STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1911=1912

GEO. B. THATCHER, Attorney-General

CARSON CITY, NEVADA
STATE PRINTING OFFICE . . . JOE FARNSWORTH, SUPERINTENDENT
1913


TYPOGRAPHICAL
UNION
LABEL
WASHOE

LETTER OF TRANSMITTAL

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 31, 1912.

To His Excellency, TASKER L. ODDIE, *Governor of Nevada*.

SIR: Pursuant to the provisions of section 4132, Rev. Laws, I have the honor to herewith submit my report as Attorney-General of the State of Nevada for the years 1911 and 1912.

Very respectfully, GEO. B. THATCHER,
Attorney-General.

ATTORNEYS-GENERAL OF NEVADA

G. A. Nourse	1865–1866
R. M. Clarke	1867–1870
L. A. Buckner	1871–1874
John R. Kittrell	1875–1878
M. A. Murphy	1879–1882
W. H. Davenport	1883–1886
J. F. Alexander	1887–1890
J. D. Torreyson	1891–1894
R. M. Beatty[1]	1895–1896
J. R. Judge[2]	1896–1898
W. D. Jones[3]	1899–1901
William Woodburn	1901–1902
J. G. Sweeney	1903–1906
R. C. Stoddard	1907–1910
Cleveland H. Baker[4]	1911–1912
Geo. B. Thatcher[5]	1912–

[1]Died December 10, 1896.
[2]J. R. Judge appointed to fill unexpired term, December 24, 1896.
[3]Resigned January 15, 1901, and William Woodburn appointed on the same day to fill the unexpired term.
[4]Died December 5, 1912.
[5]Geo. B. Thatcher appointed to fill unexpired term, December 6, 1912.

OFFICE FORCE

Geo. B. Thatcher	Attorney-General
Edward T. Patrick	Deputy Attorney-General
Bertha S. Cohen	Stenographic Clerk

REPORT OF THE ATTORNEY-GENERAL

RAILROAD COMMISSION OF NEVADA

During the period embraced in this report the Attorney-General assisted the Railroad Commission in the following manner:

He attended the Fourth-Section hearing before the Interstate Commerce Commission at Washington in March, 1912. This was a very important matter. Some thirteen transcontinental roads applied to the Interstate Commerce Commission for exemption from the long-and-short-haul clause of the amended fourth section.

These cases are now pending in the U. S. Supreme Court.

Also, at the same time, a further hearing was had in the Reno case.

Again in May, 1912, a still further hearing in the Reno case was had, the result being concessions by the railroads amounting to about $50,000 annually to the people of this State.

CASES IN THE SUPREME COURT DURING THE PERIOD OF THIS REPORT WHEREIN THE STATE OF NEVADA WAS A PARTY

State of Nevada v. Robert Jorme and Ed. Malone. Burglary. Appeal from Washoe County. Judgment affirmed.

State of Nevada v. Fred Skinner. Murder. Appeal from Nye County. Appellant's and respondent's brief have been filed and the case was set for argument December 7, 1912. Owing to the death of Mr. Baker and the fact that the present Attorney-General was attorney for appellant, the matter has been continued to permit appellant time to engage other counsel.

State of Nevada v. Bernard Clark. Accessory to murder. Appeal from Humboldt County. Submitted.

Frank Golden v. Mark Averill, Judge, etc. Prohibition. Appeal from Nye County. Dismissed on motion of petitioner.

State v. Bob Orr. Assault with deadly weapon. Appeal from White Pine County. Affirmed.

State v. H. R. Kruger. Forgery. Appeal from White Pine County. Reversed.

State v. Frank Bauer. Burglary. Appeal from White Pine County. Affirmed.

State v. John Prosole. Appeal from Washoe County. Dismissed pursuant to stipulation.

State, ex rel. Springmeyer, v. Baker. Quo warranto. Dismissed on motion of relator.

State, ex rel. Legate, v. Josephs. Quo warranto. Judgment for respondent.

In re Albert W. Lewis. Habeas corpus. Writ denied.

In re William J. Hose. Habeas corpus. Writ denied.

State, ex rel. Howell, v. Wildes. Mandamus. Writ denied.

Ex parte Ah Pah. Habeas corpus. Writ denied.

Ex parte Oscar J. Smith and W. E. Griffin. Habeas corpus. Petitioners discharged.

Oscar J. Smith and W. E. Griffin, v. Second Judicial District Court and Thomas F. Moran, District Judge. Prohibition. Writ denied and temporary restraining order vacated.

State, ex rel. Mighels, v. Eggers. Mandamus. Pending.

Ex parte Oscar J. Smith, W. E. Griffin, C. H. Gorman and F. H. Golding. Habeas corpus. Petitioners discharged.

Ex parte John Hancock. Habeas corpus. Petitioner discharged.

Ex parte A. L. Spencer. Habeas corpus. Petitioner discharged.

State, ex rel. Mills, v. McMillan. Mandamus. Writ issued.

State v. John Carey. Assault. Appeal from Washoe County. Reversed.

State v. F. H. Wichman. Murder. Appeal from Washoe County. Appeal dismissed.

State v. University Club. Selling liquors without license. Appeal from White Pine County. Submitted.

State v. Nimrod Urie. Murder. Appeal from Humboldt County. Affirmed.

J. C. Breckenridge v. S. H. Lamb, Sheriff of Humboldt County. Habeas corpus. Writ denied.

Ex parte J. Frank Tramner. Habeas corpus. Writ denied.

State v. M. J. Smith. High-grading. Appeal from Esmeralda County. Affirmed.

State v. William Dye. Arson. Appeal from Elko County. Submitted.

State v. Frank Williams. Gambling. Appeal from Humboldt County. Affirmed.

State v. C. W. King. White slavery. Appeal from Washoe County. Affirmed.

State, ex rel. Allen, v. Brodigan. Mandamus. Writ denied.

State v. Andriza Mircovich. Murder. Appeal from Nye County. Submitted.

Ex parte Earl Simmons, Bert Simmons and Charles Simmons. Habeas corpus. Writ denied.

Ex parte Z. M. Taylor. Habeas corpus. Submitted.

Ex parte L. P. Rounds. Habeas corpus. Submitted.

State v. Herbert Towers. Obtaining money under false pretenses. Appeal from Esmeralda County. Pending.

State, ex rel. Springmeyer, v. Brodigan. Prohibition. Writ issued.

State, ex rel. Eggers, v. Esser, et al. Mandamus. Submitted.

State, ex rel. Norcross, v. Eggers. Mandamus. Order for issuance of peremptory writ.

IN THE DISTRICT COURT OF THE UNITED STATES

The Pullman Company, a Corporation, v. William M. Weathers, Assessor of Elko County, et al. This is an action brought against the Assessors of Elko, Esmeralda, Nye and Mineral Counties for an injunction to restrain them from seizing and selling for taxes personal property of the complainant to satisfy an assessment made by the said Assessors, respectively, upon its personal property in each of their counties. This case is pending upon a motion for restraining order.

CASES IN THE DISTRICT COURTS

In the Sixth Judicial District, Humboldt County. E. H. Winters v. W. M. Kearney and Thomas Nelson. To settle water rights. Pending.

In the Ninth Judicial District, White Pine County. H. Byrd Northrup v. W. M. Kearney and H. A. Comins. To settle water rights. Pending.

In the Second Judicial District, Washoe County. Nevada and California Land and Livestock Company, a Corporation, v. C. L. Deady, as Surveyor-General and ex officio Land Register of Nevada. To quiet title to certain real estate. This was an amicable action brought at the suggestion of the Attorney-General to correct a mistake in description of certain land, which the State sold under contract a number of years since. The error was made in the course of probate proceedings and, although it involved but forty acres, the State Land Register could not issue deed for a large body of land held on contracts by the same purchaser. As a result of this proceeding, the title was made perfect and the Land Register issued his deed for the entire tract.

CASES IN JUSTICE COURTS

During the month of December, 1912, the State Police arrested seven men at National, Humboldt County, for gambling, and filed complaints against them in the Justice Court of Judge Shea at National. As the District Attorney of Humboldt County, Hon. J. A. Callahan, was engaged in the trial of a murder case and had no deputy to send to attend the preliminary hearing of these cases, and as it was impossible, owing to press of business, for the Attorney-General or his deputy to be present, the Attorney-General, acting under authority conferred upon him by sections 4135-4136, Rev. Laws, appointed Hon. M. S. Bonnifield and Hon. T. A. Brandon, Deputy Attorneys-General for the preliminary hearing of these cases. The result was that all of the defendants, except one who confessed, were bound over to await the action of the Humboldt County grand jury.

IN THE MATTER OF THE ESTATE OF HIRAM CHASE, DECEASED

During his incumbency of the office of Attorney-General, the Hon. R. C. Stoddard filed in the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, his information for and on behalf of the State of Nevada for judgment and decree therein,

adjudging that the estate of said deceased has escheated and vested in the State of Nevada pursuant to law.

Said information alleged that on or about the 15th day of April, 1905, said Hiram Chase died intestate at the town of Elko, State of Nevada, being at the time of his death a resident thereof and leaving an estate therein consisting of both real and personal property; that one John W. Yowell was duly appointed administrator of said estate and entered upon the discharge of his duties as administrator; that said Hiram Chase left surviving him no heirs, no representatives, no legatees nor devisees, capable of inheriting or of holding his property and estate, and since the death of said deceased there is no owner of or other person interested in said estate and property capable of holding, owning, inheriting or succeeding to the same; but, on the contrary, at the time of the death of said decedent, said estate and property, and the whole and every part and parcel thereof, escheated to and vested in the State of Nevada; that various persons appeared in this matter claiming to be heirs-at-law of the said Hiram Chase; that none of said persons are of kin, heirs-at-law, representatives or legatees of said decedent or capable of inheriting or holding said estate and that their claims are invalid and groundless, and praying judgment that the whole of said estate has escheated to and is vested in the State of Nevada.

During the year 1912 such proceedings were had that judgment was entered in said cause in accordance with the prayer of the complaint.

The cash in the hands of said administrator, less his lawful expenses and commissions, was turned over to the Treasurer of the State of Nevada, less his lawful expenses and commissions. On December 12, 1912, after due notice, the real estate belonging to said estate was sold at public auction by the Sheriff of Elko County, which said sale was confirmed by the court and the amount realized therefrom, less the expenses and commission of the Sheriff, was also turned over to said Treasurer.

The total amount thus received from the said estate and placed in the State Treasury to the credit of the public school fund, in accordance with law, is $25,000.66.

This matter was brought to a very successful issue through the efforts of the late Attorney-General, Cleveland H. Baker.

OPINIONS OF THE ATTORNEY-GENERAL

Section 4130, Rev. Laws, provides: "When required, the Attorney-General shall give his opinion, in writing, upon any question of law, to the Governor, the Secretary of State, Controller, Treasurer, Surveyor-General, the Trustees, Commissioners, or Warden of State Prison, hospital, or asylum, or the officers of any state institution whatever, and to any District Attorney, upon any question of law, relating to their respective offices."

During the past two years 134 written opinions have been prepared by this office in response to inquiries submitted by various state officers and others, a summary of which is as follows:

Auditors and Recorders	1
Bureau of Industry, Agriculture and Irrigation	1
Clerk of the Supreme Court	1
Controller	12
County Assessors	3
District Attorneys	30
District Judges	1
Governor	14
Justices of the Peace	3
Lieutenant-Governor	1
Miscellaneous	26
Secretary of State	20
Sheriffs	5
State Board of Examiners	2
State Board of Health	1
State License and Bullion Tax Agent	5
Superintendent of Public Instruction	3
Surveyor-General	1
Treasurer	2
University of Nevada	1
Virginia City School of Mines	1
Warden of State Prison	1
Total	134

In explanation of some of the opinions which are given to various county officers, of whom the District Attorney is the proper legal adviser, let me say that usually the officer making the inquiry was not satisfied with the advice of the District Attorney, and by agreement the matter was referred to this office for final action.

A large part of the opinions listed above as "Miscellaneous" were in answer to inquiries from nonresidents of this State on matters of public interest.

The said opinions are published here in full, with the exception of some few which were either duplications, or considered of not sufficient importance to justify publication, or were omitted for reasons of public policy.

In addition to the following opinions, the Attorney-General, or his deputy, has been in daily consultation with one or more of the officers, of whom he is the legal adviser, on matters of great public importance.

Legislature—Temporary Adjournment.

During the session of the Legislature, either house may adjourn from Thursday until the following Monday without the consent of the other.

CARSON CITY, January 27, 1911.

HON. TASKER L. ODDIE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: Your communication of this date has just been handed to me and I take the first opportunity in giving you an opinion on the subject-matter as per your request.

Your question, as I understand it, is whether or not the State Senate has the power to adjourn from Thursday until the following Monday without the consent of the Assembly. Article 4, section 15, of the Constitution of the State of Nevada reads as follows:

> The doors of each house shall be kept open during its session, except the Senate while sitting in executive session, and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than in which they may be holding their sessions.

Therefore the question is, whether an adjournment by the Senate from Thursday to the following Monday, without the consent of the Assembly, comes within this section of the Constitution.

I am of the opinion that the State Senate in adjourning from Thursday until the following Monday, without the consent of the Assembly, was acting within the power granted that body by the Constitution of Nevada in said article and section above named.

A similar adjournment by the Senate of this State has been had on various occasions before. The Journal of the Senate for 1901, pages 21 to 25, inclusive, shows that the Senate of this State adjourned on Thursday, January 31, 1901, and was not again in session until Monday, February 4, 1901, and that on another occasion, to wit, the Senate adjourned without the consent of the Assembly on Thursday, February 9, 1899, and was not again in session until Monday, February 13, 1899, as found in the Journal of the Senate of the year 1899 at pages 61 to 66, inclusive.

I find, also, that article 1, section 5, subdivision 4, of the Constitution of the United States reads as follows:

> Neither house, during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

This provision is identical with the provision of our State Constitution, and it has been construed, and is the regular practice of each of the houses to adjourn from Thursday until the following Monday without obtaining the consent of the other house.

Wilson on the Constitution, vol. 1, at pages 298 to 300, inclusive, discusses the above section of the Constitution of the United States and says in part:

> In practice, the three days' limit is reached by one or both branches of Congress very frequently, during their long session, when an adjournment is had over from Thursday until Monday. (Citing Miller on the Constitution, pp. 197–198.)

Therefore, this office is of the opinion that the State Senate in

adjourning from Thursday until the following Monday, without the consent of the Assembly, was acting within the limitation imposed on it by the Constitution, and was acting, the period of adjournment not exceeding three days, as had been the common practice of this State on previous occasions by the said body, and was acting as the Congress of the United States, under a similar provision of the Constitution, acts.

Yours very sincerely,

CLEVE H. BAKER, *Attorney-General.*

Officers—Holding More than One Office.

An elected officer may hold an appointive office, and draw salaries for both such offices, provided such appointment does not conflict with article 4, section 8, of the Constitution, and provided also he has the necessary qualifications for such appointive office.

CARSON CITY, January 30, 1911.

HON. J. EGGERS, *State Controller, Carson City, Nevada:*

DEAR SIR: I received your letter under date of January 25, 1911, in which you request the following opinion:

> Can an elected officer hold, after being qualified as an elected officer, an appointive office and draw a salary for both such offices?

Article 4, section 8, of the Constitution of Nevada is as follows:

> No Senator or Member of the Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit in this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

Cyc. vol. 29, p. 1381, in discussing the matter of holding other offices of employment says as follows:

> It may be laid down as a rule in common law that the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question.

I am therefore of the opinion that a person can hold an elective office and also an appointive office and draw salaries for each office respectively, so long as it does not conflict with this portion of the Constitution as hereinbefore quoted, and further, provided he has the other necessary qualifications for holding such office.

Very respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Bullion Tax—Net Proceeds of Mines—Mines and Mining.

Cost of development work, either by the parent company itself or by

lessees, should not, for purposes of taxing proceeds of mines, be figured in estimating cost of extraction of ores.

CARSON CITY, January 31, 1911.

L. F. ADAMSON, *State License and Bullion Tax Agent, Carson City, Nevada.*

DEAR SIR: Replying to your letter of January 12, 1911, I submit the following opinion with reference to the taxes on proceeds of mines.

Section 1147 of Cutting's Compiled Laws (1900) is in part as follows:

> All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes, quarterly, in the following manner: From the gross yield return, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale; and the actual cost of reduction or sale; and the remainder shall be deemed the net proceeds, and shall be assessed and taxed at the same rate ad valorem, as other property is taxed as provided in this Act.

Section 1150, Cutting's Compiled Laws, is in part as follows:

> For the purpose of enabling the Assessor to make such assessment, he shall demand from the president, secretary, superintendent, treasurer or managing agent of each corporation or association, and from each firm or persons engaged in extracting ores or minerals, or working tailings within his county, a statement, under oath, or affirmation, of the total number of tons extracted, or worked or sold by him or them during the preceding quarter-year; the gross yield in dollars and cents; the actual cost of extracting the same from the mine or tailings deposit; the actual cost of transportation of the same to place of reduction or sale, and the actual cost of reduction or sale of the same, for the last preceding three months respectively, etc.

It is evident from the above sections what the Legislature had in mind with reference to the manner and mode of taxing the proceeds of mines. There is nothing said as to the cost of development work done by either a parent company or by the lessees, and I am of the opinion that the cost of development work, either by the parent company itself or by the lessees, should not, for the purpose of taxing the proceeds of mines, be figured in estimating the cost of extraction of ores for bullion tax purposes, for you can readily see that if such a thing were allowed, the cost of development work would, in many instances, exceed the net proceeds of the mine, and the intention of the Legislature is not to tax a mine for its development work, or in its effort to discover new ore bodies, but it is the legislative intent to tax the net proceeds of ore bodies already discovered and developed.

Very sincerely yours,

CLEVE H. BAKER, *Attorney-General.*

Extradition—Escaped Convict.

Extradition laws apply to escaped convicts. The term "charged" applies to persons convicted as well as to a person merely sought for the purpose of trial. An escaped convict is a "fugitive from justice" within the meaning of extradition laws.

CARSON CITY, February 3, 1911.

HON. T. L. ODDIE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: In re extradition Harry Brenan (Oregon):

I have examined the papers in the matter of the requisition of Harry Brenan, a fugitive from justice from the State of Oregon at present living in the State of Nevada.

The Constitution provides that a person charged shall be delivered up on demand of the executive authority of the State from which he has fled; however, whether or not a person, who is a fugitive from justice, shall be delivered up is a matter which is in the ultimate discretion of the Chief Executive alone. In this case the person demanded is an escape from the penitentiary at Salem, Oregon.

> The term "charged" applies to persons convicted as well as a person merely sought for the purpose of trial. Where a person is convicted of crime, his sentence of imprisonment can be satisfied only by actual service of his term of prison; hence, if he escapes, the term ceases to run, and he may, after its nominal expiration, be brought back to serve the unexpired term. (Moore on Extradition, vol. 2, p. 839.)

The demand from the Governor of a State or Territory must meet the following requirements:

> First—It must be addressed to the Executive of the State or Territory to which the person accused has fled.
>
> Second—Such person must be demanded as a fugitive from justice.
>
> Third—He must be charged with the commission of treason, felony or other crime in the demanded State or Territory.
>
> Fourth—The charge may be made either by the copy of the indictment found, or an affidavit made before a magistrate of such State or Territory.
>
> Fifth—The indictment, or affidavit, must be certified as authentic by the Governor or Chief Magistrate of the State or Territory from which place the person so charged has fled.

After an examination of the papers in the above-entitled matter I find them to meet the requirements above named, and to be in due and legal form.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—Emergency Loans—Manner of Application For—State Board of Revenue

The declaration of an emergency loan should be made by the Board

of County Commissioners and then be ratified by the State Board of Revenue.

CARSON CITY, February 16, 1911.

C. J. MCFADDEN, ESQ., *District Attorney, Ely, Nevada.*

DEAR SIR: The matter of the resolution passed by the Board of County Commissioners of White Pine County on the 6th day of February, 1911, I beg leave to state that the same has been referred to me by the State Board of Revenue, and I submit the following in that regard:

That your request, as sent to the State Board of Revenue, does not comply with section 6 of the Act passed in 1903, found in Statutes of Nevada for 1903, page 108, section 6, in this: that your resolution is in the form of a request to the State Board of Revenue for permission to authorize the said Board of County Commissioners to make such temporary loan in the sum not to exceed $20,000, etc.; whereas, according to section 6 of that Act, "After reciting the necessity or emergency, the Board of County Commissioners by unanimous vote, by resolution reciting the character of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency, but such resolution shall not take effect until it has been approved by resolution adopted by a majority of the State Board of Revenue, and the resolution of the State Board of Revenue shall also be recorded in the minutes of the County Commissioners."

You will see from the reading of this statute that you get your power to borrow from the Legislature in this section of the Act, and that the Legislature by this section authorizes the Board of County Commissioners to authorize a temporary loan for the purpose set forth in the resolution, but that this authority to make the loan is not complete until it has been approved by the majority of the State Board of Revenue; therefore, your resolution should read to this effect:

> Now, therefore, be it resolved that the Board of County Commissioners of White Pine County, State of Nevada, acting under and by virtue of the authority vested in them by the Legislature of the State of Nevada, by an Act passed by the Legislature in 1903, and found more particularly in the Statutes of Nevada, 1903, pages 107 to 110, inclusive, do hereby authorize a temporary loan for the purpose of meeting such emergency and necessity, etc.

It will be better as a code of procedure to have the County Commissioners sign these resolutions and have them authenticated by the Clerk as having been duly passed, etc., and then forward them to the State Board of Revenue.

Your recitals showing the character of such necessity and emergency was fine, and if you follow the suggestion with reference to the other part of the resolution, I think that it will be safer and that it will then conform more strictly to the law.

Respectfully yours,

CLEVE H. BAKER, *Attorney-General.*

Legislature—Statutes—Majority Necessary To Pass

A majority of all members elected, and not a majority of those present, is necessary for the passage of a bill or joint resolution.

CARSON CITY, February 16, 1911.

HON. GILBERT C. ROSS, *Lieutenant-Governor of Nevada, Carson City, Nevada.*

DEAR SIR: In reply to your question "Whether it is necessary to have a majority of all the members elected to the Senate to pass a bill or joint resolution, or a majority of those present is sufficient," I beg leave to submit the following:

Article 4, section 18, reads as follows:

> Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays; to be entered on the Journals of each house; and a majority of all the members elected to each house shall be necessary to pass every bill or joint resolution, and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the Secretary of the Senate and Clerk of the Assembly.

It is the opinion of this office that it requires a majority of all of the members elected to the Senate, as well as a majority of all the members elected to the House to pass every bill or joint resolution, and that a majority of those present, in either house, is not sufficient to meet the constitutional requirement as quoted above. When there are twenty members elected to the Senate eleven votes are necessary to pass a bill or joint resolution.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Railroads—Live Stock—Due Process of Law

Section 3 of "An Act requiring all railways to give public notice of live stock killed or injured by their locomotives or cars," etc., is unconstitutional as contrary to the "due process of law" clause of the fourteenth amendment to the United States Constitution.

CARSON CITY, February 18, 1911.

HON. TASKER L. ODDIE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: You have transmitted to me Assembly Bill No. 28, the same being a bill for "An Act requiring all railways to give public notice of live stock killed or injured by their locomotives or cars, providing a penalty for failing or neglecting to do so; and making such companies liable for damages to live stock killed or injured by cars," and requesting an opinion as to its form and constitutionality.

In form the bill appears to be unobjectionable. The bill provides in substance:

SECTION 1. Every person, association or corporation operating a railway within the State that shall injure or kill any live stock of any description by the running of any engine or engines, car or cars, over or against any such live stock, shall, within ten days thereafter, post at the first railway station in each direction from the place of such injury or killing, a notice in writing in such conspicuous place on the outside of such stations, and mail a duplicate to the County Clerk of the county in which stock is injured or killed, which notice shall contain the number and kind of animals so injured or killed, and a full description of each, with the time and place, as near as may be, of such injury or killing, and shall be dated and signed by some officer or agent of such person, association or corporation operating such railway.

SEC. 2. Every person, association or corporation that shall fail, neglect, or refuse to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $100.

SEC. 3. Every person, association or corporation operating a railway within this State shall be liable for all damages sustained by the owner of any live stock killed or injured by the engines or cars of said person, association or corporation.

I am constrained to the view that this bill is subject to constitutional objections as being contrary to the due process of law clause of the fourteenth amendment to the Constitution of the United States. I consider sections 1 and 2 of said Act unobjectionable, as it is within the power of the Legislature to pass such provisions, and also to impose a penal clause for the noncompliance with such provisions. The objectionable feature of the Act is found in section 3, which is as follows:

> SEC. 3. Every person, association or corporation operating a railway within this State shall be liable for all damages sustained by the owner of any live stock killed or injured by the engines or cars of said person, association or corporation.

This is clearly unconstitutional, as it is in direct violation of the fourteenth amendment of the Constitution of the United States as depriving a person of his property without due process of law.

FOURTEENTH AMENDMENT TO CONSTITUTION OF UNITED STATES

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Due process of law has been held to mean as follows:

> Due process of the law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense; to be heard by testi-

> mony, or otherwise, and to have the right of controverting by proof of material fact, which appears upon the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. (*Zeigler* v. *South and North Alabama Railway*, 58 Ala. 594–600; quotation, p. 599.)

The identical section of this statute, which we are considering, has been passed upon by the Supreme Courts of other States, namely, Utah, Montana, Idaho, Alabama, and Illinois, and has been held in each instance to be unconstitutional and void upon the ground that it deprives a person of his property without due process of law.

The Supreme Court of the State of Utah in considering this question says as follows:

> Tested by the light of these suggestions, how stands it with the statute in this case? The defendant company, under a charter granted by the Legislature, of which the statute mentioned is no part, has purchased its right of way over the lands of the territory, established its track, and put thereon its engines and cars, for the purpose of carrying out the original design of the Legislature in granting its charter. It will then be seen that the defendant is in the exercise of a lawful right, in a lawful way. Now comes the statute and says to the defendant: "Notwithstanding all this, when you killed an animal, you shall pay its value to the owner." That is, although you are in the exercise of a perfectly lawful pursuit, and without any fault or negligence, proof of killing and value shall be conclusive evidence of wrong on your part, and you shall not be allowed to aver or prove the contrary. If this be due process of law, then all the Legislature has to do, to take the property of A and give it to B, is to enact that when A sues B certain admitted facts shall establish conclusively A's right to recover, and B shall not be heard to introduce evidence to the contrary. No matter how careful and cautious an engineer may be in the management of his train; no matter how steep the grade may be that his train is going down; no matter how many hundred lives are in his care behind his engine—must all be sacrificed to save a horse or cow, or is the company to pay the damages? (*Jensen* v. *Union Pacific Railway Company*, 6 Utah, 253–258.)

The Supreme Court of Montana, in passing upon a similar statute, held that it is unconstitutional and void for attempting to impose a liability upon such corporation without any negligence or breach of duty on its part.

> The gist of the action is negligence and until some negligence is shown there cannot be said to be any liability. (*Bielenberg* v. *Railway Company*, 20 Pac. 314.)

And in the case of *Cottrell* v. *Railway Co.*, 21 Pac. 416, the Supreme Court of Idaho held, where the statute was an exact copy of the one now under consideration, that the name was void as not being "due process of law." See, also, *Railway Co.* v. *Lackey*, 78 Ill. 55, which holds to the same effect.

Therefore from an examination of the above-mentioned authorities this office is of the opinion that section 3 of the Act above mentioned is unconstitutional and void for the reasons stated.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Crimes and Punishments—Slot Machines

Under Stats. 1909, pp. 307–309, it is not unlawful to operate, maintain or keep slot machines when they are played for cigars, cigarettes, drinks or trade.

CARSON CITY, February 21, 1911.

HON. J. A. SANDERS, *District Attorney, Tonopah, Nevada.*

DEAR SIR: Replying to your favor of February 2, 1911, in which you request the following: "Please do me the favor to give me your opinion of the gambling Act of 1909, affecting the conduct and operation of slot machines," I beg leave to submit the following:

The Act to which you refer was passed by the Legislature of Nevada and approved March 24, 1909, and is found in the session laws of Nevada, 1908–1909, pages 307–309, inclusive.

After the title and enacting clause the section of the Act to which your question refers is in substance as follows:

> SECTION 1. It shall be unlawful for any person to deal, play or carry on, open or conduct in any capacity whatever, any game of faro, monte, roulette, lasquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, poker, whist, bridge whist, five hundred, solo, frog, or any other card game, or any banking or percentage game, played with cards, dice, or any device, for money, property, checks, credit, or any representative of value; or any gambling game in which any person keeping, conducting, managing, or permitting the same to be carried on receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, carrying or permitting the said game to be carried on; or to play, maintain, or keep any slot machine played for money or for checks or tokens redeemable in money; or to buy, sell, or deal in pools or make books on horse races; and any person who violates any of the provisions of this section shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the State Prison for a period of not less than one year or more than five years.

The language of the first part of the statute—

> It shall be unlawful for any person to deal, play or carry on, open or conduct in any capacity whatever * * * any device for money, property, checks, credit, or any representative of value—

would seem to include under the law anything which was constructed, planned or contrived for the purpose of gambling, so whenever "money or other valuable is hazard, which may be lost or more than the value

obtained and dependent upon chance, the construction is gambling." *State* v. *Smith*, 10 Tenn. (2 Yerg.) 272–281.

And under this part of section one a gambling device would include slot machines when played for money, property, checks, credit, or any representative of value, and it would be unlawful to conduct or operate a slot machine for money, cigars, cigarettes, drinks or anything in trade.

"A slot machine is held to be a gambling device." (Words and Phrases, vol. 4, secs. 30–32.)

In the case of *In re Lee Tong*, found in 18 Fed. 253–257, the court says: "A gambling device is defined to be anything which is used as a means of playing for money or other thing of value so that the result depends more largely on chance than skill."

Had section 1 of the said Act ended here, as above quoted, without making special reference to slot machines further on in the said section, there is no question but that slot machines operated for drinks, cigars cigarettes, trade, etc., would be unlawful under the comprehensive language of the portion of section 1, above quoted, for, as we have seen, a slot machine is a gambling device, and money, property, checks, credit, or representative of value is broad and comprehensive enough to include cigars, cigarettes, drinks, trade, etc., but further on in the same section of the said Act, the Legislature specified slot machines in the following manner:

> Or to play, maintain, or keep any slot machine played for money, or for checks or tokens redeemable in money.

From this direct and positive language the only construction that can be reasonably placed upon the same is: That the Legislature intended to make it unlawful "to play, maintain, or keep any slot machine played for money or for checks or tokens redeemable in money," but there is nothing in the language of this section to express or indicate an intention to place a restriction on slot machines when they are maintained or played for cigars, cigarettes, drinks or trade.

The law of statutory construction is:

> Where there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of the general provision, then the particular provision must prevail; and if both cannot apply, then the particular provision will be treated as an exception to the general provision. (Lewis-Sutherland, Statutory Construction, 2d ed. vol. 2, sec. 387. *Dahnke* v. *People*, 168 Ill. 102; *People* v. *Hutchinson*, 172 Ill. 486; *Musick* v. *Kansas City Ry. Co.*, 114 Mo. 309; *Arnold* v. *Council Bluffs*, 85 Iowa, 441; *Hawes* v. *Fliegler*, 87 Minn. 319; *In re Rouse, Hazard & Co.*, 91 Fed. 96.)

"Where a statute expresses first a general intent and afterwards an inconsistent particular intent, the latter will be taken as an exception from the former and both will stand." (Sutherland, Statutory Construction, 1st ed. sec. 153.)

For the foregoing reasons it is the opinion of this office that the Legislature did not intend to make it unlawful to operate, maintain, or keep slot machines when said slot machines are played for cigars, cigarettes, drinks or trade, but that it was the manifest intention of the Legislature,

as clearly expressed in the latter portion of said section of the said Act, to place a restriction on slot machines only when played, maintained or kept for money, or checks or tokens redeemable in money.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Secretary of State—Corporations—Fees for Certifying Copies.

Where copy is "furnished" by applicant, the Secretary of State is authorized to charge $2 for certifying to same. Where copy is made by Secretary of State, he is entitled to 40 cents per folio and $5 for certificate and seal.

CARSON CITY, March 13, 1911.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I have your favor of the 11th instant requesting an official opinion "concerning the fee to be charged under the General Corporation Law for certifying to a copy of articles of incorporation wherein the office of Secretary of State makes the copy of the articles," and in reply beg to state:

Your request relates to the interpretation to be placed upon the paragraph of section 102 of the General Corporation Law, reading: "for certifying to articles of incorporation when copy is furnished, two dollars." This office interprets the language here used to mean that the copy so "furnished" shall be prepared outside of your office, by or for the person desiring to procure the certificate to same; on the other hand, where a person requests to be furnished with a certified copy of articles of incorporation, which are on file and of record in your office, the fees which you are entitled to charge and demand therefor are those provided for in section 1938, General Statutes (Cutting Compilation), to wit, 40 cents per folio for preparing copy and $5 for certificate and seal.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—County Commissioners—Emergency Loans—State Board of Revenue.

The language of section 6 of the Act of 1903 (p. 107)—"may authorize a temporary loan for the purpose of meeting such necessity or emergency"—is not peremptory, and by its terms leaves it entirely to the discretion of the Commissioners whether or not they shall authorize a loan.

CARSON CITY, April 8, 1911.

HON. TASKER L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: I have before me, under your reference of the 7th instant, letter of Mr. E. O. Patterson, County Clerk of Ormsby County, dated the 5th instant, and addressed to you as Governor, reading as follows:

CARSON CITY, April 5, 1911.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

MY DEAR SIR: I think that it becomes my duty at this time to call your attention to the fact that the County Commissioners of Ormsby County, Nevada, did at their last meeting refuse to follow the law of the State relative to providing funds for the government of their county.

Under the law of 1903, pages 107–110, inclusive—"An Act relating to county government and the reduction of the rate of county taxation," approved March 13, 1903—provision is made for the procuring of the necessary funds to carry on the government of a county, and the penalties are therein stated for a violation of this law. That I may not be held for a violation of these laws is my object in making this statement to you, you being a member of the State Board of Revenue.

E. P. Esser, Chairman of the Board of County Commissioners of Ormsby County, at the last regular meeting of the board, held April 3, 1911, presented a resolution to the said Board of Commissioners for their consideration, which resolution was to the effect that the State Board of Revenue, by resolution, grant the county of Ormsby permission to borrow $5,000 with which to govern themselves; and two Commissioners, Geo. E. Kitzmeyer and Joseph Rochon, refused to make this borrow, and stated that they would not vote to borrow any money for the county and would not support or vote for this resolution.

The county of Ormsby, Nevada, has at this time no money whatever with which to pay its bills, either for elected officers or for necessary running expenses, and no bills have been paid for the last two months. In my opinion this matter should be looked into at once by the State Board of Revenue, as provided in the above-cited law.

Awaiting your instructions in this matter, I remain, sir,

Yours very respectfully,

E. O. PATTERSON, *County Clerk*.

It would seem from a reading of the above letter that Ormsby County has not, in its treasury at the present time, money with which to pay the salaries of its officers, and that two members of the Board of County Commissioners, at their regular meeting on April 3, 1911, refused to vote or support a resolution authorizing a temporary loan of $5,000 to be used in the payment of salaries and other necessary county expenses, and that, by reason of such failure and refusal on their part, they had failed to comply with the requirements of the Act of the Legislature of the State, to wit: An Act entitled "An Act relating to county government and the reduction of the rate of county taxation," approved March 13, 1903, section 6 of which said Act relates to the manner in which the Board of County Commissioners of any county, desiring to authorize a temporary loan for county purposes, shall proceed, which said section reads as follows:

> In case of great necessity or emergency, the Board of Commissioners by unanimous vote, by resolution reciting the character of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency, but such resolution shall not take effect until it has been approved by resolution adopted by a majority of the State Board of Revenue, and the resolution of the State Board of Revenue shall also be recorded in the minutes of the County Commissioners.

It will be noted that the language used in this section—"may authorize a temporary loan for the purpose of meeting such necessity or emergency"—is not peremptory, and by its terms leaves the question entirely in the discretion of the Commissioners, whether or not they shall authorize a loan, and in case they do, by a unanimous vote, authorize the loan, the resolution authorizing it shall not take effect until it has been approved by resolution adopted by the State Board of Revenue, and is the only right or authority given by the Act to said board, relating to the action of a Board of County Commissioners in this State desiring to authorize a temporary loan for county purposes.

The fact that two of the Commissioners refused to vote in favor of the resolution authorizing a loan, was not, as far as I can determine from

an examination of the statute above cited, a violation of any of its provisions, and their action, in that particular instance, is not subject to review or control by the State Board of Revenue.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Constitutional Law—State Board of Examiners—Claims Against the State—Allowance of Unliquidated Claims.

A claim against the State, for which no appropriation has been made, must before it is transmitted to the Legislature, or passed upon by that body, be presented to, considered and passed upon by the Board of Examiners.

CARSON CITY, April 11, 1911.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: I have your letter of the 5th instant in which you request my opinion relative to drawing your warrants as State Controller in payment of the amounts appropriated by the Legislature, at its recent session, in favor of Washoe County for $742.50 and Dr. E. C. Krebs for $92.

The reason you give for declining to draw your warrants in payment of the amounts appropriated above is that the claims were not, so far as you are advised, or can ascertain, submitted to, considered by or passed upon by the Board of Examiners before they were transmitted to or passed upon by the Legislature; that no claim for the sums appropriated, or either thereof, has been lodged in your office by the Clerk of the Board of Examiners.

Section 21, article 6, Constitution of Nevada, relating to the manner of presenting claims against the State for which no appropriation has been made, reads as follows:

> The Governor, Secretary of State, and Attorney-General shall constitute a Board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall constitute a Board of Examiners, with power to examine all claims against the State (except salaries or compensation of officers fixed by law), and perform such other duties as may be prescribed by law. And no claim against the State (except salaries or compensations of officers fixed by law) shall be passed upon by the Legislature without having been considered and acted upon by said Board of Examiners.

The Supreme Court of this State, in passing upon the provisions of this section of said article 6 of the Constitution, say:

> At each biennial session of the Legislature appropriations are made for the support of the government for the two years then current. From the nature of the case it is impossible for the Legislature to anticipate the details of expenditures or to enumerate the specific disbursements to be made. Appropriations are made under separate heads, and expenditures chargeable thereto are considered and passed upon by the Board of Examiners in conformity with the requirements of the Constitution that they "shall examine all claims against the State." Claims

for which no appropriation has been made must be acted upon by the board before submission to the Legislature, in order that its members may have the advantage of the information which the members of the board would naturally acquire from the nature of their duties. These provisions of the statutes present a practical and reasonable exposition of the provisions of the Constitution, and place the authority to audit unliquidated claims with the board created for that purpose by the Constitution. (*County of Lyon* v. *Hallock*, 20 Nev. 326.)

The reasoning of the Supreme Court, as expressed in the foregoing citation from its opinion, in passing upon the question of how claims against the State, for which no appropriation has been made, shall be presented and considered by the Board of Examiners, makes it quite clear in my judgment that the claim must, before it is transmitted to the Legislature, or be passed upon by that body, be presented to, considered and passed upon by the Board of Examiners.

For the foregoing reasons I advise that you decline to draw your warrant for the claims mentioned in your letter.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Taxation—State Tax Levy—Public Schools.

The state tax rate for public school purposes for the year 1911 is 10 cents on the $100 valuation, as provided by section 135, Stats. 1911, p. 220, notwithstanding the state tax levy (Stats. 1911, p. 106) fixes the rate for the General School Fund at 6 cents.

CARSON CITY, April 20, 1911.

HON. JOHN EDWARDS BRAY, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR SIR: Your letter of the 12th instant duly received, and note your request for an opinion of this office upon the question stated therein, reading:

> Two bills relating to the state school tax levy were enacted into law at the last legislative session, providing different rates for such levy.
>
> One of these was Substitute for Senate Bill No. 187, which was "An Act to fix the state tax levy, and to distribute the same in the proper funds." This bill fixes the state tax levy at 60 cents on the $100 of taxable property, and distributes the same as follows:
>
> General Fund, thirty-nine and six-tenths cents; State Interest and Sinking Fund, three cents; Territorial Interest Fund, three cents; General School Fund, six cents; Contingent University Fund, five cents; Contingent University Fund, 1905, No. 1, one-tenth of one cent; Contingent University Fund, 1905, No. 2, three-tenths of one cent; State Prison Interest and Sinking Fund, three cents.
>
> This bill was signed by the Governor on March 18, 1911. By its terms 6 cents would seem to be the state school tax levy.
>
> The other bill, entitled "An Act concerning public schools, and repealing certain Acts relating thereto," generally known as

the school code bill, under Chapter 10 relating to school funds, reads as follows:

Ad Valorem State School Tax.

SEC. 135. An ad valorem tax of ten cents on the hundred dollars of all taxable property in the State is hereby levied and directed to be collected and paid in the same manner as other state taxes are required to be paid; and said tax shall be known as the state school tax, and the Board of County Commissioners of the several counties, shall, annually, at the same time other state taxes are levied, add this to the other taxes provided by law to be levied and collected, and it shall be annually collected at the same time and in the same manner as other state taxes are collected, and if, from any reason whatever, in any year said taxes are to be levied as herein required, by the Board of County Commissioners, the County Auditor shall enter the same on the assessment roll, as required by law for other taxes.

The bill containing the provisions here quoted was signed by the Governor on March 21, 1911. Here is definitely set forth a state school tax of ten cents on the hundred dollars of taxable property and the concluding section of the bill says: "* * * and all Acts and parts of Acts in conflict with this Act are hereby repealed."

As the state school levy is an important matter for the schools, and for all school boards in planning work and improvement for the coming year, I respectfully ask in their behalf, your opinion as to whether the legal rate is six cents or ten cents.

Substitute for Senate Bill No. 187, above quoted, and which became a law March 18, 1911, fixed the state tax levy at 60 cents on each $100 of taxable property in the State, and distributed 6 cents on each hundred dollars of the taxable property in the State, under this levy, into the General School Fund; the "Act concerning public schools, and repealing certain Acts thereto," was approved by the Governor March 22, 1911, and became effective as a law on that date; by section 135, chapter 10, of this Act, under head of "School Funds," a state tax of 10 cents on each $100 of all the taxable property in the State is directed to be levied and collected in the same manner as other state taxes are required to be paid, and is therein designated as the state school tax, and is, by section 136 of said Act, directed to be placed in and constitute a fund to be known as the "State Distributive School Fund." Section 221 of the Act provides for the repeal of all Acts and parts of Acts in conflict with said Act.

Taking into consideration, therefore, the fact that the Act providing for the state tax levy, in which the rate to be paid in to the General School Fund was in force and effect on the date when the Act concerning public schools became a law, that it was the intention of the Legislature, as expressed in this latter Act, to fix the amount of the state school tax, levied and collected annually, at 10 cents upon each one hundred dollars of taxable property in the State, instead of 6 cents, as fixed and provided for in Substitute for Senate Bill No. 187.

You are therefore advised that it is the opinion of this office that the state tax rate, authorized by the above-quoted Act approved March 22, 1911, to be levied, collected and paid into the State Distributive School Fund, designated by section 136 of said Act as the fund into which said tax shall be paid, is 10 cents on each hundred dollars of the taxable property in the State. Respectfully submitted,

By JAMES R. JUDGE, *Deputy.* CLEVE H. BAKER, *Attorney-General.*

Fish and Game—Game Wardens—Licenses to Aliens.

The price of the license to be issued to aliens under section 3, Stats. 1909, p. 39, is $25.

Physicians and Surgeons—Dentistry

A physician and surgeon, engaging in the general practice of dentistry, must procure a license therefor as provided in section 1, Stats. 1905, p. 242.

Crimes and Punishments—Indians—Selling Liquor to Indians—Federal Laws

Members of the Shoshone tribe of Indians are not recognized as the wards of the Government, and, not being accorded the aid and protection of the General Government, the duty of protecting them devolves on the State.

Persons arrested for selling liquor to Shoshone Indians should be prosecuted therefor under state law.

CARSON CITY, April 20, 1911.

D. A. PATE, ESQ., *District Attorney, Austin, Nevada.*

DEAR SIR: I have your letter of March 23, 1910, with the following inquiries:

> The Game Wardens of Lander County are at a loss as to whether foreigners are to pay one dollar or twenty-five dollars for a license. Also as to whether there is any change as to the appointment of Game Wardens by the County Commissioners.

Replying to the same I beg to state: The license for foreigners, as fixed by the Act of 1909, found on page 39, Stats. 1909, third paragraph of section 3, reads as follows:

> To any person not a citizen of the United States upon the payment of twenty-five dollars.

You are therefore advised that the Game Wardens are authorized and required to collect from foreigners, who desire to either fish or hunt for game in your county, the sum of twenty-five dollars for a license. The dollar license mentioned in the Act refers to resident citizens of the United States in Nevada.

There is not, so far as I know from a hasty examination of the statutes passed at the recent session of the Legislature, any change as to the appointment of Game Wardens by the County Commissioners.

Concerning the requirements of the Act regarding the fish law, the same will be found on page 61, Stats. 1911, which will be distributed, I apprehend, within the next sixty days, to the various county officials.

As to the inquiry, which you made in your letter, dated April 13, 1911, relating to the matter of license to a practicing physician and surgeon engaged in the general practice of dentistry without having procured a license for the practice of dentistry, I advise you, that the Act of 1905, to which you refer in your letter, and which has not been, so far as I have been able to ascertain, amended or repealed, requires all persons practicing dentistry to have received the proper authority therefor from the Board of Dental Examiners of this State, and further that they are required to procure the license required under said Act of the Legislature before engaging in the practice of that profession in this State.

In the matter of the two white men whom you mention as having been arrested in your county for selling liquor to Indians, members of the

Shoshone tribe, and now being held to answer before the grand jury, there is not, so far as I have been able to ascertain, any treaty existing between this particular tribe, or any of its members, and the United States, under or by the terms of which they receive, or are intended to receive any aid or support from the General Government, nor are they under the control of an Indian agent or superintendent, appointed by the Government, and are not recognized as being wards of the Government. Not being accorded the aid and protection of the General Government extended to the Piute Indians, the duty of protecting them devolves upon the state authorities.

It is the opinion of this office that the men under arrest in your county for selling liquor to Indians, as stated in your letter, should be prosecuted therefor under the state law.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Taxation—Bullion Tax—Mines and Mining—"Actual Cost of Extracting" Defined

The "actual cost of extracting" is covered by the cost of breaking or removing ore from the vein, lode or deposit.

Licenses—Slot Machines

All persons desiring to operate slot machines for merchandise premiums must procure a license upon the same by the quarterly payment of $20.

Licenses—State Liquor Licenses—Druggists' Liquor License

Under the provisions of section 9, Stats. 1905, p. 228, the $12 annual license therein provided for retail drug stores does not authorize or warrant the sale of liquor at such stores except when prescribed by a duly licensed and practicing physician.

CARSON CITY, April 21, 1911.

HON. L. F. ADAMSON, *State License and Bullion Tax Agent.*

DEAR SIR: Your letters of recent date requesting that I furnish you opinions:

1. Concerning construction to be placed upon section 1147, Cutting's Compiled Laws, relating to taxation of proceeds of mines, and particularly as to what constitutes "actual cost of extracting."

That portion of said section 1147, to which your inquiry, in the present instance, applies, reads:

> All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes quarterly, in the manner following: From the gross yield returned, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale, and the remainder shall be deemed the net proceeds, and shall be assessed and taxed at the same rate ad valorem, as other property is taxed, as provided in this Act.

The language used by the Legislature in section 1147, above quoted, seems to itemize the several charges to be deducted from the gross yield returned, or value of ores, etc., with the one exception which you point out, to wit, "actual cost of extracting," which exception, it would seem, from the statement in your letter, is varied in accordance with the views of each separate mine owner or operator. As I understand the expression, "actual cost of extracting," as applied to mining operations, and as I believe it was intended to be applied by the Legislature relating to taxing proceeds of mines, is covered by the cost of breaking, or removing the ore from the vein, lode or mineral deposit, to be deducted from the gross yield, being enumerated in the statute, and these enumerated charges, together with the cost of breaking and removing the ore from the vein, lode, or mineral deposit, cover all the costs and charges which the owners or operators of mining properties, in this State, are entitled to deduct from the gross yield of mines in making returns to you upon which to base the amount of the bullion tax to be assessed to such mine.

2. Your second request for an opinion relates to the amount of license, if any, which the several county license collectors throughout the State should demand and collect from each person who is permitted to operate a slot machine for merchandise premiums. In the opinion heretofore rendered by this office, upon the question of operating nickel-in-the-slot machines, under date of February 21, 1911, the question of a license being required was not considered or passed upon.

Under the Act of the Legislature, entitled "An Act to amend an Act entitled 'An Act relating to nickel-in-the-slot machines, and providing a penalty for carrying on, or playing against such device,' approved February 23, 1901, and to prescribe a license for the carrying on of such nickel-in-the-slot machines, and regulate their operation," approved March 15, 1905 (Stats. 1905, p. 77), as amended and approved March 29, 1907 (Stats. 1907, p. 236), section 4 of said Act, relating to the licensing of such machines, reads as follows:

> SEC. 4. Any person may procure a license for the carrying on and operating of any nickel-in-the-slot machine, or machines or similar devices, as mentioned and described in section 1 of this Act. All such licenses shall be issued and obtained in the same manner as other gambling licenses are now issued and obtained, upon the payment quarterly of the sum of twenty ($20) dollars for each machine or device so licensed, which sum shall be collected and enforced in the same manner as other gambling licenses.

The foregoing provisions relating to licensing nickel-in-the-slot machines are operative and enforceable in the State at the present time, and it is the duty of all officers to see that the laws upon the statute books of the State are enforced, and that all persons desiring to operate nickel-in-the-slot machines for merchandise premiums shall first procure a license from the proper county official, granting the right to operate such machine, upon the payment quarterly of $20 for each machine or device, as in said section 4 of the Act above quoted, is provided.

3. Your third question relates to the construction to be placed upon the state liquor license of $12 required to be paid by all retail druggists doing business in this State, under the Act of the Legislature of the State of Nevada entitled "An Act supplemental to an Act entitled 'An Act to

provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891, and to all Acts amendatory thereof, and to provide for a state license upon the business of disposing at retail or wholesale of spirituous, malt, or vinous liquors in this State, and providing penalties for the violation hereof," approved March 15, 1905.

Section 1 of said Act reads as follows:

> On the 1st day of July, 1905, and annually thereafter on January 1, every person, firm, company or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt or vinous liquors shall in addition to the licenses now provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment or otherwise.

Under the provisions of the foregoing section it is provided that "every person, firm, company, or corporation, manufacturing or selling, either at retail or wholesale, shall take out a state liquor license, as hereinafter provided." * * *

Section 9 of said Act reads:

> This Act shall take effect on the 1st day of July, 1905; *provided*, that the licenses collected for the year 1905 shall be pro rata for the remainder of said year 1905, calculated at fifty dollars per annum for retailers, twelve dollars per annum for retail drug stores, and one hundred dollars per annum for wholesalers and retailers, as herein provided.

The foregoing section fixes the state license at $50 per annum for retailers, and $12 for retail drug stores. Under this provision of the statute you state that in some cases retail druggists claim the right, and advertise to that effect, to sell liquor by the bottle. The license granted to retail druggists, upon payment of the amount required to be paid by them under said section 9, does not authorize or warrant the sale of liquor by them except when prescribed by a duly licensed and practicing physician, and in no other manner.

You are therefore advised to instruct the officers to enforce the law in the respect above indicated, and not permit retail druggists to sell or serve customers with liquor, wines or alcoholic stimulants, except when authorized so to do upon prescriptions of licensed practicing physicians.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Constitutional Law—Legislature—Power to Appropriate Money in Payment of Claim for Damages

The Act of 1911, p. 288—"An Act for the relief of Nevada Ballard"—for injuries received by her while upon the premises of the State Capitol is within the power vested by the Constitution in the Legislature and

final, and the State Treasurer is required to pay the sum therein appropriated.

CARSON CITY, April 27, 1911.

HON. WM. MCMILLAN, *State Treasurer, Carson City, Nevada.*

DEAR SIR: Your letter of the 8th instant is before me, in which you request my written opinion upon the subject-matter of said letter, reading:

> Being in doubt as to the validity of the action of the Legislature, at its last session, in appropriating $4,000 to Mrs. Nevada Ballard, for injuries received by her while upon the premises of the State Capitol, I desire your written opinion relative to the same, with instructions to me, the custodian of state moneys, as to whether I should pay the warrant, drawn for the above amount in favor of Mrs. Nevada Ballard.
>
> My doubt rests more particularly in the interpretation of section 1, article 3, of the State Constitution, relating to the functions of each department of the government.

The claim referred to in your letter is one the payment of which is authorized by an Act of the Legislature of the State of Nevada entitled "An Act for the relief of Nevada Ballard," approved March 20, 1911, and reads as follows:

> WHEREAS, Nevada Ballard, the wife of W. S. Ballard, on the 30th day of July, 1910, in descending the narrow stairway leading into the ladies' toilet in the basement of the Nevada State Library building, fell therefrom, receiving great bodily injury which disabled her for life, and incapacitated her from performing any kind of labor, which said stairway was unsafe and dangerous, being unprotected by railing and without light to guide her footsteps; and
>
> WHEREAS, The said W. S. Ballard has laid out and expended a large sum of money for medical services and nursing at Carson City and in the City of San Francisco in the vain endeavor to cure her of the injuries received as aforesaid; now, therefore,
>
> *The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*
>
> SECTION 1. The sum of four thousand dollars is hereby appropriated, out of any moneys in the General Fund of the State Treasury not otherwise appropriated, for the relief of the said Nevada Ballard in full compensation of the injuries sustained.
>
> SEC. 2. The State Controller is hereby directed to draw his warrant in favor of the said Nevada Ballard for the sum of four thousand dollars, and the State Treasurer is hereby directed to pay the same on the execution and delivery by the said Nevada Ballard and W. S. Ballard of a proper release to the State for any further claims for damages for such injuries, such release to be approved by the Attorney-General.

The question which you raise is, as I understand the inquiry in your letter to be: Has the Legislature the authority to appropriate money for the payment of this claim out of the State Treasury, and to direct you, as State Treasurer, to pay the same, upon presentation of the warrant of the State Controller for the sum?

Article 3, Constitution of Nevada, referred to in your letter, reads:

> SECTION 1. The powers of the government of the State of Nevada shall be divided into three separate departments—the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed and permitted.

The powers conferred upon each of these departments is defined in the articles of the Constitution relating specially to each respectively.

The law-making power is vested by the Constitution (art. 4, sec. 1) in a Senate and Assembly designated "The Legislature of the State of Nevada." Section 19 provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law." The Legislature is therefore vested with the sole and exclusive right and power to authorize the payment of money out of the State Treasury, and, as in the case under consideration, where properly presented and considered by that body, and its payment authorized by direct legislative action, this action by the Legislature authorizing the payment of this particular claim is, in my judgment, final and within the power vested by the Constitution in the Legislature.

In *County of Lyon* v. *Hallock*, 20 Nev. 329, a somewhat similar question to the one involved here was being considered. In the opinion of the court deciding that case, Justice Belknap used this language:

> If a claim of this character is allowed by the Legislature, the form of the law is generally such as to create a liquidated demand for which a warrant upon the treasury is issued.

By section 1987, Cutting's Compilation, the duties of the State Treasurer are defined to be as follows:

> SEC. 4. He shall receive and keep all moneys of the State not expressly required by law to be received and kept by some other person; shall receipt to the Controller for all moneys received, from whatever source, and at the time of receiving the same; shall disburse the public moneys upon warrants drawn upon the treasury by the Controller of State, and not otherwise. Such warrants shall be registered, and paid in the order of their registry.

This office is not authorized, nor is it the desire of the Attorney-General, when his opinion is requested by any state official authorized to make such request, to instruct such or any state official as to his duties or the manner in which the same shall be performed. The opinion given in response to such request is, in every instance, advisory solely and so intended.

It is the opinion of this office that the payment of the Ballard claim, by you as State Treasurer, is duly authorized by the action of the Legislature thereon.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Liquor License—Wholesale Liquor License.

A corporation manufacturing malt liquors in one county, and having branch offices in another county, where its goods are stored and sold by its agents at wholesale, is required to pay a wholesale license for each branch office.

Every corporation doing a wholesale liquor business in this State must take out a wholesale and retail license for each separate place of business that it maintains.

CARSON CITY, April 27, 1911.

HON. H. F. BREDE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: This office is in receipt of your letter of April 25, 1911. The first question which you submitted to me for my opinion is as follows:

> Does a corporation which manufactures malt liquors in one county of this State, and has branch offices in another county, where goods of their manufacture are stored and sold by their agents at wholesale, have to pay for a wholesale license for the branch offices?

An Act passed by the Legislature of the State of Nevada entitled "An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto," approved March 23, 1891, found at page 135, and more particularly at page 174 following, provided for a license tax, and this Act was amended by an Act passed by the Legislature entitled "An Act supplemental to an Act entitled 'An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891, and to all Acts amendatory thereof, and to provide for a state license upon the business of disposing at retail or wholesale of spirituous, malt, or vinous liquors in this State, and providing penalties for violation hereof."

Section 1 thereof, reads as follows:

> On the 1st day of July, 1905, and annually thereafter on January first, every person, firm, company or corporation, manufacturing or selling, either at retail or wholesale, any spirituous, malt or vinous liquors, shall in addition to the licenses now provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment or otherwise.

Section 3 provides for the retail license and reads as follows:

> The several Sheriffs of the respective counties of this State are hereby made the collectors of, and authorized and required to issue and collect, said licenses, and shall, upon the payment of fifty ($50) dollars, issue a retail state license to any person, firm, company or corporation engaged in selling spirituous, malt or vinous liquors in quantities less than five gallons, and the word "Retail" shall be written in red ink across the face of such license; *provided*, that retail drug stores shall not be required to pay more than twelve ($12) dollars per annum for such retail state liquor license.

Section 4 provides for the wholesale license and reads as follows:

> Any person, firm, company or corporation disposing of spirit-

uous, malt or vinous liquors in quantities in excess of five gallons shall be considered a wholesaler or rectifier, and shall pay a state liquor license of one hundred ($100) dollars per annum, and the word "Wholesale" shall be written across the face of such license in red ink.

It is therefore my opinion that a corporation manufacturing malt liquors in one county, and having branch offices in another county, where its goods are stored and sold by its agents at wholesale, is required to pay a wholesale license for each branch office.

In reply to question 2, which is as follows:

> Whether a corporation selling malt and spirituous liquors, manufactured in a foreign State, at wholesale and retail, having three different places of business in the same county, must take out a separate wholesale and retail license for each place of business?

I beg to submit the following:

Stats. 1905, section 1, above referred to, makes no distinction between a corporation which manufactures malt liquors in this State and a corporation selling malt and spirituous liquors manufactured in another State.

It is my opinion that every corporation doing a wholesale and retail business in this State must take out a wholesale and retail license for each separate place of business that it maintains, and that one wholesale and retail license is not sufficient to cover all.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Constitutional Laws—Public Schools—Acts Partly Void.

So much of sections 215 and 217 of the acts concerning public schools (Stats. 1911, p. 183) relating to churches, is unconstitutional and void as not being germane to the title.

The remainder of said sections is constitutional and valid.

A statute may be void in part and valid in part.

CARSON CITY, May 1, 1911.

To the District Attorneys of the Several Counties of the State of Nevada:

DEAR SIRS: The following copy of an opinion furnished the District Attorney of Washoe County will control the same question and apply thereto in the several other counties of the State.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

HON. WM. WOODBURN, JR., *District Attorney, Washoe County, Nevada.*

DEAR SIR: I have the honor to acknowledge receipt of your communication of April 28, submitting the following question and requesting an opinion thereon:

> I would thank you for an expression of your views as to whether or not chapter 19, and also the preceding chapter (18) of an Act entitled "An Act concerning public schools and repealing certain Acts relating thereto," found in the advance sheets of the Statutes of the State of Nevada, 1911, at page 183, and more particularly at page 245, come within the restrictions of article 4, section 17, of the Constitution of Nevada.

For the purposes of the discussion I will quote the title of the Act and said chapters thereof, and article 4, section 17, of the Constitution of Nevada. The title of said Act reads as follows: "An Act concerning public schools and repealing certain Acts relating thereto."

Chapter 18 of said Act consists of two sections—section 215 and section 216—which read as follows:

> SEC. 215. It shall be a misdemeanor for any person or persons to wilfully and maliciously injure, mark, or deface any church edifice, schoolhouse or other building, public or private, its fixtures, books or appurtenances, or to commit any nuisance therein, or to purposely or maliciously commit any trespass upon the grounds attached thereto, or any fixtures placed thereon, or any enclosure or sidewalk about the same, or in any manner to maliciously and purposely interfere with or disturb those peaceably assembled within such building or buildings.
>
> SEC. 216. Any person or persons convicted of a misdemeanor under the foregoing section of this Act shall be subject to a fine, not exceeding two hundred dollars, or to imprisonment in the county jail not to exceed six months, or to both such fine and imprisonment.

Chapter 19 of said Act consists of three sections—section 217, section 218 and section 219—which are as follows:

> SEC. 217. It shall be unlawful for any owner or agent of any owner, or any other person, to keep any house of ill-fame, or to let or rent to any person whomsoever, for any length of time whatever, to be kept or used as a house of ill-fame, or resort for the purpose of prostitution, any house, room, or structure situated within eight hundred yards of any schoolhouse or school room used by any public or common school in the State of Nevada, or within eight hundred yards of any church edifice, building or structure, erected and used for devotional services or religious worship in the State of Nevada.
>
> SEC. 218. Any person violating the provisions of section 217 of this Act shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five dollars nor more than three hundred dollars or to be imprisoned in the county jail not less than five nor more than sixty days, or by both such fine and imprisonment, in the discretion of the court.
>
> SEC. 219. It shall be the duty of the District Attorney and the Sheriff of each county in this State to see that the provisions of this Act are strictly enforced and carried into effect, and upon neglect so to do they, or either of them, shall be deemed guilty of a misdemeanor in office, and may be proceeded against as provided in sections 63 to 72, inclusive, of an Act entitled "An Act relating to elections," approved March 12, 1872. (See Cutting's Compiled Laws, sections 1646 to 1653, inclusive.)

Article 4, section 17, of the Constitution of Nevada, reads as follows:

> SEC. 17. Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title, and no law shall be revised or amended by reference to its title only, but, in such case, the Act as revised, or section as amended, shall be re-enacted and published at length.

I shall consider your question with reference to chapter 18 and chapter 19 separately, treating of chapter 18 in the first instance:

Chapter 18 consists of section 215 and section 216. A critical reading of section 215 will disclose that reference is made therein as follows: "It shall be a misdemeanor for any person or persons to wilfully and maliciously injure, mark or deface any church edifice."

Considering this part of the above section in connection with the title of the said Act above quoted, and it becomes apparent that there is nothing in the title of said Act that embraces or includes church edifices, or could possibly do so, by the strongest implication—therefore, it is my opinion that so much of said section 215 as refers to church edifices is clearly a subject not embraced or expressed in the said title and not germane thereto, and consequently is unconstitutional and void, as being in violation of article 4, section 17, of the Constitution of Nevada.

"The constitutional provision that each law shall embrace but one subject,

which shall be briefly expresssed in the title, is mandatory, but should be liberally construed." (*State* v. *Ah Sam*, 15 Nev. 27.)

See also Lewis-Sutherland, Statutory Construction, 2d ed. vol. 1, pp. 180-182.

The Supreme Court, in discussing article 4, section 17, Constitution of Nevada, in the case of *Bell* v. *District Court*, 28 Nev. 296, says: "As was said in the case of the *State* v. *Stone*, 24 Nev. 310, 53 Pac. 497, that a compliance with the provision of the Constitution is essential to the validity of every law enacted by the legislature has been so often decided by the court that it is not worth while here to cite the causes." This same view was held by the Supreme Court of Nevada in the case of *State* v. *Gibson*, 30 Nev. 353, and the test that is applied to an Act is laid down by the Supreme Court of Indiana which gives the following rule:

> The proper test in all questions of the sort is, does the body of the particular legislation embrace more than one subject, and such matters as are calculated to assist in reaching the single object intended, and is that subject *disclosed* by the title? If thus tested, it appears that an Act embraces but one subject and matters properly connected therewith, and that subject is *shown* by the title, it must be held to be constitutional; otherwise not. (*Isenhour* v. *State*, 157 Ind. 517; 62 N. E. 40, 87 Am. St., Rep. 228.)

For further additional cases, see Lewis-Sutherland, Statutory Construction, 2d ed., vol. 1, p. 249, footnote.

The next question which presents itself at this time is whether the entire section 215 is void or only that portion which is not embraced in the title of said Act.

I am of the opinion that only so much of said section 215, to wit, that portion relating to "church edifice," a subject not included in the title of the Act, is unconstitutional and void, and that the remaining portion of said section referring to public schools is clearly embraced and expressed in the title, and therefore should stand.

> So if the body of an Act embrace more than one subject, and only one be mentioned in the title, the whole Act will be void, unless the subject mentioned in the title is so independently treated in the Act as to be capable of separation from the other subject.

And again:

> When the provisions of a statute which are not connected with its subject are separable, they will be declared void and the residue sustained. (Lewis-Sutherland, Statutory Construction, 2d ed., vol. 1, p. 251, and footnote.)

It is a well-recognized principle of law that statutes may be void in part and good in part.

> When a part only of a statute is unconstitutional and therefore void, the remainder may still have effect under certain conditions. The court is not warranted in declaring the whole statute void unless all provisions are connected in subject matter, depend on each other, were designed to operate for the same purpose, or are otherwise so dependent in meaning that it cannot be presumed that the legislature would have passed one without the other. The constitutional and unconstitutional provisions may even be expressed in the same section or even in the same sentence, and yet be perfectly distinct and separable, so that the first may stand and the last may fall. The point or test is not whether they are contained in the same section, for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance. If so connected, the whole statute is void.

In Lewis-Sutherland, Statutory Construction, 2d ed. vol. 1, pp. 579-580, the author says:

> It may be laid down generally as a sound proposition that one part of a statute cannot be declared void and leave any other part in force, unlesss the statute is so composite, consisting of such separable parts, that, when the void part is eliminated, another living, tangible part remains, capable by its own terms of being carried into effect, consistently with the intent of the legislature which enacted it in connection with the void part.

It is therefore my opinion from the foregoing reasons that the subject-matter referring to churches and the subject-matter referring to public schools are separate and distinct subjects, in no way interwoven or dependent the one upon the other, and that, therefore, they may be separated and the portion treating of churches is unconstitutional and void, and the remaining portion of the section should stand.

Section 216 will apply to the portion of sections 215 which refers to public schools. In considering chapter 19, in my judgment the same reasons which are cited above with reference to section 215 apply with equal force and effect to section 217, and therefore that portion of section 217 that relates to the keeping of any house of ill-fame within eight hundred yards of any church edifice, etc., is unconstitutional and void, and that the remaining part—public schools and the limitation of houses of ill-fame within eight hundred yards—therefore is constitutional and will stand.

Section 218 will apply to the valid portion of section 217.

With reference to section 219, I deem it unnecessary to pass upon the question, as it is to be presumed that sworn officers of the law will perform their duty.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Billiard Tables.

The term "billiard table" as used in section 1187, Comp. Laws, includes all tables used in public resorts whether for playing billiards or for playing pool.

CARSON CITY, May 13, 1911.

HON. L. F. ADAMSON, *State License and Bullion Tax Agent.*

DEAR SIR: I have your letter of recent date which reads in part as follows:

> Rev. Laws, sec. 1187, reads in part as follows: From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table, five ($5) dollars per quarter-year. This refers to license tax. You will note that "pool tables" are not particularly specified. In some counties in the State I find license collections being made on billiard tables and not pool tables. In some counties license collections are being made on both billiard and pool tables, while in others, license collections are being made on neither. While not giving definite instructions in any instance, my general line of talk to the various Sheriffs has been that pool tables technically come under the law, and licenses should be collected on them as well as billiard tables.
>
> I would be glad to have your opinion on this matter as soon as possible in order that I may issue definite instructions.

The question above submitted and upon which you request my opinion has not, I believe, been passed by the courts of this State.

The Century dictionary defines "pool" as being a "game played on a billiard table with six pockets." The same work in defining "billiard table" says:

> A table built of mahogany or other hard wood; the bed of the table is either slate or marble covered with a fine, green cloth; the railing surrounding the bed and rising above it two to two and one-half inches, the inner sides of which are composed of rubber, covered with the same character of cloth.

Many billiard tables have six pockets, and used for playing pool; this is nearly the style of the present "English" billiard table.

The question as to whether or not a table upon which either the game of pool or billards could be played could, where minors were permitted to frequent a room and play pool upon such tables, be construed to violate a statute reading:

> No person who keeps a billiard hall, beer saloon, or nine-or ten-pin alley, nor the agent, clerk, or servant of any such person, nor any person having charge or control of any such hall, saloon or alley, shall permit any minor to remain in such hall, saloon or alley, or take part in any of the games known as billiards, nine -or ten-pins.

The Supreme Court of Iowa passing upon the question used this language:

> It may be conceded that the game of billiards is essentially different from that of pool, and that, in allowing minors to engage in the latter game the law was not violated. * * *
>
> But when engaged in the game, they remained in the defendant's room containing two tables on which either game might be played. It is quite immaterial whether the minor indulges in any game whatever, if he is permitted to enter the room and remain therein for any purpose, and that room is a billard hall, the keeper is amenable to the penalties of the law. This is evident from the reading of the statute above quoted. * * *
>
> If the game be different, both are played on tables, which are invariably described by the lexicographers as billard tables of four or six pockets or without pockets, and these fix the character of the room in which they are kept. * * *
>
> The Standard dictionary defines "pool" as "one of the various games played on a six-pocket billiard table." It is treated in Webster's International dictionary and the Encyclopedia Brittanica as a kind of billiards. * * *
>
> But the definition of the lexicographers and encyclopedias, to the effect that, whatever the game, the pocketed and pocketless are alike billard tables cannot be ignored. * * *
>
> It is not so important what the place was called, as what it really was. Two billiard tables upon which people were generally permitted to play pool at a fixed fee per game were kept in a room by defendants, and notwithstanding the incidental sale of cigars, candy and peanuts, they constituted a billiard hall within the meaning of the law.

From the definition of "billiard table" given by the several standard authorities above quoted, and of the game of "billiards" and "pool," the playing of which games are, as appears from the foregoing definitions, confined and restricted to "billiard tables," the conclusion seems irresistible that the Legislature in the enactment of said section 1187 providing for licensing "billiard tables" had in mind and intended by said expression to include thereunder all tables used in public resorts, whether for playing billiards or for playing pool.

Such, you are advised, is the opinion of this office.

Very respectfully,

By JAMES R. JUDGE, *Deputy.* CLEVE H. BAKER, *Attorney-General.*

Employer and Employee—Eight-Hour Law—Mines and Mining—Watchmen.

The eight hours' employment contemplated by Stats. 1903, p. 33, means eight hours' actual labor.

A person employed as a watchman, in, about and upon the surface workings of any mining grounds and premises, is included in the term "workingman," as used in Stats. 1911, p. 373.

CARSON CITY, May 18, 1911.

HON. GEO. N. NOEL, *District Attorney, Virginia City, Nevada.*

SIR: I have the honor to acknowledge receipt of your letter of May 8, in which you request an opinion from this office on the following subject-matters:

> First—The miners desire to ascertain if they are obliged to be in the performance of eight hours of actual work, or whether they should be allowed sufficient time for partaking of their luncheon, and that time to be deducted from the eight hours of labor required, or whether they can be lawfully required to devote nine hours to their labor and eating purposes.
>
> Second—Can a person employed as a watchman in, about and upon the surface workings of any milling or mining grounds and premises be obliged to work more than eight hours out of every twenty-four per day without additional compensation therefor?

I shall consider these two questions in their order.

An Act passed by the Legislature of Nevada and approved February 23, 1903, found in the Statutes of Nevada, 1903, at page 33, entitled "An Act regulating the hours of employment in underground mines and smelters and ore reduction works, and providing penalties for violation thereof," reads as follows:

> SECTION 1. The period of employment of workingmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.
>
> SEC. 2. The period of employment of workingmen in smelters and in all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.
>
> SEC. 3. Any person who violates either of the preceding sections of this Act, or any person, corporation, employer or his or its agent, who hires, contracts with, or causes any person to work in an underground mine or other underground workings, or in a smelter or any other institution or place for the reduction or refining of ores or metals for a period of time longer than eight (8) hours during one day unless life and property shall be in imminent danger, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred ($100) dollars, nor more than five hundred ($500) dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment.
>
> SEC. 4. This Act shall take effect sixty days from and after its passage.

The question, as I view it, is whether time for luncheon shall be deducted from the eight hours' employment as prescribed in the above-entitled Act.

The whole question can be answered by a determination of what the word "employment" as used in the said Act means. The word "employment," as used in the statute, has a plain and definite meaning. Webster defines it as follows: "Employment: The act of employing or using; also the state of being employed." (Words and Phrases, vol. 3, p. 2381; *Short* v. *Bullion Beck and Champion Mining Camp*, 45 L. R. A. 604.)

If then, employment means "the state of being employed" or engaged, it would seem that the statute contemplated the eight hours, actual employment in labor.

However, the Supreme Court passed upon this Act when the constitutionality of the same was raised and sustained, and Judge Talbot in discussing the same, speaking for the court, said:

> We cannot say that this law, *limiting the period of labor in underground mines to eight hours each day*, is not calculated to promote health; that it is not adapted to the protection of the health of a class of men who work in underground mines. (*Ex Parte Boyce*, 27 Nev. 335.)

Therefore, from Judge Talbot's own words in passing upon this eight-hour law he declares it to be a law "limiting the period of labor in underground mines to eight hours each day." Here it is plainly seen he construes the word "employment" to mean actual labor.

I am, therefore, of the opinion that the eight hours' employment contemplated by the statute means eight hours' actual labor.

The second question you advance resolves itself into whether a watchman comes within the terms of the Act passed by the Legislature of Nevada, approved March 24, 1911, and found in the Statutes of Nevada, 1911, at page 373, and if so, whether he can be obliged to work more than eight hours out of every twenty-four per day without additional compensation therefor. The said Act reads as follows:

> SECTION 1. The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, top men, and all workingmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger.
>
> SEC. 2. Any person who violates any of the provisions of this Act, or any person, corporation, employer or agent who hires, contracts with, or in any manner causes or induces any person to work or labor on or about the surface or surface workings of any underground mine workings for more than eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred ($100) dollars nor more than five hundred ($500) dollars, or by imprisonment in the county jail for not longer than six months, or by both such fine and imprisonment.

SEC. 3. This Act shall take effect and be in force thirty days from and after its passage and approval.

A watchman has been defined as follows:

> A watchman is an officer in cities or towns, whose duty it is to watch during the night and take care of the property of the inhabitants. (Black Law Dict.; Bouvier Law Dict.) Webster's definition of the word "watchman" is: "One who guards the streets of a city or building by night."

The next query then is, whether a watchman is a workingman in the sense contemplated by section 1 of said Act?

The first part of said section specifically enumerates mechanics, engineers, blacksmiths, carpenters, and then adds a clause so sweeping in its nature as to include "*all workingmen employed or working about the surface or surface workings of any underground mine workings.*"

Obviously a watchman is not included among those specifically enumerated in the first part of said section, and this leads us to a consideration of the latter portion of said section 1 or to what is included under the expression "workingmen."

Century dictionary defines "workingman" as "a laboring man or one who earns his living by manual labor."

"A bookkeeper is not a workingman within Laws 1897, c. 415, sec. 8, preferring wages of workingmen of insolvent corporations." (*Cochran* v. *A. S. Baker & Co.*, 61 N. Y. Supp. 724.)

A laborer is defined as follows:

The Century dictionary defines a "laborer" as "one who labors or works with mind or body, or both, but specifically one who is engaged in some toilsome physical occupation, or, in a more restricted sense, one who performs work requiring little skill or special training as distinguished from a skilled workman or one engaged especially in husbandry." (*Cochran* v. *A. S. Baker & Co.* 61 N. Y. Supp. 724.)

"Laborers" as used in Laws of 1892, c. 688, sec. 514, making stockholders of corporations personally liable for all debts due any of their laborers, servants or employees, other than the contractors, for services performed by them, are those who toil in a menial capacity. (*Bristol* v. *Kretz*, 49 N. Y. Supp. 404.)

"Laborer; one who, as a means of livelihood, performs work and labor for those who employ him." (*Oliver* v. *Macon Hardware Co.*, 98 Ga. 249, 25 S. E. 403.)

A laborer, as defined by Webster, is one who works at a toilsome occupation; a man who does work requiring little skill as distinguished from an artisan, sometimes called a workingman. Clerks, agents, cashiers of banks and all that class of employees whose employment is associated with mental labor and skill are not considered laborers. (*Oliver* v. *Macon Hardware Co.*, 25 S. E. 403.)

A bartender has been held to be a laborer. (*Lowenstein* v. *Meyer*, 40 S. E. 726.)

Laborer: "One who subsists by physical toil in distinction from one who subsists by professional skill, and physical toil being the main ingredient of service rendered." (*William* v. *Link*, 64 Miss. 641.)

A foreman of a gas company is held to be a laborer. (*Pendergast* v. *Gandes*, 24 N. E. 724.)

Workman synonymous with laborer. (*Leuffler* v. *Pennsylvania & D. R. Co.*, 11 Phila. 548.)

Century dictionary defines a workingman as a laboring man, or one who earns his living by manual labor. (Words and Phrases, vol. 8, p. 7522.)

From the foregoing it will be observed that whether a person is to be classed as a workingman or laborer, a professional man or artisan, depends upon the test of whether the work done is mental or physical, or as it has been said, whether it be "one who subsists by physical toil in distinction from one who subsists by professional skill."

In my judgment, clearly a watchman would come under the class who subsists by physical toil rather than professional skill, and is therefore in the broad sense a laboring or workingman, and as such comes within the provisions of section 1 of said Act.

Having therefore arrived at the conclusion that a watchman is included in the terms of the Act, the next and last question is: "Can he be obliged to work more than eight hours out of every twenty-four without additional compensation?"

This question does not admit of a doubt. Similar statutes have been passed upon by the Supreme Court of Utah, the United States Supreme Court, the Supreme Court of Kansas, and our own Supreme Court.

Judge Talbot, in the leading opinion in the case of *Ex Parte Boyce*, 27 Nev. 329, said: "The language forbids any person from working in underground mines, smelters or mills for the reduction of ores more than eight hours per day and the penalty is imposed alike on the man who labors in those places longer than the time prescribed, and on the owner who hires and thereby encourages an infraction of the statute by others in his service."

The identical question was raised in the case of *Short* v. *Mining Co.*, a Utah case found in 45 L. R. A., 603, 606, and the court, in speaking to the question, said: "Nor will courts assist a person who has participated in a transaction forbidden by statute to assert rights growing out of, or to relieve himself from the consequences of his own illegal act. When a contract grows immediately out of and is connected with an illegal or immoral act, it will not be enforced. An act done in disobedience to the law creates no right of action which a court of justice will enforce."

The same court speaking, on page 607, said: "It would indeed be a strange anomaly if a contract made in violation of a statute and prohibited by a penalty, could be enforced in courts of the same country whose laws are thus trampled on and set at defiance." (*Short* v. *Mining Co.*, 20 Utah, 20; 57 Pac. 720; 45 L. R. A. 603.) See, also, *Miller* v. *Ammon*, 145 U. S. 427.

The Supreme Court of Kansas held: "It is an elementary principle of law that a person cannot base a cause of action upon his own wrong. In the case at bar if the services performed came within the scope of said chapter 114, then it was unlawful for the plaintiff to work more than eight hours each day, and it was unlawful for the commissioners to allow him to do so, and he, by his act, violated the law and subjected the commissioners, if not himself, to a criminal prosecution, and now asks to profit by it." (*Billingsley* v. *Board of County Commissioners of Marshall County*, 49 Pac. 329.)

From a careful consideration of the reasoning by the courts in the opinions above cited and quoted from, I am led to the conclusion, and it is my opinion, that a watchman is, under the language of the statute

above quoted, included and is intended to be included in the expression and term "workingman," and as such cannot under said law be required or obliged to work, on or about the surface workings of any underground mine workings, to exceed eight hours in any period of twenty-four hours, except in cases of emergency when life or property is in imminent danger. To do so would constitute a violation of the law by the person employed in that capacity, as well as the employer, and for such services rendered in violation of the law, no compensation could be legally claimed or recovered by resort to the courts.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Legislature—Later Enactments—War Claims.

The Legislature is not bound by any enactment of a previous session, but can increase or decrease the per centum allowed to attorneys for the collection of war claims of the State against the Government of the United States, can abolish it entirely, or provide a lump sum in payment.

CARSON CITY, May 19, 1911.

HON. JACOB EGGERS, *Controller of State, Carson City, Nevada.*

SIR: In response to your query, "Did the Legislature of 1911 have the power to allow attorneys a different per centum on all the collections made and paid into the State Treasury of the State of Nevada on war claims of the State of Nevada against the Government of the United States, when a statute passed by the Legislature of Nevada found in the Session Laws of 1905, page 198, section 1 thereof, which provides that attorneys can be allowed 10 per cent of all collections?" I beg to advise you that the action of the Legislature of 1905 is not binding upon any action which the Legislature meeting in 1911 shall see fit to take, and that subsequent Legislatures, if they so desire, can increase or diminish the per centum allowed in such cases to attorneys, or abolish it entirely or provide for a lump sum in payment, without denominating any particular per centum.

You are therefore advised that, according to the law passed by the Legislature of the State of Nevada, found in the Statutes of 1911, at page 106, section 2, it is your duty to draw a warrant in favor of Jackson H. Ralston, and the legal or personal representative of the estate of John Mullen, according to the manner therein prescribed, and the State Treasurer is therefor directed to pay the same.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Slot Machines—Disposition of Moneys Collected from Licenses Of.

Under Stats. 1905, p. 77, one-half of the licenses collected thereunder goes to the State General Fund and the other half to the county in which such license is paid.

CARSON CITY, May 19, 1911.

MR. GEORGE L. SANFORD, *District Attorney, Carson City, Nevada.*

SIR: In response to your query "as to the disposition of moneys collected for licenses for conducting nickel-in-the-slot machines operated for such redeemable merchandise," I beg leave to submit the following:

"An Act to amend an Act entitled 'An Act relating to nickel-in-the-slot machines and providing a penalty for carrying on or playing against such device,' approved February 23, 1901, and to prescribe a license for the carrying on of such nickel-in-the-slot machines and regulate their operation," approved March 15, 1905, will be found in the Statutes of 1905, pages 77 and 78, and section 3 thereof provides as follows:

> One-half of the licenses collected under the provisions of this Act shall go to the State and be assigned to the General Fund, the other half shall go to the county in which such license is paid.

Very respectfully yours,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Lottery Defined—Shooting Galleries

Shooting galleries, offering prizes or merchandise to the person making the highest score, do not come within the inhibition of the Act prohibiting lotteries.

CARSON CITY, May 23, 1911.

HON. WM. WOODBURN, JR., *District Attorney, Reno, Nevada.*

DEAR SIR: In response to your query as to "whether prizes or merchandise offered by shooting galleries to persons making the highest score come within the inhibition of the Act prohibiting lotteries," allow me to submit the following:

"An Act to prohibit lotteries" is found in Cutting's Compiled Laws of the State of Nevada, sections 4937–4945, inclusive. Section 4937 of said compilation reads as follows:

> SECTION 1. A lottery is any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share or any interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name the same may be known.

It is plain that nowhere in said section is any reference made to the word *skill*. Lottery is defined to be any scheme for the disposal or distribution of property by chance, and therefore we are free to infer that any scheme for the disposal of property by skill is not a lottery.

It is a familiar maxim of law, *Expressio unius est exclusio alterius*. Our own Supreme Court has on several occasions considered the above-quoted section defining lottery. See *Ex Parte Blanchard*, 9 Nev. 104; *State* v. *Overton*, 16 Nev. 131.

Judge Hawley, speaking for the court in the case of *State* v. *Overton*, *supra*, on page 143 said: "When the element of chance enters into the distribution of prizes, it is a lottery, without reference to the name by which it is called."

Lottery has been variously defined as follows:

"The term 'lottery' has no technical meaning in the law distinct from its popular signification. A lottery is a scheme for the distribu-

tion of prizes by chance." (*Dunn* v. *People*, 40 Ill. 465–467; *Thomas* v. *People*, 69 Ill. 160–163; *Com.* v. *Mackey*, 177 Mass. 345, 58 N. E. 1027; *Quatsoe* v. *Eggleston*, 42 Or. 315, 71 Pac. 66.)

"Chance is an essential element of lottery, whether that chance be as to any return, or merely as to the amount or value of the return." (*Com.* v. *Moorhead*, 7 Pac. Co. Ct. R. 516.)

"To be a criminal lottery, there must be a consideration, and where small amounts are hazarded to gain large amounts, and the result of the winning is to be determined by the use of a contrivance of chance in which neither choice nor skill can exert any effect, it is gambling by lot, or a prohibited lottery." (*Johnson* v. *State*, 137 Ala. 101, 34 South. 1018–1019.)

"The name given to the process and the form of the machinery used to accomplish the object are not material, provided the substance of the transaction is a distribution or disposition of property by lot." (*State* v. *Clarke*, 33 N. H. 335.)

From the examination of the definitions of a lottery and the leading cases discussing the same, it will be seen that "chance" is an essential ingredient of a lottery.

The test which is applied to lotteries is whether the success in winning depends on chance or lot, whereby the most unskilful stands upon an equal footing with the most skilful, or whether the result is determined by the superior skill or judgment of the person. When chance is the controlling element, it is a lottery, and when the results depend upon skill or judgment, it is not a lottery.

"By Pen. Code, sec. 323, a lottery is defined to be a scheme for the distribution of property by chance among persons who have paid or agreed to pay a valuable consideration for the chance, whether called a "lottery," "raffle," "gift enterprise," or any other name. And a fishpond game seeming to involve no element of chance and calling wholly for the exercise of skill, is probably not subject to inhibition against lotteries. In most instances the chances are that the anglers are found to be unskilful, but that does not make the result of angling depend upon chance. (*People* v. *Furest*, 34 N. Y. Supp. 1115–1117; 13 Misc. Rep. 304.)

This case seems clearly in point, for whether a fishing pond game or, in this instance, a shooting gallery, there is no element of chance involved, as it calls for the exercise of skill, and, as the court well said, *supra*, while some who participate may be unskilful, yet that does not make the result depend upon chance.

You are therefore advised that shooting galleries, offering prizes or merchandise to the person making the highest score, do not come within the inhibition in said Act applying to lotteries.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Surety Companies.

A surety company failing to pay the license provided under Stats. 1909, p. 315, for one year, and afterwards paying the same, is entitled to claim and date its entry into and right to do business in this State under the latter license only.

CARSON CITY, June 23, 1911.

MR. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada:*

DEAR SIR: Complying with your verbal request of recent date for my official opinion as to what shall be deemed or considered the date from which The Title Guaranty and Surety Company is entitled to claim and date its right to do business in this State, under that certain Act of the Legislature of the State of Nevada entitled "An Act to facilitate the giving of bonds and undertakings in certain cases and prescribing conditions upon which surety companies may became liable thereon in this State; fixing penalties for violation thereof; repealing conflicting Acts, and other matters relating thereto," approved March 26, 1909, I have to say:

Your memoranda submitted with the foregoing request shows that the above-named company paid its first annual license to the State Controller under said above-entitled Act on July 15, 1908, and, as by said Act required, appointed Jacob Eggers its state agent; again on April 3, 1909, said company paid its annual license for the year 1909. Your notation shows that the company failed to pay the annual license for the year 1910.

On April 3, 1911, the company paid the state license for the year 1911, and on that date appointed Jacob Eggers, Controller, its state agent.

Under the foregoing state of facts, you are advised that The Title Guaranty and Surety Company is entitled to claim and date its entry into and right to do business in this State under its present license, commencing April 3, 1911.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Constitutional Law—Officers—Tenure of Office—Appointment of Successor.

Notwithstanding the language of section 11, article 15, of the Constitution, an officer appointed for the term of four years is entitled to hold his office and receive the salary provided therefor after the expiration of his time, and until his successor is duly appointed and qualified.

CARSON CITY, July 6, 1911.

HON. JACOB EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: I have your favor of recent date asking for a written opinion concerning the claim of Hon. S. P. Davis for the sum of $208.33, for which amount he claims to be entitled to receive a warrant from you as State Controller for salary as Chairman of the State Industrial and Publicity Commission, for the month of May, 1911.

The State Industrial and Publicity Commission is authorized and provided for under that certain Act of the Legislature of the State of Nevada entitled "An Act creating and establishing a State Industrial and Publicity Commission, prescribing their duties and compensation, providing funds to be used for the accomplishment of their objects, and other matters relating thereto," approved March 27, 1907 (Stats. 1907, p. 408).

Section 2 of said Act designates the number of persons who shall compose said commission, provides for their appointment and terms of office; said section reads as follows:

> SEC. 2. Such Commission shall consist of a Chairman and two other members to be appointed by the Governor, to serve

for the term of four years, except that one of the members (other than the Chairman) of the first Commission appointed shall serve for two years, and the other member (not the Chirman) of the Commission first appointed shall serve for the period of three years; the term of office of the first Commission appointed shall commence on May 1, 1907, and that of the Chairman shall be for the full period of four years, and all Commissioners appointed after the expiration of the terms of the first Commissioners appointed shall have expired, shall be for the full period of four years.

Section 3 of said Act fixes the compensation which shall be paid the Chairman, and the manner in which the same shall be paid, in these words:

SEC. 3. The Chairman of such Commission shall receive as compensation for his services, to be paid out of the treasury of the State of Nevada, the sum of twenty-five hundred dollars per annum, payable in equal monthly installments, upon the first day of each and every month, and the other two members shall serve without compensation.

Under the foregoing statute and subject to its provisions, Mr. Davis was appointed and commissioned Chairman of said Commission for the period of four years from the 1st day of May, 1907, and received from the State of Nevada the annual salary of twenty-five hundred dollars, same being paid in equal monthly installments for each and every month of said term, up to and including April 30, 1911.

The term of office of Chairman is fixed by section 2 of said Act above quoted, and declared to be "for the full period of four years, and all Commissioners after the expiration of the terms of the first Commissioners appointed shall have expired, shall be for the full period of four years."

The Act of the Legislature creating and establishing said Commission was repealed by an Act of the Legislature of the State of Nevada, approved March 18, 1911 (Stats. 1911, p. 133), section 2 of which said repealing Act is in these words:

SEC. 2. This Act shall take effect and be in force from June 1, 1911.

The facts disclose that Mr. Davis continued to act as Chairman of the Publicity Commission from April 30, 1911, up to and including May 31, 1911, after the term for which he had been appointed expired, and without having been reappointed by the Governor, and without the Governor appointing any one to succeed him, and now he seeks compensation for services rendered during said month.

The Constitution of Nevada provides that the Legislature shall not create any office, the tenure of which shall be longer than four years. Section 11, article 15, of the Constitution of the State of Nevada reads:

SEC. 11. The tenure of any office not herein provided for may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years, except as herein otherwise provided in this Constitution.

The tenure of the office under consideration was, in unmistakable terms, limited to a period of four years. But it must be borne in mind that there is a distinction between *the tenure of the office* and the office itself. In this instance, the tenure was for a period of four years; yet as to the existence of the office itself, there was no limitation placed by the Legislature, the office continuing to exist after the expiration of the appointment of the Chairman.

The question is, then, whether the Chairman was entitled to hold over until his successor was appointed and qualified.

Section 8, article 17, of the Constitution of Nevada reads as follows:

> SEC. 8. The term of state officers (except judicial) elected at the first election under this Constitution shall continue until the Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors.

Section 13, article 17, of the Constitution reads:

> SEC. 13. All county officers under the laws of the Territory of Nevada at the time when this Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified; and all township officers shall continue in office until the expiration of their term of office, and until their successors are elected and qualified; *provided*, that the Probate Judges of the several counties, respectively, shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts; *and provided further*, that the term of office of the present county officers of Lander County shall expire on the first Monday of January, A. D. eighteen hundred and sixty-five, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. eighteen hundred and sixty-four, and there shall be an election for county officers of Lander County at the general election in November, A. D. eighteen hundred and sixty-four, and the officers then elected shall hold office from the first Monday of January, A. D. eighteen hundred and sixty-five, until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified.

And section 18 of article 17 of the Constitution reads:

> SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors, respectively.

The idea that state officers should hold over until their successors were elected and qualified seemed to be paramount in the minds of the framers of the Constitution, and the whole spirit of that document seems to indicate that they took every precaution to prevent possible lapses or vacancies in public offices.

It is true that section 2 of article 17 expressly provides that the Legislature shall not create an office, the tenure of which shall be for a period longer than four years, except as otherwise provided. However, the purpose and intent of that section was to prevent the creation by the law-making body of offices, the tenure of which might be extended over an unlimited or unusual period. But this section does not expressly, nor by fair implication, prohibit the holding over by the officer until his successor has been elected and qualified; while, to the contrary, other provisions of the Constitution above quoted hold, as to state officers, they must hold over until election and qualification of their successors, and by fair analogy it would seem that the same would apply in this case.

In this State there is a total absence of any constitutional or statutory provision dealing directly with this subject-matter, while in California and most of the other States of the Union the matter is expressly provided for, either by constitutional or statutory enactment.

In California, section 879 of the Political Code reads:

> Every officer must continue to discharge the duties of his office, although his term has expired, until his predecessor is elected and qualified.

Prior to the adoption of the above-quoted section of the Political Code by the Legislature of the State of California, the Supreme Court of that State, in the case of *People* v. *Stratton*, 28 Cal. 382, had under consideration a section of the Constitution, the language of which is identical with that of the section of our Constitution under consideration here, in which it used this language:

> When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this Constitution ever exceed four years.

> In the abstract, "office" signifies a place of trust. In legal idea, an office is an entity, and may exist in fact, though it be without an incumbent. In this sense the word "office" is used in a number of instances in the Constitution and also in the statutes. An office is also defined to be a right to exercise a public function or employment, and to take the fees and emoluments belonging to it. (*Miller* v. *Supervisors*, 25 Cal. 98.) The section of the Constitution declares that the duration of any office not fixed by the Constitution shall never exceed four years. This does not mean that the office shall cease to exist after the constitutional limit declared has expired; but the word "duration" evidently means the term which may be fixed by the constituting authority as the limit beyond which the incumbent's right by election or appointment to the office shall not extend. The constitutional inhibition operates as a total restraint to the creation of a term of office by election or appointment of longer

duration than four years. So when, by an Act of the Legislature, an office is created and provision is made for filling it with a person who shall be invested with the right and authority to perform the functions belonging to it, for a period, for instance, of two years, the term thus prescribed is limited by a law of as binding obligation as the Constitution itself, provided it is in no sense repugnant to the organic law; and the incumbent's term is complete and at an end upon the expiration of the time prescribed for its duration. But notwithstanding the incumbent's term in such case be at an end by lapse of time, it is not to be gainsaid that he may remain in the exercise of the duties of the office as its *locum tenens* until his successor is elected or appointed. In such case he holds the position, not as the incumbent by election or appointment, but because the public necessities require that the office shall not be without a person in its possession having authority to perform the duties appertaining to it.

This continuance in office is not an extension of the term where the term is expressly limited, though it is an incumbency by sufferance for the public convenience, subject to be determined whenever the proper authority may act effectively. Now whether the term of office be two years or four years we apprehend can make no difference. In the latter case, as well as in the former, he who was the incumbent of the term expired is permitted to remain in office, invested with it as its *locum tenens*, until a successor is authorized to enter into and upon the discharge of its functions, because the public necessities demand that the duties of the office should be duly administered. (*Stratton* v. *Oulton*, 28 Cal. 44, and the cases therein cited.) The views above expressed, in our judgment, are in no sense opposed to the letter or spirit of the seventh section of the eleventh article of the Constitution, but in harmony with it.

Later, the same court in the case of *People* v. *Edwards*, 28 Pac. 831, on page 832 said:

It is claimed that section 16 of article 20 of the Constitution makes it unlawful to occupy an office, created by the Legislature, for a longer period than four years. That section provides that, "when the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; * * * but in no case shall such term exceed four years." This question, also, was passed upon in *People* v. *Hammond*, and requires no further notice. See, also, *State* v. *Harrison*, *supra*, where the purpose and effect of a similar provision is discussed. This section is a reenactment of section 7, article 2, of the old Constitution, which was held not to forbid a holding over until a successor has been chosen and has qualified, but merely to limit the incumbent's term by election or appointment. (*People* v. *Tilton*, *supra*.) As the section is substantially the same as it was in the former Constitution, it must be construed in the same way. (*Sharon* v. *Sharon*, 67 Cal. 189, 7 Pac. 456, 635; 8 Pac. 709.)

The Supreme Court of Indiana, in the case of *State* v. *Harrison*, 113 Ind. 440, said:

> Whether or not, as a general principle of the common law, officers are entitled to hold over beyond their prescribed terms without some express provision, is not settled upon authority, although the view adopted by the American courts seem to be that, in the absence of any restrictive provision, the officer is entitled to hold until he is superseded by the election of another person in his place. (*Tuley* v. *State*, 1 Ind. 500; *People* v. *Runkel*, 9 Johns. 147; *Trustees* v. *Hills*, 6 Cow. 23, 16 Am. Dec. 429; *McCall* v. *Bryam Mfg. Co.*, 6 Conn. 428; *State* v. *Fagan*, 42 Conn. 32; *Sparks* v. *Farmers Bank*, 3 Del. Ch. 274, 9 A. L. R. 365; *Stratton* v. *Oulton*, 28 Cal. 44; *People* v. *Bull*, 46 N. Y. 57; 1 Dillon, Mun. Corp. 219.)

Judge Dillon, in his Commentary on Municipal Corporations, 5th. ed. (1911) vol. 1, sec. 419, p. 716, says:

> At common law the office of an alderman, jurat, capital burgess, or other member of a select body, is a franchise for life, though by prescription or charter it may be limited to a definite period, but the office was so much in the nature of a freehold that there was an implied right to hold over, unless it was otherwise provided.
>
> SEC. 411. In this country, however, a public office is not considered as being in the nature of a grant or contract, and the officer, as against the public, has no freehold or property of that nature in the office, although he may have a legal right to execute its duties and to its emoluments; and it is almost an invariable provision of law that all officers shall be elected or appointed for a fixed and definite period. To guard against lapses, sometimes unavoidable, the provision is almost always made in terms that the officer shall hold until his successor is elected and qualified.

In the case of *Robb* v. *Carter*, 4 Atl. 282, the Supreme Court of Maryland lays down the proposition that in the absence of any provision authorizing him to continue in office until the appointment and qualification of his successor, it was his duty to hold over, citing with approval the case of *People* v. *Tilton*, 37 Cal. 614, and *Kreider* v. *State*, 24 Ohio St. 22.

The same rule is laid down in *Bath* v. *Reed*, 78 Me. 276. The Supreme Court, at page 280, said:

> Even in the absence of any charter or statute provision that the officer of a municipal corporation shall hold over until his successor is elected and qualified, the doctrine of the American courts has strongly inclined to guard against lapses, sometimes unavoidable, and to adopt the analogy of other corporate officers who hold over until their successors are elected, unless the legislative intent to the contrary is clearly manifested. (Dillon, Mun. Corp. 158; *Chandler* v. *Bradish*, 23 Vt. 416; *Tuley* v. *State*, 1 Ind. 502.)

And the same court, in the case of *Bunker* v. *Gouldsboro*, 81 Me. 194, said:

The language of the statutes may show an intention to precisely fix and limit the tenure of a municipal officer, so that on a fixed day, his authority will cease, even if an entire vacancy and absence of authority be the result. Unless such an intention appears, however, the better opinion is that the officer should continue to exercise his functions until another person is qualified to assume them. As the natural law is said to abhor a vacuum in physics, the municipal law may be said to dislike a vacancy in authority. (Dillon, Mun. Corp. 220; *Bath* v. *Reed*, 78 Me. 276, 280.)

But, even without such a provision, the American courts have not adopted the strict rule of the English corporations which disables the mayor or chief officer from holding beyond the charter or election day, but rather the analogy of the other corporate officers who hold over until their successors are elected, unless the legislative intent to the contrary be manifested.

See, also, *People* v. *Runkel*, 9 Johns. (N. Y.) 147; 2 Kent Comm. 238; *Kilsey* v. *Wright*, 1 Root (Conn.) 83; *Smith* v. *Natchez Steamboat Co.*, 1 How. (Miss.) 479; *Elmendorf* v. *Mayor of N. Y.*, 25 Wend. (N. Y.) 693; *State* v. *Wilson*, 12 Lea (Tenn.) 246; *People* v. *Oulton*, 28 Cal. 44; *People* v. *Blair*, 82 Ill. App. 570; *State* v. *Harrison*, 113 Ind. 434–440; *Lynn* v. *Cumberland*, 77 Md. 119, 130; *Pratt* v. *Swan*, 16 Utah, 483; *State* v. *Daggett*, 28 Wash. 1, 16; *State* v. *Slay*, 64 Mo. 89; *Territory* v. *Stoke*, 2 N. M. 63.)

For the foregoing reasons, it is the opinion of this office that the claim of Hon. S. P. Davis is a valid claim for the sum of $208.33, for which amount he is entitled to receive a warrant from you as State Controller, and, as such, you are advised that it is your duty to draw the same.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Legislature—Appropriation—Adjutant-General.

The appropriation for contingent expenses of the Adjutant-General's office, care and transportation of military property, is under the direction and control of the Adjutant-General, and may lawfully be expended by him for clerical services in his office.

CARSON CITY, July 11, 1911.

HON. JACOB EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: Concerning the claim of Mr. Archibald Dickson, amounting to the sum of $300 for clerical services performed by him in the office of the Adjutant-General, during the months of May and June, 1911, at and by the request of that official, I beg to advise you that I have examined into the justness as well as reasonableness of same, and give it as my opinion that the claims were duly and properly incurred.

The duties performed by Mr. Dickson were, as I am informed, to some extent, of a technical character, dealing with correspondence and accounts between the U. S. War Department and the State, relating to certain property heretofore furnished by the United States through the War Department to the State, which correspondence, and accounts to which

they relate, have been allowed to drag and remain unanswered, a portion thereof extending back a number of years.

I desire to state further in this behalf that, in my investigation of these claims, this state of facts was developed: That for a number of years past the Legislature has, at each session, made an appropriation of money for contingent expenses of the Adjutant-General's office, care and transportation of military property; that the expenditure of this money is, and for years has been, under the direction and control of the Adjutant-General, and his right to do so has never been questioned, but on the contrary has invariably been promptly approved by the Board of Military Auditors and Examiners, and has not, after receiving the sanction of these boards, been further questioned or delayed.

For the foregoing reasons, and further believing the claims to be just and correct, I advise that you issue and deliver your warrant upon the State Treasurer in favor of Mr. Dickson for the amount of his claims.

Very truly yours,

CLEVE H. BAKER, *Attorney-General.*

Courts—Criminal Procedure—Attorneys.

The fee provided for an attorney, appointed to defend a person indicted for any offense, by Stats. 1911, p. 318, should be allowed for each person defended, whether he be tried jointly or severally.

CARSON CITY, August 11, 1911.

HON. PETER BREEN, *District Judge, Third Judicial District.*

MY DEAR SIR: Your favor of August 4 was received by this office in due course of mail, containing your question, to wit: "Is the attorney so appointed by the court entitled to a fee of one hundred dollars for each person, or to a single fee of one hundred dollars, there being but one trial, where the parties are jointly tried for murder?"

The Act of 1911 (Stats. 1911, p. 318) provides as follows:

> An attorney appointed by a court to defend a person indicted for any offense is entitled to receive from the county treasury the following fees: For a case of murder, one hundred dollars; for a felony or misdemeanor, such fee as the court may fix, not to exceed fifty dollars.

It would seem that, according to the above statute, the fee is paid for defending a person indicted, irrespective of the manner or mode of trial, and therefore I am of the opinion that a fee should be allowed for each person defended, whether he be tried jointly or severally.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Controller—Duty to Draw Warrants.

It is the duty of the Controller to draw his warrants upon the State Treasurer when the specific appropriation upon which the warrant is drawn is not exhausted, even though the fund upon which the warrant is drawn is depleted.

CARSON CITY, August 16, 1911.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: In reply to your letter under date of August 7, 1911, in which you submit the following: "As the General Fund of the State will soon be exhausted, I would ask an early opinion as to whether I can draw warrants on an exhausted fund and issue the same to claimants?" I beg leave to submit the following:

Section 1960, Cutting's Compiled Laws, reads as follows:

> SEC. 6. He shall draw all warrants upon the treasury for money, and each warrant shall express, in the body thereof, the particular fund out of which the same is to be paid, and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet the same. The Controller shall keep an account of all warrants by him drawn on the treasury, and a separate account under the head of each specific appropriation, in such form and manner as at all times to show the unexpended balance of each appropriation.

The prohibition which the above section places on the Controller arises only when there is "an exhausted specific appropriation, by law, to meet the same." I take it that there is a distinction in law as well as fact between an appropriation, and the fund set aside in the State Treasury upon which the Controller's warrants are drawn.

The Supreme Court of the State has held that the public revenues, may be appropriated by the Legislature in anticipation of their receipt, and it is not necessary to the validity of such an appropriation that funds to meet it should be in the treasury. (*State* v. *Parkinson*, 5 Nev. 17; *Eggers* v. *Davis*, 29 Nev. 469.)

Therefore, so long as the specific appropriation is unexhausted, it matters not whether the fund be depleted or not, it is the duty of the Controller to draw his warrants. Section 1994, Cutting's Compiled Laws, reads as follows:

> SECTION 1. The State Treasurer shall pay all warrants drawn upon him by the State Controller, out of the proper fund, as directed, in the order in which the same are presented. If there be no money to pay any warrant when presented, the State Treasurer shall endorse thereon the words "Not paid for want of funds," and shall note the date of presentation, and attest the endorsement made by his official signature. He shall at the same time make an entry of the date of presentation, number, and amount of the warrant in the register required by law to be kept by him. So soon as money accumulates or is received into the State Treasury, applicable to and sufficient for the payment of any outstanding warrant or warrants so presented for payment and not paid for want of funds, the State Treasurer shall post a notice in writing in a conspicuous place in his office, setting forth the number and amount of his warrant or warrants, and the fact that there is money in the State Treasury to pay the same. From the time of the posting of such notice no interest shall be allowed or paid upon any warrant which by law is, or may be, entitled to bear interest.

It is evident, from a reading of said section 1994, that the Legislature

foresaw the possibility of such contingencies arising as would make it necessary for the Treasurer to be unable to pay the warrants which the Controller had drawn upon funds which were depleted. The very existence of this section, passed by the Legislature of the State, presupposes that it is the duty of the Controller to draw the warrants, and then for the Treasurer to endorse on the warrants "Not paid for lack of funds."

An examination of the Nevada Constitutional Debates and Proceedings (1864), at page 221 thereof, sustains the conclusion we have already reached, for we find there that the same matter was discussed and that the framers of the Constitution, by a decisive vote of 16 to 6, refused to put a clause in the Constitution prohibiting the Controller from issuing his warrant, even though there were no funds in the State Treasury to meet the same.

The discussion was in part as follows:

> SEC. 5. No scrip, certificate, or other evidence of state debt whatsoever, shall be issued, for the payment of which there are no funds in the treasury, except for such debts as are authorized by the third section of this article.
>
> Mr. Warwick—I will move to amend, by striking that section out entirely. I will give my reasons for it. There was a provision similar to this among the laws of the State of California, but it was found to work a very great hardship. When there was no money in the treasury it was impossible, under this provision, to issue any certificate or acknowledgment of the indebtedness of the State, and the consequence was, in the case of members of the Legislature who came to the State Capitol to serve the people, that, although the indebtedness was incurred by the State, yet, not being able to receive any acknowledgment of that indebtedness, they were unable to negotiate it.
>
> Although the debt was valid, yet, having no certificate or other evidence of indebtedness, the individual members were unable to raise anything upon it, and it was therefore found necessary, at the last session of the California Legislature, in which I had the honor to serve, to abrogate that provision.
>
> There is no good reason why, if the State incurs indebtedness, it should not issue the acknowledgment to the creditor, whether the money to pay it be in the treasury or not. The creditor should at least have some acknowledgment of the indebtedness of the State in his hands or in his pocket. If, in the case of a private individual, an indebtedness has accrued, he has no hesitation in giving to his creditor an acknowledgment, so that it shall stand against him and be negotiable in the market. For that reason it was deemed necessary and expedient, by the assembled wisdom of California, to abrogate that provision of law. I know, if I may refer to my own experience in this connection, that that action of the Legislature had a very healthy effect, because when we had no warrants for our pay we could not negotiate at all, but with the warrants in our hands, we could go into the exchange and negotiate readily. * * *
>
> The question was taken upon the amendment offered by Mr. Warwick, to strike out the whole section, and upon a division it was agreed to—ayes, 16; noes, 6.

It is therefore the opinion of this office that it is the duty of the Controller, under the law as above quoted, to draw his warrant upon the State Treasurer when the specific appropriation upon which the warrant is drawn is not exhausted, even though the fund to meet the appropriation is depleted.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Public Schools—Superintendent of Public Instruction—Traveling Expenses—Appropriation For.

The traveling expenses of the Superintendent of Public Instruction are provided by Stats. 1911, p. 185, sec. 6, subd. 1, and not out of the fund appropriated by Stats. 1911, p. 78, sec. 34, which section was repealed by the first-mentioned Act.

CARSON CITY, August 16, 1911.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: I have your letter of the 8th instant, relating to the matter of the traveling expenses of the Superintendent of Public Instruction while engaged in the performance of his official duties, which letter reads as follows:

OFFICE OF THE STATE CONTROLLER,
CARSON CITY, August 8, 1911.

HON. CLEVE H. BAKER, *Attorney-General.*

DEAR SIR: The Statutes of 1911, page 185, section 6, subsection 1, approved March 20, 1911, states the Superintendent of Public Instruction shall visit each county, and the necessary traveling expenses shall be allowed, audited and paid out of the General Fund, provided that the sum so expended in any one year shall not exceed one thousand dollars.

The General Appropriation Act, approved March 17, 1911, makes an appropriation for Superintendent of Public Instruction for traveling expenses of eight hundred dollars, payable out of the General School Fund. The Act approved March 20, 1911, repeals all Acts or parts of Acts in conflict with that Act.

Under the law, or both of these laws, can I draw warrants for traveling expenses of the Superintendent of Public Instruction? If so, under what Act?

Respectfully, J. EGGERS, *State Controller.*

The Act of the Legislature entitled "An Act making appropriation for the support of the Civil Government of the State of Nevada for the years 1911 and 1912," approved March 17, 1911 (Stats. 1911, p. 78), made provision for the payment of traveling expenses of the Superintendent of Public Instruction, to wit, the sum of $800, payable out of the General School Fund.

This Act was on March 17, 1911, approved by the Governor; three days later an Act entitled "An Act concerning public schools, and repealing certain Acts relating thereto," approved March 20, 1911, received the approval of the Governor and was filed in the office of the Secretary of State. Chapter 2 of this Act relates to and defines the powers and duties of the Superintendent of Public Instruction; certain of these duties are defined in section 6 of the Act, as follows:

> 1. To visit each county in the State at least once each year for the purpose of conducting institutes, visiting schools, consulting with school officers, and addressing public assemblies on subjects pertaining to the schools; and the necessary traveling

expenses incurred by the Superintendent in performance of such duties, such traveling expenses to include the cost of transportation and board while absent from his place of residence, shall be allowed, audited and paid out of the General Fund in the same manner as claims upon said fund are now allowed, audited and paid; *provided*, that the sum so expended in any one year shall not exceed one thousand dollars.

Subsection 24 of general section 221 of said Act reads:

24. An Act to provide * * * are hereby repealed, and all other Acts and parts of Acts in conflict with this Act are hereby repealed.

That there is a conflict between the provisions of section 34 of the General Appropriation Act and the provisions of section 6 of the later Act relating to public schools can be readily admitted. The amount of money appropriated and made applicable to the expenses of the Superintendent of Public Instruction for the years 1911 and 1912 is $800, payable out of the General Fund, while under the provisions of section 6 of the Act relating to public schools, approved March 20, 1911, the amount designated and allowed for the same purpose shall not exceed one thousand dollars per year, payable out of the General Fund. It may be admitted, for the purpose of this communication, that by the language of the repealing clause of the latter Act, it was the intention of the Legislature, by naming the sum, one thousand dollars per year, as the amount applicable to paying the expenses named therein, to repeal said section 34 of the General Appropriation Act, which by its terms appropriated $800 to be applied in payment of the expenses of the Superintendent of Public Instruction for the years 1911 and 1912.

In conclusion, it is the opinion of this office that the expenses of the Superintendent of Public Instruction, including his traveling expenses, are payable under the provisions of the Act relating to public schools, approved March 20, 1911, out of the General Fund.

Respectfully submitted.

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Licenses—Intelligence Offices.

A license fee of $15 per quarter should be collected from the keeper of an intelligence office under section 1187, Cutting, whether the same is conducted in connection with any other business or not, and irrespective of whether the keeper charges a fee for the services rendered or not.

CARSON CITY, August 30, 1911.

HON. CHARLES P. FERRELL, *Sheriff, Reno, Nevada.*

MY DEAR SIR: In reply to your letter of recent date wherein you desire to know whether or not a license fee of $15 should be collected from all keepers of intelligence offices, or whether there is a distinction made between those who charge a fee for the services rendered and those who do not:

Section 1187, subdivision 4, Cutting's Compiled Laws, reads as follows:

> Fourth—For each keeper of an intelligence office fifteen ($15) dollars per quarter-year. All such licenses shall be paid in advance.

It is the opinion of this office that a license fee of $15 per quarter-year should be collected from each keeper of an intelligence office, whether the said intelligence office is conducted in connection with any other business or not, and irrespective of whether the keeper sees fit to charge a fee for the services rendered or not. The license is upon the business and not upon the profits, and it makes no difference whether or not the intelligence office is run in connection with any other business or not.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Assessment—Assessment of Mortgaged Real Property.

Under Stats. 1911, p. 352, it is the duty of the County Assessor, in every instance where real property in his county is mortgaged, to deduct the value of the mortgage, as shown by the record thereof, from the value of the real property, which, less such deduction, should be assessed to the owner of the property, while the mortgage, whether held by resident or nonresident, should be assessed to the owner thereof.

CARSON CITY, September 6, 1911.

MR. JOHN HAYES, *County Assessor, Reno, Nevada.*

DEAR SIR: I have your letter of the 5th instant, in which, owing to the absence of the District Attorney of Washoe County, you request to be advised as to the manner in which you shall proceed concerning the assessment of mortgaged lands situate in your county, particularly with reference to the deduction therefrom, of the value of the mortgage thereon, as required by the provisions of that certain Act of the Legislature of the State of Nevada entitled "An Act supplemental to an Act entitled 'An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891," which Act became a law March 23, 1911 (Stats. 1911, p. 352), there being, as you suggest, some doubt as to your duty under this law, particularly since some of your county officials raise the question as to whether or not the power to make such deduction is conferred upon the Legislature under the Constitution.

The Act to which you refer and the provisions thereof relate solely to mortgages upon real estate situate in any one county in this State. Section 1 of the Act reads as follows:

> SECTION 1. All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. A mortgage, deed of trust, contract or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security,

> shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof in the county, city or district in which the property affected thereby is situated.

As will be noted, it is provided:

First—That all property must be assessed at its full cash value.

Second—Land and improvements thereon shall be separately assessed.

Third—A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except * * *. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such property shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated.

Section 1, article 10, Constitution of Nevada, relating to taxation, reads:

> SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed * * *.

An examination of the decisions of a number of the state courts of last resort, show that the question presented by your letter has, in a number of instances, been the subject of consideration by these courts, and the power of the Legislature to make provision for the deduction of the value of solvent debts, secured by mortgage upon real property from the assessed valuation placed upon such real property, has been approved.

The Supreme Court of Indiana (*State* v. *Smith*, 158 Ind. 543), where a similar statute to that above quoted was under consideration, the judgment of the lower court in that case being against the deduction of the value of the mortgage, from which an appeal was taken to the Supreme Court, in reversing the lower court, used this language:

> The power of taxation is an incident of sovereignity, and is possessed by the government without being expressly conferred by the people. (*State Board* v. *Holliday*, 150 Ind. 216.) The power belongs to that class of powers known as political powers, and while, in the genesis of popular government, it was occasionally exercised by the executive branch of the government, yet it is now well settled that the power of taxation is purely a legislative function. (*State Board* v. *Holliday*, *supra*; *Union Tel. Co.* v. *Mayer*, 28 Ohio St. 521.)
>
> The extent to which it (the taxing power) shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the States commit the exercise of the power.
>
> The discretion is restrained only by the will of the people, expressed in the State Constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. (*Lane*

County v. *State of Oregon*, 7 Wall. 71, 77, 19 L. Ed. 101.) And see, also, *Sharpless* v. *Mayor of Philadelphia*, 21 Pa. St. 147, 160, 59 Am. Dec. 759.)

This doctrine is even more forcibly stated by Judge Cooley in his work on taxation (p. 5). He there says: "Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes.

* * * * * * * * *

We are disposed to place stress upon the fact that the lien which may be made the basis of a deduction is a mortgage lien, as distinguished from other liens upon real estate, general and special. While it is true that for most purposes a mortgage will be treated as a mere security for a debt, yet, whenever it is necessary to render effective the rights of the parties, the courts still treat mortgages as forms of defeasible sales. (*Vinnedge* v. *Shaffer*, 35 Ind. 341; *United States Co.* v. *Harris*, 142 Ind. 226; *Citizens State Bank* v. *Harris*, 149 Ind. 208; *Savings Society* v. *Multnomah County*, *supra*.) As observed by the Supreme Court of the United States in the case last cited: "If the law treats the mortgagee's interest in the land as real estate for his protection, it is not easy to see why the law should forbid it to be treated as real estate for the purpose of taxation."

To the same effect are the following cases, which in principle sustain the views expressed in the case of *State* v. *Smith*, 158 Ind. 543: *City of Indianapolis* v. *Navin*, 151 Ind. 139; *Matter* v. *Campbell*, 71 Ind. 512; *Moore* v. *Hewitt*, 147 Ind. 464; *Crawford* v. *Lenn Co.* 11 Or., 482; *Savings Society* v. *Multnomah County*, 169 U. S. 421; *State* v. *Runyon*, 41 N. J. L. 98.

The Supreme Court of California, in the case of *People* v. *Hibernia S. & L. Soc.*, 51 Cal. 243, expressed itself in effect similarly to that of the Supreme Court of Indiana.

Concerning the question of whether the revenues which can be collected under this law will be less than under the law as it stood prior to the time the present law went into effect, was one solely for the Legislature to determine, and it is not within the province of any officer of the executive department to question the wisdom or expediency of its action in placing the law in question on the statute books, and having so ordained, it is, in my opinion, the duty of this office to use all reasonable efforts in maintaining the law.

For the foregoing reasons you are advised that it is your duty, as County Assessor, in every instance where real property in your county is mortgaged, to deduct the value of the mortgage, as shown by the record thereof, from the value of the real property, which real property, less such deduction, should be assessed to the owner of the property, while the mortgage, whether held by a resident of your county or a nonresident, should be assessed to the owner thereof.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—Official Advertising—Rates For.

Stats. 1897, p. 92, "fixing the rates for official advertising by the State of Nevada and the several counties of the State," repealed Stats. 1893, p. 13, "providing for the publication of all bills allowed by the Board of County Commissioners in this State," and the first Act governs in all matters relating to official printing and advertising required by the respective counties of this State.

CARSON CITY, September 11, 1911.

MR. H. F. BREDE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: I have your favor of August 12, reading: "Please favor me with your opinion of 'An Act fixing the rates for official advertising by the State of Nevada, and the several counties of the State,' approved March 16, 1897. This Act fixes the rate at two dollars per square, while an Act approved February 1, 1893, fixes the rate at one dollar. Which governs? I understand that Esmeralda pays at the rate of one dollar per square."

The Act of 1893, to which you call attention, is entitled "An Act providing for the publication of all bills allowed by the Board of County Commissioners in this State," approved February 1, 1893 (Stats. 1893, p. 13). By section 1 of this Act, it was made the duty of the Board of County Commissioners of the different counties in this State to cause to be published in some newspaper published in their respective counties, the amount of all bills allowed by them, together with the names of the persons to whom such allowances are made.

By Section 2, provision is made that the amount to be paid for such publication shall not exceed the sum of one dollar per square of ten lines, and the publication shall not extend beyond a single insertion.

The Act of 1897, relating to official advertising is entitled "An Act fixing the rates for official advertising by the State of Nevada and the several counties of the State," approved March 16, 1897 (Stats. 1897, p. 92). Section 1 of this Act reads:

> SECTION 1. All advertising ordered or required by the State of Nevada, or by the respective counties of the State, shall be paid for by the State or the county ordering or requiring the same at the rate of two dollars per square of ten lines nonpareil measurement for the first insertion and one dollar per square for each subsequent insertion; an insertion be held to be one publication per week whether the newspaper in which such advertising is ordered to be done be published daily or weekly; *provided*, that nothing herein contained shall prohibit Boards of County Commissioners from entering into annual contracts for the entire official printing and advertising of their respective counties when in their judgment a saving of public funds will be effected thereby.

Section 2 of this Act reads as follows:

> SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

By the enactment of the above-entitled statutes, it was the undoubted intent and purpose of the Legislature that it should in future govern and control the subject of official advertising required by the State as also by the several counties of the State, authority being granted to the

from reading the Act of the Legislature to which you refer in your letter, require an interpretation of the statute, but of the contract between the Board of County Commissioners of White Pine County and the Ely Water Company, and which was submitted to the Legislature for its sanction, ratification and approval, as entered into and executed by and on behalf of said White Pine County, acting by and through its Board of County Commissioners; the clause of the contract to which you refer is the eighth paragraph thereof, contained in the preamble to the Act of the Legislature ratifying, sanctioning and approving and declaring valid said contract with said Ely Water Company, and is found, as suggested in your letter, in Stats. 1907 (p. 48), and reads:

> Eighth—That the said party of the second part shall furnish and supply water to the courthouse, hospitals, city hall and schoolhouses in said town and its additions free of any cost to said town, or its additions, or to said county of White Pine, State of Nevada, during the life of this instrument; *provided*, that the cost of all taps, pipes and plumbing necessary to connect said public buildings with mains or pipes of the said party of the second part then existing shall be borne by the said town, or its additions, or by said county, as the case may be.

By the foregoing clause the Ely Water Company "shall furnish and supply water to the courthouse, hospitals, city hall and schoolhouses in said town and its additions free of any cost to said town or its additions, or to said county of White Pine, State of Nevada, during the life of this instrument." It is further provided therein "that the cost of all taps, pipes and plumbing necessary to connect said public buildings with mains or pipes of the said party of the second part then existing shall be borne by the said town, or its additions, or by the said county, as the case may be."

A careful consideration of the language used in the foregoing paragraph of contract with the Water Company fails, in my judgment, to show that the county of White Pine reserved to itself the right to use, free of charge, any of the water to be furnished by the Ely Water Company, for irrigating or sprinkling the grounds upon which the courthouse is located; when it has supplied all the water necessary, or required for use in the courthouse, without charge to the county for same, it has complied with the terms of the contract, so far as that building is concerned, and nothing therein contained can be construed as requiring the Water Company to furnish to the county, free of charge, water for the sprinkling of the grounds upon which the courthouse is located, nor for the irrigation of the trees planted thereon, and such, you are advised, is the opinion of this office.

Yours very truly,

By JAMES R. JUDGE, *Deputy.* CLEVE H. BAKER, *Attorney-General.*

Secretary of State, Fees of—Corporations—General Corporation Law.

Under section 102 of the General Corporation Law the fee to be charged by the Secretary of State for filing notice of change of place of business of a corporation is one dollar.

CARSON CITY, September 21, 1911.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: I have your letter of September 20, 1911, containing

request that I "furnish your office with written advice as to the proper fee to be charged by your office for filing notice of change of place of business of a corporation under section 69 of the General Corporation Laws of Nevada."

Section 69 of the General Corporation Law provides that any corporation "desiring at any time to change the location of its principal office, shall, after a resolution has been passed by its directors, members or stockholders, authorizing or directing such change or removal, file in the office of the Secretary of State * * * a notice of such change, specifying particularly where the said office is to be located, the date when the change was or will be made and the name of the resident agent to have charge of such office after such change. The notice of such change may be signed by any officer or director of the corporation."

The notice of change of principal place of business by any corporation required by the foregoing section to be filed with the Secretary of State, is limited to one paper, or instrument in writing, which may be signed by any officer or director of the corporation. The fee, which you are by statute authorized to demand and collect for filing in your office, the notice set forth in section 69 above quoted, is the matter upon which you request to be advised.

The fees which the Secretary of State is authorized to demand and collect under the General Corporation Law, as enumerated and provided for in section 102 of said Act are: "For certificate or articles of incorporation, ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than ten dollars; * * * for filing list of officers and directors or trustees, and the name of agent in charge of principal office, one dollar."

In my judgment, the clause last above cited, and which relates to the filing of "list of officers and directors or trustees, and the name of agent in charge of principal, one dollar," is intended to include and cover, when and as the same occurs, "change of the location of principal office," and this fee, one dollar, is the sum which your office is authorized, under the statute, to charge and receive for filing same, and you are advised accordingly.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Licenses—Liquor Licenses—Merchant's License.

Persons who keep and sell cigars, cigarettes or tobacco, or either of these articles in connection with the retail liquor business, are subject to the payment of a merchandise license therefor.

CARSON CITY, September 25, 1911.

HON. D. A. PATE, *District Attorney, Austin, Nevada.*

DEAR SIR: Your favor of the 20th inst, requesting that I give you an opinion upon the question: "Are saloon-keepers liable for a merchandise license under the section 1192, Compiled Laws (1900), for selling cigars and other tobacco?" Just received.

Answering the foregoing question will state: Section 1192, Cutting's Compiled Laws, relates to licenses and provides that "every person who

shall sell or vend any goods, wares or merchandise, or wines or distilled liquors, drugs or medicines, * * *, shall obtain from the Sheriff of the county in which such business may be transacted, for each of the branches of business in this, and each of the preceding sections enumerated, a license for the transaction of such business at the following rates, to wit, all persons dealing as aforesaid shall be classed according to the amount of the average monthly sales effected, in the following manner." Then follows a classification into ten classes, according to monthly sales, from one hundred thousand dollars or more for the highest, down to all amounts under one thousand dollars for the lowest; the license for the first class is fixed at fifty dollars, with a reduction for each class—the license for the lowest or tenth class being two dollars and fifty cents per month.

It further provides "that the sale of liquors and wines by persons licensed under this section shall not be in less quantities than one quart measure."

Section 1193, Cutting's Compiled Laws, reads:

> Any person or persons who may dispose of any spirituous, malt or fermented liquors or wines in less quantities than one quart, shall, before the transaction of any such business, take out a license from the Sheriff of the county in which he or she proposes to do such business, and pay therefor the sum of ten dollars per month; *provided*, that all persons engaged in retailing liquors as aforesaid, in connection with entertainment for travelers, at any point one mile or more outside the limits of any city or town in this State, shall pay a quarterly license of fifteen dollars.

It will be noted, from a reading of the sections of the statute above quoted, that every person who shall sell any "goods, wares or merchandise, wines or distilled liquors" is subject to the payment of a license under some one of the classifications therein specified; each, as I understand the language of the section, being subject to a separate license.

In all cases where the sale of merchandise is carried on and where wines or distilled liquors are sold in connection therewith, and carried as part and parcel of the stock of merchandise, the owner is required to procure a license to carry, sell and deal in merchandise, and a separate license for the sale of wines or distilled liquors.

A person who engages in the business of selling liquors, tobacco or cigarettes, or either one of those articles, in this State is, under the law, required to procure a license authorizing such person to carry on the business, and, in event such person desires to sell wines or distilled liquors in connection with, and as a part of, the business in which he is then engaged, the law requires that he shall, before offering the wines or distilled liquor for sale, procure a license authorizing him to engage in the business of selling wines or distilled liquors. This being so, and nothing to the contrary appearing in, or being provided for by, the statute, I see no good or sufficient nor any reason why a person engaged in the business of selling at retail wines or distilled liquors, who desires to engage in the business of selling cigars, tobacco or cigarettes in connection with said business should not, under the law, before offering these articles, or either of them, for sale, be required to procure the license for such business provided by the statute.

Section 1247, Cutting's Compiled Laws of the State of Nevada, reads:

> From and after the passage of this Act the quarterly license for the sale of cigarettes or cigarette paper shall be fifteen dollars.

See, also, sections 1248–1251, inclusive.

For the foregoing reasons, it is my opinion that persons who keep and sell cigars, cigarettes or tobacco, or either of these articles, in connection with the retail liquor business, are subject to payment of a merchandise license therefor.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

State Prison Commissioners—Convicts—Convict Road Work—Disposition of Moneys Received.

The money paid to the Board of State Prison Commissioners by any county for work and labor by convicts upon the public roads in such county is to be expended under the direction of said board in the maintenance of convicts while detailed for and employed upon such road work.

CARSON CITY, October 14, 1911.

HON. RAYMOND T. BAKER, *Warden Nevada State Prison.*

DEAR SIR: Replying to your request for an opinion, in writing, relative to the disposition, authorized by the statute, to be made of the money directed to be collected by the Board of State Prison Commissioners, under the provisions of section 4 of the Act of the Legislature entitled "An Act authorizing and relating to the employment of convicts on the public roads and highways, providing a general road fund in the State Treasury to defray the expenses thereof, and for other purposes," approved March 16, 1911 (Stats. 1911, p. 73), under agreement with the County Commissioners of any county for work to be performed in the construction or repairs or improvement of roads and public highways by convicts detailed by the Board of State Prison Commissioners from the Nevada State Prison:

The provision of the statute particularly relating to this matter, contained in said section 4, is in the words following:

> No road work, under the provisions of this Act, shall be instituted in any county prior to an agreement with the County Commissioners of such county with respect to the survey and character and construction of such road, and an agreement by such county to construct, at its own expense, all bridges or other structures of wood, iron, concrete or stone, requiring skilled labor, and no convict shall be employed thereon; *and such county may be required by said board to contribute in part toward the expense of the maintenance of convicts on such road work.*

The amount which may be collected from any county by the Board of State Prison Commissioners, under the provisions of the statute above quoted, is, as I understand the language employed, to be determined by agreement between the Board of State Prison Commissioners and the county authorities, the statute reading, "and such county may be

required by said board to contribute in part toward the expense of the maintenance of convicts on such road work."

It is provided by section 6 of the above-entitled Act relating to disbursement for expenditures thereunder as follows:

> SEC. 6. All disbursements for expenditures arising under the provisions of this Act, including for road-making tools and implements, horses, wagons, tents, bedding, clothing, tobacco, medicine, and commissary utensils and supplies, shall be on warrants certified to by the officer or engineer in charge of said road work, and by the chairman of said board, and which, on approval by the State Board of Examiners, shall be paid, on warrants drawn by the State Controller, by the State Treasurer from the following funds, respectively, in the State Treasury to wit: From said general road fund in every instance, except for part payment for clothing and commissary supplies, an amount not exceeding fifty cents per day per convict, for the total number of days detailed.

As to the disposition authorized to be made of the money paid to the Board of State Prison Commissioners by the county under such agreement—that is, whether it shall be expended directly by the board in defraying the expense of the maintenance of convicts in the prosecution of such road work, or whether it shall be paid into the State Treasury and placed to the credit of the State Prison Fund—it is my judgment that, under the closing language of section 4 of said Act of March 16, 1911, last above quoted, the expenditure of all money derived from contracts by the board made with the County Commissioners of any county for work and labor upon public roads in such county shall be expended by the board in payment of the expense of the maintenance of the convicts engaged in such road work.

It is, in my judgment, clearly the intention and purpose of said Act that the money paid to the Board of State Prison Commissioners by any county for work and labor by convicts upon the public roads in such county shall be expended under the direction of said board in the maintenance of convicts while detailed for and employed upon road work as provided for in said Act of March 16, 1911 (Stats. 1911, p. 73), and such, you are advised, is the opinion of this office.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Constitutional Law—Notaries Public—Eligibility of Postmasters.

If the compensation of a postmaster does not exceed $500 per annum, he is eligible to hold the civil office of Notary Public; otherwise not.

CARSON CITY, November 8, 1911.

HON. R. A. BROY, *Assistant Postmaster, Eureka, Nevada.*

DEAR SIR: In reply to your communication of recent date wherein you desire to be informed as to whether there "is any law prohibiting an assistant postmaster from being a Notary Public," I beg leave to submit the following:

Article 4, section 9, of the Constitution of Nevada reads as follows:

> No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

The office of Notary Public is a civil office of profit under the State within the meaning of section 9, article 4, of the Constitution. This section applies to appointive as well as elective offices. (*State* v. *Clarke*, 21 Nev. 333.)

The office of Notary Public being an office of profit within the meaning of article 4, section 9, the only question to decide is whether your assistant postmastership comes within the exception set forth in said section of the Constitution, *i. e.*, "*provided*, that postmasters, whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office." You are therefore advised that, if your compensation does not exceed five hundred dollars per annum as assistant postmaster, you are eligible to hold the civil office of Notary Public; otherwise not.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

State Prison Commissioners—Convict Road Work, Appropriation for—Disposition of Receipts.

Under Stats. 1911, p. 73, the sum of $20,000 appropriated therein was placed in the general road fund, and all moneys paid in by any county should be placed there also, and this is a cumulative fund. The money accruing from the 50 cents per day for convicts should remain in the general State Prison Fund, against which warrants are drawn upon claims for clothing and commissary supplies for road work.

CARSON CITY, November 13, 1911.

HON. WM. MCMILLAN, *State Treasurer, Carson City, Nevada.*

DEAR SIR: Replying to your request for an opinion relative to what disposition is to be made of money coming into the State Treasury by virtue of the agreement made by the Nevada State Board of Prison Commissioners and the Commissioners of Washoe County, I beg leave to advise as follows:

Section 1 of "An Act authorizing and relating to the employment of convicts on the public roads and highways, providing a general road fund in the State Treasury to defray the expenses thereof, and for other purposes," approved March 16, 1911, reads as follows:

> The sum of twenty thousand dollars is hereby appropriated, out of any money in the State Treasury not otherwise appropriated, which shall constitute a fund to be known as the general road fund.

Section 5 of said Act reads as follows:

> Said board, on the recommendation of the State Engineer, or

> the County Surveyor of each county, is hereby authorized and empowered to determine upon what public roads convicts so detailed shall be employed; whether in the improvement of existing roads or the construction of new roads, and shall pass upon and approve or reject the plans and specifications of the State Engineer or the respective County Surveyors in respect thereto. The State Engineer shall have general supervision and direction of all road work so approved. No road work, under the provisions of this Act, shall be instituted in any county prior to an agreement with the County Commissioners of such county with respect to the survey and character and construction of such road and an agreement by such county to construct, at its own expense, all bridges or other structures of wood, iron, concrete or stone, requiring skilled labor, and no convict shall be employed thereon; and such county may be required by said board to contribute in part toward the expense of the maintenance of convicts on such road work.

Section 6 of said Act reads as follows:

> All disbursements for expenditures arising under the provisions of this Act, including for road-making tools and implements, horses, wagons, tents, bedding, clothing, tobacco, medicine, and commissary utensils and suppiles, shall be on warrants certified to by the officer or engineer in charge of said road work, and by the chairman of said board, and which, on approval by the State Board of Examiners, shall be paid on warrants drawn by the State Controller, by the State Treasurer from the following funds, respectively, in the State Treasury, to wit: From said general road fund in every instance, except for part payment for clothing and commissary supplies, an amount not exceeding fifty cents per day per convict, for the total number of days detailed, which shall be paid from any appropriation hereafter made for the support and maintenance of the State Prison.

The questions which I have considered herein are as follows:

First—What amount of revenue did the Legislature provide for carrying on the said road work, and from what source or sources is the same to be derived?

Second—How is said money set apart, and into what fund or funds is the same to be placed?

In support of the first query above suggested, it is clearly evident that the Legislature intended and provided three sources of revenue for the purpose of defraying the expense of the road work. Section 1 provides: "The sum of twenty thousand dollars is hereby appropriated, out of any money in the State Treasury not otherwise appropriated, which shall constitute a fund to be known as the general road fund."

Section 5 provides in part that the "county may be required by said board to contribute in part towards the expense of the maintenance of convicts on such road work."

Section 6 in part provides "for part payment for clothing and commissary supplies, an amount not exceeding fifty cents per day per convict for the total number of days detailed, which shall be paid from any appropriation hereafter made for the support and maintenance of the State Prison."

As shown by the foregoing sections the Legislature contemplated and provided three sources of supply of revenue for the road work, namely:

First—An outright appropriation of $20,000 from the General Fund.

Second—Such revenue as shall be derived by agreement with the counties desiring the road work; and

Third—A cumulative appropriation of 50 cents per day per convict for each man detailed for road work.

Coming now to the second consideration, namely, into what fund or funds should this money be kept, I call attention again to that part of said section 6, which reads: "All disbursements * * * shall be paid on warrants drawn by the State Controller by the State Treasurer from the following funds on the State Treasury, to wit: *From said general road fund in every instance except for part payment for clothing and commissary supplies, an amount not exceeding fifty cents per day per convict for the total number of days detailed, which shall be paid from any appropriation hereafter made for the support and maintenance of the State Prison.*"

Therefore, I take it, that two funds were specified out of which the warrants were to be paid:

First—The general road fund.

Second—Any appropriation hereafter made for the support and maintenance of the State Prison which is now designated as the State Prison Fund.

You are therefore advised that the said sum of $20,000 appropriated by the Legislature from the General Fund was, by said Act, placed in the general road fund, and all moneys paid in by Washoe County, or any other county, should be placed there also, and that this general road fund is a cumulative fund. The money which accrues from the 50 cents per day per convict should remain in the general State Prison Fund, against which warrants should be drawn, upon claims for clothing and commissary supplies for the road work, by the Controller, and paid by you as Treasurer.

These funds become exhausted only after the $20,000 appropriation, together with the money which is received from the county or counties and the amount which is authorized to be used from the State Prison Fund, have been expended.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

State Prison Commissioners—Convict Road Work, Appropriation for—Disposition of Receipts.

Under Stats. 1911, p. 73, the money paid by various counties must go into the general road fund, and funds for the road work contemplated by said Act become exhausted only after the $20,000, together with moneys from the counties and amount authorized to be used from the general State Prison Fund, have been expended.

CARSON CITY, November 17, 1911.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: In reply to your recent letter relative to the general road fund, I desire to state as follows: By virtue of that certain Act entitled "An Act authorizing and relating to the employment of convicts on the

public roads and highways, providing a general road fund in the State Treasury to defray the expenses thereof, and for other purposes," passed by the Legislature of the State of Nevada, and approved March 16, 1911, found in Stats. 1911, p. 73, by section 1 thereof, a general road fund was created, and $20,000 was placed in this road fund by the Legislature from the General Fund.

By section 5 of said Act provision was made whereby counties desiring road work should be made "to contribute towards the expense of the maintenance of convicts on such road work."

What disposition was to be made of moneys so received from the counties carrying on road work and contributing to its support, is plainly and unmistakably pointed out by section 6, which provides in part:

> All disbursements for expenditures arising under the provisions of this Act, including for road-making tools and implements, horses, wagons, tents, bedding, clothing, tobacco, medicine and commissary utensils and supplies, shall be on warrants certified to by the officer or engineer in charge of said road work, and by the chairman of said board, and which, on approval by the State Board of Examiners, shall be paid on warrants drawn by the State Controller, by the State Treasurer from the following funds, respectively, in the State Treasury, to wit: From said general road fund in every instance, except for part payment for clothing and commissary supplies, an amount not exceeding fifty cents per day per convict, for the total number of days detailed, which shall be paid from any appropriation hereafter made for the support and maintenance of the State Prison.

There is only one logical conclusion that can be reached, and it seems to be irresistible, and that is that the Legislature created a general road fund, put $20,000 in a lump sum into that fund, and made provision for its being supplied by counties as long as the road work was to be continued—with the exception that, in obedience to a very wise provision which was calculated to help defray the burden of the expense of clothing and feeding the prisoners on the road, who otherwise would have to be supported by the general State Prison Fund at the State Prison in Carson City, they provided 50 cents per day per convict detailed on such road work; this money to be paid out of the said general State Prison Fund in payment of claims for commissary supplies and clothing of prisoners working on the road.

I take it that this view is entirely consistent and in accord with the recent opinion rendered by the Supreme Court in the case of *State, ex rel. George T. Mills*, v. *Wm. McMillan*, in which the court held: "That all the moneys coming into the State Treasury constitute a part of the General Fund, unless by provision of the Constitution or some statutory enactments they are placed in some specific fund," for in this very instance the Legislature created the general road fund and made it a condition precedent to the instituting of road work in any county that the county, among other things, be required to contribute towards support of the work.

Therefore, as the general road fund was created, and the counties are to contribute towards the expense of the work, and inasmuch as the said Act provides that all disbursements shall be paid from the road fund

with one exception, it inevitably follows that the money from the counties must go into the general road fund in order to be paid out of it.

It is my opinion, and you are so advised, that the money coming in from the various counties must go into the general road fund, and that the funds for the road work, as contemplated by said Act, become exhausted only after the $20,000 appropriation, together with the money coming in from the various counties, and the amount authorized to be used from the general State Prison Fund, have been expended.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

County Commissioners—Criminal Actions, Powers of Commissioners in—Witnesses—District Attorneys, Expenses Outside of the County.

County Commissioners have the power to procure witnesses necessary to the proper hearing and presentation of any case, and to pay the mileage and per diem of such witnesses.

The District Attorney is entitled to be repaid the amount expended by him for traveling and hotel expenses necessarily incurred beyond the boundaries of his county.

CARSON CITY, November 29, 1911.

HON. T. J. MCPARLIN, *District Attorney, Eureka, Nevada.*

DEAR SIR: Your favor of 31st ultimo received containing request for an opinion whether or not District Judge Breen and County Commissioner Fraser of Eureka County, subpenaed as witnesses on behalf of respondents *In Re Application of O. J. Smith, et al.*, to Supreme Court of Nevada, for writ of *habeas corpus*, against their arrest and detention under bench warrants for their arrest, issued out of and under the seal of the District Court of the Third Judicial District of the State of Nevada, upon indictments against said O. J. Smith, *et al.*, theretofore found by the grand jury of said county, and then on file in the office of the Clerk of said court; and containing the further inquiry: "Is the District Attorney of this county entitled to all of his necessary expenses, including hotel bills, when he goes to Carson City, outside of his jurisdiction, at the request of the County Commissioners, to assist in the defense of the above proceedings?"

The consideration of these questions involves, as I understand it, the scope of the powers conferred by the Legislature upon the Board of County Commissioners in the "prosecution or defense of all suits to which the county is a party," and is contained in subdivision 12, section 2111, Cutting's General Statutes of Nevada, as follows: "Twelfth—To control the prosecution or defense of all suits to which the county is a party." This language of the statute unmistakably confers upon the Board of County Commissioners full and complete power to take all necessary steps and meet all proper expenses for the conduct of any suit to which the county is a party, and, as I understand and believe the intent of the law to be, the expenditures so authorized to be met and paid in the prosecution or defense of such actions are not, nor are they intended to be, limited to expenditures incurred within the county, but are intended, upon reason and fairness, as well as in the protection and

preservation of the rights of the people of the county, to apply where expenditures are made necessary without and beyond the boundaries of the county, as in the case being considered where the expenditures were made in the protection of the rights of the people and taxpayers of the county and upholding the law as well as the respect and dignity due to its courts and of the officers charged with the administration of the law therein.

The powers of the Board of County Commissioners under said subdivision 12, section 2111, General Statutes of Nevada, were before the Supreme Court of Nevada in the case of *Ellis* v. *Washoe County*, 7 Nev. 291. The question under discussion there involved the power of the Board of County Commissioners to employ counsel to aid the District Attorney in a suit against the county. The court, in passing upon the question, used this language:

> It is quite evident if the County Commissioners had the power to bind the county by a contract such as that counted on in the complaint, the demurrer should not have been sustained; for a contract otherwise complete and valid is set out, and the breach properly alleged.
>
> The only question to be determined then is, whether the Commissioners possessed the authority to so bind the county. This particular power is not given in express terms, but the power "to control the prosecution or defense of all suits to which the county is a party," which is given in subdivision 12 of section 8, Stats. 1871, clearly embraces the power to employ counsel to protect the interests of the county.
>
> Litigation can only be controlled by means of attorneys having the authority to appear in the courts; hence, to give full effect to this power, the Commissioners must in the very outset have the power to employ counsel. Nor is it any answer to say that the law designates and provides an attorney for that purpose—the District Attorney; for it is not unfrequently the case that he may be unable to attend to the business of the county, or its interests in some particular suit may be of such magnitude that the assistance of other counsel would be very desirable, or possibly indispensable.

Upon principle it follows that the Commissioners have, under the statute quoted, the power to employ counsel and provide for their payment. It follows, upon principle as well as reason and authority, that they have under statute the power to procure witnesses necessary to the proper hearing and presentation of any case, as the one here under consideration, and to pay the mileage and per diem of such witnesses for attendance before the court in which the case is being tried.

It is my opinion, therefore, and you are so advised, that Judge Breen and County Commissioner Fraser are entitled to have and receive from Eureka County their mileage and per diem for appearing in the Supreme Court as witnesses on behalf of said county upon the hearing of the applications of said O. J. Smith, *et al.*, for writ of *habeas corpus*, and that the Board of County Commissioners has the power to authorize payment of same, and to allow the claims therefor; and that your claim, as District Attorney, having been incurred at the request and under the direction of

said Board of County Commissioners, you are entitled to be repaid the amount expended by you for traveling expenses from Eureka to Carson City and return, together with your hotel expenses necessarily incurred.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Licenses—Dance Halls

The Sheriff is not warranted or authorized in demanding or collecting a dance-hall or concert-saloon license unless it is made to appear that the proprietor thereof employs, or has in his employ, as owner of said saloon, women or girls to dance therein, or to solicit the purchase by persons visiting such saloon, either directly or indirectly, of any kind of liquor or wine or cigars; such circumstances being necessary to appear to bring the dance hall within the provisions of Stats. 1903, p. 26.

CARSON CITY, December 4, 1911.

HON. D. A. PATE, *District Attorney, Austin, Nevada.*

DEAR SIR: Your favor of 25th ultimo received inclosing statement of conditions under which A. B. Cooper and Alice Miller are now, and have been conducting, a saloon in Austin, and requesting to be advised whether or not the statement of facts which you submit are sufficient to authorize the collection of a dance-hall license from the persons conducting said saloon. The statement of facts which you submit reads:

AGREED STATEMENT OF FACTS

In order to obtain an opinion from the Attorney-General of the State of Nevada as to what constitutes a dance-hall, the following facts are agreed to by the District Attorney of Lander County, Nevada, and Wm. D. Coppernoll, of counsel for A. B. Cooper, hereinafter mentioned as the purported owner of a dance hall:

One A. B. Cooper holds license, both state and retail, for the Alice Club Saloon, in the Town of Austin, County of Lander, State of Nevada.

In said saloon there is a piano, and therein a space about twenty-five *foot* square which is used for the purpose of dancing.

No women are employed around said saloon.

The women who are in the immediate vicinity of said saloon (which is in the tenderloin district) hire cribs which are in a distinct and separate building. These women are termed prostitutes.

These women, so living, come into said saloon, drink at the bar thereof, if they so desire.

These women sometimes dance in said saloon, but receive no commission or reward therefor.

It is not compulsory for said women to be in attendance in said saloon; and if they enter therein it is simply of their own volition.

They are free to go to any other saloon, in fact, are without restriction as far as said saloon or the owners therof are concerned.

Men congregate at this saloon the same as they might at any other saloon. These men, or a majority of them, dance with the women coming into said saloon. If they do so dance there is no rule requiring them to pay for said dance; in fact, they may dance all night without paying one penny therefor. It is their privilege to treat whomsoever they please, but there is no solicitation on the part of the inmates. If the men dancing wish to treat some woman in said saloon, the woman receives no reward or commission.

D. A. PATE,
District Attorney of Lander County.

WM. D. COPPERNOLL,
Attorney for A. B. Cooper.

Section 124 of "An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto," approved March 23, 1891, as amended by an Act approved February 26, 1903 (Stats. 1903, p. 34), contains, I believe, the latest reference to dance-houses by the Legislature of Nevada, as follows:

SEC. 124. Any person or persons who may conduct any hurdy-gurdy house, dance-house or concert saloon in this State, where women or girls are employed to dance, or to solicit the purchase by the persons visiting such house, either directly or indirectly, of any kind of liquor, or wine or cigars, or to solicit such persons so visiting to treat to any kind of liquor, wine or cigars, shall, before entering upon the conduct of such dance-house, or hurdy-gurdy house, or concert saloon, take out a license, in addition to the retail liquor license, from the Sheriff of the county in which such person or persons propose to carry on such business, and pay therefor the sum of five thousand dollars for each and every three months.

In the foregoing section, as quoted, the Legislature has made provision that when a dance-house or concert saloon is conducted in this State in the manner therein described, viz: "By the *employment* of women or girls, to dance, or to solicit the purchase by the persons visiting such house, either directly or indirectly, of any kind of liquor or wine or cigars, or to solicit such persons so visiting to treat to any kind of liquor, wine or cigars, shall * * * take out a license in addition to the retail liquor license * * * and pay therefor the sum of five thousand dollars for each and every three months."

Comparing the facts contained in the statement submitted by you with the acts authorized or permitted to be practiced by the women or girls employed in a dance-house or concert saloon, whose proprietor has paid the license required for conducting same, I am unable to discover that you show the employment of women or girls in the saloon conducted by Mr. Cooper, either to dance therein or solicit the purchase by the persons visiting such house or saloon, either directly or indirectly, of any kind of liquor, wine or cigars.

It is the opinion of this office that the Sheriff of your county is not warranted or authorized, under the facts submitted in your statement, in demanding or collecting a dance-hall or concert-saloon license from A. B. Cooper, since it is not made to appear thereby that he employs, or has in his employ, as owner of said saloon, women or girls to dance therein, or

to solicit the purchase by persons visiting such saloon, either directly or indirectly, of any kind of liquor, or wine or cigars, and you are advised accordingly.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

District Attorneys—Duties as Advisers of School Trustees—School Trustees—Power to Employ Private Counsel.

It is the duty of the District Attorney to render legal opinions to School Trustees when requested to do so; the law does not require him to render further services.

It is within the power of School Trustees to employ such legal assistance as they may deem necessary to protect the school interests and to pay a reasonable compensation for such services when rendered.

CARSON CITY, December 28, 1911.

HON. WM. WOODBURN, JR., *District Attorney, Reno, Nevada.*

MY DEAR SIR: In reply to your letter of recent date wherein you desire to be advised as to whether "it is the duty of the District Attorney of the county in which the various school districts may be situated, to act, not only as legal adviser, but to draw contracts, attend to bond issues, examine abstracts and represent them in all suits to which they may be made a party," I beg leave to submit the following: Section 40 of an Act entitled "An Act concerning public schools, and repealing certain Acts relating thereto," passed by the Legislature of Nevada, and found in the Statutes of 1911 at page 196, reads as follows:

> SEC. 40. The trustees of a school district shall constitute a board for such district, and such board is hereby created a body corporate.

Section 41, found at page 196, reads as follows:

> SEC. 41. All property which is now vested in, or shall hereafter be transferred to, the trustees of a district, for the use of schools in the district, shall be held by them as a corporation.

Section 67, found at page 201, enumerates the duties imposed on School Trustees.

Section 73, found at page 207, reads as follows:

> SEC. 73. The Boards of School Trustees of the respective school districts of the State of Nevada are hereby given such reasonable and necessary powers, not conflicting with the Constitution and laws of the State of Nevada as may be requisite to attain the ends for which the public schools are established, and to promote the welfare of school children.

Section 115, found at page 215, reads as follows:

> SEC. 115. The District Attorneys of the several counties of Nevada must give, when required, and without fee, his opinion in writing to School Trustees, on matters relating to the duties of their offices.

Section 2305, Cutting's Compiled Laws of Nevada, reads as follows:

> The District Attorney shall, without fee, give his legal opinion to any Assessor, collector, Auditor or County Treasurer, and to all other county, township or district officers within his county, in any matter relating to the duties of the respective offices.

From an observation of the foregoing sections of the statutes, it will be noticed that the Legislature of Nevada (1911) created the school board a body corporate, and that among other things it imposed on said School Trustees the duty to buy and sell schoolhouses or sites, to build, purchase or rent suitable places for schools, to change the location of schoolhouses, to manage and control school property, to prescribe and enforce rules for the regulation of school discipline, to keep school property in repair, to insure school property, to employ qualified teachers by contract, and to pay them their salaries, to provide for terms of school, to provide books for indigent children, to transfer school moneys according to law, to furnish paper, pens, blackboards and necessary equipment, to enforce sanitary regulations, and many other powers necessary and incident to the administration of our public schools.

It is reasonably to be expected that arising out of the multifarious duties imposed upon the School Trustees, such as drawing of contracts, the issuing of school bonds, the apportionment of school moneys and expenditure of same, the prosecution of suits or defense of suits in which the School Trustees are a party, that the services of an attorney might often become very necessary and essential to the welfare and protection of the school interests and property, and the employment of counsel in such cases would, in my judgment, be entirely consistent with the provisions set forth in section 73, Statutes of 1911, page 207, granting the Board of School Trustees such reasonable and necessary powers as may be requisite and necessary to carry out their duties and promote the general welfare and successful administration of the public school.

> A school district ordinarily has statutory power through its proper boards or officers to employ counsel to represent it in suits brought by or against it, or any of its officers, involving the interest of the district, and the power may be implied from the power to sue. (Cyc. vol. 35, p. 952–953.)

It being conceded that the services of an attorney are often necessary in the administration of affairs by School Trustees, and that the school board is entitled to have such legal assistance, we come to the question as to whether the District Attorney is required by law to render such service.

In many States there are particular statutes requiring the District Attorney to perform all necessary legal services for School Trustees and school boards, but we have no such statute enacted in this State.

The District Attorney, among other duties, shall be the public prosecutor of the county, and conduct all prosecutions on behalf of the people, and defend all suits brought against the county, and deliver opinions to the various county, district and township officers in matters relating to the duties of their office. (Comp. Laws, 2298–2299, 2301–2305.)

According to section 115, Statutes of 1911, page 215, above quoted, the District Attorney must give, when required, and without fee, his opinion in writing to the School Trustees on matters relating to the duties of

their office. Section 2305, Compiled Laws of Nevada, is to the same effect.

There is a wide distinction between giving a legal opinion on matters relating to the duty of an officer and conducting litigation which might come as a result of that opinion. To give a legal opinion is one thing; to conduct litigation, draw up contracts, bonds, etc., is another. The former the District Attorney must do when required by the School Trustees; the latter he is not required to do.

> The duties of the prosecuting attorney are prescribed by statute; his office is defined and his authority comes from the same source of power as does the court, and the functions of each are defined by law. (*State* v. *Heaton*, 21 Wash. 59.)
>
> The authority of the prosecuting attorney to appear in a particular proceeding is ordinarily, at least, found in the statutes. (*State* v. *Seattle Gas Co.*, 28 Wash. 488; *Montgomery Co.* v. *Tipton*, 15 S. W. 249.)

The Supreme Court of Washington, in the case of *Bates* v. *School District No. 10*, 88 Pac. 944, in considering a statute very similar to ours, held that the law did not require a prosecuting attorney to appear in court and conduct litigation on behalf of school districts.

> In this State the prosecuting attorney is also the county attorney, and the relation of that officer to the county may be such as possibly require him to appear in behalf of the county in some instances, even if the specific duty may not be particularly and expressly prescribed by statute.
>
> If so, the duty arises out of the obligation he has assumed as an officer of the county to discharge the general functions of an attorney in its behalf. A school district is, however, not the county. It is a legal subdivision of the county, but it is a distinct entity, and is in this State a separate municipal corporation. It cannot reasonably be said that because one is the attorney for the county he is for that reason obligated to act as the attorney of every other municipal corporation which is a legal subdivision of the county.
>
> The one duty is by no means included within the other; and, unless a statute so declares, the county attorney is not required to act as the attorney for school districts in litigated matters.
>
> A number of statutes have been called to our attention which specify duties for the prosecuting attorney, but the only one which in terms in any way refers to school districts is section 468, 1 Ballinger's Ann. Codes & St., which is as follows:
>
> "The prosecuting attorney in each county is hereby required to give legal advice, when required, to all county and precinct officers, and directors and superintendents of common schools, in all matters relating to their official business, and when so required, he shall draw up, in writing, all contracts, obligations, and like instruments of an official nature, for the use of said officers."
>
> It will be observed that the duties prescribed in the above section are that the prosecuting attorney shall give "legal advice" to school directors, and shall "draw up in writing all contracts,

obligations and like instruments of an official nature for the use of said officers."

The prescribed duties do not specify such as appearing in court to prosecute or defend litigation. Duties of the last-named nature are much more burdensome than those specified in the statute, and it should not be held that they are classified together unless the Legislature has made it unmistakably clear that such was intended.

We think it is manifest from the language used that the Legislature never intended by the above statute to require county attorneys to appear in court and carry the burdens of conducting litigation in behalf of school districts. Such was the nature of the services rendered in this case. While the answer alleges that respondent advised appellant concerning the subject-matter of this litigation before the suit was brought, yet the agreed facts show that the actual services for which respondent seeks to recover were rendered in the litigation by the conduct of the defense.

We therefore find no statute enjoining the duty upon respondent to discharge the services rendered as county attorney, and in the absence of such a statute he was not required to do so. (*Berington* v. *Woodbury*, 78 N. W. 222; *Town of Eagle River* v. *Oneida Co.*, 56 N. W. 644; *Sands* v. *Frontier County*, 60 N. W. 1017; *Huffman* v. *Commissioners of Greenwood Co.*, 23 Kan. 281.)

Inasmuch, therefore, as there was no statute requiring respondent as county attorney to conduct said litigation, he was not then discharging his official duties as county attorney, but was acting as a private attorney for the school district, and he is entitled to compensation. (*United States* v. *Winston*, 170 U. S. 522, 18 Sup. Ct. 701, 42 L. Ed. 1130.)

You are therefore advised that it is your duty to render legal opinions to the School Trustees when requested to do so; the law does not require you to render further services; and that it is within the power of the School Trustees to employ such legal assistance as they may deem necessary to protect the school interests and to pay a reasonable compensation for such services rendered.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Crimes and Punishments—Gambling—Slot Machines.

A slot machine is a gambling device wherein the player depends on chance and not on skill to win or lose.

Under section 263 of "An Act concerning crimes and punishments," effective January 1, 1912, it is unlawful for any person to "play, maintain or keep any slot machine played for money, or for checks or tokens redeemable in money, or played for chance."

CARSON CITY, December 30, 1911.

HON. WM. WOODBURN, JR., *District Attorney, Reno, Nevada.*

DEAR SIR: In reply to your recent letter, wherein you desire to be

advised as to "whether or not slot machines can be played for checks redeemable in drinks or cigars," under the Crimes and Punishment Act which is to take effect January 1, 1912, I beg leave to submit the following:

An Act entitled "An Act prohibiting gambling, providing for the destruction of gambling property, and other matters relating thereto," was passed by the Legislature of Nevada and approved March 24, 1909 (Stats. 1909, p. 307–309), and section 1 thereof refers to the operation of slot machines as follows:

> It shall be unlawful for any person * * * to play, maintain, or keep any slot machine played for money, or for checks or tokens redeemable in money.

The opinion of this office previously was that the Legislature did not intend to make it unlawful to operate, maintain or keep slot machines, when said slot machines were played for cigars, cigarettes, drinks or trade, but the restriction was placed on slot machines when played, maintained or kept for money or checks or tokens redeemable in money.

An Act entitled "An Act concerning crimes and punishments, and repealing certain Acts relating thereto" was passed by the Legislature of Nevada and approved March 20, 1911, and becomes effective January 1, 1912. Section 253 of said Act refers to slot machines in the following language:

> It shall be unlawful for any person to play, maintain or keep any slot machine played for money or for checks or tokens redeemable in money, *or played for chance*.

The Crimes and Punishments Act being approved March 20, 1911, is the latest expression of the Legislature, and as such it will be the law of this State, commencing January 1, 1912, and will remain as such until altered or repealed.

The language referring to slot machines, used by the Legislature in 1909, and that by the Legislature in 1911, is identical, with one exception—that the Legislature in 1911 saw fit to add the additional restriction "or played for chance."

This leads us to consider what is a slot machine and when it is deemed to be "played for chance."

> A nickel-slot machine is a gambling device; the mechanism of the machine is such that, when a five-cent piece is dropped into one of the several slots representing several colors, a disk is made to revolve, on which are painted corresponding colors, and when it ceases to revolve the color upon its face opposite to a finger determines whether the player has won or lost.
>
> Each color has a different value, from 10 cents up to $1, and, if the player has won upon the color selected, the sum won is by a mechanical device delivered to him in a cup. The machine is a contrivance or apparatus by which it is determined who, as between the player and the proprietor, is the winner or loser of the money hazarded.
>
> The player stakes or hazards his money on a chance which is sufficient to make out the gambling. Within the general understanding such a machine is a gambling device. (*Lyman* v. *City Trust, Safe Deposit and Surety Co.*, 59 N. E. 903, 905, 166 N. Y.

274; *Lyman* v. *Brucker*, 56 N. Y. Supp. 767, 770, 26 Misc. Rep. 594; *Kolshorn* v. *State*, 23 S. E. 829, 830, 97 Ga. 343; *State* v. *Grimes*, 52 N. W. 42, 49 Minn. 443; *Portis* v. *State*, 27 Ark. 360, 362; *Jeffries* v. *State*, 32 S. W. 1080, 1081, 61 Ark. 308; *Bobel* v. *People*, 173 Ill. 19, 20, 50 N. E. 322, 64 Am. St. Rep. 64.)

A card machine is a slot machine, as contemplated by the statutes of Nevada above quoted.

A nickel-in-the-slot machine is a gambling device. (Words and Phrases, vol. 4, p. 3032.)

A gambling device is defined to be anything which is used as a means of playing for money or other thing of value, so that the result depends more largely on chance than skill. (*In re Lee Fong*, 18 Fed. 253–257.)

Chance may be defined to be hazard, risk or the result or issue of uncertain and unknown conditions and forces. (Words and Phrases, vol. 2, p. 1050.)

Chance implies possibility. (Idem.)

Anything is said to happen by chance to anyone when it was neither understandingly brought about by his act nor preestimated by his understanding. (*Goodman* v. *Cody*, 1 Wash. 329–335; 34 Am. Rep. 808.)

The word "chance" in the definition of a lottery as "a scheme for the distribution of prizes by lottery or chance," may be defined as an accident; fortuity; casualty; an event without an assigned cause. (14 Pa. Co. Ct. R. 499–501.)

Chance, in criminal law: an accident, an unexpected, unforeseen, or unintended consequence of an act; a fortuitous event; the opposite of intention, design, or contrivance. (Black's Law Dictionary, p. 189.)

Pure chance consists in the entire absence of all means of calculating results. (*Harless* v. *U. S.*, Moore, Iowa, 173.)

Webster defines chance: "an unforeseen event; an accident; a possibility; opportunity; risk."

It shall be unlawful for any person * * * to play, maintain or keep any slot machine * * * played for chance. (Sec. 253, Idem.)

This is the clear and unmistakable language of the Legislature, and does not admit of any construction. It is plain and unambiguous.

A slot machine is essentially a gambling device wherein the player depends on chance and not skill to win or lose.

During the past year slot machines have been sanctioned by law, when played, kept and maintained for cigars, cigarettes, drinks and trade, and the Legislature, convening in 1911, having full knowledge of the law then in force and effect governing slot machines, saw fit to change the then existing law by the addition of the restriction "or played for chance," which prohibition, in my judgment, was intended to abolish entirely the use and operation of slot machines for gambling in this State on and after the 1st day of January, 1912.

It is the opinion of this office, and you are so advised, that it is unlawful for any person to "play, maintain or keep any slot machine played for money or for checks or tokens redeemable in money, or played for chance"; and a slot machine is deemed to be played for chance when the

result depends on an "uncertainty" or "hazard," and not a certainty, and when there is not equal value received for every expenditure made.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—County Officers—Bonds of County Officers—Surety Bonds, Payment of Premium For.

When the County Treasurer gives official bond with security furnished by a surety company, the premium on the same is to be paid by the county out of the general fund.

CARSON CITY, January 8, 1912.

HON. GEORGE L. SANFORD, *District Attorney, Carson City, Nevada.*

DEAR SIR: In reply to your letter under the date of January 2, 1912, in which you wish to be advised "If a County Treasurer tenders a bond by a surety company for the faithful performance of his duties, etc., is it *mandatory* upon the county to pay the premium on such bond out of the funds of the county?" I beg leave to submit the following:

Section 1 of an Act entitled "An Act to provide surety bonds for state, county and precinct officers," approved March 23, 1909, reads as follows:

> SECTION 1. That all state, county and precinct officers within the State of Nevada, who are now required by law, or who may hereafter be required by law, to give an official bond for the faithful discharge of the duties of such office, it shall be lawful for such officer or officers aforesaid to give security for the faithful discharge of the duties of their office by any surety company lawfully authorized to do business within the State of Nevada.

Section 2 thereof reads as follows:

> SEC. 2. In the case of each County Treasurer of each county in the State of Nevada the premium of such surety bond for such Treasurer shall be paid for by the county out of the general fund of each county.

Section 3 of said Act reads as follows:

> SEC. 3. Whenever any of the aforesaid officials shall tender bonds of any surety company for approval to the County Commissioners, or to any official board or person with whom such official bonds are required to be approved and filed, it shall be the duty of such board, which is required by law to approve the same, to accept such bonds; *provided, however*, said surety company shall have first complied with the laws of the State of Nevada, and be duly authorized to transact business within this State.

You are therefore advised that when the County Treasurer gives official bond for the faithful discharge of his duties, with security furnished by a surety company, provided the said surety company has complied with the laws of the State and is authorized to transact business within the State, the premium on the same is to be paid for by the county out of the general fund.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Crimes and Punishments—Gambling.

Under section 253 of "An Act concerning crimes and punishments," "whist, bridge whist, five hundred, solo, frog or any other card game," excepting those which are specifically prohibited by the provisions of the said section, are not prohibited.

However, it is unlawful to deal, play or carry on, open or conduct in any capacity whatever, any of said games, or any gambling game in which the person keeping, conducting, managing or permitting the same to be carried on, receives, directly or indirectly, any compensation or reward.

CARSON CITY, January 15, 1912.

HON. JAMES DYSART, *District Attorney, Elko, Nevada.*

DEAR SIR: I have your telegram of this date reading: "Can solo, five hundred, whist, bridge whist, domino whist or any other card game be played for money when there is no percentage on the game, under the Act of March 17, 1911, prohibiting gambling?" and in reply beg to submit the following for your information:

Section 1 of an Act of the Legislature entitled "An Act prohibiting gambling, providing for the destruction of gambling property, and other matters relating thereto," approved March 24, 1909 (Stats. 1909, pp. 307–309), reads as follows:

> SECTION 1. It shall be unlawful for any person to deal, play or carry on, open or conduct in any capacity whatever, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, poker, whist, bridge whist, five hundred, solo, frog, or any other card game, or any banking or percentage game played with cards, dice, or any device, for money, property, checks, credit or any representative of value; or any gambling game in which any person keeping, conducting, managing or permitting the same to be carried on receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played for, keeping, running, carrying on or permitting the said game to be carried on; or to play, maintain or keep any slot machine played for money or for checks or tokens redeemable in money; or buy, sell or deal in pools or make books on horse races; and any person who violates any of the provisions of this section shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the State Prison for a period of not less than one year or more than five years.

Section 253 of an Act entitled "An Act concerning crimes and punishments and repealing certain Acts relating thereto," which was passed by the Legislature of Nevada and approved March 17, 1911, to be in effect January 1, 1912, is in the words following:

> SEC. 253. It shall be unlawful for any person to deal, play or carry on, open or conduct in any capacity whatever, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, poker, or any banking or percentage game played with cards, dice, or any device, for money, property, checks, credit or any representative of value; or any

> gambling game in which any person keeping, conducting, managing or permitting the same to be carried on receives, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running, carrying on or permitting the said game to be carried on; or to play, maintain or keep any slot machine played for money or for checks or tokens redeemable in money, or played for chance; or to buy, sell or deal in pools or make books on horse races; and any person who violates any of the provisions of this section shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the State Prison for a period of not less than one year nor more than five years.

Section 569 of the Act last above quoted contains a schedule of Acts which were in force at the date of the passage of said Act, concerning which said schedule and the Acts therein enumerated by title the Legislature employs this language: "The Acts designated in said schedule are repealed from and after the time this Act goes into effect."

The closing words of said section 569 read: "Also, all Acts amendatory of the foregoing Acts specified, and all other Acts not particularly referred to, in conflict with this Act."

Here, permit me to call your attention, by comparison, to the change made by the Legislature of 1911 in the provisions of section 253 of the Act approved March 17, 1911, last above quoted, in effect January 1, 1912, from the provisions of section 1 of the Act of the Legislature herein first above quoted, approved March 24, 1909.

The Legislature of 1909, in enumerating the games intended to be prohibited, specified any game of faro, monte, roulette, lasquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, poker, *whist*, *bridge whist*, *five hundred*, *solo*, *frog*, or any other card game.

The Legislature of this State convening in 1911 passed the "Act concerning crimes and punishments and repealing certain Acts relating thereto," the provisions and language of section 253 which said Act, it will be noted, are identical with those of the Act of March 24, 1909, above quoted, save that in the Act of 1911 the words: "*whist*, *bridge whist*, *five hundred*, *frog or any other card game*," which had been previously included in the provisions of the Act of 1909 are omitted.

It is a well-settled maxim of the law: *Expressio unius est exclusio alterius*, which means "The expression of one thing is the exclusion of another." (19 Cyc. p. 23.)

Broom, in his Legal Maxims, says that no maxim of the law is of more general and uniform application and it is never more applicable than in construction and interpretation of statutes. (*In the Matter of Attorney-General*, 2 N. M. 49, 57; *Hackett* v. *Armstrong*, 56 Vt. 201, 206.)

"When a statute defining an offense designates one class of persons as subject to its penalties, all other persons are deemed to be exempted." (Lewis-Sutherland, Stat. Const. 2d ed. vol. 2, p. 918; *Howell* v. *Stewart*, 54 Mo. 400; *Jacques* v. *Golightly*, 2 W. Bl. 1073; *State* v. *Jaeger*, 63 Mo. 403, 409.)

"When a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others; there is then a natural inference that its application is not intended to be general."

(Lewis-Sutherland, Stat. Const. 2d ed. vol. 2, p. 921; *Johnson* v. *Southern Pacific Co.*, 117 Fed. 462, 466.)

In the light of the foregoing principle of law, of what significance is the omission by the Legislature of 1911 of the words "*whist, bridge whist, five hundred, solo, frog, or any other card game*," which were included by the Legislature in the Act passed in 1909? With the law of 1909 then in force before them, the subsequent Legislature took occasion to change that law by omitting therefrom the words "*whist, bridge whist, five hundred, solo, frog, or any other card game*," and that they did so intentionally does not admit of a doubt, and so leads to the irresistible conclusion that they decided not to restrict those games which they advisedly and deliberately omitted, and which theretofore had been enumerated and prohibited. From the conclusion arrived at, we are forced to adopt the maxim "the expression of one thing is the exclusion of another," for, when the Legislature undertakes specifically to name certain games and acts which are prohibited and unlawful, those games which are not mentioned or specified are deemed not to be prohibited or unlawful.

"That penal statutes are to be strictly construed" has become a maxim of the law, affirmed and illustrated by innumerable cases.

"The established rule is," says the court in *Ex Parte Bailey*, "that a penal law must be construed strictly and according to its letter. Nothing is to be regarded as included within them that is not within their letter as well as their spirit; nothing that is not clearly and intelligibly described in the very words of the statutes as well as manifestly intended by the Legislature." (Lewis-Sutherland, Stat. Const. 2d ed. vol. 2, p. 964.)

Penal statutes can never be extended by mere implication to either persons or things not expressly brought within their terms." (Idem, 965.)

It is the opinion of this office, and you are so advised, that "*whist, bridge whist, five hundred, solo, frog, or any other card game*," excepting those which are specifically prohibited by the provisions of said section 253 of said Act of the Legislature of 1911, are not prohibited by the law of the State as amended, though under the said Act of 1909 they were prohibited; but, as amended by said Act of 1911, they are not. The games in question are not included, and according to the rule of construction, by which we are guided, when certain games are specified, those that are not mentioned are deemed exempted.

However, under the law as amended, it is still unlawful to deal, play or carry on, open or conduct, in any capacity whatever, whist, bridge whist, five hundred, solo, frog or any other card game or any of the games mentioned in section 1 of said Act of 1911, "or any banking or percentage game, played with cards, dice or any device, for money, property, checks, credit or any representative of value, or any gambling game in which any person keeping, conducting, managing or permitting the same to be carried on, receives directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, carrying on or permitting said game to be carried on," or, in other words, prohibits absolutely *any* and *all* card games or gambling games or devices, in which there is a percentage or share received from the gambling.

Respectfully submitted.

CLEVE H. BAKER, *Attorney-General.*

Board of Examiners—County Commissioners—Expert Accountant, Right to Appoint.

The right to appoint experts to examine the accounts of public officers is vested in the officers designated in Stats. 1911, p. 276, and such right is limited to the boards and officers therein named, and the appointment of such experts by other boards, persons or authority than those named in the statute is without warrant or authority of law.

CARSON CITY, April 12, 1912.

To His Excellency, GOVERNOR ODDIE, *and* HON. GEORGE BRODIGAN, *Secretary of State, constituting State Board of Examiners, Carson City, Nevada.*

GENTLEMEN: I herewith acknowledge receipt of your valued favor of the 15th instant in which you request "a written interpretation of chapter 135, page 276, Stats. 1911, especially as such law applies to appointment of expert accountants for state institutions," and say: "It is necessary that we have same immediately, as the State University has already appointed its own experts and we wish to determine whether it has the right or if such appointment is the duty of the Board of Examiners."

Section 1 of the Act of the Legislature to which you direct my attention reads:

> SECTION 1. It is hereby made the duty of the Board of Examiners and the Board of County Commissioners of the various counties of this State, and the Board of Trustees, City Council, or other governing body of any incorporated city or town within this State, to audit and examine at least twice in each year the accounts of all officials, state, county or town, charged with the receipt, collection, disbursement or handling of money, credits, effects or property, belonging to the State.

The right, power and authority under the provisions of this statute above quoted—and my attention has not been called or directed to any other, nor have I been able to find any law changing, or in any manner modifying the provisions of said statute—impose the duty upon the Board of Examiners, and upon that board solely, to audit and examine at least twice in each year the accounts of all state officials, and in the performance of that duty it is further provided by said section that "they shall have the power to employ a competent expert accountant to examine said books or accounts of such officers."

The power to appoint experts to examine the accounts of public officers, named in the statute above quoted, is vested in certain officers therein designated, and, as I interpret the law, these appointments are limited to the boards and officers there named and designated, and the appointment of such experts by any other boards, persons or authority than those named in the statutes is without warrant or authority of law, illegal and void, and in the case of state officers, a gratuitous and unwarranted interference with the duties of the Board of Examiners, and such, you are advised, is the opinion of this office.

Very truly yours,

CLEVE H. BAKER, *Attorney-General.*

By JAMES R. JUDGE, *Deputy.*

Public Schools—Normal-Training Schools, Appropriation Therefor—Controller, Duty in Relation To.

There is nothing mandatory in sections 185–190 of the Act "concerning public schools" (Stats. 1911, p. 237) as to the time of establishing normal-training schools, and therefore that provision of subdivision 2 of section 189 of said Act, designating October and February of each year as the time to set the moneys apart, is not mandatory upon the Controller, but merely directory.

CARSON CITY, April 12, 1912.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: In reply to your question as to whether or not you are justified in drawing warrants in favor of teacher's salary for the normal school established at Ely, White Pine County, after the 1st day of October, 1911, I desire to submit the following:

By virtue of an Act passed by the Legislature of the State of Nevada, entitled "An Act concerning public schools, and repealing certain Acts relating thereto," approved March 20, 1911, chapter 14, sections 185–190, set forth the manner and mode of establishing normal-training schools in this State, the duties of the training-school board, the provisions for maintaining such schools, and the authority conferred upon the normal-training school board.

The facts in this case show that under and by virtue of said Act a normal school was regularly established at Ely, White Pine County, but that it was not established until after the 1st day of October, 1911, but immediately thereafter, and that it has been in full force and operation since on or about the 13th day of November, 1911.

Subdivision 2 of section 189 of said Act refers to the duties of the State Controller as follows:

> Upon certification of the State Board of Education that a normal-training school has been established in any county, that the school has been properly equipped, that at least five *bona fide* students are in actual attendance, and that a competent normal-training teacher is employed, the State Controller shall on the first day of October and the first day of February of each year set aside, from any money in the State General Fund not otherwise appropriated, a sum designated by the State Board of Education not exceeding nine hundred dollars and not less than six hundred dollars, to be known as the normal-training school salary fund for_____County, to be used in payment of the teacher's salary and to be drawn from the State Treasury in the usual manner. Any money remaining in such fund on the thirty-first day of August of each year shall revert to the State General Fund.

Now, your question, as I understand it, is that, inasmuch as the certification of the State Board of Education to the fact that a normal-training school has been established in Ely, White Pine County, etc., was not made to your office before the 1st day of October, 1911, but subsequent thereto, and, therefore, inasmuch as the law provides for the State Controller to set aside on the 1st day of October and the 1st day of February of each year money for the payment of the salary of the teachers of the normal school, can the Controller legally set apart the moneys at any other dates than those specified in the Act?

As I view the situation, the said Act provides for the establishment of normal-training schools and the manner and mode of their establishment; it designates certain functions to be performed by the County Board of Education and the State Board of Education. There is no time specified in the Act when these functions shall be performed; the intention of the law is to establish normal-training schools when certain requirements have been complied with, and for the State Controller to draw warrants for the salary of the normal-training school teachers when the schools are regularly established.

There is nothing mandatory, in my judgment, as to the time of establishing the schools, and therefore that provision of subdivision 2 of section 189 of the said Act hereinbefore quoted, designating October and February of each year as the time to set the moneys apart is not mandatory upon the Controller, but merely directory; simply an arbitrary designation of time which may be used for the convenience of the Controller in his office in setting aside money from the State General Fund.

Therefore, inasmuch as the proper certification of the normal-training school at Ely, Nevada, was made, the school established, the teacher employed after October 1, 1911, and the services rendered, I believe that the State is in duty bound to pay for the services rendered, and that you are fully justified in setting aside the money which was appropriated out of the General Fund into the normal training-school fund at any time after the 1st day of October, 1911, and you are so advised.

Respectfully submitted.

CLEVE H. BAKER, *Attorney-General.*

Licenses—Billiard Tables—Pool Tables.

By the enactment of section 1187, Comp. Laws, providing for licensing "billiard tables," the Legislature had in mind and intended by said expression to include thereunder all tables used in public resorts, whether for playing billiards or for playing pool.

Taxation—Bullion Tax—Gypsum Mines—Taxation of Output Of.

Gypsum is a mineral, and it is the duty of the tax collector to exact a bullion tax on the output of gypsum mines in accordance with the statutes regulating taxes exacted from mines.

CARSON CITY, April 12, 1912.

HON. L. F. ADAMSON, *State License and Bullion Tax Agent, Carson City, Nevada.*

DEAR SIR: By way of confirming the opinion which I gave you orally the other day, concerning the proper license collections on pool tables, the sale of cigarettes and cigarette papers and also the bullion tax collections on the output of gypsum mines, I beg leave to submit the following:

Section 3872 of the Revised Laws of Nevada (1912) reads as follows:

> SECTION 1. From and after the passage of this Act the quarterly license for the sale of cigarettes or cigarette papers shall be fifteen dollars.

So, any firm, association or corporation engaged in dealing, in selling,

giving away or offering to sell cigarettes or cigarette papers shall take out this license before doing so, or shall be guilty of a misdemeanor.

In regard to the proper license collections on pool tables I call your attention to an opinion of this office given you on May 13, 1911, relative to the same.

Section 3727 of the Revised Laws of Nevada (1912) provides as follows:

> SEC. 115. The Sheriff in the several counties of this State shall be ex officio collector of licenses, as provided in this Act. There shall be levied and collected the following licenses:
>
> First—From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table five ($5) dollars per quarter-year; for a nine- or ten-pin or bowling alley, ten ($10) dollars per quarter-year, license to be granted for a term of not less than three months.

I quote that portion of my former opinion addressed to you, which is as follows: "From the definition of 'billiard table' given by the several standard authorities above quoted, and of the games of 'billiards' and 'pool,' the playing of which said games are, as appears from the foregoing definitions, confined and restricted to 'billiard tables,' the conclusion seems irresistible that the Legislature in the enactment of said section 3727 providing for licensing 'billiard tables,' had in mind and intended by said expression to include thereunder all tables used in public resorts, whether for playing billiards or for playing pool."

As regards the collection of bullion tax upon the output of gypsum mines, I desire to state that, in accordance with the opinion of Professor George J. Young, of the Mining Department of the University of Nevada, gypsum is a mineral, and it is your duty under the law to exact a bullion tax on the output of the gypsum mines in accordance with the statutes regulating taxes on mines.

I would suggest that you take this matter up with the District Attorney of Lyon County, together with the Sheriff, and I believe that an amicable adjustment of the matters hereinbefore considered can be had.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—State Liquor License Not Transferable.

A state liquor license issued in the form set forth in Comp. Laws, 3778, is not transferable by sale, assignment or otherwise, and a person, firm or corporation, licensed to do business in one town, cannot transfer that business to another town or county in the State under such license.

CARSON CITY, April 12, 1912.

HON. D. P. RANDALL, *Sheriff and Assessor, Yerington, Nevada.*

DEAR SIR: In reply to your letter of March 29, 1912, in which you desire to know whether the holder of a state liquor license can transfer the license from one precinct to another, I desire to submit the following:

Section 3777 of the Revised Laws of Nevada (1912) reads as follows:

> SECTION 1. On the first day of July, A. D. one thousand nine hundred and five, and annually thereafter on January first, every person, firm, company or corporation manufacturing or

selling, either at retail or wholesale, any spirituous, malt or vinous liquors shall, in addition to the licenses now provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment or otherwise.

Section 3778 of said Revised Laws reads as follows:

SEC. 2. The State Controller is hereby authorized and required to have printed blank licenses in sufficient quantities to supply all of the counties of this State, duly numbered and bound together in convenient form, similar to the poll-tax books now issued by said State Controller, said licenses to generally conform in words and blank lines to the following:

$____ STATE OF NEVADA LIQUOR LICENSE No.____

_____County, Nevada,

_____, 19__.

This certifies that _____has paid_____ ($____) dollars state liquor license, which entitles him, upon payment of the other licenses provided by law, to carry on the business of (retailing or wholesaling, as the case may be) spirituous, malt and vinous liquors in_____, in the County of_____, State of Nevada, for the year ending _____, 19__, unless this or the other licenses provided by law be revoked by authority of law. _____, Sheriff of_____County, Nevada.

_____, State Controller.

You are advised that it is the opinion of this office that a state liquor license issued in the form hereinbefore set forth provides the town and county in which said business is licensed, and according to section 3777, hereinbefore quoted, said "license shall not be transferable by sale, assignment or otherwise," and that a person, firm or corporation licensed to do business in one town cannot transfer that place of business to another town or county in the State under that license.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Officers—State Officers—State Veterinarian—Salaries.

The salary of the State Veterinarian being specified in Stats. 1905, p. 235, at "not to exceed $1,800 per annum," it does not come within the meaning of the decision in the case of *State, ex rel. Davis*, v. *Eggers*, 29 Nev. 469, and does not constitute an appropriation out of the treasury for the payment of such salary.

CARSON CITY, April 17, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: In reply to the question which Dr. T. F. Richardson, State Veterinarian, has asked of you with reference to the salary of $1,003 for services rendered as such officer, I beg to inform you that I took this matter up with Dr. Richardson himself in my office yesterday, and went over the statutes governing the same, and have told him that, in my judgment, the only way he can be compensated for the services which he

has rendered will be by means of a relief bill passed by the next session of the Legislature.

His case does not come within the decision of *State* v. *Eggers*, found in 29 Nev. 469–486, for the reason that in the above case the amount of salary which the Chairman of the Publicity Commission was to receive was a fixed and stated amount, namely, twenty-five hundred dollars per year, to be paid in twelve monthly installments, whereas in the case of the State Veterinarian (Stats. 1905, pp. 235–237) the law provides: "The State Veterinarian herein provided for shall receive a salary not to exceed eighteen hundred dollars per annum, and necessary traveling expenses, payable out of the General Fund of the State of Nevada, as other claims are paid."

You will see here that in reference to the State Veterinarian the amount is not fixed; it may be any amount from one dollar up to eighteen hundred dollars per year, and therefore it does not come within the language used in the case of *State* v. *Eggers*.

I believe that Dr. Richardson understands the situation as I do, and I am sorry that the provisions under the law are not such as to make it possible for him to receive compensation every month, for I am convinced that the work that he is carrying on is of great importance to the health of the cattle, and in that way has important bearing upon the health of our various communities.

I believe that if he continues the work and puts in claims each month, as he has been doing in the past, that when the Legislature meets in 1913 and this matter is properly presented to them for their consideration, there will be no question but that he will receive just compensation.

I am returning you the claims of Dr. Richardson with this opinion.

Respectfully submitted.

CLEVE H. BAKER, *Attorney-General.*

Counties—County Commissioners—Tax Sales.

Under section 2125, Comp. Laws, a County Commissioner cannot buy at tax sales of delinquent property.

CARSON CITY, April 22, 1912.

HON. JOHN GALLAGHER, *Auditor and Recorder, Hawthorne, Nevada.*

DEAR SIR: I regret exceedingly not having been able to answer your letter before this date, but have been occupied with board and commission meetings, and in the absence of my deputy have been unable to give it my attention before this time. I trust that this short delay has not inconvenienced you.

In reply to your question "Can a County Commissioner buy delinquent property, being the highest bidder, and will a deed from the Treasurer as trustee for said property to the County Commissioner be legal?" I desire to call your attention to section 2125 of the Compiled Laws of Nevada. The part of said section referring to your question reads as follows:

> No member of the Board of County Commissioners shall be interested, directly or indirectly, in any property purchased for the use of the county, or in any purchase or sale of property belonging to the county.

In my judgment, the County Commissioner would therefore be barred by this section of the statute hereinbefore quoted, and you are so advised.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Officers—State Officers—State Board of Health—Salaries—Deputy Health Officer—Counties.

Under Stats. 1911, p. 392, sec. 6, any salary which the County Commissioners shall determine upon, not in excess of $25 per month for local deputy health officers, is the compensation contemplated.

CARSON CITY, April 23, 1912.

DR. EDWARD DUNSCOMB, *Midas, Nevada.*

DEAR SIR: Your favor of the 18th ultimo reached this office in due course of mail, and I regret exceedingly having been unable to give the matter stated my attention before this time, but the pressure of official business was such, together with the absence of my deputy, that this is the first opportunity I have had to attend to the same.

In reply to your question as to the pay that a deputy health officer is to receive—that is, "whether he receive twenty-five dollars per month, the same as a health officer, or whether any county can make the amount any sum that it wishes to, not to exceed twenty-five dollars a month"—I beg leave to submit the following:

Section 6 of an Act entitled "An Act to create a State Board of Health, defining their duties, prescribing the manner of the appointments of its officers, fixing their compensation, making an appropriation for the support of said board, establishing County Boards of Health, requiring certain statements to be filed, defining certain misdemeanors and providing penalties therefor and other matters relating thereto," passed by the Legislature of 1911, and approved March 27, 1911 (Stats. 1911, p. 392), provides as follows:

> SEC. 6. The local health officer in each county shall act as a collector of vital statistics and is empowered to appoint such deputy or deputies as may be necessary, with the approval of the Board of County Commissioners. For collecting and compiling the vital statistics of the county he shall receive from the county a sum of not less than twenty-five dollars per month, and the Board of County Commissioners are directed to allow a claim for this or for such greater sum as they may deem proper for the work performed; the deputies appointed by the local health officer, with the approval of the County Commissioners, shall be paid in the same manner a sum not to exceed twenty-five dollars per month, for registering and compiling the data prescribed by the State Board of Health and by this Act.
>
> The deputy health officers shall file with the local health officer monthly reports not later than the fifth day of each month which said reports shall be compiled by the local health officer and forwarded to the secretary of the State Board of Health not later than the tenth day of each month. He shall file a copy of said report with the County Recorder.

By virtue of section 6 the local health officer is empowered to appoint deputies by and with the consent of the Board of County Commissioners; payment of such deputies is provided for in the following language: "The deputies appointed by the local health officer, with the approval, * * * shall be paid * * * a sum not to exceed twenty-five dollars per month."

This language is plain and unmistakable; it does not attempt, nor by its language can it be said, to fix a definite stated salary for the deputies. It may be any amount which the Commissioners shall determine, not to exceed twenty-five dollars per month.

This may mean that the Commissioners, by virtue of this Act, have the power to allow the deputies twenty-five dollars per month if they see fit, or they can determine upon any amount less than twenty-five dollars per month, and by the terms of the statute the compensation cannot be in excess of twenty-five dollars per month.

You are therefore advised that any salary which the County Commissioners shall determine upon, not in excess of twenty-five dollars per month, for local deputy health officers, is such compensation as is contemplated by the terms of this Act.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Revenue—Statutes, Repeal Of.

Stats. 1911, p. 352, was repealed by Stats. 1912, p. 10.

CARSON CITY, May 1, 1912.

HON. J. A. SANDERS, *District Attorney, Tonopah, Nevada.*

DEAR SIR: In reply to your question as to whether or not that certain Act entitled "An Act supplementary to an Act entitled 'An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891," passed by the Legislature of 1911, and approved March 23, 1911, found in Stats. 1911, p. 352, is now in operation or has been repealed, I beg to submit the following:

At the special session of the Legislature in February, 1912, this Act referred to was repealed. The Act repealing said Act referring to mortgages is found in Stats. 1912, at page 10, and is as follows:

> SECTION 1. The Act entitled "An Act supplementary to an Act entitled 'An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891," became a law March 23, 1911, is hereby repealed.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Merchant's License—Itinerant Merchants.

The license for itinerant and unsettled merchants, traders, auctioneers or peddlers is fixed by section 3892, Revised Laws.

CARSON CITY, May 1, 1912.

MR. JOHN KLEIN, *Bakersfield, Cal.*

DEAR SIR: In reply to your question as to what is the amount of the license exacted from an itinerant or unsettled merchant peddling dry-goods in this State, I beg to inform you as follows:

Section 3892 of the Revised Laws of Nevada (1912) is as follows:

> SEC. 3. Each and every itinerant and unsettled merchant, trader, auctioneer or peddler shall, before selling or offering for sale any goods, wares or merchandise within this State, procure a license for each and every county in which such person shall attempt to sell or offer for sale any goods, wares or merchandise, which license shall not be granted for more than one month and shall cost the applicant three hundred dollars ($300).

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Cattle—Quarantine—Public Health.

Under the terms of the proclamation of the Governor issued May 14, 1912, one desiring to ship cattle into this State from the quarantined region must show by certification by the proper authorities that such cattle are not diseased or infected with any contagious diseases, and have not been exposed to any of the contagious diseases mentioned in the proclamation.

CARSON CITY, May 29, 1912.

HON. TASKER L. ODDIE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: In reply to your letter of May 28th in which you request an opinion as to whether or not you can comply with the request of Mr. R. O. Bliss relative to the shipment of cattle into this State from Merced County, Cal., in view of your proclamation issued on the 14th day of May 1912, I beg leave to state in this connection that, inasmuch as the cattle which Mr. Bliss desires to ship into this State come from that portion of California which lies south of the Mount Diablo base line which was quarantined against by you in your said proclamation, Mr. Bliss must first bring himself within the terms of the quarantine—namely, that he must show by certification to you from the proper authorities, first, that the cattle that he requests permission to ship into this State are not diseased or infected with any contagious diseases, and, second, have not been exposed to any of said contagious diseases mentioned in the proclamation.

If such a showing can be made, then I am of the opinion that such cattle may properly be shipped into this State, and still be consistent with the terms of your said proclamation.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Code Commission—Right of Commissioners to Compensation.

Under Stats. 1912, p 9, it is the duty of the Controller to draw warrants for the compensation of the Code Commissioners as therein provided.

CARSON CITY, May 31, 1912.

HON. J. EGGERS, *State Controller, Carson City, Nevada.*

DEAR SIR: Your letter of the 20th instant came to the office while I was at Washington, D. C., attending to official duties, and I take this first opportunity to reply to the same.

In regard to your question as to whether, under the law, you can draw warrants in favor of the Justices of the Supreme Court for services rendered as Code Commissioners, in view of article 17, section 5, of the Constitution of Nevada, and also in view of that certain statute passed by the Legislature of Nevada, found in the session laws for 1909, pages 330–333, inclusive, I specifically call your attention to the biennial report of the Attorney-General of Nevada, 1909–1910, pages 32–36, inclusive, and page 47 of said report, wherein my predecessor rendered an opinion to you of the law covering this matter.

In reply to your query as to whether the Act passed at the extraordinary session of the Legislature of Nevada, 1912, found in the session laws for 1912, page 9, repeals that certain provision of the said Act of 1909, relative to compensation, I desire to state that inasmuch as the provisions of the law passed by the Legislature of 1912, relative to the compensation to be paid the Justices is in direct conflict and is irreconcilably inconsistent with the provisions relating to the same provided for in the said Act of 1909, that the latest expression of the Legislature will be considered as repealing the former, and as such will stand.

> Repeals by implication are not favored and are only held to have occurred in cases of irreconcilable repugnancy when the two cannot stand together. (*Estate of Walley*, 11 Nev. 260; *State* v. *Donnelly*, 20 Nev. 240.)

As was also said by our Supreme Court, speaking in the case of the *State* v. *LaGrave*, 23 Nev. 380: "A general statute without negative words will not repeal the particular provisions of a former one *unless* the two Acts are irreconcilably inconsistent."

As I said in a recent opinion to the Board of Examiners, their action, and yours in this case, becomes simply one of a ministerial nature, for, the authority to pass such Acts being within the power and discretion of the Legislature, and the appropriation for the same having been made, then, by virtue of that portion of section 4 of said Act of 1912, to wit, "The State Controller is hereby authorized and directed to draw his warrants on the State Treasury for claims presented," you are authorized and directed to draw the warrants, and it becomes your duty to do so.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Bullion Tax—Net Proceeds of Mines.

Sections 3687 and 3690, Revised Laws, relative to bullion tax, apply to the proceeds of all mines, and it is immaterial whether the mine or mines are owned by individuals or corporations.

J. B. JENSON, *Salt Lake City, Utah.* CARSON CITY, June 5, 1912.

MY DEAR SIR: I regret exceedingly not having been able to give your letter any attention before this date, but I have been away from the office some considerable time, due to ill-health, and on my return here was

immediately called to Washington on official business, and this is the first opportunity I have had to answer the same.

I desire to state that the law relative to bullion tax in this State applies to the proceeds of mines as set forth in section 3687 of the Revised Laws of Nevada, and it is immaterial whether the mine or mines are owned by individuals or corporations. Section 3687 reads as follows:

> 3687. SEC. 75. All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes quarterly in the manner following: From the gross yield returned, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores, or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale, and the actual cost of reduction or sale; and the remainder shall be deemed the net proceeds, and shall be assessed and taxed at the same rate ad valorem as other property is taxed, as provided in this Act; *provided*, that there shall be no allowance made for expenses incurred prior to the quarter for which the assessment is made, excepting tailings and mines producing not more than one ton of ore or mineral-bearing material per day, for which expenses may be deducted for the four consecutive quarters preceding the quarter for which the assessment is made; *and provided further*, that the net proceeds shall not a second time be assessed for taxation so long as such proceeds, in the form produced, remain in the possession of the person, firm or corporation producing the same.

I also refer you to section 3690, which is in point and reads as follows:

> 3690. SEC. 78. For the purpose of enabling the Assessor to make such assessment, he shall demand from the president, secretary, superintendent, treasurer or managing agent of each corporation or association, and from each firm or persons engaged in extracting ores or minerals, or working tailings within his county, a statement, under oath or affirmation, of the total number of tons extracted, or worked, or sold by him or them during the preceding quarter-year; the gross yield or value of the same in dollars and cents; the actual cost of extracting the same from the mine or tailings deposit; the actual cost of transportation of the same to place of reduction or sale, and the actual cost of reduction or sale of the same, for the last preceding three months respectively. If any person shall knowingly make or give, under oath or affirmation, as aforesaid, a false statement to the Assessor, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law for the punishment of that crime.

I trust that this is the information you desire, but if you desire anything additional in this matter, I would suggest that you write to Mr. L. F. Adamson, Carson City, Nevada, State Bullion Tax Collector.

Very truly yours,

CLEVE H. BAKER, *Attorney-General.*

State University—School Moneys—Investment Of.

Under U. S. Stats. the Agricultural College funds of the State must be so invested as to yield no less than 5 per cent per annum.

CARSON CITY, June 6, 1912.

HON. TASKER L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: Your favor of the 4th instant to hand, with enclosure of the letter from the Department of Interior, which letter I herewith return.

In reply to your question as to what action should be taken in the matter relative to the investment of the school moneys, I beg to inform you that I have carefully examined the United States statutes referred to by Secretary Fisher in his letter, and find that his references to the United States statutes are correct, for, under the terms of those statutes, the Agricultural College funds of the State must be so invested as to yield not less than 5 per cent per annum on the par value thereof.

As suggested in the enclosed letter, this has not been done, and I believe the proper course to pursue at this time is to write the Secretary of the Interior, telling him that the action of the State School Board was due to inadvertence and assure him that now, since the matter has been called to your attention, no such investment will be made in the future, and that the law will be strictly complied with.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Live Stock—Quarantine—State Veterinarian.

There is no express statutory provision authorizing the killing of diseased live stock by the State Veterinarian; provision is made for their quarantine only.

CARSON CITY, June 6, 1912.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: Replying to your favor of the 23d ultimo enclosing copy of a letter from Dr. T. F. Richardson, and also a copy of a letter addressed to Mr. C. L. Noble of Fallon, Nevada, from the United States Department of the Interior, wherein you request an opinion as to whether "the law provides in any way for issuing an order to have the animal killed when it has been proven positively to have the glanders," I desire to submit the following:

By virtue of an Act passed by the Legislature of Nevada and approved March 15, 1905, the office of State Veterinarian was created, his duties defined, etc. Section 5 of said Act (section 4380, Revised Laws of Nevada) reads:

> 4380. SEC. 5. If, upon investigation, said State Veterinarian shall be satisfied that said live stock is infected with what is known as pleuro-pneumonia, tuberculosis, glanders, anthrax, hog cholera, swine plague, foot and mouth disease, or any other contagious or infectious disease against which he may think best to quarantine, he shall have authority to call upon the Sheriff or other officer of the law in said county in which said diseased stock may be found, setting forth in writing the number of stock infected and the character of the disease, the said Sheriff or other officer to enforce such regulations as the State

Veterinarian shall deem necessary to control or subdue said outbreak or infectious disease.

The above-quoted section of said Act makes no provision for the killing of live stock so diseased, but provides for a quarantine of such infected live stock and authorizes the State Veterinarian to establish such regulations as to make a quarantine effective and control and subdue any outbreak of infectious diseases.

It further authorizes him to call upon the Sheriff or other officer to assist him in carrying out the same; but there is no provision in the Act providing for the killing of said diseased animals.

An examination of the statutes of some of the other States discloses the fact that when diseased live stock are killed it is authorized by express statutory provision.

There being no such express statutory provision in this State authorizing the killing of diseased live stock by the State Veterinarian, you are therefore advised that the only provision is for their quarantine.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Live Stock—State Veterinarian, Services of, Claim Against the State.

The services rendered by the State Veterinarian, in making a test of a horse for glanders, is a proper charge against the State.

CARSON CITY, June 6, 1912.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: Receipt is hereby acknowledged of your letter of the 4th instant wherein you request an opinion as to whether or not the services rendered by Dr. T. F. Richardson, State Veterinarian, in making a test of a horse for glanders is a proper charge against the State of Nevada.

Section 4377 of the Revised Laws of Nevada defines the duties of the State Veterinarian and reads as follows:

> 4377. SEC. 2. Said State Veterinarian shall devote his time to the investigation of the nature, causes of and remedies for diseases of horses, mules, cattle, swine, sheep, and all other domestic animals; and to such other duties as the Governor may prescribe.

Section 4378 sets forth the manner and mode of obtaining the services of the State Veterinarian in certain cases and reads as follows:

> 4378. SEC. 3. It shall be lawful for any three freeholders and residents of this State to go before a Justice of the Peace, the District Attorney or the Board of County Commissioners and demand the presence and services of the said State Veterinarian to investigate an outbreak of any contagious or infectious disease amongst any of the domestic animals.

I am of the opinion that if Dr. T. F. Richardson voluntarily or by virtue of a demand made upon him as provided for by law, rendered the service of making a test of a horse for glanders, that such service would come within his duties as prescribed by law, and therefore be a charge against the State.

The real purpose of his work is to investigate such diseases and to prevent by quarantine the spreading thereof, and any such examination he makes of those contagious diseases is, in my judgment, strictly along the lines of his prescribed duties.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Crimes and Punishments—Fish and Game—Construction of Dams or Weirs.

Section 2048, Revised Laws, provides means of punishment of persons, firms, companies, associations or corporations erecting dams, water weirs or other obstructions to the free passage of fish in the waters of this State.

CARSON CITY, June 8, 1912.

E. T. GEORGE, *Justice of the Peace, Battle Mountain, Nevada.*

DEAR SIR: Your favor of June 4 is hereby acknowledged, and I desire to state that yesterday afternoon I called Mr. George T. Mills, Chairman of the Fish Commission, into my office and discussed this matter with him.

I am of the opinion that there is no law compelling said corporation to put screens over the pipe. I would suggest that you call the attention of the Game Warden to section 2048 of the Revised Laws of Nevada, which reads as follows:

> 2048. SEC. 2. All persons, firms, companies, associations or corporations, who have erected or who may hereafter erect any dams, water weirs or other obstructions to the free passage of fish in the rivers, streams, lakes or other waters of the State of Nevada, shall construct and keep in repair fishways or fish ladders at all such dams, water weirs or other obstructions, so that at all seasons of the year fish may ascend above such dams, water weirs or other obstructions, to deposit their spawn. Any person or persons, firm, company, association or corporation failing to comply with the provisions of this section after having been notified and required so to do by the proper authority, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty-five days nor more than one hundred and fifty days.

This, I believe, would be the means of stopping this wanton waste of fish. If the Game Warden calls the attention of the corporation you complain of to this section of the law, I believe they will readily comply with the demand made upon them; if not, I would advise a strict enforcement of section 2048 already referred to.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Fish and Game—Doves.

There is nothing in section 1, page 16, of the Fish and Game Laws for 1911 which prohibits the killing of doves. Every person, however, killing any of the wild birds or animals of this State, without first procuring a license therefor, is guilty of a misdemeanor.

CARSON CITY, June 12, 1912.

J. W. GILLIAM, *Imlay, Nevada.*

DEAR SIR: Replying to your letter of May 30 I beg to inform you that there is nothing in section 1, page 16, of the Fish and Game Laws for 1911 which prohibits the killing of doves.

I desire, however, to call your attention to sections 2085 to 2100, inclusive, of the Revised Laws of Nevada, which sections relate to the protection and preservation of game, and especially section 2101 of the Revised Laws of Nevada, which is as follows:

> 2101. SECTION 1. Every person in the State of Nevada, who hunts, pursues or kills any of the wild birds or animals, or who takes or catches any of the fishes that are protected by the laws of this State, without first procuring a license therefor, as provided in this Act, is guilty of a misdemeanor.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Public Schools—State Board of Education—Superintendent of Public Instruction—Deputies, Appointment Of.

Under section 9, Stats. 1911, p. 183, in order to make an effective appointment of a Deputy Superintendent of Public Instruction, the Superintendent of Public Instruction must nominate, the State Board of Education must appoint, and the appointee must qualify by taking office.

CARSON CITY, June 24, 1912.

HON. J. E. BRAY, *Superintendent of Public Instruction.*

DEAR SIR: In reply to your letter of the 20th instant, wherein you desire to be informed relative to the appointment of Mr. G. E. Anderson of Elko and Mr. A. B. Lightfoot of Eureka as Deputy Superintendents of Public Instruction, and whether the same became effective the first Monday in September, 1911, and if so, for what period they shall serve, I beg leave to call your attention to an Act entitled "An Act concerning public schools, and repealing certain Acts relating thereto," approved March 20, 1911, and found in Stats. 1911, at page 183.

Section 9, chapter 3, page 187, of said Act, which has special reference to the matter now under consideration, reads in part as follows:

> SEC. 9. Upon the nomination of the Superintendent of Public Instruction the State Board of Education shall, on or before the first Monday in May, 1912, and each fourth year thereafter, appoint one Deputy Superintendent of Public Instruction for each supervision district as herein provided for, and such appointee shall, at the time of his appointment and during his term of office, be a *bona fide* resident of the district for which he

> is appointed. Such appointee shall take office on the first Monday in September and shall serve for a period of four years, or until his successor shall have been appointed and shall have qualified.

In your letter you state that you nominated Mr. Anderson and Mr. Lightfoot to serve from the first Monday in May, 1911, for a period of four years, but that the other members of the board did not take any definite action upon these two men, but did upon others whom you nominated as Deputy Superintendents for other districts.

The State Board of Education is created by statute (section 3239, Revised Laws) and, as such, its power and authority are confined to that expressly conferred by statute. Like the Boards of County Commissioners, it can only exercise such powers as are conferred upon it by statute, and then only in the manner and method prescribed by law.

Section 9 of said school law of 1911, among other things, provides "upon nomination of the Superintendent of Public Instruction the State Board shall, on or before the first Monday in May, 1911, and each fourth year thereafter, appoint one Deputy Superintendent of Public Instruction for each supervision district, * * * and such appointee shall take office on the first Monday in September and shall serve for a period of four years."

This section provides for three things which must be performed before the appointment becomes complete and regular:

First—The Superintendent of Public Instruction must nominate.

Second—The State Board of Education, consisting of the Governor, the President of the State University and the Superintendent of Public Instruction, must appoint.

Third—The appointee must qualify by taking office on the first Monday in September.

The statute clearly provides how this appointment shall be made and when, and must be strictly followed, and the minutes of the Board of Education should show that this statute has been complied with in the manner above indicated.

> The usual mode by which a Board of Education makes known its will on any subject over which it has control, is either by motion or by a resolution passed by the board at an official meeting and entered upon the record of its proceeding where it may be seen by any party interested. (*State Board of Education* v. *City of Columbus*, 35 Ohio St. 368.)

I am of the opinion, from the facts set forth in your letter, that there never was any official action taken by the State Board of Education appointing these two Deputy Superintendents, and therefore in the case of Mr. Anderson and Mr. Lightfoot there is a vacancy at the present time in said districts as Deputy Superintendents of Public Instruction.

When a vacancy exists in the office of Deputy Superintendent of Public Instruction, section 9 of said school act hereinbefore referred to provides the methods for filling said vacancy. "In case a vacancy shall occur in the office of Deputy Superintendent of Public Instruction, the State Board of Education shall in like manner make an appointment for the unexpired term."

You are therefore advised that it is the opinion of this office that at the present time there exists a vacancy in the office of Deputy Super-

intendents of Public Instruction in the cases of Mr. Anderson and Mr. Lightfoot, due to the fact that these appointments were never made according to the law of the State Board of Education, and that the proper course to pursue at this time is for the State Board of Education to meet and fill the vacancies according to the section of the statute hereinbefore quoted.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Glove Contests.

Under section 3881, Revised Laws, glove contests in which the contestants in any way, directly or indirectly, receive any compensation, wager or a reward, must be licensed.

CARSON CITY, June 26, 1912.

HON. C. J. MCFADDEN, *District Attorney, Ely, Nevada.*

DEAR SIR: Your letter of the 20th instant received and in reply to your query as to my opinion of section 3881 of the Revised Laws of Nevada, relating to glove contests in this State, I herewith submit the following:

Section 3881 of said laws reads as follows:

> Any male person over the age of twenty-one years may procure a license for an exhibition in a public place for any contest or exhibition with gloves between man and man for a wager or reward, and the weight of the gloves shall not be less than four ounces used in said contest or exhibition.

The only logical conclusion that can be drawn from the reading of the above section is that glove contests in which the contestants in any way, directly or indirectly, receive any compensation, wager or reward, must be licensed, and the amount of license exacted is the sum of one thousand ($1,000) dollars as set forth in section 3882, Revised Laws, and reads as follows:

> The Sheriff of any county in which the exhibition named by section 1 of this Act is to be held shall issue a license for such exhibition or contest upon payment to him of the sum of one thousand ($1,000) dollars.

The penalty for not complying with the terms of those sections is provided for in section 3889 of the Revised Laws.

I understand that frequently endeavor is made to have these glove contests without obtaining a license for the same, with the understanding that part of the proceeds is to go to some charitable cause, the other part, of course, being divided up by the promoters and contestants.

This is clearly contrary to the express terms of the statute hereinbefore quoted, which in unmistakable language provides that where any part at all of the proceeds go to the contestants a license must be obtained.

This is the law passed by the Legislature, and our only duty is to enforce the same. I believe that the best way to enforce this law is to keep a close surveillance on all such exhibitions, and where there is any reasonable ground to believe that the law has been violated, to cause an investigation of the same to be made by the proper authorities.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections, Publication of Notice Of.

Where the maximum number of newspapers is used for publication of notice of primary election, the two selected should be those designated in section 1746, Revised Laws.

CARSON CITY, June 27, 1912.

HON. GEORGE L. SANFORD, *District Attorney, Carson City, Nevada.*

DEAR SIR: In reply to your favor of the 18th instant wherein you ask the following: "In how many newspapers are publications required under the provisions of the primary election law, particularly sections 4 and 11 of said Act?" I beg leave to submit the following:

Section 1739, Revised Laws, section 4 of said primary election law, approved March 23, 1909, reads as follows:

> SEC. 4. 1. At least sixty days before the time for holding such September primary election in 1910, and biennially thereafter, the Secretary of State shall prepare and transmit to each County Clerk and to the City Clerk in any city a notice in writing designating the offices for which candidates are to be nominated at such primary election.
>
> 2. Within ten days after the receipt of such notice such County Clerk or City Clerk in any city shall publish so much thereof as may be applicable to his county once in each week for six successive weeks, in not more than two newspapers published in each county or city and county.
>
> 3. In the case of September primary elections for the nomination of candidates for the city or city and county offices to be voted for at the November election in the odd-numbered years, the City Clerk or secretary of the legislative body in any such city shall cause the publication of notice of such primary election, together with a complete statement of the offices for which candidates are to be nominated, once in each week for four successive weeks in not more than two newspapers of general circulation published in such city or city and county, the last publication to be made not more than forty and not less than fourteen days before such primary election.
>
> 4. In the case of primary elections other than the September primary elections the City Clerk or secretary of the legislative body of the political subdivision for which such primary election shall be held shall cause one publication of such notice to be given, such publication and posting to be not more than forty and not less than fourteen days before such primary election.

Section 1746, Revised Laws (section 11 of said Primary Election Law), reads as follows:

> SEC. 11. Every publication required by this Act shall be made in not more than two newspapers of general circulation published in such county or city or town or township, and one of such newspapers shall represent the political party that cast at the last preceding general election the highest number of votes in such county or city or town or township, and one of such newspapers, if any, shall represent the party which cast the next highest number of votes at such election. In any case where the publication of the notices provided for by this Act

cannot be made as hereinbefore provided it shall be made in any newspaper having a general circulation in the city or county in which the notice is required to be published.

It is apparent from a reading of subdivision 2 of section 1739 that the notice therein required shall be published for the stated period in at least one and not more than two newspapers in the county.

"In not more than two newspapers" is a limitation which cannot be exceeded; it means one or two, but not more than two, and a proper inference to be drawn from this language is that publication in one newspaper is sufficient. Yet publication in two newspapers may be had if so desired.

The same construction applies to subdivision 3 of said section.

With reference to subdivision 4 of said section 1739, the publication therein provided for is specified in the following terms: "Shall cause one publication of such notice to be given." In this subdivision there is provision made for one publication only.

Section 1746, Revised Laws (section 11 of said Primary Election Law), places a limitation of *not more than two newspapers* for every *publication* named in the Act. This section was evidently inserted to emphasize the fact that in no instance where publication was necessary was such publication to be in more than two newspapers.

In no section of the Act has any provision been made that it *must be published in two newspapers*, but the maximum number of publications in any instance was not to exceed two newspapers.

That part of section 1746 which refers to the method of selecting the two newspapers, to wit, one representing the political party that cast the highest number of votes in the last preceding general election, etc., and the other representing the party which cast the next highest number of votes, etc., I believe must be construed along with the other section of the Act referring to publications, but this would apply only where two newspapers were used to carry out the terms of this Act.

In other words, where the maximum number of newspapers were used for publication, then the two selected should be those designated by reference to the provisions set forth in section 1746.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—County Commissioners—Taxation—Poll Taxes—Assessor—Collector of Poll Taxes—Sheriff.

The Sheriff, as ex officio Assessor and poll-tax collector, is the officer designated by law to collect poll taxes, and neither he, nor anyone else, is allowed fees for collecting the same.

The Assessor is ex officio poll-tax collector, and he alone, or some one deputized by him, has authority to collect poll taxes, and the Board of County Commissioners has no power to appoint any one to act in this capacity.

CARSON CITY, June 28, 1912.

HON. GEORGE N. NOEL, *District Attorney, Virginia City, Nevada.*

DEAR SIR: In reply to your letter of the 21st instant, wherein you submit the following question: "Has the Board of County Commission-

ers of Storey County, Nevada, the right to appoint any person other than the Sheriff, who ex officio acts as Assessor and ex officio poll-tax collector, to collect poll taxes; and in collecting any poll tax is any person other than the Assessor entitled to fees, and is it not necessary to deliver the money collected in said tax to the officer designated in section 3722 of the new code, and further, under said section, is any person entitled to compensation therefor?" I beg leave to call your attention to the following sections of our code:

Section 3713, Revised Laws, reads as follows:

> The Auditor shall, from time to time, issue to the Assessor (who shall be ex officio poll-tax collector) so many of the receipts for poll-tax as he may need, taking his receipt therefor and charging him therewith.

Section 3715, Revised Laws, reads as follows:

> Upon receiving such receipts from the Auditor, the Assessor shall give a receipt to said Auditor for the same, and the said Auditor shall immediately charge the same to the Assessor so receiving them. The Board of County Commissioners in each county shall exact (if they deem advisable) an additional bond from the Assessor as ex officio poll-tax collector, with additional sureties in such penal sums as the said board shall believe necessary to insure the prompt and faithful payment to the County Treasurer of all moneys received by such Assessor for poll taxes.

Section 3722, Revised Laws, reads as follows:

> On the first Monday in each month the Assessor shall pay over to the County Treasurer all moneys in his hands collected as poll taxes, and take duplicate receipts therefor; and he shall, on the same day, repair to the office of the County Auditor and make oath before the Auditor of the total number of poll taxes collected by him during the last preceding month, and file with the Auditor, the County Treasurer's receipt for the total amount of poll taxes collected; and the Auditor shall charge the Treasurer with said amount.

Section 3723, Revised Laws, reads as follows:

> On the first Monday in December, in each year, the Assessor shall return to the County Auditor all poll-tax receipts received by him and not used, and shall pay to the County Treasurer the total amount collected, and not paid heretofore; and on the same day the County Treasurer shall attend with the Assessor at the office of the County Auditor, and the County Auditor shall, then and there, finally settle with the Assessor for all poll-tax receipts signed by the Treasurer and delivered to him.

Section 3724, Revised Laws, reads as follows:

> It shall be the duty of the Assessor to keep a roll of the names of all persons who shall pay a poll tax in each year, and the date and amount of each payment; also, in a separate column of said roll, the names of all persons liable to such tax, from whom he has demanded such tax, who have refused or neglected to pay the same, with the date of such demand. This

return shall be certified by him as a true and full return of all persons from whom he has made such collection, or on whom he has made demand, and shall be verified by his oath or affirmation.

Section 3841, Revised Laws, reads as follows:

> From and after the passage of this Act all moneys received from poll-tax collections shall be by the County Commissioners of the various counties of this State set aside for the exclusive use of the different road districts of the several counties, according to the amounts collected in the various road districts, and all receipts for poll taxes shall hereafter be furnished by the respective counties instead of the State Controller, and all poll-tax receipts shall be signed by the County Assessor.

You will see from the terms of the foregoing sections of our code that by law the Assessor is ex officio poll-tax collector, and that the Auditor, from time to time, issues receipts to him; that there are penalties imposed upon the Assessor for receiving poll taxes without giving receipt therefor; that the Board of County Commissioners can exact an additional bond from him as poll-tax collector; that the Assessor at certain periods each month shall pay over poll-tax money to the County Treasurer, and that the Assessor shall on December 1 of each year, return receipt to Auditor, who in turn settles with the Treasurer; that the Assessor shall keep a poll-tax roll.

Therefore, according to law, the Assessor is ex officio poll-tax collector, and he alone, or some one deputized by him, has the authority to collect poll taxes and the Board of County Commissioners has no power to appoint any one to act in this capacity.

There is no authority for the County Commissioners allowing the Assessor or any one else fees for making poll-tax collections.

The Sheriff of Storey County, who is also Assessor and ex officio poll-tax collector, is paid a salary for his services as such. See Stat. 1909, p. 168:

> The Sheriff, for services as Sheriff and ex officio Assessor, shall receive the sum of eighteen hundred dollars a year.

Section 3722, above quoted, provides that the poll-tax collector each month must turn over all poll-tax money to the County Treasurer.

By virtue of section 3841, Revised Laws, the County Assessor now, instead of the State Controller, signs the poll-tax receipts, and all poll-tax collections shall be by the County Commissioners of the various counties set aside for the exclusive use of the different road districts.

Therefore, you are advised that the Sheriff of Storey County as ex officio Assessor and poll-tax collector, is the officer designated by the law to collect poll taxes, and that neither he nor anyone else, is allowed fees for collecting the same, and that the poll taxes so collected must be turned over on the first Monday each month to the county treasurer.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Assessment Roll, What Constitutes—Judicial Districts.

The assessment roll referred to by section 3 of the Act to create Judicial

Districts (Stats. 1909, p. 186) is the assessment roll provided for by section 3635, Revised Laws.

CARSON CITY, June 29, 1912.

HON. J. EMMETT WALSH, *District Attorney, Goldfield, Nevada.*

DEAR SIR: Receipt of your favor of the 24th instant is hereby acknowledged, and in reply to your question therein stated, namely, "What constitutes the assessment roll under the provisions of section 3 of an Act to create Judicial Districts, etc. (Stats. 1909, p. 186)?" I beg leave to submit the following:

That portion of section 3 to which you have referred, which has particular bearing upon your question, reads as follows:

> Each county in each district in the State shall contribute annually to the said fund its proportionate share of the money necessary to pay the Judge or Judges of its district their respective salaries monthly for each year, based upon the assessment roll of each county for the previous year.

Section 3633 of the Revised Laws of Nevada sets forth what the assessment roll shall consist of and includes a form of assessment roll which should be substantially followed.

I have not quoted the same, as speedy reference can be had to the same in the code.

In the case of *State* v. *Meyers*, 23 Nev. 274, the Supreme Court at page 277, speaking of the assessment roll, said:

> Under the provisions of sections 17 and 19 of the amended revenue law, it is made the duty of the Assessor on or before the first Monday in September of each year to complete the assessment roll, *which must contain a list of all the property in the county subject to taxation*, which list shall be verified by his affidavit.

It is the opinion of this office that the assessment roll referred to by said section 3 of the Act to create Judicial Districts (Stats. 1909, p. 186) is the assessment roll provided for by said section 3635 of the Revised Laws.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Express Companies.

Under section 3728, Revised Laws, a license should be taken out by any express company engaged in transmitting gold dust, gold or silver, coin or bullion from any place in this State to any place without this State, or from one place to another within this State for profit.

CARSON CITY, June 29, 1912.

HON. J. A. SANDERS, *District Attorney, Tonopah, Nevada.*

DEAR SIR: In reply to your favor of the 22d instant wherein you desire to know whether or not the American Express Company should pay a license in Nye County, I beg leave to call your attention to section 3728 of the Revised Laws, more particularly to the latter portion of the section, which reads: "Licenses shall also be obtained by any person or

persons, private associations or corporations doing business in this State and engaged in transmitting gold dust, gold or silver, coin or bullion, from any place in this State to any place without this State, or from one place to another within this State, for profit, and the same shall be taken to be a common carrier within the meaning of this Act."

I am not familiar with the business which the American Express Company does in Nye County. The facts can be readily obtained by you, and if, after investigation, you find that they come within the terms of this said section, they certainly should pay this license.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Fish and Game—Shipment of Fish into State.

There is no law which prohibits the shipment into this State of fish raised or caught in a foreign State.

CARSON CITY, July 5, 1912.

HYRUM BAIRD, *Provo City, Utah.*

DEAR SIR: I have made an investigation with reference to your company's shipping trout into this State and find, as a result of this investigation, conditions to be about the same as you stated in your letter.

So far as I have been able to find out, I know of no law which prohibits the shipping into this State of fish which were raised or caught in a foreign State, and, therefore, if you comply with the laws of our State in other respects, I see no legal objection why your firm should be prevented from shipping fish into this State.

You have a copy, you say, of the Fish and Game Laws of Nevada, and therefore further reference by me to the same is unnecessary.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Fish and Game—Express Companies—Shipment of Fish from State.

Under section 2051, Revised Laws, it is unlawful for an express company to receive for shipment outside of the State any of the varieties of fish therein named.

CARSON CITY, July 5, 1912.

S. F. PEEK, *Verdi, Nevada.*

DEAR SIR: Your favor of June 24 received and in reply to your question as to whether or not it is lawful to ship fish, taken from Nevada streams, into California, I beg leave to submit the following:

Section 2051 of the Revised Laws of Nevada reads as follows:

> It shall be unlawful for any person or persons, company, association or corporation, to at any time transport or offer for transportation to any place outside of this State any lake, river or brook trout or land-locked salmon, which are intended to be offered for sale; and any person who shall so transport or offer for transportation any lake, river or brook trout or land-locked salmon, white-fish or wide-mouthed bass which are thereafter

offered for sale or sold at any place outside of this State, or are offered for sale after being transported outside of this State, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty-five nor more than two hundred and fifty days, or by both such fine and imprisonment.

You are therefore advised that it is unlawful to ship any lake, river or brook trout or land-locked salmon to any place outside of this State, when the same are intended to be offered for sale.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Public Lands—School Lands—Mineral Lands—Mines and Mining.

Under sections 2456–2459 and 3226, Revised Laws, any of the public lands of this State are subject to entry as mineral.

CARSON CITY, July 12, 1912.

M. K. MILLER, *Oakland, Cal.*

DEAR SIR: I am in receipt of your favor of April 19 last, wherein you ask "if lands which were taken by Nevada in lieu of school sections, under provisions of the Act of June 16, 1880, are open to mineral locations; also, under said Act, was it permissible and legal for Nevada to include mineral lands in its lieu selections?"

I should have answered your letter before this date, but, owing to the great pressure of business in this office and also to the fact that I have been somewhat crippled by the enforced absence of my deputy for the last six months, due to illness, it has been impossible for me to give your letter my consideration before this time.

In response to your inquiries permit me to say that under sections 2456–2459 and section 3226 of the Revised Laws of Nevada, any of the public lands of this State are subject to entry as mineral. The State has expressly disclaimed all interest in mineral lands; every patent for state lands expressly reserves all valuable minerals from the operation of such patent; any citizen of the United States may enter upon any unfenced and unimproved land in the State held in private ownership, excepting mining claims and property already located, and may prospect thereon for valuable minerals, and may locate mineral deposits found thereon.

You will see from the above that the State Legislature has exerted every effort to favor and encourage mining, and it is also unnecessary to reply to your second inquiry.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Corporations—Secretary of State, Fees for Certified Copies.

The fee of the Secretary of State for certifying to articles of incorporation where such office makes the copy is regulated by section 4260, Revised Laws, notwithstanding the fact that under section 1203, Revised Laws, it is provided that the fee "for certifying to articles of incorporation, where copy is furnished," is "$2."

CARSON CITY, July 12, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: In response to your favor of March 11 inquiring concerning fee to be charged for certifying to a copy of articles of incorporation, where your office makes such copy, permit me to say that in my opinion the fee in such cases is regulated by section 4260, Revised Laws of Nevada, wherein it is provided, "for certificate and use of state seal, five dollars for each impression," notwithstanding the fact that under section 102 of the General Corporation Law (Rev. Laws, section 1203) it is provided that the fee "for certifying to articles of incorporation, where a copy is furnished, two dollars."

The law of 1865 in reference to such fees remains in full force and effect except as expressly modified by the above-quoted provision of section 1203.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections—Registration.

The only construction that can reasonably be placed upon section 1733, Revised Laws, is that the expression "shall have registered a vote" should be construed to read as if written "shall have registered to vote," for it is plain that the purpose of enacting this section was to provide for a single registration for both the primary and general elections.

Elections—Registration—Registry Agent, Eligibility of Females As.

A female is not eligible to the office of Registry Agent or his deputy, for the reason that, under the law, there is no authority for a female to administer an oath.

CARSON CITY, July 17, 1912.

HON. J. EMMETT WALSH, *District Attorney, Goldfield, Nevada.*

DEAR SIR: Confirming my opinion recently sent you by telegram in response to your letter of the 12th ultimo wherein you desire to be informed as to whether "an elector must vote at the primary election before the Registry Agent shall transfer his name from the supplemental register to the registration book for the general election, or does it mean when the elector has registered "to" vote at any primary election, the Registry Agent shall copy and transfer the names that appear upon the supplemental register into the registration book for the general election?"

Your question resolves itself into this: "What did the Legislature mean by that portion of said section 1733 which reads, 'when any qualified elector shall have registered a vote.'"

Permit me to call your attention to the following:

Section 1733, Revised Laws of Nevada, reads as follows:

> Hereafter when any qualified elector shall have registered a vote at any primary election under the provisions of section 17 of "An Act to provide for the direct nomination of candidates for public office by electors, political parties and organizations of electors, without conventions, at elections to be known and designated as primary elections, determining the tests and conditions upon which electors, political parties and organizations

of electors may participate in any such primary elections, and establishing the rates of compensation for primary election officers serving at such primary elections; providing for the organization of political parties and the promulgation of their platforms, and providing the methods whereby the electors of political parties may express their choice for the registration of votes for said primary elections and the compensation of Registry Agents, and to provide penalties for violating the provisions of this Act," approved March 23, 1909, and his name shall appear on the supplemental register provided for in said section 17, said elector shall not be required to register again in the same voting precinct as a qualification to vote at the election for which candidates were nominated at such primary election for which he has previously registered; and the Registry Agent shall copy the names appearing on said supplemental register into the registration books for said election the same as if such elector had registered for such election as now required by the registration laws of this State.

Said section 1733 is section 1 of an Act approved March 23, 1911, entitled as follows: "An Act providing for a single registration of the names of electors to vote at any primary election and at the election for which candidates are nominated at such primary elections."

It will be seen that the title of the Act provided primarily for the single registration of the voters who shall be entitled to vote at the primary election and the general election following at which candidates were nominated at said primary election. It is primarily an Act to regulate the registration of electors and not the voting. It simply designates what registration shall be sufficient to entitle electors to vote.

When you consider together the following provisions of said section 1733, which read: "Hereafter when any qualified elector shall have *registered a vote* at any primary election * * * such elector shall not be required to *register again*, * * *" it will be readily seen that, "registered again" refers back to the first part of the said section and shows conclusively that the Legislature contemplated simply the act of registering irrespective of any "voting," and that the expression "a vote" used following was simply an inadvertence, and should have been, in order to carry out the unmistakable intention of the Legislature, "to vote."

It is therefore the opinion of this office that the only construction that can reasonably be placed upon said section is that the expression "shall have registered *a vote*" should be construed to read as if written "shall have registered *to vote*," for it is plain that the purpose of enacting this section by the Legislature was to provide for a single registration in such cases.

In reply to your question as to "whether or not, under section 1705 of the Revised Laws, the Registry Agent may appoint a woman as Deputy Registry Agent," allow me to direct your attention to the following:

Article 15, section 3, of the Constitution of Nevada (Revised Laws of Nevada, section 371) reads in part as follows:

> No person shall be eligible to any office who is not a qualified elector under the Constitution * * * ; *provided*, that females over the age of twenty-one years, who have resided in the State one year, and in the county or district six months next preced-

ing any election to fill either of said offices, shall be eligible to the offices of Superintendent of Public Schools and School Trustees.

Assembly Concurrent Resolution No. 3, relative to amending section 3, article 15, of the Constitution of the State of Nevada, passed March 12, 1909, also passed by the Legislature February 21, 1911, and is therefore now subject to ratification by the people at the next general election to be held in 1912. Among other things which the constitutional amendment proposes is that females shall be eligible to the offices of Superintendent of Public Instruction, Deputy Superintendent of Public Instruction, School Trustee and Notary Public.

Section 1705, Revised Laws, reads as follows:

> The Justices of the Peace of the several counties of the State shall be ex officio the Registry Agents of their respective townships, and, as such, their powers and duties shall be as hereinafter provided in this Act; *provided*, that in any townships where, from any cause, there shall be no Justice of the Peace duly commissioned and qualified, or where an election district may be situated too distant from the office of the Justice of the Peace of said township, the Commissioners of the county in which said election district is located may appoint some other competent person to perform the duties of Registry Agent, who shall be clothed with the same power and governed by the same restrictions as Justices of the Peace in the registration of the names of electors under the provisions of this Act.
>
> All Registry Agents shall have power to administer oaths or affirmations, and do such other acts as may be necessary to fully carry out the provisions of this Act.
>
> Any Registry Agent or ex officio Registry Agent may appoint a Deputy Registry Agent who, upon the filing of his appointment and oath of office with the County Clerk, shall have power to register voters, administer oaths or affirmations, and do all such other acts as may be done by a Registry Agent in carrying out the provisions of this Act.
>
> Any Registry Agent or ex officio Registry Agent appointing any deputy shall be responsible for the compensation and acts of such deputy.

You are therefore advised that it is the opinion of this office that, by virtue of the constitutional provision above quoted, a female is not eligible to the office of Registry Agent or deputy, and, irrespective of this constitutional provision, could not perform the services required of the office for the further reason that under the law there is no authority for a female to administer an oath.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Public Lands—Federal Homestead Entries, Assessment Of.

Lands embraced in federal homestead entries are not subject to assessment and taxation until final entry has been made by the homesteader.

Improvements upon said land are taxable.

CARSON CITY, July 17, 1912.

HON. H. C. MCTERNEY, *County Assessor, Eureka, Nevada.*

DEAR SIR: I am in receipt of your favor of July 10 asking opinion of this office in regard to assessment of federal homestead entries.

Upon a careful examination of the question presented I find that the subject has been decided in numerous cases, and as a result thereof the law has been crystallized as follows:

> Land held under the preemption or homestead law is exempt from taxation until the issuance of the final certificate, and this is a defense available to the preemption or homestead claimant. (*Carroll* v. *Safford*, 3 How. 441; *Witherspoon* v. *Duncan*, 4 Wall. 210; *State* v. *C. P. R. R. Co.*, 21 Nev. 257.)
>
> All property belonging to the United States, no matter for what purpose acquired or held, is exempt from all state and local taxation, on account of the necessary and entire independence of the two systems of government.
>
> Land lying within the borders of a State, but which still constitutes a portion of the public domain, and the legal and beneficial title to which remains in the United States, is not subject to any species of state taxation, and any assessment of taxes upon such land is null and void and can in no way affect the interests of the Government.
>
> When land belonging to the United States has been entered at the land office and paid for and a certificate has been given to the purchaser, it is liable to taxation by the State, in advance of the issuance of the patent; for in such case the contract of purchase is executed and the land belongs to the vendee and no longer to the Government; the conveyance has not been made, but the purchaser has the equitable title, and the United States merely holds the dry legal title in trust for him; the land is segregated from the public domain and is thenceforth private property and subject to taxation.
>
> The equitable title just spoken of, to be subject to taxation, must be perfect and complete, without anything more to be paid or any further act to be done before the entryman is entitled to receive his patent. Hence the land is not to be taxed before its survey and approval of the survey; nor is it subject to taxation before full payment and acceptance of the price by the United States. Again, in the case of homestead entries, the settler does not become entitled to a patent until he has completed the prescribed term of residence on the land, and his interest is not taxable before he is entitled to make his final proofs. (37 Cyc. 866, 867, 868.)
>
> Land, duly and properly entered for a homestead, under the homestead laws of the United States, is not, from the time of entry, and pending proceedings before the land department, and until final disposition by that department, so appropriated for special purpose, and so segregated from the public domain as to be no longer lands of the United States, within the purview and meaning of section 2461 of the Revised Statutes of the United States; but, on the contrary, it continues to be the property of the United States for five years following the entry,

and until a patent is issued. (*Shiver* v. *United States*, 156 U. S. 491, 492.)

On the merits of the case we remark that while it is undoubtedly true that when the full equitable title has passed from the Government, even prior to the issue of a patent conveying the legal title, the land is subject to state taxation. (*Carroll* v. *Safford*, 3 How. 441; *Witherspoon* v. *Duncan*, 4 Wall. 210); yet until such equitable title has passed and while the land is still subject to the control of the Government it is beyond the reach of the State's power to tax. (*Railway Company* v. *McShane*, 22 Wall. 444; *Tucker* v. *Ferguson*, 22 Wall. 527, 572; *Colorado Company* v. *Commissioners*, 95 U. S. 259; *Hussman* v. *Durham*, 165 U. S. 147.)

The possessory interests which private individuals may hold in the public lands of the United States for mining, agriculture and various other purposes, constitute a species of property recognized by law and which is subject to taxation by the State.

The exemption of public property from taxation does not extend to improvements on the public lands made by preemptioners, homestead, and other claimants, or occupants, at their own expense, and these are taxable by the State. (37 Cyc. 869.)

The interest of an entryman in a federal homestead is different in many respects from other entries of government land, and is peculiar in this, that such interests may never ripen into a title, owing to the failure of the settler to perform the various acts required by the Government, and also that not every person can become a settler. As shown by the above quotations, the title to homesteads remains with the Government until he has completed all of the acts required of him and receives a patent to the land.

A sale of such homestead for delinquent taxes would have no effect, for the reason that the purchaser, at the tax sale, might not be qualified to make entry of a homestead, and further, if such sale could be made, such purchaser could not take advantage of the residence of the settler upon such land, but would be compelled to reside thereon the full period of time required by law, and to do and perform all the acts and things required of any homesteader.

In other words, the interest of a homesteader in the land upon which he is settled prior to issuance of patent is personal and peculiar to himself, and is not such an interest as could be transferred to any purchaser at a tax sale. You will see from the above quotations that this exemption of public property from taxation does not extend to improvements on public lands made by preemptioners, homestead or other claimants or occupants at their own expense, and these are taxable by the State. The answer to your question as to assessment of homestead entries renders it unnecessary to answer the question as to minimum valuation upon such land.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Election—Nominations for Office.

No candidate can be nominated for an elective office except by direct vote at primary elections, or by petition of electors, and the name of no

candidate can appear on official ballots at a primary election unless a proper nomination paper has been filed.

CARSON CITY, July 23, 1912.

HON. JUSTUS E. TAYLOR, *State Secretary Socialist Party of Nevada, Reno, Nevada.*

DEAR SIR: Your communication to Hon. George Brodigan, Secretary of State, has been referred to me for answer, and in that connection permit me to say that the pressure of business in this office has been such, together with the absence of my deputy, on account of ill-health, that it has been impossible for your matter to receive attention until this time.

In your letter you ask: "Can we secure recognition upon the ballot by filing the nominees of a party convention or a referendum vote in the party, or will it be necessary that we also secure and file petitions of nomination in addition to the regular party method of nomination?"

In response to this inquiry, permit me to say that the Act in regard to primary elections, approved March 23, 1909, and the amendments thereto, being sections 1736 to 1766, inclusive, of the Revised Laws of Nevada, contemplates in the main the entire abolition of nominations for office by means of party conventions, and therefore, in my opinion, sections 1834–1838 of the said Revised Laws of Nevada, in reference to nominations by conventions, have been superseded by the provisions of the above-mentioned Act in relation to primary elections.

Section 2 of said Act (Rev. Laws, 1737) provides:

> All candidates for elective public offices shall be nominated as follows:
>
> 1. By direct vote at primary elections held in accordance with the provisions of this Act; or
>
> 2. By nominating petitions signed and filed as provided by existing laws. Party candidates for the office of United States Senator shall be nominated in the manner provided herein for the nomination of candidates for state offices.
>
> This Act shall not apply to special elections to fill vacancies to the nomination of party candidates for Presidential Electors, nor to the nomination of officers of the incorporated cities, whose charters or ordinances now or may hereafter provide a system for nominating candidates for such offices, nor to the nomination of officers for reclamation and irrigation districts; nor to school district officers or School Trustees; nor shall it be construed as restricting or affecting the right of political parties to hold, under existing laws, which are hereby continued in force for all such purposes, primaries and conventions for the selection of delegates to national conventions.

It will be seen from the latter portion of said subdivision 2 of section 2 (Rev. Laws, 1737) that this Act does not apply to special elections *to fill vacancies*, [nor] *to the nomination of party candidates for Presidential Electors*, etc.; "nor shall it be construed as restricting or affecting the right of political parties to hold, under existing laws which are hereby continued in force for all such purposes, primaries and conventions for the seclection of delegates to national conventions."

I take it that there is nothing in this Act which prevents the holding of party conventions and the selecting and endorsing of party candidates for nomination, but before these candidates selected by the convention

can become the regular nominees of their party, they must also file their nominating petitions and be voted for at the direct primary. Our own Supreme Court in deciding this very question in the case of *Riter* v. *Douglass*, 32 Nev. 420–421, said:

> The Democratic Party could, if it saw fit, issue a call for a convention as heretofore has been the custom, prepare platforms setting forth such principles as it may desire, and select and indorse whatever candidates it may desire to submit at the primary election.
>
> Such candidates selected, however, before they can become the nominees of their party, must submit to the voters of their party by direct vote to secure the proper certificates necessary to appear on the official ballot.
>
> Under the old convention method, the candidates selected became the party nominees, but under the primary law candidates for nomination must qualify before the rest of the voters of their party faith if they would be nominees of their party, unless they run independently.
>
> One of the purposes of the direct primary law was undoubtedly to remove candidates from the influence of convention dictators or bosses or those who manipulate the selection of candidates by a superior knowledge of politics in convention by making such candidates so selected, should a convention be held anyway, be ratified by a majority of the voters of the particular party before they become party nominees. In other words, the voters may select their candidates directly; or can either ratify the nominations of candidates nominated and recommended by a convention, should a convention be held, or in opposition to the convention candidates, if a convention should be held, reject such candidates if a majority of the voters of the party are not satisfied, or ratify as many of the nominations of such convention candidates as meet with the approval of a majority of the party. So it is plain that the purpose of the law is not to destroy political parties as contended, but rather to secure and preserve the right of the electors to select their own candidates if not satisfied with the candidates selected in a convention, were one had, for the purpose of the illustration suggested.

Section 5 of said Act (Rev. Laws, 1740) provides as follows:

> SEC. 5. a. The name of no candidate shall be printed on an official ballot used at any primary election unless, at least thirty days prior to the primary election, if the candidate is to be voted for at the September primary election, and at least fourteen days prior to the primary election other than the September primary election, he shall file a nomination paper with the proper official as hereinafter provided by this Act, such nomination paper to be under oath and in substantially the following form: * * *

Under the terms of the above-quoted sections it appears certain that no candidate can be nominated for an elective office except by direct vote at primary elections, and that the name of no candidate can appear on official ballots at a primary election unless a proper nomination paper has been filed.

It is the opinion of this office, therefore, that nomination papers for such candidates as the Socialist Party wishes to place in the field in White Pine County, be prepared and filed in accordance with sections 1740–1741 of the Revised Laws.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections—Registration—Registration in Towns and Cities.

Stats. 1911, p. 332, providing for a uniform method of registration throughout the State, is superseded by Stats. 1911, p. 370, in so far as registration in cities polling over 2,000 votes at the last preceding general election is concerned.

CARSON CITY, July 24, 1912.

HON. WM. WOODBURN, JR., *District Attorney, Reno, Nevada.*

DEAR SIR: Confirming my opinion given you recently over the telephone in response to your letter of the 25th ultimo, wherein you desired to be advised as to whether "An Act providing for a single registration of the names of electors to vote at any primary election and at the election for which candidates are nominated at such primary election," section 1733, Revised Laws of Nevada, and of section 17 of the Primary Law of Nevada, section 1751, Revised Laws of Nevada, apply to incorporated cities polling more than two thousand votes at the last preceding general election, under the Act entitled "An Act to provide for the registration of the names of electors and to prevent fraud at elections in certain incorporated cities within the State of Nevada," etc. (secs. 1726 to 1732, inclusive, Revised Laws of Nevada), allow me to submit the following:

The Legislature of 1911 passed two Acts concerning registration of electors. An Act entitled "An Act providing for a single registration of names of electors to vote at any primary election and at the election for which candidates are nominated at such primary elections," was passed and approved March 23, 1911, and subsequently thereto the same Legislature passed an Act entitled "An Act to provide for the registration of the names of electors and to prevent fraud at the elections in certain incorporated cities within the State of Nevada, providing certain penalties and other matters properly appertaining thereto," approved March 24, 1911.

From the provisions of said Act approved March 23, 1911, it will be observed that it is general in its application; from the terms of said Act of March 24, 1911, it will be seen from section 1 thereof that it is to apply to "any incorporated city within the State of Nevada, polling more than two thousand votes at the last preceding general election. * * *" and is therefore limited in its application.

There is in the latter Act of the Legislature an express purpose of providing additional safeguards in matters of registration in cities polling over two thousand votes, for among other things provided, the elector must in registering, sign his name to the register (section 1776, Revised Laws), and then the official register containing the original names and signatures must be delivered to the election officers (sec. 1729) so that the signature of the elector registered and the elector who votes may be

compared in case any question arises as to identity of the man registered and the man presenting himself to vote.

The Act approved March 23, 1911, simply provides that the Registry Agent shall provide a *certified copy* of the register, and if this applies to cities polling over two thousand votes, etc., it would plainly defeat one of the very main objects of the Act approved March 24, 1911, requiring the original register with the signatures as written by the electors.

The said Act of March 23, 1911, providing for a uniform method of registration throughout the State, is superseded by the subsequent Act of March 24, 1911, in so far as registration in cities polling over two thousand votes at the last preceding general election is concerned.

The latter will stand as the law governing registration in said cities polling over two thousand votes, etc., and the former will prescribe the method of registration in all other cases.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Secretary of State, Fees of—Extradition, Fees for—Constitutional Law—Statutes, Construction Of.

The provision in section 7435, Revised Laws, in regard to fees in extradition cases is an extraneous subject not germane to the title of the Act which purports to relate exclusively to "criminal cases in this State"; it is also open to the vice of duplicity of subject and said provision is therefore void and of no effect.

CARSON CITY, July 24, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I am in receipt of a communication of the 12th instant from your office asking an opinion concerning the apparent conflict between sections 4260 and 7435, Revised Laws of Nevada, both of which concern the fees to be charged in the attestation of extradition papers.

The title of the Act containing said section 4260 is "An Act concerning the office of Secretary of State," which was approved February 14, 1865. The title of the Act containing said section 7435 is "An Act to regulate proceedings in criminal cases in this State, and to repeal all other Acts in relation thereto," which was approved March 17, 1911.

It is apparent that by enactment of the last-named section the Legislature intended to repeal by implication that provision of the section concerning fees in your office so far as the same related to extradition papers.

"A statute perfect in itself may repeal another part of a law by implication, although such repeal is not expressed in the title of the repealing statute." (*Union Trust Company* v. *Trumbull*, 137 Ill. 146.)

The question, therefore, is whether said section 7435 repealed the provisions of section 4260 relating to your fees in extradition matters.

The Constitution of this State (art. 4, sec. 17, Rev. Laws, 275) provides as follows:

> Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the Act as revised, or section as amended, shall be reenacted and published at length.

"The design of this provision is to prevent improper combinations to secure passage of laws containing subjects having no necessary or proper relation and which, as independent measures, could not be carried; also to prevent the Legislature and the public from being misled by the title" (*State* v. *Silver*, 9 Nev. 227, 231), and also to prevent "a combination in one act of incongruous and distinct subjects, and also imposition upon the members of the Legislature and the public, by covering up, under innocent titles, vicious and harmful provisions." (*State, ex rel. Norcross*, v. *Washoe County*, 22 Nev. 399.)

"The Supreme Court of this State has recognized and enforced this section as being mandatory." (*State* v. *Silver*, *supra; State*, *ex rel. Chase*, v. *Rogers*, 10 Nev. 253), and has held that "while this section should be liberally construed, to the end that there may be no unnecessary hampering of legislation, this liberal construction should not go to the extent of nullifying the Constitution. Where the Act clearly embraces two distinct and independent subjects, or the real subject of the Act is not expressed in the title, it is the duty of the courts to declare the Act void." (*State*, *ex rel. Norcross*, v. *Washoe County*, *supra*.)

"Where, by the title, the subject of an Act is restricted to a certain purpose, the purview of the Act cannot be extended to other purposes not indicated in the title. The Act can be no broader than the subject expressed in the title. (*State*, *ex rel. Norcross*, v. *Washoe County*, *supra*.)

The Supreme Court of this State in several instances has declared Acts void as being in conflict with this provision, notably in the case of *State* v. *Hoadley*, 20 Nev. 317; *State, ex rel. Watson*, v. *Stone*, 24 Nev. 308, and *State* v. *Gibson*, 30 Nev. 353.

From a careful consideration of the above authorities and also of chapter 4, Lewis-Sutherland on Statutory Construction, I am of the opinion that the provision in said section 7435 in regard to the fees in cases of extradition is an extraneous subject not germane to the title of the Act which purports exclusively to "regulating criminal cases in this State." It is a question in my mind whether an extradition case concerning exclusively a criminal action in another State can be considered "a criminal case in this State," but, in any event, no one reading the title of the Criminal Practice Act would expect to find incorporated therein a provision concerning the fees of your office in extradition matters.

Another objection to the clause in said section 7435 is that the same is open to the vice of duplicity of subject. The purport of the whole Act, of which this is a clause, is the regulation of proceedings in criminal cases, and in attempting to regulate the fees of your office in extradition matters the Legislature has gone beyond the purview of the Act and has attempted to legislate upon a subject clearly not embraced within the title.

My conclusion, therefore, is that the clause in said section 7435 attempting to regulate the fees in your office in extradition matters did not repeal any portion of section 4260, and is void and of no effect, and in extradition matters you are authorized to charge fees as provided in said section 4260.

Respectfully submitted.

CLEVE H. BAKER, *Attorney-General.*

Corporations, Reviver of—Governor, Duty In.

If, from all the facts and circumstances surrounding an application to revive a corporation whose charter has become forfeited under section 1120, Revised Laws, the Governor believes that good and sufficient reason for noncompliance with said section has been given, it is his duty to issue his certificate reviving the same.

CARSON CITY, July 25, 1912.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: In the matter of the application of the Dromedary Hump Mines Company to have the certificate of the Secretary of State of the State of Nevada, of its due incorporation, revived by certificate of the Governor of the State of Nevada, I beg leave to call your attention to "An Act providing a General Corporation Law," approved March 16, 1903, and subsequent amendments thereto, and more particularly to section 16 thereof, which is found in the Revised Laws of Nevada, section 1120, and reads as follows:

> SEC. 16. Every corporation organized under this Act shall have and maintain in a conspicuous place on its principal office required by section 14, in letters sufficiently large to be easily read, painted or printed, the corporate name of such corporation. And every such corporation which shall fail or refuse to comply with the requirements of section 14 and of this section, for a period of thirty days, or fail to maintain such office or fail to have a competent agent in charge thereof, on all business days of the year, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered with costs by the State before any court of competent jurisdiction by action at law, to be prosecuted by the Attorney-General, or by the District Attorney of the county in which such action or proceeding to recover such fine is prosecuted. Failure to comply with the requirements of this section for a period of ninety days shall render the certificate issued by the Secretary of State void, and the same can only be revived by a certificate from the Governor issued for good and sufficient reasons for noncompliance.

This section above quoted contemplates that there may be certain conditions and contingencies arise which are excusable and, in a way, justifiable, even in view of these provisions of section 16, and that when a proper showing is made to you which sets forth sufficient reasons for the noncompliance with the provisions of this statute, you are then authorized, under the law, to issue a certificate and revive the said corporation.

Therefore, if from all the facts and circumstances surrounding this company you believe that good and sufficient reasons have been given for the noncompliance with this statute, I believe it is your duty to issue a certificate so that same be revived.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Extradition—Sufficiency of Indictment—Governor, Duty in Extradition Matters.

The obligation of the Executive of a State to deliver up a fugitive from justice on demand of the Executive of another State arises only when the fugitive is legally charged with a crime committed within the State demanding his surrender.

CARSON CITY, July 25, 1912.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

MY DEAR SIR: I have examined the papers sent you by his Excellency, Hon. John F. Shaffroth, Governor of the State of Colorado, in the matter of the extradition of B. F. McDonald, a fugitive from justice from the State of Colorado, and now alleged to be in Elko, Nevada.

I find that the criminal complaint against the said B. F. McDonald, which is included in the requisition papers, is based upon section 1704 of the Statutes of Colorado and found in Colo. Stats. Annotated, vol. 2, pp. 1048 and 1049 thereof.

That portion of the said statute which is relied on in this complaint is as follows: "Every person who shall falsely make, alter, forge or counterfeit any * * * check or draft * * * with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this State or not; *or who shall utter*, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed or attempt to be passed as true or genuine, any of the above-named false, altered, forged or counterfeit matters as above specified and described, knowing the same to be false, altered, forged or counterfeit, with intent, etc. * * *; shall be deemed guilty of forgery."

The criminal complaint in this case was sworn to by D. H. Dailey, the complaining witness, before H. C. Dennis, Justice of the Peace in and for the county of Morgan, State of Colorado.

Omitting the formal parts of the complaint it reads as follows:

"B. F. McDonald, on the 3d day of July, A.D. 1912, in said county, did wilfully, unlawfully and feloniously, falsely make, alter, forge, and counterfeit a certain bank check in writing in the words and figures following, to wit:

FORT MORGAN, COLO., July 3, 1912.

Pay to the order of B. F. McDonald, Twelve and $\frac{60}{100}$ Dollars. ($12.60) B. O. NEIL,

To the First National Bank, D. H. DAILEY.
Fort Morgan, Colo.

And did utter, publish and pass the same as true and genuine; he, the said B. F. McDonald, did then and there, knowing the same to be false, forged and counterfeited with his intent then and there in him, the said B. F. McDonald, to damage and defraud the Dailey Construction Company, a corporation, and the Brown Mercantile Company, a corporation."

I desire to advise you that it is the opinion of this office that this indictment does not conform to the requirements of the law, for the reason that it charges two separate and distinct crimes, to wit, it accuses the said B. F. McDonald of *wilfully, unlawfully, feloniously*, and *falsely making, altering, forging and counterfeiting a certain bank check*, and also of *uttering, publishing and passing* the same *as true and genuine*, etc.

The statute above quoted, as will be seen, makes either of these acts a crime, for, after the words "reside in or belong to this State or not," above quoted, there is a semicolon, and then the connective "or" is used, making all that follows in the alternative rather than the conjunctive.

"To constitute the crime of forgery it is essential that three things should exist—one, that there must be a false making or other alteration of some instrument in writing; two, that there must be a fraudulent intent; three, the instrument must be apparently capable of effecting a fraud." (Cyc. vol. 19, p. 1373.)

The uttering or publishing the same or causing to utter or publish the same not being necessary, but made a separate and distinct crime by the statute.

"Although the indictment charges in separate counts the forgery of an instrument and the uttering of the same, a conviction cannot be had for both offenses, separate indictments being necessary for this purpose." (Cyc. vol. 19, pp. 1410–1411.)

"Under an indictment charging one count a forgery and in another uttering a forged instrument, there can be conviction but for one only of the offenses." (*Crawford* v. *State*, 19 S. W. 766.)

The court in the case of *Crawford* v. *State*, *supra*, uses the following language: "Mr. Bishop, in his Criminal Procedure, 448, declares that under the doctrine prevailing in England and most of the States there can not be joinder of offenses so as to include separate transactions."

"In an indictment for felony different counts are drawn with a view to one and the same transaction, so that some one count may be found on the trial to be in accordance with the evidence. This is legitimate, but it sometimes happens that the prosecutor's object in inserting different counts is really to prosecute the defendant for separate offenses by one indictment. This he has no right to do and when ascertained before the trial the court will defeat his design." (*Supra*.)

"No uttering is necessary to constitute the offense." (Vol. 13, Am. & Eng. Cyc. Law, 2d ed. p. 1085.)

The note cited under that section is as follows:

> Uttering unnecessary: *State* v. *Fisher*, 65 Mo. 437; *Rex* v. *Crocker*, 2 Leach C. C. 987; *Rex* v. *Ward*, 2 East P. C. 861; *Keeler* v. *State*, 15 Tex. App. 111.
>
> In 2 Russ on Cr. (9th Am. ed.) 709, it is said: "It should be observed that the offense of forgery may be complete though there be no publication or uttering of the forged instrument. For the very making with a fraudulent intention, and without lawful authority, of any instrument which at common law or by statute is the subject of forgery, is of itself a sufficient completion of the offense, before publication, and though the publication of the instrument be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence (2 East P. C. c. 19, sec. 4, p. 855). Thus, in a case where a note, which the prisoner was charged with having forged, was never published, but was found in his possession at the time he was apprehended, no objection was taken to the conviction on the ground of the note never having been published, there being in the case circumstances sufficient to warrant the jury in finding a fraudulent intention. (*Rex* v. *Elliot*,

1 Leach C. C. 175, 2 East P. C. c. 19, sec. 44, p. 951, 2 B. & P. N. R. 93, note a; *Rex* v. *Crocker*, 2 Leach C. C. 987.)

The complaint in this case also accuses the said B. F. McDonald of altering a check. The indictment is not good in that regard, for according to vol. 19, Cyc. p. 1394, c. 2, "where the alteration of a genuine instrument is charged the indictment must clearly set forth the alterations alleged with the proper averments showing the alterations or a material part thereof."

In the case of *In Re Waterman*, 29 Nev. 288, the Supreme Court of this State held:

> Under the Constitution of the United States, art. 4, sec. 2, providing that one charged in one State with a felony, who shall flee from justice and be found in another State, shall, on demand of the Executive of the former State, be delivered up for removal thereto, and Rev. Stats. U. S. 5278 (U. S. Comp. Stats. 1901, p. 3597), providing that when the Executive of a State demands a person as a fugitive from justice of the Executive of a State to which such person has fled, and produces a copy of the indictment charging the person demanded with having committed felony, etc., it shall be the duty of the Executive of the State to which such person has fled to cause him to be arrested, etc.; the obligation of the Executive of a State to deliver up a fugitive from justice on demand of the Executive of another State, only arises when the fugitive is legally charged with a crime committed within the State demanding his surrender.

For the foregoing reasons I am of the opinion that the indictment on which the requisition of the Governor of Colorado is based is fatally defective and void, and that, therefore, you should, as Governor of this State, withhold the requisition warrant.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—General Elections—Nomination of Candidates—Fees for Filing Nominations.

The only instance in which a candidate does not have to pay a fee for filing nomination papers is when he is a candidate for an office which carries no compensation with it.

CARSON CITY, July 26, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Permit me to acknowledge your favor of the 24th instant enclosing the letter from H. E. Beaudreau of Fallon, Nevada, and in this communication I will address myself to the enclosed letter and the question submitted therein.

I will also take the liberty of enclosing you a copy of this letter, which you may, if you so desire, send to him.

With reference to the question which Mr. Beaudreau proposes: "Is it possible under the present law to become a candidate for a county office,

under a party name, without paying the present high filing fees?" I will simply call attention to section 1742, Revised Laws of Nevada:

> Any candidate filing a nomination paper as provided in section 5a, with the proper officer as provided in section 6, shall pay to such officer a fee for such filing as follows:
>
> If a candidate for nomination for any state office, or any district office voted for in more than one county, or Representative or United States Senator in Congress, one hundred dollars.
>
> If a candidate for any district office voted for wholly in one county, fifty dollars.
>
> *If a candidate for any county office, twenty-five dollars.*
>
> If a candidate for State Senator, twenty-five dollars.
>
> If a candidate for Assemblyman, fifteen dollars.
>
> If a candidate for Justice of the Peace, Constable or other township office, ten dollars.
>
> No filing fee shall be required from a candidate for an office the holder of which receives no compensation.

Therefore, it will readily be seen that the only instance in which a candidate does not have to pay a filing fee for filing a nomination paper is when he is a candidate for an office which carries no compensation with it.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—General Election—Primary Election—Secretary of State—Notice of Election—Presidential Electors.

The omission of the comma after word "vacancies" in section 2, Stats. 1909, p. 273, as appears in the amendatory Act of 1911 of the primary law of 1909 (Stats. 1911, p. 334), was due to a clerical error, and not to a desire on the part of the Legislature of 1911 to amend this Act in this particular.

Under the Direct Primary Law there is no authority for the Secretary of State, in issuing a notice designating the officers for which candidates are to be nominated at primary elections, to include in the notice candidates for the office of Presidential Electors.

CARSON CITY, July 27, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Permit me to acknowledge receipt of your communication of the 23d instant wherein you desire to be advised as to whether the call issued by your office for the various officers to be nominated at the coming primary election properly included a call for Presidential Electors. In reply to your question therein stated I submit the following:

The original primary election law passed by the Legislature of 1909, approved March 23, 1909 (Stats. 1909, p. 273), provided for the direct nomination of all candidates for elective offices by means of a primary election. The entire portion of section 2 thereof reads as follows:

> SEC. 2. All candidates for elective public offices shall be nominated as follows:
>
> 1. By direct vote at primary elections held in accordance with the provisions of this Act; or

2. By nominating petitions signed and filed as provided by existing laws.

Party candidates for the office of United States Senator shall be nominated in the manner provided herein for the nomination of candidates for state offices.

This Act shall not apply to special elections to fill vacancies, to the nomination of party candidates for Presidential Electors; nor to the nomination of officers of the municipalities, whose charters provide a system for nominating candidates for such offices; nor to the nomination of officers for reclamation and irrigation districts; nor to school district officers or School Trustees; nor shall it be construed as restricting or affecting the right of political parties to hold, under existing laws, which are hereby continued in force for all such purposes, primaries and conventions for the selection of delegates to national conventions.

There can be no possible doubt in the mind of anyone as to what the said provisions in section 2 mean as passed by the Legislature in 1909.

The Legislature of 1911 passed an amendatory Act, approved March 23, 1911 (Stats 1911, p. 334) amending the latter portion of section 2 as follows:

This Act shall not apply to special elections to fill vacancies to the nomination of party candidates for Presidential Electors, nor to the *nomination of officers of the incorporated cities, whose charters or ordinances now or may hereafter provide* a system for nominating candidates for such offices, nor to the nomination of officers for reclamation and irrigation districts; nor to school district officers or School Trustees; nor shall it be construed as restricting or affecting the right of political parties to hold, under existing laws, which are hereby continued in force for all such purposes, primaries and conventions for the selection of delegates to national conventions.

A comparison of section 2 as passed in 1909 and as amended in 1911 will reveal that the original Act was enlarged so as not to apply to the nomination of officers of *incorporated cities whose charters or ordinances now or may hereafter* provide a system for nominating candidates for such offices. (The italicised words show what was added.)

The word "municipal" was stricken out and the words "incorporated cities" put in, and the words "or ordinance now or may hereafter" are added by the said amendatory Act.

The entire language of the original Act remained unchanged excepting as above pointed out, but an examination of the enrolled bills of the original Act of 1909 and the amendment of 1911 shows that in the former Act a comma is found after the word "vacancies," while in the amendatory Act the comma is omitted, and in the original Act a semicolon appears after the word "electors," while in the amendatory Act a comma appears after the word "electors." However, for purposes of this discussion the punctuation after the word "electors" is unimportant; the important consideration is whether the omission of the comma after vacancies in the amendatory Act was intentional, or only a clerical error.

Section 2 of the primary law as passed originally reads that it shall apply to "all candidates for elective public offices" and then further on

in the same section, subdivision 2 thereof, it excepts special elections to fill vacancies and the nomination of party candidates for Presidential Electors, etc., from the operation of the Act. The language of the latter part of said section 2 indicates clearly that this primary law contemplated that party conventions would still be held, and the Legislature, by means of this section, especially excepted the nomination of Presidential Electors from the operation of the Act allowing this function to be exercised by the party convention as formerly, together with the other functions, such as selecting delegates to the national conventions, promulgating party platforms, etc.

Without the use of the comma the sense of this portion of the section becomes meaningless and contemplates a departure from our political procedure which heretofore has never been conceived, namely, a special election to fill a vacancy to the nomination, etc. Another comment which might with propriety be added is that, if the Legislature intended to amend this Act by omitting the comma, it has done violence to every known rule of syntax and grammar, for the use of the preposition "to" following the word "vacancies" is certainly not consistent with good grammar, and had such an amendment been contemplated "to" would have been stricken out and "in" used in its place.

Now, considering that the Legislature intended to amend the said section, it is hardly reasonable to suppose that the amendment would consist only in the omission of a comma. Punctuation, properly speaking, is no part of the English language (*Holmes* v. *Phœnix Ins. Co.*, 98 Fed. 240), and, if the Legislature intended to amend this portion, it would certainly have done so by a resort to the language and text of the statute rather than by simply omitting a punctuation mark.

"While punctuation, including quotation marks, brackets, etc., is subordinate to the text and can never control the plain meaning of a statute, it is, nevertheless, proper, in case of doubt, that punctuation, etc., should operate as an aid in this construction and interpretation of the statute." (Cyc. vol. 36, pp. 1117–1118, a.)

"Punctuation marks may, in proper cases, be regarded as aids in arriving at the correct meaning of statements in the statute, but in construing statutes punctuation cannot be accorded a controlling influence. Courts do not hesitate to repunctuate when it is necessary to arrive at the true meaning." (*Cook* v. *State*, 110 Ala. 40–46, 20 South. 360.)

In order to get a proper understanding of section 2 of said primary law it must be considered in connection with section 27 of said Act, which reads as follows: "Vacancies occurring after the holding of any primary elections shall be filled by the party committee of the city, city and county, district or State, as the case may be."

This section provides the method of filling vacancies after nomination and applies to vacancies in the nomination of Presidential Electors as well as any other nominees to be elected.

The method of filling vacancies after nomination being amply provided for, why, then, should that portion of section 2 have been inserted, referring specifically to special elections to fill vacancies to the nomination of Presidential Electors, which construction, if accepted, would naturally lead us to believe that the direct primary law does apply to all other special elections to fill all other vacancies in nomination except Presidential Electors, and the construction that this Act contemplates that vacancies in the nomination are to be filled by special election is unten-

able when considered in conjunction with section 27 of the primary law and section 7 of the general election law (Rev. Laws, 1839).

It is therefore the opinion of this office that the omission of the comma after the word "vacancies," as appears in the said amendatory Act of 1911 of the primary law of 1909, was due to a clerical error, and not a desire or intention on the part of the Legislature of 1911 to amend this said Act in this particular.

You are therefore advised that, under the direct primary law as originally passed and amended, there is no authority therein for you, as Secretary of State, in issuing a notice in writing designating the offices for which candidates are to be nominated at such primary election, to include in the notice candidates for the office of Presidential Electors.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections, Nominations for—Conventions—Petition of Electors—Writing Names Upon Ballot.

Section 1737, Revised Laws, provides one and the only way by which candidates for elective public offices shall be nominated by a party and be entitled to have the names of such candidates appear on a general election ballot under a party designation.

The candidates of a particular party cannot be put on the general ballot by petition and secure the party name.

No names can be written upon the ballot at primary elections except for the choice of a committeeman in the particular precinct.

CARSON CITY, July 30, 1912.

JUSTUS E. TAYLOR, *State Secretary, Socialist Party of Nevada, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant inclosing letter from H. E. Beaudreau, State Secretary of the Fallon local, in which the opinion of this office is requested upon certain questions propounded in both letters. In his letter Mr. Beaudreau states that he had been advised by the District Attorney of Churchill County "that we cannot put our candidates on the general ballot by petition and secure the party name; we cannot file one name on primary and write in the rest, but we can hold a convention and put them on the general ballot without fees, providing no unauthorized person or persons have filed ahead of us on the primary."

In your letter you state: "I have advised the Fallon members that they could place their county nominees upon the ballot, under that party name, by the filing of a petition containing the names of ten per cent of the qualified electors of the county or district; that in using this method they could avoid the filing fees, but must keep out of the primary entirely. I have also advised them that it would not be legal for them to file one name for the primary and write in upon the blank spaces of the ballot the names of the balance of their nominees, using this method to avoid the fees."

In some respects the advice of the District Attorney, if properly quoted, is, in my opinion, incorrect, and the same is true in regard to your advice to Mr. Beaudreau.

"The purpose of the Primary Act," as stated by Norcross, C. J., in *In Re Primary Ballots*, 33 Nev. 136, "was to place in the entire electorate of a party the power to directly name party candidates for office and to do away with the old system of making such nominations through the means of delegates elected to a convention."

The same idea is expressed by Sweeney, J. (present Chief Justice) in the case of *Riter* v. *Douglass*, 32 Nev. 420, in these words:

"One of the purposes of the direct primary law was undoubtedly to remove candidates from the influence of the convention dictators or bosses or those who manipulate the selection of candidates by a superior knowledge of politics in conventions, by making such candidates so selected, should a convention be held anyway, be ratified by a majority of the voters of a particular party before they become party nominees. * * * Under the old convention method, the candidates selected became the party nominees, but under the primary law, candidates for nomination must qualify before the rest of the voters of their party faith, if they would be nominees of their party, unless they run independently."

In the same opinion, Sweeney, J., defines the term "political parties" as follows: "Political parties are organizations of electors entertaining the same political opinions, attempting through an organization to elect officers of their own party faith and make their political doctrines the policy of the government."

He defines "primary election" as "one for the nomination of candidates of the various parties."

In section 1834, Revised Laws, a convention is defined as "an organized assemblage of delegates representing a political party, which, at the last election before the holding of such convention, polled at least three per cent of the entire vote cast in the State, county, district or other political division for which the nomination is made."

Section 1836, Revised Laws, provides how nominations otherwise than by convention may be made, as follows: "A candidate for public office may be nominated otherwise than by a convention in the manner following: A certificate of nomination containing the name of the candidate to be nominated, with the other information required to be given in the certificate provided for in section 3 of this Act, shall be signed by electors residing within the district or political division for which candidates are to be presented equal in number to at least ten per cent of the entire vote cast at the last preceding election in the State, district or political division for which the nomination is to be made. * * * Such certificate of nomination shall have the same effect as the certificate of nomination made by a party convention."

Section 1737, Revised Laws, provides:

> All candidates for elective public offices shall be nominated as follows:
>
> 1. By direct vote at primary elections held in accordance with the provisions of this Act; or
>
> 2. By nominating petition signed and filed as provided by existing laws.

Section 1740, Revised Laws, provides: "a. The name of no candidate shall be printed on an official ballot used at any primary election unless * * * he shall file a nomination paper with the proper officer as hereinafter provided by this Act."

Previously to the enactment of the direct primary law (Revised Laws 1736, *et seq.*) the only means provided for the nomination of candidates to offices by the Legislature of this State were:

1. By convention (Rev. Laws, 1834); or
2. By petition (Rev. Laws, 1836).

"Nothing herein shall be construed as prohibiting the independent nomination of candidates to be voted for at any general election, by electors or bodies of electors as now provided by law." (Revised Laws, 1741, subd. c.)

> The statute having recognized the right of political parties, through conventions or primary meetings, to nominate candidates for office, they have an equal right to refrain from making nominations, and no person not so nominated has the right to have his name placed on the official ballot as the candidate of a party, and a candidate placed in nomination by petition is the nominee of the petitioners only, and cannot be designated on the ballot as a candidate of a regularly organized party. (*State, ex rel. Woody*, v. *Rotwitt*, 46 Pac. 370.)
>
> The nominations of an organized existing political party cannot be made by petitions of the individual electors. (*State, ex rel. Brooks*, v. *Fransham*, 48 Pac. 1.)
>
> A petition filed with the County Clerk and Recorder, nominating certain persons for offices as candidates of a certain political party, does not entitle such persons to be placed on the official ballot. (*State, ex rel. Russell*, v. *Tooker*, 46 Pac. 530.)
>
> Section 38 of the primary election law, relating to the nomination of Judges, does away with all other forms of nomination, so far as the official ballot is concerned, than the one therein prescribed, and the filing of a nomination by petition was properly refused. (*State, ex rel. Zent*, v. *Nichols*, 97 Pac. 729.)
>
> Under the Australian ballot law, where a political party fails to nominate a candidate by convention or primary elections and a candidate is nominated by electors, who state in the certificate he was nominated as the candidate of such party, he does not thereby become its candidate so as to entitle him to have his name placed in the same group with the other candidates of such party. (*Atkeson* v. *Lay*, 115 Mo. 538.)

Taking up now the questions propounded for answer, let me reply thereto, bearing in mind the foregoing provisions of our statutes and extracts quoted from the decisions of our Supreme Court and other courts:

In my opinion the language of section 1737 provides one, and only one, way by which candidates for elective public offices shall be nominated by a party and be entitled to have the names of such candidates appear on a general election ballot under such party designation. It also appears to me that by the enactment of section 1737, being a later enactment on the same subject, the provisions of section 1836, so far as the same relate to the nomination of any *party* candidates for office, are superseded, if not repealed, and that said section 1836 furnishes the method by which independent candidates, and independent candidates only, may be placed on the general election ballot.

The purpose of the Legislature in the enactment of this section (1836)

was undoubtedly to provide a means whereby, if a considerable proportion of the electors of any particular party in this State, district or political division in which the election is to be held, were dissatisfied with the party nominees, or in case any individual elector was dissatisfied with all the nominees for a particular office and desired to make a campaign for such office, they or he might have a way to do so. For this reason I am of the opinion that you cannot put the candidates of the Socialist Party on the general ballot by petition and secure the party name. All such candidates should be marked on the ballot by the abbreviation "Ind." signifying "Independent."

The next question propounded is in regard to writing names upon the ballot. The case of *Re Primary Ballots*, *supra*, expressly decides that no names can be written upon the ballot except for the choice of a committeeman in the particular precinct, Norcross, C. J., dissenting.

For the reasons stated I am of the opinion that you cannot hold a convention and put the names of your nominees upon the general ballot without fees, as the primary law contemplates that the names appearing upon the general election ballot shall have been ratified by the electors of the particular party at the primary election, and section 1740 provides that "the name of no candidate shall be printed on an official ballot used at any primary election unless he shall file a nomination paper," etc.

For the foregoing reasons the names of the county nominees of your party cannot be placed upon the general election ballot by petition.

The fees for filing nomination papers were materially reduced at the last session of the Legislature and are not excessive; such fees will be found set forth in section 1742, Revised Laws.

The process of filing the nomination paper was also greatly simplified at said session. No signature except that of the candidate himself is now required and the form thereof is given in section 1740, Revised Laws.

I trust this opinion has made clear the distinction which the law makes between the nomination of *party* candidates and the nomination of independent candidates.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections—Registration—Transfer of Registration.

By section 1707, Revised Laws, it is the intention of the Legislature that every elector should register every two years and that such registration is good and valid for all subsequent elections of every kind until the period for reregistration occurs—the approach of the event specified in said section, *i. e.*, a general election.

The law contemplates but one registration in each two-year period, and if an elector loses his right to vote in the district in which he is registered, by reason of his removal therefrom, the proper way for him to regain his electoral privilege is to obtain a certificate as provided in section 1714, Revised Laws, and act as therein provided.

CARSON CITY, July 31, 1912.

HON. J. A. CALLAHAN, *District Attorney, Winnemucca, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th instant, concerning registration for primary election, wherein you ask the following ques-

tions: "First—Can a person, registered at the last general election, again register for the primary election to be held September 3, 1912. Second—Can a person registered at the last general election, in a precinct different from that in which he now resides, register for the primary election to be held September 3, 1912, in the precinct wherein he now resides, or, is he required to have his name transferred from the registration list in the precinct wherein he resided in 1910, to the precinct wherein he now resides?"

After careful consideration of the questions propounded, I am of the opinion that by section 1707, Revised Laws, it was the intention of the Legislature that every elector should register every two years, and that such registration was to be good and valid for all subsequent elections of every kind until the period for reregistration occurs—the approach of the event specified in said section, *i. e.*, a general election.

I am further of the opinion that the law contemplates but one registration in each two-year period, and that, if the elector loses his right to vote in the district from which he is registered, by reason of his removal therefrom, the proper way for him to regain his electoral privilege is to obtain a certificate as provided in section 1714, Revised Laws, and "which certificate shall entitle him to have his name registered in the same manner as other names are registered, in any other election district, either within the same county or any other county, for said election; *provided*, that it shall satisfactorily appear to the Registry Agent receiving the certificate, and to whom *application is made for the second registration*, that the applicant will have resided such length of time within such county and election district, prior to the next ensuing election, as is or may be provided by law to entitle him to vote."

The language of section 1751, Revised Laws, bears out this interpretation of the law, because it says: "Said register shall be made by taking the names of all voters on the register used at the last general election in the city, town or county, together with supplemental register or additions showing all additional registrations, changes and corrections made since the last general election. The supplemental registers to be made as follows: All persons entitled to register or vote at any primary election in any town, city or county whose names are not upon the register, *or who may be entitled to transfer their registration*, shall be entitled to be *registered* or *transferred* so as to enable them to vote at such primary election."

On receiving such certificate by the provisions of said section 1714, the elector's name is immediately erased from the register of his former place of registration, and upon presentation of such certificate to the Registry Agent at his new location, he can then lawfully take the oath required by section 1709 and truthfully answer in the negative the fifth question required to be propounded him, in case of doubt, by section 1710.

This is one of the strongest reasons which induces me to take the view of this matter herein set forth, in that in case an elector already registered should attempt registration in his new location instead of by certificate of transfer, he could not lawfully take the oath nor truthfully answer the question above referred to.

The provisions of section 1714 do not seem to require a personal appearance before the Registry Agent by the elector for the purpose of securing his certificate of transfer, and, as a matter of fact, the custom has been for the elector to secure such certificate by correspondence. In

view of this, I do not think it an unlawful restraint on the right of suffrage to require an elector to go through the simple procedure necessary to secure a certificate of transfer, especially so, as his removal from his district caused the necessity. There can be no unlawful restraint of suffrage, because whether the elector shall vote or not depends upon himself and his seeking a transfer, as provided by law.

By the enactment of section 1751, Revised Laws, it was the intention of the Legislature to provide a way whereby an elector not already on the voting list might qualify himself for voting at a primary election, and it was not the intention to, nor did such section change the other provision of the registration law in any other respect.

In this connection I would call your attention to section 3612, Revised Laws, which seems to provide that under certain conditions an elector may vote where registered, even though he may have removed from the county or precinct.

Therefore, in view of the foregoing considerations, my answer to your interrogatories is in the negative in each instance.

I am mindful that the greatest liberality should be indulged in when construing these statutes, to the end that every qualified elector be given a chance to express his will at the polls, but I do not consider the sections referred to as in any way limiting or abridging this privilege, but rather as wise and salutary provisions of law to prevent an elector from having his name on two registration books, thereby opening up an opportunity for fraud.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Corporations—Mining Corporations—Annual Statement.

If a company is not selling or offering for sale, either directly or indirectly, any of its shares of capital stock, it does not have to file the annual statement required by sections 1330–1340, Revised Laws, and therefore it need not send a copy of said annual statement to its stockholders.

CARSON CITY, August 2, 1912.

B. BRAUNWORTH, *Prentice, Wisconsin.*

DEAR SIR: Your favor of the 13th ultimo received, and in reply to the question therein stated, namely: "As to whether a corporation, holding, leasing or engaged in the business of working mining claims in the State of Nevada, even though not selling any of its shares to the public at present, is obliged to furnish to its stockholders during the month of June or November of each calendar year a copy of said report?" allow me to inform you that the Act approved March 5, 1909, requiring certain mining corporations to file statements with the County Recorder and the Attorney-General, etc., was amended in 1911 by an Act approved March 22, 1911, which amended the original law making it necessary to file statements annually instead of semiannually.

If your company is not selling or offering for sale, either directly or indirectly, any of its shares of capital stock, it is the opinion of this office that you do not have to file these statements, and therefore it is unnecessary to send a statement to the stockholders.

The law contemplated that only such companies as were operating in this State and selling directly or indirectly any of its shares of capital

stock would be required to file their annual statements with the Attorney-General and the County Recorder, and send a copy of this statement, as filed with said officers, to their stockholders.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Corporations—Foreign Corporations, Duty to File Copy of Articles.

Sections 1346 and 1348, Revised Laws, are mandatory and must be strictly complied with.

CARSON CITY, August 2, 1912.

GEORGE D. WORSWICK, *San Jose, Cal.*

DEAR SIR: In response to a letter which I received from Mr. E. H. Worswick, Lovelock, Nevada, I beg to inform you that the provisions of section 1346 of the Revised Laws of Nevada, which reads as follows:

> Every incorporated company or association created and existing under the laws of any other State, or of any foreign government, shall file in the office of the County Recorder of each county of this State, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the Act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the County Recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof—

And the provisions of section 1348 of the Revised Laws of Nevada, which reads as follows, are mandatory and must be strictly complied with:

> SEC. 1348. Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this State for the purpose of doing business therein, must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental Acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of the County Clerk of the county where its principal place of business in this State is located.

Respectfully yours,

CLEVE H. BAKER, *Attorney-General.*

Extradition—Children, Abandonment of—Extraditable Crimes.

A misdemeanor is such a crime as is contemplated by the Constitution of the United States in matters relating to extradition.

CARSON CITY, August 7, 1912.

HON. GILBERT C. ROSS, *Lieutenant and Acting Governor, Carson, Nevada.*

DEAR SIR: In reply to the question which Governor William Spry of Utah has asked you in regard to honoring two requisitions on charge of abandonment of children, said abandonment of children being made a misdemeanor under the statutes of the State of Utah, I beg leave to submit the following:

The issuing of an executive warrant for a fugitive from justice is a matter which lies within the discretion of the Governor, and a misdemeanor is such a crime as is recognized by law as an extraditable offense in interstate extradition.

In considering offenses which are grounds for extradition, the words of the Constitution, "treason, felony or other crime," include every offense made punishable by the law of the State in which it was committed, from the highest to the lowest in the grade of offenses, including misdemeanors and statutory crimes. It must, however, be a definite and specific offense. (Cyc. vol. 19, p. 86.)

> "Crime (in U. S. Const., art. 4, sec. 2, relating to extradition of persons charged with crime) means any offense indictable by the laws of the State demanding their surrender and is not confined to common-law crimes." (*State of Kentucky* v. *Dennison*, 65 U. S. 66, 16 L. Ed. 717.)
>
> "Revised Statutes, section 5278, requiring the surrender of a fugitive from justice found in one of the Territories or the State in which he stands charged with treason, felony or other crime, embraces every crime known to the laws of the demanding State, including misdemeanor." (*Ex Parte Reggle*, 114 U. S. 642, 29 L. Ed. 250.)

You are therefore advised that a misdemeanor is such a crime as is contemplated by the Constitution of the United States in matters relating to extradition, and, if the requisition papers are sufficient in all other respects, there is no legal reason why you should not use your executive warrant for a person accused of a misdemeanor in Utah and a fugitive from justice of Utah and at present in the State of Nevada.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Licenses—Liquor License, Not Transferable.

A state liquor license issued in the form set forth in section 3778, Revised Laws, provides the town and county in which said business is licensed, and according to section 3777, Revised Laws, a person, firm or corporation licensed to do business in one town cannot transfer that place of business to any other town or county under such license.

CARSON CITY, August 7, 1912.

HON. J. C. HARRIS, *Sheriff, Elko, Nevada.*

DEAR SIR: Replying to your favor of the 23d ultimo, allow me to state that, although the opinions of the Attorney-General are by law reserved

for the state officials and the District Attorneys of the various counties, I will reply to your question, as I think, under the circumstances, that this is a matter which needs a prompt reply.

You are advised that it is the opinion of this office that a state liquor license issued in the form set forth in section 3778 provides the town and county in which said business is licensed, and according to section 3777 the said "licenses shall not be transferable by sale, assignment or otherwise," and that a person, firm or corporation licensed to do business in one town cannot transfer that place of business to any other town or county in the state under that license.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Taxation—Mines and Mining—Assessment, Patented Claims Exempt From.

When the amount of labor specified in article 10 of the Constitution has been performed on each patented mining claim, such claim is not subject to taxation.

CARSON CITY, August 8, 1912.

C. N. PLATT, *Redlich, Nevada.*

DEAR SIR: Your favor of the 19th ultimo addressed to Hon. Samuel Platt, U. S. District Attorney, was forwarded to me to answer, and permit me to say that the opinions of the Attorney-General are by law reserved for certain state officials and boards and the District Attorneys of the several counties, but I deem your question of sufficient importance to take the liberty of answering.

In reply to your question as to whether owners of patented mining claims doing one hundred dollars' worth of improvements each year on each claim are free from paying taxes on said patented claims, I desire to state that by virtue of an amendment to article 10 of the Constitution now in force (see Revised Laws of Nevada, section 352), patented mines shall be assessed at not less than five hundred dollars, *excepting when one hundred dollars in labor has been actually performed thereon during the year.*

You are therefore advised that when said amount of labor has been performed on each mining claim, such patented claim is not subject to taxation. Of course, this does not apply to the taxing of the net proceeds of mines.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Code Commission—Claims Against the State—Legislature—State Board of Examiners.

The amount appropriated by section 3 (Stats. 1912, p. 9) for payment of the Code Commissioners, for additional services rendered in the preparation of the Revised Laws, is a legal claim against the State.

As the amount to be paid is specified in the Act, the Board of Examiners has no power to consider the amount of each claim; its duty is simply to determine whether the work has been completed by the Judges.

FROM MINUTES OF THE BOARD OF EXAMINERS

As to whether or not this is a claim that comes properly before the State Board of Examiners, Attorney-General Baker said:

"By virtue of an Act entitled 'An Act to provide additional appropriations for the completion of the compilation, annotation, printing and binding of the Revised Laws of Nevada, and for the payment of services rendered and to be rendered in completing the same,' passed by the Legislature of the State of Nevada at the Extraordinary Session in 1912, and approved by the Governor the 4th day of March, 1912, section 4 of which reads as follows:

> SEC. 4. The State Controller is hereby authorized and directed to draw his warrants on the State Treasury for claims presented which may be payable by reason of the foregoing sections, and for the amounts which the said parties named in this bill are entitled to, and the State Treasurer is hereby authorized and directed to pay the same—

and as this is a claim against the State, and the Board of Examiners is the proper board before whom claims should be presented, and by section 4 of said Act the Legislature directed that the claims mentioned in said Act should be presented, the only conclusion reasonably to be placed on the language of said section is that they were to be presented to the Board of Examiners.

"As the amount to be paid on each claim is specified in the Act, we have no power to consider that; our duty is simply to determine whether the work has been completed by the Judges, and this they have certified to, individually, and therefore our action is of a ministerial nature, no other discretion being given this board.

"There seems to be no question as to the legality of the claim, as the question involved has already been passed upon by my predecessor, and similar claims have already been allowed and paid, and that the Legislature has seen fit to allow additional compensation is a matter for the consideration of that body, and not the Board of Examiners."

Corporations—Foreign Corporations Filing Copy of Articles—Secretary of State—Fees for Filing Articles of Incorporation.

Every foreign corporation, whether doing a state or interstate business, wishing to comply with the provisions of sections 1348-1349, Revised Laws, must pay the fees provided in section, 1203, Revised Laws, upon the entire amount of its capitalization, regardless of how much thereof is used to transact its business within this State.

CARSON CITY, August 9, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Your favor of July 22 received in due course of mail, and I have delayed answering the matters therein contained for the reasons that the questions of law involved are of such importance that I wanted to review them carefully.

Permit me in this connection to call your attention to section 1348 (Rev. Laws), which reads as follows:

Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this State for the purpose of doing business therein, must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental Acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of the County Clerk of the county where its principal place of business in this State is located.

Also section 1349 (Rev. Laws), which reads as follows:

On filing certified articles, papers, or other instruments of incorporation, as required in section 1 of this Act, said corporation shall pay the same fees to the Secretary of State as are paid by corporations organized under the laws of this State.

And section 1203 (Rev. Laws), which reads as follows:

On filing any certificate or articles or other paper relative to corporations, in the office of the Secretary of State, the following fees and taxes shall be paid to the Secretary of State, for the use of the State: For certificate or articles of incorporation, ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than ten dollars; increase of capital stock, ten (10) cents for each thousand dollars of the total of the increase authorized, but in no case less than ten dollars; consolidation and merger of corporations, ten (10) cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of organization or incorporation by this Act; dissolution of corporation, change of nature of business, amended articles or certificates of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of number of shares, ten dollars; for filing list of officers and directors or trustees, and name of agent in charge of principal office, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; for certifying to articles of incorporation where copy is furnished, two dollars; for certifying to the authorized printed copy of the general corporation law, as compiled by the Secretary of State, two dollars; and for all certificates not hereby provided for, five dollars; *provided*, that no fee shall be required to be paid by any religious or charitable society or association or educational association having no capital stock.

From a reading of the foregoing sections it will be observed that section 1348 applies to foreign corporations "which shall *hereafter* enter the

State for the purpose of doing business therein." This section does not apply to the Pullman Company, for the reason that said company was already doing business in this State when this statute was enacted, and therefore it is not compelled to comply with its terms. However, in the event that the Pullman Company desires to comply with this section, then it must pay the same filing fees as any other foreign corporation, as referred to in section 1349 (Rev. Laws) and provided for in section 1203 (Rev. Laws).

After examining the authorities submitted by counsel for the Pullman Company, I am convinced that they have no particular bearing upon the questions here raised, and it is the opinion of this office that if the Pullman Company desires to file a copy of its charter or articles of incorporation certified to by the Secretary of the State of Illinois, the Pullman Company being organized under the laws of the State of Illinois, that the filing fee required by our law in this instance would amount to ten cents on each one thousand dollars of the total amount of capitalization authorized (Rev. Laws, 1203), or a sum total filing fee of twelve thousand dollars ($12,000).

In support of his contention that a filing fee of $31.40 only is authorized to be paid, or ten cents on every thousand dollars of the capital stock actually engaged in business in Nevada, counsel has cited the cases of *Western Union Telegraph Company* v. *Kansas*, 216 U. S. 1, and *Pullman Company* v. *Kansas*, 2 Kan. 956, where, by a divided court, four to three, the majority held that the right to carry on interstate commerce is not a privilege granted by States, but a constitutional right of every citizen of the United States, and Congress alone can limit the right of corporations to engage therein. The opinion of the court was written by Mr. Justice Harlan. I quote from an extract on page 30 thereof, which says:

> Looking, then, at the natural and reasonable effect of the statute, disregarding mere forms of expression, it is clear that the making of the payment by the telegraph company, as a charter fee, of a given per cent *of its authorized capital*, representing, as that capital clearly does, *all* of its business and property, both within and *outside of the State*, *a condition* of its right to do local business in Kansas is, in its essence, not simply a tax for the privilege of doing local business in the State, but a burden and tax on the company's interstate business and on its property located or used outside of the State.

The dissenting opinions in the cases, concurred in by three members of the court, advance, to my mind, a line of reasoning more cogent and forceful than the majority opinions. However, with the complexion of the court almost entirely changed since the rendering of these opinions, it will be interesting to note, in the event the question is presented again for their consideration, whether or not they will reverse themselves and adopt the stronger reasoning of the dissenting opinions, which opinions, by the way, were concurred in by the late Chief Justice Fuller. Justice Holmes, in his dissenting opinion in *Western Union Telegraph Company* v. *Kansas*, at pages 52 and 53 said:

> I think that the judgment of the Supreme Court of Kansas was right, and it will not take me long to give my reasons. I assume that a State cannot tax a corporation on commerce car-

ried on by it with another State, or on property outside the jurisdiction of the taxing State, and I assume further that for that reason a tax on or measured by the value of the total stock of a corporation like the Western Union Telegraph Company is void. But I also assume that it is not intended to deny or overrule what has been regarded as unquestionable since *Bank of Augusta* v. *Earle*, 13 Pet. 519, that as to foreign corporations seeking to do business wholly within a State, that State is the master, and may prohibit or tax such business at will. (*Security Mutual Life Ins. Co.* v. *Prewitt*, 202 U. S. 246, 249; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *Paul* v. *Virginia*, 8 Wall. 168.)

I make the same assumption as to what has been decided twice at least since I have sat on this bench, that the right to prohibit, regulate or tax foreign corporations in respect of business done wholly within a State is not taken away by the fact that they are also engaged there in commerce among the States. (*Pullman Co.* v. *Adams*, 189 U. S. 420; *Allen* v. *Pullman Palace Car Co.*, 191 U. S. 171.)

If it should be said that the corporation had a right to enter the State for commerce with other States, and being there had the same right to use its property as others, I reply that this begs the question, if the premises be granted. If the corporation has the right to enter for one purpose and the State has a right to exclude its entry for another, the two rights can coexist. To say that the disappearance of the latter is an incident of the ownership of property there is to declare that what is allowed only for a limited purpose must have general results. I think it more logical and more true to the scheme of the Union to recognize that what comes in only for a special purpose can claim constitutional protection only in its use for that purpose and for nothing else. That, at all events, has been decided in the cases to which I have referred.

Now, what has Kansas done? She has not undertaken to tax the Western Union. She has not attempted to impose an absolute liability for a single dollar. She simply has said to the company that if it wants to do local business it must pay a certain sum of money, just as Mississippi said to the Pullman Company that if it wanted to carry on local traffic it must pay a certain sum. It does not matter if the sum is extravagant. Even in the law the whole generally includes its parts. If the State may prohibit, it may prohibit with the privilege of avoiding the prohibition in a certain way. I hardly can suppose that the provision is made any the worse by giving a bad reason for it or by calling it by a bad name. I quite agree that we must look through form to substance. The whole matter is left in the Western Union's hands. If the license fee is more than the local business will bear, it can stop that business and avoid the fee. Whether economically wise or not, I am far from thinking that the charge is inherently vicious or bad.

If the imposition were absolute, or if the attempt were to oust the corporation from the State if it did not pay, the arguments that prevail would be opposite. But the State seeks only

to oust the corporation from that part of its business that the corporation has no right to do unless the State gives leave.

I shall not consider the case of *Pullman Company* v. *Kansas*, 2 Kan. 56, which was decided by the same court fourteen days later, as the legal principles involved are practically the same and the decision of the court and the dissenting opinions the same as in the other case.

The reason that I have considered these decisions somewhat at length is to clearly indicate by the decisions themselves that the question at issue in those cases can have no possible bearing upon the matter presented to you.

In the cases referred to, the State attempted to tax the Pullman Company and the Western Union a certain fee for the privilege of coming into the State of Kansas and doing purely *intrastate* business. There is no such attempt being made in this State; we have no such statute. The Pullman Company is already in the State, and has been many years. It is carrying on both interstate and intrastate business, and there is no attempt made to interfere with this traffic in any way.

However, the Pullman Company, although not required by statute to do so, comes voluntarily and requests the Secretary of State to file its certified articles of incorporation and tenders a filing fee of $31.40. By its own statement its authorized capital stock is $120,000,000, and our law says the filing fee shall be 10 cents per each thousand dollars authorized capitalization; therefore, the fee in such case, according to law, is $12,000 and not $31.40.

The filing fee is based upon the amount of capitalization, and not upon the right to transact intrastate business. The payment of the filing fee would not carry with it the privilege of carrying on intrastate commerce. It would simply authorize the Secretary of State to file the articles of incorporation. It is simply an Act to regulate fees in the office of the Secretary of State, and in no way attempts to regulate or burden commerce, interstate or intrastate. It matters not whether the company seeking to file its articles of incorporation is doing interstate or intrastate business, or not doing any business at all, here is a law which says any foreign corporation filing its articles of incorporation must pay a certain filing fee. The Legislature of our State in such cases had the authority to pass such an Act, and it has done so.

You are therefore advised that the fee of $31.40 as tendered by the Pullman Company is not sufficient under the law, and it is your duty to refuse to file the articles of incorporation of said company until the fee of $12,000 is paid.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Public Lands—State Lands—State Land Register—Correction of Errors.

It is the duty of the State Land Register to make such corrections in contracts for the sale of state lands, when necessary, that they will correctly express the intention of the parties to such contract.

An application filed for an erroneous acreage does not invalidate the

application, provided the real intention of the parties can be ascertained from such application.

CARSON CITY, August 12, 1912.

HON. C. L. DEADY, *Surveyor-General and State Land Register, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, concerning two applications of Ben. E. Jackson for reverted state lands of 80 acres each, on which contracts were executed, and it was afterwards discovered that the correct acreage of the tracts described in said applications and contracts was respectively $80\frac{23}{100}$ and $80\frac{25}{100}$ acres.

Upon discovery of this fact, an additional deposit of 6 cents each was made by the applicant and passed through the usual channels.

Upon this state of facts, you ask whether the contracts should be corrected or canceled as erroneous, and new contracts entered into.

You also inquire whether the fact that the applications were filed for an erroneous acreage in any way tend to invalidate the applications.

Upon examination of the questions, I find the following principles of law applicable to this matter:

> In all cases the intention of the parties, as gathered from the whole instrument, is of controlling authority. (5 Cyc. 880.)
>
> Where an intention is clearly shown to grant or convey a specifically designated quantity of land, the boundaries will be so located, if possible, as to contain the quantity called for, but mere proof of an overplus of land is not sufficient to change boundaries that are marked by monuments. (Id. 883.)
>
> In ascertaining the boundaries of land sold under government surveys, the sections and their subdivisions are to be considered as containing the exact quantity expressed in the returns of the surveys, whatever be the actual quantity contained in such sections or subdivisions. (Id. 883.)
>
> Calls for quantity are merely descriptive, and yield to other calls. (Id. 886.)
>
> In locating boundaries a call for quantity inserted in the instrument by way of description, must yield to lines marked or surveyed. (Id. 916.)

Inasmuch as government and state lands are always sold by legal subdivisions, and as the intention of the parties is of controlling authority, and as overplus of land is not sufficient to change boundaries that are marked by monuments, and as land sold under government surveys are to be considered as containing the exact quantity expressed in the returns of the surveyors, and as calls for quantity are merely descriptive and must yield to other calls, such as lines marked and surveyed, I am of the opinion that the real contract entered into between the State and Mr. Jackson was for the sale of $80\frac{23}{100}$ and $80\frac{25}{100}$ acres of land, respectively, and that the contracts already executed should be canceled, and new contracts executed which shall conform to the real intention of the parties.

I am further of the opinion that the cancelation of these contracts and the execution of new ones, to remedy the mistake made, will in no way invalidate the applications, or render the land embraced therein subject to entry by a legal applicant.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

State Seal, Imitation of—Use of in Advertisements.

There is no Act to forbid the use of a representation of our state seal in connection with advertising matter.

CARSON CITY, August 13, 1912.

JULIUS BIEN COMPANY, *New York, N. Y.*

GENTLEMEN: Your favor of the 18th ultimo, wherein you state that you desire to use a representation of the seal of this State in connection with matter advertising a standard product, and asking to be advised whether there is any statute of this State forbidding the use of such representation in this manner, received.

In response permit me to say that a careful examination of our statutes fails to disclose any Act forbidding the use of a representation of our seal in the manner described. I am very sorry, however, that such is the case; for while the product you desire to use our seal in connection with is undoubtedly in every way worthy and a credit to this State, yet as you see by the omission of the Legislature to forbid such use the field is open to all manner of snide advertisers to make use of our beautiful state seal to forward their purposes.

Inasmuch as the National Government has forbidden the use of the national flag for advertising purposes, and nearly every State of the Union, including Nevada, has passed similar Acts, and also Acts protecting its state flag from desecration, it seems to me not compatible with the dignity of the State to permit its seal to be so used, and steps to prevent this will undoubtedly be taken at the next session of the Legislature.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections, Ballots for—Form Of.

In the preparation of primary election ballots, where there are two places to be filled and but one person in any party has declared himself an applicant for nomination, the direction to voters in such case to be set opposite the name of such office, should be "Vote for one."

CARSON CITY, August 16, 1912.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: I am in receipt of a telegram signed by James Dysart, District Attorney of Elko County, which has been referred by you to this office for advice, reading as follows:

> In printing primary ballot, where there are to be two Regents of the University nominated and only one name certified to be placed on the ballot, should there be printed above the name the words "Vote for one" or "Vote for two." Of the opinion that "Vote for two" is misleading in Democrat and Republican columns. Must have answer at once.

The statutes on this subject provide:

> The names of the candidates for each office shall be grouped in alphabetical order according to the surnames of the candidates for such office and each group shall be preceded by the designation of the office for which the candidates seek nomina-

tion and the words "Vote for one" or "Vote for two" or more, according to the number to be nominated. Such designation of the office to be nominated for and of the number of candidates to be nominated shall be printed in heavy-faced gothic type, not smaller than eight-point. The word or words designating the office shall be printed flush with the left-hand margin, and the words "Vote for one" or "Vote for two" or more, as the case may be, shall extend to the extreme right of the column and over the voting square. The designation of the office and the direction for voting shall be separated from the names of the candidates by a light line. (Rev. Laws, sec. 1747, subd. 6.)

(a) The voter shall designate the political party the candidates of which he desires to vote for, by a cross (X) in the square immediately below the name of such party and he shall designate but one such party; if he shall designate more than one party it shall render such ballot void, and if he shall fail to so designate any party at all such ballot shall be void unless the voter shall have voted only for the candidates of one and the same political party, and shall not have voted for any candidate for any other political party, in which case such ballot shall be counted the same as if the voter had properly designated the party for whose candidates he voted. In case the voter designates one political party in the manner above provided and votes for candidates for nomination of any other political party than the party designated, such votes for such candidates of any other party than the one designated, shall be disregarded in the count.

(b) The voter shall designate his choice on the ballot of candidates of his party by stamping a cross (X) in the small square opposite the name of each candidate for whom he desires to vote. If he shall stamp more names than there are candidates to be nominated for any office, or if for any reason it is impossible to determine his choice for any office, his ballot shall not be counted for such office, but the rest of his ballot, if properly stamped, shall be counted, except as above provided in subdivision a of this section.

No ballot shall be rejected for any technical error which does not render it impossible to determine the voter's choice for candidates of his party, nor even though such ballot be somewhat soiled or defaced. (Rev. Laws, sec. 1753.)

The former primary law provided for a separate ballot for each political party, and the voter was required to ask of the inspectors of election the ballot of the political party with which he was affiliated. There was objection made to this method, for the reason that many electors considered it an invasion of their rights to be compelled to declare their party affiliation, and in some parts of the State it was claimed that such declaration of political belief might have the effect of causing some electors to lose their positions.

For these reasons many electors refused to exercise their privilege of voting at primary elections.

To remedy this serious evil, the law was amended so that it is now

unnecessary for a voter to declare his political affiliation as a prerequisite to receiving a ballot, and he will now receive, without any such declaration, a ballot containing the names of all those applicants for the nomination for office from any of the political parties of this State.

Bearing in mind the foregoing reasons for the amendment of this Act, it is evident that the ballot so received by the elector, although printed on one sheet of paper only, is really three separate ballots, presenting to the electors of the respective parties the names of those seeking nomination for office from the various parties, and also that the voter is confined in his selection to the names appearing in the column of his party designation, and must treat the balance of the ballot as if it were an entire blank.

In view of the decision in *In Re Primary Ballots*, 33 Nev. 125, that no name can be written on the ballots, and of the fact that the voter can vote for the applicants for nomination of his own party only, and treating each column on the sheet as a separate ballot, the true meaning of the words "according to the number to be nominated" is at once apparent and all inconsistencies reconciled.

Where there are two places to be filled, and but one person in his party has declared himself an applicant for the nomination, the voter, having declared his party affiliation by marking as provided in section 1753, and as he cannot, after such declaration, vote for the applicant for nomination for such place of any other person of another party, it seems that the words "according to the number to be nominated" can mean only one, because he can vote for but one, and the direction to voters in such case opposite the name of such office should be "Vote for one."

Any other interpretation of section 1747 would be senseless and misleading to the voters, in that it expressly commands him to do what the law forbids.

The old law prevented a voter from participating in the selection of candidates of any other party but his own, by providing that he be handed only the list of persons seeking nomination from his own party for the respective offices. The new law accomplishes this same purpose by confining his selection to the list of names in the column of the ballot containing the names of his party's aspirants for nomination.

I am therefore of opinion that in the case stated, that opposite the office of "Long-Term Regent" the direction to voters should be "Vote for one."

In the Ormsby County ballot furnished me, I note that the County Clerk has fallen into the same error in the column alloted to the "Democratic Party." Opposite the heading "Members of the Assembly" appears the direction "Vote for two." The ballot shows that there is but one person seeking the vote of the Democratic electors for the nomination for this office. This direction should be changed to "Vote for one." Had there been two or more Democrats seeking this nomination, the heading "Vote for two" would have been correct.

In the "Socialist Party" column of the same ballot, opposite the office "Long-Term Regent," the direction to the voter is "Vote for two." This is undoubtedly correct, for two persons of that party offer themselves as aspirants for the nomination from that party, and it is entitled to have two candidates for this place.

Respectfully,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections—Nominations for Office—Conventions—Nominations by Petition of Electors Who May Sign Petition.

As section 1838, Revised Laws, referring to conventions, does not apply to direct primary elections, and as there is no other provision of law prohibiting electors from signing petition of electors, as provided in section 1836, Revised Laws, a person who has voted in a primary election may sign a petition of an independent candidate for nomination to an office to which a nominee was selected at said primary.

If the party the voter affiliates with and votes the party ticket of at said primary election has no candidate for a particular office, the voter can, after participating in such primary, sign the petition of an independent candidate for such office.

CARSON CITY, August 19, 1912.

HON. GEORGE L. SANFORD, *District Attorney, Carson City, Nevada.*

DEAR SIR: Your favor of the 8th instant received, wherein you ask to be advised upon the following:

> First—Can a person who has participated (i. e., voted) in the September primary, legally sign the petition of an independent candidate for nomination to an office to which a nominee was selected at said primary?
>
> Second—If the party the voter affiliates with and votes the party ticket of at said primary has no candidate for a particular office, can the voter after participating in such primary sign the petition of an independent candidate for such office?

My answer to both of your questions is in the affirmative, and based upon the following reasons:

Section 1834, Revised Laws, reads as follows:

> Any convention, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public offices, to be filled by election within the State. *A convention within the meaning of this Act is an organized assemblage of delegates representing a political party, which at the last election, before the holding of such convention, polled at least three per cent of the entire vote cast in the State, county, district or other political division, for which the nomination is made.*

Section 1836, Revised Laws, reads in part as follows:

> A candidate for public office may be nominated otherwise than by a convention in the following manner: A certificate of nomination containing the name of the candidate, with other information required to be given in the certificate provided for in section (3) of the Act, *shall be signed by the electors* residing within the district or political division for which candidates are to be presented, equal in number to at least ten per cent of the entire vote cast at the last preceding election in the State, district or political division for which the nomination is to be made.

Section 1838, Revised Laws, reads as follows:

> No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall

> join in nominating, under the provision of section 4 of this Act, more than one nominee for each office to be filled, and no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office, shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office.

From the foregoing provisions of our code, it will be seen that the law has defined what shall constitute a convention. Provision is also made for independent nominations to office, and also certain restrictions are made by law to prevent an elector participating in a convention from signing the petition of an independent candidate for any office for which a nominee was selected for that office at a convention wherein said elector participated either in person or by proxy.

The sections hereinbefore quoted are sections 2, 4, and 6, respectively, of an Act entitled "An Act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891. At the time this said Act was passed the only methods of nominating candidates for office were by convention and by petition, and the law provides that no one participating in a convention at which a candidate was nominated for office, could thereafter sign a petition of an independent candidate for such office. In 1909 this primary law was passed, and certain changes therein made by amendments in 1911. By the Act the method of nominating party candidates for office was changed from the old method, a party convention, to that of a direct party primary election. There are a few exceptions to the Primary Act, such as Presidential Electors, etc. Therefore, for purposes of nomination of party candidates the convention system is practically abolished by the direct primary election.

Now the query is whether electors voting at the primary election are prohibited thereafter from signing the petition of an independent candidate.

In my judgment the elector is at liberty to sigh such a petition, even though he voted at the primary, unless there is some statute to the contrary. The only section of our code which throws any light upon the matter, and this very indirectly, is section 1838 of the Revised Laws. The particular part of said section is "no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office, shall join in nominating in any manner any other nominee for that office."

Can this section, applying to conventions, be construed so as to apply to direct primary elections? It is the opinion of this office that it can not. A convention as defined by our law is one thing and a direct primary election another. It is argued that since the purpose of the direct primary is to take the place of the convention that any limitation that had been placed on conventions should be made to apply to the direct primary. This would be all right if the law had said so, but it has not. Because the direct primary law has taken the place of the convention, it can not be said the direct primary is a convention, any more than it can be argued that because the automobile takes the place of a horse, it is a horse, and *vice versa*. Therefore, as section 1838 was passed in 1891, long before our direct primary law was contemplated, it is reasonable to suppose that the Legislature could not possibly have intended it to apply to something then not in existence in this State, and possibly unthought of.

Therefore, as said section 1838, referring to conventions, does not apply to a direct primary election, and there being no other provision of our law prohibiting such electors from signing such petitions, they can do so.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Employer and Employee—Eight-Hour Laws, Compilation Of.

A compilation of the eight-hour laws of this State.

CARSON CITY, August 26, 1912.

MR. EARL JENSON, *Secretary-Treasurer, Mason Miners' Union, Mason, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking information concerning the eight-hour laws of this State, and am pleased to respond to your request.

I had hoped to be able to send you printed copies of these laws, but, on inquiry at the office of the Secretary of State, learn that he has none on hand, and will therefore give you a synopsis of these laws, which will perhaps answer your purpose. In connection with the laws I give the section number of the Revised Laws of Nevada, a copy of which work you will find in any lawyer's office in Mason, and a reference thereto will give you the full text.

By section 2430, the value of a day's labor, in the performance of annual assessment work upon mining claims, is fixed at four dollars, and said section further provides "that in the sense of this statute eight hours of labor actually performed upon the mining claim shall constitute a day's labor."

Section 6554 provides: "The period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger."

Section 6555 provides the same hours of labor with same exception in case of "men in smelters, and in other institutions for the reduction or refining of ores or metals."

Section 6556 provides that any one violating either of the two preceding sections "shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail not more than six months, or both."

Section 6557 provides same period of employment with same exception for "working men in open-pit and open-cut mines."

Section 6558 provides same punishment as above for violation of section 6557.

Section 6559 provides same period of employment "of all persons engaged or employed in any mill or other institution wherein plaster or cement is manufactured, except in cases of emergency where life is in imminent danger, or the product of such mill or institution liable to loss or damage by delay in treatment."

Section 6560 provides punishment as above for violation of section 6559.

Section 1941 provides: The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, top men, and all workingmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger.

Section 1942 provides above punishment for violation.

Section 3481 provides an eight-hour day and minimum $3 wage "on all public works carried on in the erection of public buildings by or for the State of Nevada, or by any individual, firm, company or corporation under contract with the State of Nevada." This law applies to "unskilled labor" only.

Section 3842 provides a fine of "$50 for each man employed at such labor for less than $3 per eight-hour day."

Section 6778 provides: "On public works, all works or undertakings carried on or aided by the State, county or municipal governments, eight hours shall constitute a day's labor," and provides for a fine of "not less than ten dollars nor more than fifty dollars for each and every man so employed, and in addition thereto said contract shall be forfeited and be null and void," with the usual provision as to an emergency.

Sections 3597-3599 provides an eight-hour day for "any telegraph or telephone operator who spaces trains under what is known as the block system," and provides a fine of one hundred dollars for each violation.

This is the extent of the eight-hour legislation in this State so far as I have been able to find.

If there is any other information you desire concerning this question, I shall be pleased to respond to your further inquiries.

Very respectfully,

CLEVE H. BAKER, *Attorney-General.*

Schools—Virginia City School of Mines, Appropriation for—Statutes, Repeal Of.

Section 39 of the General Appropriation Act (Stats. 1911, p. 78,) was repealed by Stats. 1911, p. 281, and the latter Act contains the only provision that was made by the Legislature at said session for the support and maintenance of the Virginia City School of Mines.

CARSON CITY, September 6, 1912.

MR. M. A. HOLCOMBE, *President Virginia City School of Mines, Virginia City, Nevada.*

DEAR SIR: In answer to your favor of May 10th last, inquiring as to effect of the two Acts carrying appropriations for your school contained in the session laws of 1911, I beg to say that reply has been delayed by reason of the fact that your letter was referred to my late deputy, Hon. James R. Judge, for response, and has just been found among his papers.

However, the delay is not of great moment for the reason that, in my view of the law, it will be necessary for me to decide against your contention that both of these appropriations are available for the support and maintenance of the Virginia City School of Mines.

Repeals of statutes are effected in two ways: (1) by express words enacting that an Act be repealed; and (2) by implication, or in other words by the enactment of a later Act concerning the same subject. Where two statutes cover the same subject-matter, the presumption is that the Legislature had the existing Act in mind and intended to repeal it by the later one. Repeals by implication are valid if contained in a properly enacted statute. Earlier Acts must give way to later ones covering the same object. Acts take effect from the date of their approval, unless some other time of taking effect is expressly designated in the Act.

The first provision for your school at the Twenty-fifth Session of the Legislature is contained in section 39 of the general appropriation bill which was approved March 17, 1911, and became effective on that day. The other provision for your school is contained in a law passed for that purpose, approved March 20, 1911. By the passage of this later Act, the presumption is that the Legislature had in mind the former provision already made for the support and maintenance of the Virginia City School of Mines, and intended to repeal it and substitute the latter Act in its place. I know of no rule of law which would enable both Acts to exist and be operative.

In my judgment, therefore, section 39 of the General Appropriation Act was repealed by the Act appearing on page 281, Stats. 1911, and that latter Act contains the only provision that was made by the Legislature at said session for the support and maintenance of your school.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

State Board of Health—Death Certificate, Correction of Errors In.

The duty of seeing that certificates of death contain true and correct data devolves upon the Secretary of the State Board of Health.

If it should come to his knowledge that some of the facts stated in a certificate are not correct, it is his duty to make the certificate show the true facts.

CARSON CITY, September 6, 1912.

DR. S. L. LEE, *Secretary State Board of Health, Carson City, Nevada.*

DEAR SIR: This office is in receipt of an inquiry from you asking advice as to your course of procedure in regard to the certificate of death of Mary Berg, the statistical information in which certificate being not correct, as appears from a letter of Mr. Ben Berg, handed me in connection with said inquiry, which letter is herewith returned to you.

Section 2955 of the Revised Laws provides: "The local health officer in each county shall act as a collector of vital statistics." Section 2958 of the same volume provides: "The certificate of death that shall be used is that of the United States standard form as approved by the Bureau of the Census. The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts."

Section 2959 provides: "He (the secretary of the board) shall carefully examine the certificates received monthly from the local health officer, and if any such are incomplete or unsatisfactory he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory."

The purpose of the law in regard to these certificates seems to be to make them accurate so that they will be of value in the preparation of vital statistics, and you would not be justified in keeping among the records of your office a certificate which you know to be incorrect.

In view of the above provisions of our statute, it appears to me that the duty of seeing that certificates of death contain true and correct data devolves finally upon you. If it should come to your knowledge, therefore, that some of the facts stated in a certificate are not correct, it is your duty to make the certificate show the true facts after you are satisfied of their correctness. This information you can gain by affidavits of persons familiar with the matter or by any other means satisfactory to you. For your own protection, however, I would suggest that where you change a certificate in your possession, you do so only upon a written statement, supported by the affidavit of the person making the same, and that such affidavits should be kept as a portion of the records of your office.

In the case in question, therefore, I am of opinion that upon receipt of an affidavit from Mr. Berg embodying therein the facts as stated in his letter, you are authorized to make the certificate of death of Mary Berg correspond thereto.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—State Central Committee—Conventions—Party Platform.

Under the provisions of section 1760, Revised Laws, the State Central Committee selected in the year 1910 held and exercised its power until the selection of a new State Central Committee by the various parties, in convention assembled, in 1912, and such new State Central Committee will hold and exercise its power until the assemblage of candidates, on the fourth Tuesday of September, 1914, shall select a new State Central Committee as provided by the first portion of said section.

CARSON CITY, September 16, 1912.

HON. CLAY TALLMAN, *Tonopah, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, asking of this office a construction of section 1760, Revised Laws, being section 26 of the Direct Primary Law, as amended by the Acts of 1911, page 346.

Upon examination of the original Act I find that the only amendment of this section consisted of inserting the second paragraph of said section, reading as follows: "Members of such conventions may be represented thereat by proxy duly executed, but no person other than a member shall act as proxy for a member."

It is apparent that this amendment in no wise affects the question you propound, which was as follows: "I desire to ask your opinion as to whether or not this statute contemplates a state convention of candidates in years when a President of the United States is elected, such state convention having the power to adopt a platform and to elect a State Central Committee as successors to any existing or presiding State Central Committee." The said section is in full as follows:

SEC. 26. In the years when a Governor and other state officers are to be elected the candidates for state officers and for Senate and Assembly nominated by each political party whose term of office extends beyond the first Monday in January of the year next ensuing shall meet at the State Capitol at 2 o'clock in the afternoon on the fourth Tuesday of September after the date on which any primary election is held preliminary to such general state election.

They shall forthwith formulate the state platforms of their party, which said state platform of each political party shall be framed at such time that it shall be made public not later than 6 o'clock in the afternoon of the following Thursday.

Members of such conventions may be represented thereat by proxy duly executed, but no person other than a member shall act as proxy for a member.

It shall also proceed to elect a State Central Committee, to consist of at least three members from each county, who shall hold office until a new State Central Committee shall have been selected.

In years when a state convention assembles to select delegates to a national convention to nominate a candidate for President and Vice-President of the United States, such state convention shall have the power to formulate their party platform and to select such new State Central Committee, which shall consist of at least one member from each county, which committee shall hold and exercise its power until the candidates for state offices and for Senate and Assembly to be voted for at the *next ensuing state election* shall assemble and select their successors. Such State Central Committee shall meet and organize at a time and place to be designated by the body selecting such State Central Committee, and such committee may then and thereafter select an executive committee.

It appears therefrom that two methods for selecting a state central committee are therein provided:

1. "In the years when a Governor and other state officers are to be elected," etc., and
2. "In the years when a state convention assembles," etc.

These methods are not to be applied both in the same year, but each is to be applied in the year in which the circumstances above quoted occur.

It will greatly aid in the construction of this section to ascertain the meanings of the terms above quoted.

In what years is it that a Governor and other state officers are to be elected, and in what years does a state convention assemble to select delegates to a national convention to nominate a candidate for President and Vice-President of the United States?

Section 2774, Revised Laws, answers the first part of the above question wherein it provides that:

> The Governor, Lieutenant-Governor, Secretary of State, State Controller, State Treasurer, Attorney-General, and Surveyor-General, shall be chosen at the general election of the year eighteen hundred and sixty-six, and every fourth year thereafter, and shall hold their office for the term of four years from the time of their installment.

The first election for a Governor occurring in 1866 and the term of office being for four years, a little figuring will show that a "Governor and other state officers" are not to be elected this year.

It is therefore evident that the first paragraph of said section does not apply.

We know by experience that the election for Presidential Electors is held quadrennially in the year the number of which is exactly divisible by four, and such being the case with the present year, it follows that such an election is pending this year.

It is also a matter of common knowledge that all the great political parties of this State have held conventions "to select delegates to a national convention and nominate a candidate for President and Vice-President of the United States," and that such state conventions have formulated platforms and elected new State Central Committees.

It is therefore apparent that the second above-quoted method for the selection of the State Central Committee applies this year. In your letter you state: "I call your attention to this matter and ask your opinion for the reason that there appears to be some diversity of opinion on the question above indicated, some holding that the State Central Committee recently elected at the Fallon convention of the Democratic Party may be succeeded by another State Central Committee to be elected by a convention of candidates for state offices which shall be held in Carson City on the fourth Tuesday following the primary election; while, on the other hand, it seems to be the general opinion of attorneys whom I have consulted on the matter that the statute does not contemplate a state convention of candidates at all this year, or on Presidential years generally."

I am therefore of the opinion that the provisions of this section for the selection of a State Central Committee, for the formulation of state platforms, and the meeting of the candidates for such purpose, this not being the year "when a Governor and other state officers are to be elected" do not apply. The provisions of said section concerning the selection of a new State Central Committee in state conventions of the party do apply, as this is a Presidential year.

This construction of said section harmonizes the entire context thereof, for it would be an absurdity to provide for the selection of a State Central Committee at a convention of the party, which conventions are usually held in May or June of Presidential years and for the Legislature then to provide that such State Central Committee should go out of office in the September following, a period of only three or four months.

This construction also harmonizes the words in said section "shall hold and exercise its power until the candidates for state offices and for Senate and Assembly to be voted for at the *next ensuing state election* shall assemble and select their successors."

From the above consideration, I am of the opinion that the State Central Committee selected in the year 1910, under the provisions of the first portion of said section, held and exercised its power until the selection of a new State Central Committee by the various parties, in convention assembled, this year, and that such new State Central Committee will hold and exercise its power until the assemblage of candidates on the fourth Tuesday of September, 1914, shall select a new State Central Committee as provided by the first portion of said section.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Corporations—Foreign Corporations—Secretary of State, Fees of—Surety Companies.

By the enactment of section 697, Revised Laws, it was not the intention of the Legislature to repeal the provisions of section 1348, *et seq.* requiring foreign corporations to qualify.

Before a foreign corporation can be certified by the Secretary of State as qualified to do business in this State, it must, if a surety company, in addition to the fees paid the Controller for license and the fee provided in section 697, Revised Laws, comply with the provisions contained in section 1348, Revised Laws, *et seq.*

CARSON CITY, September 17, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of this date, submitting for my written opinion a letter of Mr. Victor Innes in regard to the Guardian Casualty and Guaranty Company concerning its right to do business in this State.

The language of section 697 of the Revised Laws would seem to imply that upon the payment of a fee of two dollars a surety company, organized under the laws of another State, could obtain from you a certificate authorizing it to do business in this State.

Said section 697, however, is section 4 of an Act entitled "An Act to facilitate the giving of bonds and undertakings in certain cases and prescribing conditions upon which surety companies may become liable thereon in this State," which was approved March 26, 1909.

At the date of such approval there was already upon the statute books of this State "An Act to require foreign corporations to qualify before carrying on business in this State, regulating and prescribing the manner thereof," etc., being sections 1348–1350, Revised Laws.

Said Act was approved March 20, 1907, and provides substantially that every foreign corporation which shall hereafter enter this State for the purpose of doing business must, before commencing or doing any business in this State, file with the Secretary of State a certified copy of its articles of incorporation or charter or authority by which it was created, and also file a certified copy thereof in the office of the County Clerk of the county where its principal place of business in this State is located. Section 2 of said Act provides that said corporation, on filing said papers, shall pay the same fees as are paid by domestic corporations.

Section 3 of said Act provides certain penal provisions for noncompliance with the preceding sections of the Act.

Unless there is some language in the Act of March 26, 1909, in regard to bonds and undertakings which amount to a repeal by implication, or expressly, the provisions of section 1348, *et seq.*, and I am unable to find any, requiring foreign corporations to qualify before carrying on business in this State, it is presumed to be the intention of the Legislature that both of these Acts shall remain in full force and effect.

As was said by Talbot, J., in his concurrent opinion in the case of *State, ex rel. Springmeyer*, v. *Baker* (not yet reported): "The rule is well settled that a later general law does not repeal an earlier special law relating to a particular subject, and I do not believe that the Legislature by passing section 5409, which provides that public documents may be admitted in evidence by the certificate of the legal keeper, had in mind or intended to repeal the clear provisions providing for the official and

secret custody of ballots, nor that the provision that a public document may be admitted in evidence by the certificate of the legal keeper was intended to repeal the provisions of section 1795 for the official keeping and secrecy of official ballots, nor to authorize them to be turned over to contestants or other persons when the statute is specific in directing their official and secret keeping, and nowhere provides that they shall be turned over to contestants or individuals other than the officers specially authorized to retain them.

In accordance with the above-quoted language of Judge Talbot, I am of opinion that by enactment of said section 697, Revised Laws, it was not the intention of the Legislature to repeal the provisions of section 1348, *et seq.*, requiring foreign corporations to qualify.

I am of opinion that, before the corporation in question can be certified by you as qualified to do business in this State, it must, in addition to the fees already paid the Controller for license and the fee provided for in section 697, comply with the provisions contained in section 1348, *et seq.*, Revised Laws.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Election—Nomination for Office—Nomination by Petition of Electors—How Indicated on the Ballot—Secretary of State, Duties on Petition of Electors, Fees Of.

Upon receipt of a petition of electors, nominating for various state offices the persons therein named and requesting that they be designated upon the general election ballot as members of the "Progressive Party," it is the duty of the Secretary of State to refuse to place such party designation upon the official ballot after the names of such candidates.

The proper designation to be placed after the names of such candidates is "Independent."

There is no filing fee required by law for the filing of such nomination certificate.

CARSON CITY, September 18, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Your favor of September 17, 1912, received, wherein you ask the following questions:

> I hand you herewith a signed petition of the Progressive Party, praying that certain names be placed upon the general election ballot at the election to be held in November; also the written request of said party, addressed to myself, asking that the same be filed. The petition of the above party is filed under and designates its candidates as members of "The Progressive Party," and it is their desire to enter the political field in the State of Nevada under that name. The election law of this State, as you know, provides for the appearance of candidates at a preferential primary, thus being nominated by their parties, or, it states, that the nomination may be made independently by petition. It provides in no way for the voting by the electors of a new party. Inasmuch as the request embodies a desire to place a new party in the field, without said party appearing legally at

a primary, and not being filed as candidates upon independent lines, I am undecided as to the course to pursue with regard to the filing of said petition. You are already familiar with the question briefly outlined above, and I herewith respectfully request your written opinion by which to govern my action in this regard.

Under the Primary Law, provision is made for the payment of certain fees by certain candidates for the privilege of having their names placed on the official primary ballot. Under the general election law, no fee is provided for such filing. Inasmuch as the party called Progressive desires to take certain privileges under the election laws of this State, it seems to me that some fee should be charged for the privilege that they desire. I am uncertain in this regard also, and would appreciate your opinion upon this last question incorporated, if possible, in the above.

As I understand your first query, it is simply this: Are you, as Secretary of State, authorized under the law of this State, to place after the names of the candidates of the so-called Progressive Party on the official ballot for the general election to be held November 5, 1912, the party designation, to wit, "Progressive"?

The method of nomination of candidates by petition of electors is provided for by what is known as the Australian ballot law, and more particularly designated "An Act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891. Section 3 thereof (Rev. Laws, 1835) reads in part as follows:

> All nominations made by any such *convention* shall be certified as follows: The certificate of nomination, which must be in writing, shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate the party or principle which *such convention represents*.

Section 4 thereof (Rev. Laws, 1836) reads in part as follows:

> A candidate for public office may be nominated otherwise than by a convention in the following manner: A certificate of nomination containing the name of the candidate to be nominated, with the *other* information required to be given in the certificate provided for in section 3 of this Act, shall be signed by electors residing within the district or political division for which candidates are to be presented, equal in number to at least ten per cent of the entire vote cast at the last preceding election in the State, district or political division for which the nomination is to be made.

It will be seen that by virtue of said section 4 of the Australian ballot law, the certificate of nomination shall contain the name of the candidate "*with* such *other* information required to be given in the certificate provided for in section 3 of this Act," and the information required in said section 3 is the name of the person nominated, his residence, the office for which he is nominated, "and shall designate the party or principle which such convention represents."

In view of these provisions it is urged that it is mandatory for the candidate circulating the petition to be signed by the electors to desig-

nate the party or principle which he represents, and that his certificate of nomination entitles him to have his name placed upon the official ballot with the party designation after his name; or, in other words, that a certain percentage of electors, by signing a person's petition can make such person the nominee of a party.

This office does not so view the law. It will be observed that the Australian ballot law was approved March 13, 1891. At that time and up to the time of the passage of the direct primary law (1909) the regular method of nomination by party was by convention, and section 2 of said Australian ballot law (Rev. Laws, 1834) provided in part that "any convention, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public offices."

Therefore section 3 simply enumerated the provisions of the certificates of nomination for candidates so nominated by conventions and also the designation of the party or principle which such convention represents. This section has been repealed by the direct primary law (section 33 thereof).

By section 4 of said Act nomination is provided for in an entirely separate and distinct method—the signing of a petition by a certain percentage of electors, and there is no limitation placed as to the electors who might sign. They might be Democrats, Republicans, Socialists and Prohibitionists and Progressives, and some of the signers might not have party affiliation, yet such a petition, if legally prepared and circulated and signed, receiving the required number of signatures of electors, would entitle the candidate to have his name placed upon the official ballot, not, however, with any party designation after it, but the designation "Independent," and the information required to be given in such certificate, as referred to in section 3, would consist of the name of the person nominated, his residence, and the office for which he is nominated, and the provision "the party or principle which such convention represents" would not apply, for the signing of such petition by electors could not be considered a convention, and, even if it were held to constitute a convention, such method of party nomination by convention has been superseded by the direct primary law.

As has been referred to before, the Legislature of 1909 passed what is known as the direct primary law, which was subsequently amended in 1911, which said law practically abolished the old method of nomination of candidates by convention, with the exception of Presidential Electors and a few municipal officers specifically excepted from the operation of said law. (*State of Nevada, ex rel. Allen*, v. *Brodigan*, 34 Nev. 486.)

The title of the said primary law reads in part as follows: "An Act to provide for the direct nomination of candidates *for public office by electors, political parties and organizations of electors, without conventions, at elections to be known and designated as primary elections*."

The Direct Primary Act provides for a strictly party primary; any person desiring to become the nominee of his party can file his nomination paper, upon the payment of a filing fee, which nomination paper is subscribed and sworn to, and among other things includes the following provisions: "That I am a qualified member of the_____party, that I intend to support the principles and policies of such political party in the coming election." (Sec. 5, Primary Act; Rev. Laws 1740.)

This is the method and the only one now sanctioned by our law for the purpose of nominating *party* candidates. In other words, before a person can become the *nominee* of his *party* for an office to be voted for at the general election, he must be voted for and elected by his party first at the primary elections.

This view is expressed by our own Supreme Court in the case of *Riter* v. *Douglass*, 32 Nev. 420:

> The Democratic Party could, if it saw fit, issue a call for a convention as heretofore has been the custom, prepare platforms setting forth such principles as it may desire, and select and indorse whatever candidates it may desire to submit at the primary election. Such candidates selected, however, before they can become the nominees of their party, must submit to the voters of their party by direct vote to secure the proper certificates necessary to appear on the official ballot. Under the old convention method, the candidates selected became the party nominees, but under the primary law candidates for nomination must qualify before the rest of the voters of their party faith if they would be nominees of their party, unless they run independently.

The question then presents itself whether the Progressive Party, so-called and organized, can have its nominees placed upon the official ballot under the party name by petition of electors.

In view of the primary law of this State which provides for the method of nomination of party candidates, and in view of section 4 of said Australian ballot law which provides for the nomination of independent candidates by petition, and in view also of a recent decision of our Supreme Court, and of the Supreme Court of other States having similar statutes to ours, which I consider in point upon the matter, I am of the opinion that the nominees of the so-called Progressive Party are not entitled, as our law now stands, to have the designation "Progressive" after their names, but must appear as Independent candidates.

In support of this position I refer you specifically to the decision of the Supreme Court of this State in the case of *Riter* v. *Douglass*, 32 Nev. 420, wherein the very question which is here presented was considered, and the court speaking at page 439 said:

> The next point raised by counsel for appellant is that "the law prohibits the nomination of 'Independent' candidates, and thus shows the legislative intent to confine participation in the primaries to parties having candidates at the last presidential election." This contention is also devoid of merit. The primary law expressly preserves the existing law (section 1693, *et seq.*, Comp. Laws), wherein independent candidates who may not be able to qualify or avail themselves of the primary law may get on the official ballot by independent action. Nowhere in the law are independent candidates prohibited from being voted for at the general election. We believe this assignment has been so thoroughly covered in previous parts of this opinion in answer to other objections raised that it is undeserving of further comment.

In the case of *Atkeson* v. *Lay*, 115 Mo. 551, the Supreme Court of Missouri said:

> The law makes no provision for the nomination of candidates by a political party of less strength than the required three per cent, or in any other manner than by a convention of delegates or a primary election, and only candidates so nominated become the nominees of a political party and as such entitled to go upon the ballot to be so voted for. Candidates nominated by electors are not the nominees of a political party, but of the individual electors nominating them, and only as such are entitled to go upon the ballot.

The same view is expressed by the Supreme Court of Montana in the case of *State* v. *Rotwitt*, 46 Pac. 373:

> The law contemplates nominations by conventions, by primary meetings held to make nominations, or by petition by a certain number of electors resident within the district or political division in which the officer is to be elected. Conventions or primary meeting nominations, under the law, are made by organized assemblages of electors or delegates representing a political party or principle, and only candidates so nominated are the nominees of political parties, and only such are entitled to be placed as regular party nominees upon the official ballots.
>
> A candidate certified as nominated by electors is not nominated by a political party. He is simply a candidate of those individual electors who have joined in nominating him, and he is only entitled to be placed upon the ballot as such a candidate. * * *
>
> The Secretary of State, therefore, cannot certify a candidate so nominated by electors as the candidate of a political party, for clearly he is not such a candidate, and has no place in a group of candidates certified as nominated by a regular political party convention or organization under the name of the party making such nominations.

Also, the same court held in the case of *State* v. *Tooker*, 46 Pac. 531, that a petition filed with the County Clerk and Recorder, nominating certain persons for offices as candidates of a certain political party, does not entitle such persons to be placed on the official ballot.

The Supreme Court of Montana again, in the case of *State*, *ex rel. Brooks*, v. *Fransham*, 48 Pac. 5, held:

> We have already decided in the cases of *State* v. *Rotwitt*, 18 Mont. 562, 46 Pac. 370, *State* v. *Tooker*, 46 Pac. 530, and *State* v. *Peek*, 46 Pac. 422, that the statutes do not permit the nomination of a person as the candidate of a regularly existing political party to be made by petition of unorganized electors, and, furthermore, that a candidate, certified as nominated by electors, is not nominated by a political party, and has no right to be placed on the official ballot as the candidate of an organized existing party.

The Supreme Court of Oregon (*Clinton* v. *City of Portland*, 38 Pac. 407) held:

> The electors' nomination of petitioner, containing, as it does, in our view, the requisite number of names, and having been

> filed in time, entitles petitioner to have his name placed upon the official ballot as an independent candidate for the office of Senator. * * * To hold that any 150 electors may secure the names of any person they see fit to endorse, to be placed upon the ticket of any party, would, we think, be opening the door to the perpetration of fraud—would in fact be offering an inducement therefor. And neither American politics nor politicians have as yet, even among the most Utopian organizations, reached that stage of purity which will warrant or excuse the removing of all legal restraints from them.

From a review of the foregoing decisions we take it that the law covering the situation is settled.

It is very evident from the number of questions which have been submitted to this office for opinions during the past three months that there is a serious need of revision of the direct primary law as well as some of the features of our general election laws. On the one hand, there is too much legislation, resulting in a confusion as to the real intent and meaning of our laws, and, on the other hand, a lack of proper legislature to meet the requirements of our advanced condition of affairs.

The abuses which were possible under our direct primary law at the last primary election are familiar to all, and will doubtless be remedied by the next Legislature. The law is right in principle and in theory, but we have not yet arrived at the proper mode of finding out the will of each party, and yet securing the secrecy of the ballot on the one hand, and, on the other hand, preventing one party, by means of the primary election, from manipulating the affairs of another.

As a matter of abstract justice, it would seem that all parties and all persons representing the principles of a certain party, should have the right to go upon the ballot properly designated so that the elector could be informed as to what party and candidate he is voting for, and then let the nominee abide by the will of the people.

This would be all right in the absence of anything to the contrary, but where the Legislature has prescribed by law certain methods and means by which parties must nominate their candidate, this method must be followed, and moral and political considerations can have no weight in view of such legislative enactment.

If the laws do not meet the conditions or are not elastic or comprehensive enough, that is a matter for the legislative branch of our government and not the executive.

The Legislature enacts the laws, and it is the duty of the executive branch not to attempt to change them, but to uphold and enforce them as they are.

You are therefore advised that, as Secretary of State, it is your duty under the law to refuse to place the party designation, to wit, "Progressive," upon the official ballot after the names of the candidates submitted to your office by the so-called Progressive Party; and that the proper designation to be placed after the name of the said candidate is "Independent."

In reply to your second question I beg to inform you that there is no filing fee required by law for the filing of such nomination certificates as is contemplated by the Australian ballot law.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Elections—Primary Elections—Officers—Candidates, Qualification Of.

The fact that a person is blind is not a disqualification for holding office.

A candidate defeated at the primary election for an office cannot run for the same office independently at the general election.

CARSON CITY, September 18, 1912.

MR. JAMES ENNIS, *Gold Hill, Nevada.*

DEAR SIR: Your favors of September 5th and 12th received, but I have been unable to give your matter attention before this time, owing to matters which have been engaging my attention in the Supreme Court; besides, my legal opinions are, by law, reserved for state officials and the District Attorneys of the various counties.

However, I shall make an exception in this matter and answer your questions.

The fact that a person is blind is no disqualification under the law for holding office.

In reply to your second question, a candidate defeated at the primary election for an office cannot run for the same office independently at the general election.

Very truly yours,

CLEVE H. BAKER, *Attorney-General.*

Elections—General Election—Registration, When Closed.

When the last day of a period of time within which an act is to be done falls on Sunday, that day is excluded from the computation, and the act may be rightfully done on the following day, and exception to the rule existing when the Act in question may be lawfully done on Sunday.

The 20th of October falling in 1912 on Sunday, the period of registration for said year closes on October 21, at 6 p. m.

Elections—General Elections—Registration Officers—State Officers, Residence of, Place and Manner of Registration.

Residence once acquired is not lost by a temporary absence while attending to the duties of a public office with the intention of returning.

The provisions of the registration Act, in so far as they direct the mode of procedure in the matter of registration, are generally to be regarded as directory, and not as mandatory.

If the Registry Agent is satisfied that an elector occupying a state office is still a resident of a district and entitled to be placed upon the registry list, it is his duty to act upon his request by mail.

CARSON CITY, September 23, 1912.

HON. ARTHUR E. BARNES, *Registry Agent, Goldfield, Nevada.*

DEAR SIR: I am in receipt of your favor of the 7th instant, wherein you ask my opinion upon two questions concerning the registration of voters.

1. Upon what day does the registration for this year end?
2. Have you the right to register an elector upon his request by mail?

You state that upon the above-recited points you have already had the opinion of your District Attorney, but desire to have his opinion confirmed by the decision of this office.

In response, permit me to say that my opinion agrees with the District Attorney on the first point, and that I disagree with him on the second.

Section 1707, Revised Laws, provides: "It shall be the duty of the Registry Agent, at any time, when called upon to do so, between the hours of 10 a. m. and 6 p. m. on all legal days, from and after the 1st day of August up to the 20th day of October, prior to any general election, to receive and register the names of all persons legally qualified and entitled to vote at such election," etc.

The 20th of October falling this year upon Sunday, the question arises, upon what day does the registration of voters close?

It has been held that there is nothing unlawful in the registration of voters on a Sunday (*State* v. *Schnierle*, 5 Rich. S. C. 299), but it seems to me the better rule is laid down in 38 Cyc. 329, as follows:

> As Sunday is *dies non* in regard to judicial proceedings, and the performance of common labor as well as the direction of ordinary business on that day is generally prohibited by statute, it is a general rule, made so by statute in many jurisdictions, that when the last day of a period of time within which an act is to be done falls on Sunday, that day is excluded from the computation, and the act may be rightfully done on the following day, an exception to the rule existing when the act in question may be lawfully done on Sunday.

In section 5482, although not applicable otherwise, for the reason that the operation thereof is expressly limited to the Civil Practice Act, Sunday is declared to be a nonjudicial day. The section as quoted above provides that registration shall proceed on "all legal days." It follows, therefore, that Sunday is not a "legal day," and the rule above quoted from Cyc. comes into operation and the registration may be rightfully done on the following day.

It is therefore my opinion that the period of registration for this year closes on October 21 at 6 o'clock p. m.

In regard to your second question, I take it that the two electors you mention are state officials and maintain that they have not lost their residence in Goldfield, and therefore desire to be registered in your precinct, although your letter does not so state.

You say "two electors of Carson City and residents of Goldfield" have requested you by mail to register there, stating that they could not be in Goldfield prior to October 20, and that both the District Attorney and yourself have ruled that this is not permissible.

Of course, if your language is to be taken literally, that "two electors of Carson City" have made application for registration in your precinct, they should be refused, because the law distinctly provides that electors should be registered in the precinct of their residence, and if they are electors of Carson City they should be registered in Ormsby County, but I take it that your inquiry is directed to such former citizens of Goldfield as George Brodigan and William Kelly and others here on state business. If such is the fact, it seems to me that, upon proper showing

to your satisfaction that they are entitled to registration in your precinct, they should be registered upon request by mail.

Article 2, section 1 (Rev. Laws, 250) of the State Constitution provides: "Every male citizen of the United States * * * of the age of twenty-one years and upwards, who shall have actually and not constructively resided in the State six months preceding any election shall be entitled to vote for all officers that now are or hereafter may be elected by the people," etc.

Section 6 of the same article provides: "Provision shall be made by law for the registration of the names of electors within the counties of which they may be residents," etc. A legal residence is defined in Revised Laws, 3609, and Revised Laws, 3611, provides: "No person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed * * * in the service of the State of Nevada."

Section 3610, Revised Laws, provides: "The legal residence of a person with reference to his right of suffrage * * * is that place where his habitation is fixed and permanent and to which, whenever he is absent, he has the intention of returning."

In McCrary on Elections, at section 97, the author says: "Domicile or residence in a legal sense is determined by the intention of the party. * * * Residence once acquired is not lost by a temporary absence for pleasure or business, or while attending to the duties of a public office with an intention of returning."

The last-named author, in sections 133 and 137 of his work, says that "regulations concerning registration must be reasonable," and in section 140 he says: "The provisions of the registration Act, in so far as they direct the mode or proceeding in the matter of registration, are generally to be regarded as directory, and not as mandatory."

The Legislature has no right to impose such restrictions on the right of the exercising of suffrage as would constitute a virtual prohibition of such right.

Nothing is contained in section 1707, containing directions as to your duty as Registry Agent, which states or implies that the applicant for registration must personally appear before you, and nothing to such effect is contained in the Act, unless it is that portion of section 1709 requiring the voter to take an oath, but this section has the proviso "that no elector who has taken said oath at the time of his previous registration shall be required to do so a second time in the same precinct."

From the above considerations I am of opinion that if you are satisfied that the two electors in question are still residents of Goldfield, and are entitled to be placed upon the registry list, it is your duty to act upon their requests by mail and not compel them to suffer expense and loss of time that would be involved in a trip to Goldfield from Carson City for the mere purpose of appearing before you as Registry Agent, to have their registration in your precinct properly entered. The law contemplates that every elector shall have the privilege of exercising the right of suffrage, and any interpretation of the law which would put him to an unnecessary expense in having his name entered upon the registration list is unwise in policy, and cannot be upheld.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Fish and Game—Transportation Companies—Railroads—Shipments of Game.

There is no state law prohibiting railroads from accepting consignments of game for shipment from one point to another within this State.

CARSON CITY, September 25, 1912.

HON. WM. WOODBURN, JR., *District Attorney, Reno, Nevada.*

DEAR SIR: This office is in receipt of your favor of the 19th instant, wherein you ask an opinion as to whether or not it is unlawful for the various transportation companies of this State to receive game for shipment to points within the State of Nevada.

Like yourself, after careful examination of the statutes I have been unable to find any sections bearing upon the same, except sections 2099 and 2113, Revised Laws, both of which seem to cover only shipments received in this State for transmission out of its boundaries.

No part of the business of a common carrier can be made illegal unless there is express provision of law to that effect, and therefore, in the absence of any statute prohibiting the railroad companies from receiving intrastate shipments of game, I know of no reason why the same should not be upon the same footing as lumber, flour, or any other commodity usually carried by the railroads.

It is possible that there may be some provision in the United States laws prohibiting such shipments. No examination of the United States statutes as to this has been made.

In the absence of such prohibition in the United States law, it appears to me that the railroads can lawfully accept consignments of game for shipment to points within the State.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Counties—County Officers—Coroner and Public Administrator—Statutes, Repeal Of.

So much of the Act of 1866 (p. 231) providing that "there shall be elected * * * one Public Administrator, who shall be ex officio Coroner," has been repealed by section 7543, Revised Laws.

CARSON CITY, September 25, 1912.

MR. A. S. PHIPPS, *Yerington, Nevada.*

DEAR SIR: The Attorney-General, Hon. C. H. Baker, left here last Thursday for his vacation, and I found among his papers your letter of the 17th instant, asking information in regard to the office of Public Administrator, and I am taking the liberty of answering the same for him.

It is true that section 2765, Revised Laws, provides under the Act of 1866, on page 231, that: "There shall be elected * * * one Public Administrator, who shall be ex officio Coroner."

The Act of March 16, 1909, in relation to Coroners, being section 7542 and following of the Revised Laws, provides: "All Justices of the Peace in this State are hereby made ex officio Coroners."

The Act of March 7, 1883, in relation to Public Administrators—being section 1615 and following, Revised Laws—in section 3 of said Act specifies the duties of the Public Administrator, among which there is no specification of his duty as Coroner, if he has any.

By comparison of the dates of these various Acts, I take it that so much of the Act of 1866 as is contained in section 2765, above quoted, making the Public Administrator ex officio Coroner, has been repealed by the Act of 1909 (Rev. Laws, 7543).

In this opinion I am confirmed by the fact that the Act of 1883 in regard to Public Administrators, in specifying the duties of that office, makes no mention of any duties as Coroner. I know it has been the custom in various parts of the State for the Justice of the Peace to perform the offices of the Coroner in all cases, even in those counties where the Public Administrator has been regularly elected.

Trusting this will fully answer your inquiry, I am,

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Corporations—Foreign Corporations "Doing Business in This State"—Duty to File Articles.

A corporation, owning mining claims in this State and developing them for the company under the supervision of an agent, who hires the miners, directs their operations, and pays them off by personal check, "has entered this State for the purpose of doing business therein," within the meaning of sections 1348–1350, Revised Laws, and said company and its agent are subject to the penalty therein prescribed.

CARSON CITY, September 28, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: From my conversation with you yesterday I understand that the Hardware Mining Company is the owner of a group of claims in the Garfield Mining District, Mineral County, Nevada, and that the same is being developed for the company under the supervision of Mr. Gregory, who hires the miners, directs their operations and pays them off by personal check.

Under this state of facts you ask my opinion as to whether or not this corporation "has entered this State for the purpose of doing business therein" within the meaning of sections 1348–1350 of our Revised Laws, and whether or not the corporation should file a copy of its articles of incorporation with you, and whether the corporation and Mr. Gregory are subject to the penalties provided in section 1350 for failure to do so.

Upon a careful examination of the above-named sections I am satisfied that the corporation in question comes within the purview of that Act, and that unless it files with you a copy of its articles as therein provided, it is subject to the penalty provided in section 1350, and Mr. Gregory is individually liable to a fine for not less than five hundred dollars.

The mere fact that the company is not operating in this State under its own name cannot save it or Mr. Gregory from the penalties of this Act, because it can easily be shown that the money expended by Mr. Gregory is the company's money and is expended on the company's property, and any benefit therefrom will inure to the company.

Herewith find enclosed communications concerning this matter which you left with me.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Elections—General Election—State Central Committee—Nomination of Candidates—Vacancies on Ticket, When May Be Filled.

There is no time specified within which a vacancy occurring after the holding of any primary election shall be filled.

If a vacancy occurs in a nomination by convention, or by petition of electors, such vacancy may be filled at any time before the day of election.

CARSON CITY, October 11, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, requesting information as follows: "Kindly advise this office the length of time, if any, that a State Central Committee may substitute the name of some other person for an office wherein a vacancy has occurred by death or some other cause, as provided by section 27 of the Act relating to primary elections, if this applies, or as provided for under general election laws."

In response thereto, permit me to say that prior to enactment of the Primary Law of March 23, 1909 (Rev. Laws, 1736, *et seq.*), the only method for making nominations in this State was contained in sections 1834–1836 of the Revised Laws, which provide for nomination by convention and also by petition of electors.

By the decision of the Supreme Court in the case of *State, ex rel. Allen*, v. *Brodigan*, it was decided that Presidential Electors must be nominated by convention, and it follows, with the exception of the officers enumerated in subdivision 2 of section 1737, that all other nominations should be made by primary election or by petition of electors as provided in section 1836.

You do not state whether the vacancy to be filled was one where nomination had been made (1) by primary election, (2) by convention, or (3) by petition of electors. If the vacancy occurred in a nomination by primary election, such vacancy may be filled in accordance with the provisions of section 1761, Revised Laws, providing as follows:

> 1761. SEC. 27. Vacancies occurring after the holding of any primary election shall be filled by the party committee of the city, county, city and county, district or State, as the case may be.

There is no time specified within which such vacancy should be filled, but, as a matter of convenience to those officers who are engaged in preparing for the election, action to fill a vacancy should be taken as soon as it may conveniently be done.

If a vacancy occurs in a nomination by convention or by petition of electors, such vacancy should be filled under the provisions of section 1839 of the Revised Laws, which provides as follows:

> 1839. Should a vacancy occur from any cause in the list of nominees for any office, such vacancy may be filled at any time before the day of election by the convention or by a committee to which the convention has delegated power to fill such vacancies, or by petitioners as provided for by section 4 of this Act. The chairman and secretary of *such convention*, or of *such committee*, or *such petitioners*, shall make out and file with the proper officer a certificate setting forth the name of the person nominated to fill such vacancy, the office for which he is nominated, the name of the person for whom the new nominee is to be

substituted, and such further information as is required to be given in an original certificate of nomination.

When such certificate is filed the officer with whom it is filed shall substitute the name of the person therein for the original nominee, by printing, if practicable, or by writing the name of the person there substituted.

As will be noticed by the language of the above quotation such vacancy may be filled at any time before the day of election.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Elections—General Election—Ballots—Candidates for President and Vice-President—Secretary of State, Duties Of.

It is the duty of the Secretary of State to certify to the various County Clerks the names of the candidates for President and Vice-President of the various parties, which names shall precede the names of the Presidential Electors of the respective parties.

CARSON CITY, October 16, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: In reply to your communication of October 15, I beg to inform you that it is the opinion of this office that it is your duty to certify in the names of the President and Vice-President candidates, which names shall precede the names of the Presidential Electors of the respective parties.

Yours very truly,

CLEVE H. BAKER, *Attorney-General.*

Elections—Ballots, Form Of—Constitutional Amendments, How to Appear—Secretary of State, Duties Of.

In certifying the various constitutional amendments to the County Clerks as the same shall appear upon the general ballot, it is the duty of the Secretary of State to certify the titles of the various amendments as passed by the Legislature and to add after such titles, where there is not in the title of any proposed amendment an indication of its purport, a brief statement embodying the purport thereof.

CARSON CITY, October 16, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: This office is in receipt of a communication from you asking form for placing the question of constitutional amendments on ballots.

The only provision of law which I have been able to find relating directly to this matter is that portion of sections 1844 and 1852 providing as follows: "Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot in such manner as to enable the electors to vote upon the question in the manner hereinafter provided. * * * In case of a constitutional amendment or other

question submitted to the voters the cross or X should be placed after the answer which he desires to give."

Referring now to the certificate of these amendments sent out by you, I find that of the five amendments to be submitted to the action of the electors at the coming election only two of them have any word or words in the title thereof to sufficiently indicate to the elector their purport. These are in the order certified by you, Nos. 1 and 4, the other three being simply proposals to amend various sections of articles, or that additional section be added to a certain article. If the title of the proposal to amend only were printed upon the ballot in the case of these three mentioned it is entirely possible that any intelligent voter, who had made a study of the amendment and had decided how he expected to vote upon the same, would be in doubt, when in the election booth, with the ballot before him, as to which of these three amendments he wished to vote for and which he wished to vote against.

The law does not seem to require that the entire proposed amendment should be printed upon the ballot, but only that "it shall be printed upon the ballot in such manner as to enable the electors to vote upon the question." The difficulty above pointed out, it seems to me, may be obviated in a very simple manner.

The proper form for submission of these proposed amendments to the electorate would be by placing the words "shall amendment" before the title and the words "be approved" after the title, and in addition, where there is not in the title of the proposed amendments any indication of its purport, after the title and before the words "be approved," two or three words be inserted in parenthesis showing the same.

Below the title should appear the words "for the amendment" or "against the amendment."

I understand that it is your purpose to advise the County Clerks of this opinion, and therefore, in order to secure uniformity on the ballots throughout the State, I have taken the liberty of indicating what words, in my opinion, should be added after the title of the three amendments above referred to in order to indicate to the voter what they concern.

The first amendment shows in its title that it refers to the initiative and referendum and nothing more is necessary.

There is nothing in the title of the second amendment indicating in any way what it concerns, but upon reading the context, it is apparent that it relates to the "recall." I would therefore recommend that on printing the same upon the ballots, after the word "Nevada" in the title of the amendment and before the words "be approved," the words "(relating to the recall)" should be inserted.

There is nothing in the title of the third proposed amendment indicating its purport, but the text of the amendment shows that it is a proposal to amend the present provision in regard to the investment of public school moneys by permitting investments in the bonds of any county of the State of Nevada, I would therefore recommend that the words "(investment school moneys)" be similarly inserted after title of this amendment.

The fourth proposed amendment adds to presentment by indictment already provided in this State an information by the District Attorney or Attorney-General, and its purport sufficiently appears in the title.

There is nothing in the title of the fifth amendment showing its purport, but upon comparing it with the existing section of said article, it

appears that the amendment consists of adding the words "and Notary Public," thus providing that females who are qualified as therein provided shall be eligible to that office. In the case of this proposed amendment I would recommend that the words "(females eligible as Notary Public)" be added.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Public Schools—Superintendent of Public Instruction—Deputy Superintendent of Public Instruction, Appropriation for—Statutes, Repeal of, Construction Of.

The amount of money provided for Deputy Superintendent of Public Instruction, District No. 1, for traveling expenses is $1,000, as provided by Stats. 1911, p. 80, sec. 40, notwithstanding Stats. 1911, p. 189, sec. 13, provides "that not more than $800 shall be paid from the General Fund of the State in settlement of claims for such traveling expenses of any Deputy Superintendent of Public Instruction during any one year."

CARSON CITY, October 17, 1912.

G. E. ANDERSON, *Deputy Superintendent of Public Instruction, Elko, Nevada.*

DEAR SIR: I am in receipt of your favor of the 9th instant, asking opinion in regard to funds appropriated for your district by the Legislature at its last regular session, and in connection therewith you call my attention to certain statutes and decisions.

Referring to the provisions passed at said session by the Legislature for the support and maintenance of the Virginia School of Mines, let me say that this office has decided that the appropriation contained in section 39 of the General Appropriation Act (Stats. 1911, p. 80) for the support of said institution was repealed by the Act appearing on page 281 of said volume, chapter 139, and it was decided that the only provision made by the Legislature at said session was that contained in the last-named Act.

In the case of your office the Legislature apparently made two provisions therefor, namely, section 40 of the General Appropriation Act (p. 80), and section 13 of the Public School Act (p. 189). The first provides four thousand dollars for payment of your salary; one thousand dollars for traveling expenses, and six hundred and fifty dollars for the office expenses.

The second fixes a compensation of each Deputy Superintendent of Public Instruction at two thousand dollars per annum and provides how it shall be paid. It further provides that "all claims for traveling expenses * * * shall be paid from the General Fund of the State; *provided*, that no more than eight hundred dollars shall be paid from the General Fund of the State in settlement of claims for such traveling expenses of any Deputy Superintendent of Public Instruction during any one year," etc.

By your citation of the case of *State, ex rel. Davis*, v. *Eggers*, 29 Nev. 469, I take it that it is your contention that by the enactment of section 13 of the school law the Legislature appropriated the sum of sixteen hundred dollars for your traveling expenses during the years 1911 and 1912. The statutes, however, are quite different. The one passed upon

by the court in the Eggers case may be found in the laws of 1907 on page 409, and provides as follows: "The chairman of said Commission shall receive as compensation for his services, to be paid out of the treasury of the State of Nevada, the sum of twenty-five hundred dollars per annum, payable in equal monthly installments upon the first day of each and every month." These, as you will see by the language of the above quotation, and by the decision of the court, constitute a direct appropriation for the payment of the salary of the Commissioner.

The language in section 13, *supra*, is "that not more than eight hundred dollars shall be paid," etc.

In the 1907 statute the court held that this was a direct appropriation of money for the payment of the salary of the Commissioner, while the language in section 13 of the school law clearly shows that the Legislature had no intention of making an appropriation, but merely imposed a limitation upon the amount that the Superintendent might spend in any one year.

I am therefore of opinion that the entire amount appropriated by the Legislature at said session for your office is fully expressed in section 40 of the General Appropriation Act, namely, four thousand dollars for salary, one thousand dollars for traveling expenses, and six hundred and fifty dollars for office expenses, and that when you have exhausted the one thousand dollars for traveling expenses, the Controller has no authority to draw warrants for any additional amount on account of said expenses.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Elections—General Elections—Registration—Indians, Citizenship of, Right to Registration.

An Indian is not a citizen of the United States by birth, because not born "subject to the jurisdiction thereof." He cannot make himself a citizen without the consent and cooperation of the Government. An Indian not being a citizen of the United States, is not entitled to register and vote.

CARSON CITY, October 17, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Your inquiry this day as to whether or not a half-breed Indian is a citizen and therefore entitled to register and vote received, and in answer thereto permit me to say that article 14, section 1 of the Constitution of the United States (Rev. Laws, 185) provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Article 2, section 1 of the Nevada Constitution (Rev. Laws, 250), limits the right of suffrage to "every male citizen of the United States."

It has been a number of times decided that an Indian is not a citizen of the United States by birth, because not born "subject to the jurisdiction thereof." He cannot make himself a citizen without the consent and cooperation of the Government.

Wherefore, I am of opinion that the Indian in question, not being a citizen of the United States, is not entitled to register and vote.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

BY EDW. T. PATRICK, *Deputy.*

Fish and Game—Deer—Right to Sell Animals Killed.

Under sections 2092–2094, Revised Laws, one is permitted to sell deer, killed by himself, within the number therein limited, to actual consumers of the flesh thereof, but it is unlawful for the person so killing said deer to sell the same to anyone who will vend it out at retail to the consumer.

CARSON CITY, October 23, 1912.

MR. V. S. BAXTER, *Mina, Nevada.*

DEAR SIR: Your favor of the 7th instant, addressed to the Game and Fish Commissioner, and asking "if it is lawful to sell the two deer which the season permits or one deer which is permitted," has been handed to this office for reply.

Section 2093, Revised Laws, provides an open season for deer and antelope from September 15 until October 15 and limits the number to two for any one open season or year.

Section 2094 provides: "It shall be unlawful for any person or persons to sell or offer for sale or to trade or barter or offer to trade or barter any number of deer or antelope in excess of two between September 15 and November 1 of any year."

Section 2092 provides: "Nothing in this Act shall be construed to prohibit any person from selling game killed by himself, but it shall be unlawful for any person or persons, firm, company, corporation or association to purchase such game for the purpose of barter or sale," etc.

Section 2093 permits the killing of two deer or antelope in any one season.

By implication, section 2094 permits the sale of the two deer or antelope during the period specified in one season.

Section 2092 makes it unlawful for any one to purchase such game for the purpose of barter or sale.

From a consideration of the above provisions of our statute I take it that it was the intention of the Legislature to permit any one to sell game, killed by himself within the limit of number aforesaid, to actual consumers of the flesh thereof, but that it was unlawful for the person so killing the game to sell the same to any purchaser of such game who would use it for the purpose of barter and sale; that is, to vend out the same at retail to the consumer.

Very truly yours,

CLEVE H. BAKER, *Attorney-General.*

State Militia, Officers of—Secretary of State, Fee for Military Commission.

Under section 3592, Revised Laws, the Secretary of State is entitled to charge the sum of $5 for the issuance of commissions to the officers of the state militia.

CARSON CITY, November 20, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I am in receipt of your inquiry of this date as to your right to charge a fee for the issuance of commission to officers of the state militia.

There are two statutes relating to this matter, which seem to be directly in conflict. Section 3952, Revised Laws, provides: "Each and every officer of this State, civil and military, except Commissioners of Deeds and Notaries Public, shall, at the time of the issuance of his commission, and before entering upon the duties of his office, pay to the Secretary of State the sum of five dollars," etc.

This is section 7 of an Act entitled "An Act in relation to the State Library," which was approved February 14, 1865. This section was amended in 1907, which said amendment was approved March 29, 1907, and it appears on page 372 of the laws of that year.

Section 3967, Revised Laws, provides: "The Governor, as commander-in-chief of the militia of the State, shall issue commissions to all officers appointed or elected therein. The commissions shall be attested by the Secretary of State with the great seal, and also by the Adjutant-General with the seal of his office. No fee shall be charged for military commissions." This section is section 3 of "An Act relating to the National Guard and the enrolled militia," approved March 6, 1893.

Although the Act in relation to the State Library was enacted in 1865, and the Act in relation to the National Guard was enacted in 1893, still the Legislature of 1907, having reenacted with some slight change section 7 of the Library Act, and having retained in said section 7 the express provision that military officers should pay a fee to the Secretary of State upon issuance of the commission as therein provided, I am of opinion that you are entitled to charge the sum of five dollars upon issuance of such commissions, such appearing to be the latest expression of the legislative will.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Bureau of Industry, Agriculture and Irrigation—Commissioner of Bureau, Salary of, Appropriation For.

The payment of the salary of the Commissioner of the Bureau of Industry, Agriculture and Irrigation is one of the "disbursements" which the law contemplated would be paid out of the $25,000 appropriation provided in section 7, Statutes of 1911, page 75.

CARSON CITY, November 20, 1912.

HON. C. A. NORCROSS, *Commissioner of the Bureau of Industry, Agriculture and Irrigation.*

DEAR SIR: Your favor of the 15th ultimo received, requesting the opinion of this office upon certain matters therein stated which are in substance as follows:

First—Whether that certain Act creating the Bureau of Industry, Agriculture and Irrigation, approved March 17, 1911, and making an appropriation therefor, contemplated that the salary of the Commissioner should be paid out of the said $25,000 appropriation.

Second—Was that certain claim (No. 3911) of the Sunset Magazine Company for $450 against the Bureau of Industry, Agriculture and Irrigation, approved and passed by the Board of Examiners on July 10, 1912, and audited July 25, 1912, by the State Controller, a legal charge against said bureau and payable out of said bureau's appropriation?

Third—Whether or not the appropriation for said bureau is now exhausted.

By virtue of "An Act creating and establishing a Nevada Bureau of Industry, Agriculture and Irrigation, providing for a commission in charge thereof; creating the office of Commissioner of Industry, Agriculture and Irrigation, and fixing his compensation; defining the objects and purposes of said bureau; prescribing the powers and duties of said commission; appropriating funds for its support and maintenance and to carry out its objects and purposes, and other matters relating thereto," approved March 17, 1911, and found in Statutes of Nevada for 1911 at page 75, the Bureau of Industry, Agriculture and Irrigation was established. Section 1 of said Act, among other things, provides for a Commissioner to be appointed by the Governor.

Section 6 of said Act provides for the salary of the Commissioner as follows: "Said Commissioner shall receive a salary of three thousand six hundred dollars per annum, payable in equal monthly installments by the State Treasurer on warrants drawn by the Controller."

Section 7 of said Act provides for the appropriation: "There is hereby, appropriated to carry out the purposes of this Act, the sum of $25,000, and all disbursements from which, as well as from the said Industrial Commission Fund, shall be on certificates of the Commissioner approved by the State Board of Examiners, when the State Controller shall draw his warrant and the State Treasurer shall pay the same."

In your letter you say "that the salary of the Commissioner has been paid in equal monthly installments by the State Treasurer on warrants drawn by the State Controller," but that "it is denied that said salary or any part thereof has been paid on certificates of the Commissioner, approved by the State Board of Examiners."

The records of the State Controller disclose that your salary warrant was drawn each month against the said $25,000 appropriation for the Bureau of Industry, Agriculture and Irrigation, and as such was received by you as Commissioner.

It is the opinion of this office that your salary is one of the disbursements which the law contemplated would be paid out of this $25,000 appropriation, for said section 7 specifically says: "There is hereby appropriated, to carry out the purposes of this Act, the sum of $25,000," and one of the purposes of the Act was the creation of the office of Commissioner of Industry, Agriculture and Irrigation, and another purpose of the Act the payment of a monthly salary of such Commissioner.

The provision of said section 6, which provides that the Commissioner's salary shall be "payable in equal monthly installments by the State Treasurer on warrants drawn by the State Controller," makes it unnecessary to have this claim presented each month to the State Board of Examiners.

It is urged that the salary of the Commissioner should not have been drawn against the $25,000 appropriation, because "all disbursements from which * * * shall be on certificates of the Commissioner, approved by the State Board of Examiners, * * * and that this

was not done, but that a warrant each month was drawn by the State Controller in favor of the Commissioner in accordance with section 6 of said Act, and charged against this $25,000 appropriation."

As regards this, I am of the opinion that the Controller acted within the law in not requiring certified claims to be submitted therefor and approved by the Board of Examiners, for, while it is true that said section 7 provides that all disbursements shall be on the certificate of the Commissioner, etc., said section 6 has specifically excepted the Commissioner's salary, and made it unnecessary to present such claims. There is nothing in the Act, however, which precludes the payment of the Commissioner's salary from the $25,000 appropriation, but, on the contrary, the Act contemplates that it shall be so paid.

In reply to your second question as to the payment of claim No. 3911, presented by the Sunset Magazine Company against the Bureau of Industry, Agriculture and Irrigation in the sum of $450, approved by you, together with Mr. Wm. Kearney and Hon. C. L. Deady, and thereafter approved by the State Board of Examiners on July 10, 1912, and audited by the State Controller July 24, 1912, your attention is called to the fact that the original statement itself shows that this is a charge by the said Sunset Magazine Company against the Bureau of Industry, Agriculture and Irrigation, and being approved by a majority of said Commission, I believe the same to be a legal charge against said bureau and appropriation. There is nothing upon the claim as made out, presented and allowed that would indicate that it should be paid from the Carey Act Trust Fund.

In reply to your third question as to whether or not the said $25,000 appropriation made for the Bureau of Industry, Agriculture and Irrigation is exhausted or not, I beg to inform you that those facts are not in the possession of this office, but must be ascertained from the State Controller, whose duty it is to keep a record of the expenditures and disbursements of the various appropriations.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Employer and Employee—Employers' Liability Act—When Compensation Commences.

Under section 1920, Revised Laws, the employee is entitled to compensation for the ten days immediately following the injury, but the disability must be such as to prevent him from performing his regular services for ten days or more.

CARSON CITY, December 4, 1912.

HON. H. H. ATKINSON, *Justice of the Peace, Tonopah, Nevada.*

DEAR SIR: Your night letter under date of December 2, 1912, received, wherein you request a letter stating the opinion given you as regards the Employers' Liability Act in a telegram under the date of October 24, 1912.

Your question, as submitted in your telegram of October 22, 1912, reads as follows: "Do you consider the meaning of section 6, Employers' Liability Act (Rev. Laws, 1920), to mean that the workman is entitled to compensation for the ten days immediately following injury?"

Section 1 of said Act (Rev. Laws, 1915) states wherein the workman is entitled to receive compensation for personal injury in the following

language: "If in any employment to which this Act applies, personal injury disabling a workman for more than ten days, or death by accident, * * * said employer shall be liable to pay the compensation provided for in this Act."

This section contemplates what injuries are within the purview of this Act; in other words, the disability must be such as to prevent the workman from performing his regular services for ten days or more. I take it that such injuries which do not extend ten days or more are not meant to come within the provisions of this Act.

The next question that arises: If a workman is injured in a way such as to bring him within the terms of this Act, then, when does the time commence for his payment for same?

Section 6 of said Act (Rev. Laws, 1920) provides in part as follows: "The amount of compensation in case of total or partial disability resulting from injury shall be: (a) a weekly payment during the disability, beginning within ten days after the injury."

I believe that whatever ambiguity has arisen as to the meaning of this section is due to the use of the word "within."

In section 1, before referred to, the words "ten days or more" place a limitation on the injuries that are to be considered; in other words, the disability must be for at least ten days. In section 6, if the Legislature had intended that no compensation should accrue during the first ten days, then, I believe, that the word "*after*" instead of "*within*" would have been used.

However, having used the word "within," I understand the phrase "beginning within ten days" in that connection to mean that the period within which payment for said injuries can be considered as commencing is any time during the first ten days.

There is no conflict as to section 1 or section 6 of said Act. Section 1 merely states the number of days of disability necessary in order to make the Act applicable, and when once the Act becomes operative as to a certain workman, then section 6 states when payment can commence; for there is no reason why, if the injury is such as to bring the workman within the scope of the Act, the payment of the same should not commence immediately rather than wait ten days. The reason for payment is just as forceful the first day as it is the last day.

Of course, ten days must elapse in the first instance to show that it is a proper case, and when this is established, I believe that the language of said section 6, taken and viewed from a standpoint of justice and humanity, leads to the conclusion that payment can be considered as well for the first ten days, or such part thereof as the workman demands.

Respectfully submitted,

CLEVE H. BAKER, *Attorney-General.*

Counties—County Officers—Lyon County—Assessors, Fee for Statistical Report.

Under Stats. 1909, p. 159, the Sheriff of Lyon County as ex officio Assessor is not entitled to the "fee" for statistical report provided in Revised Laws, section 1586.

CARSON CITY, December 11, 1912.

D. P. RANDALL, *Sheriff, Yerington, Nevada.*

DEAR SIR: Upon assuming the duties of this office I found your favor of the 5th instant, inquiring as to your right to receive a fee for the preparation of a statistical report for the use of the Surveyor-General, awaiting attention.

Upon a careful consideration of the Act of March 22, 1909 (Stats. 1909, p. 156), "consolidating certain county offices in Lyon County and regulating the compensation of the county officers of said county," and previous Acts concerning the compensation provided for your office as Sheriff and ex officio Assessor to be found in Stats. 1891, p. 53; Stats. 1893, p. 28; Stats. 1897, p. 73, and Stats. 1905, p. 217, I am satisfied that the District Attorney of your county correctly advised your Board of County Commissioners that they had no right to pay for these services, as your salary as ex officio Assessor includes the same.

The word "fees" in the first-mentioned statute clearly applies to fees received by you as Sheriff, and cannot, in any way, be construed so as to authorize the County Commissioners to pay you the sum of money mentioned in section 3 of the Act of February 17, 1879, in regard to this statistical report.

I am confirmed in my opinion by a reading of the various versions of section 5 of the Act in regard to the salaries of officers of Lyon County, above referred to, all of which allow the Sheriff of said county "fees now provided by law," and show, in some cases, more clearly than the last Act that the "fees" therein referred to, refer solely and exclusively to fees which may accrue to you by virtue of your office as Sheriff of Lyon County, and can, in no way, mean any fee, compensation or other emolument which is provided by general law for County Assessors.

Respectfully submitted.

GEO. B. THATCHER, *Attorney-General.*

Extradition—Governor, Duty of, in Extradition Cases.

It must appear to the Governor of the State to whom the demand for extradition is presented, before he can legally comply with it, first, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the Governor making the demand; and, second, that the person demanded is a fugitive from justice of the State the executive authority of which makes the demand.

CARSON CITY, December 20, 1912.

HON. T. L. ODDIE, *Governor of Nevada, Carson City, Nevada.*

SIR: In response to your verbal inquiry concerning the sufficiency of certain extradition papers from his Excellency, Joseph N. Brown, Governor of the State of Georgia, addressed to yourself, which have been submitted to me by you, I have to respectfully report as follows:

The indictment included with said papers sets forth that John H. Schroder, in the county of Chatham, State of Georgia, aforesaid, on the 1st day of March, 1912, being then and there the father of a certain

minor child, to wit, Margaret Elfrieda Schroder, eight years of age, did wilfully and voluntarily abandon his said child, Margaret Elfrieda Schroder, leaving it in a dependent condition, contrary to the laws of the said State, etc.

To the extradition papers there is attached what purports to be a copy of section 116 of the Penal Code of the State of Georgia, adopted August 15, 1910, under which this indictment is found, which reads as follows:

> *Abandonment of Child.* If any father shall wilfully and voluntarily abandon his child, leaving it in a dependent condition, he shall be guilty of a misdemeanor. The wife shall be a competent witness, in such cases, to testify for or against her husband. A child thus abandoned by the father shall be considered to be in a dependent condition when the father does not furnish sufficient food and clothing for the needs of the child.

Section 1275, subdivision 2, of the Penal Code of Georgia, provides that "the application must be accompanied by the *affidavit of the prosecutor*, if any, stating that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to enforce the payment thereof."

The sixth amendment to the Constitution of the United States provides that "in all criminal prosecutions, the accused shall have the right to be informed of the nature and cause of the accusation."

While it is the duty of the Chief Executive of the State wherein resides the man who has fled and is a fugitive from justice, to surrender such fugitive upon proper application from the Governor of the demanding State, it is still the right and duty of the Executive not to surrender such person upon such requisition, unless he is satisfied, first, that a crime has been committed in the other State; second, that the accused has been accused in that State of the commission of that crime and, third, that he has fled from justice and is within this State. (*Ex Parte Lorraine*, 16 Nev. 63.)

The obligation on the Executive of a State to deliver up a fugitive on demand of the Executive of another State only arises when the fugitive is legally charged with a crime within the State demanding his surrender. (*In Re Waterman*, 29 Nev. 288.)

In the papers submitted there is nothing to show that John H. Schroder, who is demanded for surrender by you, is a fugitive from justice. The affidavit required by section 1275, subdivision 2, of the Georgia Penal Code is not attached; the indictment seems to be fatally defective, in that it does not charge that the said Schroder abandoned his child and left her in a destitute condition; the indictment does not sufficiently inform the accused of the nature and cause of the accusation against him; it omits an essential element requisite to a valid indictment in the State of Georgia, for it does not state how, when or where accused failed to furnish sufficient food and clothing for the needs of his child.

The Supreme Court of Georgia has passed upon this indentical provision of its Penal Code in a number of cases.

In the case of *McDaniel, Governor*, v. *Campbell*, 78 Ga., the court said:

> An indictment which charged a father with wilfully abandoning his child, leaving it in a dependent condition, but failed to allege that the abandonment was wilful, and that the child was left in a destitute condition, was fatally defective.

In the case of *Dalton* v. *The State*, 115 Ga. 196, the court says:

> The evidence adduced on the trial showed that the father was willing for the wife to leave him and return to her relatives. The child, which she took with her, was between four and five years of age, and was, of course, dependent. The evidence, however, does not disclose that the child was destitute at the time of the abandonment, or had even become destitute up to the time of the trial. So the case turns upon the question whether the father is guilty if he fails to provide for his child after the separation, even though the child may be abundantly supplied with all the necessaries of life. While it is true that a father is under a moral and legal obligation to support his minor child, it is not also true that, if he fails in this duty, he may be convicted under the above section of the code, although the child is fully provided for by others. The father cannot be convicted unless it is shown that the child was not only dependent but in a destitute condition. If it is not destitute, but is amply supplied with all necessaries, the father cannot be convicted. It is true he may have violated his moral and legal obligations in abandoning the child at all; but, as criminal statutes must be construed strictly, we are constrained to give this statute this interpretation.
>
> Jackson, C. J., in discussing this question in *McDaniel* v. *Campbell*, 78 Ga. 188, said: "To leave a child dependent does not convey the idea of absolute destitution. The child may be cared for and comfortable, and yet dependent on some charity; but left destitute, it has no protector, friend, or other author of benevolent kindness feeding and clothing it."
>
> Atkinson, J., in discussing the same question in *Crow* v. *State*, 96 Ga. 297, (p. 299) said: "Many cases occur in human experience where a child is less destitute under the tender care of affectionate grandparents than when its wants are left to be supplied by an improvident and shiftless parent. At all events, neither abandonment nor destitution is proven unless the father leaves the child, intending to abandon it to its own fate, without providing for it the necessaries of life, and leaving it wholly dependent upon others who are themselves unable or unwilling to provide for it."

It will be noted that the crime of abandonment of a child is one of intent only. If the man Schroder, who is demanded of you by the Executive of Georgia, at the time of leaving the State of Georgia made ample provisions for the care and support and maintenance of his child during his absence, and after leaving the State he had conceived the intention of abandoning the child, the crime, therefore, could not have been committed within the State of Georgia, and he would not, therefore, be a fugitive from justice of that State and would not, therefore, be extraditable under the provisions of the United States statute regarding this matter.

In Willoughby on Constitution, page 227, it is said:

> It must appear, therefore, to the Governor of the State to whom such demand is presented, before he can lawfully comply with it, first, that the person demanded is substantially

> charged with a crime against the laws of a State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the Governor of the State making the demand; and, second, that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand. The first of these prerequisites is a question of law and is always open upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of *habeas corpus*. The second is a question of fact, which the Governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory.

It is true that the question as to the sufficiency of the indictment pertains rather to the judicial than to the executive department. I am satisfied that if the man Schroder is brought up before any court of this State on *habeas corpus* he would be discharged, because the indictment does not sufficiently, or at all, allege any crime against him under the laws of Georgia, and does not apprise him of the nature and cause of the accusation. Whether or not he is a fugitive from justice, your Excellency has a right, and it is your duty, to pass upon such evidence as you may deem satisfactory.

I am informed by Mr. Schroder's representative, who has come here from Savannah, Georgia, that he can establish, by the most satisfactory evidence, the fact that at the time Schroder left the State of Georgia he made ample provision for the support and maintenance of his child; that he left that State upon the advice of a physician, on account of failing health; that he has asked his wife repeatedly to join him elsewhere; that the child is not in destitute circumstances, but is amply and fully provided for, as is also shown by affidavits submitted to me.

I would suggest, therefore, that, if you so desire, a time for the presentation of such proof be arranged.

From the foregoing reasons, I am of the opinion that the requisition of his Excellency, the Governor of Georgia, should not be honored, and if you see fit to concur in my opinion, and to the end that his Excellency of Georgia may be informed that you have not refused his request upon no light, frivolous or unsubstantial grounds, I have taken the liberty to enclose herewith an extra copy of this opinion, in order that the same may be forwarded to him.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Public Lands—Railroad Grants—Indemnity Lands—Rights of State—Taxation—Right to Tax—When May Be Taxed.

The filing of the Central Pacific Railroad Company lieu-land lists is made under authority of "An Act for the relief of settlers on railroad land" (18 Stat. L. 194).

The State has no ground on which it can successfully contest these filings.

The lands embraced in said filings are taxable as soon as the filings have been approved by the Secretary of the Interior.

CARSON CITY, December 31, 1912.

HON. T. L. ODDIE, *Governor, Carson City, Nevada.*

DEAR SIR: For a number of reasons, of which you are aware, answer to your inquiry of August 29 last, concerning Central Pacific Railroad Company Lieu-Land Lists No. 64 and No. 65, has been delayed until now.

You state that these lands are all on even-numbered sections within the twenty-mile limit of the Southern Pacific Railroad, and ask that this office ascertain the following facts with respect to these filings and report:

(1) Under what law or authority of law are these filings made?
(2) In your opinion, has the State of Nevada any grounds on which it could successfully contest such filings?
(3) Are these lands subject to taxation?

In answer to your inquiries I have the honor to report as follows:

(1) These filings were made under authority of "An Act for the the relief of settlers on railroad land." (Act of June 22, 1874, ch. 400, 18 Stat. L. 194, to be found also in 6 Federal Statutes, Annotated, page 430.)
(2) In my opinion, the State of Nevada has no ground on which it can successfully contest these filings.
(3) It has been held that such acts do not constitute a grant *in presenti* and that the title thereto does not pass till the filing has been approved by the Secretary of the Interior. As soon as this is done the title will pass and the land will then be subject to taxation.

In my consideration of the questions involved in this inquiry, I have carefully considered the following authorities and think an examination thereof will bear out the conclusions reached: 12 Stat. L. 492, sec. 3; 13 Stat. L. 358; 18 Stat. L. 194; 26 Stat. L. 369; *Peers* v. *Deluchi*, 21 Nev. 166; *State* v. *C. P. R. R. Co.*, 20 Nev. 372; *State* v. *C. P. R. R. Co.*, 21 Nev. 247; *N. P. R. R. Co.* v. *Hinchman*, 53 Fed. 523; *Taborek* v. *B. & M. R. R. Co.*, 13 Fed. 103; *Denny* v. *Dodson*, 32 Fed. 899; *St. P. M. & M. R. R. Co.* v. *Sage*, 71 Fed. 40; *S. P. R. R. Co.* v. *Tilley*, 41 Fed. 729; *S. P. R. R. Co.* v. *Smith*, 74 Fed. 588; *N. P. R. R. Co.* v. *U. S.*, 36 Fed. 282; *U. S.* v. *M. K. & T. R. R. Co.*, 141 U. S. 368; *W. & St. P. R. R. Co.* v. *Barney*, 113 U. S. 618; *U. S.* v. *B. & M. R. R. Co.*, 98 U. S. 334; 32 Cyc. 949, 959-963.

Please pardon the brevity of this opinion. If you have any doubt on the conclusions reached, I shall be glad to go over the authorities with you.

Herewith is returned the list of lands enclosed in your letter.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Corporations—Foreign Corporations—Corporate Name, Similarity of—Secretary of State, Duty Of.

Should articles of incorporation of a foreign corporation, bearing a name so similar to a Nevada corporation as to be apt to cause confusion, be tendered to the Secretary of State for filing, it is his duty to refuse to file the same until compelled to do so by proper authority.

CARSON CITY, December 31, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: Owing to circumstances of which you are aware, answer to your inquiry of October 10, in regard to corporate name, has been delayed until now.

It seems that a corporation was incorporated under the Nevada laws some years since and you now apprehend that a Utah corporation of exactly similar name may file with you a copy of its articles as required by the Act concerning foreign corporations doing business in this State, and in case such copy is tendered you for filing you ask instruction in the premises.

In response, permit me to say that the decisions on this subject are very conflicting and the law cannot be said, as yet, to be settled upon the question involved. Most of the decisions say that by analogy the law relating to trademarks should be followed.

On account of the uncertainty of the matter and in order that if the question arise an authoritative decision from our Supreme Court may be had, I would advise that should articles of a foreign corporation bearing a name so similar to a Nevada corporation as to be apt to cause confusion, be tendered you, for filing, you refuse to file the same until compelled to do so by proper authority.

In my consideration of this matter I have examined the following authorities: 43 L. R. A. 95; 31 L. R. A. 133; 20 L. R. A. 272; 16 L. R. A. 429; 8 L. R. A. 320; 43 L. R. A. 905; 21 L. R. A. 133; 10 L. R. A. 758; 21 L. R. A. 42; 48 L. R. A. 658; 15 L. R. A. 462; 16 L. R. A. 453; 17 L. R. A. 354; 10 Cyc. 152-3; 153 Mass. 271; 111 Mich. 405; 145 N. C. 367; 135 App. Div. 268; 120 N. Y. S. 471; 151 Mass. 558; 159 Mass. 436; 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. Rep. N. S. 633; 2 Meg. 120; 17 Ch. Div. 638; 96 Iowa, 592; 9 O. S. & C. P. Dec. 579; 7 O. N. P. 135; 46 Ill. App. 281; 145 Cal. 380; 210 Ill. 176; 101 App. Div. 296; 91 N. Y. S. 649; 71 N. J. E. 595; 75 N. J. E. 39.

Herewith is returned the correspondence concerning this matter submitted with your inquiry.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

Officers—Bonds—Official Bonds—Secretary of State, Fees For Filing and Recording Bond.

The Secretary of State is authorized to demand and receive a $5 fee for filing and recording each official bond.

All official bonds required by law to be filed with the Secretary of State should be recorded by him.

CARSON CITY, December 31, 1912.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 14th instant, asking opinion on the matter of filing and recording of official bonds and the fee chargeable therefor.

Section 2872, Revised Laws, provides that the official bond of all state officers required by law to give bond shall be approved by the Governor and filed and recorded in the office of the Secretary of State.

Section 4360, Revised Laws, in regard to the fees of your office, provides: "For filing and recording each official bond, five dollars."

The officer in question is required to give a bond, approved by the Governor, and to be filed in your office.

Nothing being said in regard to recording such bond, the question arises in your mind whether or not you are permitted to charge the five-dollar fee provided for "filing and recording" this official bond. In my opinion, you are entitled to charge this fee. The Act in question was approved March 26, 1907. By Act approved March 8, 1879 (Rev. Laws, 4266-4267), it is provided: "It shall be the duty of any officer, person or persons, authorized by law to enter into any agreement or contract on behalf of this State, to have the same reduced to writing, and after the signing of the same by the contracting parties, to deliver the said agreement or contract so reduced to writing, signed by the contracting parties, to the Secretary of State."

The next paragraph provides that you shall immediately record such agreements and contracts in a book to be kept for that purpose.

The language of section 4266 is undoubtedly broad enough to include all official bonds fixed by law or required to be filed with you, and in omitting the provision as to recording the bond in question it is a logical inference that the Legislature had in mind this section and purposely omitted this provision.

I am therefore of opinion that all official bonds required by law to be deposited with you should be recorded by you, and that you are authorized to demand and receive therefor the five-dollar fee provided by law for recording and filing each official bond.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

BY EDW. T. PATRICK, *Deputy.*

DUTIES AS MINERAL LAND COMMISSIONER

Sections 4141, 4142, and 4146, Revised Laws, create the office of Mineral Land Commissioner, prescribe his duties and make the Attorney-General, ex officio, such Commissioner.

During the period covered by this report the Mineral Land Commissioner has examined applications for patent of the public lands of the United States and made an abstract of such applications in 435 cases. He has also examined applications for patents of the public lands in this State and made an abstract of such applications in 333 cases.

In all of said cases circulars have been sent to the County Recorders of the county in which the land sought to be patented is located, inquiring if any portion of the land mentioned in the application is located within any mining district or known mineral belt, or if there is any reason to believe that said land, or any portion thereof, is mineral in character or contains mineral in quantities sufficient to support a *bona fide* mining claim.

Some of the County Recorders gave these circular letters prompt and efficient attention, but others, I am sorry to say, although required, by section 4142 of the Revised Laws, to furnish such information to the Mineral Land Commissioner, wholly ignored them.

Out of the responses received, however, a number have been held for investigation in case land in the vicinity proves to be mineral, in which case action will be promptly taken thereon as prescribed in said sections.

OTHER DUTIES OF ATTORNEY-GENERAL

The Attorney-General is ex officio a member of the following boards and commissions:

Board of Examiners, Rev. Laws, 314;
Board of Irrigation, Rev. Laws, 4706;
Board of Pardons, Rev. Laws, 307;
Board of Parole, Rev. Laws, 7622-7624;
Board of Prison Commissioners, Rev. Laws, 314;
Railroad Commission, Rev. Laws, 4549;
State Board of Revenue, Rev. Laws, 3809, 3828;
Board to investigate State Police, Rev. Laws, 4281.
Bureau of Industry, Agriculture and Irrigation, Rev. Laws, 4468.

Many of these boards or bureaus have regular monthly meetings; others four times a year, and some have special meetings three or four times a month.

All of these meetings the Attorney-General has attended whenever possible to do so.

EXTRADITION MATTERS

During the period embraced in this report thirty-five cases, involving extradition of persons accused of crime, have been presented for the consideration of this office. Some of these required the preparation of full duplicate sets of extradition papers for persons accused of crime in this State who had fled for refuge to other States, and the other cases were requests for extradition by various State Executives of persons charged with crime in other States who had come to this State for refuge.

In all the latter class of cases, the extradition papers were carefully examined by this office as to their legality and regularity, and in several instances written opinions were prepared advising the Governor not to honor such requisitions.

EXPENSES OF OFFICE

In addition to the salaries provided by law, the expenses of this office for the period named has been as follows:

Stationery	$192.43
Postage	151.00
Total	$343.43

SUGGESTIONS AS TO CHANGES IN LAWS

Section 4132 Revised Laws, requires the Attorney-General to make such suggestions as shall appear to him calculated to improve the laws of this State.

Article 2 of the Constitution (Rev. Laws, 352) provides that patented mining claims shall be assessed at not less than $500, except when $100 in labor has been actually performed on such patented mine during the year.

At the last general election five proposed amendments to the Constitution were adopted by the vote of the people.

These were: An amendment relating to the initiative and referendum; an amendment relating to the recall from office; an amendment providing for the investment of school moneys, in addition to the provisions now existing, in the bonds of any county of the State of Nevada; an amendment providing for trial for capital or other crimes upon information filed by a District Attorney or by the Attorney-General; and an amendment making females eligible to the office of Notary Public.

It is a matter of grave doubt in the minds of many attorneys of this State whether or not these provisions of the Constitution are self-executing, or whether it is necessary for the Legislature to enact proper measures for the execution of these provisions. In order to settle this question beyond the possibility of a doubt, I would recommend that suitable legislation be enacted.

The statutes in relation to the "recall" should provide some method of nominating candidates who run in opposition in the recall election.

The various express companies operating in this State are carrying on a *quasi*-banking business, receiving moneys on deposit and issuing bills of exchange, money orders, etc., in direct competition with the state banking institutions. They should be required to pay a license, and for the safety of depositors be required to keep a deposit in cash or securities with the State Controller or some other state officer.

The law with reference to "elections" is in a very confused condition. It consists of some twenty separate acts, comprising sections 1705–1914 of the Revised Laws. Many of the provisions therein contained are not in harmony with provisions of other Acts, and contradictions may be found in the provisions of the same Act.

During the three or four months before the last general election a great deal of the time of this office was taken up in the preparation of opinions attempting to reconcile these incongruous provisions.

I would therefore recommend that, even if no change is to be made in the present law, the existing laws be drafted and reframed into one general Act covering the entire subject.

Under the head of "Reports of Mining Corporations" a recommendation has been made which, if adopted, would result in producing a small revenue for the State, and attention is now called to same.

REPORTS OF MINING CORPORATIONS

Under the provisions of "An Act requiring certain mining corporations to file statements with the County Recorder and Attorney-General," etc. (Rev. Laws, 1330–1340), over six hundred such reports have been received, filed and receipt acknowledged during the period embraced in this report.

In addition, copies of a number of these reports have been furnished by this office to persons interested therein, without charge.

As it is apparent that many of these requests for copies of mining reports are inspired by mere idle curiosity, and the law providing no fee to the State for the reception, care of such reports, and preparation of such copies, thereby depriving the State of a source of revenue, I would recommend that this office be permitted to turn over to the Secretary of State all such requests for copies, and he would thereby be enabled to ask and receive the usual fee of his office for such service.

It will be noted that the law applies only to corporations selling or offering for sale any of its shares of capital stock, which accounts for the comparatively small number of reports received from the many mining corporations doing business in this State.

CORRECTION

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

CORRECTION

It is a matter of grave doubt in the minds of many attorneys of this State whether or not these provisions of the Constitution are self-executing, or whether it is necessary for the Legislature to enact proper measures for the execution of these provisions. In order to settle this question beyond the possibility of a doubt, I would recommend that suitable legislation be enacted.

The statutes in relation to the "recall" should provide some method of nominating candidates who run in opposition in the recall election.

The various express companies operating in this State are carrying on a *quasi*-banking business, receiving moneys on deposit and issuing bills of exchange, money orders, etc., in direct competition with the state banking institutions. They should be required to pay a license, and for the safety of depositors be required to keep a deposit in cash or securities with the State Controller or some other state officer.

The law with reference to "elections" is in a very confused condition. It consists of some twenty separate acts, comprising sections 1705–1914 of the Revised Laws. Many of the provisions therein contained are not in harmony with provisions of other Acts, and contradictions may be found in the provisions of the same Act.

During the three or four months before the last general election a great deal of the time of this office was taken up in the preparation of opinions attempting to reconcile these incongruous provisions.

I would therefore recommend that, even if no change is to be made in the present law, the existing laws be drafted and reframed into one general Act covering the entire subject.

Under the head of "Reports of Mining Corporations" a recommendation has been made which, if adopted, would result in producing a small revenue for the State, and attention is now called to same.

REPORTS OF MINING CORPORATIONS

Under the provisions of "An Act requiring certain mining corporations to file statements with the County Recorder and Attorney-General," etc. (Rev. Laws, 1330–1340), over six hundred such reports have been received, filed and receipt acknowledged during the period embraced in this report.

In addition, copies of a number of these reports have been furnished by this office to persons interested therein, without charge.

As it is apparent that many of these requests for copies of mining reports are inspired by mere idle curiosity, and the law providing no fee to the State for the reception, care of such reports, and preparation of such copies, thereby depriving the State of a source of revenue, I would recommend that this office be permitted to turn over to the Secretary of State all such requests for copies, and he would thereby be enabled to ask and receive the usual fee of his office for such service.

It will be noted that the law applies only to corporations selling or offering for sale any of its shares of capital stock, which accounts for the comparatively small number of reports received from the many mining corporations doing business in this State.

REPORTS OF DISTRICT ATTORNEYS FOR 1911

CLARK COUNTY

LAS VEGAS, November 28, 1911.

To the Honorable the Attorney-General.

DEAR SIR: I beg leave herewith to submit my annual report for the year ending November 1, 1911, as District Attorney for Clark County, Nevada, as follows:

Number of prosecutions, 21, as follows: Assault with intent to kill, 4; assault with deadly weapon, 3; sodomy, 2; murder, 1; burglary, 1; miscellaneous misdemeanors, 10.

Number of convictions, 9.

Average punishment on conviction, 60 days imprisonment.

Number acquitted, none.

Number abated or dismissed, 6.

Number of cases pending, 6.

The cost of the above-mentioned prosecutions, as near as I can ascertain, amounted to $329.75.

The amount of fines paid under the foregoing prosecutions was $85.

During the period covered by the foregoing report no trial jury was in attendance on the District Court, hence the cost of administration of justice in this county for the year 1911 has been very small.

Respectfully submitted,

C. F. VAN PELT, *District Attorney.*

DOUGLAS COUNTY

GENOA, November 22, 1911.

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, 1911.

Number and character of prosecutions: Felonies, 3; for disposing of liquor to Indians (plead guilty and each sentenced to one year in the State Prison), 2; indicted for felony (issuing bad paper), plead guilty and sentenced to two years in the State Prison, 1.

Misdemeanors, 9, all for disturbing the peace, and sentenced as follows: $10 fine or 10 days in county jail; $8 fine or 8 days in county jail; $10 fine or 10 days in county jail; $10 fine or 10 days in county jail; $20 fine or 20 days in county jail; $10 fine or 10 days in county jail; 25 days in county jail; 20 days in county jail; 5 days in county jail or $10 fine.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed: Two different parties at different times charged with assault with intent to kill, dismissed by grand jury.

Number of prosecutions pending: None.

Cost of prosecutions, $2,993.60.

Amount of fines paid, $90.50.

Average punishment—Felonies, 1.33 years; misdemeanors, 14⅓ days.

Respectfully submitted,

F. E. BROCKLISS, *District Attorney.*

ELKO COUNTY

ELKO, December 23, 1911.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to the law, I herewith submit my annual report on criminal business transacted in Elko County, State of Nevada, for the year ending November 1, 1911:

Misdemeanors: Total number of convictions, 131, sentence ranging from 30 days to 6 months.

Felonies: Total number of indictments, 8; 3 defendants jointly indicted for arson, one tried and convicted, sentenced for 10 years in the State Prison, trial of the other two pending; 2 defendants jointly indicted for obtaining money under false pretenses, one plead guilty and was sentenced to 20 months in the State Prison, the other tried and acquitted; 1 assault with intent to kill, tried and found guilty of simple assault and sentenced to 6 months in the county jail; 1 attempt to commit grand larceny, tried and acquitted; 1 grand larceny tried, hung jury, indictment still pending; 1 for perjury, indictment dismissed; 1 for burglary, plead guilty and was sentenced to 8 months in the State Prison; 1 for grand larceny, indictment quashed. Number of defendants acquitted on trial, 2. Number of defendants convicted, 4. Number of indictments pending, 3.

Penal fines collected, $960.25.

Cost of prosecutions, including juror and witness fees, $16,280.25.

(The case of the defendant convicted of arson was before the jury 30 days and over 100 witnesses examined, and the total cost was about $13,000.)

Respectfully submitted,

JAMES DYSART, *District Attorney.*

ESMERALDA COUNTY

GOLDFIELD, December 1, 1911.

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, 1911:

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

David Edward Roach, assault with intent to kill; November 28, 1910; 3 years.

John Antonini, murder in the second degree; December 3, 1910; 25 years.

George Gibson, assault with intent to kill; December 13, 1910; 14 years.

Thomas Lewis, burglary in the second degree; June 12, 1911; 2 years.

John Flaig, burglary in the second degree; June 14, 1911; 1 year and 3 months.

Esteban Rocha de Ortega and Branlio Sanches; assault with intent to kill (found guilty of assault); October 29, 1911; 6 months in the county jail; sentence suspended.

William Deray, manslaughter; November 4, 1911; 2½ years.

NUMBER OF PERSONS ACQUITTED, OR AS TO WHOM PROSECUTIONS WERE ABATED OR DISMISSED

Henry Weber, embezzlement; dismissed after jury failed to agree on second trial; December 7, 1910.

Henry Weber, embezzlement; two indictments dismissed; December 7, 1910.

Thomas B. Rickey, embezzlement; two indictments dismissed; December 7, 1910.

Volney B. Leonard, embezzlement; two indictments dismissed; December 7, 1910.

W. A. Flowers, murder; March 25, 1911; acquitted.

D. A. Worth, embezzlement; defendant failed to appear for trial; bond forfeited and bench warrant issued.

Bonifacio Gonzales and Francito Reynosa; jointly charged with Esteban Rocha de Ortega and Branlio Sanches of assault with intent to kill, and were acquitted on October 27, 1911.

Approximate cost of prosecutions in the District Court, as far as the same can be ascertained, $7,659.75.

NUMBER OF PROSECUTIONS IN THE JUSTICE COURT, AND CHARACTER OF THE SAME

Assault and battery—Convicted 11, acquitted 3, dismissed 3; average punishment, $42, or 21 days in jail.

Disturbing the peace—Convicted 38, acquitted 2, dismissed 3; average sentence 48 days; average fine, $6.

Vagrancy—Convicted 12, acquitted 1; average sentence, 28 days.

Petit larceny—Convicted 3, acquitted 1, dismissed 2; average fine, $45.

Defrauding an inn keeper—Dismissed 1.

Malicious mischief—Convicted 3, acquitted 1; average sentence, 60 days; average fine, $1.

Carrying concealed weapons—Convicted 3, dismissed 1; average fine, $26.

Failure to provide—Acquitted 1.

Peddling without license—Dismissed 1, on payment of license.

Attempted petit larceny—Convicted 2; average fine, $30.

Selling liquor to minors: Jointly charged—Convicted 1, acquitted 1, dismissed 1; average fine, $1.

Obtaining money under false pretenses—Acquitted 1.

Selling liquor without state license—Acquitted 2.

Selling liquor without county license—Acquitted 1.

The above report does not include prosecutions under the ordinances of the town of Goldfield, and includes only prosecutions in the Justice Court of Goldfield Township.

Fines collected in the Justice Court, $161.

Costs collected from defendants in Justice Court, $503.50.

Amount collected when bond was forfeited, $400.

The Justice of the Peace and Constable of Goldfield Township are both salaried offices, hence there is no expense for prosecutions in this court, except the salaries of these officers.

Respectfully submitted,

J. EMMETT WALSH, *District Attorney.*

EUREKA COUNTY

EUREKA, December 1, 1911.

To the Honorable the Attorney-General.

Pursuant to law, I herewith transmit to you my annual report of the criminal business transacted in the county of Eureka during the year ending on the 1st day of November, 1911, and hereby submit the same to you, as follows:

NUMBER AND CHARACTER OF PROSECUTIONS

Indictments for felonies: Assent to the reception of deposits in an insolvent banking institution; 15 cases. Defendants discharged on *habeas corpus* by the Supreme Court.

Murder; 1 case, and 2 defendants. The defendants were acquitted, after trial, by a jury.

Publishing a false statement of the amount of the assets of a banking corporation transacting business under chapter CXCI of the Laws of Nevada; 3 cases, and 4 defendants. These cases are pending in the Supreme Court on the application of the defendants for discharge under *habeas corpus*.

Acceptance of deposits in an insolvent banking institution by the directors and cashier thereof; 4 cases, and 5 defendants. These cases are pending in the Supreme Court on the application of the defendants for discharge under *habeas corpus*.

Connivance at the reception of deposits in an insolvent banking institution by the directors thereof; 1 case, and 4 defendants. These cases are pending in the Supreme Court on the application of the defendants for discharge under *habeas corpus*.

Acceptance of deposit in an insolvent banking corporation; 1 case, and 1 defendant. This case is pending in the Supreme Court on the application of the defendant for discharge in *habeas corpus*.

Assent to the reception of deposits in an insolvent banking institution by the directors thereof; 1 case, and four defendants. This case is pending in the Supreme Court upon the application of the defendants for discharge under *habeas corpus*.

PRELIMINARY EXAMINATIONS

Murder; 1 case, 1 defendant. The defendant was discharged on motion of the District Attorney on the ground that there was no evidence to substantiate such a charge or crime.

Arson; 1 case, and 1 defendant. The defendant was bound over to the grand jury. Pending.

Murder; 1 case, and 2 defendants. This case was dismissed on motion of the District Attorney on the ground that there was no evidence to connect the defendants with the crime. The defendants were held as witnesses.

Assenting to the reception of deposits in an insolvent bank by the directors thereof; 1 case, and 4 defendants. This case is pending in the Supreme Court upon the application of the defendants for discharge under *habeas corpus*.

Subscribing to false statement concerning the affairs of a bank; 1 case, and 3 defendants. This case is pending in the Supreme Court upon the application of the defendants for discharge under *habeas corpus*.

Receiving deposits in an insolvent bank; 1 case, and 4 defendants. This case is pending in the Supreme Court upon the application of the defendants for discharge under *habeas corpus*.

MISDEMEANORS

Vagrancy; 30 cases. Convictions in all cases.
Disturbing the peace; 26 cases; 24 convictions, and 2 discharges.
Drunk and disorderly; 8 cases; 6 convictions, and 2 discharges.
Assault and battery; 2 cases; 2 convictions.
Petit larceny; 4 cases; 4 convictions.
Obtaining goods under false pretenses; 1 case; 1 conviction.
Total convictions for misdemeanors, 69. Total discharges in misdemeanor cases, 4.
Total jail sentences (in days), 244. Average jail sentences in cases of conviction, 16 days.
Amount of fines paid, $66.50. Amount of costs paid, $55.24.
There was no conviction in a felony case during the year.
The cost to the county of Eureka for the foregoing prosecutions (as near as the same can be ascertained at the date hereof) is $2,410.20, including jury and grand jury fees.

Respectfully submitted,
THOMAS J. MCPARLIN, *District Attorney.*

HUMBOLDT COUNTY

WINNEMUCCA, May 1, 1912.

To the Honorable the Attorney-General.

NUMBER AND CHARACTER OF PROSECUTIONS

FELONY CHARGES

State v. Charles McCabe—Felony, defrauding by drawing and passing worthless check.
State v. Frank Evans—Burglary.
State v. A. T. Carter—Assault with intent to kill.
State v. John Murphy—Burglary.
State v. Riley Wooten—Murder.
State v. Ralph Weaver—Burglary.
State v. Baron J. La Rose—Grand larceny.
State v. Harry Watson—Burglary.
State v. Guy W. Barnum—Forgery.
State v. J. Frank Tranmer—Murder.
State v. Nimrod Urie—Murder.
State v. Frank U. Friend—Embezzlement.
State v. C. E. Riley—Forgery.

MISDEMEANOR CHARGES

State v. Martin Rinza—Misdemeanor, exhibiting deadly weapon in the presence of two or more persons, in a rude and angry manner.

NUMBER OF PERSONS CONVICTED AND PUNISHMENT OF EACH

November 18, 1910—Ed. Hall; vagrancy; 90 days in county jail; sentence suspended 24 hours.
December 28, 1910—Cinnabar Jim; disturbing the peace; fined $200, alternative 100 days in county jail.

December 28, 1910—Skinny Pascal and Jimmy Morrison; disturbing the peace; fined $100, alternative 50 days in county jail.

January 5, 1911—John Doe Guignio, alias E. Polloni; disturbing the peace; to pay a fine of $20 with alternative of 10 days in county jail.

January 9, 1911—G. A. Pike; vagrancy; released on own recognizance to appear for sentence January 11, 1911, at 10.30 a. m. Defendant did not appear. Defendant not apprehended.

January 11, 1911—Gilbert Scott and George Tybo; disturbing the peace; each of said defendants sentenced to serve 60 days in county jail.

January 14, 1911—Oliver Deshon; petit larceny; 60 days in county jail.

January 23, 1911—M. C. Gomez; vagrancy; 40 days in county jail.

January 23, 1911—Frank Snodgrass; disturbing the peace; 30 days imprisonment in county jail.

January 24, 1911—C. F. Stone; vagrancy; 80 days imprisonment in county jail.

February 2, 1911—A. H. Patterson; carrying concealed dangerous weapon without a permit; a fine of $20 with alternative of 10 days in county jail, and in addition thereto, 30 days imprisonment in county jail.

March 1, 1911—Frank Fornia; vagrancy; 90 days imprisonment in county jail.

March 3, 1911—Emma Jim and Maud Donnelley; each sentenced to 20 days in county jail.

March 3, 1911—C. L. Tobin; assault and battery; fined $10, with alternative of 5 days in county jail. Fine paid by defendant.

March 20, 1911—Maud Cinnabar; disturbing the peace; fined $10, with alternative of 5 days in county jail. Released on her own recognizance for 24 hours.

March 23, 1911—Harry Smith; vagrancy; 40 days in county jail.

March 23, 1911—Jose Ortago; vagrancy; 10 days in county jail.

March 23, 1911—Charles Carey; disturbing the peace; fined $20. Fine paid.

April 3, 1911—George Tybo; disturbing the peace; 40 days in county jail.

April 5, 1911—George Massingill; vagrancy; 20 days in county jail.

April 21, 1911—Henry Sioux; disturbing the peace; 20 days in county jail.

April 22, 1911—Harry Marmalejo; disturbing the peace; 20 days in county jail.

April 24, 1911—Pat O'Toole; disturbing the peace; fined $10, with alternative of 5 days in county jail.

April 25, 1911—John Ryan; disturbing the peace; fined $10, with alternative of 5 days in county jail.

April 25, 1911—Indian Doe, alias Louie Jim; disturbing the peace; 20 days in county jail.

May 1, 1911—J. Conley; disturbing the peace; fined $20, with alternative of 10 days in county jail.

May 12, 1911—Martin Brown; assault and battery; fined $15. Fine paid.

May 12, 1911—Chesley B. Chapman; disturbing the peace; fined $10; fine paid and defendant discharged.

May 17, 1911—William Nunneley; disturbing the peace; fined $20 or 10 days in county jail.

May 17, 1911—William Merritt; disturbing the peace; fined $20 or 5 days in county jail.

May 20, 1911—Ned Oppenheim, Gilbert Scott, Mike Donnelly and Jenkins Jim; disturbing the peace; Mike Donnelly and Jenkins Jim fined $10 or 5 days in county jail. Ned Oppenheim and Gilbert Scott sentenced to 30 days in county jail. Defendant Mike Donnelly paid fine of $10 and discharged from custody.

May 23, 1911—A. Laferriere; disturbing the peace; fined $20 or 10 days in county jail.

May 31, 1911—Jim Daley; vagrancy; 30 days in county jail.

June 1, 1911—Michael Flynn; vagrancy; 30 days in county jail.

June 7, 1911—James Larmond; vagrancy; 30 days in county jail.

June 12, 1911—Herman Johnson; unlawful possession of opium pipe; fined $200, or 100 days in county jail.

June 15, 1911—John Foley; disturbing the peace; 10 days in county jail.

June 26, 1911—Ned Oppenheim; disturbing the peace; 60 days in county jail.

June 26, 1911—Thomas Barry; vagrancy; 20 days in county jail.

June 26, 1911—L. O. Martin; disturbing the peace; fined $30, or 15 days in county jail.

July 11, 1911—Harry Marmalejo; disturbing the peace; 30 days in county jail.

July 15, 1911—Maud Cinnabar and Theresa Sioux; petit larceny. Maud Cinnabar found guilty; 90 days in county jail.

July 24, 1911—Bob Johnson; vagrancy; sentenced to 20 days in county jail.

August 3, 1911—M. H. O'Neil; vagrancy; sentenced to county jail for forty days; sentence suspended 4 hours.

August 7, 1911—John Foley; disturbing the peace; sentenced to pay fine of $40, with alternative of 20 days in county jail.

August 7, 1911—Patrick Henry; disturbing the peace; sentenced to pay fine of $40, with alternative of 20 days in county jail.

August 7, 1911—Ben Button; disturbing the peace; sentenced to county jail for 20 days.

August 7, 1911—Jim Conway; vagrancy; sentenced to county jail for 40 days.

August 7, 1911—Charley Button; disturbing the peace; sentenced to pay fine of $40, with alternative of 20 days in county jail.

August 9, 1911—Thomas Reynolds; disturbing the peace; sentenced to pay fine of $20, with alternative of 10 days in county jail.

August 14, 1911—J. B. Ellinger and M. B. McMullen; obtaining money by false pretenses; J. B. Ellinger sentenced to pay fine of $200, with alternative of 100 days in county jail; M. B. McMullen sentenced to pay fine of $100, with alternative of 50 days in county jail. M. B. McMullen paid fine of $100 and was discharged from custody.

August 15, 1911—Anton Herzog; disturbing the peace; sentenced to pay fine of $20, with alternative of 10 days in county jail.

August 16, 1911—A. H. Fosen; disturbing the peace; sentenced to pay fine of $30, with alternative of 15 days in county jail.

August 17, 1911—Steve Coneo; disturbing the peace; sentenced to pay fine of $40, with alternative of 20 days in county jail.

August 24, 1911—Harry Cox; carrying concealed and dangerous weapon without permit; sentenced to pay fine of $50 and 30 days in county jail. This case appealed.

September 2, 1911 — Charles W. Brandt; vagrancy; sentenced to imprisonment county jail for 20 days.

September 2, 1911—John Bliss; disturbing the peace; sentenced to county jail for 30 days.

September 2, 1911—Eugene Meyers; disturbing the peace; fined $20 or 10 days in the county jail. Fine paid and defendant discharged.

September 15, 1911—James McNamara; vagrancy; imprisonment in county jail for 20 days.

September 16, 1911—Jesse Turner; threatening to assault; defendant placed under $500 bonds to keep the peace.

September 19, 1911—John Kerns; disturbing the peace; sentenced to county jail for 10 days.

September 23, 1911—J. Starr; disturbing the peace; fined $10 or 5 days in county jail; fine paid and defendant discharged.

October 2, 1911—Jesse Williams; disturbing the peace; fined $10 or 5 days in county jail; fine paid and defendant discharged.

October 11, 1911—Edward J. Diamond; disturbing the peace; fined $10 or 5 days in county jail; defendant remanded to custody of Sheriff.

October 12, 1911—Gilbert Scott; disturbing the peace; sentenced to 40 days in county jail.

October 12, 1911—John Doe Graham, whose true name is J. F. Graham; assault and battery; sentenced to pay $100 fine or 50 days in county jail. On November 14, 1912, certified copy of order of Board of Pardons of the State of Nevada, remitting $75 of said fine, filed; November 20, 1912, defendant paid fine of $25.

October 19, 1911—Joe Davis; vagrancy; sentenced to 90 days in county jail.

October 28, 1911—C. E. Williams; vagrancy; sentenced 90 days in the county jail.

(Not accurate as to misdemeanor charges for the reason that most of the Justices of this county failed to make reports during this year and were on salary, and there is no county record of such data.)

Number of persons convicted: Felony charges, 13; misdemeanor charges, 69.

Average punishments on conviction: Felony charges, 1 death penalty, 2 life imprisonment; average for remainder, 3 years, 7 months, 15 days; misdemeanor charges, 30 days imprisonment, $16.50 fine.

(Not accurate as to misdemeanor charges for the reason that most of the Justices of this county failed to make reports during this year and were on salary, and there is therefore no county record of such data.)

Number of persons acquitted: Felony charges, 4; misdemeanor charges, 6. (Not accurate as to misdemeanor charges for the reasons heretofore stated.)

Number of dismissals: Felony charges, none; misdemeanor charges, 7. (Not accurate as to misdemeanor charges for the reasons aforesaid.)

Number of prosecutions pending at time of making report: Felony charges: Four persons have been held to answer, but the grand jury has not yet met. Misdemeanor charges, none.

Cost of prosecution to county: Felony charges: $17,588.92, but this

does not include grand jurors' fees and mileage, which amounted to $1,100.60.

Misdemeanor charges: Cost cannot be ascertained, for the reason that most of the Justices of Humboldt County are on salary.

Amount of fines paid into county: Felony cases, none; misdemeanor cases, $1,156.50.

Respectfully submitted, J. A. CALLAHAN.

LANDER COUNTY

AUSTIN, December 1, 1911.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in Lander County during the year ending November 1, 1911:

Number and kind of prosecutions in the Justice Courts of the county were as follows:

AUSTIN TOWNSHIP

Disturbing the peace, 50; convictions 35, dismissed 10, acquitted 5.

Vagrancy, 11; convictions 4, indefinitely postponed 3, acquitted 4.

Contempt of court, 1.

Petit larceny, 3; convictions 3.

Assault and battery, 1; dismissed.

Defrauding boarding-house, 2; convictions 1, pending 1.

Surety of the peace, 1; conviction 1.

Running engine without license, 1; dismissed.

Obtaining goods under false pretense, 1; goods returned and case dismissed.

Total number of misdemeanors, Austin Township, 70.

Total number of preliminary examinations 9, as follows: Burglary 2, selling whisky to Indians not wards of the Government 5, assault with intent to kill 1, killing animals belonging to another 1.

Bonds forfeited 1, in the sum of $1,000.

ARGENTA TOWNSHIP

Disturbing the peace, 41; convictions 35, dismissed 6.

Intent to defraud, 2; convictions 2.

Assault and battery, 3; convictions 2, acquitted 1.

Bonds forfeited, 3; 2 in the sum of $10, 1 in the sum of $20.

Violating game law, 1; convictions 1.

Total number of misdemeanors in Argenta Township, 51.

Total number of preliminary examinations 3, as follows: Perjury 1, burglary 1, murder 1.

DISTRICT COURT

Number and character of the prosecutions for felonies in the District Court were as follows:

Burglary, 5; convictions 4. One defendant being dismissed on account of mental imbecility. The average punishment was 3 years, 1½ months.

Selling whisky to Indians not wards of the Government, 5; convictions 2, acquittals 3. Average punishment, 2½ years.

Perjury, 2; 1 ignored by the grand jury, 1 dismissed on account of the defendant being an Indian and not understanding the nature of an oath.

Subornation of perjury, 1; ignored by grand jury.
Killing animals running at large, 3; convictions 2, dismissed 1.
Average punishment, 1½ years.
Total average punishment on convictions, 2 years, 5⅔ months.
Number of prosecutions pending, 2.
Costs of prosecutions in District Court, approximately $5,000.
Amount of fines collected, $413.50.

Respectfully submitted,

D. A. PATE, *District Attorney.*

LINCOLN COUNTY

PIOCHE, December 1, 1911.

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, 1911:

Number and character of prosecutions: Murder, 2; assault with intent to kill, 2; assault with deadly weapon, 2; assault with intent to commit rape, 1; burglary, 5; grand larceny, 4; escape, 1; forgery, 1; obtaining money under false pretenses, 1; robbery, 1; criminal libel, 2; selling liquor within limits of construction camp, 6; opium smoking, 4; receiving stolen goods, 2; disturbing the peace, 40; petit larceny, 9; assault and battery, 9; vagrancy, 5; other misdemeanors, 16.

Number of persons convicted: Murder, 1 (life); manslaughter, 1 (9 years); burglary, 3 (1 year each); forgery, 1 (1 year); obtaining goods under false pretenses, 1 (3 months); smoking opium, 4 (average fine, $6); criminal libel, 1 (fine, $50); selling liquor within limits of construction camps, 6 ($25 fine and 5 on appeal pending); disturbing peace, 38 (12 suspended sentences, 26 imprisonments in county jail, average sentence 16, 19, and 26 days); vagrancy, 5 (3 suspended sentence, 2 sentenced to county jail, average 45 days); petit larceny, 3 (average punishment 36 days, 1 suspended sentence, 6 months); assault and battery, 2 (suspended sentence); other misdemeanors, 8 (5 average sentence 58 days, 3 suspended sentence).

Number of persons acquitted: Felonies, 1; criminal libel, 1; misdemeanors, 14.

Number of prosecutions abated or dismissed: Murder, 1 (no bill); escape, 1; grand larceny, 3; misdemeanors, 14; murder, 2 (dismissed at preliminary hearing).

Number of prosecutions pending: Escape, 5 (not in custody); murder, 1 (not in custody), not covered by report; assault with intent to commit rape, 1 (bail forfeited).

Amount of fines paid, $74.

Costs of prosecutions, $3,600.

Respectfully,

LEO A. MCNAMEE, *District Attorney.*

LYON COUNTY

DAYTON, December 11, 1911.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report during the year ending on the above date:

CHARACTER AND NUMBER OF PROSECUTIONS

Felony charges in the District Court, 10; misdemeanors in Justice Court, 19; cases tried in District Court 3, namely, 1 for uttering and passing a fictitious check; 1 for grand larceny; 1 for bigamy.

Punishments—For uttering and passing fictitious check, 2 years; for grand larceny, 5 years; for bigamy, 3 years. One case on appeal from Justice Court, for contempt of court, pending.

In Justice Court, 16 convictions; punishments ranging from 2½ to 20 days in the county jail, or fines ranging from $5 to $40.

Number of persons acquitted, none.

Number of persons as to whom prosecutions were abated or dismissed: Dismissed on motion of the District Attorney, 3; 2 for attempt to break jail, 1 for grand larceny. Charges ignored by grand jury, 2; uttering and passing a fictitious check, 1; resisting an officer, 1.

Number of prosecutions pending, 2; murder 1, forgery 1 (broke jail and escaped).

Costs of prosecutions, $4,375.65.

Amount of fines paid, $80.60.

Respectfully submitted,

JOHN LOTHROP, *District Attorney.*

MINERAL COUNTY

HAWTHORNE, December 1, 1911.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of criminal business transacted in this county during the year ending November 1, 1911:

NUMBER AND CHARACTER OF PROSECUTIONS

Grand larceny, 1; assault with intent to kill, 1; attempt to murder, 1; murder, 2.

Number of persons convicted, none.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed, 2.

Number of prosecutions pending, 3.

Cost of prosecutions, about, $350.

Amount of fines paid (Justice Court), $67.50.

Respectfully,

H. F. BREDE, *District Attorney.*

NYE COUNTY

To the Honorable the Attorney-General.

I respectfully submit the following report:

State v. Rainbow Hickman. Defendant was discharged on January 6, 1911, on a writ of *habeas corpus* sued out in the above-entitled court

on a commitment from the Justice Court of Tonopah Township, Nye County, Nevada, to await the action of the grand jury.

State v. John Deal and Bert Douthitt. In the latter part of December, 1910, the defendants were bound over by the Justice of the Peace at Rhyolite, Nevada, on a charge of robbery. The defendants remained in jail until the 19th of April, on which date an indictment was filed charging the defendants with the crime of petit larceny. On April 19 defendants entered a plea of guilty to this charge and on the 22d day of April, I, as District Attorney, moved the court to dismiss the case on the grounds and for the reason that the court had previously held that it had no jurisdiction to pronounce judgment upon an indictment of a grand jury for petit larceny. The defendants on said date were then charged in the Justice Court with the crime of petit larceny, to which they plead guilty and were sentenced to the county jail for a period of ninety days.

State v. Albert Allen. The grand jury heard evidence adduced by the State against the defendant on the crime of killing a calf running at large, not the property of the defendant, and after hearing the testimony they requested me to bring in an indictment for a misdemeanor, that is, an indictment charging the defendant with stealing the calf. This indictment was returned into court on the 19th day of April, 1911, and on the 20th a demurrer was filed to the indictment and on that date the demurrer was sustained upon the ground and for the reason that the court had no jurisdiction of misdemeanors. The defendant was then charged with the crime before the Justice of the Peace at Manhattan and the Justice Court, on motion of attorney for defendant, dismissed the case upon the grounds that the Justice Court had no jurisdiction in that and for the reason that the crime for which the defendant was charged was made a felony by statute and he could not he convicted of a misdemeanor, and the defendant was discharged.

State v. Dave Jans. The defendant was convicted of vagrancy in the Justice Court of Manhattan Township, in March, 1911, and on April 1, 1911, transcript on appeal from this judgment was filed in this court. The case is now pending and the prosecution thereof is held up by me for the reason that I did not think that the judgment could be sustained from the evidence that has been presented to me, and the case pending serves the purpose of placing me in a position to prosecute the defendant whenever I feel justified in so doing.

State v. Gajo Pistinat. The defendant was charged on the 21st day of April, 1911, with knowingly permitting a game of stud-horse poker to be played in his premises in Rhyolite, in this county, and on the 30th day of August, 1911, a verdict of guilty was entered, and on the 8th day of August, 1911, the defendant was committed to the State Prison for the period of one year.

State v. Pat Donovan. The defendant in this case was charged with the crime of burglary by indictment of August 4, 1911, and on August 22d the case was tried, and on the 23d the jury returned a verdict of not guilty.

State v. John Scott. On July 31, 1911, the defendant was indicted for making, uttering and publishing a bogus check, and on August 3, 1911, the defendant entered a plea of guilty, and on the 7th day of August, 1911, judgment was entered committing the defendant to the State Prison for a period of one year.

State v. George McIntire. The defendant was indicted on August 2, 1911, and on August 5, 1911, a plea of not guilty was entered and on the 24th the case was called for trial and on the 25th of August a verdict of not guilty was entered. The defendant was charged with the crime of embezzling $500 from the Eagles' Lodge at Manhattan.

State v. Jack Tomanovich. The defendant was convicted on the 26th of August of assault with intent to do bodily harm and sentenced to the State Prison for a period of one year. The facts and circumstances of the case are embodied in the statement of the District Attorney.

State v. Milo Basich. The defendant was indicted on August 8, 1911, of assault with intent to kill. On September 3, 1911, verdict of guilty of "simple assault"; and judgment sentencing defendant to six months' imprisonment in the county jail on September 7, 1911.

State v. George Stout. Indictment for selling whisky to an Indian on August 3, 1911. Verdict of guilty entered on August 16, 1911. On August 19, 1911, motion in arrest of judgment was granted upon the grounds and for the reason that the indictment did not state an offense, in that it did not charge that the Indian was not a ward of the Government. On August 19, 1911, on motion of the District Attorney, defendant was discharged.

State v. Edward Mayfield. Defendant bound over from the Justice Court of Manhattan Township on August 23, 1911, to answer to an indictment for selling whisky to Indians. The witnesses were not called before the grand jury and the defendant was delivered to the custody of the officers of the United States under and by virtue of our statute.

State v. W. A. Koyne. Verdict of guilty, as charged in the indictment, charging the defendant with grand larceny, September 10, 1911. September 14, 1911, judgment entered on the verdict and defendant committed to the State Prison for a period of four years.

State v. Nat Morgan. On November 7, 1911, the defendant was charged with the crime of attempting to kill a calf, not the property of defendant, while running at large. Plea of not guilty was entered. The case was tried on the 27th of November, 1911, and on the 28th of November the jury returned a verdict of not guilty, and the defendant was discharged.

State v. Felix E. Fleur. On November 17, 1911, an indictment was returned charging the defendant with the crime of forgery. On November 25, 1911, a bench warrant issued for the arrest of the defendant, and on December 2, 1911, defendant was arraigned and a plea of guilty entered. On December 4, 1911, the court pronounced judgment and committed the defendant to State Prison for the term of three years.

Total amount of state fines, $577.50.

J. A. SANDERS, *District Attorney.*

Certified to as substantially correct:

MARK R. AVERILL, *District Judge.*

ORMSBY COUNTY

CARSON CITY, April 19, 1912.

To the Honorable the Attorney-General.

DEAR SIR: I beg to report the following criminal cases and convictions in Ormsby County, Nevada, for the year of 1911:

Total number of cases, 66; total number of convictions, 63; cost of prosecutions, unknown; average sentence, 25 days in jail.

During the year there were no indictments for felony.

Yours very respectfully,

GEORGE L. SANFORD, *District Attorney.*

STOREY COUNTY

VIRGINIA CITY, December 1, 1911.

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, 1911:

Indictments—1 for burglary of the second degree, defendant convicted and sentenced to serve 3 years in the Nevada State Prison; 1 indicted for the crime of rape, defendant not to be found; 1 for obtaining money under false pretenses, defendant out of the State; 1 for resisting an officer, ignored.

Felonies—Number of preliminary examinations held, 3.

Misdemeanors—Total number of convictions, 3; pending for trial, 1; on appeal, 1.

Number of cases prosecuted in the Justice Court, 226; convicted 188, dismissed 24, acquitted 10, suspended sentence 4.

Amount of fines paid, $478.

Costs of prosecution, $275.

Respectfully, GEORGE N. NOEL, *District Attorney.*

WASHOE COUNTY

RENO, January 2, 1911.

To the Honorable the Attorney-General.

SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in this county for the year ending November 30, 1911:

CONVICTIONS IN DISTRICT COURT

J. J. Curtis—Burglary, second degree; 2 years.
Peter Holloran—Burglary, first degree; 1½ years.
Robert Murphy—Burglary, first degree; 1¾ years.
John McGee—Burglary, first degree; 1 year.
W. T. Smith—Forgery; 1½ years.
George Sylvester—Burglary, second degree; 2 years.
John Carey—Attempting infamous crime against nature; 5 years.
H. E. Christie—Embezzlement; 6 years.
A. F. Cunningham—Embezzlement; 9 years.
F. H. Wichman—Manslaughter; 8 years.
Joe Fritz—Making threats to extort money; 6 months.
H. S. Harris—Forgery; 1 year.
H. B. Kerr—Forgery; 1¾ years.
Wm. Maynard—Selling liquor to Indians; $500.
R. E. McNeal—Forgery; 2 years.

Thos. Murphy—Selling liquor to an Indian; 1 year.
James Morgan—Burglary; 1 year.
Frank Martenes—Assault with deadly weapon; 1¾ years.
Frank Parsons—Burglary; 1 year.
Frank Sullivan—Selling whisky to an Indian; $500.
P. S. Steele, alias H. R. Carpenter—Forgery; 1½ years.
J. Frank Tranmer—Murder; life imprisonment.
John Skimmerhorn, Jr.—Manslaughter; 9 years.
Acquitted by trial jury, 2.
Dismissed for lack of evidence, 1.
Prosecutions pending, 9.
Cases ignored by the grand jury, 5.
Average years sentenced (exclusive of life imprisonment), 14⅝.
Total cost of prosecution (exclusive of Tranmer case, charged to Humboldt County), $8,435.43.

PROSECUTIONS FOR MISDEMEANORS, JUSTICE COURT, RENO TOWNSHIP

Convictions, 41; acquittals, 7; dismissed for lack of evidence on account of failure of witnesses to appear, 16.

PROSECUTIONS FOR MISDEMEANORS, JUSTICE COURT, SPARKS TOWNSHIP

Convictions, 7; acquittals, 1; dismissals, 1.

No reports received from Verdi, Wadsworth, Olinghouse or Gerlach Townships.

Respectfully submitted,

WM. WOODBURN, JR., *District Attorney.*

WHITE PINE COUNTY

ELY, December 1, 1911.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to section 2313, Compiled Laws of Nevada, I beg to submit herewith my annual report covering the period ending on the 1st day of November, 1911:

NUMBER AND CHARACTER OF PROSECUTIONS, JUSTICE COURT

Assault and battery	24
Disturbing the peace	18
Petty larceny	8
Discharging firearms in public places	4
Aiding and abetting criminals	1
Accessory after the fact	1
Threatening to do bodily harm	3
Defrauding board bill	3
Assault with intent to kill	2
Embezzlement	5
Grand larceny	2
Carrying concealed weapons	7
Passing worthless checks	1
Vagrancy	1
Exacting money on promise to employ common labor	2
Malicious mischief	1
Total	83
Number of convictions	73
Cases dismissed	5
Defendants discharged	5

Cost of prosecution, $332.35.
Fines paid in to county, $665.

Average punishment for each crime by fine, $8.10; average punishment for each crime by incarceration in county jail, 6½ days.

DISTRICT COURT

During the period covered by this report I have prosecuted three cases in the District Court of this county.

The first case was that of J. H. McMurray, charged with embezzlement. The cost of this trial to the county was $813.20. The jury found the defendant guilty as charged in the indictment. Subsequently counsel for defendant made a motion for a new trial on the ground of improper conduct on the part of a certain officer having charge of the jury, the specific charge being that said officer had unduly tried to influence one of the jurors and prejudice him against the defendant. Upon the hearing of the motion the court took the matter under advisement, and subsequently ordered a new trial.

Upon the second trial of this case the cost to the county was $534.70, and at the conclusion of the second trial the jury in the matter failed to agree and were discharged by the court.

In the case of the State v. Oscar Baldwin, charged with grand larceny, which will be more particularly referred to in a separate report under the law, the cost to the county was $132.50. The defendant was found guilty by the jury, and by the court sentenced to serve a term of twelve years in the State Prison.

Respectfully submitted,

C. J. McFADDEN, *District Attorney.*

REPORTS OF DISTRICT ATTORNEYS FOR 1912

CHURCHILL COUNTY

FALLON, December 26, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to the requirements of section 1608, Revised Laws of Nevada, I herewith submit my annual report of the criminal business transacted in this county during the year ending November 1, 1912:

State v. Adolph Webber. Forgery. Tried May 20, 1912, convicted and sentenced to serve not less than two years or more than three years in Nevada State Prison.

State v. Al. Drennan. Grand larceny. Defendant plead guilty and sentenced to serve not less than one year, nor more than fourteen years in Nevada State Prison.

State v. R. F. Harris. Obtaining property under false pretenses. Under indictment by grand jury, but now fugitive from justice.

State v. Milio Olcesse. Assault with intent to kill. Indicted by grand jury. Fugitive from justice.

State v. James Snyder Brooks Quinn. Forgery. Defendant plead guilty and sentenced to serve not less than one year, nor more than one year and six months in Nevada State Prison.

State v. William Myers. Burglary. Indicted by grand jury and is now fugitive from justice.

State v. Charles Wilson. Attempt at suicide. Defendant plead guilty and sentenced to not less than one year nor more than one year and two months in Nevada State Prison.

State v. Jud Terrell. Murder. Charge ignored by grand jury and defendant dismissed from custody.

State v. H. J. Kinkead. Setting spring gun. Indictment quashed on grounds that defendant was compelled to testify against himself before the grand jury. Was rearrested upon the same charge and again held to await action of grand jury.

State v. Henry Hopkins. Burglary. Held to await the action of the grand jury.

State v. Henry Sue. Petit larceny. Sentenced to six months in the county jail.

State v. Pat Flynn and Bernard Clause. Petit larceny. Flynn acquitted, Clause fined $30 and in default of payment thereof sentenced to fifteen days in county jail.

State v. Kitty Broadley. Drawing deadly weapon. Convicted and fined $20. Costs, $6.

State v. Leo Romano. Drawing deadly weapon. Dismissed upon motion of District Attorney.

State v. Bradley Buckhart and Albert Fisher. Petit larceny. Convicted and sentenced to fifteen days in county jail.

State v. J. H. Johnston and Charles Clark. Petit larceny. Acquitted.

State v. John Doe Shepperd. Disturbing the peace. Convicted and fined $10.

State v. H. Allen. Disturbing the peace. Defendant discharged upon paying costs amounting to the sum of $5.

State v. Charles Bowman. Defrauding inkeeper. Convicted and sentenced to twenty-five days in county jail.

State v. Joe Ramos. Assault. Convicted and sentenced to six months in county jail.

State v. C. R. Smith. Selling liquor without a license. Convicted and sentenced to sixty days in county jail.

State v. C. H. Hoover. Disturbing the peace. Placed under $500 bond to keep the peace.

State v. Dave Jim. Petit larceny. Sentenced to one hundred days in county jail.

State v. Masimano Najar. Assault with a deadly weapon. Defendant discharged for want of evidence.

State v. John Galbreath. Petit larceny. Convicted and sentenced to six months in county jail.

State v. D. W. Peters. Cruelty to animals. Defendant entered a plea of guilty and was fined $5.

State v. Albert Martinez. Running water in public road. Defendant warned and dismissed.

State v. John H. Sheldon. Assault. Convicted and sentenced to six months in county jail.

State v. Sam Hiller. Assault. Defendant acquitted.

State v. Z. M. Taylor and L. P. Rounds. Peddling without a license. Case now before Nevada Supreme Court on writ of *habeas corpus*.

State v. G. Bentz. Disturbing the peace. Convicted and sentenced to sixty days in county jail.

State v. Alexander Spinose. Carrying concealed weapon. Convicted and sentenced to three months in county jail.

State v. Joe Ramos. Lewd and vicious cohabitation. (Revised Laws, 6460.) Convicted and sentenced to six months in county jail.

Total cost of prosecutions, $724.80.

Respectfully,

WILLIAM S. WALL, *District Attorney*.

CLARK COUNTY

LAS VEGAS, December 1, 1812.

To the Honorable the Attorney-General.

DEAR SIR: I beg leave herewith to submit my annual report for the year ending November 1, 1912, as District Attorney of Clark County, Nevada, as follows:

The number of prosecutions were 28, as follows: Assault with intent to kill, 4; murder, 4; forgery, 1; burglary, 2; crimes against nature, 1; miscellaneous misdemeanors, 16.

Number of convictions, 14.

Average punishment, 60 days in jail.

Number acquitted, 1.

Number abated or dismissed, 5.

Number of cases pending, 8.

The cost of the above mentioned prosecutions, as near as I can estimate, amounted to $1,682.75.

The amount of fines paid under the foregoing prosecutions from the

1st day of November, 1911, until the 1st day of November, 1912, was $208.45.

During the period covered by the foregoing report one trial jury and one grand jury were in attendance on the District Court.

Respectfully submitted,

O. J. VAN PELT, *District Attorney.*

DOUGLAS COUNTY

GENOA, November 15, 1912.

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, 1912:

Number and character of prosecutions: Felonies, none; misdemeanors, 16. In all cases the defendants plead guilty and were given a jail sentence or a fine, or both.

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

Number of prosecutions pending, none.

Cost of prosecutions and criminal business, $1,454.25.

Amount of fines paid, $125.50.

Respectfully submitted,

F. E. BROCKLISS, *District Attorney.*

ELKO COUNTY

ELKO, December 31, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report on criminal business transacted in Elko County, State of Nevada, for the year ending December 31, 1912:

Misdemeanors—Total number convicted and served jail sentence, 136; total number tried and acquitted, 7.

Felonies—Total number of defendants that had preliminary hearings, 8; total number of defendants held to answer, 6; total number of defendants discharged, 2; total number of defendants that waived their preliminary hearings, 4; total number of indictments ignored, 2; total number of defendants indicted, 8; total number of defendants that entered pleas of guilty, 3 (2 for the crime of robbery, and 1 for the crime of grand larceny); number of defendants tried and convicted, 3 (2 for grand larceny, and 1 for the crime of an attempt to commit rape); 1 defendant tried for the crime of consenting to her daughter under the age of 18 years leading a life of prostitution, and the jury disagreed and the indictment was dismissed; 1 case of robbery was continued until the first term of court in 1913; 3 defendants indicted in 1911 were tried, 2 for the crime of arson, and were found not guilty, and 1 for violating the gambling law, and was convicted; total number of defendants sentenced, 7; total number found not guilty, 2.

Total amount of penal fines collected, $575.25.
Total cost of prosecuting criminal cases in the District Court, $16,722.20.

Respectfully submitted,

JAMES DYSART, *District Attorney.*

ESMERALDA COUNTY

GOLDFIELD, December 2, 1912.

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 30, 1912.

Following is a statement of the number of persons convicted in the District Court, and character of punishment:

P. Conlon—Burglary of the second degree; August 26, 1912; 1 year.

John McGuire—Burglary of the second degree; August 26, 1912; 1 year.

Frank Baker and Fred Tully—Assault with intent to kill; October 5, 1912; 1 year each.

E. L. Robison—Making, uttering, publishing and passing false paper; October 14, 1912; 1 year.

Jennie Enright—Appeal from Justice Court on conviction for assault and battery. Appeal ordered dismissed November 16, 1911. Defendant served sentence imposed by Justice of the Peace.

Following is a statement of the number of persons acquitted, or as to whom prosecutions were abated or dismissed:

W. P. Bowie—Burglary of the second degree; November 7, 1911; acquitted.

W. P. Bowie—Burglary of the first degree; November 8, 1911; dismissed; ordered resubmitted to the grand jury.

Otto Liss—Grand larceny; April 19, 1912; jury disagreed, and defendant committed suicide in the county jail while awaiting second trial.

E. J. Jamieson—Grand larceny; committed suicide in the county jail, April 21, 1912, while awaiting trial.

Herbert Towers—Obtaining money under false pretenses; March 19, 1912, dismissed on motion of District Attorney, and ordered resubmitted to the grand jury.

Herbert Towers—Obtaining money under false pretenses; indictment set aside, August 17, 1912; appeal taken by State to Supreme Court, which is now pending.

Richard C. Goodwin—Murder; April 27, 1912; acquitted.

An approximate cost of prosecutions in the District Court, as far as the same can be ascertained, is as follows:

Official reporter	$371.80
Witness fees	228.30
Meals and lodging for jurors	184.35
Map	10.00
Deposition	2.40
Trial jurors	589.50
Grand jurors	581.70
Attorneys' fees, for defending parties under indictment, under appointment of court	300.00
Total	$2,268.05

Following is a statement of the number of prosecutions in the Justice Court and character of the same:

Assault and Battery—Convicted, 7; acquitted, 1; dismissed, 1, after jury failed to agree on first trial; average fine $33; average punishment, 16½ days in jail.

Violation of Town Ordinances of Goldfield—Convicted, 5; average fine, $5; average punishment, 18½ days.

Defrauding an Innkeeper—Convicted, 3; dismissed, 1; average fine, $16⅔; average punishment, 31⅔ days.

Nonsupport of Wife—Acquitted, 1.

Violating Pure-Food Law—Acquitted, 1.

Petit Larceny—Convicted, 9; dismissed, 2; average fine, $25; average punishment, 18 days.

False Pretenses—Dismissed, 1.

Exposing Poison—Convicted, 1; fined $120 and costs.

Carrying Concealed Weapons—Convicted, 2; one dismissed after jury disagreed on first trial; average fine, $20.

Making Threats against Life—Dismissed, 1.

Bound Over To Keep the Peace—Convicted, 1; who gave bond.

Vagrancy—Convicted 1; average sentence, 2 days.

Disturbing the Peace—Convicted, 27; dismissed, 2; average fine, $13.17; average punishment, 8½ days. In 17 cases, the sentence was suspended, or defendants were reprimanded, or released on their own recognizance.

Fines collected in the Justice Court, $155.

Costs collected from defendants in Justice Court, $165.70.

The above report includes only the prosecutions in the Justice Court of Goldfield Township. In the preliminary examinations before the Justice of the Peace where parties were charged with a felony, and either bound over to await the action of the grand jury, or dismissed by the magistrate, the cost of the prosecution in the Justice Court for reporter's fees for Goldfield Township amounted to approximately $394.70.

The Justice of the Peace and Constable of Goldfield Township are both salaried officers, each receiving $2,400 per annum.

Respectfully submitted,

J. EMMETT WALSH, *District Attorney.*

EUREKA COUNTY

EUREKA, December 1, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit to you my annual report of the criminal business transacted in the county of Eureka during the year and ending November 1, 1912:

Number of prosecutions: Indictments pending, 10.

Character of prosecutions: Violations of the banking laws.

The defendants in the foregoing cases were discharged by the Supreme Court upon *habeas corpus* proceedings, but the above cases are pending by reason of a petition for a rehearing filed in said proceedings.

Preliminary examinations, 2; murder, 1, defendant discharged; arson, 1, defendant held to answer to the grand jury, and charge ignored by grand jury.

Miscellaneous misdemeanors, 36. Fines paid, $2. Costs, $18, paid to County Treasurer.

Number of persons convicted, none.

Number of prosecutions pending at time covered by this report: The above ten indictments.

Persons indicated as to whom prosecutions were abated or were dismissed, none.

Costs of the foregoing prosecutions to the county, including costs of grand jury, $550.20.

Respectfully submitted,

THOMAS J. MCPARLIN, *District Attorney.*

HUMBOLDT COUNTY

WINNEMUCCA, December 1, 1912.

To the Honorable the Attorney-General.

Number and character of prosecutions for the year ending November 1, 1912, within Humboldt County, Nevada.

PROSECUTIONS FOR FELONIES

Murder	1
Assault with intent to kill	2
Forgery	3
Issuing false checks	2
Obtaining money under false pretenses	1
Grand larceny	4
Burglary	1
Perjury	1
Gambling	1
Total	16

PROSECUTIONS FOR MISDEMEANORS

Assault and battery	20
Rioting	3
Disturbing the peace	52
Petty larceny	17
Opium joints	2
Vagrancy	37
Carrying concealed weapons	6
Defrauding innkeeper	3
False pretenses	2
Nuisance	2
Unlawful sale of pledged property	3
Violating ordinance	1
Unlawful fencing of public highway	1
Violating pure-food law	3
Embezzlement under $50	1
Discharging firearms in towns	2
Unnamed offenses	11
Total	166

Number of persons convicted and average punishment on conviction: Felonies, 10; average punishment on conviction for those receiving determinate sentences, 4 years, 3 months, 22½ days; average punishment for those receiving indeterminate sentences, 1 year to 10 years.

Number of persons convicted of misdemeanors, 116; average imprisonment for all those imprisoned, 10.5 days; average fines for all those fined, $12.90.

Number of persons acquitted or as to whom prosecutions were abated or dismissed: Felonies, 4; misdemeanors, 50.

Number of prosecutions pending at the time covered by this report: Felony charges, 13; misdemeanor charges, unknown.

Cost of prosecutions to the county, $22,598.85.

Amount of fines paid therein, $1,405.00.

The items relating to misdemeanors are only approximately correct, for the reason that some of the Justices of the Peace in the county have made no report from which data can be accurately obtained.

The cost of prosecution is only approximately correct for the following reasons:

(a) A number of the Justices of the Peace are on salary, and costs of prosecutions in their courts cannot be correctly estimated.

(b) A number of the Constables are on salary, and the amount of the same chargeable to prosecutions cannot be accurately estimated.

(c) Some of the Constables are also Deputy Sheriff, and some of the cost chargeable to prosecutions is sometimes charged to the county as Sheriff's fees.

(d) The amount and value of Sheriff's services in obedience to Justice Court processes cannot be accurately ascertained.

(e) The amount and value of the Sheriff's services in attending upon and serving processes out of the District Court cannot be accurately ascertained.

(f) The amount of fees and mileage of grand jurors and trial jurors chargeable to the prosecution of criminal cases cannot be accurately calculated.

Respectfully submitted,

J. A. CALLAHAN, *District Attorney.*

LANDER COUNTY

AUSTIN, December 1, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law as required by section 1608, Revised Laws of Nevada, I, as District Attorney of Lander County, State of Nevada, hereby submit report of the number and character of prosecutions for the year ending November 1, 1912:

IN THE DISTRICT COURT

Felonies, 4, as follows: 1 case selling whisky to an Indian not a ward of the Government of the United States, acquitted on account of age and physical condition; 1 case assault with intent to kill, ignored by the grand jury; 2 cases of grand larceny, 1 released on account of mental and physical condition and 1 ignored by the grand jury.

Cases pending, 3.

MISDEMEANOR CASES TRIED IN THE JUSTICE COURT

Disturbing the peace	75
Assault and battery	6
Vagrancy	13
Defrauding an innkeeper	4
Petit larceny	5
Fugitive from justice	3
Malicious mischief	1
Threatening	1
Cases pending	1

NUMBER OF CASES DISMISSED BY JUSTICES OF THE PEACE

Misdemeanors, 23, as follows:

Selling liquor without a license	3
Forcible entry and detainer	1
Carrying concealed weapon	1
Gambling	2
Vagrancy	3
Disturbing the peace	6
Assault and battery	3
Search warrants	3
Threatening	1

CHARGES OF FELONIES EXAMINED BEFORE JUSTICES OF THE PEACE

Grand larceny, 3; 2 dismissed and 1 bound over to the grand jury; assault with intent to kill, 2; 1 dismissed and 1 bound over to the grand jury; selling liquor to an Indian not a ward of the Government of the United States, 3; 2 bound over to the grand jury and 1 dismissed.

COSTS OF PROSECUTION

Before the Justices of the Peace, approximately	$500.00
In the District Court, costs, approximately	1,000.00
Total costs of prosecution, approximately	$1,500.00

Fines collected in Justice Court, $21.

Average punishment before the Justices of the Peace, 20 days imprisonment or fine.

Respectfully submitted,

D. A. PATE, *District Attorney.*

LINCOLN COUNTY

PIOCHE, November 20, 1912.

To the Honorable the Attorney-General.

DEAR SIR: In compliance with section 1608, Revised Laws, I have to report for the year 1912, ending November 1, 1912, the following prosecutions:

FELONIES

Assault with deadly weapon (acquitted), 1; burglary first degree, 4; convicted 3, acquitted 1; burglary second degree (convicted), 2; placing obstruction on railroad track (convicted), 1; embezzlement of public money (first convicted, second dismissed), 2; escape (convicted), 1; assault with deadly weapon (pending), 1.

Convictions, 8; acquittals, 2; dismissed, 1; pending, 1.

Average punishment on conviction, $2\frac{3}{6}$ years.

Cost to county, including witness fees, expense of Sheriff in summoning witnesses and jurymen, meals to prisoners, meals to jurymen, fees for attorneys appointed by court to defend and to assist prosecution, stenographers in Justice Courts and District Court, and salary of Justice of the Peace at Caliente Township, $8,872.39.

Fines paid, none.

MISDEMEANORS

Assault and battery, 7; assault, 4; disturbing the peace, 8; discharging firearms, 2; petit larceny, 6; malicious mischief, 1; vagrancy, 3;

carrying concealed weapons, 1; keeping disorderly house, 1; violation of fish and game law, 1.

Number of convictions, 24.

Number of acquittals, 9.

Average punishment 3.229 months.

Fines collected, $598.75.

Very truly yours,

LEO A. MCNAMEE, *District Attorney.*

LYON COUNTY

YERINGTON, December 14, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of the criminal business transacted in Lyon County, during the year ending December 1, 1912:

CHARACTER AND NUMBER OF PROSECUTIONS

Felony charges in the District Court, 12; misdemeanors in Justice Court, 49; cases tried in the District Court, 9. The grand jury ignored charge in 4 cases, 2 for murder, 1 for forgery, and 1 for antedating a location notice.

NUMBER OF PERSONS CONVICTED AND CHARACTER OF PUNISHMENT

Convictions in the District Court, 9; assault with intent to kill, 3; burglary in the first degree, 2; burglary in the second degree, 1; grand larceny, 2; grand larceny, reduced to petit larceny, 1.

PUNISHMENTS

Maximum sentence, 7 years; minimum sentence, 1 year. In the case of John Petrovich, convicted of the crime of grand larceny, the defendant was sentenced to the State Prison for the term of 2 years; his sentence was suspended and he was paroled for two years, with an order from the court to report at the office of the District Attorney on the first Monday of each month during said period of two years.

One case of grand larceny was reduced by the court, on motion of the District Attorney, to petit larceny, and the defendant fined $500.

In the Justice Courts there were 43 convictions, punishments ranging from five days to six months in the county jail, and fines ranging from $1 to $500.

Number of persons acquitted or as to whom prosecutions were abated or dismissed: Murder, 1 (acquitted); grand larceny, 2 (dismissed on motion of the District Attorney).

In the Justice Court 6 cases were acquitted and dismissed.

Number of prosecutions pending in the District Court, 2.

Amount of fines paid, $799.

Costs of prosecution, estimated, $6,500.

Respectfully submitted,

JOHN LOTHROP, *District Attorney.*

MINERAL COUNTY

HAWTHORNE, December 1, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to law I herewith submit my annual report of criminal business transacted in this county during the year ending November 1, 1912.

Number and character of prosecutions: Assault with intent to kill, 2; attempt to murder, 1; jailbreaking, 1; grand larceny, 1.

Number of persons convicted, 2.

Number of persons acquitted, or as to whom prosecutions were abated or dismissed, 3.

Number of prosecutions pending, none.

Cost of prosecutions, about, $650.

Amount of fines paid, none.

Respectfully, H. F. BREDE, *District Attorney.*

NYE COUNTY

TONOPAH, November 1, 1912.

To the Honorable the Attorney-General.

DEAR SIR: In obedience to section 1608, Revised Laws of Nevada, I beg leave to submit the following report as required thereby for the year ending on the 1st day of November, 1912:

State v. D. B. Black. Indictment for felony. Forgery. Plea of guilty and judgment on March 12, 1912. Three years in State Prison.

State v. W. Van Patten. Appeal from judgment of Justice Court of Manhattan Township. Dismissed on March 2, 1912.

State v. Thomas Hadlock. Indictment March 20, 1912, for felony. Assault with intent to kill. On April 19, 1912, the defendant was committed to the State Hospital for the Insane, at Reno. After the commitment, as aforesaid, the indictment was dismissed upon the ground and for the reason that the records show in the commitment proceedings that the defendant was insane when the crime was committed.

State v. G. E. Dixson. Indictment on March 25, 1912, for a felony. Murder. Verdict on May 8, 1912, finding defendant guilty of manslaughter. On May 11, 1912, judgment was entered sentencing defendant to the State Prison for ten years. On August 12, 1912, the court made an order suspending execution of the judgment.

State v. Nick Vico and Jerry Comninaz. Indictment for felony. Killing a calf while running at large. June 17, 1912, verdict of not guilty.

State v. Andriza Mircovich. Indictment on May 16, 1912, for crime of murder. June 12, 1912, verdict guilty fixing defendant's punishment at death. June 15, 1912, judgment. July 31, 1912, record forwarded to Supreme Court on appeal.

Two cases wherein the State was plaintiff and Hall and Frevert were defendants, and Beardsley defendant in the other, the defendants were bound over to answer to indictment and the grand jury in both cases failed to find a bill.

No fines have been paid into this office.

The costs of the prosecution in each case cannot be determined by reason of the mode and manner in which the entries are made in the Auditor's office. The bills in criminal cases for witness fees, jury service and such items are intermingled with all other expenses of the county.

Respectfully submitted,

J. A. SANDERS, *District Attorney.*

ORMSBY COUNTY

CARSON CITY, December 31, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Herewith find annual report for the year 1912:

Number of prosecutions, 55, all misdemeanors; convictions, 53; average punishment, 17 days; 1 dismissal and 1 acquittal.

No prosecutions pending.

Costs to county, none.

Yours respectfully,

GEORGE L. SANFORD, *District Attorney.*

STOREY COUNTY

VIRGINIA CITY, December 23, 1912.

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, 1912:

NUMBER AND CHARACTER OF PROSECUTIONS

Burglary, 1. Defendant convicted of burglary of the second degree, and sentenced to not more than 2 years and not less than one year and 10 months in the Nevada State Prison.

Indicted for violation of the gambling law. Owing to the utter impossibility of securing sufficient evidence upon which to secure a conviction of the parties indicted, and also after a determined and unsuccessful endeavor to secure a jury to try one of the defendants indicted, the cases were dismissed.

Misdemeanors—Total number of convictions, 2.

Prosecutions pending under indictment, 2.

One charge of bigamy ignored by the grand jury.

JUSTICE COURT

There were 124 cases of a criminal nature tried in the Justice Court, of which number conviction was obtained in 114 cases, most of which cases were violations of the city ordinances.

Cost of prosecutions, $3,000.

Fines paid, $774.65.

Respectfully,

GEORGE N. NOEL, *District Attorney.*

WASHOE COUNTY

RENO, December 1, 1912.

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 for the year ending November 30, 1912:

CONVICTIONS IN DISTRICT COURT

Perry H. Brewington—Bigamy; 1 year, 3 months, $600 fine.
J. H. Cooke—Forgery; 1 year.
John Dillon—Forgery; 1 to 2 years; indeterminate.
James Fearn—Burglary first degree; 2 to 2½ years; indeterminate.
Paul Fink—Burglary first degree; not more than four years nor less than three years; indeterminate.
Edward Garland—Burglary first degree; 2 to 2½ years; indeterminate.
C. W. King—Living with prostitute; 1 to 1¼ years; indeterminate.
Jos. Leem—Burglary; 1 year 1 month to 1½ years; indeterminate.
Hyman London—Living with prostitute; 1 to 1¼ years; indeterminate.
W. E. Lamb—Forgery; 1½ to 2 years; indeterminate.
Thos. Munroe—Burglary; 1 1/2 years to 2 years; indeterminate.
Frank Mills—Forgery; 1 to 1¼ years; indeterminate.
Theodore Morris—Forgery; 1⅛ to 1¾ years; indeterminate.
Leon Noel—Burglary second degree; 2¼ to 2¾ years; indeterminate.
Wm. Costello—Burglary; 2 to 2½ years; indeterminate.
Elliott Peterson—Robbery; 5 to 10 years; indeterminate.
Wm. J. Potter—Grand larceny; 2½ to 3 years; indeterminate.
Donceano Rosas—Burglary second degree; 2½ to 3 years; indeterminate.
Peter Raicevich—Manslaughter; 6 years; indeterminate.
Kitty Smith—Robbery; 5 to 8 years; indeterminate.
John Scott—Forgery; 1½ to 2 years; indeterminate.
Charles Stringer—Assault with deadly weapon; 1⅜ to 1 1/2 years; indeterminate.
I. E. Smith—Assault; 5 months.
Ed. Stolicker—Forgery; 1½ to 1¾ years; indeterminate.
Henry Walker—Forgery; 3½ to 4 years; indeterminate.
Robt. M. Whitlock—Rape; 12 years.
W. W. Yerger—Forgery; 1¼ to 1½ years; indeterminate.
Acquitted by trial jury, 3; dismissals for lack of evidence, 2; prosecutions pending, 6.
Average years sentenced (based on the minimum), 2 2/3 years.
Total cost of prosecution, $7,494.17.

PROSECUTIONS FOR MISDEMEANORS IN JUSTICE COURT

Reno Township—Convictions, 46; dismissals, 31; acquittals, 1.
Sparks Township—Convictions, 12; dismissals, 4; acquittals, 4.
Wadsworth Township—Convictions, 15; dismissals, 5; acquittals, 5.
Verdi Township—Convictions, 7; dismissals, 0; acquittals, 3.
No reports received from Olinghouse or Gerlach Townships.

Respectfully submitted,

WM. WOODBURN, JR., *District Attorney.*

WHITE PINE COUNTY

ELY, December 5, 1912.

To the Honorable the Attorney-General.

DEAR SIR: Pursuant to section 1608, Revised Laws of Nevada, I beg to submit herewith my annual report covering the period ending December 1, 1912:

NUMBER AND CHARACTER OF PROSECUTIONS IN JUSTICE COURT

Simple assault	5
Assault and battery	31
Petit larceny	2
Discharging firearms in public places	6
Aiding and abetting prisoners	0
Accessory after the fact	0
Threatening to do bodily harm	1
Defrauding board bill	2
Assault with intent to kill	2
Embezzlement	3
Grand larceny	0
Carrying concealed weapons	6
Passing worthless checks	1
Vagrancy	1
Exacting money on promise to employ common labor	0
Malicious mischief	1
Gambling, misdemeanor	1
Bond to keep the peace	1
Flourishing deadly weapon	4
Cruelty to animals	2
Selling liquor without a license	2
Robbery	0
Forgery	0
Having possession of opium and opium pipes	5
Frequenting a house where opium is kept	1
Resorting to an apartment to smoke opium	1
Discharging a pistol on a public highway	1
Trapping wild ducks out of season	1
Killing deer out of season	1
Total	81
Number of convictions	57
Cases dismissed	20
Defendants discharged	4

Fines paid into county, $1,298.

Under the item of cost of prosecution the exact figures cannot be given, as the Justice of the Peace is on a salary of $150 per month, and no record is available in this county. But all the prosecutions herein cited have been tried before A. J. Cartwright, Justice of the Peace of Ely Township No. 1.

Average punishment for each crime by fine, $16.05.

Average punishment for each crime by incarceration in county jail, 6½ days.

DISTRICT COURT

State v. George Vuk. Defendant was convicted in Justice of the Peace Court on charge of assault and battery and by petition for writ of *habeas corpus*, defendant was discharged on the ground that the complaint did not state a public offense. There were no witnesses sworn, the petition simply raised a question of law.

State v. August Munter. Defendant was charged with discharging firearms on a public highway, and appealed from the Justice Court to

the District Court after conviction, and the case is now pending for the reason that the Hon. B. W. Coleman, Judge, is disqualified in the case, and no outside Judge has been called in here yet to hear the case.

State v. Fred Magilton and W. R. Bauer. Grand larceny. Tried and found not guilty. Cost of case, $87.20.

State v. J. E. Burke. The defendant was charged with felony (gambling) and bound over to the action of the grand jury, and the grand jury ignored the charge. Defendant was released from custody.

State v. Tom Murray. Same as previous case. Ignored by the grand jury.

State v. Ma Sing. Same as previous case. Charge ignored by the grand jury.

State v. Bessie Arlington. Defendant was charged with grand larceny. A disagreement of the jury in this case. Defendant afterwards plead guilty to petit larceny; sentence was suspended by the District Judge, and defendant allowed to go on her own recognizance. Cost of prosecution, $50.

State v. Henry Heber. Defendant was charged with the murder of one Jennie Fitzgerald, and found guilty of murder in the second degree and sentenced to a term of fifteen years in the Nevada State Prison, where he is now serving time. Cost of prosecution, $911.20.

State v. John Pistkovice. This case was an appeal from the Justice Court to the Ninth Judicial District Court. Dismissed upon payment of costs, as the witnesses for the State had left the county. Defendant in above-entitled case was charged with selling liquor without a license.

State v. George Valassis. The defendant was indicted by the grand jury for exacting money on the promise to employ common labor. The indictment had to be dismissed on motion of District Attorney, as there was no proof to sustain the allegations of the charge.

State v. Emil Marrilio. Defendant in this case was charged with carrying concealed weapons, complaint having been prepared by J. H. Leishman, Justice of the Peace, acting for A. J. Cartwright, and by a petition of a writ of *habeas corpus* defendant was released from custody on the ground that the complaint did not state a public offense, the writ having been granted.

State v. Harry Curtiss. Defendant was convicted of assault and battery in the Justice Court, and appealed to the District Court, where it now awaits trial as soon as the complaining witness returns to Ely.

State v. H. T. Caravantes. Defendant in this case was charged with passing worthless checks; bound over to the grand jury, and charge was ignored. Defendant was released.

State v. Bart J. Smithson. Defendant was charged with assault with a deadly weapon with intent to inflict a bodily injury. When time for trial had arrived, defendant through his attorney asked that he be allowed to plead guilty to simple assault. The plea was accepted on behalf of the State, and defendant was sentenced to serve the term of thirty days in the county jail, which he served. Cost of prosecution, $36.10.

State v. Joseph Marivitch. Defendant was charged with the murder of John Okzeba, at the Veteran mine, by stabbing him to death. He was convicted and sentenced to life imprisonment in the State Prison. Cost of prosecution, $476.10.

State v. John Bracovich. Defendant in this case was charged with assault with intent to kill. The jury found the defendant guilty as charged in the indictment, and he was sentenced to serve a term of three years in the State Prison, which term he is now serving. Cost of prosecution, $73.20.

State v. W. G. Allen, G. W. McGaffin, John Danials, Ernest Neidhardt, Arthur Sanders, Geo. Graham, Edward E. Hutchison, John Martin, Frank Stewart, John Dunovan, J. E. Mullaney, Carl Schmidt, Edward F. Rooney, H. Brady, Alward Hoffman, Geo. Furtell, William Anderson, J. R. Bryce, John Dillon, Fred Gassier, Geo. W. Davis, J. A. Collins. The defendants were all charged with the crime of murder, committed at McGill, during the strike in October, 1912. Preliminary hearing was waived; the cases were investigated by the grand jury, and the charge was ignored. The matter is now pending in the District Court of the Ninth Judicial District, an effort being made to have these cases resubmitted to a new grand jury.

This includes a complete report up to the present date, including prosecutions and cost of the same, under the requirements set forth in section 1608 of the Revised Laws.

Respectfully submitted,

C. J. McFADDEN, *District Attorney.*

IN MEMORIAM—CLEVELAND HALL BAKER

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON CITY, December 16, 1912.

Court convened at 10 o'clock a. m.

Present—SWEENEY, C. J., TALBOT, J., and officers of the Court.

E. T. Patrick, Esq., Deputy Attorney-General, now addressed the Honorable Court, announcing the death of the Hon. Cleveland H. Baker, Attorney-General of the State of Nevada, who died December 5, 1912, as follows:

May It Please the Court:

It is my mournful duty to announce officially to this Honorable Court the death of CLEVELAND HALL BAKER, Attorney-General of the State of Nevada, which occurred at his residence in this city, after a very brief illness, on the morning of the 5th of December. He had been engaged in the duties of his office until after 5 o'clock of the previous evening and departed for his home apparently in his usual health. He was taken ill during the night and died the following morning.

So suddenly was he snatched away from among us that it is even yet difficult to realize that we will see his genial, smiling face and hear his pleasant voice no more.

Mr. Baker was a man of great fortitude and will-power, for, although he must have realized that the malady which afflicted him was fatal and his demise a matter of but a few weeks or months, no one ever heard him utter a word of complaint or mention the precarious state of his health.

To know him was to respect and admire him, and he was gifted with so much tact and was so uniformly polite that, if it was necessary in his duty as Attorney-General, for him to interpret the law in a manner adversely to the contention of his opponent, he was able to do so and still retain the respect and friendship of the person affected by his decision. This was also exemplified by his manner in court.

Your Honors will remember an instance of this only a few weeks since when Mr. Baker, kindly and considerate in his dealings with all, excused the act of an officer, in a case where all of the attorneys interested unanimously agreed that such officer had made a mistake, by saying that it was the duty of all officers to follow the law as written.

Elected by the people to two important offices of honor and high position, he conducted the affairs thereof with credit to himself and satisfaction to the people. Exposed to all the temptations which beset one seeking and occupying such prominent positions, not one word of reproach has ever been truly uttered against him, either in his moral, political or social character, and it can well be said of him, as beautifully expressed by Tennyson, that "He wore the white flower of a blameless life."

It is proper and fitting that the passing of such a life should be duly commemorated. I, therefore, move this Honorable Court that a committee be appointed to draft resolutions of sympathy for his family and respect to the memory of our deceased brother.

Upon motion of the Hon. E. T. Patrick the Court appointed the following committee to draft resolutions upon the death of the Hon. Cleveland H. Baker, Attorney-General: Hon. Geo. B. Thatcher, Hon. William Woodburn, and Hon. H. F. Bartine.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON CITY, December 30, 1912.

Court convened at 10 o'clock a. m.

Present—Full bench and officers of the court.

The committee heretofore appointed to draft appropriate resolutions expressing the sorrow of the Court and bar due to the death of Cleveland H. Baker, the Attorney-General of the State of Nevada, and the committee being present in court, Hon. H. F. Bartine presented the following to the Court:

IN MEMORIAM

CLEVELAND HALL BAKER

Died December 5, 1912

To the Honorable the Supreme Court of the State of Nevada:

The undersigned, to whom was delegated the duty of paying tribute to the memory of the late Attorney-General, CLEVELAND H. BAKER, beg leave to submit the following:

Struck down in the flower of his brilliant young manhood, with the brightest of worldly hopes before him, the death of CLEVELAND H. BAKER, Attorney-General of Nevada, cast a gloom over the entire State. In delicate health for two years past, but with no suggestion that the end was so near, on the 5th day of December, 1912, he died, literally in the arms of the devoted wife and widowed mother whom he loved so well.

Nothing could have been more serenely beautiful than the home life of the man whom the bench and bar of this State honor today. At his age most men have scarce reached the height of their early frolics and foibles, but to him the family circle was the dearest thing on earth. It was the sacred spot for which his heart ever yearned and which, when wearied with the cares of the day, in preference to all other places and associations, he sought as the shades of evening fell. His devotion to his young wife, who gave him the fullest measure of affection in return, to his gray-haired mother and to his brothers and sisters, bespoke the true nobility of his character and endeared him to all who knew him as he was.

Afflicted with what appeared to others to be an incurable disease, not a murmur or a complaint escaped him. Cheerful, and even joyful, in his temperament he shed rays of sunshine where'er he went, and he was the very life of any social gather-

ing of which he formed a part. Highly educated along broad lines, and a careful student of law in its basic principles, he had, at the age of thirty years, already attained an enviable and honored standing in the profession of his choice.

Mr. BAKER began his public career as District Attorney of Nye County, serving faithfully and efficiently for the term of two years. Elected in 1910 to the higher office of Attorney-General, he had already made a distinguished name for himself when the Grim Reaper called him away from all earthly duties. During the two years he held the office of Attorney-General he had grown and developed professionally in a most remarkable degree. His associates in office found him a safe and sure counselor, his opinions upon legal questions indicating a maturity of thought seldom observed in one so young. With ordinary health and strength it is reasonable to believe that soon he would have had few equals and no superiors in the bar of this State. Always kindly, always courteous, always conscientious in the discharge of his duties, he commanded the respect of all and the love of those who knew him best. Had he been permitted to live the usual span of human life, with physical strength on a par with his mentality, there is no honor and no distinction which he might not have attained. But while his mind, strong by nature and stronger by cultivation, maintained its clearness and even increased in power, his bodily strength failed day by day, little by little, until upon that fateful morning in December his heart and his brain both ceased their work and slept in silence together.

In the death of such a man as CLEVELAND H. BAKER we feel that the State has suffered an irreparable loss. On behalf of our bench and bar we wish to express as best we can our regret for the loss to the State, our sorrow for the loss to ourselves, and our tenderest sympathy for those who were nearest and dearest to him in his life, and whose own lives have been shadowed by the great bereavement they have sustained.

In lieu of the formal resolutions usually adopted in such cases, we ask that this expression be accepted as a performance of the duty assigned to us, and this feeble offering be printed in the next volume of the Supreme Court Reports of the State of Nevada.

GEO. B. THATCHER,
H. F. BARTINE.

The Court now replied and expressed its profound sorrow, respect and admiration of the deceased Attorney-General, Cleveland H. Baker, and thanking the committee for its appropriate memorial it ordered that the same be spread upon the minutes of the Court, and that an engrossed copy be forwarded to the widow and to the mother of the deceased, and that the memorial be printed in the next volume of the Supreme Court Reports.

Attest: JOE JOSEPHS, Clerk.

IN MEMORIAM—JAMES RAY JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON CITY, August 2, 1912.

Court convened at 10 o'clock a. m.

Present—SWEENEY, C. J., TALBOT, J., NORCROSS, J., and officers of the Court.

Hon. Cleveland H. Baker, the Attorney-General, now addressed the Court upon the death of Hon. James R. Judge, late Deputy Attorney-General and an officer of the Court. Upon motion of the Attorney-General the Court appointed the following committee to draft resolutions on the death of Hon. James Ray Judge as follows: Hon. Cleveland H. Baker, William Woodburn, and Samuel Platt.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON CITY, January 30, 1913.

Court convened at 10 o'clock a. m.

Present—TALBOT, C. J., NORCROSS, J., MCCARRAN, J., and officers of the Court.

The committee heretofore appointed to draft appropriate resolutions for the Court and bar on the death of Hon. James R. Judge, Deputy Attorney-General of the State of Nevada, consisting of Hon. Cleveland H. Baker, Hon. William Woodburn, and Hon. Samuel Platt, and it appearing that during the existence of this committee the Hon. E. T. Patrick notified this court of the death of the Hon. Cleveland H. Baker, one of the committee, therefore the Court, on the 16th day of December, 1912, appointed Hon. E. T. Patrick to act as a member of this committee in lieu of Cleveland H. Baker, deceased. Now, on this day, the full committee being present, Hon. Samuel Platt presented the following to the court:

Your committee appointed to draft and submit suitable resolutions upon the death of the late Hon. James R. Judge respectfully embodies as its report the following address delivered by the late Hon. Cleveland H. Baker, a member of your committee, before the Nevada Bar Association at its November session (1912) in Reno. Your committee not only presents the same as a fitting tribute to the memory of General Judge, but as a further testimonial of its high regard for the views and opinions and professional standing of the late lamented General Baker.

Respectfully submitted,

WILLIAM WOODBURN,
SAMUEL PLATT,
E. T. PATRICK,
Committee.

IN MEMORIAM

JAMES RAY JUDGE

The late James Ray Judge was born in Altoona, Pennsylvania, September 9, 1850, and died in Carson City, Nevada, July 31, 1912, in the State which he loved and adopted, and which had so often honored and favored him.

Between these two dates lies the record of a life of useful service and application.

Growing to manhood in his native State, the close-calculating and analytical bent of his mind caused him to study civil engineering. After graduating from a college there, he left Pennsylvania and came out with a surveying party and intentionally located at Carson City in 1877.

He found immediate employment as a practical railroad man with the Virginia and Truckee Railroad, and later was placed in charge as a foreman of construction.

The outdoor work in the West having built up his health to a marked degree, he determined to take up uninterruptedly the study of law, a study for which he had always treasured a fondness, and to which during all his spare time as a railroad man and engineer he devoted himself.

In 1879 he entered the law office of the late Col. A. C. Ellis as a student. Under the direction of that distinguished lawyer he acquired a strong and firm foundation in legal principles, and on April 5, 1881, he was admitted to practice before the Supreme Court of this State.

In the law Mr. Judge's chief distinction lay as a close and careful pleader. His pleadings were drawn with all the care and caution of a scholar, for, as he once said, "A person's standing in court depends upon what he is standing on."

In 1892 he moved to Eureka, where he became associated in law with the late Judge Henry Reeves, who at that time was acknowledged one of the brightest legal minds in the State.

However, with the price of silver declining and the mines of Eureka not being able to be worked profitably, business there did not reach expectations, and Mr. Judge returned again to Carson City and here he remained.

During his practice of law in the Capital City he was identified with some of the biggest and most important litigation that has come before our courts.

As one of the leading counsel for Governor Sadler in his election contest case, he ably and successfully defended his title to the office, and in that long-drawn-out struggle in which the foremost legal talent in the State challenged each other, he was conspicuous for his unfaltering zeal and close attention to the mass of detail involved in that suit.

While Mr. Woodburn was Attorney-General, Mr. Judge was appointed to assist him in the conduct of the important tax suits which were then pending against the Central Pacific Rail-

road, and since that time every case of any importance has usually found him allied on one side or the other.

On December 24, 1896, he was appointed Attorney-General by Governor Sadler to succeed the late Robert M. Beatty, who had died in office, and as Attorney-General he devoted his entire time to the affairs of the State, often being called upon for advice on matters of administration, and his official report is a splendid commentary upon the close attention and detail which he gave the affairs of his office, and his strong and well-reasoned opinions did much to guide the state officers through the many legal obstacles that arose.

In 1896 he served Governor Sadler for a time as his Private Secretary, and in the fall of that year, when silver was the keynote of one of the hardest campaigns ever waged in the interest of a Silver State, he rallied to its cause and as one of the standard-bearers of the Silver Party he was nominated and elected to the office of Lieutenant-Governor by a large majority.

By virtue of his election to this office he presided over the deliberations of the Senate during the Nineteenth and Twentieth Sessions, and as President of the Senate he made an admirable presiding officer by reason of his splendid equipment as a lawyer and a student of parliamentary law, and the close and intimate knowledge of the machinery and affairs of government which his former offices had made possible.

In 1893 he married Mrs. Della B. Upton in San José, California, who survives him.

After retiring from the office of Lieutenant-Governor in 1904, he devoted himself to the practice of his profession and accepted no public office until January, 1911, when he was appointed Deputy Attorney-General, which office he filled at the time of his death.

In the passing of General Judge the courts have lost one of the strongest exponents of the honesty and integrity of the bench; the bar one of its ablest pleaders and most courteous and obliging of counsel; the State a citizen who at all times stood ready and willing to serve in any capacity from the highest to the humblest, and whose most sacred duty was ever to be just and fair, and who, as Attorney-General and Lieutenant-Governor, by his every act and deed has added his name to his State's roll of honor.

From her who mourns him as a fond and affectionate husband may the Almighty, in his infinite wisdom and mercy, lift the burden of grief, and comfort the hearts of his fond and loving friends.

The Court now expressed its sorrow, respect and admiration of the deceased, James R. Judge, Deputy Attorney-General, and thanking the committee for the appropriate memorial, ordered that the memorial be spread in full upon the minutes of the court, that the Clerk of this Court forward an engrossed copy to the widow of the deceased, and that this memorial be printed in the next volume of the Supreme Court Reports, and in further honor and respect, when this Court adjourns, it will stand adjourned for the day.

Attest: J. JOSEPHS, *Clerk*.

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TYPOGRAPHICAL
UNION
LABEL
WASHOE