STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1903=1904

JAMES G. SWEENEY, Attorney-General

CARSON CITY, NEVADA
STATE PRINTING OFFICE, : : : : : ANDREW MAUTE, SUPERINTENDENT
1905

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WASHOE No 65

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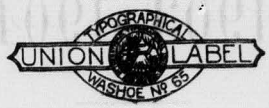
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LETTER OF TRANSMITTAL.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 2, 1905.

To His Excellency, JOHN SPARKS, *Governor of the State of Nevada.*

SIR: I herewith submit to you my report as Attorney-General of the State of Nevada, for the years 1903-1904, giving a synopsis of State cases decided by the Supreme Court, cases pending wherein the State is a party, opinions rendered by me, and a synopsis of the reports of the District Attorneys of the various counties.

Very respectfully,

JAMES G. SWEENEY,
Attorney-General.

REPORT OF THE ATTORNEY-GENERAL.

OFFICIAL OPINIONS.

During my term of office I have given hundreds of oral opinions to the various State officers, State Boards, heads of State institutions and to District Attorneys.

I have written many opinions which were and are comparatively unimportant, and have for this reason omitted them in this report, the following being of the most interest:

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 24, 1903.

CHAS. A. WALKER, ESQ., *District Attorney of White Pine County, Nevada.*

DEAR SIR: Your letter of inquiry of January 14th duly received. Other official business occupying my attention accounts for my seeming delay in not replying sooner.

I call your attention to Section 3 of Article 1079 of our Compiled Laws of 1900, wherein it is laid down that every tax levied is made a lien against the property assessed; that the lien attaches on the real property for the tax levied on the personal property of the owner of the real estate; and that that lien attaches upon the day on which the taxes are levied in each year, and is not satisfied or cannot be removed until all the taxes on both real and personal property are paid.

In that B's property is now directly affected in the proposed suit, I advise you to also make him a party with A.

Concerning your second query, I advise you to insert in your complaint the correct description of the property in dispute.

Yours, respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 24, 1903.

MR. WILLIAM EASTON, *County Assessor of Lander County, Austin, Nevada.*

MY DEAR SIR: Your communication of the 17th instant, inclosing a copy of the tax levy made by the County Commissioners of Lander

County for the year 1903, requesting an opinion to certain inquiries therein made as to its legality, duly received and considered.

According to said tax levy, the Commissioners placed the State tax rate for the year 1903 at 80 cents.

Section 1078 of our Compiled Laws makes it mandatory on the part of the County Commissioners of each county, on or before the first Monday in March, to fix the rate of county taxes for such year, designating the number of cents on each one hundred dollars of property levied for each fund; and that they shall levy the State and county taxes upon the taxable property of the county.

"The levy of State taxes by the Board of County Commissioners, though provided for in the revenue law, is an idle ceremony, for the reason that the levy is made by the Legislature." (State v. Manhattan S. M. Co., 4 Nev. 318.)

The Legislature of Nevada, now in session, has not, up to this date, passed the usual Act fixing the State tax rate, but will do so before they adjourn; it is believed at this time, by those qualified to base an opinion on this subject, that the present tax rate of 80 cents will be reduced to at least 70 cents.

However, until this present State tax rate of 80 cents, as now in force (see Statutes of 1901, p. 117), is changed by them, the County Commissioners of the various counties will be obliged to place the State tax rate at 80 cents, as prescribed by the present existing law.

In the event the present Legislature levies a new State tax rate for 1903 and until further changed, the various County Commissioners of the various counties will be obliged to adjust their State tax rate, as may have been fixed by them for 80 cents, to the State tax rate as changed by the Legislature. (See Section 1232, Compiled Laws of 1900.)

The fixing of the State tax rate at 80 cents at the present time by the Commissioners of your county is therefore legal, but must be adjusted to the rate fixed by the Legislature if said State rate is changed.

The total tax rate for all purposes as levied by the Commissioners of Lander County, amounts to a rate of $4.75 on the $100 of taxable property for all purposes, and is therefore in this respect not in violation of Article 1222 of our Compiled Laws, wherein it places a limitation not to exceed a rate of $5 on each one hundred dollars of the taxable property of a county.

Concerning the legality of "Austin town tax" and the different "road taxes" of Lander County, as levied by your County Commissioners, not having the assessed values of all the real and personal property of said county before me, I can only refer you to the sections of our laws, wherein the duties and authority of the County Commissioners for levying such taxes and tax rates are derived, and the limitation prescribed as to the rate for levying such taxes for said purposes.

Concerning the rates as fixed by the County Commissioners of your county for the different "road funds," as to their correctness and legality, I refer you to "An Act in relation to public highways." (Article 449, Section 3, Compiled Laws of 1900.)

Pertaining to the rate fixed for the "Austin town tax," I call your attention to "An Act providing for the government of towns and cities of this State." (Article 2174, Section 3.)

If the different "road fund" rates as levied by the County Commissioners are within the limitations of Article 449, Section 3, they are legal; if not, they are void for excess and must be adjusted to come within its limits.

In like manner, if the "Austin town tax" rate as levied is not in excess of the tax allowed for such purposes in Article 2174, Section 3, it is valid.

I respectfully call your attention to the fact that the District Attorney of Lander County is your legal adviser in relation to your official duties, and that the opinions of the Attorney-General are by law reserved for him, should he need or desire them.

With kindest regards and best wishes, I remain,

Yours, very sincerely,

JAMES G. SWEENEY, Attorney-General.

RENO, NEVADA, January 23, 1904.

HON. JAMES G. SWEENEY, *Attorney-General, Carson City, Nevada.*

DEAR GENERAL: I received a letter from you some days since in which you have called my attention to the Statute as set forth in Section 2313, Compiled Laws of 1900. I desire to ask your opinion as to your construction of that section with reference to the Prosecuting Attorney reporting to your office a "written statement of the facts and circumstances connected with the commission of the crime for which the person stands convicted, as shown by the evidence upon the trial thereof," etc.

The question in my mind is whether or not a defendant who pleads guilty to the charge as set forth by the indictment is entitled to have this paper furnished, or whether it is compulsory on the part of the Prosecuting Attorney and District Judge to furnish these statements in such cases. From the reading of the statute, I should say that the Legislature contemplated that they should be furnished only where the defendant stands trial and is convicted. Of course, the Prosecuting Attorney can furnish your office with a statement of the evidence adduced at the preliminary examination, and it is barely possible that the Legislature contemplated that in making the law. If your version of the statute is to that effect, I am prepared to furnish a statement of the evidence adduced at the preliminary examination of the several defendants who have recently plead guilty in our court, and have been sentenced to the penitentiary.

Kindly let me hear from you regarding this matter, and I shall act in accordance with your opinion.

Yours, very truly,

W. H. A. PIKE,
District Attorney.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 27, 1904.

HON. W. H. A. PIKE, *District Attorney of Washoe County, Reno, Nevada.*

MY DEAR SIR: Your favor of the 23d instant, requesting my con-

struction of 2313 Compiled Laws of 1900, regarding certain provisions therein, duly received.

I differ with your interpretation of the section, being of the opinion that written statements should be sent to this office of the facts and circumstances connected with every crime for which a party is convicted and sentenced to our State Prison. It appears evident to me that it was the intention of our Legislature, when it enacted the section in question, that these reports should be forwarded to this office and be of record so that whenever a prisoner applied for a pardon the records, facts and circumstances in connection with the crime would be available. I add further that this is the construction that has been placed on this section by all of my predecessors and that the other District Attorneys of the State have complied and are now complying with the interpretation.

The letter which you received in connection with this matter was a copy of one forwarded to every District Attorney in the State, requesting a strict compliance with this statute. The State Board of Pardons have been hampered and handicapped by reason of District Attorneys failing to send in their statements as required by law, an evil which we must remedy.

With kindest regards and best wishes, I am, as ever,

Very respectfully, yours,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 7, 1903.

County Assessor, Churchill County, St. Clair, Nevada.

DEAR SIR: Your favor of the 3d instant, inquiring of the Attorney-General whether or not the Assessor of your county is entitled to fees for the filing of his statements and the amounts therefor, duly received.

The Statutes of 1897, p. 78, referring to the compensation of county officers of Churchill County and other matters relating thereto specifies the salaries of the different county officers of Churchill County, and places the salary of the Assessor at four hundred ($400) dollars per annum.

It is a well-established principle of law that the services of a public officer are gratuitous, unless compensation is authorized by statute; that a public officer must perform every service required of him by law, and that he must look to the statute for his compensation. If it provides none, then his services are gratuitous.

I find no authority in our law authorizing the Assessor of your county to collect fees for the filing of the statements you mention.

I respectfully call your attention to the fact that the District Attorney of your county is your legal adviser; that to him you should apply for such information or advice concerning your duties as you may desire; the opinions of the Attorney-General are in reserve for him, should he need or desire them.

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 3, 1903.

JOHN HANCOCK, ESQ., *District Attorney of Eureka County, Eureka, Nevada.*

MY DEAR SIR: Your communication requesting of the Attorney-General an opinion concerning the construction of a certain part of Section 16 of Assembly Bill No. 19, commonly called the Irrigation Bill, and recently enacted into law, duly received.

You ask whether these words: "It shall be the duty of the County Recorder in each of the counties of this State to prepare a full and complete transcript of all the claims and appropriations of water now on file in their respective offices and to transmit the same without delay, to the State Engineer by express or registered mail," pertain *only* to records of claims and appropriations of water rights which are connected with or refer to the waters of the Truckee, Carson, Walker and Humboldt Rivers?

It is my opinion that these words, viewed in the light of the entire Act, and the seeming intent of the Legislature in enacting this measure into law, should be construed in their ordinary and natural meaning; that, therefore, under this law it becomes the duty of the County Recorder of each of the counties of this State to prepare a full and complete transcript of *all* the claims and appropriations of water that are now on file in their respective offices, and to transmit the same either by express or registered mail, within sixty days from the passage of this Act, to the State Engineer who will be appointed under this law.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 6, 1903.

H. E. DRISCOLL, ESQ., *District Attorney of Lander County, Austin, Nevada.*

MY DEAR SIR: I am in receipt of your favor of the 3d instant, wherein you present the following for an official opinion:

"On the 9th of February last there was an election contest in the Third Judicial District Court for Lander County for the office of Long-Term County Commissioner between H. R. Lemaire, plaintiff, and P. Walsh, defendant, which resulted in a judgment for Lemaire, Judge Breen having declared him elected by a majority of one vote, and upon such finding gave Lemaire a certificate of election. Mr. Walsh has been acting as Long-Term Commissioner since the 5th day of January, 1903, he (Walsh) having been declared elected by the Board of Canvassers. On the 2d day of this month Lemaire presented his certificate to the Clerk and asked to be sworn in as Long-Term County Commissioner; the Clerk then swore him in. The above date being the day for the regular meeting of the Board of County Commissioners, Mr. Walsh then, through his attorney, claimed the right to act as Commissioner pending the time allowed by law to make motion for new trial

and appeal, and asked Commissioner Ingham to act with Walsh instead of Lemaire, Commissioner Litster, who is Chairman of the Board, being sick and unable to attend the meeting. Commissioner Ingham decided to act with Walsh and proceeded with him to dispose of the business before the Board. Now the Auditor has refused to draw his warrant for any of the bills allowed or passed on by this Board of Commissioners, composed of Walsh and Ingham, the Auditor contending that Walsh is not a Commissioner and has no right to act as such."

In conclusion you ask whether or not the Auditor should draw his warrants for the claims passed on by the Board of Commissioners as above stated.

After due consideration of the foregoing and a careful examination of the law applicable thereto, I am of the opinion that the Auditor rightly refused to draw his warrant for any of the claims passed upon by the so-called Board of County Commissioners on said day, composed of Messrs. Walsh and Ingham.

From the moment Mr. Lemaire qualified as the Long-Term County Commissioner, after having been adjudged elected by the District Court, he became the Long-Term County Commissioner of Lander County, until his certificate of election has been set aside or revoked by some competent court having jurisdiction, and is entitled to the immediate possession and emoluments of the office.

The powers of County Commissioners are limited and special and must comply strictly with the statutes relating thereto.

The claims presented to the Auditor, having been passed upon by only one of the three Commissioners *legally* entitled to act upon presented claims, is in contravention of Section 2108 of our Compiled Laws, which provides among other things that a quorum of the County Commissioners is necessary for the transaction of business.

You do not state whether or not Mr. Walsh or his attorney gave notice of motion for a new trial or took any steps in relation to an appeal; but even if they did, according to my opinion, it would not alter the situation.

I do not know of any law or Supreme Court decision of our State applicable to this particular case or class of cases which would stay the proceedings as provided for in other cases and entitle Mr. Walsh to retain his position pending the determination of an appeal or any proceedings thereunder.

The claims passed upon by Messrs. Walsh and Ingham in question should be regularly presented to the Board of County Commissioners for their consideration.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 9, 1903.

BENJAMIN SANDERS, ESQ., *District Attorney of Lincoln County, Pioche, Nevada.*

MY DEAR SIR: I am in receipt of your communication requesting

of me several opinions on different matters, which I would have answered sooner had it not been for pressing official business occupying my time.

As to your first inquiry, to wit: "Does the law require me as District Attorney to go to Justice's Courts in the county at townships in other places than the county seat, where I live? My salary is $66.66 a month, and we have Justice's Courts all the way from 12 miles to 250 from the county seat. Hence, if the law requires me to go does it contemplate that I shall pay my own expenses, or how am I to travel, having no means with which to travel?"

Section 2299 of our Compiled Laws provides among other duties therein imposed on you as District Attorney, that you "shall also attend Justice's Courts in his county, when required by Justices of the Peace, and conduct all prosecutions on behalf of the people for public offenses." This statute is mandatory, and it is my opinion that if required by any Justice of the Peace in any township of Lincoln County wherein there is a Justice Court, to attend his Court for the above purpose, you are obligated to do so.

The statutes of 1889 at page 25, fixes your salary as District Attorney and ex officio Superintendent of Public Schools of Lincoln County at one thousand dollars per annum, without any provision for your mileage or any other expenses, and in the absence of such you are not entitled in law to receive any. The salaries and compensation of officers are regulated strictly by statute.

I respectfully call your attention to Section 2306 of our Compiled Laws, to the additional fees you are entitled to receive as District Attorney, among which you will find one of $15 for each conviction you secure in the Justice Court, to be taxed against the defendant, and also one for $5 for each suit commenced in the Justice Court for the recovery of delinquent taxes.

You are authorized under our law (see Sections 2451-2-3, Compiled Laws) to appoint a deputy should you desire to do so, but at your own expense.

As to your second inquiry: "Which school census is the County School Superintendent to be controlled by in making the apportionment of the school money?"

It is my construction of the law pertaining thereto, that he is to be controlled by the *last* preceding school census taken to the time of making the apportionment of the school money.

In answer to your last question, I can only refer you to Sections 1322 and 1340, Compiled Laws of Nevada. If, as you state, the school house was pulled down and moved away, and there were not a sufficient number of census children to entitle the district to a school, under the latter section (1340) in particular, no school money whatever should have been apportioned to it; when apportioned thus illegally, the error should have been corrected by returning the money so apportioned to the County Treasurer, to be reapportioned in compliance with Section 1338, Compiled Laws of Nevada.

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 18, 1903.

HON. ORVIS RING, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR SIR: Your communication submitting to me the following questions has been duly considered:

(1) Can the names of children not resident in the district on the first day of May, be legally enrolled in that year's census?

(2) Can children who have never lived in the district be enrolled there, even if the father works there, as is sometimes the case, as a miner or a railroad hand?

(3) Is there a law to the effect that a teacher need not teach children in grammar schools after they graduate from the eighth grade, and yet are still drawing public money, unless such pupils again take up only studies taught in eighth grade?

(4) Is it against our laws for a principal in grammar schools to teach a ninth-grade class?

(5) Is a contract made between a teacher and the Board of Trustees all right, or is it the duty of County and State Superintendents to say what is right for that teacher to do and not to do, when they have nothing to say in employing that teacher?

(1) In answer to your first inquiry, I respectfully call your attention to Section 1296 of the Compiled Laws of Nevada, wherein it states: "It shall be the duty of the Trustees in each district to take or cause to be taken by the School Census Marshal, annually, in the month of May, an enumeration of all children between the ages of 6 and 18 years, resident within such district, and return a certified copy thereof, under oath, to the County Superintendent, on or before the 1st day of July next following," etc., etc.

Also to Section 1301 of our Compiled Laws, wherein the duties of the School Census Marshal are defined, among which it is made obligatory on him "To take annually between the 1st and 31st days of May, inclusive, a census of all children under 18 years of age and over 6 years, *who are residents of his district on the first day of May.*"

Section 1296 provides by whom and when the census is to be taken, without especially designating the qualifications necessary to be entitled to be enrolled; section 1301 not only reiterates more specifically by whom and when said census shall be taken, but also specifically prescribes who are entitled to be enrolled.

It is my interpretation of these apparently conflicting sections, based on well-defined rules of construction, that children who are not residents of the district on May first *are not* entitled to be legally enrolled in that year's census for that particular district.

(2) Your second inquiry involves the question of what is a legal residence, as applied to minor children.

If a man has a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the State and he be permanently located within the same, he is deemed a resident.

Minor children have in law as their residence the residence of the parents. If the father is residing in one place for business purposes and his family in another, the residence of the child is determined as above stated.

If children are residing in the district of the family residence as distinguished from the district wherein the father may be working, they are not entitled to be enrolled also in the district wherein the father may be working. If allowed to do so, they could be enrolled in two districts, and as they could attend but one shool, the school money would not be justly apportioned, and some district would have to suffer by receiving less than it ought to receive, by reason of one district being accorded more of the school money on a false apportionment of children than it is justly and lawfully entitled to.

It is my opinion, though, that under the laws on which our school system is founded, if a child be actually residing on the first of May with the father in the district wherein he is working, the child would be entitled to the option of being enrolled and attending the school either in that district or the district of the family residence; but if the child is not living or residing or never lived or resided in the district, as you referred to in your communication, the child would not be legally entitled to enrollment simply because the father happened to be working there.

(3-4) Your third and fourth questions are governed by the grade diploma, or certificate, the teacher holds. It is my opinion that a teacher holding one of the different diplomas or certificates, as prescribed by law, is only authorized to teach such branches of study as that diploma or certificate represents the holder thereof as qualified under our laws to teach. The principle of "the greater includes the lesser" I deem applicable to our diplomas and teachers' certificates; for, if qualified to teach the higher branches of study, it is reason to presume that they would be qualified to teach the lower branches of study. There is no law of ours that I am aware of which would preclude a teacher holding a higher grade diploma or certificate to teach studies below that grade of diploma or certificate; but, as I construe our school law, a teacher holding a low grade of diploma or certificate would not be authorized to teach higher studies or grades of study than those studies embraced in the highest grade diploma or certificate that school teacher holds.

For the different branches of study prescribed to attain the different grades of diplomas and certificates or license to teach school in our State, I refer you to Sections 1358 to 1365 of the Compiled Laws of 1900 and to pages 48, 49 and 50 of the Statutes of 1901.

(5) The first part of your fifth question, as to whether or not a contract made between the teacher and Board of School Trustees is legal, I answer in the affirmative.

It is not only the privilege of School Trustees to employ qualified teachers for their respective districts, but it is their duty.

School Trustees are also authorized, under our law, to dismiss, at any time, any school teacher, for such reasons as they may deem sufficient.

The State and County Superintendents have a general supervision over our schools, and are empowered to see that our school laws are conformed to and enforced.

Pressing official business accounts for my seeming neglect in not responding sooner.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 19, 1903.

MR. J. J. EARL, *School Trustee of Bunkerville, Nevada.*

MY ESTEEMED FRIEND: Your favor of the 13th instant, requesting of me an opinion as to whether or not a Board of Trustees are authorized to encumber a school house by giving a lien thereon, duly received.

All school property, under Section 1315 of our Compiled Laws, is exempt from taxation and from sale on execution, or other writ or order, in the nature of an execution. This being so, the real purpose of the lien—to wit, security for value advanced by the lienholder—is rendered ineffective and worthless, even if the Board of Trustees were granted the power to encumber school property, which they are not under our law.

School Trustees, being creatures of the statute, have no powers beyond those expressly granted by the Legislature. The statute not authorizing it, they cannot therefore legally give a lien on school property. A lien if given would be utterly void.

Your attention is respectfully called to the fact that the District Attorney of your county is the legal adviser of your county officers, and that the opinion of the Attorney-General is held in reserve for him should he need or desire the same. Kindly advise him of the receipt of this opinion.

With kindest of regards, I am

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 2, 1903.

MR. CHAS. S. GRUNDITZ, *Recorder and Auditor of White Pine County, Nevada.*

DEAR SIR: Your favor of the 28th instant, requesting of me a construction of the new Irrigation Act, in certain particulars pertaining to the duties of the County Clerk and County Recorder as specified in Section 16, duly received yesterday. I had occasion very recently to examine this section and to render an official opinion thereon.

The County Recorder of each of the counties of this State must prepare a full and complete "transcript" of all the claims and appropriations of water now on file in their respective offices, and transmit the same within sixty days from April 16th, the date of the approval of this Act, to the State Engineer by express or registered mail. It is not necessary for the Recorder to attach a certificate to each claim on

file in his office, but to attach a certificate of the Recorder to the prepared transcript when it is completed.

The County Clerk of each District Court in this State must transmit to the State Engineer, by express or registered mail, certified copies of all decrees of said Courts affecting water rights on file in the offices of the said Clerks of said District Courts of the State.

The County Recorder or County Clerk are not given any discretion as to what recorded claims, appropriations of water or decrees of court, as the case may be, will be needed or beneficial to the State Board of Irrigation, but the law is obligatory in its terms that they shall transmit all the recorded or filed claims, appropriations and decrees of court affecting water rights in their respective offices, as the case may be, to the State Engineer as specified in Section 16 of said Act.

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 8, 1903.

MR. G. W. LIKES, *County Recorder of Churchill County, Stillwater, Nevada.*

MY DEAR SIR: Governor Sparks handed me your communication of the 1st instant to answer your query therein made, as to whether or not, under the late enacted irrigation law, it was your duty to make your transcripts of water appropriations recorded in your office in book form and indexed, or whether all was required was a transcript made in typewriting.

The law is silent as to the style of transcript and makes no reference to it being indexed. It will therefore be a matter of discretion on the part of the Recorder as to what style he may select in making up his transcript; all that is required of him by the law is that he shall make a full and complete transcript of all the claims and appropriations of water on file in his office, and transmit the same, etc., etc.

It is my opinion that it is unnecessary to index the same, but believe it would be a great aid to the State Board of Irrigation, if it were done, and therefore deem it advisable to do so.

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

ELKO, NEVADA, April 13, 1903.

JAMES SWEENEY, ESQ., *Attorney-General, Carson City, Nevada.*

DEAR SIR: I have been requested by a number of parties in Elko to enforce the 400-yard-limit law which requires all houses of ill-fame to be 400 yards or more from any school house or any church or church edifice. I have been informed that you have rendered a decision or handed down an opinion in this matter in which you state that this

law cannot be enforced; if this is true, I wish you would kindly send me a copy of your opinion, so that I can be guided by it.

Kindly let me know the facts in the matter and oblige,

Very truly yours,

CHAS. B. HENDERSON,
District Attorney of Elko County.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 15, 1903.

CHARLES B. HENDERSON, ESQ., *District Attorney of Elko County, Elko, Nevada.*

MY DEAR SIR: Your favor of the 13th instant received to-day. In answer thereto, I have never been called upon to render an opinion concerning the Act you refer to.

Since the receipt of your letter, I have examined the Act, and believe it to be constitutional and that it should be enforced.

It is certainly within the provision of police regulations and the provision attendant public morals.

If there are any transgressions of this particular Act in your county, I respectfully suggest that you prosecute any and all offenders.

With kindest regards, and best wishes, I remain,

Yours, very sincerely,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 16, 1903.

To the Honorable Board of County Commissioners of Nye County, Belmont, Nevada.

RESPECTED SIRS: Your communication of the 9th instant wherein you request of me an official construction of Sections 4866 and 2306 of the Compiled Laws of Nevada, pertaining to fees allowed District Attorneys in certain cases, duly received.

I have examined carefully the sections in question and the law of construction applicable thereto.

In my opinion Section 4866 does not conflict, modify or repeal in any way Section 2306.

Section 2306 allows District Attorneys different fees for the different kinds of felonies and misdemeanors for which they may be successful in securing a conviction, the fees, however, being contingent in this respect, to wit, "*that they must be collected as costs against the defendant, but in no case be charged against the county.*"

Section 4866 provides that for every legal conviction under the Act to which this section is applicable, the District Attorney shall be entitled to "receive the sum of ten dollars *from the county.*"

The Legislature obviously intended by Section 4866 to provide an incentive to District Attorneys to prosecute this class of offenders, they generally being impecunious creatures.

It is my opinion that District Attorneys are entitled to receive, for every legal conviction under Section 4866, $10 from the county, and an additional fee of $15 under Section 2306, provided that the latter fee of $15 can be collected from the convicted defendant as costs.

Respectfully submitted.

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 17, 1903.

HON. GEO. N. NOEL, *Deputy Secretary of State, Carson City, Nevada.*

DEAR SIR: The correspondence transmitted to the office of the Secretary of State by Mark Averill, Esq., together with the articles of incorporation of the Nye County Mercantile Company, which you have submitted to me for an official opinion, I have duly examined and considered.

The matter in dispute practically resolves itself into the question of whether the old law governing corporations or our new Incorporation Act, approved March 16, 1903, shall govern the Secretary of State in charging incorporation fees, when articles of incorporation have been filed with the County Clerk prior to March 16, 1903, but not received in the Secretary of State's office until after said date.

Or, in effect, differently stated: Is a corporation, in the eye of the old law, *formed* when the articles of incorporation have been filed with the County Clerk?

The records show that the articles of incorporation of the Nye County Mercantile Company were filed with the County Clerk of Nye County on the 12th day of March, 1903, and received in the office of the Secretary of State for filing and recording on March 19, 1903.

Section 114 of our newly enacted Incorporation Act, among other things, provides that "No corporation *formed* or existing prior to the passage of this Act is affected by any of the provisions of this Act," with exceptions not relevant to the point in question.

Section 866 of the Compiled Laws of Nevada (1900) applicable to the old law, after stating the different purposes for which corporations may be formed, adds "*may* be formed subject to all the *conditions* and liabilities herein imposed," etc.

Then follows Section 837, specifying the manner in which the corporation under the old Incorporation Act is accomplished; one of the essential conditions being that, after any three or more persons have specified the purposes for which they desire their corporation formed, acknowledged the same, and had filed and recorded in the office of the Clerk of the county in which the principal place of business of the corporation is intended to be located, they shall file and record in the office of the Secretary of State a certified copy of the articles of incorporation under the seal of the Clerk of said county, which must contain certain specified data.

Such being the premises and the law applicable thereto, it is my opinion that, under the old law, a corporation was not *legally formed* by the simple filing and recording of the articles of incorporation in the

office of the Clerk of the county wherein the principal place of business of the corporation was to be located, it being but *one* of the *essential* acts to be done to accomplish the formation of a corporation, with other remaining essential requirements to be performed, before in legal contemplation it could be recognized as a corporate body.

It is my opinion that in all such cases the Secretary of State must be guided by the schedule of fees embraced in our new corporation law, approved March 16, 1903.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 27, 1903.

HON. S. P. DAVIS, *State Controller, Carson City, Nevada.*

DEAR SIR: Your question submitted to me for an official opinion, as to the right of W. T. Virgin, acting in the capacity of Special State Commissioner, to draw his compensation under an Act entitled "An Act providing for the appointment of a Special State Commissioner to secure the payment of the Nevada war claims against the United States of America," approved March 20, 1903, I have carefully examined.

Your question, in effect, raises the point as to whether or not the Legislature made a valid appropriation for the compensation provided in this Act.

Sections 3 and 4 of said Act, which create the appropriation in question, and regulate the manner in which it shall be disbursed, read as follows:

"SEC. 3. The compensation of said Special Commissioner shall be two hundred and fifty dollars, payable as follows: At the end of the first month after his appointment, $75; at the end of the second month after his appointment, $75; and at the end of the third month after his appointment, $100, and the State Controller is hereby authorized to draw his warrants on *the General Fund* for the said amounts in favor of the said Special Commissioner, and the State Treasurer is hereby directed to pay the same.

"SEC. 4. The State Controller is hereby authorized to draw his warrant on the General Fund in favor of such Special Commissioner for a sum equal to three-quarters of one per centum of any and all moneys actually paid by the United States to, and received by, the State of Nevada for the purposes aforesaid, and the State Treasurer is hereby directed and ordered to pay such warrants; *provided*, that no moneys shall be paid to, or compensation allowed (except as specified in section three of this Act), except the percentage aforesaid, which percentage shall be paid only on the basis of moneys actually paid by the United States Government and received by and placed in the State Treasury of Nevada; *and provided further*, that the total compensation herein provided for shall not exceed a sum equal to three-quarters of one per centum of the amount actually paid by the United States Government and received by the State of Nevada."

The Legislature possesses the entire control and management of the

financial affairs of the State. It can levy such taxes as it may deem expedient, subject only to the constitutional requirements of equality and uniformity, and appropriate the proceeds of the taxation to such specific objects as it may think proper.

The Constitution of our State provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law." (Article IV, Section 13, Constitution of Nevada.)

In the absence of such an appropriation the executive officers have no power to make expenditures, no matter how great may be the State's moral or legal obligations to pay.

The word "appropriation" signifies an authority from the Legislature, given at the proper time and in legal form to the proper officer, to apply sums of money out of that which may be in the treasury, to specific objects or demands against the State. (Risdon v. State, 20 Ind. 339.)

"An appropriation in the sense of the Constitution (Nevada) means the setting apart a portion of the public funds for a public purpose." (State, ex rel. Pyne, v. LaGrave, State Controller, 23 Nev. 25.)

To constitute an "appropriation" neither the word "appropriate" or "to appropriate" is essential. (State of Louisiana v. L. Bordelon, et al., 6 La. 68; Campbell v. Commissioners, 115 Ind. 594.)

Our Constitution provides no particular or technical form of words to make an appropriation.

"An appropriation of money to a specific object would be an authority to the proper officer to pay the money, because the Auditor is authorized to draw his warrant upon an appropriation, and the Treasurer is authorized to pay such amount, if he has appropriated money in the treasury. And such an appropriation may be prospective, that is, it may be made in one year of the revenues to accrue in another or future years, the law being so framed to address itself to such future revenues." (Risdon v. State, 20 Ind. 339.)

In construing a provision of the California Code, which is similar to ours, Judge Field, speaking for the Court in the case of McCauley v. Brooks, said: "To an appropriation within the meaning of the Constitution nothing more is requisite than a designation of the amount and the fund out of which it shall be paid. It is not essential that funds to meet the same should be at the time in the treasury." (McCauley v. Brooks, 16 Cal. 28.)

In Campbell v. The Board of Commissioners, 115 Ind. 594, the Court, in affirming the same general principles as those in California, said: "It is true, as claimed, that no money can be lawfully withdrawn from the treasury except in pursuance of an appropriation made by law; but such an appropriation may be made impliedly as well as expressly, and in general terms as well as special terms. It may be a continuing appropriation as well as for a temporary purpose or a limited period. The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of public money to a given purpose without in any manner designating the Act as an appropriation." (Campbell v. Commissioners, 115 Ind. 594.)

It is a wise and well-founded principle of construction that, in construing a law, "the intent of the Legislature should be carefully sought, and, if clearly manifest, given weight."

An appropriation is sufficient if the intention of the Legislature to

make it out of a specified fund in the treasury of the State is clearly evinced by the language of the statute. (Carr v. State, 117 Ind. 625; Proll v. Dunn, 80 Cal. 220; Hanbert v. Dunn, 84 Cal. 57; Campbell v. Commissioners, 115 Ind. 594.)

In this Act we have a clear, distinct expression of the legislative will making an appropriation, the Act clearly expressing to whom, how and when it shall be paid, and particularly expressing the "General Fund" in the treasury as the "fund" in the treasury out of which the payment shall be paid said Special State Examiner.

The opinion of our Supreme Court rendered in the case of State, ex rel. Pyne v. LaGrave, State Controller, wherein our Court held that no appropriation was legally made by the Legislature in the Act then under consideration, is not applicable to the case at bar. In that case the Legislature directed the State Controller to draw his warrant on the State Treasurer; in this case "on the General Fund." In that case the Court found that there was no specific appropriation; in this the "General Fund" is specifically designated as the fund out of which the appropriation is made. In that case the Supreme Court held that it was "improbable that the provisions of the statute were intended as an appropriation"; in this case it is clearly manifest.

It is my opinion that the Act carries with it a valid appropriation, and that the State Controller is obliged to draw his warrant in favor of W. T. Virgin, as Special State Commissioner, as his compensation becomes due, in compliance with the provisions of the above-referred-to Act.

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 8, 1903.

C. L. RICHARDS, *District Attorney of Nye County, Tonopah, Nevada.*

MY DEAR SIR: Your letter of the 5th instant, wherein you submit for my opinion the following question, received this day:

"At the last election (1902) Nye County polled over 900 votes. Under which Act must we pay Sheriff's, Recorder's, and Clerk's fees—that of 1865 or that of 1883?"

The Statute of 1895, approved March 11th of that year, regulates the fees embraced in your inquiry, and determines the same. (Stats. 1895, p. 41.)

Under this Act the Sheriff of Nye County shall receive such fees as are allowed under the provisions of "An Act to regulate fees and compensation for official and other services in the State of Nevada," approved March 6, 1875, and as ex officio Assessor the Sheriff shall receive $800 per annum.

The County Clerk shall receive such *fees* as are allowed in the Act of March 9, 1865, and such other compensation as is allowed by law.

The Recorder and ex officio Auditor shall receive $900 per annum, and such *fees* as are allowed in the Act of March 9, 1865. (See Statutes of 1895, p. 41.)

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 11, 1903.

HON. S. P. DAVIS, *State Controller of Nevada, Carson City, Nevada.*

DEAR SIR: The following questions, which you have submitted to me this day for an official opinion, I have duly considered:

(1) Can an unauthorized fire insurance company write policies of insurance for a company authorized to transact business in the State of Nevada?

(2) Can an unauthorized fire insurance company place an agent in the State of Nevada and give him power to write a policy of insurance in a company authorized to transact business in the State of Nevada?

After a thorough investigation of the fire insurance laws of our State, I am of the opinion that both your questions must be answered in the negative.

By allowing unauthorized insurance companies the privilege of doing business in our State in the manner the affirmative of your inquiries suggest, would be simply subverting our law and be a transgression of that old well-founded principle of law, to-wit: "That you cannot do indirectly that which the law forbids doing directly."

Not only this, but it would be an injustice to those insurance companies who comply with the provisions of our law by paying their annual license fee of $100 to do business in our State.

Any insurance company, corporation, person or persons, attempting to do business of an insurance nature in our State without being first so authorized to do by the State Controller, are made criminally liable under the insurance laws of our State.

Respectfully submitted,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 16, 1903.

MR. A. C. HOUSE, *Assessor of White Pine County, Ely, Nevada.*

MY DEAR SIR: Your favor of the 8th instant, wherein you submit the following queries for an official opinion, duly received:

"Residents of the State of Utah, and having their home ranches in that State, bring sheep—some for purposes of grazing and others to lamb—into this State. If these parties show receipts of having paid tax on the sheep in that State, can I collect tax for such sheep as I find in this State? If so, can I also collect by levy and sale as under old law?"

I am of the opinion, after an examination of our laws of assessment and taxation, that both of your queries must be answered in the affirmative.

A tax receipt from Utah or any other State will not exempt them from taxation in this State, when they are driven into this State for the purposes of being grazed; as to your duties as County Assessor for the purposes of assessment and taxation of such transient property, I

refer you to an Act of the Legislature approved March 9th of this year. (Statutes of 1903, pp. 65 to 70.)

If an attempt is made to remove transient stock from your county without first having complied with the provisions of the law referred to, Section 12 of said law provides for writs of attachment to issue. You are, however, privileged to collect your taxes by levy and sale, as under the old law.

I respectfully call your attention to the fact that the District Attorney of your county is your legal adviser, and that to him you should apply for any information or advice desired, the opinions of the Attorney-General under the law being held in reserve for him, should he need or request them.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 30, 1903.

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

DEAR SIR: The question you submitted to me at the request of the County Commissioners of your county I have duly considered:

Section 2306 of our Compiled Laws is a section which provides fees in certain instances for District Attorneys in addition to their salary. Among other enumerated fees in this section there is one which provides that the District Attorney is entitled to ten per cent of "all amounts collected by him for the county by action, except for delinquent taxes."

As I understand the facts of this case, it appears that a man named Anderson was bound over by the Justice of the Peace on a felony charge, and was released upon depositing a $500 cash bail and was later indicted by the Grand Jury. The case was set for trial in the District Court in May, 1902, and on the day set for the hearing the defendant failed to appear, whereupon the District Attorney moved the Court that the $500 bail be declared forfeited to the county, which was accordingly done. On March 27, 1903, the said District Attorney presented to the Board of County Commissioners of White Pine County a claim under the particular section above quoted for $50, this sum being ten per cent of the cash bail forfeited.

It is my opinion that the "motion" made by the District Attorney is entitled to the dignity of an "action," as contemplated by the statute, and that he is as much entitled in law to this additional fee of 10 per cent of the $500 collected for the county as though he was compelled to institute an "action" for its recovery on a bail bond, had one been given in lieu of cash.

There is, however, an element in the claim presented which renders it fatally defective, and that is the fact that it was not presented within the statutory period prescribed by law.

Section 2127 of our Compiled Laws provides that "All unaudited claims or accounts against any county in this State *shall* be presented to the Board of County Commissioners of said county, duly authen-

ticated, within six months from the time such claims or accounts become due or payable."

This section raises the bar of limitations against the claim herein, the same not having been presented within the six months after it became due and payable, and for this reason the action of the Board of County Commissioners of White Pine County in rejecting said claim is correct.

Section 3425, cited by claimant in support of the allowance of said claim, does not relieve or remove the bar of limitations.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 10, 1903.

HON. ORVIS RING, *State Superintendent of Public Instruction, Carson City, Nevada.*

MY DEAR SIR: Your communication of the 6th instant, wherein you request my opinion as to whether or not the various County Superintendents of Schools should apportion the school funds you apportion to the several counties, upon the same census on which you make your apportionment, or whether they should apportion the money on the last school census taken, I have carefully considered.

You state in your communication that you do not receive the census taken in May from the various County School Superintendents until the middle of September, and that you make your apportionment of the school moneys in July based on the last school census which you have received, which is nearly a year old.

Section 1277 of our Compiled Laws prescribes it as a duty of the State Superintendent of Public Instruction, subject to the supervision of the State Board of Education, *immediately* after the State Controller has made his semi-annual report, to apportion to the various counties of the State the several amounts of school moneys which they are entitled to, based on the last reports of the County School Superintendents to the State Superintendent.

Section 1296 provides for the taking of the school census by the School Census Marshal annually in the month of May, obligating the School Census Marshal to report, under oath, to the County Superintendent of Schools on or before the 1st day of July next following.

Section 1289 provides that the County Superintendents shall report to the State Superintendent the census of each district, as reported to him by the School Census Marshal, on or before the 15th day of September.

It is possible that the County Superintendents could, if they would, make their census reports to you immediately on receipt of the same from the Census Marshals, but under the preceding section they are not obligated to do so before the 15th of September, unless they desire.

It is my opinion that you are therefore correct on your part in apportioning the school moneys as provided in Section 1277, based on the last census reports which you received the preceding year.

Section 1388 of our Compiled Laws provides how and when the County Superintendents must apportion the several amounts of school money for their several districts based on the "next preceding census."

As I construe this section, the County School Superintendents must apportion the school money on the "next preceding census" which would be the census taken before the May census, to wit, the previous May, making it, therefore, the same census as that on which you apportion your money.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 11, 1903.

BENJ. SANDERS, ESQ., *District Attorney of Lincoln County, Pioche, Nevada.*

MY DEAR SIR: Your communication of the 17th instant wherein you ask my opinion as to whether or not Census Marshals are entitled to 25 cents per name for all names taken, irrespective of age, duly received.

We have no law designating what sum shall be paid per name for the taking of the census; that is a matter which is left to the discretion of the various County Commissioners of the various counties of the State. They may pay the Census Marshal by the day, or for the whole time consumed in taking the census as a whole, or they may allow the Census Marshal so much per name; it is wholly left to their discretion.

Section 1296 of our Compiled Laws prescribes the duty of the Trustees to cause to have taken by the Census Marshal a census of children between certain ages, and other data, and also provides that the School Census Marshal shall gather such other statistics as the Superintendent of Public Instruction may require. If the State Superintendent should prescribe that, in addition to the children between the ages of 6 and 18, he desires taken for statistical purposes the census of all between the ages of 4 and 6 and over 18 and under 21 or any other ages he may desire, it would be the duty of the Census Marshal to gather such statistics as required by the State Superintendent of Public Instruction, and for the County Commissioners to pay the Census Marshal whatever they deemed fair and reasonable for the services performed.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 18, 1903.

B. C. MARIS, *Justice of the Peace, Lovelock, Nevada.*

MY DEAR SIR: Your favor of the 24th instant, wherein you ask

me whether or not there is a law prohibiting the playing of stud-horse poker without a license, duly received.

In answer thereto, I respectfully call your attention to Section 1263, Compiled Laws of Nevada, under an Act entitled "An Act to restrict gaming," wherein, among other games enumerated, the playing of the game "stud-horse poker" for money, checks, credit or any other valuable thing or *representative of value* is made a misdemeanor, punishable by fine or imprisonment or both.

In my opinion, anyone who conducts a game enumerated in Section 1263 *without a license so to do*, wherein they accomplish "indirectly that which the law forbids directly" either by playing for "the drinks," checks, credit, or any other valuable thing or *representative of value*, is guilty of a misdemeanor.

Pressing official business occupying my attention in our Supreme Court accounts for my seeming neglect in not responding sooner.

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, November 6, 1903.

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

MY DEAR SIR: Your favor of the 29th instant, wherein you submit the following questions for my official opinion, duly received:

(1) The Board of County Commissioners have fixed the boundaries of the town of Ely, and levied a town tax. Can this tax be paid in installments as State and county taxes?

(2) Providing a taxpayer tenders the amount of his State and county taxes, but refuses to pay the town tax, shall the Treasurer accept the former, advertising the delinquent town tax at the proper time?

Providing the County Commissioners of your county have levied the town tax in accordance with our law pertaining thereto, which I take for granted they have, any taxpayer subject to such tax may, at his or her option, pay said tax either in full or semi-annually as provided by law. (See Section 1233, Compiled Laws of 1900.)

It is my opinion that your County Treasurer cannot legally accept the State and county taxes of any taxpayer subject also to the town tax who tenders his State and county taxes, but refuses to pay the town tax proportionately. If any such taxpayer refuses to pay his town tax proportionately with his State and county taxes, the Treasurer must refuse to accept any, and advertise the property as delinquent for the total taxes.

Section 2175 of our Compiled Laws specially provides, among other things, that all such taxes as those in question shall be assessed and collected at the same time and in the same manner and by the same officers as provided in the revenue laws of our State for the levying and collecting of State and county taxes, and all our revenue laws are deemed and held applicable to the levying and collecting of these taxes which are not inconsistent therewith.

The Treasurer of your county is intrusted with the collection of all

the taxes which is handed to him by the County Auditor and held liable for the collection thereof in pursuance to law; should he accept less than the Auditor has placed against the property, he or his bondsmen must make good the deficit between the amount collected and the total amount due. (See Sections 2174, 2175, 2176, Compiled Laws of 1900.)

Respectfully submitted,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 6, 1904.

BENJAMIN SANDERS, ESQ., *District Attorney of Lincoln County, Pioche, Nevada.*

MY DEAR SIR: Your favor of the 21st instant, wherein you submit for my opinion the following queries, duly received:

"I have a request submitted to me this morning by a Justice of the Peace at Searchlight. He wants to know if he can't sentence men to light imprisonment and confine them in the jail at Searchlight. * * * It will cost approximately $300 to bring a prisoner up from there to Pioche, the county seat. * * * Can they sentence a man and confine him in their jail and put him to work on the streets just the same as they can at the county seat, * * * and thus avoid the expense of bringing them up here?"

Our Legislature in its wisdom and foresight, has enacted measures for the purpose of avoiding the expenses that would naturally be incurred in large counties, such as it is your privilege to live in, if all offenders were required to be brought to the jail at the county seat, by authorizing and making it the duty of the County Commissioners of the several counties to erect, furnish and keep in repair, among other public buildings, jails for the reception and detention of those who transgress the law, a provision which the County Commissioners of your county have already complied with as to Searchlight. (See Section 2109, Compiled Laws of 1900.)

The intent and object of the Legislature in enacting the above quoted section—to-wit, the saving of expense—to a great degree would be thwarted if it were necessary to send culprits after their conviction in outside precincts to the jail at the county seat to serve their imprisonment.

While we have no express provision in our State laws saying that the prisoners must be confined at the jail in the precinct wherein they are convicted, yet, under all well-defined rules of interpretation of statutes, it is my opinion that they may be so confined, providing that in the discretion of the committing magistrate the jail be sufficiently strong and commodious for their detention.

As to your query as to whether or not the Justice may sentence those convicted to imprisonment in a county jail to labor, our Legislature has at different times expressed its will on this point.

Section 2272 of our Compiled Laws expressly provides that "all prisoners sentenced by the Judge of any District Court, or by the

Justices of the Peace of any Justice Court, and sentenced to a term of imprisonment in any county, city or town jail *shall be deemed to have been also sentenced to labor* during such term, unless the Judge or Justice of the Peace, sentencing said prisoner, for good cause orders otherwise."

And again, through Sections 2270 and 2271, wherein the various Boards of County Commissioners of the several counties, Boards of Aldermen and Boards of Trustees of each and every city within the State are authorized and required to utilize the labor of prisoners committed to the various county jails.

In view of these provisions there can be no doubt of the authority of the Justice of the Peace at Searchlight sentencing in proper cases to labor.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 14, 1904.

H. E. DRISCOLL, ESQ., *District Attorney of Lander County, Austin, Nevada.*

MY DEAR SIR: Your favor of the 8th instant, inclosing copies of the proposed Lander County Five Per Cent Funding Bonds, together with a copy of the resolution of the County Commissioners of your county providing for said bonds, and requesting my opinion as to their form and legality, was duly received.

I have carefully examined both the law under which the County Commissioners have proceeded and the form you have adopted, and it is my opinion that if the bonds are issued as proposed that they will be both perfectly legal, sufficient, and satisfactory as to their form.

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

ELKO, NEVADA, January 27, 1904.

HON. JAMES G. SWEENEY, *Attorney-General, Carson City, Nevada.*

DEAR SIR: The Board of County Commissioners of Elko County intend at their next meeting, which will be held next Monday, February 1st, to fix the rate of taxation for this year. The total tax levied in this county last year amounted to 65 cents on the $100 of assessed valuation; of this 65 cents, 25 cents was for the purposes of the Common School Fund; 4 cents for the County High School Fund, and 1 cent for the redemption of County High School bonds, which left 35 cents for general county purposes. The question has been raised whether or not Elko County will be compelled to reduce its rate this year 5 cents in accordance with the provisions of Chapter LXVIII of the Laws of 1903; and if so, whether or not the rate levied to raise money for the County High School comes within the purview of the

law. It is by some here contended that by the term "county purposes," used in the first two lines of the first section of said Act, is meant simply expenditures which would be made out of the three funds specified in Section 2137 of the Compiled Laws, namely, the General Fund, the Indigent Fund, and the Contingent Fund, and that the taxes which are levied for the common schools and for the County High School are not levied for "county purposes" within the meaning of that law. I suppose that these various questions have already been discussed by the State Board of Revenue. Under Section 3 of the Act of March 13, 1903, if the Commissioners do not properly reduce the rate in accordance with the Act, you could direct me to institute a suit to remove the Commissioner or Commissioners who voted for the excess rate. I therefore desire at once your opinion on the points raised so that I may intelligently advise the Commissioners at their meeting on Monday next. I hope you will be able to mail me your opinion not later than Saturday in order that I may receive it next Sunday.

I desire especially to call your attention to the question of the matter of a High School Fund. Our County High School has grown very rapidly, and, from the number of pupils who are preparing to enter the school next fall, it will have a largely increased growth and will therefore necessitate employment of extra teaching force and a large expenditure all along the line. If the tax levied for high-school funds comes within the meaning of the term for "county purposes," we may not be able to secure the extra money needed for the High School, because an increase of the rate of the high-school tax would necessitate a corresponding decrease in the rate levied for other county purposes in addition to the 5 cents decrease required by the law; so that the tax for the three funds that I have mentioned, namely, the General Fund, the Indigent Fund and the Contingent Fund, would be cut down by 5 cents plus the increased rate for the High School Fund. It seems to me that the law providing for the establishment of county high schools (Sections 1371 to 1379, Compiled Laws) really created a special school tax, co-terminus it is true with the county, by having its own governing body and its own special fund. The County Commissioners have nothing to do with the expenditure of funds raised for County High School purposes, but all moneys raised for high-school tax are paid to the County High School Fund, and are disbursed under orders of the County Board of Education. It is true the County Commissioners must levy the tax for the High School Fund, but they do this only as they levy a special tax for any special school district fund, and not as a part of their levy for "county purposes." That is my interpretation of the law.

I call your attention especially to Sections 1377 and 1378, whereby the County Board of Education determined the amount of money which is to be raised, and it becomes the duty of the Commissioners to levy a tax sufficient to reach the estimated amount. The Commissioners have no discretion in the matter. If the High School Fund is a fund for "county purposes" within the meaning of the law of March 13, 1903, then the County Board of Education at any time might be crippled, or the other county funds, by demanding a special rate for high-school purposes. For instance, if we wished to build a new high school, or made additions to it, we might demand a sum which would necessitate a tax rate of 20 or 25 cents, leaving then only 25 or 30 cents for all

other county purposes. I make these suggestions for your consideration, and ask for your opinion on the points involved.

Hoping, as I have already said, that I may receive your reply not later than Sunday next, I remain,

Very sincerely yours,

CHARLES B. HENDERSON,
District Attorney of Elko County.

OFFICE OF
STATE BOARD OF REVENUE,
CARSON CITY, January 30, 1904.

CHARLES B. HENDERSON, ESQ., *District Attorney of Elko County, Elko, Nevada.*

MY DEAR SIR: Your letter of the 27th instant, wherein you submit the following query for my official opinion, has been duly received, and has received the careful consideration which its importance demands:

"The Board of County Commissioners of Elko County intend at their next meeting, which will be held next Monday, February 1st, to fix the rate of taxation for this year. The total tax levied in this county last year amounted to 65 cents on the $100 of assessed valuation; of this 65 cents, 25 cents was for the purposes of the Common School Fund; 4 cents for the County High School Fund, and 1 cent for the redemption of County High School bonds, which left 35 cents for general county purposes. The question has been raised whether or not Elko County will be compelled to reduce its rate this year 5 cents in accordance with the provisions of Chapter LXVIII of the Laws of 1903; and if so, whether or not the rate levied to raise money for the County High School comes within the purview of the law. * * *

"I desire especially to call your attention to the question of the matter of a High School Fund. Our County High School has grown very rapidly and from the number of pupils who are preparing to enter the school next fall, it will have a largely increased growth, and will, therefore, necessitate employment of extra teaching force and a large expenditure all along the line. If the tax levied for high-school funds comes within the meaning of the term for 'county purposes,' we may not be able to secure the extra money needed for the High School, because an increase of the rate of the high-school tax would necessitate a corresponding decrease in the rate levied for other county purposes in addition to the 5 cents decrease required by the law; so that the tax for the three funds that I have mentioned, namely, the General Fund, the Indigent Fund and the Contingent Fund, would be cut down by 5 cents plus the increased rate for the High School Fund. * * * I call your attention especially to Sections 1377 and 1378, whereby the County Board of Education determined the amount of money which is to be raised, and it becomes the duty of the Commissioners to levy a tax sufficient to reach the estimated amount. The Commissioners have no discretion in the matter. If the High School Fund is a fund for 'county purposes' within the meaning of the law of March 13, 1903, then the County Board of Education at any time might be crippled, or the other county funds, by demanding a special rate for high-school purposes. For instance, if we wished to build a new High School, or make additions to it, we might demand a sum which would necessitate a tax rate

of 20 or 25 cents, leaving then only 25 or 30 cents for all other county purposes. * * *

"I would also call your attention to the fact, which I overlooked in writing to you yesterday, that the law provides that a tax of not less than 15 cents and not more than 50 cents shall be levied for school purposes. I do not believe that the Act of 1903 repeals the former Act. If that is the case, the Commissioners would have the power to levy a tax of 50 cents for school purposes, and, if they did, it would completely bankrupt the other funds under the new law. The more I think of the matter the stronger my opinion is that taxes levied for the support of the common schools, and especially of our High School, are not taxes for county purposes; if they are, and if you should so hold, it is going to greatly injure us this year in levying our taxes. I trust you will get me your opinion before Monday, as the Commissioners meet then, and I would like to have this matter disposed of."

In construing a statute of doubtful or double interpretation, it is of utmost importance and axiomatic to consider the intent which actuated the Legislature to enact it, and, likewise, the object sought to be attained, and if the intent and object be plain, it should be sustained, provided no constitutional objection is involved.

There is no question in my mind, and I speak from knowledge gleaned from commingling with a majority of the members who composed the Legislature which passed the Act, and from association with those who framed the measure, that it was passed for the purpose of raising valuations in our State, and for the object of lowering our tax rate, which, in the comparative light of tax rates of other States, is excessively high. It is not necessary for me to allude to the numerous advantages resulting to a State from a low tax rate, nor to give more reasons for the support of that theory to impress its importance, than the mere mention of the fact that it is conducive to attract capital, rather than repel it, as is the case where a high rate stares conservative investors in the face. Nor is it necessary for me to allude to the fact that, with high valuations, the State takes on a healthy complexion it does not possess where the valuations are depressed, have an impoverished air, or where the valuations, as compared with their rightful valuations, are insignificant. But, in short, these evident truths, with others unnecessary to state, were the motives which actuated the Legislature to enact the measure in question with an object to attain higher valuations and a lower tax rate.

And it is evident, from the Act in question itself, that the legislators who passed the Act intended the law to apply to every county in the State, save and except Lincoln County, and was so discussed and understood by every member of that body.

If the construction you place on the Act were sustained, the law would not be applicable to Elko County, as that county would then be under the proposed rate of 50 cents on the $100—the ultimate object of the Act.

Elko County was represented by six intelligent representatives, who were conversant with the conditions of the county they represented, and a polling of that delegation would show, as would a polling of the remaining members of the Legislature, that the Act in question was to apply to all the counties of the State with the exception of Lincoln County.

Section 1 reads as follows: "In all counties whose tax rate for county purposes for the year 1902, exclusive of the tax to pay the interest and maintain the sinking funds of the bonded indebtedness of such counties, did not exceed one dollar and fifty cents on the one hundred dollars of assessed valuation, the tax rate for such county purposes for the year 1903, exclusive of the tax to pay the interest and maintain the sinking funds aforesaid, shall not exceed such tax rate for the year 1902; and thereafter such tax rate shall be diminished annually at the rate of not less than five cents on the one hundred dollars of assessed valuation per annum until it reaches fifty cents on the one hundred dollars of assessed valuation; and thereafter the permanent limitation of taxation for such county purposes, exclusive of the tax to pay the interest and maintain the sinking funds aforesaid, shall be fifty cents on the one hundred dollars of assessed valuation."

To place a construction on this section to the effect that the tax levied, or to be levied, for a County High School is not a tax for "county purposes," in view of the fact that the tax is general in its terms in so far as the county is affected; in consideration of the fact that a high school is established for the benefit of the children of the whole county, who may desire to take advantage of the educational advantages thus offered; in consideration of the fact that the tax must be borne proportionately by every taxpayer in the county; and in further view of the fact that all our statutes which bear on this matter speak of the same in its general sense for "county purposes," would, indeed, to my mind, be placing on the section a strained construction, which neither the law nor the facts, in my judgment, warrant. It is an elementary rule of construction of statutes that the words must be construed in their ordinary sense.

I have noted carefully what you have to say concerning the circumstances which confront your county, and have borne them constantly in mind while investigating and reaching the opinion herein, but, when you consider them in view of the intent of the Legislature and the remedy you have to apply to them, the anticipated hardships you suggest all find a ready and effectual relief. Elko County, above all the counties in the State, is particularly blessed in possessing bountiful resources, whose valuations, with a slight increase, can be made to yield abundant taxes for all requirements to both county and State. Favorably located as it is, possessing more miles of railroad than any county in the State, it is already receiving through the effect of the Act in question, from the work of the State Board of Assessors, a raise in the valuations of its railroad property for the purpose of assessment and taxation, about 3⅓ per cent over the valuation of last year.

To those whose contention would place a construction on the term "county purposes," as used in the first two lines of the first section of said Act, as meaning simply the expenditures which would be made out of the three funds specified in Section 2137 of the Compiled Laws, to wit, the General Fund, the Indigent Fund and the Contingent Fund, and consider taxes which are levied for the "County High School" as not a tax levied for "county purposes," have, to say the least, a different conception and method of interpreting statutes than I.

I cannot comprehend how they can construe county revenue, which is levied for and contributed out of the Indigent Fund for the support of the County Poor House, as revenue raised *for "county purposes,"*

and at the same time construe county revenue which is raised and contributed by practically the same methods for the support of the County High School as revenue *not for "county purposes."* Such a construction would not only be illogical, but would, so to speak, be splitting hairs, and would be but the beginning of endless contentions that could, if they would, be raised by the different counties on equally good grounds of putting forth different funds as not levied for "county purposes," in order to evade the law.

In the case of the Power River Company against the Board of Johnson County, a Wyoming case, Vol. 29, Pacific Reporter, page 361, to which you refer, the facts are not identically the same in nature to the one under consideration, nor are the laws of that State bearing on the question identical with ours, but, even if they were, with all due respect to the majority of that court in their opinion in the case, I concur with the strong dissenting opinion of the minority, which, I think, contains the most cogent and logical reasoning of the two, and, in my judgment, is unanswerable.

It is not necessary here to pass on the question of whether or not the law of 1903 repeals the law which provides that a tax of not less than 15 cents and not more than 50 cents shall be levied for school purposes. Assuming that it does *not*, for the purpose of this opinion, it is not to be presumed that the Commissioners would levy a tax of 50 cents or any excessive tax for school purposes which would completely bankrupt the other funds under the law.

It is rather to be presumed that, as men of intelligence and ability, as they are, they will act advisedly and with discretion, and for the best interests of the county in consonance with law.

The revenue officers of your county have the remedy in their own hands, and need only apply the same to cure the complaints under consideration.

Your competent Assessor, I have no fear, will raise all the revenue needed to supply Elko County's every want, if the amount but be made known.

It was not until after mature consideration, and a careful study of the matters herein involved, that I arrived at my opinion herein, that Elko County should reduce its tax rate 5 cents on the $100 as required by law for the ensuing year. I might add that this opinion is concurred in by the members of the State Board of Revenue and our Tax Examiner.

Respectfully submitted,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 30, 1904.

CHARLES B. HENDERSON, ESQ., *District Attorney of Elko County, Elko, Nevada.*

MY DEAR SIR: Your favor of the 20th instant, submitting for my official opinion a query in effect as to which law quarantine officers are subject when appointed by either the State Board of Health under the

Act of March 6, 1893, or when appointed by Board of County Commissioners under Act of March 12, 1903, duly received.

The Act of March 12, 1903, is practically a reiteration of the Act of March 6, 1893; both Acts having as an object the prevention of diseases and defined methods of preventing the same; the trouble resulting from the Acts in question arises from the inconsistency caused by the authority to enforce each Act being vested in separate and different Boards, the Act of March 6, 1893, being under the control and authority of the State Board of Health, while in the Act of 1903 that power is vested in the County Commissioners, and said Act of 1903 does not repeal in express terms the Act of 1893.

This inconsistency of necessity causes some friction and embarassment, not to mention other trouble, whenever occasion demands the enforcement of the law to remedy the evil for the purposes of which both Acts were intended and enacted.

Where statutes of this character conflict it is not only a matter of regret which must be endured until the inconsistencies of the two Acts can be amended or changed by legislative action, but some interpretation must be placed on the conflicting statutes in the intervening time until said conflict is remedied, to avoid trouble in future emergencies.

In the placing of an interpretation and construction on conflicting statutes, such as we now have under consideration, to wit, where the purposes of the Acts are practically the same, but where the latter statute does not in express terms repeal the former, it is an ordinary and elementary rule of construction to interpret the Act which expresses the last will of the people, speaking through its Legislature, as the Act to be favored and which must be enforced.

There are many arguments in favor of having the authority vested in either Board; some contend that the Board of Health should have that authority, for the reason that the members of that Board are more particularly qualified to act on the merits of the cases and emergencies arising, by reason of being medical men, while members of Boards of County Commissioners are usually laymen; some contend that Boards of County Commissioners, being conversant with the county's needs and finances, are better able to judge for the best in emergencies that may arise and make up for their medical disqualifications in being able and authorized to employ medical ability and services when occasion demands; but the merits of these respective arguments are not matters for us here to decide, but for the people of the State in Legislature assembled. Next January we will endeavor to have this matter straightened.

In the meanwhile in accordance with the above rule of interpretation and construction of conflicting statutes, I am of the opinion that the preference must be resolved in favor of the County Commissioners and they be given authority to act whenever occasion demands.

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 13, 1904.

HON. W. D. JONES, *Austin, Nevada.*

DEAR SIR: I must first apologize to you for not responding sooner

to the query you submitted to me some months ago. A rather unprecedented crush of official work on hand accounts in a measure for my seeming neglect.

Your question propounded is as follows:

"A man whose mother is an Indian (Shoshone) and whose father is doubtful, which man has always maintained his tribal relations with the Shoshones, living with the Indians, except when working with the whites, desires to purchase land from the State; in fact has purchased by contract 40 acres. He has registered and voted at general elections for several years. He speaks the Indian language, attends fandangos and Indian rabbit hunts, etc.

"Will you kindly give me your opinion as to his elegibility to purchase and hold land purchased from the State?"

In other words, can a half-blooded Shoshone Indian, giving the father the benefit of the doubt of being a white man, purchase land from the State out of the Two-Million-Acre Grant from the General Government to this State for school purposes?

Section 5 of Article 306 of Compiled Laws, in treating of those entitled to apply for land under this grant, specially provides that the applicant must be a "citizen of the United States, or any person who has legally declared his intention to become such."

Your query then resolves itself into the proposition of whether or not a half-blooded Indian is a citizen of the United States, or a person who can by any manner or means become such.

Without dilating on the whys or wherefores or reasons or justice of our laws for so being, my investigation leads me to the conclusion that he cannot, except by treaty with the General Government or special Act of Congress, which has not been done in the case in question, in so far as my investigation revealed. In support of this proposition I cite you to the opinions of the Attorneys-General of the United States and authorities in that opinion therein cited, holding that he cannot. (See Vol. VII, 746, Opinions of Attorneys-General; Vol. VII, 174, Opinions of Attorneys-General.)

This being the law, under Section 5 of Article 306, I am of the opinion that such a person would be ineligible to apply for said land.

Respectfully submitted, with kindest regards,

Yours, very respectfully,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 24, 1904.

BENJ. SANDERS, ESQ., *District Attorney of Lincoln County, Pioche, Nevada.*

MY DEAR SIR: Your favor of the 19th instant, propounding certain queries as to the salary and fees of the Sheriff of your county and the appointment of deputies, duly received.

An Act of our Legislature approved March 20, 1901, defines the salary and other compensation your Sheriff is entitled to; under this Act he is to receive $1,500 per annum; in addition to this he is entitled to

receive his traveling expenses when it becomes necessary in either civil or criminal cases to travel a greater distance than twenty-five miles from the county seat; he is also entitled to retain to his own use all fees and percentages collected by him as ex officio License Collector. No salary should be allowed or paid him for his expenses or duties performed in the capacity as ex officio License Collector other than above mentioned. (See Statutes of 1901, p. 92.)

When in his judgment the public safety may require it, the Sheriff, with the consent of the County Commissioners, may appoint deputies or policemen in any part or parts of the county where they are necessary, and the County Commissioners are authorized to pay them a reasonable salary or compensation.

With kindest regards,

Yours, very respectfully,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 15, 1904.

E. E. ROBERTS, ESQ., *District Attorney of Ormsby County, Carson City, Nevada.*

MY DEAR SIR: I am in receipt of your favor of the 14th instant, wherein you request my opinion as to whether or not nickel-in-the-slot machines can be used in this State, "providing said machines have no blanks or chances attached thereto."

If said machine can be used in any way or in any manner for gambling purposes of any sort, for anything representing value, the law approved February 23, 1901 (Stats. 1901, p. 23), would make it a misdemeanor for any person so operating or conducting said machine, or for any person to play or bet at or against said machine.

It is my opinion that said Act was passed for the purpose of stopping gambling in this sort of a way, and that, if said machines are not used for gambling purposes of any character whatever, it would not be unlawful to use them.

Respectfully submitted,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 15, 1904.

MR. W. ENGER, *Clerk of the Board of County Commissioners of Nye County, Belmont, Nevada.*

MY DEAR SIR: Your favor, submitting to me for my official opinion the following query, duly received: "If the revenue of the county, when all paid in, will defray the expenses for the year, does the issuance of scrip as present payment of debt amount to a floating indebtedness for the year?"

My answer is that it will. A county has no right to issue scrip for

any purpose. See Sections 8 and 9 of the Act of March 13, 1903, entitled "An Act relating to county government and the reduction of the rate of county taxation" (Stats. 1903, p. 107), which make this perfectly clear.

This also indicates that the Board of Revenue cannot approve the resolution adopted by your Board of County Commissioners on April 7th and reading as follows: "*Resolved*, That the County of Nye be permitted to borrow money for future contingencies at the lowest possible rate obtainable and pay current expenses with scrip without the issuance of bonds or a levy of a special tax, as long as the revenue of the county, when paid in, covers the current expenses (scrip issued for the year) of the county as well as said future contingencies for the year."

The term "future contingencies," as used in the resolution, is very indefinite. It may mean almost anything, and the Board of Revenue would not be willing to commit itself to a proposition which involves the borrowing of money for "future contingencies."

There is no objection to the county borrowing money to meet emergencies, which would include necessary current expenses which must be met before the year's revenue is available, but the consent of the Board of Revenue must first be obtained, and every case must stand upon its own merits. The money can be borrowed on short-time bonds, which is the course pursued in Washoe County, and probably the better way, but some other mode may be selected if preferred. There must not, however, be any further issue of scrip for any purpose, and that already out should be promptly taken up either by special tax or by funding into 5 per cent bonds as provided by Section 8 and as done by Lander and other counties.

If the county borrows money to meet current expenses, there is no apparent reason why it should wish to issue scrip. The borrowed money would enable the county to pay cash and no scrip would be necessary.

Respectfully submitted,
JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, April 26, 1904.

HON. ORVIS RING, *State Superintendent of Public Instruction, Carson City, Nevada.*

MY DEAR SIR: Your favor of the 25th instant, submitting to me for my official opinion the following queries, duly received and considered:

"The question regarding the number of School Trustees in school districts has arisen, *i. e.*, whether any district in this State is entitled to more than three Trustees?

"Is there any law authorizing five Trustees for any school district in the State of Nevada?"

An Act of our Legislature, approved March 7, 1873, provides, among other matters in relation to the election of School Trustees, that "at the

general election of the several counties in this State, A. D. 1874, there shall be elected by the qualified voters of each district a Board of School Trustees, to consist of three members; *provided*, that in any district wherein the number of votes cast at the previous general election exceeded fifteen hundred, such Board shall consist of five members." The Statutes of 1869, p. 175, also made a similar provision for five Trustees for the district wherein more than 1,500 votes were cast at the previous general election.

Since the passage of the Act containing the provision above quoted, the State Legislatures of 1891 and 1897 passed measures in relation to the election of School Trustees, but neither Act repealed, amended or annulled in any way the particular provision in question; nor has any Act up to the present time effaced this provision; in consequence the provision above quoted is in full force and effect. (See Stats. 1869, p. 175; Stats. 1873, p. 159; Stats. 1891, p. 93; Stats. 1897, p. 100.)

I am informed, and if it be a fact, that the School District of Reno cast over 1,500 votes at the last general election, then this district would be entitled to five School Trustees. Likewise, any school district which cast a vote at the last general election which exceeded 1,500 votes would be entitled to five School Trustees, but I believe it to be the fact that there was no other school district in the State, other than the one above referred to, which is affected by the law in question.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 21, 1904.

HON. W. H. A. PIKE, *District Attorney of Washoe County, Reno, Nevada.*

MY DEAR SIR: I have duly received your favor of the 19th instant, wherein you submit for my official opinion the following query:

"Who is Coroner in and for Reno Township and vicinity? In other words, is the duly elected, qualified and acting Public Administrator of Washoe County, by virtue of his office, entited to act as Coroner of Washoe County within Reno Township, or, is the duly elected, qualified and acting Justice of the Peace of Reno Township, by virtue of his office, Coroner and entitled to the fees attached to that office?"

An Act of our Legislature approved March 7, 1883, p. 115, made the Public Administrator to be elected at the general election in 1884, and each two years thereafter, ex officio Coroner. This law remained in force and effect until February 23, 1899.

An Act of our Legislature approved February 23, 1899, repealed the above Act of 1883 in so far as the Public Administrator was made ex officio Coroner, and substituted the provision "that all the Justices of the Peace in this State are hereby made ex officio Coroners," and further provided in said Act of 1899 that "each township in this State is hereby made a Coroner's township."

Since the passage of this Act of 1899 it has neither been repealed, amended, modified or declared unconstitutional.

I have given your query the careful consideration its importance demands and my investigation leads me to the irresistible conclusion and opinion that the duly elected, qualified and acting Justice of the Peace of Reno Township is, by virtue of his office, ex officio Coroner, obligated to perform the duties of Coroner as they are prescribed by our law, and entitled to the emoluments of said office.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 23, 1904.

W. C. GRIMES, ESQ., *District Attorney of Churchill County, Fallon, Nevada.*

MY DEAR SIR: Your favor of the 9th instant, requesting my construction of Sections 1856–1859 and Sections 2125 and 5054 of our Compiled Laws, in so far as they may affect the office of County Treasurer, I have duly received and considered.

In my opinion Sections 1856–1859 and Section 2125 are not applicable to the County Treasurer; the officers who are liable and affected by the sections above named are specifically mentioned, a reading of which will disclose that the County Treasurer is not mentioned or referred to. Where a law specifically mentions those offices which it is supposed and intended to affect, it is a fundamental rule of construction of statutes to limit said statute to those specifically mentioned, and all other offices not specifically mentioned are excluded.

Section 5054 provides that all supplies purchased for the *State of Nevada* shall be purchased of resident merchants, whenever our business men are ready to supply said provisions at an advance of not more than ten per cent over San Francisco prices, freight added, "*provided*, that all supplies for the use of the county shall be purchased by the County Commissioners." The proviso indicates plainly that the Legislature intended to leave the purchasing of supplies for county purposes to the discretion of the County Commissioners, having faith in their ability and integrity to act justly to all merchants and to purchase such supplies at the least cost to their county as is in their power.

It is my opinion that County Treasurers are entitled under our law to supply counties with whatever they have to sell, if the county desires to purchase of him, and that he is not deprived of such right by reason of holding the office of County Treasurer. He is not, however, to be given any privileges, by reason of holding such office, other than are accorded to every citizen who is not disbarred from disposing or selling supplies or goods to counties.

The law presumes and supposes that County Commissioners, in purchasing supplies, will purchase from those who will sell to the county at the lowest cost, with the proviso, always, that the County Commissioners have the right to use their discretion in the interest of the county, and to reject any and all offers from those who may be irresponsible or who are not able to fill contracts, if same were given them.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

ELKO, NEVADA, July 13, 1904.

HON. JAMES G. SWEENEY, *Attorney-General, Carson City, Nevada.*

MY DEAR MR. SWEENEY: A little matter has come up the last few days, and it brings up an old question that I wish you would give us your opinion on. It has been a practice in this county of bringing criminal cases before the Justice situated in the township convenient to the complaining witness, and the question has been raised whether or not a Justice of the Peace has any jurisdiction over a criminal case where the crime was committed in another township. For instance: Charleston Township in this county is about sixty miles from Elko Township; a party in Charleston Township, it is claimed, made some threatening remarks about a party; that party comes to Elko, swears to a complaint asking that the party making the threats be put under bonds to keep the peace; the question of jurisdiction again arises as to whether or not the Justice of the Peace of Elko Township could try the case. The statute seems to use the word "county," and is not very clear on this point. I thought perhaps the matter had been before you, and I would like to know your opinion as to whether or not a criminal case can be brought before any Justice of the Peace, regardless of whether or not the crime was committed in that township in which the case is brought.

Another little question arose in this same case. The complaint as drawn was intended to be one for threats against the person of another, and asking that the person making the threats be put under bonds to keep the peace. The complaint stated the facts quite fully, and it is claimed includes assault and battery, and petit larceny. Attorney for the defendant claimed that he had the right to a trial jury on these charges. I was not present during the hearing this morning, but Mr. Wilson was associate counsel representing the complaining witness, and it seems that he was not sure on that point. I take it that a jury cannot be demanded in the case where a party is being tried for threats and to be put under bonds to keep the peace, and no matter what the other statements in the complaint might be, still the party could not be convicted of assault and battery or petit larceny where the object was to have him put under bonds to keep the peace. Do you agree with me in this opinion?

Kindly let me know at once regarding the jurisdictional part, as Judge Morgan is very anxious to know before he sets the case for trial.

With very kind regards, I remain,

Yours, very truly, C. B. HENDERSON,
District Attorney of Elko County.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 16, 1904.

CHARLES B. HENDERSON, ESQ., *District Attorney of Elko County, Elko, Nevada.*

MY DEAR SIR: Your favor of the 13th instant, wherein you submit for my opinion the query whether or not a Justice of the Peace has jurisdiction to try a case of putting a party under bonds to keep

the peace for threatening remarks, when said threats were made in another township but within same county, duly received.

Article VI, Section 8, of our Constitution provides, among other things, "that Justice's Courts shall have such criminal jurisdiction as may be prescribed by law."

Section 2531 of our Compiled Laws, provides that "Justice's Courts shall have jurisdiction of the following public offenses, committed within the respective *counties* in which such courts are established"; then enumerates misdemeanors inclusive of the offense in question.

Section 2318 of our Compiled Laws provides that "the Justices of the Peace in their respective townships shall be conservators of the peace, and shall discharge such duties as may be prescribed by law."

It is my opinion that the Justice of the Peace has jurisdiction to try the case in question, by reason of the law above quoted.

I can readily understand how hardship may be worked on the party complained of in certain instances, by reason of having to come personally or by bringing witnesses from a distance, but as to the policy, expediency and wisdom of the law the Legislature is the sole judge, and having the authority to confer jurisdiction on Justices of the Peace throughout the State, having so decreed that they have jurisdiction of the offense in question, even granting that the grounds of action occurred wholly without the township, we are compelled to execute the law as they make it.

As conservators of the peace within their respective townships, as prescribed in Section 2318, I can conceive of no offense more appropriately within the powers and jurisdiction of a Justice as a conservator of the peace than a case of placing a person under bonds, if said person is a dangerous person likely to do bodily harm or disturb the peace.

I believe it is the privilege and right of any person, under our law, to seek the restraining arm of the law to protect himself or property from the threats of another, no matter where such threats are made, providing there are just grounds for such apprehension.

On the other hand, Justices of the Peace should exercise this power vested in them with the greatest of care and precaution, and only in cases wherein it is clear that the party complained of is a dangerous and not a law-abiding citizen. Parties sometimes seek this remedy for revenge, or to satisfy some personal feeling, and at other times to harm parties financially or socially, when no sufficient reasons exist for their alleged apprehensions or fears.

In concurrence with my opinion in interpreting the statutes bearing on the question in point, I might add that it is borne out by the practice in Justice Courts in this section of the State for years, the jurisdiction never being questioned to my knowledge.

The Justice of the Peace is the sole judge of whether or not he will put the party complained of under bonds to keep the peace; and it is further my opinion that, where a complaint may state other offenses for the purpose of showing grounds for apprehension, upon the trial of such action the party complained of cannot be convicted of any of the offenses that therein might be stated.

Respectfully submitted.

JAMES G. SWEENEY, Attorney-General.

ELKO, NEVADA, July 6, 1904.

HON. JAMES G. SWEENEY, *Attorney-General, Carson City, Nevada.*

MY DEAR SIR: I enclose herein copy of three letters—two received by the County Commissioners, and one by Mr. J. A. McBride. These copies will assist you in determining what can be done, if anything, regarding the matter I am writing you on.

You no doubt have read in the papers that one Mr. Pringle, a Government Inspector from the Indian Department, was in Elko last winter looking for a site for an Indian School near Elko. His report was accepted and an appropriation of $75,000 for the establishment of an Indian School was made. It seems, as you will note from the Commissioner's letter of May 26th and of his letter of June 24th, that before they will do anything regarding this site they must secure from the County Commissioners permission to empty the sewerage from the Indian School into a branch or slough of the Humboldt River.

The question which arose in my mind was: What power the County Commissioners had to grant such permission? Every one in the town of Elko, and I think in Elko County generally, are anxious to see the Indian School erected. The County Commissioners are disposed to grant this privilege if it is within their power to do so. At the meeting of the Commissioners yesterday Hon. Thomas Hunter, and Messrs. J. A. McBride, John W. Morrow, A. W. Hesson, Edgar Reinhart, David Casper, and others, all prominent business men of Elko, appeared before the Board and asked that they grant the permission if that would satisfy the Department, and if they did not feel like making an out-and-out grant to simply state that so far as was in their power they granted the right. Mr. Hunter is the party owning the land adjoining the slough in which the sewerage from the Indian School would be emptied, and he states that he cannot see in what respect it can injure him, and he is perfectly willing to release the Government from any damage that it might cause him. It is only in high-water time that the water flows through this branch or slough, and of course during that period it would clean it out and carry the debris and waste matter down the river. The parties above mentioned have been investigating the matter thoroughly, and they cannot see where it would damage anyone.

After going over the proposition thoroughly, it was decided to leave the matter in my hands for investigation, to see what could be done, and to take it up with you. I proposed that, for I knew that you would be willing to help us all you could in this matter, for whatever benefits Elko County will benefit the State of Nevada, and it is not only a local proposition, but it is more—it helps the State, and improves this section of the country in a way. Now, do you know of any law giving the County Commissioners the right to make any such grant? I do not. Again, what effect would it have should the County Commissioners make an order granting the right to the Government? If that satisfied the Government and they put up their buildings on such a grant, could it in any way involve the Commissioners of the County of Elko in a damage suit, should one arise later over this matter? If the Government simply wants a resolution from the Board of County Commissioners granting them the right, would it be against the law for them to make it?

Trusting that you will be able to give me your views on this matter at an early date, I remain, with very kind regards,

Yours, very truly,

CHARLES B. HENDERSON,
District Attorney of Elko County.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, July 13, 1904.

CHARLES B. HENDERSON, ESQ., *District Attorney of Elko County, Elko, Nevada.*

MY DEAR SIR: Your favor of the 6th instant was duly received. A lengthy session of the Board of Pardons, and other official work on hand, precluded me to date from answering the queries in your favor of the 6th instant.

Your queries are in effect, first, as to whether or not there is any law authorizing your County Commissioners to grant a permission to the Government to empty the sewerage from a proposed Indian School, to be erected, into the Humboldt River?

Secondly: "What effect would it have should the County Commissioners make an order granting the right to the Government? If that satisfied the Government and they put up their buildings on such a grant, could it in any way involve the Commissioners of the County of Elko in a damage suit, should one arise later over this matter?"

Thirdly: "If the Government simply wants a resolution from the Board of County Commissioners granting them the right, would it be against the law for them to make it?"

I have carefully examined our statutes, and can find no law which would expressly or otherwise give the Commissioners the right to grant the proposed request.

As you are aware, the powers of Boards of County Commissioners are special and limited. They are, in legal contemplation, inferior tribunals of special and limited jurisdiction, and any action they take must affirmatively appear to be in conformity with some provision of law giving them the power, or it will be without authority. (State v. C. P. R. R. Co., 9 Nev. 79; Godchaux v. Humboldt County, 19 Nev. 415.)

This being so, the effect of such an order or resolution being passed by the Board, as you suggest, would be without authority, and, therefore, totally void and of no effect.

If your Board of Commissioners were to pass such a resolution for the purpose of pleasing the Government, if they are satisfied with such a resolution, I cannot in any way see how such an action on the part of your Commissioners could involve Elko County in a damage suit by reason of such an action; it being thoroughly void, no damage could be recovered.

County Commissioners can only exercise such powers as are especially granted to them, or as may be necessarily incidental for the purpose of carrying such powers into effect (Sadler v. Eureka County, 15 Nev. 39; State v. Washoe County, 6 Nev. 104.)

There is no law specially forbidding the Commissioners from passing such a resolution as you suggest, other than the inhibitions expressed above limiting their authority to the laws as passed and declaring any

act on their part in excess of their specially conferred powers as being absolutely void and of no effect.

It appears to me, in the first place, that the Government should be as interested as any State, county, city, or individual in avoiding the pollution of any river, if the same will prove dangerous, unhealthful or damaging to either individuals or property; that the Government is amply able to avoid such pollution if there is any way to avoid it, and that, if there is a way of avoiding emptying the sewerage into the river so that it will injure no one, it should be done at the expense of the Government, no matter what it would cost. Of course, if emptying the sewerage in the river will not be detrimental to any one and no damage can ensue, why no one can raise any objection to such a proposition.

It further appears to me that the parties to be specially consulted by the Government in this matter should be the parties who own the land adjoining where the sewerage is to be emptied and those to be affected by it, and that they are the ones that should give them the permission, if they so desire. I do not see that the County Commissioners have anything to do with the matter at this time. At any rate, any action they might take as to the proposed request could not bind the county to respond in damages, should it at any time become necessary to take adverse action. If they granted such permission, such action being void, they would not be estopped from taking action in future should any state of circumstances arise which might make action of some kind necessary.

Respectfully submitted,

JAMES G. SWEENEY, Attorney-General.

CASES DECIDED DURING 1902–1903 WHEREIN THE STATE OF NEVADA WAS A PARTY.

[No. 1630.]

STATE OF NEVADA, *ex rel.* GEORGE WATT, *Relator*, v. W. D. JONES, DISTRICT JUDGE OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF NEVADA, AND THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, *Respondent*.

[Reported in 27 Nev. 58.]

Application for writ of certiorari.

This action was brought to review the proceedings in an election contest in Lander County, but was dismissed by the Court because the original petitioner for the writ dismissed the contest sought to have been reviewed, during the pendency of the application for the writ in the Supreme Court.

[No. 1632.]

STATE OF NEVADA, *Respondent* v. ADAMO BURALLI, *Appellant*.

[Reported in 27 Nev. 41.]

The defendant was tried, convicted of murder in the first degree, and sentenced to be hanged, in the District Court of the First Judicial District of the State of Nevada, in and for Lyon County.

A motion for a new trial was denied, and from the order denying the motion for a new trial, Buralli appealed to the Supreme Court, relying upon the following specifications of error: Insufficiency of evidence to support the verdict. Insufficiency of indictment by reason of the venue being laid in and for the "County of Lyon," appellant contending that there is no such county as "County of Lyon," but that said county should have been designated "Lyon County." Error in giving five or six instructions asked for by the prosecution. Also, error in giving certain instructions asked for by the State. The case was argued, briefed and submitted to the Supreme Court, and the judgment of the lower court affirmed. The date of execution was fixed for January 26, 1903, but the State Board of Pardons commuted the sentence to life imprisonment.

[No. 1635.]

Ex Parte J. FINNEGAN.

[Reported in 27 Nev. 57.]

Application for a writ of habeas corpus.

The petitioner was charged with the crime of selling arduous spirits to an Indian, and convicted of an attempt to commit that offense.

The petitioner contended that the judgment was void and the restraint illegal, for the reason that the conviction was of a different offense from that charged. It was contended on behalf of the State that in all cases where the defendant was found guilty of any offense, the commission of which was necessarily included in that with which he was charged in the indictment, that he could be found guilty of an attempt to commit the offense charged.

The Court ruled with the State, dismissing the writ.

[No. 1638.]

STATE OF NEVADA, *ex rel.* H. W. MILES, *et al.*, AS THE BOARD OF SCHOOL TRUSTEES OF THE DELAMAR SCHOOL DISTRICT NO. 18, LINCOLN COUNTY, NEVADA, *Relators*, v. SARAH WEDGE, AS SCHOOL SUPERINTENDENT OF PUBLIC SCHOOLS OF LINCOLN COUNTY, NEVADA, *Respondent*.

[Reported in 27 Nev. 61.]

A demurrer was interposed to the sufficiency of the answer of respondent to the alternative writ and sustained, and respondent given time to file amended answer. This case was subsequently dismissed without prejudice, on relator's motion.

[No. 1643.]

STATE OF NEVADA, *Respondent*, v. ROBERT L. BURNS, *Appellant*.

[Reported in 27 Nev. 289.]

The appellant was tried in the District Court in and for the County of Washoe for the crime of robbery. The jury found a verdict of guilty. He made a motion for a new trial. The Court denied the motion and he appealed to the Supreme Court from the order denying his motion. The grounds of appeal were (1) that the Court misdirected the jury in matters of law; (2) that the verdict was contrary to law; (3) that the verdict was contrary to the evidence. The assignments of error were numerous and without merit. The Court affirmed the judgment of the lower Court, finding that the evidence was amply sufficient to sustain the verdict, and no error sufficient in law to warrant a reversal.

[No. 1647.]

Ex Parte WILLIAM G. BOYCE.

[Reported in 27 Nev. 299.]

Application for a writ of habeas corpus.

The petitioner was arrested, convicted and sentenced for working in an underground mine for more than eight hours in one day, contrary to the provisions of an Act of the Legislature of Nevada, more familiarly known as the "Eight-Hour Law." Upon his failure to pay a fine of $100 imposed he was committed to the custody of the Sheriff. He applied to the Supreme Court for his liberty, contending that his conviction was void because the law conflicted with certain sections of the State Constitution, and also that said Act was in conflict with

certain sections of the Federal Constitution. This case attracted more than ordinary attention, not only in the immediate vicinity from where the case originated, but in all parts of the State. This case was argued, briefed and submitted to the Supreme Court and sustained by a majority of the members thereof as constitutional. The writ was dismissed, and petitioner returned to the custody of the Sheriff.

[No. 1646.]

STATE OF NEVADA, *ex rel.* CITY OF RENO, *Relator*, v. D. B. BOYD, AS COUNTY TREASURER OF WASHOE COUNTY, *Respondent.*

[Reported in 27 Nev. 249.]

This was an application for a writ of mandate requiring the Treasurer of the County of Washoe to place all moneys collected from licenses by the City of Reno in the General Fund of the city, and to hold same subject to the payment of proper warrants. The State contended that one-fourth of said sum should be paid to the State of Nevada; one-fourth of said sum to the County of Washoe, and one-half of said sum should be paid into the Reno General Fund. The Court ordered that the peremptory writ of mandate issue as prayed.

[No. 1656.]

STATE OF NEVADA, *Respondent*, v. FRED ROBERTS, FRANK WILLIAMS, J. P. SEVNER AND T. F. GORMAN, *Appellants.*

[Reported in 27 Nev. 449.]

The defendants were convicted of murder in the first degree and sentenced to be hanged by the neck until they were dead. A motion for a new trial was denied. They appealed to the Supreme Court from the order and judgment, relying mainly on three errors of law alleged to have been committed during the proceedings in the lower Court and assignment of various exceptions taken to the instructions of the Court to the jury. The three main errors were: (1) The admission in evidence of certain photographs of the dead body of the deceased, which tended to prejudice the jury against defendants. (2) The admission of the declarations of the deceased as to the identification of the defendants, when Jack Welsh, deceased, was on his death bed. (3) In denying defendants' challenge to a juror, on the ground that said juror had formed and expressed an unqualified opinion as to the guilt or innocence of the defendants, and in various instructions given by the lower Court to the jury. The Supreme Court reversed the judgment of the lower Court, and gave the defendants a new trial, upon the ground that the lower Court erred in allowing a juror to sit on the case, said juror having been challenged for entertaining an unqualified opinion as to the guilt or innocence of defendants.

[No. 1648.]

STATE OF NEVADA, *ex rel.* FRANK SMITH, *Relator*, v. J. G. CUSHING, SHERIFF OF NYE COUNTY, *Respondent.*

This was an original proceeding for a writ of mandamus.

The matter was submitted to the Court, the decision of which is still pending.

[No. 1659.]

Ex Parte PETER KAIR.

Application for writ of habeas corpus.

The petitioner was arrested, convicted and sentenced for working in a wet-crushing mill for more than eight hours in a day, contrary to the provisions of an Act of the Legislature, commonly called the "Eight-Hour Law." The petitioner claims that the judgment is void, and that he is restrained illegally, because, as he alleges, wet-crushing mills are not unhealthy employments. The matter has been fully briefed, argued and submitted to the Supreme Court, and is still pending therein.

[No. 1657.]

STATE OF NEVADA, *ex rel.* H. C. DANGBERG, *Relator*, v. THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, NEVADA, *Respondents.*

[Reported in 27 Nev. 469.]

This is an application for a writ of mandate against the Board of County Commissioners of Douglas County, Nevada, asking the Supreme Court to compel the Board of County Commissioners to open up a new road through Douglas County, and vacate an old established road.

The Court denied the petition for the writ.

STATE OF NEVADA, *Respondent*, v. THE NEVADA CENTRAL RAILROAD COMPANY, *Appellant.*

This is an action by the State against the Nevada Central Railroad Company, *et al.*, for the taxes due and delinquent for the year 1901. The State recovered a verdict by the jury for $8,063.49, the amount of taxes in delinquency, and judgment was rendered accordingly. The railroad company moved for a new trial. The motion for a new trial was denied and from the judgment and order denying the motion for a new trial, they appealed to the Supreme Court.

The matter is still pending in the Supreme Court, having been argued and submitted on the 18th day of January, 1905.

FEDERAL CASES PENDING WHEREIN THE STATE OF NEVADA IS A PARTY.

IN THE CIRCUIT COURT OF THE UNITED STATES, THE NINTH CIRCUIT OF THE NORTHERN DISTRICT OF CALIFORNIA.

STATE OF NEVADA, *Plaintiff*, *v.* THE FLORISTON PULP AND PAPER COMPANY, A CORPORATION, *Defendant*.

In April, 1904, the State of Nevada commenced suit in the above-entitled Court against the above-named defendant, for a permanent injunction restraining the defendants from emptying into the Truckee River the water from their plant which became inoculated with certain chemicals and acids from their paper works on the Truckee River; also from emptying into said Truckee River refuse and other injurious substances which came from their said manufacturing plant.

The Court granted a temporary injunction, and the order was issued to defendants to show cause why said temporary injunction should not be made perpetual. The defendants answered the complaint by denying that the waters of the Truckee River were in any way injured by any water or substance which came from their plant, contending that such water as ran through their plant into the said Truckee River was not injurious to the waters of said river or to health.

On December 8, 1904, a stipulation was entered into between the respective parties stipulating that the testimony in the above-entitled cause could be taken in Reno or San Francisco before certain United States Commissioners to be appointed by the Court for that purpose. In accordance with the stipulation the Court issued an order that the testimony be taken both in Reno and San Francisco during the months of February, March and April of the year 1905.

At the last session of the Legislature an appropriation of $3,000 was made for the purpose of defraying the expenses to be incurred in this suit. Up to the first of the year, at which time all moneys previously appropriated and which had not been expended reverted into the State Treasury, only $100 of the said $3,000 previously appropriated had been expended and the remaining $2,900 lapsed, by virtue of the law, back into the State Treasury. As the suit is in progress and the testimony to be taken and the expenses to be incurred in the suit will have to be met in paying witnesses, taking depositions, traveling expenses, etc., I respectfully recommend to the Legislature at the present session that immediate action be taken upon this matter, and $3,000 appropriated for the purpose of defraying the expenses of this suit.

RECOMMENDATIONS.

When the present Board of Revenue, consisting of Governor Sparks, Controller Davis and myself, came into office we found that our predecessors, ex-Governor Sadler, ex-Attorney-General Woodburn and Controller Davis had entered into a contract with Trenmor Coffin, now deceased, Alfred Chartz, and James R. Judge to assist the then Attorney-General in a suit pending in the United States Circuit Court wherein the Southern Pacific Railroad Company was plaintiff and the State Board of Assessors of the various counties of Nevada were defendants. The contract entered into with these attorneys is as follows, to wit:

WHEREAS, The Southern Pacific Railroad Company has brought suit against William Kinney and thirteen others, acting as a Board of State Assessors, in the Circuit Court of the United States, Ninth Circuit, District of Nevada; and

WHEREAS, Said Assessors have been enjoined by order of Court from acting in pursuance of law in such case made and provided; and

WHEREAS, The Governor, Attorney-General and State Controller of the State of Nevada, constitute a legally organized Board to enforce the collection of revenue and prosecute delinquents, with certain defined powers and duties; and

WHEREAS, Said last-mentioned Board deem it necessary to defend said action and to employ additional counsel for that purpose:

Now, therefore, these presents witnesseth: That said last-mentioned Board have employed and do hereby employ James R. Judge, Trenmor Coffin and Alfred Chartz as associate counsel to the Attorney-General of the State of Nevada to defend said action in said United States Circuit Court, and as compensation for all their services in defending said action in the United States Circuit Court, do hereby on the part and on behalf of the State of Nevada agree to pay each of said additional counsel the sum of one thousand dollars as follows:

The sum of $250 each as a retainer upon the first meeting of the Board of Examiners in July, 1901, and the further sum of $750 each, if the same is allowed and approved by the Legislature of the State of Nevada to meet at its Twenty-first Session, which said payment said Board will recommend to be made under and by virtue of proper appropriation therefor.

It is mutually understood and agreed that if said Legislature fails to appropriate, or if any subsequent Legislature fails to appropriate, moneys to pay said sum of $750 for each of said additional counsel, that said Board, nor any individual member thereof, shall not be held responsible for the payment thereof.

It is further mutually understood and agreed that in the event said action as aforesaid and now pending in the said Court shall be dismissed or abated without actual trial thereof, then and in that event said payment of two hundred and fifty dollars for each of said additional counsel shall constitute and be full payment for all their said services to date of settlement or abatement

of said action, and for all services performed by them in said action to date.

IN WITNESS WHEREOF, The contracting parties hereto have set their hands and seals, this 29th day of June, 1901.

REINHOLD SADLER, [SEAL]
SAM. P. DAVIS, [SEAL]
W. WOODBURN. [SEAL]

State Board for Enforcing the Collection of Revenue and to prosecute delinquents.

We, the undersigned, agree to the foregoing terms.

JAMES R. JUDGE, [SEAL]
ALFRED CHARTZ, [SEAL]
TRENMOR COFFIN. [SEAL]

Additional counsel employed to enforce the collection of revenue and to prosecute delinquents.

From the above it will be seen that the State, through its regularly authorized revenue officers, entered into a contract with the attorneys therein mentioned. The attorneys received a retainer's fee of $250 each, as stipulated in the contract, and have never been paid the remaining $750, as stipulated in the contract. The attorneys mentioned performed all the services which they had contracted to do for the State and are justly entitled, in my opinion, to their remaining fee of $750 each, said sum, in my opinion, being a reasonable fee for the work contracted to be performed, and which was performed. The State is morally obligated to pay this debt. Its integrity is now at stake, and I heartily recommend that an appropriation of $2,250 be made to meet the fees of these gentlemen in accordance with the above stipulated contract.

During the past two years the volume of work in the Attorney-General's office has largely increased. There is an abundance of correspondence to be attended to in addition to the various duties now imposed by law upon the Attorney-General. Since the passage of the law making the present salary of the Attorney-General the work of the Attorney-General's office has been increased from time to time through certain Acts of the Legislature. Besides acting as a member of the Board of Prison Commissioners; on the Board of State Examiners; representing the State wherein it is a party in our Supreme Court; giving advice to the various State officials; rendering official opinions to the various District Attorneys in the various counties of the State, when called upon so to do by them, the Attorney-General has been placed on the Board of Revenue and the State Board of Irrigation—two new Boards created since the passage of the law creating the present salary of the Attorney-General.

In view of the increased volume of business transacted in this office and the large correspondence, and in further view of the fact that there is no deputy or clerk in this office, I respectfully recommend an appropriation of $2,400 for the ensuing two years for the purpose of allowing the Attorney-General a stenographer and typewriter.

DISTRICT ATTORNEYS' REPORTS.

REPORTS OF DISTRICT ATTORNEYS FOR 1903.

The following is a statement of the criminal business transacted in the several counties of the State during the year 1903, 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.

STILLWATER, December 5, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: 1 for selling fresh beef from wagon without having in his possession and failing to exhibit the hide of the slaughtered animal when requested to do so; 1 for breach of the peace.

Number of persons convicted, and character of punishment: 2. Judgment for fines only.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: None.

Number of prosecutions pending: None.

Cost of prosecutions, $20.

Amount of fines paid, $70.

Respectfully,

W. C. GRIMES,
District Attorney of Churchill County.

DOUGLAS COUNTY.

GENOA, December 2, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: 1 drawing deadly weapon; 1 larceny charged and search warrant issued, but no arrest; 1 obstructing highway; 2 burglary; 1 obtaining money and board under false pretenses; 2 assault with deadly weapon; 2 furnishing whisky to Indians.

Number of persons convicted, and character of punishment: 1 drawing deadly weapon, fined $35 and costs; 1 assault with deadly weapon, sent to State Prison for 18 months; 4 (boys) burglary, plead guilty to petit larceny, and were sent to county jail for 30 days each.

Number of persons acquitted, or as to whom prosecutions were abated

or dismissed: 1 larceny, no arrest, dismissed; 1 assault with deadly weapon, dismissed; 1 burglary, evidence insufficient, case dismissed, or, rather, defendant discharged; 1 obtaining money and board under false pretenses, acquitted; 1 selling whisky to Indians, ignored by Grand Jury; 1 selling whisky to Indians, acquitted; 1 obstructing highway, dismissed by order of County Commissioners.

Number of prosecutions pending: None.

Cost of prosecutions, $1,902.15.

Amount of fines paid, $35.

Respectfully,

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

ELKO COUNTY.

ELKO, January 2, 1903.

To the Honorable the Attorney-General.

DEAR SIR: I have the honor to submit a statement of the criminal business transacted in the County of Elko, State of Nevada, during the year 1903, in accordance with the provisions of the Act of the Legislature approved March 1, 1889:

Total prosecutions in District Court (murder, 1; burglary, 2; assault with intent to kill, 2; housebreaking, 1; forgery, 1), 7.

Convicted, or pleaded guilty (burglary, 2; assault with intent to kill, 1; housebreaking, 1; burglary, 1), 5.

Acquitted (murder, 1; assault with intent to kill, 1), 2.

Average length of sentence, 3 years 9 months.

Cases awaiting action of Grand Jury, 2.

Cost of prosecutions: District Court, $1,930.80; Justice Court, $3,905.60.

Fines collected, $577.88.

Respectfully submitted,

CHARLES B. HENDERSON,
District Attorney of Elko County.

ESMERALDA COUNTY.

HAWTHORNE, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in Esmeralda County during the year ending November 1, 1903:

Number and character of prosecutions: None.

Number of persons convicted, and character of punishment: None.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: None.

Number of prosecutions pending: One. State v. J. W. Lambert. Assault with intent to kill.

Cost of prosecutions: None.

Fines paid: None.

I beg leave to further report that during the year 1903 we have had no Grand Jury, no indictments have been found, and no criminal busi-

ness has been transacted in this county. I am sorry to state that things do not look so favorable for the ensuing year, and since the 1st day of November, 1903, several criminal prosecutions have been commenced.

Respectfully submitted,

GEO. S. GREEN,
District Attorney of Esmeralda County.

EUREKA COUNTY.

EUREKA, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: Extortion by threats, 1; involuntary manslaughter, 1; assault with intent to kill, 2; forgery, 2; petit larceny, 1; malicious mischief, 1.

Number of persons convicted and character of punishment: Assault with intent to kill, 1 (plead guilty and sentenced to serve 6 years and 5 months in State Prison); forgery, 1 (plead guilty and sentenced to 3 years and 7 months in State Prison); malicious mischief, 1 (fined $1 and costs, paid).

Number of persons acquitted or as to whom prosecutions were abated or dismissed: Extortion by threats, 1 (Grand Jury failed to indict); involuntary manslaughter, 1 (Grand Jury failed to indict); assault with intent to kill, 1 (Grand Jury failed to indict); forgery, 1 (Grand Jury failed to indict); petit larceny, 1 (goods recovered and case dismissed).

Number of prosecutions pending: None.

Cost of prosecutions, about $310.

Amount of fines paid, $1.

Respectfully, JOHN HANCOCK,
District Attorney of Eureka County.

HUMBOLDT COUNTY.

WINNEMUCCA, Dec. 14, 1903.

To the Honorable the Attorney-General.

DEAR SIR: The subjoined report covers the criminal prosecutions in this county instituted by this office during the period ending November 30, 1903. During that period there have been three separate District Attorneys as follows:

Bert L. Hood, December 1, 1902, to January 7, 1903.

F. X. Murphy, January 7 to April 7, 1903.

H. Warren (present incumbent), April 8th to date.

I have been unable to give a full statement of the cost attending these prosecutions for the reason that several suits involving consid-

erable sums are pending against the county for fees on cases arising prior to my incumbency.

I will furnish at some future time, that is as soon as the evidence is satisfactorily settled, the other data reqired by the statute.

Trusting that this is satisfactory, I am

Very respectfully yours, H. WARREN,
District Attorney of Humboldt County.

PROSECUTIONS.

Murder, 7; assault with intent to kill, 6; robbery, 2; burglary, 3; housebreaking, 1; rape, 1; grand larceny, 2; selling whisky to Indians, 5; forgery, 2. Total, 29.

Number of persons convicted, 12. Average punishment, 3 years 12½ days. Persons acquitted, 3. Cases dismissed by Grand Jury, 13. Cases dismissed by order of Court, 2. Prosecutions pending, 5. Cost of such prosecutions to the county, $8,124.42. Amount of fines paid therein, $787.15.

CHARACTER OF PROSECUTIONS.

State of Nevada v. James Kerrigan and Fred Barnes. Charge, burglary. Indicted January 12, 1903. Fred Barnes pleaded guilty February 7, 1903. Charge dismissed against James Kerrigan on motion of District Attorney, February 1, 1903.

State of Nevada v. José Andorza, Victor Rubianas and Jerardo Neveran. Indictment on charge of Grand Jury presented January 12, 1903. José Andorza forfeited his bail, not appearing for arraignment and is yet a fugitive. Victor Rubianas and Jerardo Neveran were tried jointly commencing February 2, 1903. Jury returned verdict of not guilty February 14, 1903.

State of Nevada v. William Currier. Fugitive. Indicted January 12, 1903. Charge, forgery. Defendant not apprehended.

State of Nevada v. Harry Dimar. Charge, murder. Trial commenced February 10, 1903. Verdict of not guilty returned February 11, 1903.

State of Nevada v. W. F. Davis. Indicted July 23, 1903. Charge, housebreaking. Allowed to withdraw plea of not guilty and enter plea of guilty of petit larceny, July 24, 1903. Sentence, $200, or one day imprisonment in county jail for every $2 thereof in case of default in payment.

State of Nevada v. F. W. Duncan. Charge, selling whisky to Indians. Indicted July 23, 1903. Dismissed on motion of District Attorney August 12, 1903.

State of Nevada v. F. Murphy and Hanley. Charge, burglary. Trial commencing August 14, 1903. Verdict of guilty as charged returned August 15, 1903. Sentenced August 17, 1903, to five years each.

State of Nevada v. W. R. Fitts. Charge, assault with intent to kill. Dismissed by the Grand Jury.

State of Nevada v. James Creegan Crane. Charge, forgery. Indicted July 23, 1903. Plead guilty October 12, 1903. Sentenced October 12, 1903, to five years imprisonment in State Prison. True name given as James Creegan.

State of Nevada v. William Adams and F. Winters. Charge, burglary. Indicted August 13, 1903. Adams plead guilty and Winters

plead not guilty. August 15th Winters withdrew plea of not guilty and entered plea of guilty. August 17, 1903, Winters withdrew plea of guilty and entered plea of not guilty. August 17, 1903, Winters tried; same day verdict of guilty as charged returned against F. Winters. August 18, 1903, both defendants sentenced—William Adams to three years in State Prison; F. Winters four years in State Prison.

State of Nevada v. Chas. Preea. Charge, selling whisky to Indians. Dismissed by Grand Jury.

State of Nevada v. Fred Roberts, Frank Williams, J. P. Sevener, and T. F. Gorman. Charge, murder. Indicted September 2, 1903. Trial commenced October 16, 1903. Convicted of murder in the first degree November 7, 1903. Sentenced November 16, 1903.

State of Nevada v. José Mandola. Charge, assault with intent to kill. Indicted September 1, 1903. Defendant plead guilty September 2, 1903. September 2, 1903, sentenced to 17 years in State Prison.

PROSECUTIONS PENDING.

State of Nevada v. Frank Williams, *et al.* Indictment No. 2. Indicted August 28, 1903. Charge, robbery. Plea of not guilty by each defendant.

State of Nevada v. Frank Williams, *et al.* Charge, robbery. Plea of each defendant not guilty.

State of Nevada v. G. Savornin. Charge, murder. Held to answer.

State of Nevada v. William Currier. Charge, forgery. Not apprehended.

State of Nevada v. Hugh Hutchinson. Charge, accessory to murder. Still pending.

CASES DISMISSED BY GRAND JURY.

State of Nevada v. Frank Huston. Charge, selling whisky to Indians.

State of Nevada v. J. G. Tomlenson. Charge, selling whisky to Indians.

State of Nevada v. Frank Sage. Charge, murder.

State of Nevada v. Randall Sage. Charge, murder.

State of Nevada v. Perry Boyd. Charge, murder.

State of Nevada v. Clary Langford. Charge, murder.

State of Nevada v. Frank Sage. Charge, assault with intent to kill.

State of Nevada v. Perry Boyd. Charge, assault with intent to kill.

State of Nevada v. Clay Langford. Charge, assault with intent to kill.

State of Nevada v. Larence Thomas. Charge, rape.

LANDER COUNTY.

AUSTIN, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: Disturbing peace, 84;

assault and battery, 3; selling whisky to Indians, 2; herding sheep in town limits, 2; incest, 1; assault with deadly weapon, 1; malicious mischief, 1; practicing medicine without license, 11; killing deer out of season, 4; housebreaking, 1.

Number of persons convicted, and character of punishment: Total in all Justice Courts, 82, of which 17 paid fines, 64 imprisoned in county and Argenta township jails, and 4 held to answer to Grand Jury.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Twenty-eight cases dismissed in Justice Court. Three cases Grand Jury did not indict.

Number of prosecutions pending: Case of incest pending; defendant not in custody, having given cash bail and forfeited the same.

Cost of prosecutions, $1,759.95.

Amount of fines paid, $1,671.

Respectfully, H. E. DRISCOLL,
District Attorney of Lander County.

LINCOLN COUNTY.

PIOCHE, December 31, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Following you will find my report of all criminal business which has come before the Fourth Judicial District Court of the State of Nevada, in and for Lincoln County, during the year 1903:

I submit this report in accordance with Section 2313 of the Compiled Laws of 1900:

The State of Nevada, plaintiff, v. Quinto Borlando, defendant. Indicted by the Grand Jury with the charge of an assault with intent to kill. The case was tried by a petit jury April, 1903, and acquitted.

The State of Nevada, plaintiff, v. John Giusti, defendant. Charged with perjury. He was acquitted by the Grand Jury.

The State of Nevada, plaintiff, v. W. L. Scott and A. Parker, defendants. Charged with an assault with attempt to kill. A. Parker was acquitted, and W. L. Scott was convicted, or indicted by the Grand Jury. W. L. Scott was tried by a petit jury and convicted, and sentenced by the Court for five years in the State Prison.

The State of Nevada, plaintiff, v. Cochie Sigmiller, an Indian, defendant. Charged with murder, and indicted by the Grand Jury. Defendant pleaded guilty, and the Court took testimony, and, after duly considering it, sentenced the defendant to be hanged.

To the Honorable the Board of Pardons in and for the State of Nevada: The consensus of opinion in this county is that the sentence of Cochie Sigmiller should be commuted to a number of years in State Prison, designated by you.

Respectfully, BENJ. SANDERS,
District Attorney of Lincoln County.

LYON COUNTY.

DAYTON, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: Murder, 1; breaking jail, 1; aiding prisoner to escape, 1; violating "Eight-Hour Law," 2; assault and battery, 3; disturbing the peace, 5.

Number of persons convicted and character of punishment: Murder, 1 (sentence, death; commuted to imprisonment for life by Board of Pardons); breaking jail, 1 (sentence, 2½ years in State Prison); violating "Eight-Hour Law," 2 (sentence, first case, $100 fine; dismissed on appeal in District Court on ground of unconstitutionality of law; second case now pending in Supreme Court); assault and battery, 3 (imprisonment in county jail; average, 15 days each); disturbing peace, 5 (imprisonment in County Jail, 10 days—average).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Aiding prisoner to escape, 1 (ignored by Grand Jury).

Number of prosecutions pending: Violating "Eight-Hour Law," 1 (now pending in the Supreme Court).

Cost of prosecutions, $2,173.

Amount of fines paid: None.

Respectfully,

JOHN LOTHROP,
District Attorney of Lyon County.

ORMSBY COUNTY.

CARSON CITY, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: Assault and battery, 3; making threats against life, 1; burying body without permit, 1; burglary, 2; manslaughter, 1; disturbing peace, 1.

Number of persons convicted, and character of punishment: Assault and battery 2, (fines of $40 and $100 imposed); making threats, 1 (placed under bonds); burying body without permit, 1 (fined $50); burglary, 1 (sentenced 1 year); disturbing the peace, 1 (fined $5).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Assault and battery, 1 (case dismissed); manslaughter, 1 (charge ignored by Grand Jury); burglary, 1 (charge ignored by Grand Jury).

Number of prosecutions pending: None.

Amount of fines paid, $155.

Respectfully,

E. E. ROBERTS,
District Attorney of Ormsby County.

STOREY COUNTY.

VIRGINIA CITY, November 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: For violations of city ordinances, 18; drunkenness, 11; drunk and disorderly, 7; for statutory crimes, 8; assault and battery, 2; assault with intent to kill, 1; turning in false alarm of fire, 1; vagrancy, 3; selling goods without license, 1.

Number of persons convicted, and character of punishment: For violations of city ordinances all convicted, imprisoned in county jail or fined ($274 paid in fines); assault with intent to kill, dismissed by Justice on motion of District Attorney, not sufficient evidence to prosecute; assault and battery, both convicted, paid $30 fine; turning in fire alarm, convicted, paid $10 fine; vagrancy, 2 convictions, 1 acquittal (imprisonment in county jail); selling goods without a license, convicted, paid $25 fine.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Vagrancy, 1 acquitted; assault with intent to kill, dismissed after hearing at preliminary examination by Justice on motion of District Attorney, not sufficient evidence to warrant prosecution.

Number of prosecutions pending: None.

Amount of fines paid, $339.

Respectfully, GEO. D. PYNE,
District Attorney of Storey County.

WHITE PINE COUNTY.

ELY, December 1, 1903.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1903:

Number and character of prosecutions: Simple assault, 2; assault with intent to kill, 1.

Number of persons convicted, and character of punishment: William Lloyd, convicted of assault, fined $250 and costs, paid; Dan Hendrix, convicted of assault, fined $10 and costs, paid.

Number of prosecutions pending: Assault with intent to kill, 1 (Mike Ahern).

Cost of prosecutions, $300.

Amount of fines paid, $260.

Respectfully, CHAS. A. WALKER,
District Attorney of White Pine County.

REPORTS OF DISTRICT ATTORNEYS FOR 1904.

The following is a statement of the criminal business transacted in the several counties of the State during the year 1904, 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.

FALLON, December 17, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: Burglary, 1; petit larceny, 2; assault, 1.

Number of persons convicted, and character of punishment: Petit larceny, 2 (one fined $25, served in jail 12 days; one fined $1 and costs, paid fine); assault, 1 (paid fine, $3).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Burglary, 1 (jury failed to agree; defendant released on his own recognizance).

Number of prosecutions pending: Grand larceny, 1; assault with intent to kill, 2; assault with intent to rob, 2.

Cost of prosecutions, $325.

Amount of fines paid, $4.

Respectfully,

W. C. GRIMES,
District Attorney of Churchill County.

DOUGLAS COUNTY.

GENOA, December 1, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: 3 cases of assault and battery; 3 cases of disturbing the peace; 3 cases of carrying concealed weapons; 1 case of assault with deadly weapon; 1 case of petit larceny; 2 cases of violating the 12 o'clock closing law; 1 case of issuing search warrant in suspected larceny case; 1 case of burglary; 1 case of furnishing spirituous liquor to Indian. Total number of prosecutions, 16.

Number of persons convicted, and character of punishment: 1 per-

son convicted of burglary (5 years in State Prison); 1 person convicted of furnishing liquor to Indian (2 years in State Prison); 3 persons convicted of carrying concealed weapons (1 sentenced to county jail for 30 days; other two fined each $20 and costs); 2 persons convicted of disturbing the peace (1 fined $5 and costs, the other $15 and costs); 1 person convicted of violating 12 o'clock closing law (fined $50 and costs); 1 person convicted of petit larceny (25 days in county jail); 1 person convicted of assault and battery (fined $5 and costs). Total number of convictions, 10.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Two persons acquitted of assault and battery; 1 person, case dismissed, disturbing the peace; 1 person charged with assault with deadly weapon, charge withdrawn by complainant; 1 person acquitted of violating 12 o'clock closing law; search warrant disclosed nothing sufficient to base larceny on, charge abandoned. Total number of persons acquitted, or otherwise, 6.

Number of prosecutions pending: None.

Cost of prosecutions, $1,556.75.

Amount of fines paid, $115.

Respectfully,

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

EUREKA COUNTY.

EUREKA, December 1, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: Assault and battery, 2; assault with a deadly weapon, 1; housebreaking, 1; disturbing the peace, 3.

Number of persons convicted, and character of punishment: Assault and battery, 1 (plead guilty, fined $10 and costs); disturbing the peace, 3 Indians (fined $24 and $9 costs each; 2 paid fine and costs, 1 served 12 days in county jail).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Assault and battery, 1 (dismissed).

Number of prosecutions pending: Assault with a deadly weapon, 1; housebreaking, 1.

Cost of prosecutions, $100.

Amount of fines paid, $58.

Respectfully,

JOHN HANCOCK,
District Attorney of Eureka County.

HUMBOLDT COUNTY.

WINNEMUCCA, November 28, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to the statute in such case made and provided, I hereby submit my annual report as District Attorney of Humboldt County for the period ending December 1, 1904, as follows, to wit:

Number of persons prosecuted, 8.
Number of persons convicted, 6.
Number of persons acquitted, 2.
Average punishment, 4 years 8 months.
Number of prosecutions pending: None.
Number of cases dismissed: None.
Cost of prosecutions: Grand Jury fees, $360.60; Grand Jury fees, $130.20; Trial Jury fees, $1,527.60; Court orders, $600. Total $2,618.40.
Transferred from Humboldt County to Washoe County: Indictments, 3; persons indicted, 3; convicted, 4; awaiting trial, 1. Cost (estimated), $2,800.
Fines collected: None.

Respectfully,

H. WARREN,
District Attorney of Humboldt County.

LANDER COUNTY.

AUSTIN, December 20, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

JUSTICE COURT—AUSTIN TOWNSHIP.

Number and character of prosecutions: Disturbing peace, 8; housebreaking, 1; grand larceny, 1; soliciting without a license, 1; carrying a concealed weapon, 1; assault and battery, 1; drawing a deadly weapon, 1; petit larceny, 1; malicious mischief, 1; breaking out of quarantine, 1.
Number of persons convicted, and character of punishment: 9 were fined.
Number of persons acquitted, or as to whom prosecutions were abated or dismissed: 7 dismissed.
Number of prosecutions pending: 1.
Cost of prosecutions, $149.25.
Amount of fines paid, $22.

JUSTICE COURT—ARGENTA TOWNSHIP.

Number and character of prosecutions: White men, 30; Negroes, 3; Indians, 42; vagrants, 5; assault, 15; drunks, 18. Total, 75.

Number of persons convicted, and character of punishment: Convicted, 55 (punished by imprisonment).
Number of persons acquitted, 19.
Number of prosecutions pending: None.
Amount of fines paid, $12.

Respectfully,

H. E. DRISCOLL,
District Attorney of Lander County.

LINCOLN COUNTY.

PIOCHE, December 17, 1904.

To the Honorable the Attorney-General.

DEAR SIR: There have been no criminal cases in this (Lincoln) county, State of Nevada, during the year ending December 1, 1904.

There have been no fines paid in the District Court.

I believe there have been some small fines paid in the several Justice Courts. Of these I have no record, and do not know anything about them.

Respectfully,

BENJ. SANDERS,
District Attorney of Lincoln County.

LYON COUNTY.

DAYTON, November 22, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: Assault and battery, 3; disturbing the peace, 7; murder, 1. Total, 11.

Number of persons convicted, and character of punishment: Assault and battery, 2; disturbing the peace, 7. Fine and imprisonment in the county jail.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Assault and battery, 1.

Number of prosecutions pending: Murder, 1.

Cost of prosecutions, $265.50.

Amount of fines paid, $48.

Respectfully,

JOHN LOTHROP,
District Attorney of Lyon County.

ORMSBY COUNTY.

CARSON CITY, December 1, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annuals report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: 2 assault and battery cases; 3 cruelty to animals cases; 1 maintaining a public nuisance case; 1 man placed under bonds to keep the peace.

Number of persons convicted, and character of punishment: 2 assault and battery cases ($10 fine imposed); 3 cruelty to animals cases (50 days sentences imposed); 1 maintaining public nuisance ($1 fine and abatement).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: None.

Number of prosecution pending: None.

Amount of fines paid, $53.

Respectfully,

E. E. ROBERTS,
District Attorney of Ormsby County.

STOREY COUNTY.

VIRGINIA CITY, December 31, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1904:

Number and character of prosecutions: Assault with intent to kill, 3; assault and battery, 4; petit larceny, 3; selling goods without license, 1; carrying concealed weapon, 1; assault, 1; vagrancy, 1. Violations of city and town ordinances: 9 cases of drunk and disorderly conduct; 1 case of using profane language.

Number of persons convicted and character of punishment: Selling goods without license, 1 (fined $25, fine paid); assault and battery, 1 (sentenced to 20 days in county jail); assault and battery, 2 (fined $20, fine paid); petit larceny, 1 (fined $60, served 30 days in county jail); petit larceny, 1(fined $100, served 50 days in county jail); petit larceny, 1 (fined $20, served 10 days in jail); petit larceny, 1 (fined $30 or 15 days in jail, served time); carrying concealed weapon, 1 (fined $2 and imprisoned 180 days in county jail); 9 cases of drunk and disorderly (average punishment, 14 days in jail); 1 case of using profane language ($10 fine, fine paid).

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: 1 case of assault with intent to kill (dismissed); 1 case of assault with intent to kill (bound over to Grand Jury and ignored); 1 case of assault (dismissed); 1 case of assault with intent

to kill (bound over to Grand Jury and ignored); 2 cases of petit larceny (dismissed on motion of District Attorney).

Number of prosecutions pending: None.

Cost of prosecutions, $549.85.

Amount of fines paid, $55.

Respectfully,

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

WHITE PINE COUNTY.

ELY, December 21, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this County during the year ending November 1, 1904:

Number and character of prosecutions: 1 habeas corpus application (applicant, Mike Ahern; writ refused); 1 petty larceny (defendant, Mike Ahern; appeal from Justice Court; defendant acquitted).

Number of persons convicted, and character of punishment: None.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: 1 (Mike Ahern; see above).

Number of prosecutions pending: None.

Cost of prosecutions, $150.

Amount of fines paid: None.

Respectfully,

CHAS. A. WALKER,
District Attorney of White Pine County.

WASHOE COUNTY.

RENO, November 30, 1904.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law, I herewith submit my annual report of the criminal business transacted in Washoe County during the year ending November 1, 1904:

NUMBER AND CHARACTER OF PROSECUTIONS AND CONVICTIONS IN THE SEVERAL JUSTICE COURTS OF THE COUNTY.

Reno Township—On charges of vagrancy, 385; disturbing the peace, 439; assault and battery, 39; cheating, 1; malicious mischief, 2; petit larceny, 40; carrying concealed weapons, 12; other misdemeanors, 16; held to answer on various felony charges, 29.

Wadsworth Township—On charges of vagrancy, 45; disturbing the peace, 130; assault and battery, 11; carrying concealed weapons, 3; petit larceny, 15; nuisances, 4; malicious mischief, 1; various other misdemeanors, 44; held to answer on various felony charges, 6.

Verdi Township—On charges of vagrancy, 150; drunk and disorderly conduct, 60; disturbing the peace, 19; assault and battery, 7; petit

larceny, 3; carrying concealed weapons, 3; vending goods without license, 1; held to answer on charge of felony, 1.

PERSONS CONVICTED IN THE DISTRICT COURT, AND CHARACTER OF PUNISHMENT.

James McAndrews, liquor to Indians, 2 years in State Prison; M. K. Hastings, grand larceny, 2 years in State Prison; Wm. E. Parker, forgery, 1¼ years in State Prison; John Pickett, liquor to Indians, 1½ years in State Prison; Jack Gerdes, burglary, 5 years in State Prison; Frank Benites, liquor to Indians, 3 years in State Prison; James Harris, burglary, 5 years in State Prison; F. H. Franklin, housebreaking, 1¼ years in State Prison; John Reade, assault to kill, 14 years in State Prison; Charles Wallace, obtaining money under false pretenses, 6 years in State Prison; Daniel O'Doane, bigamy, 5 years in State Prison; Ed. West, grand larceny, 2 years in State Prison; Robert Brooks, burglary, 5 years in State Prison; Frank McCauley, burglary, 7 years in State Prison; M. Uyeda, assault with intent to do a bodily injury, 2 years in State Prison; Geo. Rubin, assault with intent to commit rape, 14 years in State Prison.

Number of persons discharged by Grand Jury, 5.

Number of persons acquitted by trial jury, 5.

Number of persons dismissed on motion of District Attorney, for want of sufficient evidence to proceed to trial, 3.

Number of prosecutions pending, 5.

Cost of prosecutions in Justice and District Courts (approximated), $14,500.

Amount of fines paid, $520.

Respectfully,

W. H. A. PIKE,
District Attorney of Washoe County.


TYPOGRAPHICAL
UNION
LABEL
WASHOE No. 65