the various school districts in this State shall not include in their enumeration of children between the ages of six and eighteen years any Indian children not attending public school."

By this statute you have a perfect right to enumerate any Indian children resident in your district, between the age of six and eighteen years, if such Indian children are attending public school, or were so attending when school last closed. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 29, 1899.

HON. L. V. FITCH, *District Attorney of Churchill County, Nevada:*

SIR: Your letter of the 10th instant has not been answered sooner because I was away from home.

In apportioning the taxes of the assessment of 1898 the rate should be figured at 92 cents, as that was the rate of that year. The rate of $1 only applies to 1899 and subsequent years.

Section 1161 of the General Statutes authorized the Sheriff to collect one dollar from the party obtaining a license, fifty cents of which he had to pay to the County Auditor. But the statute of 1891 (p. 182, sec. 133) only allows the Sheriff to retain 6 per cent of the gross amount on each business license sold. Hence, it is not his duty, and he is prohibited from collecting the one dollar. And section 153, Statutes of 1891, page 187, takes from the Auditor the fifty cents that section 1161, General Statutes, gave him.

None of your Commissioners are entitled to mileage (Statutes of 1897, p. 78, sec. 2). The Constitution does not prohibit the Legislature from changing the compensation or fees of a county officer during his term of office. As the Legislature has the power to cut off the Commissioner's mileage, and has done so by the statute of 1897 (p. 78, sec. 2), the Board is prohibited from allowing the mileage, the Auditor from auditing it, and the Treasurer from paying it. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON, CITY, June 15, 1899.

W. H. WILLIAMS, *Sheriff of Churchill County, Nevada:*

SIR: The statute of 1897 (p. 78, sec. 2) fixes the salary of the Sheriff of Churchill county at $400 per annum after the first Monday in January, 1899. The four hundred dollars is to be the total compensa-

tion of said Sheriff. By section 3 of that Act officers who are required to collect and pay into the county treasury all their fees, etc., are required to file a statement, etc.

If you performed the service in the Justice Court as Sheriff, I think the fees go to the county, and hence do not belong to you. It is possible that the whole Act is so indefinite and uncertain as to whether any of the officers named in said Act are required to collect and pay the fees into the county that the case might be beaten, but, on the other hand, if it should be held to be sufficiently definite and certain, the consequences would be too severe to justify the chance. I therefore advise that you pay the fees into the county treasury. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 29, 1899.

HON. MARION S. WILSON, *District Attorney, Elko, Nevada:*

SIR: In relation to the fees of the Constable of Tuscarora in criminal cases, the last Act that tends to fix the fees of Constables is that in the Statutes of 1885, p. 130, which is General Statutes, 2418.

The Statute of 1887 (p. 76) makes the Statute of 1885, 130, apply to Elko county. The latter part of section 2418, General Statutes, reads: "For services and travel in criminal cases, the same fees as are allowed Sheriffs for like services."

By Statutes 1885 (p. 86, sec. 5) the fees of the Sheriff of Elko county are fixed as those prescribed in the Statute of 1883, p. 59, sec. 5.

As far as I am able to find, page 59, section 5, of the Statutes of 1883, fix the fees at this time that the Sheriff is required to collect and turn over to the county.

If Constables are allowed the same fees as are allowed to Sheriffs for like services, then the Tuscarora Constable is entitled to forty cents per mile for travel and thirty cents each for serving jurors in criminal cases. (Stats. 1883, pp. 59, 60, sec. 5.) Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 24, 1899.

M. B. GARAGHAN, *Recorder and Auditor of White Pine County, Nevada:*

SIR: In reply to your inquiry to the State Controller, of the 28th of July, which has been handed to me to answer, I have the honor to give it to you as my opinion that all penal fines collected in this State belong to and must be paid into the State School Fund, in compliance with the Constitution of the State. (Art. XI, sec. 3, Constitution of Nevada.)

"All fines collected under the penal laws of the State," says the Con-

stitution, and it is omnipotent. "And the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses," says the same Constitution.

This, no doubt, will convince your District Attorney that fines collected for violations of the Act against the sale of liquor to Indians go to the State School Fund the same as any other penal fine. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 24, 1899.

L. V. FITCH, *District Attorney of Churchill County, Nevada:*

SIR: In reply to your letter of the 22d instant, in which you say that the Sheriff of your county would like to appoint one of your County Commissioners a Deputy Sheriff, and the Commissioner wants to know if he can accept the appointment, and you desire my advice in the premises, I have to call your attention to the statute in such cases made and provided.

The Statutes of 1891, page 184, section 139, forbid, under a severe penalty, the members of the Board of County Commissioners performing the duties of the Sheriff. The violating of this statute is made a felony, punishable by imprisonment in the State Prison not more than one year, *and* by a fine not less than two hundred nor more than one thousand dollars, and removal from office. The general law also prohibits any of the county officers from performing the duties of more than one office without the authority of the Legislature. My advice, therefore, is that the Commissioner cannot accept the position of Deputy Sheriff without first resigning as Commissioner. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, October 21, 1899.

HON. E. D. KELLEY, *State Land Register:*

SIR: Your letter of the 11th instant, asking my opinion as to what standing applicants for the purchase of unsurveyed land have, under the laws of Nevada, is before me.

Before the State can entertain an application for the sale of any lands ceded to it by the General Government, such lands must have been surveyed by the Government, and duly certified to you as such.

Section 4 of the Statutes of 1889, page 124, says that the applicant, or his agent, shall designate in his application, the land applied for "in conformity with the United States survey."

This requirement cannot be complied with until the lands applied for have been surveyed by the U. S. Government, and that fact is known in your office in an official manner. If you should entertain

such an application, you cannot make the selection in the U. S. Land Office, because there would be no plat there, as the lands are unsurveyed.

All through the fourth section of the Statutes of 1889, page 124–5, the language the "description of the lands," "the lands described in the application," "such lands as are situated," "describing the same as in the application," "any lands so applied for," and like language, is used, and all refers to such description as can *only* be applied to lands that have been surveyed by the Government, and so certified to the State Land Register.

It is, therefore, my opinion that you should decline to accept applications for the sale of unsurveyed Government land.

In cases where your predecessors in office received applications for unsurveyed lands, I advise that you notify such applicants that they have acquired no rights to the land by reason of such application, and advise them that, under the law, they are entitled to withdraw the money paid into the State treasury on such applications, as they are void.

In cases where the books of your office, and of the U. S. Land Office, show that the $2 selection fee never reached the U. S. Land Office, you are not responsible for such deficit, as it transpired during the term of the State Land Register when such application was made, and he alone is responsible.

I am further of the opinion that, by reason of any such premature applications, the applicants acquired no preferred rights whatever.

The first applicant, in due form, of two or more, for the same land, after the plat of the survey of that land is filed in your office, I think, will have the preferred right to purchase the land applied for, and no one will have that preferred right until that time. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, October 23, 1899.

HON. L. V. FITCH, *District Attorney of Churchill County, Nevada:*

SIR: Your letter of October 17th is at hand, in which you ask me if there is any legal objection to you, as District Attorney and ex officio Superintendent of Schools of Churchill county, acting as Deputy Recorder of your county.

County Recorders are ex officio Auditors of their respective counties. As the Superintendent of Schools you are frequently called upon to draw warrants on the Auditor for the payment of money out of the various school funds of the county. On presentation of those warrants to the Auditor it becomes his duty to audit them.

"To audit" means to settle or adjust. Then the Auditor must settle the question in his mind, by an examination of the facts, as to whether the claim is a proper one to be paid out of the School Fund; and if he finds it to be a legal claim he allows it, and draws his warrant on the Treasurer of the county for the amount that the Superintendent of

Schools, by his warrant, has certified to the Auditor. (Williams vs. Bidleman, 7 Nev. 73.)

By virtue of your office as Deputy County Auditor you are then called upon to audit the claim that you, as Superintendent of Schools, have drawn on yourself as Auditor.

You argue that the Auditor, under the School Law, has not any veto power. In that respect I respectfully differ with you. I think there can be no authority to audit without the authority to veto. The law does not require a useless or vain thing, and to deprive the Auditor of the veto power would result in that very thing.

Under such circumstances one man can not hold these two offices, as the duties of one are incompatible with the duties of the other.

Therefore, I advise you that you cannot legally perform the duties of Auditor of your county while holding the office of District Attorney.

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, October 27, 1899.

HON. L. V. FITCH, *District Attorney of Churchill County, Nevada:*

SIR: Your letter of the 23d instant asks me to inform you if it is necessary to collect all the poll taxes (that are on the assessment roll) in November, or one-half in November and the other half in May, and also what is the custom in the different counties of the State.

An Act of the Legislature of the State, entitled "An Act allowing the payment of taxes in equal semi-annual installments, and regulating the collection of taxes on personal property," approved March 16, 1897, found on page 95 of the Statutes of 1897, will answer your first question. The first section of the Act begins:

"Any person charged with taxes on real estate and personal property according to existing law, may, at his option, pay the full amount thereof on or before the first Monday in December of each year; but if he shall pay one-half of such taxes, as the same shall appear on the assessment roll taxed against him, on or before the first Monday in December of each year, then, in such case, the remaining half of said taxes shall not become delinquent prior to the first Monday in June next ensuing; but if such person shall fail to pay the first half of said taxes, as herein provided, then the entire tax shall become due and shall be collected as now provided by law," etc.

You will observe that the language of this section is: "Any person charged with *taxes on real estate and personal property* according to existing law," etc.

The only property the taxes on which may be paid in semi-annual installments is "real estate and personal property" charged with taxes "according to existing law." Poll taxes are not mentioned in the statute above referred to, except in the second section the words "exclusive of poll tax," used in reference to the duties of the Treasurer when that officer is "required to sell property for taxes where the taxes, exclusive of poll tax and penalties, exceed three hundred dollars," etc.

From a reading of the above entire Act you will note that the Legis-

lature has not attempted to say that one-half of the poll tax may be paid at any time. It is confined to taxes on real estate and personal property. Webster defines a poll tax as "to pay as one's personal tax." That is, not your personal property tax, but, distinctively, that peculiar tax levied upon the head or poll of the individual.

It is, therefore, my opinion that the entire poll tax should be paid by the taxpayer to the Treasurer on or before the first Monday in December of each year, and that the Treasurers of the various counties should give all taxpayers timely notice, so that each may be prepared at the proper time, and thereby not lose any rights in the premises.

As to your second question, I am not informed as to the custom in the different counties. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 8, 1899.

W. A. INGALLS, *Sheriff of Esmeralda County, Nevada:*

SIR: In reply to your question: "Is the Sheriff of Esmeralda county entitled to receive, in addition to his salary as Sheriff, 20 per cent of the licenses collected on sheep, under Statutes 1895, p. 53, sec. 6?" I have the honor to say:

The salary of the Sheriff and Assessor of Esmeralda county is fixed at $4,000 per annum, which shall be compensation in full for all his services as Sheriff and ex officio Assessor. (Stats. 1891, p. 96, sec. 1.)

By the Statutes of 1895, p. 55, sec. 6, all moneys collected for license under the provisions of the Act providing for a license on sheep, etc., shall be paid into the General Fund of the county where the license is collected.

Section 6, above cited, was amended by the Statutes of 1897, p. 114, so as to read: "All moneys collected for license under the provisions of this Act, less 20 per cent (which may be retained by the Sheriff as his commission for collecting the same), shall be paid to the County Treasurer of the county wherein such licenses are collected, and shall be by him placed to the credit of the General Fund of the county."

Under the last-named statute the Sheriff of Esmeralda county has the undoubted right to retain 20 per cent of the license collected on sheep, as, in the language of the statute, "his commission for collecting" the license.

I think the law fixing the salary at $4,000 per annum to be compensation in full for all services as Sheriff and Assessor in no manner affects your legal right to the 20 per cent commission of the sheep license, as the Legislature evidently intended that you should have the 20 per cent of the license, in addition to the salary, and has so said in plain and unmistakable language.

In fact, the words enclosed in brackets constitute the amendment, and I think it was made *solely* to give the Sheriffs of the various counties the 20 per cent to induce them to be more alert in the collecting of the license. Respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 19, 1899.

HON. SAM P. DAVIS, *State Controller:*

SIR: In your letter of this date you say that the Auditor of Humboldt county presents no vouchers from the Commissioners in settling with the State, but claims that under a special Act of the Legislature, approved March 9, 1891, Humboldt county is exempt from the provisions of the General Revenue Law, approved March 23, 1891 (p. 135), and that you request my opinion respecting the same.

Section 137 (p. 183) of the Act of March 23, 1891, entitled "An Act to provide revenue for the support of the Government of the State of Nevada and to repeal certain Acts relating thereto," provides:

"Fully itemized vouchers shall be made, allowed and certified to in duplicate, by the Board of County Commissioners, for all claims for salaries and other expenses for which the State is wholly, or in part, liable, and the Clerk of the Board of County Commissioners shall certify such duplicate vouchers to the County Auditor, who shall indorse on each the amount due from the State and county, respectively, which amount shall be in proportion to the taxes levied for State and county purposes, and shall furnish the County Treasurer one of the duplicates so indorsed. The County Treasurer shall pay out of the moneys belonging to the State and county the amounts indorsed upon such duplicate, upon warrants drawn by the County Auditor therefor, and shall cause the *payee to receipt* on said duplicate for the amount *paid thereon for the State.* The County Treasurer shall transmit these duplicate vouchers to the State Controller, for allowance in semi-annual settlement provided for in the last preceding section; and no County Treasurer *shall be allowed* to make any settlement, with the State Controller, or be in any manner released, he, or his bondsmen, from liability for the full amount by him received, unless he send to the State Controller the vouchers required by this section."

In the case of The State, ex rel. Lyon County, vs. LaGrave, 50 Pac. Rep. 796, the Supreme Court said, in speaking of State allowances to county officers: "These allowances shall be made at the time of the semi-annual settlement provided by law, *upon vouchers furnished the County Treasurer by the Board of Commissioners of each county.*" (Stats. 1885, p. 85, sec. 21.)

It is, therefore, plain that the County Treasurers are compelled by law to furnish the State Controller these vouchers, as certified by the Clerk of the Board of County Commissioners, before the "Treasurer shall be allowed to make any settlement with the State Controller, or be in any manner released, he or his bondsmen, from liability from the full amount by him received." (Stats. 1891, p. 183, sec. 137.)

The Act of 1891, fixing the salaries and compensation of the officers of Humboldt county, p. 31, sec. 6, does not relieve the Treasurer of Humboldt county from complying with the Statutes of 1891, p. 183, sec. 137, in his semi-annual settlement with the State Controller.

It is the Treasurer, and not the Auditor of Humboldt county, who must settle with your office for State taxes, and you have authority to require the Treasurer to settle in the manner provided by law.

I advise you to prepare and send to all County Treasurers blanks in conformity to section 137, above referred to, and thereby establish a uniform statutory method with the County Treasurers. Very respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 27, 1899.

J. E. STUBBS, *President Nevada State University, Reno, Nevada:*

SIR: As to the authority of the Board of Regents of the State University to lease to the President of the University a plat of ground on the University campus on which the President may build a President's House for use as the official and private or family residence of the President, I have the honor to say:

Art. XI, sec. 4, of the Constitution, directs that the State University shall be controlled by a Board of Regents, whose duties shall be prescribed by law.

I need not suggest that within the term "State University" is included all State University property.

The Legislature has nowhere in express terms said that the Regents may lease or dispose of University property, but has repeatedly vested in the Regents the management and control of such property. (Gen. Stats. 1379, 1389; Stats. 1887, p. 42.)

In the case now being considered the point is: Have the Regents the authority to lease, to the President of the University, University ground upon which the President may erect (at his personal expense) "a President's House for use as the official and private family residence of the President"?

If this is done, and the President should build the house, it should be expressed in the lease that the land will remain the property of the State University, subject to the lease, and the President's House will be the private property of the President.

It should also be expressed in the lease that the Regents are to have control over the premises the same after the house is built as over other University property, and that upon the ceasing of the present, or any succeeding, President, to whom the house may be demised, to be President of the University, the Regents are to have the refusal to purchase for the University the building, at cost, less the actual wear and tear; and in no event shall the house be transferred to, or be occupied by, any person or persons, except the President of the University and his family and guests, without the official consent of the Board of Regents.

Under such conditions it is my opinion that the Regents have authority to lease suitable University land to the President of the University upon which to, and for the purpose of permitting him to, build a President's House for the uses named.

I do not wish to be understood as advising that the Regents would be authorized to lease any University property to any except those directly connected with and constituting a part of the University, and then only when the property leased is used only for University pur-

poses, and supervised by the Regents to the extent of leaving under their supervision all matters relating to the University.

I advise that the lease, before execution, be submitted to and approved by the State Board of Examiners, of whom the Governor and Secretary of State are members, that they may be personally informed of the transaction before execution. Respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 31, 1899.

HON. J. J. HILL, *Auditor of Humboldt County, Nevada:*

SIR: As to the controversy between the Controller and Humboldt, I have given the Controller my opinion that the General Revenue Law controls all counties in their semi-annual settlements with the Controller.

If I had to pass on the law of 1891 (Stats. 1891, p. 30, sec. 6), I would be compelled to pronounce it special, and invalid, because it takes from the Board of Commissioners the duty of allowing claims against the county, and directs the warrants to be drawn by the Auditor every month, without reference to the Commissioners.

However, all I have *advised* is that the Controller is entitled to the Commissioners' certificate before he settles with the Treasurer. If other Controllers have accepted the Auditor's certificate, or if the present Controller does so, I have nothing to say.

Section 137, p. 183, of Stats. 1891, is plain that all Treasurers must produce the Commissioners' certificate on settlement with the Controller. I cannot change that; yet, if the Controller sees fit to accept anything less, that is his business, and his act, and not mine.

Gen. Stats. 1950, says: "Every demand against a county, except the salaries of the Auditor and District Judge, shall be acted on by the Board of County Commissioners, * * * and must, after having been approved by the Board, * * * before it can be paid, be presented to the Auditor to be allowed," etc.

Gen. Stats. 1951, says: "The Auditor shall sign no warrant * * * until a copy of the order of the Board of County Commissioners, allowing the amount, and ordering the payment thereof, * * * have been submitted to him," etc.

Gen. Stats. 1965, provides that all unaudited claims or accounts against a county shall be presented to the Commissioners.

Gen. Stats. 1966, provides that no claim or account against any county shall be audited, allowed, or paid by the Board, or any other officer, unless the provisions of said section 1965 are strictly complied with.

If you, as Auditor, refused to draw an officer's salary for the sum demanded, how would he sue the county for his claim, until he had complied with sec. 1964, Gen. Stats., and alleged in his complaint the presentation to the Board and its rejection in whole or in part?

The Constitution, art. IV, sec. 26 (p. 31, Gen. Stats. sec. 100) provides that the Legislature shall provide for County Commissioners

in each county, and that such Commissioners shall, jointly and individually, perform such duties as may be prescribed by law.

The Legislature has said that some of their duties are to allow claims and accounts against their county. Officers' salaries are claims or accounts against the county.

The Constitution also prohibits special legislation. Art. IV, sec. 20, says: "The Legislature shall not pass local or special laws * * * regulating county * * * business."

The statute of 1891, p. 30, sec. 6, is a special law affecting Humboldt only, and directing that in that county the Auditor shall draw the warrants for the salaries of county officers, monthly, without reference to the Commissioners, and is prohibited by the last section of the Constitution cited. Very truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA.
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 6, 1900.

HON. REINHOLD SADLER, *Governor, and Chairman of the Board of Education:*

SIR: In answer to your official communication of this date, I have the honor to advise you that a person holding a high school certificate from the State Board of Education of another State is not entitled under the law of this State to teach school in the public schools of this State, and draw money from the public school funds for such teaching. Such persons must be required to pass the examination required by the laws of this State, or to have some one of the certificates or diplomas specified in the Statutes of 1899, pp. 95, 96, 97.

The State Board of Education is limited in acting on the credentials of applicants from other States by the Statutes of 1899, p. 97, par. 16, to a life certificate of any State or to the diploma of any State Normal School.

Therefore, one seeking to teach school in the public schools of Nevada must either pass an examination, or present to the State Board a life certificate or the diploma of a State Normal School. Very respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 9, 1900.

HON. ORVIS RING, *Secretary State Board of Education:*

SIR: Your letter of yesterday, asking my opinion as to whether the State Board of Education has authority to sell the present U. S. 4 per cent bonds, which will expire in 1907, and reinvest the proceeds in U. S. 4 per cent bonds, which will expire in 1925, has been as carefully considered as the time allotted would permit.

The State now holds $685,000 in U. S. 4 per cent bonds, which will expire in 1907.

Mr. Frank L. Wildes, Deputy State Treasurer, has figured, quite carefully, that by selling the bonds to expire in 1907 now, and reinvest the proceeds in U. S. 4 per cent bonds, to expire in 1925, the School Fund will gain from $45,000 to $50,000.

Governor Sadler has figured that the profit to the School Fund would be near $60,000, by the sale and repurchase.

By the Statutes of 1891, p. 14 (School Laws, 1897, p. 36, sec. 14), the State Board of Education is authorized, "whenever there shall be a sum in said fund [the State School Fund] sufficient for investment, said Board shall direct the State Treasurer to negotiate for investment of the same in United States securities * * * at the lowest purchasable rates, and the Board shall then draw their order upon the Controller in favor of the State Treasurer for the amount to be invested, * * * and the State Treasurer shall complete the purchase of the securities negotiated for by him in pursuance of this Act," etc.

I think the Treasurer and Board of Education have the authority, under the statute cited above, to act in conjunction and dispose of the said 4 per cent bonds expiring in 1907, and reinvesting the proceeds in U. S. 4 per cent bonds to expire in 1925. Yours respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 25, 1900.

HON. ORVIS RING, *Superintendent of Public Instruction:*

SIR: In reply to your question: "Can a County Superintendent of Schools remove a member of the County Board of Examiners, appointed by such County Superintendent, during the term of such Superintendent?" I have the honor to reply:

The only authority in the statutes by which such examiners are appointed is as follows:

"The County Superintendent shall appoint two competent persons, who with himself shall constitute a Board of Examination," etc. (Stats. 1895, p. 87.)

The statute is silent as to the term of office of the examiners appointed by County Superintendents. As a general proposition the power to remove is incident to the power to appoint.

The Constitution of this State (art. XV, sec. 11) says: "The tenure of any office not herein provided for may be declared by law, or, when not so declared, such office shall be held during the pleasure of the authority making the appointment," etc.

The tenure of office of examiners is not provided for in our Constitution, nor has such tenure been declared by the Legislature. If the tenure has not been so declared, then the Constitution says: "Such office shall be held during the pleasure of the authority making the appointment."

It seems clear, therefore, that the County Superintendent may at any time, during the term for which he was elected and qualified, remove an examiner appointed by him for that term. Very truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 25, 1900.

A. MUIR, ESQ., *Hamilton, Nevada:*

SIR: Mr. Howell has requested me to answer your letter of the 12th, relative to the eligibility of a woman for a School Trustee. The language quoted in your letter is as follows:

"If a husband was naturalized after he was married, his naturalization made his wife a citizen and she is eligible to the office of School Trustee.

"If the husband was not naturalized before he married, and his wife had not been naturalized, she is an alien, and not eligible to the office of School Trustee."

The first paragraph is correct, but I find the last one to be incorrect. The error came from the fact that I consulted the naturalization laws as compiled in the General Statutes. But I find that the Revised Statutes of the United States, sec. 1994, reads as follows:

"Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen." (Rev. Stats. U. S., sec. 1994; Peqingnot vs. City of Detroit, 16 Fed. Rep. 217; Leonard vs. Grant, 6 Sawyer, 603.)

Mr. Kent lays down the same rule in his Commentaries, and I have no doubt but that a woman becomes a citizen as much by marrying a citizen as she would by her husband becoming naturalized after she had married him. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 4, 1900.

HON. H. S. STARRETT, *Battle Mountain, Nevada:*

SIR: In answer to your letter of yesterday, in which you ask: "Is there any law to prevent my acting as Notary Public since my appointment as Postmaster at Battle Mountain?" I have the honor to inform you that our Supreme Court decided in State vs. Clarke, 21 Nev. 333, that "The office of Notary Public is a civil office of profit under this State, within the meaning of section 9 of article IV of the Constitution," which section of the Constitution reads as follows: "No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that Postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not been deemed as holding a lucrative office."

In your letter you state that "this is not a salaried office. The commissions will amount to over five hundred dollars a year."

From the above you are ineligible to hold the office of Notary Public while holding the office of Postmaster, the compensation of which exceeds five hundred dollars per annum. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 5, 1900.

HON. CHAS. A. WALKER, *District Attorney of White Pine County, Ely, Nevada:*

SIR: In reply to your letter of May 30, 1900, I am of the opinion that it is mandatory, under section 1767, Compiled Laws, that the school elections be held at the school houses of the districts. It is generally understood that school elections were separated from the general elections to as nearly as possible take the election of Trustees out of politics; and apparently one of the essential steps, as viewed by the Legislature, was to have the polls at the school house of the district.

Section 1767 requires notices to be posted by the Trustees of the election, specifying, among other things, that the polls will be at the school house; and if the Trustees fail to post such notice, then any three electors of the district may, within five days of the day of election, give notice of *such* election.

What election? The election at the school house.

Whilst the notice is necessary, yet if one is not posted, the election might be good if held on the day, during the hours, and at the place required by law; but where notice is given of an election to be held at a different place from the one designated in the statute, and the election is in fact held at the place noticed, the election is certainly void.

It appears in this case that the election was noticed for, and was in fact held, "in a building in another part of town."

You say that the ballots cast for one faction contained two names, "long term" being placed after one name, and "short term" after the other. No cross (X) or other mark was placed upon the ballots.

Section 1775 requires the voter to designate his choice for Trustee "by placing a cross thus: X, opposite and to the right of the name of the person for whom he intended to vote." The intention to vote for a Trustee then must be designated by the X as required by this statute, and if not so designated, the ballot cannot be legally counted by the Election Board.

The ballots that had no cross placed upon them were illegal and void.

The ballots containing the cross (X), as required by section 1776, were valid as to the cross, etc., but invalid because cast at a house in another part of town from the school house.

I think it your duty, under the facts as given by you, and the statute, as I understand it, to treat the election as illegal and void, and to appoint Trustees to fill the vacancies caused by a failure to elect according to law. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 8, 1900.

CHAS. A. WALKER, *County Superintendent of Schools, White Pine County, Nevada:*

SIR: In answer to your letter of July 2, I have to say:

1. It is my opinion that the residence of the child for school purposes (i. e., census and school money) is the residence of the father, if living, or the mother, if father is not living. In the case you cite both parents permanently reside in White Pine county, and I advise that the census of their children be taken in the school district where the parents were permanently residing on the 1st day of May, 1900.

2. The statute makes it the duty of the Census Marshal to take annually, between the 1st and 31st days of May, inclusive, a census of all children under 18 and over 6 years of age, who are residents of his district on the 1st day of May. (Comp. Laws, 1900, sec. 1301.)

If the residence of the child is governed by the residence of the parents, then the children should be taken in the district where the parents resided on May 1st, regardless of where the children are actually residing, or were residing on May 1st. It makes no difference that children living in the district the first part of May, 1900, moved out before the Marshal got around. He had from the 1st to the 31st of May, inclusive, to list the school children that were residents of the district on the first day of May, and hence the moving out after the last day of April does not deprive the district of their enumeration and the money flowing from it, especially so, as they are only temporarily out to return when school reopens.

3. Only children between 6 and 18 years of age can draw school money, but the regulations require the taking of all children, I think, to 21 years of age. (See Census Blank.) Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 8, 1900.

F. R. MCNAMEE, ESQ., *District Attorney, Delamar, Nevada:*

SIR: In reply to your recent letter asking my opinion as to whether you, as District Attorney, are entitled to retain the 5 per cent allowed District Attorneys in tax suits, I have to say:

The statute of 1887, p. 63, fixes your salary as District Attorney of Lincoln county. The same statute, on page 64, provides that the officers named in the Act shall collect and safely keep all the fees, percentages, etc., and on the first Monday of each month pay the same to the County Treasurer, etc.

Four years afterwards the Legislature in 1891 passed the Act beginning on page 135 of the Statutes of 1891, in which Act you will find section 153, on page 187 of the Statutes of 1891, which is section 1225 of the Compiled Laws of 1900, and reads: "For services rendered

under the provisions of this Act, County Assessors, Auditors and Treasurers, except as specified in [this] the Act, shall receive no compensation to themselves other than the salaries fixed by law."

District Attorneys are not in the list restricted to their salaries as fixed by law, and the Act of 1891, being four years after the Act of 1887, restricting your office to the salary fixed by that statute, it appears to me that you are entitled to the 5 per cent for District Attorneys provided for in tax suits. If it had not have been the intention of the Legislature of 1891 to so enact, District Attorneys would have been included in section 153 of the Revenue Laws of 1891 (Comp. Laws of 1900, 1225) the same as the Assessor, Auditor and Treasurer. Not having been included, you are necessarily *excluded*, and therefore entitled to retain the 5 per cent percentage in tax suits. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 13, 1900.

HON. E. D. KELLEY, *State Land Register, Carson City, Nevada:*

SIR: Your letter of the 2d instant, relative to the Act of the Legislature, approved March 8, 1897 (Stats. 1897, p. 66), as to whether said Act authorizes you, as State Land Register, to enter into an agreement with the United States as per the form of agreement, No. 5, found on page 8 of "Regulations concerning the selection of desert lands by certain States under the Act of Congress approved August 18, 1894," has been considered by me.

Section 1 of the Act of March 8, 1897 (p. 66, Stats. 1897), reads: "The State of Nevada will act as agent for any citizen of the United States * * * who desire to obtain lands in this State, for settlement or colonization under the provisions of the said Act of Congress," meaning the Act of August 18, 1894.

Section 2 of the Act of 1897 requires the applicant desiring to obtain such lands to file his lists of the lands desired in your office, and the same section says: "Such list or lists shall be treated as applications for the lands described therein and shall have the same effect of withholding the land or lands therein described from application by any other person or persons under the provisions of this Act for a period of six months from the date of such filing; *provided*, that during said period of six months, the said applicant * * * shall deposit in said Register's office (your office), plans or diagrams in triplicate as required by said Act of Congress," and certain affidavits mentioned.

Section 3 requires you to file in the U. S. Land Office duplicate copies of each of said affidavits, plans or diagrams and list or lists of the land applied for.

Section 4 provides for the forfeiture of the application and the opening of the land to application by others upon the filing with you satisfactory proof of such forfeiture.

Section 5 authorizes you to make rules and regulations in relation to the manner of proof of irrigating, reclaiming and occupying such lands, and section 6 requires you to make rules and regulations and

furnish necessary blanks required in carrying out the provisions of that Act. Section 7 constitutes County Surveyors the agents of the State to certify the required maps and plans and to examine and certify to the character of the lands proposed to be reclaimed.

From the Act it is plain that you are not by the letter of the Act authorized to act as the agent of the State in entering into the agreement designated by "Form 5," as referred to by you, but I am of the opinion that the Legislature intended that you should act as the agent of the State in that particular, since by the Act you were made its agent by express terms in every other particular, except as to County Surveyors, and without your agency as to the agreement designated by said "Form 5" the Act of 1897 is of no avail.

The spirit and implication of the Act of 1897 is that you should act as the agent of the State in executing the agreement as provided for by Form 5. Under section 6 of the Act it is your duty to make rules and regulations necessary in carrying out the provisions of the Act. One of the requirements of the Secretary of the Interior is that you join with the Secretary of the Interior in executing the agreement designated by Form No. 5.

If the provision of the Act directing you to make rules and regulations necessary to carry out the Act means what it says, you should make a rule that you act as the agent of the State in executing the agreement, which is just what the Secretary of the Interior did to enable himself to prescribe the form of agreement and make himself a party to its execution. Otherwise, you are powerless to carry out the provisions of the Act, and applicants for the desert land must lose their efforts and expense to reclaim the land by being deprived of the benefits of the Acts of Congress and of our Legislature. I advise you, therefore, to make the rule that you act as the agent in executing the agreement, and then join in its execution. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 19, 1900.

To His Excellency, REINHOLD SADLER, *Governor:*

SIR: Your communication attached to a letter of the Fidelity and Casualty Company, relative to license of surety company, has been considered, and I have to say:

1. In reply to the first question, it is my opinion that the license paid by said company as a life and casualty company does not authorize the company to do a surety business in this State. (Comp. Laws, 916.)

Under that statute the license for a life insurance company is $100 per annum, which I understand has been paid. The license for a casualty and surety company is $20, which I understand has not been paid.

2. The company should pay a license of $20 per annum to transact the surety business in this State. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 23, 1900.

HON. MARION S. WILSON, *District Attorney, Elko, Nevada:*

SIR: In reply to your letter of the 18th instant, enclosing copy of a bill of E. A. Way, for services as Constable in the case of The State vs. Will Jewett, charged with robbery, I have to say:

In the first place the bill is not dated so as to bring it within that section of the statute that provides "All unaudited claims against the county shall be presented to the Board of County Commissioners of said county, duly authenticated, within six months from the time such claims or accounts become due and payable." (Comp. Laws, 1900, sec. 2127.)

This claim fails to show that it was presented within six months from the date it became due and payable. It is dated June 28, 1900, showing it to have been prepared for presentation then. It is sworn to on June 29, 1900, and filed June 30, 1900. The $190 30 charged in the robbery case is dated May 28th, but is silent as to the year. The last $9 60 of the bill, or that which is charged in the petit larceny case, is dated June 5th, but is also silent as to the year.

Therefore, the Board cannot know from the bill itself, whether the $190 30, or all the claim, is barred by section 2127, *supra.*

Section 2128, Comp. Laws, 1900, *prohibits* the claim being audited, allowed or paid by the Board, or any other officer, unless the provisions of section 2127, *supra*, are *strictly* complied with. (Comp. Laws, 1900, secs. 2127, 2128.)

But aside from the foregoing, and assuming that the bill had been duly presented, the question is: Is this a lawful claim?

Constables, being creatures of the statute, must find their authority to perform like services, and compel the payment of their claims for such services, in the statute.

Constables are elected for townships by the electors of the different townships of counties. (Comp. Laws, 1900, sec. 1799, 1802.)

It is fundamental that a Constable is confined to his township, in his official acts, except as the Legislature may have permitted him to act outside of his township.

"Each Constable shall be a peace officer in his township." (Comp. Laws, 1900, sec. 2321.)

The form of a warrant of arrest is prescribed by section 4076, Comp. Laws, 1900.

Section 4081, in speaking of the execution of the warrant of arrest, says the warrant may be directed, among others, to any Constable in the county in which it is issued, and may be executed in that county; or, if the defendant be in another county (meaning in this State), it may be executed therein upon the written direction of a magistrate of that county indorsed upon the warrant, signed by him with his name of office, and dated at the county, city or town where it is made, to the effect that the warrant may be executed in the county where it is so indorsed. (Comp. Laws, 1900, sec. 4081.)

From the foregoing provisions of the statute the Legislature evidently intended to limit Constables to serving warrants of arrest to the county in which the warrant was issued, without any indorsement thereon by

a magistrate other than the one issuing the warrant; and to other counties *within the State*, only, on indorsement on the warrant as provided in section 4081, *supra*.

This being my conclusion, no part of the $190 30 charged in the bill of the Constable under date of May 28th is a legal charge against the county, as it appears from the bill that the claim accrued for a trip of the Constable from Tuscarora to Park City, Utah, for arresting a man there, presumably on a warrant issued out of the Justice Court of Tuscarora Township, Nevada, and returning the man to Tuscarora.

If the items in the bill under date of June 5th showed that the $9 60 had accrued within six months before June 30, 1900, I would consider the $9 60 a legal claim against the county of Elko, but, for the reasons first given in this opinion, it does not appear that the $9 60 accrued within the six months.

The only way that Jewett could have been legally arrested in Utah on the charge of robbery, alleged to have been committed in this State, would have been on requisition of the Governor of Nevada on the Governor of Utah, and the appointment of an agent of this State to go to Utah and procure a warrant of the Governor of Utah for the arrest of Jewett in Utah, and the service of that warrant by the agent of Nevada on Jewett. In such a case, on proper showing, it would have been the duty of the Commissioners of Elko county to appropriate whatever sum of money was reasonable for the expenses of the agent of Nevada in arresting the party charged and delivering him to the Sheriff of Elko county.

This course not having been pursued, it is plain that Mr. Way cannot compel the payment of his expenses to Utah and return by Elko county, as the trip and his expenses were wholly unauthorized. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 25, 1900.

HON. ORVIS RING, *State Superintendent of Public Instruction:*

SIR: In answer to your request of this date, as to what can be done to secure the census of school children to be taken in Union Canyon School District, Nye county, where the Trustees have by oversight failed to take the census in the month of May as required by section 4, page 17, School Laws, 1897, as compiled by Cutting, it is my opinion that the census may yet be taken by the Trustees, or by a Marshal appointed by them for that purpose, under the section of the statute above cited. Whilst that section says the census shall be taken in the month of May, annually, and whilst it should be taken in May, yet, if it is not then taken, it may be taken at any time. The statute does not say that it shall not be taken except in May, nor does the statute say that a census taken at any other time than May shall be void.

If the Trustees will not take the census, or appoint a Marshal to cause it to be taken, then the County Superintendent of Schools may and should appoint a Marshal, under the fifth subdivision of section 3,

p. 21 of the compiled School Laws by Cutting, and thus have the census taken, and when duly returned to him, apportion the school money to the district according to the census so taken. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 30, 1900.

HON. SAM P. DAVIS, *State Controller:*

SIR: In your letter of the 28th instant you say:

Mr. Sol Hilp, Cattle Inspector, has a claim against the State in your office for $41 10 for expenses incurred by him on a recent trip as such Cattle Inspector. You also state that on that trip Mr. Hilp collected $50 in fees, which he turned into the State treasury, and you ask if you can issue a warrant on the treasury for the $41 10.

In issuing warrants on the State treasury your first duty is to ascertain if there is an appropriation out of which the money may be paid by the Treasurer. If you find there is such an appropriation, and money remaining to cover the claim, then your next duty is to ascertain if the claim is a legal one against the State; and if both these facts appear affirmatively, you should draw the warrant.

Mr. Hilp was appointed State Live Stock Inspector by the Governor by authority of the Act of the Legislature of the State. (Stats. 1899, 131.)

On March 14, 1899, a bill became a law, the title of which reads: "An Act making an appropriation for the salary of the State Live Stock Inspector *and other expenses.*" (Stats. 1899, 98) The body of the Act reads: "The sum of two thousand four hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the General Fund of the State, not otherwise appropriated *to pay the salary* of the State Live Stock Inspector during the fiscal years 1899 and 1900."

Unless the words "and other expenses" found in the title of the Act constitute and make the appropriation out of which the money for fees and expenses can be paid, then there is not any appropriation by that Act out of which the claim can be paid, as the $2,400 is clearly to pay the salary, only.

The Constitution requires that each law shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title. (Const. art. IV, sec. 17.)

Whilst the Act of March 14th, *supra*, includes the words "and other expenses," yet the body of the Act fails to appropriate any money for "expenses" at all; and only appropriates money to pay the Inspector's salary. This is made plain by the fact that the Act creating the office of Inspector and fixing his salary (Stats. 1899, 131), which fixes the salary at $1,200 per annum, and the appropriation is for $2,400 for two years, leaving nothing for "other expenses," as named in the Act of March 14, 1899.

Thus I am convinced that the Act of March 14, 1899, does not appropriate any money out of which the Treasurer could pay the $41 10.

I next turn to the Act creating the office of Inspector and fixing his salary and fees (Stats. 1899, 131), to find if that Act has appropriated money out of which the $41 10 can be paid.

Section 1 provides for the appointment of the Inspector. Section 7 provides that stock may be inspected in certain cases at the owner's expense; the Inspector's fee to be $10 per day and necessary traveling expenses, to be applied to the General Fund of the State. Section 10 requires the Inspector to report to the Board of Health once a month, and, among other things, to "render an account of the number of miles traveled and the actual sum of money paid out by him therefor; and, if found correct, shall be audited and allowed by the Board as is now provided by law."

Section 12 fixes the salary of the Inspector "at not to exceed $1,200 per annum and necessary traveling expenses, payable out of the General Fund of the State as other claims are paid."

Section 13 requires the Controller to draw his warrant in favor of the Inspector for the salary and traveling expenses provided for in the Act, when approved by the Board of Examiners, and directs the State Treasurer to pay the same.

Does this Act make the appropriation so the warrant may be drawn by your office for the $41 10 and paid by the State Treasurer?

In State vs. LaGrave, State Controller, 23 Nev. 25, the question as to what is necessary to constitute an appropriation of money to authorize the Controller to draw his warrant was discussed and decided. In that case a mandate was asked for against your office, claiming that the Act in question was practically the same as the Act (Stats. 1899, 131) in this case, *and that the Act itself made the appropriation.*

In discussing and deciding the question the Court said: "To constitute an appropriation there must be money placed in the fund applicable to the designated purpose. The word 'appropriate' means to allot, assign, set apart, or apply to a particular use or purpose. An appropriation in the sense of the Constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is *plainly manifested.*" (State vs. LaGrave, 23 Nev. 26.)

Under the statute: "You are forbidden to draw any warrant on the treasury except there be an *unexhausted specific appropriation to meet the same.* And it is made (your) duty, among other things, to keep an account of all warrants drawn on the treasury, and a separate account under the head of *each specific appropriation* in such form and manner as at all times *to show* the *unexpended balance of each appropriation.*" (Comp. Laws, sec. 1960; State vs. LaGrave, 23 Nev. 27; Shatten vs. Green, 45 Cal. 149.)

"The State Controller, under the Constitution, is made the supervising officer of revenue, among whose duties is the final auditing and settling of all claims against the State." (Lewis vs. Doron, 5 Nev. 339.)

Under these authorities it appears that there has not been any money placed in a fund applicable to the designated purpose. That is, money has not been allotted, assigned, set apart, or applied to the particular purpose or use, "plainly manifested," out of which Mr. Hilp may now be paid the $41 10.

He has collected in fees $50 and paid it into the State treasury, as the statute directed him to do, out of which he will be clearly entitled

to receive $41 10 whenever the Legislature may pass a relief bill for that purpose, but you are not now authorized to draw your warrant for the $41 10, nor will you be until the relief bill is passed by the Legislature.

These conditions exist because no appropriation has been made, which is to be regretted, but the only remedy that I can see is to await a relief bill by the Legislature, which, no doubt, will be granted at the earliest opportunity, and when the Legislature meets it should make a proper appropriation for 1901 and 1902 to cover future fees and expenses to the Inspector. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 7, 1900.

HON. SAM P. DAVIS, *State Controller:*

SIR: In your communication of this date you say: "On the 3d day of September, 1900, the enclosed attachment was served on the Controller. At the time of service there was nothing in the Controller's office or in his possession on which the Constable could levy. On the morning of the 4th of September, 1900, a claim was presented on which Joe Muller was entitled to $60 for one month's pay. Will the attachment hold?"

The notice endorsed on the execution reads:

"*To* S. P. DAVIS, *State Controller of Nevada:* By virtue of an execution issued out of the Justice's Court of said township and to me directed against the within defendant, I hereby attach all moneys, effects and credits in your hands, or under your control, belonging to the within defendant, in pursuance of said writ; and you are hereby notified not to transfer, pay over or deliver the same to any one but myself. W. H. CRISLER, Constable.

"Please make a statement.

"Served on me September 3, 1900. SAM P. DAVIS, State Controller."

From the above it plainly appears that at the time the execution was served on the Controller there were not any "moneys, effects and credits in your hands, or under your control, belonging to the within defendant," and hence it was impossible for anything to be attached by the service of the paper on the Controller's office, for the claim did not arrive at the office till the following day. It is as fatal to the service of an execution that it be served before the garnishee receives the money of judgment creditor as to serve it after he had paid it to the judgment debtor; and your office not having the money under your control, I think the service was premature.

"An execution is levied by a proper officer serving it upon the person having the personal property in his possession or under his control, personally, and, if capable of delivery, taking the property into his (the officer's) possession. And the statute says: "Until a levy, property shall not be affected by the execution." (Comp. Laws, 3314.)

If the property was in your hands at the time of the levy, you should have delivered it to the Constable, if capable of delivery. As

it was not, how could you do so? Which proves that the levy was of no effect. If you should pay the money to the officer on that levy, it is most likely that Muller could recover from you on the ground that you had paid out his money without authority of law; at least, there would be risk in it. If Muller has a right to the money, certainly the officer has not. Of course, I have no opinion and express none as to the justness of the claim against Muller, but only as to the validity of the levy. Yours respectfully,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 10, 1900.

HON. H. J. GOODRICH, *County Clerk, Pioche, Nevada:*

SIR: In answer to your letter of the 7th instant I have the honor to inform you that I do not think half-breed Indians are entitled to register and vote in this State, under article II, section 1, of the Constitution. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, October 3, 1900.

To the Directors of the Orphans' Home:

GENTLEMEN: Your request of this date, for my answer to three questions propounded, is at hand, and in reply I have the honor to answer as follows:

1. "Has the Board, under the statutes, authority to let children from the Home on trial without discharging or indenturing them?"

The only section of the statute applicable to the subject is section 1492, Comp. Laws, as follows:

"Whenever said Board shall deem it for the best interest of any orphan in said Home, or of the State, they may discharge any orphan therein; and they are hereby empowered, whenever they may deem it meet and proper, to apprentice any orphan in said Home to the head of any family, or to any person carrying on a useful and proper business; but in all such indentures of apprenticeship the Board shall reserve the power to themselves at any time to cancel the same, and reclaim said orphan to the Home whenever, in their judgment, the best interest of said orphan and the State shall demand."

I find nothing in the statute cited authorizing the Board to let children from the Home except to discharge or to indenture. Indenture in law is defined by Webster as being "a mutual agreement in writing between two or more parties." Discharge is defined by the same authority to mean "the act of relieving of a charge, dismission, removing or getting rid of, release, dismissal," etc. So the statute authorizes you to discharge any orphan in the Home whenever the Board shall deem it for the best interest of any orphan therein. And

you are also clearly empowered, in your discretion, to apprentice any orphan in the Home to the head of any family, or to any person carrying on a useful and proper business.

Under the letter of the statute it is my judgment that you have no authority to let children from the Home, except by indenture.

2. "The head of a family" is so variously defined by the law dictionaries and the various decisions of the Courts that it may well be denominated "an unsettled question."

Black's Law Dictionary and Rapalje's define it as "a householder, one who provides or maintains a family."

In New Hampshire it is defined as either widow or widower having a minor child living with him or her.

In Missouri an unmarried man, whose indigent mother and sister lived with him and were supported by him, was held to be the head of a family.

In South Carolina a bachelor with no family, except servants and employees, is not the head of a family.

There being different rules, it becomes necessary to look solely to our own State for a rule, if one can be found, and, if not, to adopt one of our own.

Section 550, Comp. Laws, in speaking of the selecting of homesteads, says either the husband, or the wife, or both of them, or other head of a family, may select a homestead, and that the declaration shall set forth certain things, among which may be the fact that the applicant is residing on the premises with the person or persons under their care and maintenance, thus indicating that we may have in this State the head of a family in a person who has the care and maintenance of some person or persons, and is residing with such person or persons on the premises sought to be declared upon as a homestead. Relying on this statute for my definition, I will have to hold that in this State a husband or a wife, or both of them, or any person having a person or persons under their care and maintenance, are the head of a family. This is so under the statute if the person claiming the right declares in writing, under oath, that he or she has under their care and maintenance person or persons and is residing with such person on the premises sought to be declared upon. Of course, the clause, "and is residing with such person or persons on the premises," is not applicable in the case now being discussed, but is only referred to as found in the homestead laws, and the homestead laws are referred to because therein is found the only definition of the head of a family that I am able to find in the statutes.

3. "Is a child, who has been allowed to leave the Home on trial, under the supervision of the Board of Directors and subject to the authority of the Board?"

I think not. If the Directors can only get rid of a child once duly committed to its charge by either discharging or indenturing it, and the Board has discharged a child by allowing it to leave the Home on trial, my judgment is that the allowing it to leave and thereby placing it in the hands of some one, without indenturing it, is a discharge of the child, and, until the child is again regularly committed to the Home by due process of law, the Board has no legal authority over the child.

I am unable to find any statute authorizing the Directors to dispose of

children from the Home, except as I have above pointed out, which is to either discharge or to indenture, and you will observe that you can only indenture for apprenticeship; for the language used in the statute is "but in all such indentures of apprenticeship the Board shall reserve the power to themselves at any time to cancel the same, and *reclaim* said orphan to the Home whenever, in their judgment, the best interest of said orphan and the State shall demand," thus making it plain that you cannot *reclaim* the ward unless it is *indentured*.

To apprentice is to bind the ward "by indenture to serve a mechanic, or other person, for a certain time, with a view to learn his art, mystery, or occupation, in which his master is bound to instruct him." (Webster.) This definition assists in arriving at the conclusion that the Legislature never intended that you should have authority to reclaim a ward where you had assented to its departure from the Home to be cared for by some person, unless you and the person seeking the custody and care of the ward executed an indenture. Yours truly,

W. D. JONES, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 4, 1900.

GEO. WATT, ESQ., *Sheriff of Lander County, Nevada:*

SIR: Your recent letter, with your claim against Lander county for mileage to Delamar, Lincoln county, Nevada, from Austin, Nevada, to arrest Joseph E. White, and also a copy of the warrant of arrest in the case, are before me.

From the above it appears that a warrant was issued out of the Justice Court of Austin Township, Lander county, Nevada, September 27, 1900, directed and delivered to you as the Sheriff of Lander county, commanding you forthwith to arrest Joseph E. White, on the charge of breaking jail in said county whilst under a charge of felony, and that you, in obedience to said warrant, traveled to Delamar, Lincoln county, Nevada, and there arrested said White, and returned him to the county jail in Austin, from whence he had broke and escaped, and you now ask Lander county to pay your mileage from Austin to Delamar, and $3 50 for the serving of the warrant on White.

The statute relative to the mileage is as follows: "For service of any process in a criminal case, the same mileage as in civil cases." (Comp. Laws, 2460.) The mileage in civil cases for the Sheriff of Lander county is fifty cents per mile for the first ten miles, and forty cents per mile for each subsequent mile, in going only. (Comp. Laws, 2460.)

Therefore, I think you were compelled to use diligence in trying to arrest White under the warrant, if you could find him in Nevada, and, if he had escaped out of Nevada, to have applied to the Governor for a requisition and pursued him into the State to which he had escaped. Having found and arrested him in Nevada, and returned him to your county jail, I think you are entitled to your mileage from Austin to the place of arrest by the *shortest usually traveled route*.

The statute also allows Sheriffs $3 50 for serving the warrant of arrest. Yours respectfully,

W. D. JONES, Attorney-General.

DISTRICT ATTORNEYS' REPORTS.

ANNUAL REPORTS OF DISTRICT ATTORNEYS.

The following is a statement of the criminal business transacted in the several counties of this State during the years 1899 and 1900, as shown by the reports of the District Attorneys of the respective counties furnished this office in accordance with the provisions of the Act of the Legislature, approved March 1, 1889:

CHURCHILL COUNTY—L. V. FITCH, ESQ., *District Attorney.*

1899.

No criminal business transacted.

1900.

PROSECUTIONS.

Grand larceny (dismissed, 1; pending, 1)	2
Cost of prosecutions	$217 05
Fines collected	None

Since the District Attorney made his report to this office, Leslie E. Douglass has been convicted of grand larceny and sentenced to 10 years' imprisonment in State Prison.

DOUGLAS COUNTY—MERRILL TURNER, ESQ., *District Attorney.*

PROSECUTIONS.

1899.

Petit larceny, dismissed	1
Assault and battery (convicted, 1; dismissed, 1)	2
Pending in District Court	3
Cost of prosecutions	$99 00
Fines collected	$10 00

1900.

Murder, convicted	1
Grand larceny, convicted	1
Opium smoking, convicted	1
Assault and battery (convicted, 2; dismissed, 1)	3
Misdemeanor, dismissed	1
Cost of prosecutions	$2,515 40
Fines collected	$17 50

ELKO COUNTY—MARION S. WILSON., ESQ., *District Attorney.*

1899.

Total prosecutions in District Court (housebreaking, 1; burglary, 4; resisting and assaulting an officer, 1; assault with intent to kill, 1; robbery, 1; grand larceny, 3)	11
Convicted, or pleaded guilty	4
Acquitted, or found not guilty	4
Cases in which jury disagreed	3
Average length of sentence	11¾ months
Cases pending, including those awaiting Grand Jury	5

Convictions in Justice Courts in the county (average punishment, 36¾ days; disorderly conduct, 3; disturbing peace, 9; petit larceny, 4; assault and battery, 2; selling whisky to Indians, 4)	22
Cost of prosecutions	$1,700 95
Fines collected	25 00

1900.

Convicted of burglary	7
Convicted of manslaughter	2
Convicted of housebreaking	1
Plead guilty of petit larceny	1
Bound over to appear before Grand Jury for assault with intent to kill, and ignored by Grand Jury	2
Cost of prosecutions	$2,180 65
Fines paid	$141 00

No cases pending, as all have just been cleaned up.

ESMERALDA COUNTY—G. S. GREEN, ESQ., *District Attorney.*

Grand jury ignored one case	1
Bonds to keep the peace, dismissed	1
Malicious mischief, either dismissed or acquitted	1
Cost of prosecutions	$20 00
Witness fees allowed by the Court	$30 00
Fines collected	None

1900.

Assault and battery, dismissed	1
Housebreaking, dismissed	1
Burglary, convicted (8 years in State Prison)	1
Grand larceny, dismissed	2
Arson, pending	1
Cost of prosecution, inclusive of Grand Jury	$70 00
Fines collected	None

EUREKA COUNTY—GEO. A. BARTLETT, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Assault with intent to kill, held to answer	1
Assault and battery	3
Malicious destruction of property	4
Using horse without consent of owner	1
Housebreaking	1

CONVICTIONS.

Assault and battery	1
Assault with intent to kill, held to answer	1
Malicious destruction of property, plead guilty	2

ACQUITTED OR DISMISSED.

Assault and battery	2
Using house without consent of owner	1
Malicious destruction of property	2

PENDING.

Assault with intent to kill	1
Appeal to District Court	1
Escaped	1
Cost of prosecutions	$188 00
Fines collected	None

1900.

PROSECUTIONS.

Assault with intent to kill	3
Unlawfully killing domestic animal	1

Assault and battery	1
Petit larceny	1

CONVICTED.

Petit larceny, 6 months in county jail	1

DISMISSED.

Dismissed	4
Discharged on preliminary examination	1

PENDING.

None.

Cost of prosecutions	$32 75
Fines collected	None

HUMBOLDT COUNTY—C. D. VANDUZER, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Train robbery	1
Grand larceny	2
Assault with intent to kill	1
Crime against nature	1

CONVICTED.

Grand larceny (1 year)	1
Crime against nature (1 year)	1
Grand larceny (1 year)	1

ACQUITTED.

Train robbery	1
Assault with intent to kill	1

PENDING.

Forgery	1
Cattle stealing	1
Cost of prosecutions	$
Fines collected	$

1900.

PROSECUTIONS.

Grand larceny	2
Perjury	2
Burglary	1
Assault with intent to kill	4
Forgery	1

CONVICTIONS.

Forgery (4 years)	1
Grand larceny (7 years)	1
Burglary (4 years)	1
Simple assault (6 months)	1

ACQUITTED.

Grand larceny	1
Perjury, ignored by Grand Jury	2
Assault with intent to kill, ignored by Grand Jury	3

PENDING.

Grand larceny	3
Murder	1
Cost of prosecutions	$
Fines collected	None

LINCOLN COUNTY—F. R. McNAMEE, Esq., *District Attorney.*

1899.

PROSECUTIONS.

Assault with intent to kill	2
Assault with intent to commit rape	1
Robbery	2
Murder	2
Grand larceny	2
Killing cattle running at large	1
Assault and battery	4
Disturbing peace	2
Petit larceny	2
Selling whisky to Indians	2
Threatening	1
Setting fire to timber	1

CONVICTIONS.

Robbery (2 years in State Prison)	1
Grand larceny (1 year in State Prison)	1
Killing cattle running at large (6 months in State Prison)	1
Assault and battery (fine and county jail)	4
Disturbing peace (50 and 60 days in county jail)	2
Petit larceny (10 days in county jail)	2
Selling whisky to Indians (fine and county jail)	2
Threatening ($1,000 bond to keep the peace)	1
Setting fire to timber ($200 fine, or 100 days in county jail)	1

ACQUITTED OR DISMISSED.

Assault with intent to kill	1
Assault with intent to commit rape, acquitted	1
Grand larceny; one case reduced to petit larceny	1

PENDING.

Murder	2
Assault with intent to kill	1
Robbery	1
Cost of prosecutions, estimated	$750 00
Fines collected	$18 50

1900.

PROSECUTIONS.

Assault and battery	8
Disturbing peace	4
Grand larceny	3
Selling whisky to Indians	1
Arson	1

CONVICTED.

Assault and battery (average punishment, $15)	6
Disturbing peace (average fine, $17 50)	2
Grand larceny (1 year in State Prison)	1
Selling whisky to Indians (30 days in county jail)	1

ACQUITTED OR DISMISSED.

Assault and battery	2
Disturbing peace	2
Arson	1

PENDING.

Grand larceny	1
Murder	2
Cost of prosecution	$850 00
Fines collected	$125 00

LANDER COUNTY—S. A. CRESCENZO, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Murder	1
Threatening to kill	1
Drawing and exhibiting deadly weapon	1
Selling whisky to Indian	2
Assault and battery	3
Petit larceny	1
Disturbing peace	24
Vagrancy	1
Herding sheep within city limits	1
Rape	1

CONVICTIONS.

Murder (25 years in State Prison)	1
Selling whisky to Indians	1
Threatening to kill (bond $2,500)	1
Drawing and exhibiting deadly weapon (fine $48)	1
Assault and battery	1
Disturbing peace	23
Vagrancy	1

ACQUITTALS.

Selling whisky to Indians	1
Assault and battery	2
Petit larceny	1
Herding sheep within city limits	1
Disturbing peace	1

PENDING.

Rape	1
Cost of prosecutions	$464 65
Fines collected	$88 00

1900.

PROSECUTIONS.

Murder	1
Disturbing peace	24
Assault and battery	3
Embezzlement	1
Attempt to kill	1
Jail breaking	1
Gambling without license	4

CONVICTIONS.

Murder (sentenced to be hung; committed suicide)	1
Disturbing peace	18
Assault and battery	2

ACQUITTED.

Disturbing peace	6
Gambling without license	4
Assault and battery	1
Drawing deadly weapon	1
Embezzlement	1

PENDING.

Breaking jail	1
Attempt to kill	1
Burglary	1
Cost of prosecutions	$571 20
Fines collected	$41 00

LYON COUNTY—JOHN LOTHROP, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Murder	1
Assault with intent to kill	1
Cheating at unlawful game of cards	1

DISMISSED.

Murder (defendant committed suicide in jail while awaiting trial)	1
Assault with intent to kill	1
Cheating at unlawful game of cards	1

PENDING.

Breaking and destroying dam	1
Cost of prosecutions	$385 00
Fines collected	None

1900.

PENDING.

Breaking and destroying dam	1
Cost of prosecutions	None
Fines collected	None

NYE COUNTY—J. L. BUTLER, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Grand larceny	1
Assault	1
Assault with deadly weapon	1

DISMISSED.

Grand larceny, ignored by Grand Jury	1
Assault, escaped jail	1
Assault with deadly weapon, ignored by Grand Jury	1

PENDING.

Assault, defendant escaped jail	1
Cost of prosecutions	$91 60
Fines collected	$1 00

1900.

PROSECUTIONS.

Obtaining money under false pretenses	1

CONVICTIONS.

One case, fine $1, or imprisonment in county jail until fine is paid.

Cost of prosecutions	$18 50
Fines collected	None

ORMSBY COUNTY—J. EMMETT WALSH, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Robbery	3
Grand larceny	3
Assault and battery	13
Disturbing the peace	3
Obtaining goods under false pretenses	1
Threats against life	1
Violating election laws	7

CONVICTIONS.

Felony	3
Misdemeanors	19
Average punishment of felonies	5 years

Average punishment of misdemeanors, $14 50, or 18 days in county jail.

ACQUITTALS OR DISMISSALS.

Acquitted in District Court	2
Dismissed in District Court	1
Acquitted in Justice Court	3
Dismissed in Justice Court	3

PENDING.

In District Court	1
Cost of prosecutions (about)	$1,647 50
Fines collected	$116 00

1900.

PROSECUTIONS.

Grand larceny	1
Assault and battery	7
Disturbing peace	1

CONVICTIONS.

Misdemeanors	6

Average punishment, $16 fine, or 12 days in county jail.

ACQUITTED.

In District Court	1
In Justice Court	1
Dismissed in Justice Court	1
Cost of prosecutions	$284 40
Fines collected	$30 00

STOREY COUNTY—W. E. WINNIE, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Assault and battery	3
Assault with deadly weapon	3
Embezzlement	1
Housebreaking	1
Murder	2
Peddling without license	2
Receiving stolen goods	1
Threatening to kill	2
Vagrancy	8
Willfully injuring private property	1
Violating city ordinances	1
Drunkenness	20
Disturbing a funeral	1
Discharging firearms	1
Keeping opium den	1
Visiting opium den	2

*

CONVICTIONS.

Persons convicted of statutory crimes (fines, $38)	11
All other punishments by imprisonment in county jail	--
Violation of city ordinances (fines, $10)	17
Other punishment by imprisonment in county jail	--

DISMISSALS.

Violating city ordinances	8
Other offenses	14
Cost of prosecutions	$340 10
Fines collected	$48 00

1900.

PROSECUTIONS.

Drunkenness	16
Nuisance	1
Assault and battery	6
Destroying legal notices	1
Search warrant	1
Housebreaking	4
Vagrancy	1
Assault with intent to kill	1
Malicious mischief	2
Petit larceny	6

CONVICTIONS.

Drunkenness ($50 fines paid; county jail)	16
Assault and battery ($50 fines paid)	2
Destroying legal notices ($40 fines paid)	1
Housebreaking (3 years in State Prison)	1
Assault with intent to kill ($500 fine paid)	1

ACQUITTED.

Nuisance	1
Assault and battery	4
Vagrancy	1
Malicious mischief	2
Petit larceny	6
Cost of prosecutions	$------
Fines collected	$640 00

WASHOE COUNTY—E. L. WILLIAMS, ESQ., *District Attorney*.

1899.

PROSECUTIONS.

Misdemeanors	796
Felonies	13

CONVICTIONS.

Misdemeanors, in county jail	296
Misdemeanors, paid fines	50
Felonies, in State Prison	2

ACQUITTALS.

Misdemeanors	438
Felonies	4
Bill ignored	1
Discharged by magistrate	6

PENDING.

Misdemeanor	1
Felony	1
Cost of prosecutions	$7,631 70
Fines collected	$191 35

1900.

PROSECUTIONS.

Misdemeanors	893
Felonies	19

CONVICTIONS.

Misdemeanors	373
Felonies	5

ACQUITTALS AND DISMISSALS.

Misdemeanors	520
Felonies	11

PENDING.

Felonies	3
Cost of prosecutions	$6,791 10
Fines collected	$332 63

WHITE PINE COUNTY—CHAS. A. WALKER, ESQ., *District Attorney.*

1899.

PROSECUTIONS.

Murder	1
Petit larceny	2
Disturbing peace	3
Selling whisky to Indians	3
Assault with intent to kill	1

CONVICTIONS.

Murder	1
Disturbing peace	2
Selling whisky to Indians	3

ACQUITTALS.

Petit larceny	2
Disturbing peace	1
Assault with intent to kill	1
Cost of prosecutions	$2,000 00
Fines collected	$100 00

1900.

PROSECUTIONS.

Malicious mischief	2
Selling whisky to Indians	5
Disturbing peace	5
To keep the peace	1
Assault with intent to kill	1
Petit larceny	1
Grand larceny	2
Unlawful cohabitation with Indian woman	2

CONVICTIONS.

Selling whisky to Indians	5
Disturbing peace	3
To keep the peace	1
Assault with intent to kill (bound over)	1
Unlawful cohabitation with Indian woman	2
Grand larceny	1

ACQUITTALS.

Malicious mischief	2
Disturbing peace	2
Petit larceny	1
Grand larceny	1

PENDING.

Assault with intent to kill	2
Cost of prosecutions	$500 00
Fines collected	$77 00

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TYPOGRAPHICAL
UNION
LABEL
WASHOE No. 65