

STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

—
1913-1914
—

GEO. B. THATCHER, Attorney-General



CARSON CITY, NEVADA

STATE PRINTING OFFICE : : : JOE FARNSWORTH, SUPERINTENDENT

1915

STATE OF NEVADA

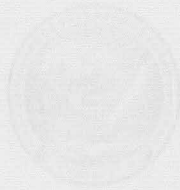
BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL



Geo. R. WATSON, Attorney-General



PRINTED BY THE STATE PRINTING OFFICE

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LETTER OF TRANSMITTAL

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 5, 1915.

To His Excellency, EMMET D. BOYLE, 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 1913 and 1914.

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	1912-1914
GEO. B. THATCHER.....	1915-1918

¹Died December 10, 1896.

²J. R. Judge appointed to fill unexpired term, December 24, 1896.

³Resigned January 15, 1901, and William Woodburn appointed on the same day to fill the unexpired term.

⁴Died December 5, 1912.

⁵Geo. B. Thatcher appointed to fill unexpired term, December 6, 1912.

OFFICE FORCE

GEO. B. THATCHER	Attorney-General
EDWARD T. PATRICK	Deputy Attorney-General
H. C. PRICE	Stenographic Clerk

REPORT OF THE ATTORNEY-GENERAL

During the period embraced in this report the following cases have had the attention of this office:

CASES IN THE SUPREME COURT OF THE STATE OF NEVADA WHEREIN THE STATE WAS A PARTY

State of Nevada v. Fred Skinner. Appeal from Nye County. Murder. Judgment affirmed.

State of Nevada v. Bernard Clark. Appeal from Humboldt County. Accessory to murder. Judgment affirmed. Pending on petition for rehearing.

State, ex rel. Mighels, v. Eggers. Petition for writ of mandamus. Writ denied.

State of Nevada v. University Club. Appeal from White Pine County. Selling liquor without license. Judgment reversed and case dismissed.

State of Nevada v. William Dye. Appeal from Elko County. Arson. Judgment reversed and new trial granted.

State of Nevada v. Frank Williams. Appeal from Humboldt County. Gambling. Judgment affirmed.

State of Nevada v. Andriza Mircovich. Appeal from Nye County. Murder. Judgment affirmed. Appellant executed.

In re Z. M. Taylor. Petition for writ of habeas corpus. Petitioner discharged.

In re V. L. T. Rounds. Petition for writ of habeas corpus. Petitioner discharged.

State of Nevada v. Herbert Towers. Appeal from Esmeralda County by State. Obtaining money under false pretenses. Appeal dismissed.

State of Nevada, ex rel. J. Eggers, v. E. P. Esser. Petition for writ of mandamus to compel payment of additional school tax. Writ issued as prayed.

State, ex rel. C. A. Norcross, v. J. Eggers. Petition for writ of mandamus. Writ granted as prayed.

In re Trifke Milosevich. Petition for writ of habeas corpus. Writ denied.

State of Nevada v. George Fronhofer. Appeal from Humboldt County. Murder. Pending.

State of Nevada v. Albert Nelson. Appeal from Elko County. Attempt to rape. Judgment affirmed.

J. A. McKinnon v. Second Judicial District Court. For writ of prohibition. Writ granted as prayed.

In re Alexander Dickson. Petition for writ of habeas corpus. Petitioner discharged.

State, ex rel. Abel, v. J. Eggers. Petition for writ of mandamus. Writ denied.

State, ex rel. Sparks, v. State Bank and Trust Company. Judgment

reversed and order allowing attorney fees and receiver fees set aside. Petition for rehearing was filed and refused. Case is now pending in the District Court of the First Judicial District upon application of the receiver for confirmation of his report and for compensation of receiver and fees for his attorneys.

State, ex rel. Beebe, v. William McMillan. Petition for writ of mandamus. Writ granted as prayed.

State of Nevada v. Cochran. Appeal from Washoe County. Forgery. Appeal dismissed.

State of Nevada v. Patchen and Burke. Appeal from Washoe County. Burglary. Judgment affirmed.

Nevada Tax Commission v. Campbell. Petition for writ of mandamus. Writ denied because application was premature.

In re E. J. L. Taber, District Judge. Petition for writ of prohibition. Writ refused.

State, ex rel. Geo. B. Thatcher, v. Frank P. Langan, District Judge. Application for writ of prohibition. Writ granted.

State of Nevada v. Bert Scott. Appeal from Humboldt County. Murder. Judgment reversed. Petition for rehearing pending.

Ex parte Kuhns. Petition for habeas corpus. Petitioner discharged.

Knox v. Kearney, State Engineer. Appeal from Clark County. To settle water rights. Judgment affirmed.

State, ex rel. Dotta, v. George Brodigan, Secretary of State. Petition for writ of mandamus. Writ denied.

Ormsby County v. William Kearney, State Engineer. Petition for writ of prohibition. To test water law. Decided with Anderson v. Kearney.

In re Benites. Petition for writ of habeas corpus. Writ denied.

State v. Wells-Fargo Company. To collect taxes. Appeal from Humboldt County. Pending.

State, ex rel. Eggers, v. Miller. Petition for writ of mandamus. Suit dismissed.

Ex parte Little Poole Jackson. Petition for writ of habeas corpus. Writ denied.

State v. Salgado. Appeal from Elko County. Murder. Pending.

George A. Bartlett v. George Brodigan, Secretary of State. Petition for writ of prohibition. Writ ordered as prayed.

State, ex rel. Geo. B. Thatcher, v. George W. Keith. Petition for writ of prohibition. Writ issued as prayed.

State, ex rel. Riggle, v. George Brodigan, Secretary of State. Petition for writ of mandamus. Writ denied.

State, ex rel. Geo. B. Thatcher, v. George Brodigan, Secretary of State. Petition for writ of prohibition. Writ issued as prayed.

State, ex rel. H. V. Moorehouse, v. George Brodigan, Secretary of State. Petition for writ of prohibition. Petition dismissed on motion of relator.

State, ex rel. Maxson, v. Brodigan and McKay. Petition for writ of prohibition. Writ denied.

State of Nevada v. Switzer. Appeal from Washoe County. Robbery. Pending.

State, ex rel. Central Pacific Railroad, v. Nevada Tax Commission. Petition for writ of mandamus. Writ granted.

State of Nevada, ex rel. Richard Busteed, v. Harley A. Harmon. Petition for writ of prohibition. Petition dismissed.

State, ex rel. Richard Busteed, v. Harmon and Harkins. Petition for writ of prohibition. Petition dismissed.

State of Nevada v. Clancy. Appeal from Washoe County. Robbery. Pending.

State, ex rel. Shaughnessy, v. Boerlin. Petition for writ of mandamus. Writ dismissed.

Allen G. McBride v. Griswold. Petition for writ of prohibition. Writ denied.

CASES IN THE DISTRICT COURT

E. H. Winters v. W. M. Kearney, State Engineer. To settle water rights. District Court of Humboldt County. Hearing indefinitely postponed.

H. Byrd Northrup v. William Kearney, State Engineer. To settle water rights. District Court of White Pine County. Pending.

In re William Chase Lawton. Petition to modify order. District Court of Washoe County. Pending.

Greater Humboldt Corporation v. Kearney. To set aside order of State Engineer. District Court of Ormsby County. Four cases. Pending.

State of Nevada, in the interest of Howard Eggendorfer, v. Carrie Eggendorfer. Motions to vacate order and quash citation denied. District Court of Washoe County.

Anderson v. Kearney, State Engineer. To restrain adjustment of water rights. District Court of Humboldt County. On appeal, judgment of District Court modified.

Ely Light and Power Co. v. Public Service Commission. To secure injunction. District Court of Ormsby County. By stipulation suit dismissed.

The Estate of Hiram Chase. District Court of Ormsby County. Petition of certain persons to be declared heirs. Pending.

Greater Humboldt Corporation v. William Kearney, State Engineer. District Court of Humboldt County. To set aside order of State Engineer. Pending.

Nevada Industrial Commission v. Washoe County. District Court of Washoe County. To collect premiums due Nevada Industrial Insurance fund. Judgment entered for amount claimed in complaint.

State, ex rel. Sparks, v. Nye and Ormsby County Bank. District Court of Ormsby County. Receivership. Pending.

Nevada Telegraph-Telephone Company v. Nevada Tax Commission. District Court of Nye County. To correct assessment. Pending.

Pittsburg Silver Peak Gold Mining Company v. Nevada Tax Commission. District Court of Ormsby County. To correct assessment. By consent judgment as prayed in complaint entered.

State of Nevada v. Berryman. District Court of Eureka County. Grand larceny. Case dismissed for want of evidence.

Goldfield Consolidated Water Company v. Nevada Tax Commission. Two cases—one in District Court of Nye County and other in District Court of Esmeralda County. To correct assessment. Pending.

The Estate of Otto Hartung. District Court of Washoe County. Petition for distribution of estate. Pending.

CASES IN THE DISTRICT COURT OF THE UNITED STATES

The Pullman Company v. William M. Weathers. To restrain collection of taxes. Upon payment of taxes in full, action was dismissed.

State of Nevada v. Blackburn. Criminal action brought under English-speaking law. Argued and submitted and awaiting decision.

Southern Pacific Railway Company v. Nevada Railroad Commission. Passenger-rate case. Suit dismissed on motion of defendant.

CASES IN JUSTICE COURTS

State Journal Publishing Company v. Nevada State Agricultural Society. In Justice Court, Reno Township, Washoe County. To collect charges for advertisement of State Fair. Case settled. Judgment paid in full.

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 155 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:

Agricultural Experiment Station	1
Assessors	2
Controller	9
Commissioner of Industry	1
County Clerks	3
County Commissioners	1
District Attorneys	29
Game Warden	1
Governor	16
Inspector of Mines	1
Legislative Committees	3
Miscellaneous	15
Nevada Hospital for Mental Diseases	1
Nevada Tax Commission	27
Registry Agents	5
Secretary of State	20
State Auditor	1
State Board of Education	8
State Board of Examiners	5
State Board of Health	1
State Board of Investment	2
State Orphans' Home	2
State Police	1
Total	155

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.

1. State Prison Convicts—General Road Fund.

Under Stats. 1911, 73, "Fifty cents per day per convict" should be paid in the "General Road Fund" created thereby, and on such funds warrants for claims incurred for working convicts on the public roads should be drawn.

CARSON CITY, January 2, 1913.

To the Honorable State Board of Examiners of the State of Nevada, Carson City, Nevada.

GENTLEMEN: Pursuant to your request I have looked into the law in reference to the payment of certain claims for expenses incurred in working convicts on the public roads as provided by Acts of 1911, 73.

The sum of \$20,000 was appropriated by said Act to constitute a fund to be known as the "General Road Fund."

It has been decided by a former Attorney-General that all payments by counties under the provisions of said Act shall go into the General Road Fund, and also the 50 cents per day per convict for the total number of days detailed, as provided in section 6 of said Act, shall go into said fund.

In answer to your inquiry: "Out of what fund the claims presented to me are payable?" permit me to say that it seems to me that the law is specific on the question, and these claims are payable only out of said "General Road Fund." The Act provides: Section 6. "All disbursements for expenditures arising under the provisions of this Act * * * shall be paid on warrants * * * drawn * * * from the following funds, respectively, in the State Treasury, to wit: From the said General Road Fund in every instance, except for part payment for clothing and commissary supplies, an amount not exceeding 50 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."

Under the above provisions, I take it, the Legislature intended that the "50 cents per day per convict" should be paid into said "General Road Fund," and on said fund warrants for the claims herewith returned should be drawn.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

2. State Board of Revenue—Counties—Emergency Loans.

Section 3831, Rev. Laws, does not require that the resolution declaring an emergency loan by a county be authenticated.

CARSON CITY, January 14, 1913.

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

SIR: I have examined the resolution of the Board of County Commissioners of Elko County, dated January 7, 1913, declaring an emergency

loan of \$50,000, and find that the same is correct and in due and usual form, except that heretofore it seems to have been customary for the Clerk to attach a certificate to such resolution that the same is a true, full, and correct copy of a resolution adopted by the Board of County Commissioners of the county named.

Upon examination of the statute, however, section 3831, Rev. Laws, it does not seem to require that the resolution be so authenticated, and if, in the opinion of the State Board of Revenue, the copy furnished is true and authentic, I think the board may safely proceed to consider the same in its present form and without such certificate.

Of course, whether or not the declaration of the emergency embodied in the resolution is sufficient to authorize the Board of County Commissioners to declare this temporary loan, is a matter upon which the State Board of Revenue must act and must be satisfied in the premises.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

3. Appropriation.

The appropriation under Stats. 1911, 276, is a continued appropriation, and may be drawn against until the same is exhausted.

CARSON CITY, January 18, 1913.

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

DEAR SIR: In accordance with your request, I have investigated the question of your right to issue warrants to Mr. Paul Gaston in payment of his services as special accountant for the State, under the provisions of the Act of 1911, p. 276.

I am informed that Mr. Gaston made a complete audit of the books for the year 1911 and is now upon a similar audit for the year 1912.

It is true that section 2 of the Act in question requires the Board of Examiners "to audit and examine at least twice in each year the accounts of all state officials." As a matter of fact, but two such examinations have been made in two years by Mr. Gaston, although the board may perhaps have made the audit and examination of the books themselves more frequently than Mr. Gaston has.

Section 6 of this Act provides: "The expense incurred in the examination of the accounts of the state officers for experts or otherwise, shall be a legal charge against the sum of \$2,400, which is hereby appropriated," etc.

From the language of the above quotation, I take it that the Legislature intended that the same should be a continued appropriation and should be drawn upon at any time until the same is exhausted. Inasmuch, therefore, as I understand from you that the sum of \$1,000 still remains to the credit of said appropriation, I see no reason why you cannot lawfully draw your warrant in favor of Mr. Gaston against this fund.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

4. Constitutional Law—Legislature.

Action by Legislature upon bills vetoed by the Governor after expiration of last session, as required by section 35 of article 4 of the Constitution, will not preclude the present Legislature from thereafter passing new bills during its session containing the same subject-matter.

CARSON CITY, January 23, 1913.

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

MY DEAR GOVERNOR: Replying to yours of the 22d instant, it is the opinion of the Attorney-General's office that action by this Legislature upon bills vetoed by the Governor after the expiration of the last session, as required by section 35 of article 4 of the Constitution, will not preclude the present Legislature from thereafter passing new bills during its session containing the same subject-matter.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

5. Coroner's Autopsy—Claim Against County.

A claim of a physician employed by a Coroner against the county for making an autopsy is a valid and legal claim against the county.

CARSON CITY, January 31, 1913.

MR. T. C. HART, *District Attorney, Churchill County, Fallon, Nevada.*

DEAR SIR: This office is in receipt of your communication of the 24th instant, asking an opinion as to the validity of a claim which has been filed against your county for the service of a physician and surgeon in performing an autopsy at the request of the Coroner and Coroner's jury.

It appears that the Coroner, on the recommendation of the jury, requested another physician to perform the autopsy, because it seems they could get nearer to the real facts and cause of death in that way, and because the county physician had told them, when questioned, that he did not think the autopsy would give any material light upon the cause of death.

Your view of the question involved is expressed as follows:

My idea in this matter is that since section 7547, Rev. Laws, empowers the Coroner to call a physician or surgeon, and since it is the duty of the Coroner and jury under the law "to summon and examine as witnesses every person who, in his opinion or that of the jurors has any knowledge of the facts and may summon a surgeon or physician to inspect the body"; and since the Coroner and jury are invested with investigating and discretionary powers and duties, that they certainly would not be bound to call in service any certain physician, but that they would, especially after making reasonable investigation and inquiry, have the authority to call in any physician or surgeon whom they saw fit, providing, perhaps, that they in good faith thought that by so doing they could come nearer to arriving at a complete and thorough investigation as to the cause of death; and that consequently they would bind the county for his services, as shown in Cyc., vol. 9, p. 988.

In response to your request for an opinion on the question involved, permit me to say that, after a careful review of the authorities quoted in your letter and of other authorities, I am of opinion that you have correctly stated the law on the subject as above quoted, and that this claim is a valid and legal claim against your county, and if, in the opinion of your Board of County Commissioners, the charge for performing this autopsy is reasonable, the same should be paid.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

6. Fees—Controller—Substituted Service.

Rev. Laws, 695, repeals by implication Stats. 1887, p. 86, and in case of substituted service upon the State Controller in actions in which a surety company is a party, it is his duty to collect the sum of three dollars at the time of service, and pay same over to the Secretary of State.

CARSON CITY, January 31, 1913.

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

DEAR SIR: In answer to your verbal inquiry of this date as to the amount of fee to be collected and the officer who shall collect the same in a case of substituted service upon the State Controller in actions in which a surety company is a party, permit me to say that the Act of 1909, p. 315 (Rev. Laws, 695, *et seq.*), repeals by implication the Act of February 26, 1887 (Stats. 1887, 86), and the only provision as to fees to be collected for such substituted service is contained in section 2 of the first-mentioned Act (Rev. Laws, 696), which is as follows:

For each copy of the process so served the Controller shall collect and pay over to the Secretary of State the sum of three dollars, which shall be paid by the plaintiff at the time of service, and which may be recovered by him as a part of the taxable costs if he prevail in the action.

That, in the opinion of the Code Commissioners, the Act of 1887 was repealed by implication by the Act of 1909, is proved by the fact that in the Revised Laws the said Act of 1887 is entirely omitted.

I am therefore of opinion that as the law now stands it is the duty of the Controller, when service is made upon him, as provided in Rev. Laws, 696, to collect the sum of three dollars at the time of service and to pay the same over to the Secretary of State.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

7. Constitutional Law—Taxation—Poll Tax.

A bill providing that poll taxes collected from residents of incorporated cities shall be apportioned to such cities would be unconstitutional, and in conflict with section 7, article 2, of the Constitution.

CARSON CITY, February 7, 1913.

Senate Committee on Counties, County Boundaries, Roads, and Bridges.

GENTLEMEN: I have to advise that the proposed Senate Bill No. 45 to amend section 99 of the General Revenue Act of the State of Nevada, by

providing that poll taxes collected from residents of incorporated cities shall be apportioned to such cities, is, in my opinion, in that respect unconstitutional, and in conflict with section 7, article 2, of the Constitution of the State of Nevada.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

8. State Orphans' Home, Children of—Expense of Maintenance.

No child not an orphan can be received by the Board of Directors of the State Orphans' Home unless it is sent by the County Commissioners of the county in which the child resides.

CARSON CITY, February 11, 1913.

The Board of Directors of the State Orphans' Home, Carson City, Nevada.

GENTLEMEN: Confirming my oral opinion of some days ago, I hereby advise you that the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, has no jurisdiction to order to the Orphans' Home, Howard Eggendorfer.

In the opinion of this office the general provisions of the Act known as the Juvenile Court Act, which provides for dependent children and provides for order of court, does not constitute an amendment of the Act for the government and maintenance of the State Orphans' Home.

Your board is governed by the statutes creating your board, to wit: "An Act for the government and maintenance of the State Orphans' Home," approved March 1, 1873, and under and by virtue of the provisions of section 12 and section 13 "no child can be received by your board unless it be sent by the County Commissioners of the county in which the child resides."

I therefore advise you that you have no present authority to receive into your institution the defendant, Howard Eggendorfer.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

9. Constitutional Law—Amendments to Constitution.

Statement of legislation necessary to carry amendments into effect.

CARSON CITY, February 13, 1913.

The Honorable, The Assembly of the State of Nevada, Carson City, Nevada.

GENTLEMEN: Complying with your resolution requesting the Attorney-General's office to advise the Assembly what legislation, in the opinion of the Attorney-General, is necessary to carry into effect the constitutional amendments approved by the people of the State at the last election, I have to advise:

That none of the amendments adopted by the people at the last election are self-executing with the exception of the amendment of section 3 to article 19 providing for the initiative, which is by its terms self-executing.

I have also to advise that the amendments to section 10 of the Constitution, providing for the taxation and assessment of patented mining claims, in my opinion, is not effective at the present time, and proper legislation should be enacted to carry it into effect.

I am handing you herewith, in compliance with your resolution, proposed bills to carry into effect the amendment of section 8 to article 1, providing for the filing of information in criminal cases, and the amendment of section 7 of article 15, relative to the appointment of females to the office of Notary Public, and the amendment of section 1 to article 10 of the Constitution, providing for the assessment and taxation of patented mines.

In my opinion the amendment relative to the initiative should be supplemented by some legislation looking to the preservation of the integrity of all petitions that may be filed thereunder.

Section 9 added to article 2, providing for the recall, should be supplemented by legislation providing for the integrity of the petitions, specifically providing for the issuance of the call for the special election, and providing a method of nominating other candidates in the special recall election.

The amendment to section 3 of article 11, concerning the investment of school funds, should be supplemented by appropriate legislation that will safeguard and restrict investments and protect the governing board having control of the investment of state school funds.

The matters of legislation concerning the recall, and the initiative, and the investment of school funds are, I respectfully submit, purely matters of policy, and I should prefer to confer and advise with your appropriate committees before submitting any proposed bills to your body in that connection.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

10. **Officers—State Officers—Commission of Industry, Agriculture and Irrigation, Claim Of.**

In view of the decision in the case of *State, ex rel. Norcross, v. Eggers*, all claims against the appropriation for the Commission of Industry, Agriculture and Irrigation charged against the same for the salary of the Commissioner are valid claims against the bureau fund. There should be in the bureau fund the amount which has heretofore been charged against that fund on account of the salary of the Commissioner.

CARSON CITY, February 24, 1913.

HON. C. A. NORCROSS, *Commissioner of Industry, Agriculture and Irrigation, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, requesting the opinion of this office as to the right of the State Controller to draw his warrants in payment of a number of claims against the appropriation for \$25,000 for your bureau contained in section 7 of the Act creating your bureau, approved March 17, 1911, which said claims were on certificates of yourself as Commissioner of said bureau, and have been approved by the State Board of Examiners.

In response thereto, permit me to say that the effect of the decision of the recent case of *The State, ex. rel. Norcross, v. Eggers*, was that all amounts in payment of your salary, which had been charged by the Controller against the above-mentioned appropriation, were payable out of the General Fund, which would leave in said appropriation the full

amount already paid to you as salary, and which has been charged by the Controller against the above-mentioned appropriation for your bureau.

In view of this decision, I am of the opinion that all claims against the appropriation to the extent of the amount charged against the same for your salary are valid claims against the bureau fund; that is, there should be in the bureau fund the amount which has heretofore been charged against that fund on account of the salary of the Commissioner.

From this balance in the fund all lawful claims against the same which are made upon your certificate and approved by the Board of Examiners should be paid.

As the State Controller advises me that he has closed his books with reference to this fund, it will, therefore, be necessary for the State Controller to credit your bureau fund with the amount which he has drawn against that fund in the payment of your salary. The State Controller can transfer this fund by this method, and his entry can show that it is done in compliance with and pursuant to the decision of the Supreme Court of this State in the case of *State, ex rel. Norcross, v. J. Eggers, Controller*.

In that connection, I wish to call your attention and also the attention of the Controller to the case of *State v. McMillan*, 34 Nev. 271.

I am sending a copy of this opinion, together with the approved bill against the fund, to the State Controller for his information.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

11. Election—Secretary of State, Duties.

It is the duty of the Secretary of State under section 11 of the Australian Ballot law to furnish all paper required for printing ballots at any municipal election.

CARSON CITY, February 25, 1913.

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

DEAR SIR: In response to your request for an opinion relative to ballot paper for the ensuing election in the city of Reno, as contained in your letter of Mr. J. R. Parry, City Clerk, of February 15, herewith returned to you, I am of opinion that it is your duty, under section 11 of the Australian Ballot law, to furnish the same.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

12. State Prison—Convicts—Boards of Pardon and Parole—Application for Parole.

One under indeterminate sentence in applying for pardon or parole must follow the same course as if a definite sentence had been imposed.

CARSON CITY, February 25, 1913.

MR. V. A. LAUGHLIN, *Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 6th instant, asking "Whether, under the indeterminate law, it is necessary to give any notice to the Judge and State's attorney of the county wherefrom, before putting in an application for a pardon or parole? Also, if, when the

minimum time has expired, one is called before the board or must file an application as usual?"

Upon an examination of the law, I am of opinion that one under indeterminate sentence, in applying for pardon or parole, must follow the same course as if a definite sentence had been imposed.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

13. Appropriation—Bureau of Industry, Agriculture and Irrigation.

The effect of the decision in *State, ex rel. Norcross, v. Eggers*, 35 Nev. 250, was that the Commissioner's salary was payable out of the General Fund of this State.

CARSON CITY, February 25, 1913.

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

DEAR SIR: The effect of the recent decision in the case of *State, ex rel. Norcross, v. Eggers* was that all amounts in payment of the Commissioner's salary, which had been charged by you against the appropriation contained in section 7 of the Act creating the Bureau of Industry, Agriculture and Irrigation, amounting to \$25,000, were payable out of the General Fund of the State, which would still leave in said appropriation the full amount heretofore paid the Commissioner of said bureau as salary, and which was charged by you against the above-mentioned appropriation.

In view of this decision, I am of the opinion that all claims against the appropriation to the extent of the amount charged by you against the same for Commissioner's salary are valid claims against the bureau fund; that is, there should be in the bureau fund the amount which has been heretofore charged by you against that fund on account of the salary of the Commissioner.

From this balance all lawful claims against the said fund made upon the certificate of the Commissioner, and approved by the Board of Examiners, should be paid. It will, therefore, be necessary for you to credit your bureau fund with the amount which has been drawn against that fund in the payment of the Commissioner's salary.

You can transfer this fund by this method, and your entry can show that it is done in compliance with, and pursuant to, the decision of the Supreme Court of this State in the above-mentioned action.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

14. Legislature—Appropriations.

The Controller is authorized to draw warrants against a Legislative Fund which has been appropriated, although there may be no money in the treasury out of which to pay the same.

CARSON CITY, March 1, 1913.

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

DEAR SIR: I am in receipt of your favor of the 26th ultimo, asking that an opinion "as to whether the State Controller can draw his warrants

for the per diem of a member of the State Legislature after the appropriation made for the same is exhausted?"

In response, permit me to say that the Senate and Assembly yesterday provided an additional legislative fund of \$25,000. It is your duty, therefore, to draw warrants against this fund for the per diem of members and attachés of the State Legislature, even if there is no money in the treasury out of which to pay the same.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

16. State Board of Investment—Statutes—State Board of Education.

The Act providing for a state loan and refunding all outstanding indebtedness of the State (Stats. 1913, 43) is a valid Act, and the State Board of Education is authorized to invest in the bonds to be issued under said Act.

CARSON CITY, March 11, 1913.

State Board of Education, Carson City, Nevada.

GENTLEMEN: I have to advise pursuant to your request for legal opinion that that certain Act entitled "An Act providing for a state loan and the refunding of outstanding indebtedness of the State," approved March 11, 1913, is a valid Act, under which the State Board of Education is entitled to invest in the bonds authorized to be issued under said Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

17. State Loan—State Board of Education—Refunding Bond—General Fund.

Form of bond and resolution declaring loan for redemption of outstanding bonds under Stats. 1913, p. 43.

CARSON CITY, March 13, 1913.

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

MY DEAR MR. EGGERS: I hand you herewith a form of bond to be issued under and by virtue of the provisions of an Act providing for a State Loan, and the refunding of outstanding indebtedness of the State, approved March 11, 1913, which form is approved by me.

I also hand you herewith, for your information, a copy of the resolution of the State Board of Education authorizing the refunding of one hundred and sixty-one thousand (\$161,000) dollars, which it holds of bonds of the State, in the bonds created under this Act, and further authorizing the investment in the bonds created under this Act of the sum of eighty-four thousand (\$84,000) dollars of cash on hand in the State Permanent School Fund ready for investment, as per the report of your office.

I also hand you a copy of a motion and resolution adopted by the

commission created under and by virtue of an Act entitled "An Act providing for a state loan and the refunding of the outstanding indebtedness of the State," approved March 11, 1913, declaring the loan providing for the redemption of outstanding bonds, and the reinvestment of bonds created under this Act, and providing for the balance to be placed in the General Fund of the State. The motion also pro rates the investments as to the various funds named in section 2 of this Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

18. Constitutional Law—Gift Enterprises—Police Power.

Assembly Bill No. 141, prohibiting gift enterprises, is constitutional, and is a valid exercise of the police power.

CARSON CITY, March 13, 1913.

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

MY DEAR GOVERNOR: I have your favor of March 11, relative to the constitutionality of Assembly Bill No. 141, an Act to prohibit gift enterprises and to provide for punishment for a violation of the same.

Mr. Robert C. Porter, referred to in your letter, also interviewed me on the question of the constitutionality of the proposed law.

The Supreme Courts of Alabama, California, Colorado, Georgia, Maryland, Minnesota, New Hampshire, New York, North Carolina, Rhode Island, and Vermont, and some of the circuit Federal Courts, have held such Acts to be unconstitutional. (*State v. Shugart*, 138 Ala. 86; *City Council of Montgomery v. Kelley*, 142 Ala. 552; *Ex parte McKenna*, 126 Cal. 429; *Ex parte Drexel*, and *Ex parte Holland*, 147 Cal. 763; *Denver v. Frueauff*, 39 Colo. 20; *Hewin v. Atlanta*, 121 Ga. 723-731; *Long v. Md.*, 74 Md. 565; *State v. Sperry & Hutchinson Co.*, 110 Minn. 378; *State v. Ramseyer*, 73 N. H. 31; *People v. Gillson*, 109 N. Y. 389; *People v. Dyker*, 72 App. Div. (N. Y.) 308; *People v. Zimmerman*, 102 App. Div. (N. Y.) 103; *Winston v. Beeson*, 135 N. C. 271; *State v. Dalton*, 22 R. I. 77; *State v. Dodge*, 76 Vt. 197; *Young v. Commonwealth*, 101 Va. 853.)

There are numerous similar decisions in the Federal Courts. On the other hand, the Court of Appeals of the District of Columbia, and also the Supreme Court of the United States have taken an opposite stand. (*Lansburgh v. District of Columbia*, 11 App. Cas. (D. C.) 512; *District of Columbia v. Gregory*, 35 App. Cas. (D. C.) 271; *District of Columbia v. Kraft*, 35 App. Cas. (D. C.) 271, 30 L. R. A. (N. S.) 957 and note; *In the Matter of Gregory*, 219 U. S. 210, 55 L. Ed. 184.)

The numerical weight of authority is undoubtedly against the constitutionality of such a statute, but I am of the opinion that the real weight of authority is in favor of its constitutionality, and, therefore, advise that, in my opinion, Assembly Bill No. 141, prohibiting gift enterprises, is constitutional and is a valid exercise of the police power of the State.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

19. Constitutional Law—Employer and Employee—Hours of Labor.

Senate Bill No. 36, "An Act limiting the hours of labor of females employed in any mill, etc.," is a valid exercise of the police power. The proviso therein for payment for extra employment at the rate of one and one-half times the regular earnings of the employee does not destroy its constitutionality.

CARSON CITY, March 18, 1913.

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

DEAR SIR: Replying to your request for an opinion on Senate Bill No. 36, "An Act limiting and regulating the hours of females employed in any mill, factory, manufacturing, mechanical or mercantile establishment, workshop, printing office, bakery, laundry, clothing, dressmaking or millinery establishment, store, restaurant, hotel, apartment house, lodging-house, hospital, office, or any place where goods or tickets are sold or distributed, or any express, railroad, transportation or power concern, or any concern engaged in the transmission or distribution of telegraph or telephone messages, or of merchandise," I have to advise that in my opinion said Act is a valid exercise of the police power. (People v. Elding, 254 Ill. 579, 98 N. E. 982, 40 L. R. A. (N. S.) 893; Withey v. Bloem, 163 Mich. 419, 129 N. W. 913, 35 L. R. A. (N. S.) 628.)

The only question in my opinion that can be raised as to the constitutionality of the Act is the proviso in section 1 thereof, as follows:

"*Provided*, that in case of emergency the period of employment may extend to fifty-two hours in any one week; *and provided, further*, that compensation shall be paid for such extra employment based at the rate of one and one-half times the regular earnings of such employee."

This proviso is certainly, to say the least, of doubtful constitutionality, because it interferes with the liberty of contract guaranteed by the 14th Amendment of the Constitution of the United States and a similar provision of our own Constitution. I am of the opinion, however, that while the proviso extending the hours of labor in emergency to fifty-two is valid and the proviso fixing the compensation for the extra employment in such emergency is probably invalid, in my opinion the last proviso: "*Provided, further*, that compensation shall be paid for such extra employment based at the rate of one and one-half times the regular earnings of such employee," does not destroy the constitutionality of the Act as a whole.

I am, therefore, of the opinion that said act is constitutional.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

20. Constitutional Law—Nevada School of Industry.

The provision in Stats. 1913, 384, section 3, does not render the said Act unconstitutional. A provision that a statute shall take effect upon a subsequent event is constitutional.

CARSON CITY, March 20, 1913.

To the Honorable Conference Committee of the Senate and Assembly.

GENTLEMEN: On amendments to Assembly Bill No. 105:

Replying to your request as to the constitutionality of said Act, and particularly with reference to that section which provides for a selection

of a site contingent upon the performance of certain acts by citizens of Elko, I have to advise that such provision in my opinion does not render the Act unconstitutional. A provision that the statute shall take effect upon a subsequent event is constitutional. (8 Cyc., p. 840; Walton v. Greenwood, 60 Me. 356.)

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

21. Constitutional Law—Criminal Practice—Death Penalty.

Assembly Bill No. 177, entitled "An Act to provide for inflicting the death penalty, etc.," is clearly unconstitutional for the reason that the subject of the Act is not expressed in the title, such Act being intended to be an amendment to section 431 of the Criminal Practice Act.

CARSON CITY, March 25, 1913.

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

DEAR SIR: Replying to yours of this date, requesting the opinion of this office on Assembly Bill No. 177, entitled "An Act to provide for inflicting the death penalty, describing the manner thereof, and to repeal all Acts and parts of Acts in conflict with this Act," and the effect your approval of the Act would have on the men in the Nevada State Prison now under sentence of death and who have been sentenced to be shot:

I have to advise that it is unnecessary for me at this time to express an opinion as to what effect your approval of the Act would have on the case mentioned in your letter, because in my opinion Assembly Bill No. 177 is clearly unconstitutional for the reason that the subject of the Act is not expressed in the title. You will note that the title of the Act is "An Act to provide for inflicting the death penalty, describing the manner thereof, and to repeal all Acts and parts of Acts in conflict with this Act," while the body of the Act clearly shows that it is an amendment to section 431 of an Act entitled "An Act to regulate proceedings in criminal cases in this State, and to repeal all other Acts in relation thereto," approved March 17, 1911.

I am, therefore, clearly of the opinion that said Act is unconstitutional and in violation of section 17 of article 4 of our Constitution.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

22. Constitutional Law—Liberty of Contract—Restraint Upon.

Senate Bill No. 152, entitled "An Act to prevent competition in restraint of trade, etc.," is unconstitutional. Said Act is an unreasonable restraint upon the liberty of contract guaranteed by the 14th Amendment to the U. S. Constitution, and is also in conflict with section 1, article 1, Nevada Constitution. Said Act is also in violation of section 1, article 1, Nevada Constitution, in that certain sections confer upon the Public Service Commission judicial powers in violation of the provisions of said section.

CARSON CITY, March 25, 1913.

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

MY DEAR GOVERNOR: Replying to yours of this date, requesting an opinion on the constitutionality of Senate Bill No. 152, "An Act to prevent competition in restraint of trade and providing for the revocation

and discontinuance of business licenses under certain conditions, and other matters properly connected therewith;" I have to advise that in my opinion said Act is unconstitutional.

Section 1 in my opinion is clearly unconstitutional and an unreasonable restraint upon liberty of contract guaranteed by the 14th Amendment to the Constitution of the United States, and is also in conflict with section 1 of article 1 of the Constitution of Nevada. (*Marymont v. State Banking Board*, 33 Nev. 333, 111 Pac. 295.)

I am further of the opinion that the Act is in violation of section 1 of article 3, in that sections 2, 3, and 4 confer upon the Public Service Commission of Nevada judicial powers in violation of the provisions of section 1 of article 3 of our Constitution.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

23. Constitutional Law—Courts—Jurisdiction.

Assembly Bill No. 135, entitled "An Act providing for original proceedings in the Supreme Court to secure rulings from that court upon the constitutionality or interpretation of Acts of the Legislature," is unconstitutional in that the said bill is in conflict with section 4 of article 6 of the State Constitution.

CARSON CITY, March 25, 1913.

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

MY DEAR GOVERNOR: Replying to yours of this date, requesting an opinion as to the constitutionality of Assembly Bill No. 135 as amended, the title of said Act being "An Act providing for original proceedings in the Supreme Court of the State of Nevada to secure rulings from that court upon the constitutionality or interpretation of Acts of the Legislature of said State and the effect of such rulings;" I have to advise that in my opinion the bill is in conflict with section 4 of article 6 of the Constitution of the State of Nevada, and is unconstitutional. Section 4 of article 6 defines the appellate and original jurisdiction of the Supreme Court of the State of Nevada, and I am of the opinion that this Act, providing for original proceedings in the Supreme Court, is in violation of that section.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

24. Constitutional Law—Legislature—Speaker, Duty Of.

Section 18, article 4, of the Constitution is mandatory, and a bill regularly passed by the Legislature without the name of the Speaker upon it is invalid.

CARSON CITY, March 25, 1913.

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

MY DEAR GOVERNOR: Replying to yours of this date requesting an opinion on Assembly Bill No. 171, which came to you from the Legislature without the name of the Speaker of the House upon it, I have to advise that in my opinion the failure of such officer to sign the bill renders the bill invalid.

Section 18 of article 4 of our Constitution has been repeatedly held by

the courts of this State to be mandatory (State v. Swift, 10 Nev. 176; State v. Rogers, 10 Nev. 250; State v. Glenn, 18 Nev. 34.) In State v. Glenn the rule laid by State v. Swift was approved, and Judge Hawley, speaking for the court, declared that "the signing of the bill by the officers designated in the Constitution is absolutely essential to its existence as a law."

I am, therefore, of the opinion that Assembly Bill No. 171 cannot become law.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

25. Statutes Repealed.

"An Act providing for the examination and auditing of the books and accounts of certain officers, and providing penalties for its violation," approved March 20, 1911, and "An Act to provide for the appointment of a State Auditor, to fix his compensation, and prescribe his duties," approved March 26, 1907, and amendments thereto on page 50 of the Statutes of 1909, are separate and independent Acts, have no relation to each other, are intended to apply to different conditions, and the Acts of 1911 in no way repeals, modifies, or affects that of 1907.

CARSON CITY, March 26, 1913.

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

DEAR SIR: In response to your verbal inquiry as to the effect of the Act entitled "An Act providing for the examination and auditing of the books and accounts of certain officers, and providing penalties for its violation," approved March 20, 1911, being Chapter 135 of the Statutes of 1911, upon "An Act to provide for the appointment of a State Auditor, to fix his compensation and prescribe his duties," approved March 26, 1907, being Chapter 123 of the Statutes of Nevada for 1907, and the amendments thereto appearing on page 50 of the Statutes of 1909, permit me to say that I am of opinion that these two Acts are separate and independent Acts, have no relation to each other, are intended to apply to different conditions, and that the Act of 1911 in no way repeals, modifies, or affects that of 1907.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

26. Constitutional Law—Railroad Commission—Railroad Commissioners.

Assembly Bill No. 329, entitled "An Act to fix the salary of the First Associate Commissioner of the Railroad Commission of Nevada," is unconstitutional in that it conflicts with section 17, article 4, of the Constitution.

CARSON CITY, March 26, 1913.

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

DEAR SIR: I am in receipt of your favor of the 24th instant, asking as to the constitutionality of Assembly Bill No. 329 entitled "An Act to fix the salary of the First Associate Commissioner of the Railroad Commission of Nevada."

Upon examination of the same, I find that it attempts to amend subdivision g of section 4549, Rev. Laws, which subdivision fixes the salaries

of the Railroad Commissioners. Section 17 of article 4 of the Constitution provides: "No law shall be revised or amended by reference to its title only; but, in such case, the Act as revised, or section amended, shall be reenacted and published at length."

In consideration of the foregoing provision of our Constitution, I am of opinion that the Act in question is unconstitutional and void.

For the same reason Senate Bill No. 163, "regulating the salaries of the members of the Railroad Commission of Nevada," is also unconstitutional.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

27. Officers—Actual Traveling Expenses.

The term "actual traveling expenses," as used in various sections of the general appropriation bill for 1913 (Stats. 1913, 183), means the actual expense of transportation only, and not the expense of meals and lodging while traveling. *Reversed.* (State, ex rel. Abel, v. Eggers, 36 Nev. 372.)

CARSON CITY, March 28, 1913.

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

DEAR SIR: Section 74 of Senate Bill No. 184 (the general appropriation Act), appropriated "for actual traveling expenses of District Judges nine thousand (\$9,000) dollars." You have asked me to advise you what is meant by the term "actual traveling expenses?"

The Statutes of 1865, p. 413, sec. 9, provides that it shall be the duty of the Superintendent of Public Instruction to visit each county in the State at least once a year for certain purposes, and further provides:

And the actual traveling expenses incurred by the Superintendent in the discharge of this duty shall be allowed and audited, and paid out of the General Fund in the same manner as claims upon said fund are now allowed, audited and paid.

The case of State, ex rel. Cutting, v. LaGrave, 23 Nev. 88, holds "that hotel bills incurred by the Superintendent of Public Instruction, while staying at a place for the purpose of visiting the schools, are not a portion of the 'actual traveling expenses' which are to be allowed and paid to that officer," under the provisions of the Act of 1865 above referred to.

The Supreme Court has therefore given a judicial definition of the term "actual traveling expenses:"

Section 4907, Revised Laws, provides:

In addition to the salary provided by law, each District Judge shall be entitled to receive his necessary expenses in going to and returning from the place of holding court, his traveling expenses when traveling by private conveyance, to be estimated at the usual amounts charged by public conveyance, and also his necessary expenses at the place of holding court when holding court in any county other than that of his residence.

An examination of the general appropriation bills passed at the last six sessions of the Legislature, previous to the one just adjourned, shows that, while numerous sections of said appropriation Acts provide for "traveling expenses" of various officials, none of said Acts uses the words "actual traveling expenses." The General Appropriation Act of 1913, however,

provides for "actual traveling expenses" of various officials in not less than eight different sections thereof.

In view of this fact and of the definition of said term in the case above referred to, it must be held that the phrase "actual traveling expenses" was used advisedly and with reference to such definition. On page 91 of the report of the case of the State v. LaGrave, I find the following:

Travel, in visiting a school, is going to and returning from the place where the school is situated, but, after he arrives there, he certainly is not, during his stay, traveling; consequently, his expenses, while there, are not incurred in traveling. But to make the matter still more certain, and apparently for the purpose of insuring that no general expense of the trips should be included, it is provided that the traveling expenses must be "actual." There are to be no constructive traveling expenses paid, but only such as are actual; that is, such as are real, bona fide, genuine expenses of travel. Had it been the intention to pay all the legitimate expenses of the Superintendent's trips, these words of limitation would not have been used.

From the above consideration, I am of opinion that the Legislature, in the General Appropriation Act of 1913, intended to confine the use of the appropriation for the traveling expenses of District Judges to "actual traveling expenses" as above defined, and that you are limited in allowance of claims out of this fund to such "actual traveling expenses."

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

28. Officers—State License and Bullion Tax Agent—Appropriation for Salary Thereof.

Section 4247, Revised Laws, does not constitute an appropriation, but merely a limitation upon the amount which the incumbent of the office of State License and Bullion Tax Agent may expend in any one year for traveling expenses.

CARSON CITY, March 31, 1913.

HON. L. F. ADAMSON, *State Auditor, Carson City, Nevada*.

DEAR SIR: I am in receipt of your request for my written opinion as to whether or not you are entitled to incur expenses in traveling in your official capacity as State License and Bullion Tax Agent.

The law creating this office appears in the Statutes of 1905, page 226. By such Act the salary was fixed at \$2,000 per annum and the actual traveling expenses were not to exceed \$500 per year. This law was amended in 1909 (Stats. 1909, p. 14), increasing the salary to \$2,500 per year, and increasing the expenses to a sum not to exceed \$1,500 for any one year. Section 8 of said Act (Rev. Laws, 4247) provides as follows:

The expenses of said State License and Bullion Tax Agent shall be a claim against the State, to be approved by the State Board of Examiners, and paid as provided in section 1 of this Act, said expenses not to exceed the sum of fifteen hundred dollars (\$1,500) for any one year.

Your contention is that this section made a specific appropriation of the sum of \$1,500 to provide for your expenses.

From an examination of the various general appropriation bills passed since the enactment of the Act in question, it appears that each year an appropriation to cover the traveling expenses of your office was carried in the General Appropriation Act. (Sec. 67, Stats. 1905, 86; sec. 70, Stats. 1907, 225; sec. 78, Stats. 1909, 166; sec. 30, Stats. 1911, 83.)

The Legislature of 1913 made no appropriation for the payment of the traveling expenses of this officer.

Section 277, Rev. Laws, being section 19 of article 4 of the Constitution, provides:

No money shall be drawn from the treasury but in consequence of an appropriation made by law.

This provision was passed upon in the case of *State, ex rel. Pyne v. LaGrave*, 23 Nev. 25, the syllabus of which is as follows:

To constitute an appropriation of state moneys by legislative act, there must be money placed in the fund applicable to the designated purpose.

In view of the positive prohibition of the Constitution against the payment of moneys from the treasury, except in consequence of appropriations made by law, and of the fact that the Legislature at every session, except the last, since the creation of this office, made an appropriation for traveling expenses, I cannot reach any other conclusion but that there is no fund appropriated by law out of which your claim for traveling expenses can be paid. It is, therefore, in the same condition as those of others who have rendered services to the State and no fund provided out of which to pay the same, and, as I understand the claim has been considered and acted upon by the Board of Examiners, it is now in shape for the passage of a relief bill covering the same, as provided by section 314, Rev. Laws.

I am of opinion that the words of section 4247, Rev. Laws, above quoted, do not constitute an appropriation, but merely a limitation upon the amount which the incumbent of your office may expend in any one year for traveling expenses, and that, although your demand is a just and legal claim against the State, no appropriation having been made for its payment, the Controller is without power to draw his warrant in payment thereof.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

29. Crimes and Punishments—Gambling.

In construing the amendment to section 253 of the Crimes and Punishments Act, Stats. 1913, 235, the phrase "prizes of a value not to exceed two dollars," should be construed in connection with the words "social games," and the purpose of the law was not to prohibit games for drinks and cigars played in saloons, nor to prohibit the offering of a prize of the value not to exceed two dollars by hostesses in the entertainment of their guests.

CARSON CITY, April 1, 1913.

HON. T. C. HART, *District Attorney Churchill County, Fallon, Nevada.*

DEAR SIR: Your favor of the 29th ultimo, asking certain questions in regard to the new gambling law, received.

The proviso is "that nothing in this paragraph shall be construed as prohibiting social games played only for drinks and cigars served individually, or for prizes of a value not to exceed two dollars."

In my opinion the phrase "prizes of a value not to exceed two dollars" should be construed in connection with the words "social games," and the purpose of the law was not to prohibit games played only for drinks and cigars in saloons, nor to prohibit the offering of a prize of the value not to exceed two dollars by hostesses in the entertainment of their guests.

Until some different interpretation has been placed upon the law by some District Court or the Supreme Court, I think that this should govern your course of action.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

30. Licenses—State Licenses—Slot Machines.

All legislation requiring a state license for the operation of slot machines has been wiped off the statute books, and there is now no provision upon which such license can be collected.

CARSON CITY, April 1, 1913.

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

DEAR SIR: I am in receipt of your favor of the 26th ultimo, asking "for a written opinion as to whether or not the license requirements of section 4 of that certain Act approved March 15, 1905, relating to nickel-in-the-slot machines is not operative in connection with the recent amendment of the gambling law permitting the playing of slot machines for cigars and drinks."

The recent amendment to the gambling law referred to provides as follows:

It shall be unlawful for any person * * * to play, maintain or keep any slot machine played for money, or for checks redeemable for money; * * * *provided, however,* that nothing in this paragraph shall be construed as prohibiting * * * nickel-in-the-slot machines for the sale of cigars and drinks and no play back allowed.

In order to better determine this question, a short review of the question of gambling in this State may be of service.

Under the common law, gambling of every kind was condemned, but in the year 1879, on page 14 of the Acts of that session, the Legislature of this State passed "An Act to restrict gambling and to repeal all other Acts in relation thereto." Under such Act licenses for conducting certain games therein named might be obtained, and such continued the law until the approval of the Act entitled "An Act prohibiting gambling, providing for the destruction of gambling property, and other matters relating thereto," appearing on page 307 of the Statutes of 1909, which Act seeks to prohibit all gambling.

Section 1 of said Act provides:

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

In the revision of this Act by the Code Commission (section 6518, Rev. Laws) the above provision as to slot machines was reenacted and after the word "money" the words "or played for chance" were inserted. The addition of these words to the section had the effect of driving all slot machines out of existence, and after the law became effective none were used for any purpose.

The first direct enactment in reference to slot machines appears in the Statutes of 1901, on page 23, whereby it was made a misdemeanor for "any one who deals, plays or carries on or conducts, either as owner or employee, whether for hire or not, any nickel-in-the-slot machine, or similar device which can be played for money, checks, cigars, drinks or prizes representing value."

Section 4 of this Act was amended in 1905 (Stats. 1905, 78) by allowing the procuring of "a license for the carrying on and operating of any nickel-in-the-slot machine." This section was further amended in Statutes of 1907, page 436, but such amendment is not in any manner material to the present inquiry.

These are all of the Acts I have been able to find with reference to licensing slot machines, and under the amendment of the original Act in the year 1905, above referred to, licenses on such machines were regularly collected.

Attached to the "Crimes and Punishments Acts," prepared by the Code Commission, in section 6834, Rev. Laws, is a long schedule of Acts repealed, paragraph 69 of which, on page 1937, repeals the original Act of 1901, the title of which is "An Act relating to nickel-in-the-slot machines, and providing a penalty for carrying on or playing against such machine or device," approved February 23, 1901.

In the revision of section 253 of the Act concerning crimes and punishments, just passed by the Legislature, the words "or played for chance" in connection with slot machines has been stricken out. The addition of the words "nor nickel-in-the slot machines for the sale of cigars or drinks and no back play allowed" shows that the Legislature intended to place the status of such machines as it was prior to the revision of section 233 of the Crimes and Punishments Act by the Code Commission, and it is a matter of common knowledge that such machines could be operated for this purpose under licenses.

In view of the foregoing, it appears to me that all legislation requiring a state license for the operation of such machines in the manner indicated by the recent amendment to the gambling Act has been wiped off the statute books, and there is now no provision under which such licenses can be collected.

It is therefore the opinion of this office that a person carrying on or conducting a nickel-in-the-slot machine in the manner indicated in the recent amendment to the gambling law, does not have to pay any state license therefor.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

31. Statutes—Interpretation of—State Board of Pharmacy.

Notwithstanding section 2 of Assembly Bill No. 90, which creates a State Board of Pharmacy, the said board is justified in using the fees collected by it to meet its expenses, but is not entitled to incur any expense in excess of such amount.

CARSON CITY, April 1, 1913.

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

DEAR SIR: In accordance with your request I have examined Assembly Bill No. 90, together with the accompanying letter from Nathaniel E. Wilson, which are herewith returned, and desire to respectfully report as follows:

This Act is designed to replace the present Act in regard to the regulation of the practice of pharmacy.

By section 5 thereof, you are authorized to appoint five competent registered pharmacists to serve as a Board of Pharmacy, and section 6 provides:

Each member of the board and the Secretary shall receive his necessary hotel and traveling expenses in attending formal meetings of the board, the same to be audited and allowed as other claims against the State out of the moneys appropriated by law.

Section 24 of this Act, as originally drafted, carried an appropriation of fifteen hundred dollars for carrying out the provisions of the Act; but this, I understand, was stricken out before passage. Section 22 of said Act provides:

All fees collected under the provisions of this Act shall be paid into the State Treasury at the end of every fiscal year.

Section 7 provides that the board shall hold a meeting once in every six months.

Sections 8, 9, and 10 of said Act provide certain fees to be paid for licenses, and this seems to be the only source of revenue provided by which the terms of the Act can be carried out.

In view of the foregoing, Mr. Wilson asks: "Can we pay the running expenses out of the moneys collected—the sole source of revenue—and turn the remainder into the State Treasury, supporting the disbursements with proper vouchers?"

It is never presumed that the Legislature intends to do a vain act and one which cannot be carried out, and, in view of the solemn enactment of this measure, it must be presumed that the Legislature intended that it should be enforced.

For the foregoing reasons, notwithstanding the provisions of section 22 of said Act above quoted, I am of opinion that, so far as the same are applicable, the Board of Pharmacy is justified in using the fees collected by it to meet the expenses of the board, but is not entitled to incur any expenses in excess of such amount.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

32. Legislature—Statutes—Constitutional Law.

A bill, to which the signature of the presiding officer of the Senate is not subscribed, never became a law, even though the same was retained by the Governor for a longer period than ten days before return of same to the Secretary of State.

CARSON CITY, April 1, 1913.

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

DEAR SIR: I am in receipt of your favor of the 2d instant in regard to Assembly Bill No. 171, to which bill the signature of the presiding officer of the Assembly was not subscribed.

It appears that the said bill has been retained by the Governor for a longer period than ten days (Sunday excepted), and you are inquiring whether, under section 35, article 4, of the Constitution, said bill became a law without the approval of the Governor by reason of having been retained by the Governor for a longer period than ten days.

Section 18 of article 4 of the Constitution provides:

All bills or joint resolutions shall be signed by the presiding officers of the respective houses and the Secretary of the Senate and Clerk of the Assembly.

Section 35 of the same article provides:

Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it he shall sign it. * * * If any bill shall not be returned within five days after it has been presented to him (Sunday excepted), exclusive of the day on which he received it, the same shall be a law in like manner as if he had signed it, unless the Legislature by its final adjournment prevent such return, and in which case it shall be a law unless the Governor within ten days after the adjournment (Sunday excepted) shall file such bill with his objections thereto in the office of the Secretary of State.

In my opinion, this bill never became a law, for the reason that the Speaker of the Assembly failed to sign it, and the fact that section 35 provides a way for the approval of the bill without the signature of the Governor is of no avail for the reason that in its present shape it could not be presented to the Governor for his approval or disapproval.

The omission of the name of the Speaker of the Assembly from the bill has the effect of making the bill void and prevents the same from becoming a law.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

33. Crimes and Punishments—Gambling—Anti-Gambling Law.

Section 253 of the Crimes and Punishments Act as amended by Stats. 1913, 235, prohibits gambling of every kind and nature. When a stake is contributed by the participants alone, and a contestant is to have the fund thus created, this constitutes gambling prohibited under said section.

CARSON CITY, April 7, 1913.

HON. J. A. SAUNDERS, *District Attorney of Nye County, Tonopah, Nevada.*

DEAR SIR: Replying to your request for an opinion from this office concerning the amendment to the anti-gambling law as passed at the

recent session of the Legislature, being an Act entitled "An Act to amend an Act entitled 'An Act concerning crimes and punishments, and repealing certain Acts relating thereto,' approved March 17, 1911; approved March 21, 1913, I have to advise that in my opinion this Act in unequivocal terms absolutely prohibits all gambling of any character or nature.

Section 253, as amended, now reads as follows:

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, fantan seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, 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 to buy, sell, or deal in pools, or make books on horse races; and any person who violates any of the above provisions, 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. Every person who shall play at any game whatsoever, other than those hereinabove mentioned, for money, property or gain, with cards, dice or any other device which may be adapted to or used in playing any game of chance, or in which chance is a material element, or who shall bet or wager on the hands or cards or sides of such as do play as aforesaid, shall be deemed guilty of a misdemeanor; *provided, however,* that nothing in this paragraph shall be construed as prohibiting social games played only for drinks and cigars served individually, or for prizes of a value not to exceed two dollars; nor nickel-in-the-slot machines for the sale of cigars and drinks, and no play back allowed.

It is clear from the section that it was the intent of the Legislature to prohibit absolutely the conduct or playing at any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, tan, fantan, seven-and-a-half, twenty-one, hokey-pokey, craps, klondyke, or any banking or percentage game played with cards, dice, or any device, for money, property, checks, credit, or any representative of value. The Act also prohibits the conducting, managing or permitting any game, in which the owner or keeper of the game receives directly or indirectly any compensation or reward or any percentage of the money or property played; and likewise prohibits the maintenance of any slot machine played for money or checks redeemable in money; and further prohibits the making of books or the sale and buying of pools on horse racing. The matters set forth in the first portion of section 253, and which are prohibited thereby, are under the terms of the statute made a felony. The second portion of the statute, commencing on line 21 of the printed bill and following thereafter, in my opinion, absolutely prohibits the playing or carrying on any other gambling game; and in my opinion the proviso in the bill concerning social

games played for drinks and cigars and for prizes not exceeding two dollars does not in any way affect the provision of the Act which prohibits and makes unlawful the carrying on of games not specifically mentioned in the Act.

I am further of the opinion that the word "prize" does not and is not intended to allow the playing of games for stakes of two dollars, and any person who should play for checks or other representatives of value of the sum of, or less than, two dollars which are redeemable in money or other property, will be guilty under the terms of said Act. A prize is defined to be a premium offered to a successful player in a game or a competitor in a contest *by persons other than such players or competitors*, but when the stake is contributed by the participants alone and the contest is to have the fund thus created, this constitutes gambling and the playing at gambling games prohibited under the Act.

I therefore repeat that, in my opinion, all gambling of every kind and nature is prohibited.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

34. Licenses—Glove Contests.

Under secs. 3881-89, Rev. Laws, as amended, the only effect of such amendment is to change the amount of all licenses fees. It has always been customary to allow preliminaries, and to have one license fee cover all events or contests of one evening. The license fee is the payment for the privilege of conducting such contest, and must be paid, no matter how short the contest may be.

CARSON CITY, April 12, 1913.

HON. GRAY MASHBURN, *District Attorney of Storey County, Virginia City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 9th instant, asking certain questions in regard to amendment of law licensing glove contests.

The law itself is contained in sections 3881-89 of the Revised Laws, and the sections amended are sections 1, 3, and 9 of said Act. In reference to these amendments you ask:

1. Will one license of \$100 cover all the events or contests on one evening in the same place and under the management of one person, both preliminary and the main event?
2. Will the man or company managing the exhibition have to pay a license of \$100, no matter if none of the contests go ten rounds?

The only effect of the amendments to this Act is to change the license fee from \$1,000 to \$100. Under the Act in question, it has always been customary to allow preliminaries and have one license fee cover all the events or contests of one evening. If it had been the intention of the Legislature to change the custom, it would have been provided in the Act.

The license fee is the payment for the privilege of conducting such a contest and must be paid, no matter how short the contest may be. Section 1, as amended, limits the length of the contest to ten rounds.

From a consideration of this Act as amended, I am of opinion that one

license will cover all the events or contests of one evening in the same place and under the same management or person, and that the license fee of \$100 must be paid whether or not the contest goes ten rounds or is terminated in the first round, and you are so advised.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

35. Virginia City School of Mines.

The appropriation of \$425 for the support and maintenance of this school during 1911-1912 (Stats. 1911, p. 80) has reverted, and there is no appropriation provided for the payment of rent of premises occupied by said school.

CARSON CITY, April 14, 1913.

HON. JOHN EDWARDS BRAY, *Secretary State Board of Education, Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 12th instant, asking opinion as to the "liability of the State for bill of Virginia City Miners Union for use of building by Virginia City School of Mines from January 1, 1912, to March 1, 1913."

At the Twenty-fifth Session of the Legislature an Act was passed fixing the salary of the principal of said school and also providing the sum of \$425 for its support and maintenance during the years 1911 and 1912. It is out of this fund of \$425 that the rent in question should be paid. I am not advised as to whether this sum was exhausted during the years mentioned, but if not it would, under the law, revert on December 31, 1912, to the General Fund, and this course was undoubtedly taken.

-- Under the circumstances, there is no appropriation provided by law for the payment of the rent from January 1, 1912, to January 1, 1913, and the only recourse of the Virginia City Miners Union is to present a relief bill at the next session of the Legislature. That portion of the bill applying to the use of the building in 1913, of course, can be paid out of the appropriation for said school for the years 1913 and 1914.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

36. Agricultural Experiment Station—Quarantine—State Printing Office.

Under sec. 11, Stats. 1913, 455, all necessary printing required by State Quarantine Officer must be printed at the State Printing Office, notwithstanding the ambiguity in said section.

CARSON CITY, April 15, 1913.

MR. GORDON H. TRUE, *Director Agricultural Experiment Station, Reno, Nevada*.

DEAR SIR: I am in receipt of your favor of the 11th instant, asking opinion upon what appears to be an error in section 11 of Substitute for Senate Bill No. 100.

Section 11 of said Act provides:

All necessary printing required by said State Quarantine Officer shall be printed at the State Printing Office, and five

thousand copies of any circular mentioned in section 7 of this Act may be so printed, but no other printed matter shall exceed the number prescribed by law.

Upon referring to section 7 of this Act it does not appear that any printing is required, but section 6 provides:

The Director of the Nevada Experiment Station is hereby declared to be, *ex officio*, the State Quarantine Officer within the meaning and provisions of this Act. It shall be his duty to prepare, or cause to be prepared and printed, such circulars describing and illustrating the appearance and characteristics of such contagious, infectious or destructive diseases, parasites or insect pests as in his judgment is necessary and desirable for the information of county inspectors, district inspectors and persons mentioned in section 5 of this Act.

The general rule is that in the consideration of an Act the whole Act must be taken into consideration and the intent of the Legislature ascertained and carried out, if possible. Upon a reading of the whole Act and special sections 6, 7, and 11 thereof, it is apparent that the words "section 7" instead of "section 6 of this Act" were used unadvisedly, possibly through a renumbering of the sections, and that "section 6" was intended in place thereof.

I am therefore of the opinion that under bill as passed the State Quarantine Officer is entitled to have all necessary printing required by him printed at the State Printing Office, and you are so advised.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

37. Nevada Tax Commission—Statutes—Repeal

Subdivision 4 of sec. 4 of the Act creating the Nevada Tax Commission (Stats. 1913, 175) repeals the Act entitled "An Act to amend secs. 6, 16, and 17 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," approved March 17, 1913. (Stats. 1913, 175.)

CARSON CITY, April 17, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your favor of the 13th instant, asking the opinion of this office as to whether or not the Tax Commission Act repeals by implication that certain Act entitled "An Act to amend sections 6, 16, and 17 of 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"

It appears that the Act in question was approved by the Governor March 17, 1913, while the Act creating your Commission was approved March 20 of the same year. The Act in question prescribed certain forms of statements required of property owners in making returns of their property, while subdivision 4 of section 4 of the Act creating the Nevada Tax Commission empowers said Commission "to establish and

prescribe general and uniform rules and regulations governing the assessment of property by the Assessors of the various counties, not in conflict with law; to prescribe the form and manner in which assessment rolls or tax lists shall be kept by Assessors, and also to prescribe the form of the statements of property owners in making returns of their property; and it is hereby made the duty of all County Assessors to adopt and put in practice such rules and regulations, and to use and adopt such form and manner of keeping such assessment rolls or tax lists, and to use and require property owners to use the blank statements required by said Commission in making their proper returns."

From the section of the law above quoted, the intention of the Legislature to allow your Commission to prescribe the form of the statements required of property owners in making returns of their property is manifested, and being a later enactment upon the same subject, and fully covering the subject-matter thereof, I am of opinion that the Tax Commission Act repeals by implication the Act to which you called my attention, the title of which is above quoted.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

38. Licenses—Automobile Licenses—Secretary of State.

Under the provisions of Stats. 1913, 280, the Secretary of State is authorized to adopt any method of determining the horsepower of automobiles. He is also authorized to issue as many duplicate tags as the manufacturer may require for the additional fee of one dollar for each duplicate tag.

CARSON CITY, April 17, 1913.

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

DEAR SIR: I am in receipt of your favor of the 9th instant, asking opinion of this office as to rating horsepower for automobile licenses and also in regard to duplicate numbers as provided in Substitute for Senate Bill No. 24, which was approved with some amendments by the Governor on March 24, 1913.

Section 2 of said Act provides as follows:

The annual filing fee shall be rated at 12½ cents per horsepower, the minimum horsepower rating to be twenty horsepower; * * * *provided*, the filing fee for the current year shall be only such proportion of money collected on horsepower rating as the remainder of the year after the passage of this Act bears to the whole year, figuring by quarters and excluding fractional quarters.

Section 7 of said Act provides as follows:

A manufacturer of or dealer in motor vehicles shall register one vehicle of each style or type manufactured or dealt in by him and be entitled to as many duplicate license tags for each style or type so manufactured or dealt in, as he may desire, on payment of an additional fee of one dollar for each duplicate tag. If a license tag and the corresponding number shall thereafter be affixed to and displayed on every vehicle of such style

or type as in this section provided, while such vehicle is being operated on the public highways, it shall be deemed a sufficient compliance with the provisions of this Act, until such vehicle shall be sold or let for hire.

I understand that in some States the automobile horsepower is rated according to A. L. A. M. rating, and in other States according to the advertised horsepower of the machine as put forth by the manufacturer.

There is nothing in the Act to indicate which rating you shall follow, and I presume it will make little difference, provided you adopt either one or the other method of rating horsepower and pursue the same in calculating the amount of license fee from machines for which applications for licenses are made to you.

In regard to duplicate numbers, I understand it is the custom of other States to have on hand blank tags which are stamped "Duplicate"; and under the law you may issue as many duplicate tags as the manufacturer or dealer may desire, for an additional fee of one dollar for each duplicate tag. The duplicate tags, of course, should bear the same number as that issued for the "one vehicle of each style or type manufactured or dealt in" as provided in said Act, and it might be well for you to require that the person operating a machine under such duplicate tag should always carry such duplicate with him while such vehicle is being operated on the public highways.

In addition, the corresponding number should be displayed on some portion of the vehicle in such a way that it may be removed without injuring the appearance of the car.

Trusting this will give you the information you desire, I am

Yours respectfully,

GEO. B. THATCHER, *Attorney-General.*

39. Officers—Civil Office—Constitutional Law.

The appointment of a member of the Legislature as assistant of the Attorney-General under the provisions of Stats. 1913, 279, does not contravene the provisions of section 8, article 4, of the Constitution. Such appointment does not create any civil office within the meaning of said section. Said Assemblyman, acting in this capacity, is not a contractor or within the meaning of secs. 2827-2828.

CARSON CITY, April 23, 1913.

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

DEAR SIR: Replying to yours of April 22, requesting an opinion on the validity of the claim of Geo. B. Thatcher in the sum of \$850, as per vouchers attached, and as to your right to pay the same, I beg to advise as follows:

I have paid particular attention to your references, to wit: The Constitution of Nevada, section 266; Revised Laws of Nevada, volume 1, sections 2827-2828, and the decisions of the Supreme Court of Nevada in *State v. Clarke*, 21 Nev. 333, and after considering all of your other citations in connection with the claim above mentioned, and particularly with reference to the matter of \$500 to be paid to William Forman thereunder.

Section 266 of the Revised Laws, being section 8, article 4, of the Constitution is as follows:

No Senator or member of 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 under 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.

The real question presented is whether or not William Forman, who was a member of the last Legislature, may be employed by the Attorney-General under an Act of the last Legislature, entitled "An Act to provide for the investigation of all matters pertaining to the affairs and receivership of the State Bank and Trust Company, and making an appropriation therefor."

In considering this matter I have considered your reference to the Constitutional Debates and Proceedings, page 141, and I found therein nothing which is of any assistance in arriving at a determination of this matter.

I have also considered the decision in the 21st Nevada, page 333, and that citation deals with section 9 of article 4 of the Constitution, and in no way bears upon section 8 of the same article.

We are, therefore, brought back to a consideration of the Act of 1913 authorizing the Attorney-General to make the investigation in connection with section 8 of the Constitution and in connection with sections 2827 and 2828 of the Revised Laws. I am of the opinion that section 8 is an inhibition against the appointment of any Senator or member of the Assembly to any "civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased, * * *" etc. But I am also of the opinion that the Act of 1913, page 279, authorizing the investigation of the affairs of the State Bank and the receivership does not create any civil office of profit under this State. The Act in question authorizes the Attorney-General to investigate the affairs of the State Bank and Trust Company and the receivership thereof, and authorizes the employment of such legal assistants, expert accountants, stenographers and other assistants as he may deem necessary.

This, in my opinion, does not create any civil office within the meaning of section 8 of the Constitution, nor is the employment of Mr. Forman, as a legal assistant in this matter, the creation of a civil office of profit within the meaning of said section 8.

I am, therefore, of the opinion that there is nothing in section 8 of the Constitution of the State of Nevada which prohibits, or in any way makes invalid, the employment of William Forman under the provisions of "An Act for the investigation of all matters pertaining to the affairs and receivership of the State Bank and Trust Company and making an appropriation therefor," approved March 24, 1913.

I am also of the opinion that Mr. Forman, acting in this capacity, is not a contractor coming within the inhibitions of section 2827 of the Revised Laws of the State of Nevada, and I am further of the opinion that section 2828 of the Revised Laws does not apply to this matter, as no contract was made by the last Legislature, and Mr. Forman is not within the inhibitions contained in said sections.

You will also note that the claim is the claim of Geo. B. Thatcher, and

not the claim of William Forman, and the expenditure is that made by the Attorney-General, and if there is any legal liability in that regard, it falls upon the Attorney-General, and not upon the State Controller.

In this particular matter the Attorney-General is legally responsible, under the Act of 1913, for the due expenditure of the funds appropriated, and I am of the opinion that under the Act all claims should be drawn by the Attorney-General in his own favor, with vouchers attached, showing the amounts which he has expended.

I am, therefore, of the opinion that the claim of Geo. B. Thatcher for \$850 referred to in yours of April 22 is a valid claim against the State and should be paid, and that the payment thereof in nowise makes your bondsmen liable.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

40. Revenue—Taxation—Bullion Tax.

A bullion tax is collectible on the output of gypsum mines.

CARSON CITY, May 3, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: In answer to your favor of the 1st instant, with reference to the taxation of the output of gypsum mines, permit me to say that this matter was passed upon by my predecessor on page 89 of the Biennial Report of the Attorney-General for 1912, and is as follows:

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 Geo. 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 see no reason for a change of the ruling of my distinguished predecessor, and, therefore, confirm the same.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

41. State Board of Investment—California State Highway Bonds.

The Act under which the California State Highway Bonds are authorized to be issued is valid, and the bond issue has been duly and regularly authorized by law.

CARSON CITY, May 3, 1913.

HONORABLE STATE BOARD OF INVESTMENT, *Carson City, Nevada*.

GENTLEMEN: I have investigated the Acts authorizing the issuance of what is commonly known as the State of California Highway Bonds, which you have under consideration, and I have to advise that, in my opinion, the Act under which said bonds are authorized to be issued is valid, and the bond issue has been duly and regularly authorized as provided by law.

I am, therefore, of the opinion that your board may legally invest moneys of the Permanent State School Fund in said bonds.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

42. Licenses—Automobile Licenses—Secretary of State—United States.

An employee of the United States Government is not required to pay a license upon an automobile used in connection with government business, and the Secretary of State is authorized to issue a license to such employee without pay.

CARSON CITY, May 3, 1913.

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

DEAR SIR: I am in receipt of a letter of the 11th ultimo, addressed to you from D. W. Cole, Project Engineer of Fallon, Nevada, and your request for an opinion as to whether or not Mr. Cole is required to pay for a license for his automobile under the recent Act on the subject. (Stats. 1913, 280).

It appears that Mr. Cole is an employee of the U. S. Reclamation Service and presumably the automobile he is using is either the property of the United States, or is used in connection with this reclamation project.

If such is the case, I am of opinion that you are authorized to issue Mr. Cole a license for his automobile without pay, and I am confirmed in this opinion by an examination of the cases of *Providence Bank v. Billings*, 4 Pet. 514; *Austin v. Boston*, 7 Wall. 694; *Wheeling P. & O. Transp. Co. v. Wheeling*, 99 U. S. 273; and *Wisconsin C. R. Co. v. Price County*, 133, U. S. 496.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

43. Officers—Actual Traveling Expenses—Claims Against the State.

Under the decision in the case of *Cutting v. LaGrave*, 23 Nev. 88, an officer is not allowed to collect for any expense of traveling except the actual expense of transportation.

CARSON CITY, May 5, 1913.

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

DEAR SIR: I am in receipt of your favor of the 26th ultimo, requesting an official opinion as to the legality of certain claims against the State as therein specified.

I am of opinion that the claims of Deputy Superintendents J. A. Abel and A. B. Lightfoot, Ed Ryan, Inspector of Mines, and James W. Gaughan, Deputy Inspector of Mines, are valid claims against the State, but the same cannot be paid, for the reason that there is no appropriation out of which to pay them.

By the General Appropriation Act, passed at the last session of the Legislature (Stats. 1913, 183), a number of appropriations were made to cover traveling expenses of various officers named in said appropriations, but by the terms thereof the words "traveling expenses" are qualified by the addition of the word "actual."

By the decision of the Supreme Court of this State, in the case of *H. C. Cutting v. LaGrave*, 23 Nev. 88, the words "actual traveling expenses" are defined to mean the actual expenses of transportation, and do not include constructive expenses of any kind, such as meals or lodging. Inasmuch as all of the claims above referred to contain items for meals and lodging and other items of expense which do not come under the terms of "actual traveling expenses" as defined by our Supreme Court, they cannot be paid out of the fund provided for "actual traveling expenses," for the reason that a portion of each of said claims is valid and may be paid out of the appropriation provided, but such valid portion is mingled with other items not payable from such appropriation.

For the same reason, the claim of the Honorable Thomas F. Moran for \$15.85 cannot be paid out of the appropriation for Judges' traveling expenses.

All the claims mentioned herein are herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

44. Licenses—Automobile Licenses—District Attorneys.

The prosecution of all violations of sec. 15, Stats. 1913, 280, for failure to procure an automobile license is lodged with the respective District Attorneys.

CARSON CITY, May 6, 1913.

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

DEAR SIR: I am in receipt of your favor of the 3d instant in regard to the automobile license law (Stats. 1913, 280), calling my attention to the fact that section 2 therein provides that all owners of motor vehicles must obtain from your office a license within thirty days after the passage of the Act; that section 16 provides a penalty for the failure to obtain a license, but fails to designate the officer or officers required to enforce this law, and inquiring whose duty it is so to do.

Said section 16 makes the violation of any of the provisions of this Act a misdemeanor, and by the law the prosecution of all misdemeanors is lodged with the respective District Attorneys of the State.

They are, therefore, the proper officials to prosecute violations of this Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

45. Rewards—State Police.

A police officer is not entitled to a reward offered for the arrest or conviction of a criminal when the service performed is within the scope or line of the duties of such officer.

CARSON CITY, May 6, 1913.

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

DEAR SIR: I am herewith returning claim of H. A. Fravel against the State of Nevada for three hundred dollars for services in the capture and arrest of Frank White and the capture and arrest of George James.

I am not advised whether or not at the time these services were

rendered Mr. Fravel was a member of the Nevada State Police. If he was a member of that body at that time, his claim is not a valid claim against the State and should not be allowed or paid.

The rule in regard to such claims succinctly stated in 34 Cyc. 1753-4, is as follows:

From an early day it has been established and continues to be the rule that an agreement to pay money to a Sheriff or other public officer for doing what he ought to do, is void and against public policy. Accordingly, a public officer, such as a Sheriff, Constable, or policeman, is not entitled to a reward offered for the arrest or conviction of a criminal, when the service performed is within the scope or line of the duties of such officer. It makes no difference that the services were rendered at a time when the officer was not on duty, or that the crime for which the arrest was made was committed in another county of the State.

In addition, our statute in regard to rewards (Rev. Laws, 3905), while not applying to the question of the recapture of an escaped convict, has an express proviso to the effect "that the provisions of this Act shall not apply to any Sheriff, Constable, Marshal or police officer who shall make such arrest in the performance of the duties of his office in the county where such officer resides, or in which his official duties are required to be performed."

If Mr. Fravel was a member of the Nevada State Police at the time the services were rendered, it was his duty to assist in the capture of escaped convicts without compensation therefor. If he was not a member when the rewards claimed were offered by the Governor, and the offers of reward were made in due form, then he is entitled to payment.

The said claim is herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

46. Nevada Tax Commission—Taxation.

The "Mack Bill," Stats. 1913, 162, is repealed by sec. 4 of the Act creating the Nevada Tax Commission, Stats. 1913, 175.

CARSON CITY, May 7, 1913.

HON. J. F. SHAUGHNESSY, *Chairman Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 1st instant, asking opinion of this office as to the status of what is known as the "Mack Bill" (Stats. 1913, 162), which was approved March 17, 1913, and which purports to amend sections 8, 16, and 17 of the General Revenue Act, in view of the enactment of the Act creating your Commission (Stats. 1913, 175), which was approved March 20, 1913.

The principal purpose of the former Act seems to be to provide a form of assessment roll. Section 4 of the Act creating your Commission provides it with the following special powers: "To provide the form and manner in which assessment rolls and tax lists shall be kept by Assessors,

and also to prescribe the form of statement of property owners in making returns of their property?"

As the Act creating your Commission was approved three days later than the "Mack Bill," and as section 15 of your Act contains a repeal "of all Acts and parts of Acts in conflict with the provisions of this Act," and as they cover the same subject-matter, I am of opinion that the "Mack Bill" was repealed by implication by the enactment of the Nevada Tax Commission Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

47. **Licenses—Liquor Licenses.**

Under Stats. 1913, 376, a government license, a state license, and a county license are all required to run a road-house or place where intoxicating liquors are sold outside the limits of an incorporated city.

CARSON CITY, May 13, 1913.

HON. GRAY MASHBURN, *District Attorney of Storey County, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, asking for the opinion of this office in reference to Chapter 248 of the Statutes of 1913, entitled "An Act to regulate the sale of intoxicating liquors outside the corporate limits of any incorporated city or town," approved March 25, 1913, and asking whether said law required "the payment of a government license, a state license, and a county license in order to run a road-house or place where intoxicating liquors are sold outside of the limits of an incorporated city, or is a government license and a county license sufficient?"

In response, permit me to say that in my opinion a government license, a state license, and a county license are all required in the case stated.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

48. **Licenses—Automobile Licenses—City Ordinances.**

The provisions of Stats. 1913, 280, relating to licenses for automobiles refer to a state license only, and do not render void any city license ordinance covering the same matter.

CARSON CITY, May 13, 1913.

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

DEAR SIR: I am in receipt of your favor of April 18, asking an official opinion on the question as to whether the automobile license law (Stats. 1913, 280) "does away with or renders void any city ordinance covering the same matter. That is, would a resident of any city having a city ordinance requiring the owner of an automobile to obtain a city license also require the purchase of a state license?"

In response, permit me to say that the law above stated refers to a state license only. Such towns and cities that had the right to regulate automobiles by licensing them, still possess such right. The enactment

of the new law has the effect of requiring the owner of an automobile to take out an additional license.

You enclosed a letter from Mr. John F. Heeney, which is herewith returned, inquiring as to the placing of the different license tags on a machine. This is a matter for regulation by your office.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

49. Licenses—Automobile Licenses.

Under the provisions of sec. 7, Stats. 1913, 281, a license is required from a manufacturer or dealer for each car of different horsepower but the same make, but if the horsepower of two different styles of cars of the same manufacture is identical, one license would be sufficient.

CARSON CITY, May 13, 1913.

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

DEAR SIR: I am in receipt of your favor of April 17, asking an interpretation of section 7 of the Act relating to automobiles, said section relating to licenses of dealers.

You stated: "Interpretation is needed in regard to question whether a dealer dealing in a certain make of car is required to obtain a license for each car of different horsepower but same make. Also, whether dealer needs license for each model of same make. For instance, may a dealer put same number on both touring car and roadster?"

In answer thereto, let me say that section 2 of the Laws of 1913, on page 281, provides the license at the rate of 12½ cents per horsepower. I take it, therefore, that for each car of different horsepower, but same make, the dealer is required to take out a license. It may be possible that of two cars of the same manufacture, one might be a sixty and the other a forty, and it would not be a compliance with the law for a license for a forty horsepower machine to be adapted to a sixty horsepower machine.

In answer to the second portion of your question, let me say that in my opinion if the horsepower of, for example, a touring car and a roadster, of the same make, is identical, one license would be sufficient.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

50. Licenses—Automobile Licenses.

Under Stats. 1913, 281, a license is required for every machine used by a person in the transportation of passengers in this State, whether or not all of said machines are engaged in regular traffic. The license under this Act is a personal privilege only, and not transferable, and the purchaser of a machine already licensed is required to immediately obtain a new license on the same.

CARSON CITY, May 13, 1913.

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

DEAR SIR: I am in receipt of your favor of the 12th instant, enclosing a letter from Mr. C. B. Burkham of Bodie, which is herewith returned, asking the opinion of this office "as to whether or not Mr. Burkham

would be required to obtain a license for each machine, or could the license of either of the two machines used regularly on the run be used on the extra auto in case of an accident to either of the two machines?"

It appears from Mr. Burkham's letter that he has two cars on the run between Bodie and Hawthorne and keeps an extra car at Bodie for his own use, but in case of breakdown it also goes on the stage run. In answer to your inquiry let me say that section 2 of an Act regulating automobiles (Stats. 1913, 281) provides:

The owner of every motor vehicle within the State shall * * * file with the Secretary of State a statement of his name and address with a brief description of the vehicle to be registered, including the name of the maker, factory number, style of vehicle, and motor power.

This section further provides for a filing fee of 12½ cents per horsepower. By the terms of the Act it includes "every motor vehicle," and notwithstanding the fact that Mr. Burkham takes out a license on the two cars regularly employed on the run between Bodie and Hawthorne, I am of opinion that as soon as he brings his extra car into this State for any purpose, it also becomes subject to the license imposed by the Act above mentioned.

You further inquired as to what "would be required in the case of the owner of an auto having purchased a license, and the same having been recorded as required by law, should he afterwards sell the auto to another person? Would the purchaser be required to obtain a new license or would the license issued to the first owner be sufficient?"

In response to this inquiry I am of opinion that the license issued is personal only and not transferable, gives the owner thereof certain privileges which expire with each transfer of the machine to a purchaser, and that the purchaser is required to immediately obtain a new license as is provided by the Act above mentioned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

51. Public Schools—Bonds.

A school district, having held an election to authorize the issuance of bonds for a definite sum, is required to sell the whole amount of bonds provided by such election.

CARSON CITY, May 17, 1913.

HON. J. E. BRAY, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR SIR: This office is in receipt of a letter from Mr. Robert O. Gibson of St. Thomas, Nevada, of May 5 (which letter is herewith returned), in regard to issuance of bonds of School District No. 15, in Clark County, Nevada, on which you ask the opinion of this office as to whether "the said district, having held an election and voted in favor of bonding the district for fifteen thousand dollars to build and equip a suitable schoolhouse, the said district is required to issue bonds to such amount."

After careful consideration of the sections of the school law called to your attention by Mr. Gibson, I am of the opinion that the District Attorney of Clark County correctly advised Mr. Gibson that the district

would have to sell the whole amount of bonds provided by the election. Of course, it is not necessary that the whole amount of the money raised therefrom shall be used; if there is any balance remaining, I see no reason why it cannot go into the sinking fund provided under the law for the redemption of the bonds.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General.*

52. **Public Health—State Board of Health—Exhumation of Bodies—Crimes and Punishments—Marine Hospital Service.**

Section 23 of Act creating State Board of Health repeals sees. 6552-3, Rev. Laws. The State Board of Health is authorized to cooperate with the Marine Hospital Service in promulgating regulations covering intrastate carriers which are exactly similar to those governing interstate carriers.

CARSON CITY, May 20, 1913.

DR. S. L. LEE, *Secretary State Board of Health, Carson City, Nevada.*

DEAR SIR: I am in receipt of verbal inquiries from you to this office which may summarized as follows:

First—Does section 28 of the Act creating the State Board of Health repeal sections 6552-3 of the Revised Laws? The sections in question are Nos. 287 and 288 of the Act concerning crimes and punishments, approved March 17, 1911, and were adopted into said Act from an earlier enactment in accordance with the rule of the Code Commission, including in said Act all laws concerning crimes and punishments which had been adopted by the Legislature since the enactment of the first Crimes and Punishments Act.

Said sections make it a misdemeanor to exhume or disinter any human remains, except upon permission of the various Boards of County Commissioners, and expressly provides "that no such permit shall be granted or issued under any circumstances or at any time where the party or parties buried or interred have died from or with any contagious or a loathsome disease."

The Act creating the State Board of Health was approved March 27, 1911, or ten days after the approval of the Crimes and Punishments Act. The provisions of section 6552 and 6553 of the Revised Laws could have been adopted only as a health measure.

Section 28 of the Act creating the State Board of Health provides:

The State Board of Health is hereby declared to be supreme in all health matters.

Being a later enactment on the subject and fully covering the same, I am of opinion that the said sections 6552 and 6553 are repealed by the Act creating the State Board of Health, and the said board is authorized to make and issue proper regulations in regard to the disinterment of human remains.

Second—"Is our board authorized to cooperate with the Marine Hospital Service in promulgating regulations covering intrastate carriers which are exactly similar to those governing interstate carriers?"

In response to this inquiry, permit me to say that in my opinion

section 28 of the Act creating your board gives you full power to adopt such rules and regulations on the subject as you see fit to adopt. The letters submitted to me are herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

53. Licenses—Liquor Licenses—Wholesale Liquor License.

Opinions of Attorney-General, 1911-12, page 33, affirmed.

CARSON CITY, May 20, 1913.

HON. L. F. ADAMSON, *Secretary Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, enclosing file of correspondence passing between your department and Messrs. Boyd & Salisbury, et al., in relation to state liquor licenses on account of distributing depots of the Reno Brewing Company, and asking the opinion of this office on the matter.

In response, permit me to call your attention to pages 33-4 of the Biennial Report of the Attorney-General for 1911-12, whereon is set out the opinion of my predecessor in answer to a precisely similar state of facts. I am fully satisfied with the opinion in question, and therefore refer the same to you for your guidance in the premises. The correspondence you mentioned is herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

54. Public Health—State Board of Health—County Commissioners.

Section 6 of the Act creating the State Board of Health as amended by Stats. 1913, 126, is mandatory, and the County Commissioners are required to appoint a local health officer. The same section fixes his salary at not less than \$25 per month.

CARSON CITY, May 20, 1913.

EDWARD DUNSCOMBE, M. D., *Midas, Nevada.*

DEAR DOCTOR: Answer to your two favors, one of April 25 and the other of May 12, has been delayed until I could prepare an opinion to the State Board of Health in regard to one of the matters therein referred to.

In answer to the question you propound in regard to a commissioner's agent for effecting a sale of mining property, let me say that by law the opinions of this office are reserved to certain state officials on matters of public interest, and, as this question concerns a purely private matter, I am prohibited from answering your inquiry and would suggest that you see some lawyer in reference to the matter.

You inquire whether it is "obligatory on the Board of County Commissioners of each county in this State to appoint a Chief Health Officer and also deputy health officers. Can the County Commissioners name the fee per month of the deputy health officers, making the same what they see fit, as long as it does not exceed \$25 per month?"

Section 6 of the Act creating a State Board of Health was amended by Stats. 1913, 126, so as to provide for the appointment of the local health

officer who was empowered to employ such deputy or deputies as may be necessary, with the approval of the Board of County Commissioners.

From the language of the Act, I take it that the same is mandatory and the County Commissioners are required to appoint a local health officer. The same section fixes his salary at not less than \$25 per month, while the salary of his deputies is not to exceed the same sum per month; or the deputy may be paid the sum of one dollar for each birth and death certificate executed by him, but in such case the total salary of the deputy from such source shall not exceed \$25 per month.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

55 Nevada State Agricultural Society—University of Nevada.

The claim of the Nevada State Agricultural Society for rent of the State Fair grounds to the University of Nevada under secs. 360, 4641, and 4653, Rev. Laws, is legal and valid, and is payable out of the Contingent University Fund.

CARSON CITY, May 20, 1913.

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

DEAR SIR: I have had under consideration the claim of the Nevada State Agricultural Society for rent of Agricultural State Fair grounds to the University of Nevada for the year 1913, amounting to \$450, which claim is herewith returned, and upon consideration of sections 360, 4641, and 4653 of the Revised Laws of 1912, am of opinion that this claim is legal and valid and is payable out of the Contingent University Fund.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

56. Nevada Industrial Commission—Appropriation.

The Statutes of 1913, 311, making an appropriation to put into effect the provisions of the statute creating the Nevada Industrial Commission, is a valid and legal Act. The money appropriated thereunder should be paid out of the treasury upon certificate of two members of the Commission.

CARSON CITY, May 21, 1913.

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

DEAR SIR: Replying to yours of May 20, 1913, requesting an opinion of the constitutionality and legality of the claim of the Nevada Industrial Commission in the amount of two thousand dollars, I have to advise that I am of the opinion that the claim is a legal and valid claim against the State of Nevada, and can be paid in the form in which it is presented.

On reading section 1 of the Act making the appropriation, to wit, Session Laws, 1913, page 311, you will note that the amount of two thousand dollars is appropriated "to be paid to the Nevada Industrial Commission"; you will also note that the Act directs the State Controller

to draw his warrant for said sum in favor of said *Commission*, and the State Treasurer is also directed to pay the same.

This money is to be paid to the Nevada Industrial Commission, to be used by them under and pursuant to the Act of March 17, 1913.

I am, therefore, of the opinion that no vouchers, other than the claim itself, need be presented to the Board of Examiners or to the State Controller to entitle the drawing of the warrant in favor of the Nevada Industrial Commission. You will also note that this money is paid to the Nevada Industrial Commission, but does not go out of the State Treasury, but remains in the State Treasury subject to certificate signed by two members of the Commission as provided in the Act of March 17, 1913.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

57. Nevada Tax Commission.

The Nevada Tax Commission is authorized to prepare its private ownership plats in any manner it may see fit, provided that copies of said plats shall be filed in the respective counties, or some other means provided, so that any property owner would not be misled in the payment of his taxes in a case where property is assessed to an unknown owner.

CARSON CITY, May 22, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your favor of the 19th instant, asking the opinion of this office as to whether or not your Commission is authorized to employ "the modern method of designating the individual parcels of land shown on the plats by numbers, rather than by the lengthy descriptions usually employed in describing lands by legal subdivisions or by metes and bounds."

Section 4 of the Act creating your Commission (Stats. 1913, 177) specifies its powers and duties in eight different paragraphs. At the conclusion thereof the following appears:

The enumeration of the said foregoing eight special powers shall not be construed as excluding the exercise of any needful and proper power and authority of said Commission, in the exercise of its general supervision and control over the entire revenue system of the State not in conflict with law.

After a careful investigation of the provisions of law contained in our Revised Statutes, relating to the matter, I am of opinion that the paragraph last above quoted gives you authority to prepare your private ownership plats in any manner you see fit, provided, however, that copies of said plats should be filed in the respective counties, or by some other means provided, so that no property owner would be apt to be misled in the payment of his taxes in a case where property is assessed to an unknown owner.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

58. Revenue—Taxation—Assessment—Banks and Banking—Mortgages.

Mortgages held by banking corporations are not subject to assessment and taxation. Method of assessment of banks pointed out.

CARSON CITY, May 29, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: Replying to yours of May 16, requesting opinion upon the assessment of the stock and property of banking corporations in this State, I have to advise you that, in my opinion, mortgages held by banking corporations in this State are not subject to assessment and taxation, and that banking corporations are to be assessed and taxed pursuant to and in accordance with the provisions of sections 3819, 3820, 3821, 3822, 3823, 3824, and 3825 of the Revised Laws of Nevada.

In other words, I am of the opinion that in assessing banks where shares of stock have been issued, you will assess the real estate; you will also assess the stock at its full cash value, after taking therefrom the proportionate value of the real estate belonging to the bank, and in banks in which shares of stock have been issued no other property than the real estate and the shares of stock shall be assessed either as against the stockholders or the bank itself. (See section 3822 of the Revised Laws of Nevada.)

Wherever the bank is not one having shares of stock, all of its property shall be assessed in the same manner and form as other property is assessed to the owners thereof. (See section 3819.)

I am of the opinion that no franchise tax can be levied against a banking corporation or bank under the laws of this State, but for the purposes of arriving at the actual value of the shares of stock you are justified in taking into consideration the par value of the stock, the undivided profits, and the surplus, and you may consider the business of the institution and the dividends distributed to stockholders in arriving at the actual full cash value of the stock.

In assessing and taxing national banks it would be necessary for you to follow the same rules as those used in assessing state banks; in other words, for the purpose of assessment and taxation of national banks, you are to consider the real estate and the capital and the shares of stock, and identically the same method should be followed in taxing national banks as is followed in assessment and taxation of state banks.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

59. Nevada Tax Commission—Taxation—Assessment—Constitutional Law.

Neither the Nevada Tax Commission nor the Legislature has the power to prescribe any different rates in the manner of assessing moneys, credits, etc., than that prescribed for other property. Section 1, article 10, of the Constitution merely authorizes the Legislature to prescribe regulations necessary to ascertain the just valuation of property, but it does not justify the application of any other rating, either in assessment or taxation.

CARSON CITY, May 29, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: Replying to yours of May 27, I am of the opinion that neither the Tax Commission nor the Legislature has any power to

prescribe any different rates in the matter of assessing moneys, credits, etc., than that prescribed for other property.

The language of section 1, article 10, quoted in your letter, clearly provides that the rate of assessment and taxes shall be uniform, and the words "and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory," merely authorized the Legislature to prescribe such regulations as may be necessary to ascertain the just valuation of property for the purpose of taxation, but it does not justify the application of any other rating, either in assessment or taxation.

This section is one which justifies the creation of the Nevada Tax Commission and justifies the Act which provides for the assessment of railroads, telephone and telegraph lines, etc., by the Board of Assessors instead of by the regular Assessor of the county.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

60. Railroads—Live Stock—Notice of Live Stock Killed—Fee for Filing Notice.

Under Stats. 1913, 296, it is the duty of the railroad company to pay the fee for filing notice of live stock killed as therein required.

CARSON CITY, May 31, 1913.

MR. FRED C. VOIGHT, *County Clerk of Elko County, Elko, Nevada.*

DEAR SIR: I am in receipt of a letter from the Honorable E. P. Carville, District Attorney, requesting that I advise you of my interpretation of the law "requiring the giving of notices of live stock killed or injured by locomotives or cars" (Stats. 1913, 296), and especially as to who shall pay for filing a "duplicate of such notice with the County Clerk of the county in which the stock is killed or injured," as provided in section 3 of said Act.

Section 3600, Revised Laws, referred to in your letter, is, of course, repealed by the Act of 1913 above mentioned. I find that sections 1995 and 2007, Rev. Laws, provide, respectively, a fee to the County Clerks of the several counties of 15 and 25 cents "for filing each paper."

I am very much surprised that the railroad should object to paying this small fee, but I am satisfied that, under the police power of this State, the Legislature is entitled to impose this small burden upon the railroads in the exercise of its powers to regulate them.

I understand that your District Attorney has already rendered you an opinion that it was your duty to collect this fee from the railroad companies, and in such opinion I concur.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

61. **Licenses—Sheep Licenses.** Under the amendment of Stats. 1901, 65, to the Sheep License Act, every person engaged in the business of grazing, herding, and pasturing sheep, who has procured a license in one county of the State in accordance with said Act is entitled to graze said sheep in any other county without procuring an additional license.

CARSON CITY, May 31, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of the 26th instant, asking an interpretation of what appears to be a conflict in the law in regard to the issuance of licenses for the grazing of sheep. (Rev. Laws, 3768-74.) In section 1 of said Act, under subdivision 7, the following proviso appears:

That nothing in this Act contained shall be so construed as to require the procurement of more than one license for the same sheep in the State of Nevada during the same year.

In section 3 of said Act appears the following:

Such license when procured shall authorize the party procuring the same within the county wherein the same is procured, but in no other county, to transact business as specified in such license.

It appears that there is a direct conflict between the provisions of sections 1 and 3 as above quoted.

The proviso above quoted from section 1 appears originally as follows:

Provided, that nothing in this Act contained shall be so construed as to require the procurement of more than one license for the same sheep in the same county for the same year. (Stats. 1895, 54.)

In 1901, however (Stats. 1901, 65), said proviso of section 1 was amended to read as it now appears, while the language above quoted from section 3 of said Act was not changed by amendment in any way.

In the original Act it was, of course, the intention of the Legislature to require a license from every county in which the owner shall graze his sheep, and the language of section 1 and 3 is therefore consistent, but by the amendment of 1901 the legislative intent was expressed so as not to require "the procurement of more than one license for the same sheep in the State of Nevada during the same year." This being the latest indication of the legislative intent, it must govern, and therefore it repeals so much of section 3 of said Act as would indicate that a license procured in one county is good only in that county, "but not in any other county."

I am, therefore, of opinion that by reason of the amendment of 1901, every person engaged in the business of raising, grazing, herding, and pasturing sheep, who has procured a license in one county of the State in accordance with the Act in question, is entitled to graze said sheep in any other county in the State without the procurement of an additional license.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

62. Public Schools—Free Text-Books—State Text-Book Commission.

The enactment of the law requiring pupils to be furnished free text-books does not obviate a contract made by the State Text-Book Commission.

CARSON CITY, JUNE 9, 1913.

HON. WILLIAM WOODBURN, JR., *District Attorney of Washoe County, Reno, Nevada.*

DEAR SIR: ANSWER to your favor of the 17th instant, in regard to the Free Text-Book Law, has been delayed until I could have a conference with Professor Bray, who has been absent from the city on official business and has just returned.

Mr. Bray tells me that the contractor, Gray, Reid, Wright Company, is willing to allow the school boards the same discount formerly allowed dealers, namely, 10 per cent for cash. I do not think that the contract with Gray, Reid, Wright Company, extending to 1915, is void by the enactment of this new law, and I believe that the school boards must deal with this firm in the purchase of books and supplies.

Semiannual apportionment of money for school purposes will be made next month, and this will realize several thousand dollars for Washoe County, out of which the free text-books and supplies may be purchased.

Should this create a deficit in your school fund, the provisions of the Act in regard to the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473-77) may be taken advantage of. This Act has been found to be of great advantage in this, the Carson City School District, for the past two years. It has enabled the schools to be kept open and the teachers paid promptly, when such would not have been the case if it were not for this Act. The Carson City School District issued altogether over \$8,000 worth of these interest-bearing warrants, and had no difficulty in disposing of them to private individuals at par on account of their interest. You will note that at the last session of the Legislature this Act was amended (Stats. 1913, 54). The amendment was for the purpose of correcting the misapprehension of the law entertained by the County Treasurer in that he was of the opinion that the warrants could be paid only out of the fund to be raised by taxation as provided by section 5 of said Act, and the result was that money was lying in the county fund, which might have been used in the redemption of warrants, but was not so used, and interest was allowed to accumulate on the warrants; so to correct this evil the amendment was passed.

The method pursued in complying with this law in this district was for the school board to declare an emergency by resolution and submit the same to the Board of County Commissioners so that the tax may be levied.

Trusting that this will fully answer your inquiries, and regretting the delay which has ensued, I am,

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

63. State Officers—Governor—Traveling Expenses.

The Governor is entitled to collect claims for "actual traveling expenses" out of the appropriation contained in sec. 58, Stats. 1913, 186, and for hotel and other necessary expenses out of the appropriation created by Act of 1908, 31.

CARSON CITY, June 23, 1913.

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

DEAR SIR: In response to your request for a written opinion on your right to collect for traveling expenses apart from the actual cost of transportation out of the unexpended balance of the fund created by "An Act to provide for the payment of certain contingent expenses of the Governor and Attorney-General," approved February 8, 1908, let me say that I am of the opinion that you are authorized, when absent from the seat of government on official business, to divide your claims for expenses into two separate claims, one of which shall comprise the "actual traveling expenses," as defined by the court in *State, ex rel. Cutting, v. LaGrave*, 23 Nev. 88, payable out of the appropriation contained in section 58, Stats. 1913, 186, "for actual traveling expenses of Governor and Attorney-General," and the other for hotel and other necessary expenses, payable out of the appropriation of the Act of 1908, page 31, title of which is above quoted.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

64. Officers—Sheriff—Allowance for Expenses.

A Sheriff serving under a stipulated salary and turning all of the fees of his office collected by him into the county treasury, is entitled to receive payment for all disbursements which he is compelled to make in the performance of duties imposed upon him by law. Such disbursements are legal and proper claims against the county, to be presented to the County Commissioners for allowance, and in the allowance of same, the board is limited to the consideration as to whether or not the expenditures were necessary, and, if so, whether such charges are reasonable.

CARSON CITY, June 24, 1913.

HON. N. W. WILLIS, *District Attorney of Lyon County, Yerington, Nevada.*

DEAR SIR: Owing to the importance of the matter involved in your favor of the 29th of April, asking for the opinion of this office on the bill of your Sheriff, D. P. Randall, which is herewith returned to you, the rendition of such an opinion has been delayed until now.

It appears that a portion of the items embraced in said bill you are willing to allow, but others, being mainly for cash expended by the Sheriff in the performance of his duties, you are inclined to disallow.

The Act fixing the salary of the Sheriff of Lyon County is found in Statutes of 1911, page 107, and provides as follows:

SEC. 2. From and after the first Monday in January, 1913, the Sheriff of said Lyon County shall receive an annual salary of

three thousand dollars, payable in twelve equal installments at the end of each calendar month. He shall pay into the treasury of said county each month all moneys collected by him as fees or to which he may be entitled as commissions. Said salary shall be in full compensation of all services and duties performed or to be performed by him as said Sheriff.

It will be seen therefrom that the Sheriff is to receive an annual salary of three thousand dollars, and is required to pay into the county treasury all moneys collected by him as fees or to which he may be entitled as commissions, and said Act further provides that such salaries shall be in full compensation of services and duties performed or to be performed by him as set forth.

The question involved resolves itself to this: Is the Sheriff required to pay from his salary any portion of the expenses of the duties required by him to be performed as such Sheriff?

The Act above quoted took effect on the first Monday in January, 1913, as provided in section 4 thereof, and therefore all previous Acts relating to the salary of this office are repealed, and the question as to what allowances he is entitled to must be settled by an interpretation of this section.

Subdivision 2 of the County Government Act (Rev. Laws, sec. 1508) gives the Board of County Commissioners power to "examine, settle and allow all accounts legally chargeable against the county," and section 1509, Rev. Laws, provides:

Every demand against the county, except the salary of Auditor, District Judge or Judges, shall be acted upon by the County Commissioners."

The powers, rights, and duties of the Sheriff are set forth in the Act relating to Sheriffs, being sections 1643 to 1660, Rev. Laws. Section 1648 provides:

It shall be the duty of the Sheriff * * * to execute the process, writs or warrants of courts of justice, judicial officers or Coroners, when delivered to him for that purpose.

Section 1696, Rev. Laws, provides:

The several officers named in this Act, who shall receive salaries as sole compensation, shall collect and safely keep all fees, percentages, and compensation, of whatever nature and kind, allowed them by law for services rendered by them or their deputies in their several official capacities, and they shall, on the first Monday in each month pay the same to the County Treasurer of their respective counties.

Section 1700, Rev. Laws, provides:

All fees and emoluments, collected by the several salaried officers under the provisions of this Act, shall be paid, upon a statement made under oath, to the County Treasurer on the first Monday of each month, and by him kept in a fund to be known as the salary fund. Whenever there is a surplus in said fund, the Board of County Commissioners may transfer it to the general fund; and whenever there is a deficiency, the Board of County Commissioners shall transfer to the salary fund a

sufficient sum from the general fund to meet all warrants drawn against said salary fund.

Thus it will be seen that the Sheriff by the payment of his fees and emoluments to the County Treasurer contributes directly toward the fund out of which his salary is paid, and that the general fund of the county is not called upon to pay any portion of such salary unless there should be a deficiency in the salary fund.

The statutes allow a liberal mileage, much more than the actual cost of transportation, to the Sheriff in the service of writs and other civil process. The reason given for this in many cases is that the Sheriff may be reimbursed for his expenses in the service of such writs and not be out of pocket through the execution of the duties imposed upon him by law.

In a number of States the expenses of service of civil process and the execution of the duties imposed upon the Sheriff by law have been held to be just claims, for which he is entitled to compensation.

Thus, in *Weston v. Weston* (102 Mass. 514), in the service of execution for possession of land, the officer was allowed for the use of a horse and carriage.

In *U. S. v. Flanders* (112 U. S. 88) the Collector of Internal Revenue was allowed moneys expended by him for the publication of advertisements required by law to be made.

In *People, ex rel. Wood, v. Denton*, 58 N. Y. S. 722, it was held that the Sheriff was entitled to be repaid his expenses necessarily incurred in serving process.

In the case of *Taggart v. Hutson*, Rice S. C. 300, the Sheriff was held to be allowed compensation not only for money paid for his own support and that of the prisoner in going to and returning from court, but also for horse hire and the hire of a guard.

In the case of *Sargent v. La Plata Co.*, 21 Colo. 158, it was held that the necessary traveling expenses paid by the Sheriff in serving a venire for jurors should be allowed by the county, and also that he was entitled to reimbursement for actual traveling expenses, provided they did not exceed the mileage allowed him by law.

In the case of *Peelings v. York County*, 212 Pa. 245, the Sheriff was allowed to charge for hack hire paid by him for conveying prisoners to the institution to which they were committed, but it was held that he must show that the expenses incurred were actually necessary.

In *Bybee v. Marion County*, 128 Iowa, 610, it is said:

The Board of Supervisors is required to allow the Sheriff compensation for his traveling expenses incurred and paid by him in the service of criminal process in addition to his salary,

While in *Wheelwright v. St. L. N. C. C. & T. Co.*, 48 La. Ann. 606, the expenditures of the Sheriff, which are taxable as costs, were held to be those incurred by him in performance of the duties cast on him by law.

In the case of *The Queen v. Vestry of St. Mary*, 59 L. J. 462, it was decided that the officer need not pay these expenses out of his own pocket before calling upon the parish to provide them.

In the case of *Marion County v. Lear*, 108 Ill. 351, the court says:

We are aware of no instance in our law where the word

"salary" is used merely to express the idea of a payment for expenses actually incurred.

In the case of *County of Crawford v. Lindsay*, 11 Bradwell, 263, the Court says:

The words "compensation" and "salary" are quite evidently used in this statute as synonymous terms, and refer to the recompense, remuneration or consideration that is stipulated to be paid to the Sheriff for his personal service.

In the *Matter of Beek*, 157 N. Y. 151, it was held that an Act making the office of Sheriff a salaried office entitled him to receive his necessary disbursements in the performance of his business; that the Sheriff is not to receive the salary for services and necessary expenses and disbursements, but for services alone, and that on presentation of his claims for audit the board should consider whether the disbursements were necessary and the amount paid was reasonable.

In view of the foregoing, I am of the opinion that the Sheriff is entitled to receive payment for all disbursements which he is compelled to make in the performance of the duties imposed upon him by law; that such disbursements are legal and proper claims against the county to be presented to the County Commissioners for allowance, and that in the allowance of the same the board is limited to the consideration as to whether or not the expenditures made by the Sheriff were necessary, and, if so, whether the charges were necessarily incurred by him in the performance of his duty, and, if so, whether the charges made therefor are reasonable.

I am confirmed in this opinion by an examination of the Act requiring county officers to file vouchers for expenses, traveling or otherwise, enacted at the last session of our Legislature and to be found on page 264 of the Statutes of 1913.

In accordance with the foregoing, I judge that the entire claim as presented by the Sheriff is a proper charge against the county and should be allowed by its Commissioners.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

65. Licenses—Dance Halls—Concert Saloons—Lodging-Houses.

Under statement of facts submitted, it was decided that a certain resort in Reno does not come under the provisions of secs. 3733-34, or 3736, Rev. Laws.

CARSON CITY, June 26, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: Your favor of the 17th duly received, together with copy of letter from A. A. Burke, Sheriff of Washoe County, in relation to the class of license to be demanded from certain parties in the town of Reno.

The statement of facts given in the enclosed copy of the letter from Sheriff Burke is as follows:

A saloon called the "Almo," conducted by a colored woman named Ida Robbins, in the redlight district; in this saloon there is a piano, and a man is employed to play this instrument for the entertainment of visitors. I understand that women are not supposed to frequent this place between the hours of 6 p. m.

and 6 a. m., but in the wee small hours of the morning that these women frequently visit this place and dance therein. In connection with this "Almo" saloon conducted by the same party are fifty-four rooms or cribs, which are rented to these women at different prices; that is, so much per day; these rooms are connected with the Almo saloon by the means of electric push buttons or bell; the inmates of these rooms or cribs solicit the male visitors to purchase drinks in the following manner, to wit: A visitor to one of these places, after having entered and signified his willingness to buy, the woman occupying the place touches the button and the waiter or bartender, employed at the Almo, appears and takes the order, and if a bottle of beer is ordered, the said visitor produces the necessary one dollar, either handing the same to the girl or laying the money on the tray of the waiter or bartender, who takes out either 25 or 35 cents, and hands the balance to the woman who occupies the crib. It is verbally understood that these women will purchase all drinks from the Almo saloon while occupying these rooms.

Three questions are presented: First, whether under the statement of facts given it comes within the provisions of section 3736 of the Revised Laws of Nevada, relative to hurdy-gurdy houses, dance-halls, or concert saloons; second, whether under the statement of facts the cribs should be required to pay a liquor license; third, whether or not the Almo should be required to pay a lodging-house license regardless of any other license required.

First—I am clearly of the opinion that under the statement of facts given the Almo does not come within the provisions of section 3736, regulating the conduct of hurdy-gurdy houses, dance-halls, and concert saloons. It appears from the facts stated that the cribs are separate and apart from the Almo saloon and are connected only by means of electric push buttons or bells. There is nothing in the statement of facts to show that the inmates of these cribs are in anywise employed in the saloon itself to either dance or solicit directly or indirectly the purchase of liquors, wines, or cigars therein.

I am further of the opinion that the fact that the inmates, in the cribs themselves, solicit the purchase by visitors of drinks and purchase the same from the Almo saloon under a verbal understanding, is not of itself sufficient to bring the cribs within the meaning of section 3736; nor does the Almo saloon under the statement of facts come within the definitions of hurdy-gurdy house, concert saloon, or dance-hall. I refer you to the opinion of Attorney-General Baker contained in the Report of the Attorney-General, 1911-12, page 74, covering a state of facts sufficiently similar to be in point here.

Second—I am further of the opinion that these cribs do not come within the provisions of section 3733, requiring the payment of a liquor license.

Third—I am further of the opinion that neither the Almo as conducted, nor the cribs, come within the provisions of section 3734. Section 3734 reads as follows:

All tavern, hotel, or inn-keepers, all restaurants, public boarding-houses, or eating stands, and all public lodging-houses shall be divided into these classes: * * *

Clearly these cribs do not come within the general or usual definitions given to the words, tavern, hotel, inn-keepers, public boarding-houses, eating stands, or public lodging-houses.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

66. Licenses—Cigars and Tobacco.

Opinions of Attorney-General for 1911-12, page 64, affirmed.

CARSON CITY, July 11, 1913.

HON. WILLIAM WOODBURN, JR., *District Attorney of Washoe County, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking for the opinion of this office as to whether or not a license can be collected under the statement of facts shown in letter enclosed with your letter.

From such statement of facts it appears that the tobacco dealer, on receipt of request from a saloon-keeper to furnish his place with a night box, prepares a small box and places in it a small assortment of tobacco and cigarettes, the object being to furnish the patrons with a package of tobacco or cigarettes at a time of night when they cannot be had elsewhere. The statement further says that the saloon-keeper does not profit thereby, and simply keeps them to accommodate his customers, and turns over the proceeds of whatever sales he makes to the tobacco dealer, the dealer replenishing the box from time to time as necessity demands.

I am of the opinion that the opinion of the Honorable C. H. Baker, late Attorney-General of Nevada, to be found on page 64 of the Biennial Report of the Attorney General for 1912, fully covers the case, the syllabus of which opinion is as follows:

Persons, who keep and sell cigars, cigarettes, and tobacco, or either of said articles, in connection with the liquor business, are subject to the payment of the merchant's license therefor.

The fact that the saloon-keeper derives no profit from this business is of no moment, because the payment of license is not controlled by the question of whether the business is profitable, and the statement of facts contained with your letter brings the saloon-keeper squarely within the terms of the opinion above referred to.

We are returning herewith the statement of facts contained with your letter.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

67. Licenses—Glove Contests.

Under the amendment of the law allowing glove contests to be conducted under license, the only change that has been made is reduction of the license fee; such fee allows preliminaries, and the license must be paid even though the contest consists of only three or four rounds.

CARSON CITY, July 11, 1913.

HON. WILLIAM WOODBURN, *District Attorney, Washoe County, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking the opinion of this office as to the proper construction of the amendment to the prize-fight law appearing on page 234 of the Statutes of 1913.

This office has already passed on the questions involved, and rendered an opinion to the District Attorney of Storey County, dated April 12, 1913, a copy of which is hereto attached.

The only effect of the amendments to this Act is to change the license fee of \$1,000 to \$100. Under the Acts in question it has always been customary to allow preliminaries, and have one license fee cover all the events or contests of one evening. If it had been the intention of the Legislature to change this custom, it would have been provided in this Act. The license fee is a payment for the privilege of conducting such a contest, no matter how short the contest may be. Section 1 as amended limits the length of the contest to ten rounds.

I am, therefore, of the opinion that under the facts presented the promoter of the contest is required to pay a license of \$100, even though the contest consists of three or four bouts, and that \$100 is the total license that will be required.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

68. Public Records—Recorders.

Under the provisions of Rev. Laws, 3232, all parties other than the Recorder are permitted to supply the general public with abstracts taken from the county records.

CARSON CITY, July 11, 1913.

HON. J. A. SAUNDERS, *District Attorney of Nye County, Tonopah, Nevada.*

DEAR SIR: Your favor of the 28th ultimo, asking for the opinion of this office as to "whether or not a Recorder of a county who receives a stipulated salary in full of all services rendered by him is permitted under section 3232 of Revised Laws to allow abstracts and copies to be made from records of his office without charging a fee therefor other than that provided by the general statute fixing a fee at one-third the cost of the original abstract or copy," received.

In response permit me to say that this section was enacted to obviate the decision of the Supreme Court in the case of State, ex rel. N. T. & G. Co., v. Grimes, reported in 29 Nev. 350, and was designed to permit

parties other than the Recorder to supply the general public with abstracts as therein provided.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

69. Revenue—Taxation—Mortgages.

Sections 2 and 3 of Statutes of 1913, 578, are merely provisions permitting the division of the taxes assessed against a mortgaged property so that the owner may pay the taxes on the value of his property less the amount of the mortgage thereon, and the mortgagee may pay the tax upon the mortgage itself. Under said Act the Assessor is authorized to assess mortgaged property at its full cash value, but is not authorized to assess the same at full cash value, and also assess the mortgage existing upon such property.

CARSON CITY, July 11, 1913.

HON. J. H. STERN, *Assessor of Ormsby County, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th ultimo, asking for the opinion of this office regarding the law in relation to the taxation of mortgages, deeds of trust, etc., to be found on page 578 of the Statutes of 1913.

The former Act on this subject, embraced in sections 3786-90, Revised Laws, was repealed at the special session of 1912, as will appear on page 10 of the laws enacted at said special session. The Act referred to, therefore, is the only existing Act on this question.

In my opinion, the purpose of the Act is to prevent double taxation. Under the law formerly existing an owner of property was taxed or required to be taxed for its full cash value. If he should be so unfortunate as to be compelled to borrow upon his property, the mortgage was taxed upon its face value, and the result was that the owner of the property was compelled to pay an increased rate of interest to the holder in order to make up for this tax on the mortgage. The result, therefore, was that if a man owned a piece of property worth one thousand dollars and borrowed five hundred dollars upon same, he would have in effect to pay taxes on such property at the value of fifteen hundred dollars. The new law obviates this injustice in that the proviso of section 1 states: "That in no case shall the valuation for taxation fixed exceed the value of said land." Sections 2 and 3 of said Act are merely provisions permitting the division of the taxes assessed against a mortgaged property, so that the owner may pay the taxes on the value of his property less the amount of the mortgage thereon, and the mortgagee may pay the tax upon the mortgage itself. Formerly such arrangement could not be made, because the tax collector was not authorized to accept less than the whole tax assessed against any particular piece of property. Under this law the tax assessed against any piece of property is a lien upon the same, but if the mortgagee has stipulated to pay the tax on the mortgage, the mortgagor is authorized, in the event of the failure of the mortgagee to pay such tax, to pay the entire tax assessed upon the property, and to have compensation for the payment on the mortgage against the principal of his indebtedness.

I am, therefore, of the opinion that under the law in question you are

authorized to assess mortgaged property at its full cash value, but are not authorized to assess the same at full cash value and also assess the mortgage existing upon such property.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

70. Licenses—Liquor Licenses—Application for Licenses.

Under Stats. 1913, 376, no license other than the merchant's license is required, where sales are not made in quantities of less than a quart. Under said statute it is not necessary that a petition be presented every quarter when license is issued, but only on the first day of January of each year, or when the first application is made for license, and then on January 1 thereafter.

CARSON CITY, July 12, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: In reply to your request for my construction of "An Act to regulate the sale of intoxicating liquors outside the corporate limits of any incorporated city or town," being chapter 248, page 376, Statutes of 1913, I beg leave to state as follows:

In construing this law it is necessary to construe it in connection with the other statutes in force prior to the passage of this Act.

Sections 3731 and 3732, Revised Laws of 1912, provide for a merchant's license, and the rate under these sections is governed by the amount of business done, while section 3733 provides that any person, who shall dispose of any spirituous, malt, or fermented liquors or wines in less than one quart, shall pay a license of \$10 per month, except in outside cities or towns, which persons shall pay a quarterly license of \$15. The foregoing sections all relate to county licenses. Sections 3777 and 3778 provide for the collection of state licenses, regardless of the character or amount of business done by any one dealing in liquors. The Act of March 25, 1913 (Stats. 1913, p. 376), was evidently intended to regulate the manner of granting liquor licenses outside of incorporated towns by the County Commissioners, and in incorporated cities and towns by the proper authorities of such cities and towns, and this Act is intended to supplement the provisions of section 3733 of Revised Laws of 1912, which requires county licenses from all persons selling in quantities of less than one quart, but in nowise affects the provisions of sections 3731 and 3732, which apply to sales under a merchant's license.

I am, therefore, of the opinion that no license other than the merchant's license is required where sales are not made in quantities of less than one quart.

I am also of the opinion, in view of the provisions of sections 3777 and 3778, which provide when license is granted by the State it shall be good until January 1 succeeding the issuance of such license, that it is not necessary that a petition be presented every quarter when license is issued, but only on the first day of January of each year or when the first application is made for license, and then on January 1 thereafter.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

71. Revenue—Taxation—Assessment—Patented Mining Claim.

It is the spirit of the Act in regard to the assessment of mining claims (Stats. 1913, 106) that each and every claim in a patented group is considered as a patented mine, and that an assessment of not less than \$500 is levied against each and every patented mining claim in the group.

CARSON CITY, July 14, 1913.

MR. L. W. TRANKLE, *Superintendent Butte and Yerington Copper Co., Yerington, Nevada.*

DEAR SIR: I am in receipt of your favor of the 3d instant, asking certain questions in regard to an Act for the assessment of patented mines, as the same appears in Stats. 1913, p. 106.

In response permit me to say that it is the spirit of the Act in question that each and every claim in a patented group is considered as a patented mine, and that an assessment of not less than \$500 is against each and every patented claim in a group.

Section 6 of the Act was inserted for the convenience of owners, so that all the annual assessment work might be done on one or more contiguous patented mining claims in analogy with the law in regard to assessment work on unpatented mining claims.

I have sent a copy of this letter to your District Attorney for his information.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

72. Officers—State Officers—Governor—Claims.

Claims of Governor for traveling expenses are payable as follows: Those for actual traveling expenses out of the appropriation for such purpose made by Stats. 1913, 186; and those for hotel expenses and meals out of the appropriation made by Stats. 1908, 31.

CARSON CITY, July 14, 1913.

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

DEAR SIR: I am in receipt of your favor of July 2, enclosing two claims of the Honorable Tasker Oddie—one amounting to \$63.80, being for traveling expenses to Salt Lake City and Reno on official business, and the other amounting to \$65, being for necessary traveling expenses on the same trips.

I am of the opinion that the first claim is payable out of the appropriation for actual traveling expenses made by the Legislature at its recent session, and the latter claim is payable out of the appropriation "for the purpose of defraying the traveling, hotel, and necessary expenses of the Governor and Attorney-General, or either of them, when absent from the seat of government on official business of the State," as appears on pages 31 and 32 of the Statutes of Nevada, Special Session, 1908.

The said claims are returned herewith.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

73. Officers—State Officers—Clerks—Compensation for Extra Work.

A clerk who performs work for a state officer not incumbent upon him to perform by reason of his position, and outside of his office hours, is entitled to compensation therefor.

CARSON CITY, July 14, 1913.

STATE BOARD OF EXAMINERS, *Carson City, Nevada.*

GENTLEMEN: In accordance with your request I have made an examination of the law concerning the claims of R. A. McKay for the transcript testimony furnished the State Engineer in the matter of the protests of the Union Canal Ditch Company, et al., v. Carpenter, et al., amounting to \$122.40 and \$44.10, respectively, and desire to report that in my opinion the same is a just and valid claim against the State, and should be paid.

It appears that these claims are for services performed by Mr. McKay, which were not incumbent upon him to perform by reason of his position as Chief Clerk in the office of the State Engineer; that he makes no charge for reporting the testimony, and that the transcript was written out by him after office hours at night and on Sundays.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

74. Revenue—Taxation—Assessment—Transient Cattle.

Cattle shipped into this State for the purpose of grazing are subject to assessment, notwithstanding the fact that such cattle may already have been assessed in another State.

CARSON CITY, July 15, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of the 11th instant, enclosing letter from Mr. H. C. McTerney, Assessor of Eureka County, wherein you request the opinion of this office as to whether or not cattle shipped into this State for the purpose of grazing are subject to assessment, notwithstanding the fact that these cattle have already been assessed in California.

Section 3621, Revised Laws, provides: "All property of every kind or nature whatsoever within this State shall be subject to taxation," excepting certain exempted property not involved in this inquiry.

Section 3619 provides:

Every tax levied * * * is hereby made a lien against the property assessed, and the lien shall attach * * * on all other property whenever it reaches this State, and shall not be satisfied or removed until all the taxes are paid or the property has vested in the purchaser under sale for taxes.

Cattle are specifically included in the definition of "personal property" contained in Revised Laws, 3622.

By section 3625 the Assessor and his associates are made liable for the taxes on all property within the county, which are not assessed through the Assessor's neglect; while by the provisions of section 3678, Rev. Laws, the County Assessor is required to immediately collect taxes on personal property assessed when the owner thereof does not own sufficient real

estate within the county of sufficient value to pay the taxes on both his real and personal property.

Sections 3843-44, Rev. Laws, furnish a method for the collection of taxes upon live stock, and further provides "and the fact that such live stock may have been assessed, and the taxes thereon for the same year paid in some other State or Territory shall not exempt it from assessment and taxation in this State."

From the foregoing provisions of our laws I am of the opinion that it is the duty of the Assessor to assess the live stock in question, and, if the owner thereof is not possessed of property sufficient in his county to cover both the personal and real taxes assessed against such owner, to proceed to collect the personal tax assessed against such property as provided by law.

The Assessor's letter is returned herewith.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

75. Licenses—Business License—Towns and Cities.

A town license is limited to the confines of the boundaries of the town issuing the same. No license can be collected of persons who have a fixed place of business in some other State, and solicit orders in this State.

CARSON CITY, August 8, 1913.

HON. E. P. CARVILLE, *District Attorney, Elko, Nevada*.

DEAR SIR: Your favor of the 25th ultimo, asking for an opinion as to whether a person who has a fixed place of business in one county of this State and solicits orders in other counties in addition to the one in which his place of business is located, is required to pay a license in each county in which he solicits, and also whether a person who has a fixed place of business in some other State and solicits orders in this State has to pay a license, received.

In answer to the first question, I would call your attention to subdivision 9, section 877, Rev. Laws, permitting the Board of County Commissioners to fix and collect a license tax upon and regulate certain businesses therein mentioned in any unincorporated towns within their county, and I am of the opinion that under the circumstances named, if any town license has been fixed in any unincorporated town, a person soliciting business in such a town would be required to pay the town license, notwithstanding the fact that the same person has paid his merchandising license in the county in which his place of business is located. There is an exception to this contained in section 3979, Rev. Laws, which provides that it shall be unlawful for any county, city, or town to impose or collect any licenses or tax upon or from any drummer or traveling salesman employed by and selling the goods of any manufacturer, compounder, wholesaler, or jobber whose factory or store is located in Nevada. Under the Act last above quoted it is not possible, of course, to impose or collect a license upon any of the classes therein mentioned.

In answer to your second interrogatory, I am of the opinion that no license can be collected of the persons who have a fixed place of business

in some other State and solicit orders in this State, for an attempt to collect such a license would be an interference with the commerce clause of the United States Constitution.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General.*

76. Licenses—Mercantile Licenses.

A brewery engaged in dispensing malted liquors in any county other than that where its principal place of business is located, is subject to the provisions of sec. 3732, Rev. Laws, requiring a merchandise license.

CARSON CITY, August 11, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: Your favor of the 23d ultimo, enclosing correspondence concerning the payment of a merchandising license in Esmeralda County by the Reno Brewing Company, received.

Section 3732 of the Revised Laws provides:

Every person, who shall sell or vend any goods, wares or merchandise, * * * shall obtain from the Sheriff of the county in which such business shall be transacted, for each of the branches of business, a license for the transaction of such business at the following rates.

I note that the brewing company claims that, as it does not deal in "wines or distilled liquors" as provided in said section, it is not liable for the payment of this merchandise license, but it certainly cannot claim that the selling of beer by wholesale is not the selling of goods, wares, or merchandise.

I am of the opinion that the company in question comes squarely under the provisions of this section, and should be compelled to take out a merchandise license for its business in Goldfield.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General.*

77. Nevada Tax Commission—County Recorders.

The County Recorder is required to attend the meetings of the Board of Equalization as provided in sec. 3638, Rev. Laws, notwithstanding the provisions as to the taxation of mortgages has been repealed.

CARSON CITY, August 11, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: In answer to your favor of the 20th ultimo, I am of the opinion that the County Recorder is still required to attend the meetings of the Board of Equalization, as provided in section 3638 of the Revised Laws, notwithstanding the provisions as to taxation of mortgages has been repealed.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General.*

78—Revenue—Taxation—Mill Sites.

The possessory rights to a mill site may be assessed for the purpose of taxation.

CARSON CITY, August 13, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: In answer to your favor of July 11th, asking the opinion of this office in reference to the taxation of mill sites, patented or unpatented, permit me to say that I see no reason why the possessory rights thereto cannot be assessed for the purpose of taxation.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

79. Counties—Public Highways—County Commissioners.

Stats. 1913, 390, was not intended to supersede the statutory requirements now existing as to the establishment, maintenance, and repair of roads, but was intended to institute a new and additional method for such supervision. Said statute was not intended to operate until after a favorable election for the issuance of bonds for road purposes, as therein provided, was held.

CARSON CITY, August 22, 1913.

HON. GRAY MASHBURN, *District Attorney of Storey County, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 15th instant asking the construction of chapter 257 of the Statutes of Nevada for 1913, relating to road government and administration.

Upon a careful examination of the same, I am of the opinion that this Act was not intended to supersede the statutory provisions now existing in relation to the establishment, maintenance, and repair of roads, but was intended to institute a new and additional method for such supervision. It is in a way a local-option Act, requiring for its adoption by the particular county the issuing of bonds at an election to be held as provided in said Act. I am led to this conclusion by reason of the fact that the enforcement of many of the provisions of this Act depends upon the issuance of bonds, after a favorable election held for that purpose, and that the Act was not intended to operate until after such election was held in the particular county.

Understanding that your county has held no such election, I am prepared to answer your specific inquiries and advise you as follows:

First—It is optional with the various Boards of County Commissioners of the State to have such commission, but not compulsory.

Second—It is not compulsory to appoint a Road Supervisor where no bonds are issued by the county.

Third—If such election is not held by the county, the Boards of County

Commissioners are at liberty to operate under the old laws relating to public roads.

Fourth—Your fourth and fifth questions have already been answered by the previous responses.

Sixth—If no election has been held in your county, the old law stands, and the matter is in the hands of your Board of County Commissioners, under the same.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

80. Bounties—Artesian Wells—Appropriation—Reversion.

The appropriation made by Stats. 1887, 119, sec. 6, for payment of bounties for sinking artesian wells, has reverted to the General Fund of the State, and while the claim of any company, which has complied with the provisions of said Act, may be a valid claim against the State, there is no appropriation out of which to pay the same.

CARSON CITY, August 22, 1913.

HON. J. W. LEGATE, *Clerk of the Board of Examiners, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 20th instant, asking the opinion of this office as to the application of the Railroad Valley Company for bounty for sinking an artesian well to a depth of one thousand feet in Nye County.

This application is made under and by virtue of the terms of an Act entitled "An Act to encourage the sinking of artesian wells," approved March 5, 1887, and appears on pages 119 and 120 of the Statutes of 1887, which said Act, except sections 6 and 7 thereof, is fully set out in sections 707 and 711 of the Revised Laws.

Upon an examination of the application presented by said company, the same appears to be in due and proper form, and that the said company has done everything required by said Act to entitle it to the bounty.

Section 6 of said Act provides an appropriation of ten thousand dollars for the payment of the bounties therein provided for. I am informed, however, that under an opinion of a former Attorney-General the State Controller was advised that such appropriation was only for the fiscal year of the passage of said Act, and that said appropriation has long since reverted to the General Fund of the State.

Therefore, I am of the opinion that, while the claim of said company may be a valid claim against the State, there is no appropriation whatever out of which the same may be paid.

The papers left for my examination are herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

81. State Officers—Corporations—Revival Of.

The provisions of sec. 1120, Rev. Laws, "Failure to comply with the requirements of this section for a period of 90 days shall render the certificate issued by the Secretary of State void," do not render the certificate void but merely voidable, and until some action has been brought by the Attorney-General against the corporation to annul its charter, such certificate continues in full force and effect. Upon application for revival of certificate, if the Governor is satisfied with the reasons given for the noncompliance with this section, it is his duty to issue a new certificate as requested.

CARSON CITY, August 22, 1913.

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

DEAR SIR: Your favor of the 22d instant, enclosing letter from Mr. Geo. W. Carty in reference to the Dutch Flat Gold Mining Company, received.

It seems from the letter of Mr. Carty that the office of this company was for a number of years kept at the Bush Hotel in Winnemucca, and that Mr. Carty, after he had sold the property, thinks that the new owner or some of his employees removed the sign from the office and building at a time when the property was given a general overhauling, and that since such removal the notice or sign has been replaced.

Section 1120, Revised Laws, being section 16 of the General Corporation Act, provides:

Every corporation organized under this Act shall have and maintain in a conspicuous place on its principal office * * * the corporate name of said corporation, and every corporation which shall refuse or fail for a period of thirty days, or fail to maintain any such office, or to have a competent agent in charge thereof * * * shall be subject to a fine. * * * Failure to comply with the requirements of this section for 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.

It is my opinion, notwithstanding the positive language of the section above, "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," that such failure does not render the certificate void but merely voidable, and until some action has been brought by the Attorney-General against the corporation to annul its charter, such certificate continues in full force and effect. So far as my knowledge goes, no such action was ever brought against the corporation in question, and its certificate is therefore in full force and effect, but, however, in order that the same may appear on the books of the Secretary of State, I would recommend, if you are satisfied with the reasons given for the noncompliance with this law, that a new certificate be issued by you as requested.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

82. Statutes—Nevada School of Industry.

Under Stats. 1913, 254, the donation of a ten-acre tract of land and payment of \$5,000 to the Commission created by said Act by the people of Elko County, are conditions precedent to the carrying out of the terms of said Act. The \$5,000 should be deposited to the credit of the Commission at such place or bank as the Commission shall designate. There are no funds available in the State Treasury applicable to carrying out the provisions of said Act at the present time.

CARSON CITY, August 22, 1913.

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

MY DEAR GOVERNOR: Replying to yours of August 12, requesting an opinion concerning the School of Industry for delinquent boys to be established at Elko, Nevada, as provided by chapter 254, Stats. 1913, I am of the opinion:

First—That the Commission provided for by section 3 of said chapter, consisting of yourself, Hon. Geo. Russell, Sr., and Hon. Frank Fernald, Sr., was authorized to carry out the terms of said Act, upon the condition that there should be deeded to the State, without charge, a ten-acre site, and that there be paid to the Commission by the citizens of Elko the sum of five thousand dollars, to assist in the construction of suitable buildings for such home.

I am also of the opinion that the donation of the ten-acre site and the payment to the Commission by the people of Elko of five thousand dollars are conditions precedent to carrying out of the terms of said Act. I am confirmed in this position also by the fact that, during the last session of the Legislature, which passed said bill, certain objections were made to the bill, owing to the fact that it was conditioned upon the happening of subsequent events, and at that time, in response to a request of the Conference Committee of the Senate and Assembly on Assembly Bill No. 105, I gave as my opinion that "a provision that the statute shall take effect upon a subsequent event is constitutional."

Second—The five thousand dollars when donated should be deposited to the credit of the Commission, at such place or bank as the Commission shall designate.

Third—I am of the opinion that there are no funds available, or in the State Treasury applicable, to the carrying out of the provisions of said chapter 4 at the present time, or will there be any funds at all until the December installment of state taxes for 1913. This is owing to the fact that no definite appropriation was made by the Legislature at the last session, but there was appropriated, as appears by section 15 of the Act, the proceeds of an ad valorem tax of 2 cents on each one hundred dollars of taxable property in the State, but until this tax is collected there will be no funds available for the purpose of carrying out said Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

83. Nevada Tax Commission—Taxation.

The Commission is authorized to call for sworn statements under subdivision 4 of section 4 of the Act creating the Commission, Stats. 1913, 175. In the event of a taxpayer refusing to present sworn statement, he has no standing before the Commission at the time of equalization. Under the provisions of section 6 of the Act creating the Commission, it is authorized to continue its hearings until all complaints have been heard. It is the duty of the Assessors to assess all property which may have escaped taxation when the same is brought to their attention, even though their rolls have been turned in.

CARSON CITY, September 8, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of this date, asking certain questions concerning the revenue laws of this State, and desire to answer them as follows:

First—The right of the Commission to call for sworn statements seems to me to be conferred in the fourth subdivision of section 4 of the Act creating the Commission, which provides: "To prescribe the form and manner in which assessment rolls for taxes shall be kept by Assessors, * * * and also to prescribe the form of statements of property owners in making returns of their property."

Second—In the event of a taxpayer refusing to return a sworn statement, he has no standing before the Commission at the time of equalization. (See section 3638, Rev. Laws, and notes thereunder.)

Third—Under the provisions of section 6 of your Act, I am of the opinion that your board is authorized to continue its hearings until all complaints have had a hearing.

Fourth—It is the duty of the Assessors of the various counties to assess all property which may have escaped taxation when same is brought to their attention, even though their rolls have been turned in, as the law contemplates the annual assessment of all taxable property in the State. I see no reason why such new assessments may not be included in supplemental rolls of the Assessors.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

84. Public Schools—Deputy Superintendent of Public Instruction—Office Expenses.

The expenditure of the amount appropriated for office expenses to each Deputy Superintendent lies largely in his discretion, and if he finds it necessary to employ assistance to aid him in keeping up his office work during his absence, he is empowered to do so.

CARSON CITY, September 11, 1913.

HON. J. W. LEGATE, *Clerk of Board of Examiners, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 6th instant, enclosing two claims of Mr. A. B. Lightfoot, Deputy Superintendent of Public Instruction, which you have referred to this office for opinion on the question of authority of the Deputy Superintendent to employ assistance in his office.

Each of the Deputy Superintendents of Public Instruction, as provided

by the General Appropriation Act of 1913 (Stats. 1913, 183), has a sum of money to be expended for "office expenses." By the terms of section 3249, Rev. Laws, it is made the duty of each of the Deputy Superintendents to visit each school in his district at least twice a year. I am aware that the district of which Mr. Lightfoot is Deputy Superintendent is very large, and it must necessarily happen that in carrying out the provisions as to visiting the schools in his district at least twice a year he must often be away from his home town several weeks at a time. While thus absent from home, of course, it is impossible for him to attend to the ordinary office duties in answering correspondence and other things which require his personal attention.

In my opinion, the expenditure of the amount appropriated for office expenses to each Deputy Superintendent lies largely in his discretion, and, if he finds it necessary to employ assistance to aid him in keeping up his office work during his absence, he is empowered to do so. In addition to this, Mr. Lightfoot certifies to each claim that the bill is just and correct, and also is required to swear that the amounts charged therein have been actually expended by him. I note that the affidavit for the \$37 claim is informal in that the word "expended" is omitted and also Mr. Lockhart's signature to the affidavit. Upon correction of the same, I think that Mr. Lightfoot is justly entitled to the payment of the claims in question, which are herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

85. Crimes and Punishments—Gambling—Slot Machines.

Amendment to section 253 of the Crimes and Punishments Act prohibits all gambling of any character or nature, including buying or selling or dealing in pools, or making books on races, whereby money is wagered between two or more persons in such a manner that one must be the loser and the other the gainer, dependent upon chance. The new play-back clause of this section is enforceable, and a violation thereof is a misdemeanor.

CARSON CITY, September 22, 1913.

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

DEAR SIR: I am in receipt of your favor of the 16th instant, asking advice as to "whether or not it is unlawful to buy or sell or deal in pools, or to make books on races, or any event—that is to say, automobile races, bicycle races, men and boys running races, dog races, or any contest of skill or endurance, etc., other than horse racing."

In my opinion to you of April 7, 1913, construing section 253 of the Crimes and Punishments Act as amended by the Legislature at its Twenty-sixth Session, to be found on page 236 of the Statutes of 1913, I stated: "I have to advise that in my opinion this Act in unequivocal terms absolutely prohibits all gambling of any character or nature." The words "gamble" and "gambling" have been frequently judicially defined. In the case of Buckley v. O'Neil, 113 Mass. 193, it is stated "the word gamble, as defined by lexicographers, means to game or play for money." It is defined in Bennett v. State, 10 Tenn. 472, as follows: "The word gamble is perhaps the most apt and substantial to convey the idea of unlawful play as our language affords. It is inclusive of hazarding and

betting as well as play." In the case of *Bell v. State*, 37 Tenn. 507, gaming is defined as "an agreement between two or more to risk money or other thing of value on a contest or chance of any kind, where one must be the loser and the other gainer." In the case of *State v. Smith*, 10 Tenn. 272, this same term has been defined to mean: "Whenever money or other valuable thing is hazarded or may be lost, or more than the value obtained, and depended upon chance, the transaction is gambling." In the case of *State v. Shaw*, 39 Minn. 153, gambling is defined as "risking of money or anything of value between two or more persons on a contest or chance of any kind where one must be the loser and the other the gainer." Buying and selling of pools has been held to be gambling. Gaming and gambling are synonymous words. They both have the same meaning and signification.

Therefore, in view of my previous opinion that the amendment to the aforementioned section absolutely prohibits all gambling of any character or nature, I am of the opinion that any device whereby money is wagered between two or more persons in such manner that one must be the loser and the other the gainer, dependent on chance of any kind, is gambling, and is prohibited by law.

You also inquire as to "whether or not the 'no-play-back' clause or provision appearing on page 236 of the 1913 Statutes is enforceable, and, if so, whether it is a felony or a misdemeanor to violate this clause." In answer thereto I wish to say that I see no reason why this clause of the section cannot and should not be enforced, and that in my opinion a violation thereof by the context of the law is made a misdemeanor.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

86. Fish and Game—Antelope.

Stats. 1913, 410, relating to the hunting of antelope, should be construed by omitting the comma after the word "antelope" in the ninth line of the amended section.

CARSON CITY, September 23, 1913.

HON. J. A. CALLAHAN, *District Attorney, Winnemucca, Nevada*.

DEAR SIR: Mr. William Woodburn, District Attorney of Washoe County, has referred to this office your letter of September 15, requesting on behalf of Judge Ducker a construction of the amendment to section 9 of an Act providing for the protection and preservation of game, to be found on page 410 of the Statutes of 1913, said amended section being section 2093 of the Revised Laws.

Upon examination of the enrolled bill, I find that the second proviso therein contained is correctly copied in regard to punctuation, except after the word "deer" at the end of the ninth line of the amended section a comma is omitted.

The amendment makes an open season for the hunting of antelope from the 15th day of October to the 15th day of November of each year, and the second proviso above mentioned seems to withdraw all permission to hunt antelope. This is a manifest inconsistency in the law, and it is, therefore, necessary to determine what the Legislature meant. A doe is

defined as "the female of almost any species of deer, antelope, hare, or other game, whose male is called a buck." It would be a manifest absurdity to hold that the Legislature intended to create an open season for the hunting of deer and antelope, and then in the same section prohibit such hunting. If the comma, after the word "antelope" in the ninth line of said section, is omitted, the provision in question would then read as follows: "And provided further, it shall be unlawful to kill, catch, trap, wound, or pursue with attempt to kill, injure, kill or destroy any antelope doe or female deer or spotted fawn at any time." This makes the entire section consistent, and I am of the opinion that it is lawful within the period and the limit imposed by that section to hunt buck antelope in this State between the 15th day of October and the 15th day of November of each year.

Respectfully submitted,

EDW. T. PATRICK, *Deputy Attorney-General.*

87. Nevada Tax Commission—Taxation.

Under the provisions of section 6 creating this Commission, it has the right to alter the valuation of any property, the valuation of which has been fixed this year by the State Board of Assessors.

CARSON CITY, September 23, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of this date, asking advice "as to the right of this Commission to alter the assessment of any property, the valuation of which has been fixed this year by the State Board of Assessors."

In response permit me to say that previous to the enactment of the law creating your Commission two methods of fixing the valuation of property for assessment in this State were provided by law: First, valuation by the County Assessors, and, second, valuation of certain designated classes of property by the State Board of County Assessors, as provided in sections 3797-3819, Revised Laws. By the Act creating your Commission, however, the above-mentioned Act creating the State Board of County Assessors was expressly repealed, leaving therefor as the means for valuation of property for assessment in this State the valuation by the individual County Assessors and by your Commission.

Section 4 of the Act relating to the State Board of County Assessors provides as follows:

The valuation fixed at such annual meetings shall be the actual cash value of all such property as may be designated,
* * * and the Assessors of the several counties shall assess and enter upon the assessment rolls of their respective counties all such property at the valuation designated by such meeting of County Assessors.

I apprehend that our respective County Assessors have complied with this section, and have entered upon the assessment rolls of their respective counties all property in their respective counties, the valuation of which was determined by the State Board of Assessors, such assessments being now entered upon the assessment rolls of the various counties.

Section 6 of the Act creating your Commission (Stats. 1913, 179) provides:

At the regular session, beginning on the second Monday in October of each year, said Commission shall review the tax rolls of the various counties as corrected by the County Boards of Equalization, and may raise or lower, for the purpose of state equalization, the valuations therein as established by County Assessors and County Boards of Equalization, on any class of property, or piece of property, in whole or in part in any county.

The course pursued in the valuation of property for assessment before the enactment of the law creating your Commission was that the State Board of Assessors hold their meeting as provided in the Act above mentioned and fix valuations upon the classes of property designated in said Act. By section 4 thereof County Assessors were required to assess the properties in their counties included in said Act at the valuation fixed by the State Board. The various Boards of County Commissioners, sitting as Boards of Equalization, have, therefore, now before them the valuations placed upon the classes of property designated in the State Board of Assessors Act for action thereon the valuations as established by said State Board. Under the law the County Boards of Equalization are not authorized to change the figures in respect to such classes of property as now appear upon the assessment rolls. The result will be that the valuations as presented on the assessment rolls to your body for equalization are such as have been established by the County Boards of Equalization as above provided in the quotation from section 6 of the Act creating your Commission. This brings such valuations squarely within the provisions of said section 6, and I am, therefore, of the opinion that your Commission has the right to alter the valuation of any property which has been fixed this year by the State Board of Assessors.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

88. Industrial Insurance Commission—Counties, Employees Of.

The Industrial Insurance Commission Act applies to employees of counties, but does not apply to those who hold office by election.

CARSON CITY, September 24, 1913.

HON. WILLIAM WOODBURN, *District Attorney, Reno, Nevada*.

DEAR SIR: Your favor of the 10th instant, in regard to demand from the Nevada Industrial Commission against your Board of County Commissioners for contributions on the Washoe County payroll, as required by sections 21 and 23 of the Nevada Industrial Insurance Act, received.

In response permit me to say that I have given the questions raised by you very considerable attention, and have advised this Commission that in my opinion the Act applies to the employees of counties, but does not apply to those who hold office by election.

I am glad to note that, in the event of my favorable opinion, your county is ready to comply with the provisions of the law, for the reason that the

contributions required by the Act are so insignificant as compared with the great advantage to be derived therefrom, and I am anxious to see all counties of the State and all employers of labor fall into line as speedily as may be.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

89. Rewards—Officers—Sheriffs.

No officer, whose duty is the apprehension of criminals, can share in any reward offered for such apprehension.

CARSON CITY, October 4, 1913.

MR. J. W. LEGATE, *Clerk of Board of Examiners, Carson City, Nevada*.

DEAR SIR: Regarding the enclosed claim of J. C. Harris "for information leading to the recapture of Jim Ross, escaped convict, \$25," which was referred to me by your board for opinion as to the legality thereof, let me say that if the claimant is Mr. J. C. Harris, Sheriff of Elko County, Nevada, I am of the opinion that the same is not a legal claim against the State, for the reason that the general rule is that no officer, whose duty is the apprehension of criminals, can share in any reward offered for such apprehension.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

90. State Board of Investment—Nye County Bonds.

The Act, approved March 24, 1909, entitled "An Act authorizing Nye County to fund and refund its existing indebtedness, and to repeal all Acts and parts of Acts in conflict therewith," authorizes Nye County to issue bonds. Said Act is valid, and the State Board of Investment may invest the moneys of the State Permanent School Fund in the refunding 6 per cent bonds of Nye County authorized by said Act.

CARSON CITY, October 8, 1913.

Honorable State Board of Investment, Carson City, Nevada.

GENTLEMEN: In the matter of investment of moneys of the Permanent School Fund in bonds of Nye County, being refunding bonds issued in 1909, I have to advise that said bonds are authorized to be issued by an Act of the Legislature, approved March 24, 1909, entitled "An Act authorizing Nye County to fund and refund its existing indebtedness, and to repeal all Acts and parts of Acts in conflict herewith."

I have examined this Act, authorizing the issuance of these bonds, and I am of the opinion that the Act under which said bonds or securities are issued is valid, and that under the law your board may invest the moneys of the State Permanent School Fund in the refunding 6 per cent bonds of Nye County authorized by said Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

91. Public Schools—Teachers—Compensation.

The provisions of section 39 of the Public School Act requiring a teacher to file a certificate with the Deputy Superintendent are directory only. If a Deputy Superintendent is in any manner aware that any teacher under his jurisdiction has been properly licensed by the State Board of Education, as provided in section 17 of the Public School Act, and capable, as provided by section 36 of said Act, he cannot withhold the payment of the compensation of such teacher for services rendered, for this reason.

CARSON CITY, October 15, 1913.

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

DEAR SIR: I am in receipt of your communication of the 8th instant, asking construction of paragraphs 17, 36, and 39 of the Public School Act.

Section 17 provides for the issuance of all teachers' certificates, except temporary certificates, by the State Board of Education.

Section 36 provides:

No teacher shall be entitled to receive any portion of the public school moneys as compensation for services rendered unless such teacher * * * shall have a certificate issued in accordance with law.

Section 39 provides:

Every teacher shall upon opening school * * * file with the Deputy Superintendent of Public Instruction a Nevada teacher's certificate entitling the holder to teach in a school in the district in which she shall be hired.

It seems that in the case of certain teachers they did not file with the Deputy Superintendent of Public Instruction a certificate as provided by section 39, and for such reason the Deputy is in doubt as to whether or not such teachers are entitled to receive compensation for services already rendered by them. It will be noted that section 36 provides merely that the teacher shall not be entitled to receive compensation for services rendered unless he has a certificate issued in accordance with law. Section 39 provides for the filing of such certificate with the Deputy Superintendent. The essential qualification for a teacher to be entitled to draw wages is the issuance of certificate and not the filing thereof with the Deputy Superintendent. It has been held in other States that "a teacher's certificate is *prima facie* evidence of the teacher's qualifications, and of the fact that the board or committee issuing such certificate have properly performed their duty as to the manner and requisites of their issuing it, and in the absence of fraud cannot be collaterally impeached." It also has been held that "officers or boards authorized to issue teachers' licenses or certificates are usually vested with a discretion in regard thereto, and their decisions are usually conclusive, * * * but where, after a proper examination, or compliance with other statutory conditions, it is determined that an applicant is competent to teach, the officer or board has no discretion to refuse the issuance of a certificate to him, and if it does so refuse, it may be compelled to issue the certificate by *mandamus*." It has also been held that "where, without a legal certificate, a teacher earns his money, and he is in fact entitled to a certificate,

CORRECTION

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which through inadvertence merely has not been received by him, he is entitled to the wages earned."

The school law provides a number of methods by which the Deputy Superintendent may know whether or not a teacher within his jurisdiction has been properly certificated: (1) By notice (which is the best authority) from the Secretary of the Board of Education that a certificate has been issued; and (2) By the biennial report of the Superintendent of Public Instruction. It may frequently happen that, through loss of certificate, delay in transmission thereof through the mails, or delay in the issuance thereof, a teacher may not be able to comply with that portion of section 39, above quoted, requiring her to file her certificate with the Deputy Superintendent, but in my opinion this is directory only, and if the Deputy Superintendent in any manner is aware of the fact that any teacher under his jurisdiction has been properly licensed by the State Board of Education, as provided in section 36, he cannot for this reason withhold payment of the compensation of such teacher for services rendered. Of course, if a teacher having possession of her certificate persistently refuses to file her certificate with the Deputy Superintendent, he may take action against her as provided in the school law.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

92. **Licenses—Banks and Banking.**

The provisions of sec. 3728, Rev. Laws, providing for a license on bankers are not repealed by implication, sec. 662, Rev. Laws, also providing a license on banking, and both such licenses are collectible from banks doing business in this State.

CARSON CITY, October 15, 1913.

HON. WILLIAM WOODBURN, *District Attorney, Reno, Nevada*.

DEAR SIR: I am in receipt of your favor of the 26th ultimo, asking for an opinion as to the licenses required of banks in this State.

You call my attention to sections 662 and 3730 of the Revised Laws. The first-mentioned section is section 47 of "An Act to regulate banking and other matters relating thereto." Under the provisions of this section the moneys derived from licenses thereunder exacted are paid into the General Fund of the State Treasury, thus providing for a state license, and such moneys are presumed to be used to defray the expenses incurred by the provisions of said Act. The latter section is section 118 of the General Revenue Act, and the moneys derived therefrom are to be collected by the Sheriff and paid into the county treasury, and, therefore, this license is a county license.

I see no reason why the Legislature of this State cannot provide in its discretion for a license for both State and county for the banking business, as the purposes of these revenue enactments are different, and I am of the opinion that the provisions of the general revenue law is not

repealed by implication by the provisions of section 662 compelling the payment of a state license upon banking business.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

93. Licenses—Dance Halls—"Employee."

Under the facts submitted, held that a license is required under the provisions of sec. 3736, Rev. Laws. The word "employed" is synonymous with "engaged." It does not import that the persons so employed must be in the employ of another. It does not necessarily imply the receipt of salary or wages from the employer.

CARSON CITY, October 16, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of the 6th instant, enclosing an agreed statement of facts with reference to a certain alleged dance hall, and asking my opinion upon such statement.

It appears from such agreed statement that the proprietors of such resort maintain a place at which intoxicating liquors are sold and which has a considerable space reserved for dancing, for which music is provided; that girls and women are constantly in attendance to accommodate men who resort to such place for the purpose of dancing; that upon completion of a dance with one of these girls the pair dancing go to the bar and pay 50 cents for two drinks, of which the bartender returns 25 cents to the girl; that said girls also solicit the patrons of said resort to go to their rooms for the purpose of drinking with them, and said girls make a commission on all wines and liquors which they induce the men, who visit their rooms, to drink, all of such wines and liquors being purchased from the bar in said resort.

The statute (Rev. Laws, 3736) requiring a license from such places provides:

Any person * * * who may conduct any dance hall * * * where women or girls are employed to dance or solicit the purchase by persons visiting such house, either directly or indirectly, of any kinds of liquor or wines or cigars * * * shall * * * take out a license * * * to carry on such business and pay therefor, etc.

The construction of the statute depends upon the meaning of the word "employed" therein used. This word is synonymous with the word "engaged." It does not import that the persons so employed must be in the employ of another. It does not necessarily imply the receipt of salary or wages from the employer. It has been held that a news-boy engaged in selling papers and permitted to pass in and out of the cars of a passenger railway company on such business is within the meaning of an Act providing that any person employed in or about the road, depot, or premises or cars of a railway company shall only have such right of action or recovery against the company for personal injuries as would exist if such person were an employee. It appears from the agreed statement of facts that the girls in such resort receive compensation for dancing with the patrons thereof, not only by direct payment from the patrons

of a stipulated sum, but also by commission on all drinks consumed by patrons in the rooms of such women.

To my mind, the facts in the agreed statement come squarely within the provisions of the section above quoted, and the resort in question is subject to the payment of the license provided therein.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

94. Public Schools—Trustees—Contract.

A contract of a school district, in which one of the trustees is pecuniarily interested, directly or indirectly, is void.

CARSON CITY, October 17, 1913.

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

DEAR SIR: I am in receipt of your favor of the 11th instant, asking the opinion of this office upon certain questions propounded touching the construction of section 71 of the Public School Act.

Said section 71 reads as follows:

No trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member.

The reasons for this declaration of public policy by the Legislature must be obvious, and it is, of course, unnecessary to detail them.

35 Cyc. 954, lays down the rule as to such contracts as follows:

As a general rule it is unlawful for a member of a school board or a school officer to enter into any contract on behalf of the school district in which he has an individual interest.

This matter has been recently examined by our Supreme Court in the case of *Worrell v. Jurden*, 132 Pac. 1160, in which case it is stated:

If the respondent (a member of the board of school trustees of the district) was interested directly or indirectly in the contract at the time the same was awarded to appellant, the contract of the latter according to many of the authorities cited would be void.

In my opinion the formal declaration of the Legislature in the matter of public policy cannot be lightly disregarded. This statute was enacted for the purpose of preventing any Trustee benefiting pecuniarily in any contract let by the board, of which he was a member, and according to the quotation from the decision above mentioned if a Trustee is interested in such contract, directly or indirectly, the same is void.

This interpretation of such section would render void any contract of the board with a partnership of which a School Trustee is a member.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

95. Mandamus.

Mandamus is not the proper remedy where petitioner has a plain, speedy, or adequate remedy at law, and such remedy is provided in case of a rejected claim against the State under sections 4459, 5653, and 5655, Rev. Laws.

95. Officers—Actual Traveling Expenses—Statutes Repealed.

That portion of the Public School Act (Rev. Laws, 3251) allowing the Superintendent of Public Instruction, while away from home on business, his necessary living expenses, is not repealed by that provision of the Appropriation Act of 1913 (Stats. 1913, 186), making "Appropriation for actual traveling expenses of Deputy Superintendents of Public Instruction."

CARSON CITY, November 7, 1913.

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

DEAR SIR: On Tuesday, November 4, 1913, the Supreme Court of the State of Nevada filed its opinion in the case of The State of Nevada, ex rel. J. F. Abel, Petitioner, v. Jacob Eggers, State Controller.

In the opinion and decision of the court the petition for *mandamus* and the issuance of a writ are denied. The writ is denied, however, strictly upon the grounds that the petitioner, Abel, has not pursued the proper remedy, and that *mandamus* is not the proper remedy, because it lies only when the party has no plain, speedy, or adequate remedy in the ordinary course of law, and the court saying in its opinion that the petitioner has plain, speedy, and adequate remedy under sections 4459, 5653, and 5655 of the Revised Laws, which provide for suits against the State.

However, the court clearly and unmistakably says in its opinion that Deputy Superintendent of Public Instruction Abel is entitled to receive and have allowed his living expenses and his traveling expenses, and that the words "actual traveling expenses" mean the actual traveling expenses as now allowed by the general law, including the cost of living actually incurred while away from home performing official duties, not exceeding the amount of the appropriation, and that the payment of such expenses is not limited by the decision of this court construing an earlier Act which did not provide for the cost of living. Under such a construction the State may properly pay the cost of living of the Deputy Superintendents while away from home in compliance with the later statute as enacted by the Legislature, which was not repealed nor suspended by this general appropriation bill.

I am clearly of the opinion, therefore, that Deputy Superintendents of Public Instruction, the State Mine Inspector and his Deputy, and the District Judges are entitled to receive their living expenses, hotel bills, etc., in addition to the cost of transportation and expenses en route.

I further desire to advise you that if you find as a matter of *fact* that the moneys have been actually expended for hotel bills and living expenses of the officer while away from the place of his residence on official duties, the account should be approved, and you should draw your warrant therefor.

In my conversation with you today you stated that you would not allow any claims which included hotel bills or living expenses. I desire to advise you if you persist in this determination, action in all probability will be commenced by the various officers to obtain judgment against

the State. All that will be necessary to be proved by the plaintiff in the trial of these cases will be that the money has been actually expended in living and necessary expenses by the officer when absent from his place of residence on official business, and if such proof be made, judgment must be rendered in his favor. As many of these cases will involve amounts less than \$300, attorney fees as well as other costs will be taxed in the judgment, and the State will be thereby penalized the amount of attorney fees and costs in addition to the amount of the claim in the first instance.

Section 5655 of the Revised Laws specifically provides:

Upon the presentation of a certified copy of a final judgment in favor of the claimant in any such action, the Controller shall draw his warrant in favor of the claimant for the amount awarded by the *judgment*.

I give you this opinion for the reason that, if the claims be proper, the State should not be penalized by having to pay costs and attorney fees, and be hampered with useless and expensive litigation.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

96. Licenses—Hotels.

The classification provided in sec. 3734, Rev. Laws, rests upon the aggregate amount of business done by each hotel, and not upon the net returns of proceeds therefrom.

CARSON CITY, November 10, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your favor of November 6, asking an interpretation of section 3734, Revised Laws, concerning the classification of hotels.

Said section provides that those hotels doing business in the *aggregate* to the amount of three thousand dollars, or over, per month, shall constitute the first class, and the exception to said section includes "any license for lodging-houses that are kept in connection with eating-houses, where the *aggregate* receipts of such lodging department does not exceed thirty dollars per month."

Upon a perusal of the whole section, I am satisfied that the classification rests upon those doing business in the aggregate to the amounts therein named, meaning thereby the gross receipts.

Had the Legislature intended to classify hotels upon the net proceeds instead of the gross receipts, it would have used apt words to that effect.

I am, therefore, of the opinion that the classification rests upon the aggregate amount of business done by each hotel and not upon the net returns or proceeds therefrom, and you are so advised.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

97. Elections—Secretary of State—Referendum.

Under the provisions of sec. 1, Stats. 1913, 566, a referendum petition must contain the names of 10 per cent or more of the voters as shown by the number of votes cast at the last preceding general election for Justice of the Supreme Court, or the same will be disregarded by the Secretary of State.

CARSON CITY, November 10, 1913.

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

DEAR SIR: You have referred to me the petition of certain electors of Elko County asking for a referendum vote on chapter 157 of the Statutes of 1913, entitled "An Act to authorize the Board of County Commissioners of the county of Elko, State of Nevada, to issue bonds to provide for the construction, equipment, and furnishing of a high-school building, in the town of Wells, Nevada," etc.

Section 1 of the chapter concerning the referendum vote of the general election law, to be found on page 566 of the Acts of 1913, provides:

Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding general election for Justice of the Supreme Court, shall express their wish that any law or resolution made by the Legislature be submitted to the vote of the people, they shall file with the Secretary of State * * * a petition, which petition shall contain the names and residences of at least ten per centum of the voters of this State, demanding that a referendum vote be had by the people of the State at the next general election upon the bill or resolution on which the referendum is demanded.

Upon examination of the petition in question I find it contains the names and addresses of about forty electors only. On reference to the official election returns, compiled by your office, upon page 19 thereof it appears that the total vote for Justice of the Supreme Court at the election held in November, 1912, was 19,071, thus requiring over 1,900 signatures to obtain a referendum vote upon this bill. As the petition lacks considerably in the number of signatures required, you are authorized to disregard the same unless supplemental petitions containing the proper number of signatures are filed with you.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

98. Constitutional Law—Legislature—Secretary of State.

It is no part of the duty of the Secretary of State to compile into a pamphlet the bills vetoed by the Governor and the veto messages pertaining thereto.

CARSON CITY, November 18, 1913.

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

DEAR SIR: I am in receipt of your communication of the 10th instant, asking a written opinion as to whose duty it is to compile the pamphlet

presented to the Legislature of the bills vetoed by the Governor, after the adjournment of the Legislature, and the veto messages pertaining thereto.

The only provision to be found in our Constitution in relation to the matter is in section 35 of article 4 (Rev. Laws, 293), which provides:

If any bill shall not be returned within five days after it shall have been presented to him (Sunday excepted) exclusive of the day on which he received it, the same shall be a law, in like manner as if he had signed it, unless the Legislature by its final adjournment prevent such return, in which case it shall be a law, unless the Governor within ten days next after the adjournment (Sundays excepted) shall file such bill with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor, and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by yeas and nays, to be entered upon the journals of each house, it shall become a law.

You will note from the above quotation that your duty is limited to laying such bills with the Governor's objection thereto before the Legislature at its next session. No provision is made by the Constitution or by statute as to the compilation of these vetoed bills, and if it is deemed best as a matter of convenience to compile the same into a pamphlet, it is no part of your duty to attend to such compilation.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

99. **Licenses—Slot Machines—County Commissioners.**

It is in accordance with law to conduct, and allow to be conducted, slot machines, but no play-backs are allowed. By the term "play-back" is meant the use of bingles procured by one operating the machine in continuing his play thereat. If a city were authorized under the old law to pass an ordinance for the licensing of slot machines, such ordinance was suspended during the time of the antigambling law, and came into full force and effect again upon the enactment of the amendment of 1913. Unless a Board of County Commissioners is operating as a governing board of some town, no county license is collectible, but in such towns the Board of County Commissioners, as such governing board, has the power to pass an ordinance fixing a license upon slot machines. The play-back clause in the amendment of 1913 is enforceable, and the violation thereof is a misdemeanor.

CARSON CITY, November 18, 1913.

HON. GRAY MASHBURN, *District Attorney, Virginia City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 10th instant, asking the opinion of this office in regard to the licensing of slot machines. Answering your questions in the order submitted, I reply as follows:

1. In my opinion it is in accordance with the law of this State to

conduct and allow to be conducted slot machines for cigars and drinks, but no play-backs are allowed.

2. By the term "play-back" is meant the use of the bingles procured by one operating the machine in continuing his play thereat. The bingles given for winnings should be of such size and shape that they cannot be used in playing at the same or a similar machine at which said bingles were given.

3. If a city were authorized under the old law to pass an ordinance for the licensing of slot machines, such ordinance was suspended during the time of the operation of the antigambling law, and came into full force and effect again upon the enactment of the amendment of 1913.

4. Unless your Board of County Commissioners is operating as a governing board of some town in your county as provided by law, no county license is collectible, but in such towns the Board of County Commissioners as such governing board has the power to pass an ordinance fixing a license upon slot machines.

In an opinion to Hon. William Woodburn, District Attorney of Washoe County, under date of September 22 last, I advised him that the no-play-back clause in the amendment is enforceable, and that a violation thereof is a misdemeanor.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

100. Public Schools—School Trustees.

There is no law compelling School Trustees to remain in office if they do not see fit to do so.

CARSON CITY, November 19, 1913.

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

DEAR SIR: It seems that all of the Trustees of a certain school district have tendered their resignations as Trustees, and have notified you that unless the same are accepted on or before the 22d instant, they will proceed to close up the business in their hands and retire from business on that date; and you desire to be informed as to your rights and duties in this matter.

I can find no provision in the school law compelling these Trustees to remain in office if they do not see fit to do so. Section 63 of the School Act provides the date for an election in case of any vacancy or vacancies in the Board of School Trustees as the fourth Saturday after the occurrence of such vacancy or vacancies. Said section further provides "that the remaining members of the board may serve as a full board for the purpose of making all required preliminary arrangements for conducting said elections to fill said vacancies." The following section provides that in case of failure to elect or in case of no election being held, as provided in section 63, the Deputy Superintendent shall fill the vacancy or vacancies occurring in such Board of Trustees. According to the provisions of

the school law, it would appear that if the resignations of all the Trustees in this district are accepted at once there would be a period of at least four weeks before the Deputy Superintendent is authorized to fill the vacancies thus created, but, if you can persuade one of the Trustees to allow you to defer action upon his resignation for the present, he can, as provided by section 63, make the preliminary arrangements for calling election of a new board. It would be unfortunate to allow this district to remain without any government for a period of four weeks, possibly placing the schools in a chaotic condition and perhaps closing them for that time.

Unless you can make such arrangement with one of the Trustees, I can see no outcome from the dilemma except through the operation of the provisions of sections 63 and 64 above mentioned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

101. License—Cigars—Hotels.

Under sec. 3732, Rev. Laws, a hotel, which is also dealing in cigars and tobacco, must, in addition to the regular hotel license, take out also a cigar license.

CARSON CITY, November 21, 1913.

HON. WILLIAM WOODBURN, *District Attorney, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of October 30, requesting an opinion on the right of the Sheriff to collect a license for the sale of cigars and tobacco from a hotel, which is running a stand for the sale of such merchandise in connection with its hotel business.

I note that you advised the corporation conducting the hotel that the businesses are of a different character, and that a separate license should be collected for each line of business.

Section 3732, Rev. Laws, provides:

Every person, who shall sell or vend any goods, wares or merchandise, * * * shall obtain from the Sheriff of the county in which such business may be transacted for each of the branches of business a license for the transaction of such business * * * at the following rates, to wit: * * *.

As you know, each saloon-keeper in the State who is selling or vending cigars and tobacco in connection with his retail liquor business, is now paying a separate license for the sale of such cigars and tobacco. In view of the provisions of section 3732, above quoted, I am of the opinion that you correctly advised this corporation that the businesses conducted by it are of a different character, and that separate licenses should be collected for each of the branches of its business.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

102. Revenue—Taxation—Poll Tax—Poll-Tax Receipts—Loss Of.

Since the adoption of the amendment to article 2, section 7, of the Constitution, the State has no interest in the poll-tax receipts. In case some of the blank receipts issued to an Assessor are lost or accidentally destroyed, the manner of the settlement of the Assessor lies entirely with the county officers. The amendment to said section of the Constitution repeals section 3725, Rev. Laws, requiring a statement of the poll-tax receipts to be sent to the Controller. If a book of poll-tax receipts is sent to the manager of a company, so that he may collect the poll taxes of the men employed by him for the Assessor, and such manager refuses to make any report of the same, under such circumstances it is the duty of the Assessor under sec. 3718, Rev. Laws, to make an estimate of the number of persons in the employ of such company as he may deem just and reasonable, and certify such number to the Treasurer, who is authorized to add the poll taxes for such number of persons to the tax to be paid by such company.

CARSON CITY, November 21, 1913.

HON. H. C. McTERNEY, *Assessor of Eureka County, Eureka, Nevada.*

DEAR SIR: Owing to the press of business in this office answer to your favors of the 6th and 14th instants, requesting opinions upon certain questions therein contained, has been delayed until now.

You inquire: "In the event of poll tax books, or receipts, being lost or accidentally destroyed, can the Auditor give the Assessor a receipt and clearance in full for same upon filing with him an affidavit to the effect that such receipts have been so lost or destroyed and that no money has been received for them by either the Assessor or the person losing them?"

The original constitutional provision in regard to poll taxes (Art. 2, sec. 7, Rev. Laws, 256) provides that one-half the receipts therefrom should be applied for state and one-half for county purposes, but by the amendment adopted at the general election of 1910 the entire poll-tax receipts go to the county in which they are collected to be expended for the maintenance and betterment of the public roads.

The State, therefore, has no further interest in these poll-tax receipts, and I am of the opinion that in case some of the blank receipts issued to an Assessor are lost or accidentally destroyed and that no money has been received for them by either the Assessor or the person losing them, the manner of the settlement of the Assessor lies entirely with the county officers, and if the proper officers are willing to accept an affidavit reciting the facts and showing that no moneys have been received upon such lost receipts, it is entirely within their power so to do, as the State has no concern whatever in the matter.

In answer to your second question, I am of the opinion that the amendment to article 2, section 7, of the Constitution, above mentioned, and the provisions of section 384, Rev. Laws, and chapter 22, Statutes of 1913, do repeal section 3725, requiring a statement of poll-tax receipts to be sent to the Controller, now that the State has no further interest in such collections.

It seems that a book of poll-tax receipts was sent to the manager of a company so that he might collect the poll taxes of the men employed by him for the Assessor, and that such manager or his successor refuses to make any report of the same. Under such circumstances, I am of the opinion that under the provisions of section 3718, Rev. Laws, it is your duty to make an estimate of the number of persons in the employ of

such corporation as you may deem just and reasonable, and certify such number to the Treasurer, who is authorized to add the poll taxes for such number of persons to the tax to be paid by such company.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

103. **Corporations—Building and Loan Associations—Investment Companies.**

Any joint-stock company, association, or corporation, organized for the purpose of engaging in the building and loan business, or to borrow and invest moneys, or dealing in investment certificates, or other similar business, must comply with the provisions of secs. 1361-64, Rev. Laws, requiring a deposit of collateral with the State Treasurer.

CARSON CITY, November 22, 1913.

MR. WILL U. MACKEY, *State Printing Office, Carson City, Nevada.*

DEAR SIR: I am in receipt of letter of October 14 addressed to you by Mr. Roosevelt Johnson, manager of The Realty Union, San Francisco, Cal., together with the documents therein specified, wherein Mr. Johnson requests the opinion of this office as to the rights of his company to do business without compliance with the provisions of an Act of this State entitled "An Act requiring certain nonresident joint-stock companies, associations, and corporations doing a building and loan business to furnish security before doing business in this State, and prescribing a penalty for a failure to do so," said Act being embraced in sections 1361-64 of the Revised Laws of Nevada.

In his letter Mr. Johnson says:

The business of The Realty Union is not a money-lending business like that of the building and loan associations, but it is mercantile in its character, since our principal business is to buy and to sell land. * * * However, many of the residents of your State send money to us to be invested. When a resident of Nevada invests with us, our evidence of indebtedness is issued in this office and delivered to the investor through such channel as he may direct.

The first section of the Act in question, being section 1361 of Revised Laws, provides as follows:

From and after the passage of this Act no joint-stock company, association or corporation heretofore or hereafter organized under the laws of any other State, Territory or foreign country, for the purpose of engaging in the building and loan business, or to borrow, *loan or invest money, or dealing in investment certificates, or other similar business,* except a banking business, shall be allowed to continue or to do business, without first having deposited with the State Treasurer the sum of ten thousand dollars in money of the United States or municipal bonds of this State, or in first mortgages upon real estate located within this State, or in first mortgages upon real estate of some other State or Territory of the United States. * * *

It seems to me that the language of Mr. Johnson's letter brings the business of The Realty Union, as described by him, squarely within that portion of section 1361 in italics above. This enactment was made for

the express purpose of protecting citizens of this State in their investment of money in such associations, and the provisions of section 1 thereof, above quoted, should be strictly complied with before such associations are permitted to transact a loan or investment business in this State.

The letter of Mr. Johnson and accompanying documents are herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

104. Licenses—Automobile Licenses.

Under secs. 3877-78, Rev. Laws, if a company taking out a license in one county maintains its headquarters there, and has no headquarters in another county, the one county license is sufficient, and the company cannot be required to procure a license from another county, even though the greater part of its route lies through such county.

CARSON CITY, November 22, 1913.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your request for an opinion upon a letter from the Honorable Eugene Grutt, Sheriff of Mineral County, inquiring as to the construction of the statute requiring licenses upon automobiles kept for hire or rent, said licenses being provided for by sections 3877-78, Rev. Laws.

Mr. Grutt inquires: "If the owners are now paying license in Lyon County and the greater part of their route lies in Mineral County, should we not collect a license also?"

In response, permit me to say that, in my opinion, if the company taking out such license in Lyon County maintains its headquarters there, and has no such headquarters in Mineral County, the license is sufficient, and the company cannot be required to procure a license from Mineral County, even though the greater part of its route lies through such county.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

105. Mines and Mining—Employer and Employee.

Stats. 1913, 569, applies to men employed underground, and also to all men employed in surface mine-workings, a part of whose duty it is to handle explosives.

CARSON CITY, November 29, 1913.

MR. W. R. COX, *Superintendent Mason Valley Mines Co., Mason, Nevada.*

DEAR SIR: Your favor of the 18th instant, addressed to Mr. Ed. Ryan, Inspector of Mines, asking information about an Act entitled "An Act requiring all persons employed in underground mines or in handling explosives to be able to speak and read the English language, and providing penalties for the violation of the Act," to be found on page 569 of the Statutes of 1913, has been referred by Mr. Ryan to this office for reply.

You inquire: "Does this Act apply to all men employed underground, miners, muckers, trammers, etc., or to those only who handle explosives?"

In response to your inquiry, let me say that in my opinion the Act applies to all men employed underground, and also to all men employed in surface mine-workings, a part of whose duties it is to handle explosives. Such was the intent of the Legislature at the time of the passage of this Act, as shown by the discussion thereon.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

106. Extradition—Duty of Governor.

A requisition upon a misdemeanor charge may be honored by the Governor, but the mere obtaining of judgment for money demand for unpaid labor in the Justice Court, without the filing of any criminal charge, would not be sufficient, and could not authorize the Governor to issue requisition papers upon the Governor of a sister State.

CARSON CITY, December 8, 1913.

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

MY DEAR GOVERNOR: Replying to yours of December 4, relative to requisition of a defendant in California for a misdemeanor charge, I am of the opinion that requisition may issue upon a misdemeanor charge, and if a criminal complaint has been properly filed in the proper court charging a misdemeanor for obtaining labor under false pretenses, and the proper request comes to your office from the District Attorney and the County Commissioners of the county, requisition may issue by you.

The portion of the letter quoted in your letter to me is somewhat ambiguous, but I am of the opinion that the mere obtaining of a judgment for a money demand for unpaid labor in a Justice Court, without the filing of any criminal complaint, would not be sufficient, and could not authorize you to issue requisition papers upon the Governor of a sister State.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

107. State Orphans' Home—Counties—Children—Expense of Maintenance.

The Board of Directors of the State Orphans' Home is not required to receive any child, except an orphan, from any county except at the expense of such county. Sec. 4099, Rev. Laws, as amended (Stats. 1913, 268), applies only to the admission of dependent and neglected children, as defined by the statutes of this State.

CARSON CITY, December 16, 1913.

Board of Directors, State Orphans' Home, Carson City, Nevada.

GENTLEMEN: In response to your request for an interpretation of section 12 of the Act relating to the government and maintenance of the State Orphans' Home as amended by chap. 243, p. 367, Stats. 1913, permit

me to state that in my opinion your board is authorized to require such guaranty or guaranties as you may see fit to impose upon the county from which a child is sent to you under such section before being compelled to receive such child from its living parent or parents into your institution. In other words, your board is not required to receive any child but an orphan from any county except at the expense of such county. If the county wishes to look to the living parent or parents for such expense, it may do so at its discretion, but you are not in any way bound by such action of the county.

It is my opinion that section 13 of said Act as amended applies only to the admission of dependent and neglected children as defined by the statutes of this State.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

108. Licenses—Liquor Licenses.

Opinion of July 12, 1913, to Nevada Tax Commission (No. 68), confirmed. Stats. 1913, 376, applies to the whole of Storey County.

CARSON CITY, December 20, 1913.

HON. GRAY MASHBURN, *District Attorney, Virginia City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 8th instant, asking for an interpretation of "An Act to regulate the sale of intoxicating liquors outside the corporate limits of an incorporated city or town," being chapter 248 of the Statutes of 1913.

In response I would first call your attention to my opinion of July 12, printed on page 70 of the Laws Relating to Assessment and Taxation as compiled by the Nevada Tax Commission, in which it is decided that it is not necessary that a petition for license be presented every quarter, but only on the 1st of January of each year, or when the first application is made for license, and then on January 1 thereafter. This opinion obviates the hardship you speak of in your letter of requiring each applicant for license to make application quarterly and deposit therewith the amount of the quarterly fee, and requires such deposit to be made in case of those regularly engaged in the liquor business only once a year. I think that this is a reasonable provision evidencing the good faith of the applicant for license, and certainly would save the license collector much trouble in that, when a favorable action has been taken upon an application, the money is already in the hands of the collector, and the only steps necessary to be taken are the issuance and delivery of license.

I am of the opinion that the law in question applies to the whole of Storey County in that there is no incorporated city or town in your county.

I believe that this fully covers the matters mentioned in your letter.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

109. Licenses—Liquor Licenses—Druggist's Liquor License.

The retail drug-store license covers the filling of prescriptions when prescribed by a duly licensed and practicing physician only, and in no other case, and does not cover the sales of liquor, wines, or alcoholic stimulants except when so prescribed. The license to be collected from druggists, who sell liquors, wines, or alcoholic stimulants without such prescription, is fixed at \$100 per year. Upon such payment, however, the \$25 required for druggist's license is waived.

CARSON CITY, January 3, 1914.

HON. A. J. MAESTRETTI, *District Attorney, Austin, Nevada.*

DEAR SIR: I am in receipt of your favor of the 30th ultimo, asking the construction of chapter 268, page 423, Statutes of 1913, and what license should be collected from a druggist who sells whisky by the bottle without a physician's prescription, but does not sell it by the drink.

The statute in question is an amendment of section 3779, Revised Laws, and the only change therein made by such amendment is the raising of the price of the retail state license to \$100 from \$50, and the raising of the price required for a retail drug-store from \$12 to \$25. It has been heretofore held that a retail drug-store license covers the filling of prescriptions when prescribed by a duly licensed and practicing physician only, and in no other case (see Opinions of Attorney-General, 1912, p. 30), and did not cover sales of liquor, wines, or alcoholic stimulants except when so prescribed. I am satisfied with this opinion of my predecessor that the license to be collected from druggists who sell liquor, wines, or alcoholic stimulants without such prescription is fixed at \$100 per year. On such payment, however, the \$25 required for a druggist's license is, of course, waived.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

110. Corporations—Articles of Incorporation—Corporate Name—Notaries Public—Secretary of State.

In the reorganization of corporations the addition of the word "Limited" to the original name of the corporation is not a violation of the provisions of sec. 1108, Rev. Laws, and the Secretary of State must accept for filing, articles bearing such corporate name, notwithstanding the fact that the articles of incorporation bearing the same name, with the exception of the word "Limited," are already on file in his office. A Notary Public who was a party to the instrument, is disqualified to take the acknowledgments thereto.

CARSON CITY, January 9, 1914.

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

DEAR SIR: I am in receipt of your favor of the 7th instant, in regard to articles of incorporation of Indian National Mining Company, Limited, and in response would advise you as follows:

It appears that the State has already accepted articles of incorporation

of the Indian National Mining Company, and you inquire whether the addition of the word "Limited" to such name is sufficient to distinguish it from the present company on record.

Section 1108, Revised Laws, provides:

The name of the corporation shall be such as to distinguish it from any other formed or incorporated in this State or engaged in the same business or promoting or carrying on the same business or purposes in this State.

The purpose of this enactment seems to be to prevent one corporation from assuming a name already taken by another in this State for the purpose of misleading the public or in procuring some of the business of the first corporation through similarity of names. In the case of the corporation in question, however, it appears that this company is merely a reorganization of the Indian National Mining Company, with presumably the same stockholders and officers. I do not see how any trouble could arise under the circumstances by this similarity of names, and I think that the addition of the word "Limited" to the name of the original company is sufficient to distinguish it from the former corporation incorporated in this State. Under the circumstances I do not think you would be warranted in refusing to file the articles of this new company now in your possession.

It appears from said articles that one W. H. O'Neil is one of the incorporators of the Indian National Mining Company, Limited, and it also appears that he is a Notary Public, and has taken his own acknowledgment as an incorporator of the company. Section 1107, Revised Laws, provides:

All persons who desire to form a corporation or any one or more specified in this Act shall make, sign and acknowledge before some person *competent* to take acknowledgments of deeds, and file and have recorded * * * articles of incorporation.

Inasmuch as Mr. O'Neil is both one of the incorporators and is a Notary Public taking his own acknowledgment, I do not think he is competent to take the acknowledgment of the incorporators of these articles of incorporation, because he is a party to the instrument, and is, therefore, disqualified to take his own acknowledgment. In a note to the case of *Havemeyer v. Dahn*, reported in 33 L. R. A. 332, the law on this question is distinctly stated as follows:

The cases universally hold, in the absence of any statute affecting the question, that an officer, who is a party to an instrument, is disqualified to take the acknowledgment, and it seems to be generally assumed that the identity of the names is a sufficient indication of the identity of the party and the officer.

On account of such defective acknowledgment, I would advise you that said articles of incorporation be not accepted by you for filing in your office.

The articles are returned herewith.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

111. Counties—County Government—County Commissioners—Budgets—Duty of Preparation Of.

The counties are bound to follow the budget system. It is the duty of the County Commissioners to make a budget of the amount of estimated expense of conducting public business of the county for the ensuing fiscal year as provided by sec. 3829, Rev. Laws. Under sec. 3818, Rev. Laws, it is the mandatory duty of the Board of County Commissioners, if, after equalization, it appears that the levy previously made will result in the collection of revenue in excess or deficiency of the requirements of the county for the current year, to raise or lower the tax rate.

CARSON CITY, January 12, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: The Nevada Tax Commission, under the provisions of section 4 of the Act creating the same, has general supervision and control over the entire revenue system of the State, and it is its duty and it has the power thereunder to confer and advise with the Assessors and County Boards of Equalization. I, therefore, deem it advisable to call the attention of your Commission to certain matters with reference to county revenue, taxation, and county government.

I am of the opinion that under the law as it stands at the present time the counties of this State are bound to follow a budget system, and it is the duty of the Board of County Commissioners between the first Monday in January and the first Monday in March of each year to make a budget of the amount of estimated expenses of conducting public business of the county for the next ensuing fiscal year, and that having made such a budget it is the absolute duty of the Board of County Commissioners to keep within the aggregate amount designated in the budget; and further that the tax rate shall be such as to raise the amount of money necessary to return the amount of the budget, and no more.

Section 3829 of the Revised Laws provides:

The Commissioners shall between the first Monday in January and the first Monday in March make a budget of the amount estimated to be required to pay the expenses of conducting the public business of said county for the next ensuing year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof as the Commissioners shall deem advisable. After the final estimate is made in accordance herewith it shall be signed by the majority of the Commissioners and the County Clerk, and the several sums shall then be appropriated for the ensuing fiscal year to the several purposes therein named. The estimate shall be filed in the office of the Auditor.

This section to my mind clearly makes it the mandatory duty of the Board of County Commissioners to prepare this budget fixing the amount of money which will be necessary to pay the expenses of conducting the public business of the county for the ensuing year. In that connection I call your attention to section 3830 of the Revised Laws of the State of Nevada, which provides a penalty, as follows:

It shall not be lawful for the Commissioners or any officer of the county to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury, and

especially set aside for such payment. Any Commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the District Attorney in the county in which said Commissioner resides upon the request of the Attorney-General.

It is clear from the two foregoing provisions that it is the duty of the County Commissioners between the first Monday in January and the first Monday in March to make a budget of the amount estimated to be required to pay the expenses of conducting the public business of the county for the ensuing year, and to prepare such budget in detail both as to the aggregate sum and the items, and it is made unlawful for the Board of County Commissioners to contract for any expenditure unless the money for the payment thereof is in the treasury *and especially set aside for such payment.* I am confirmed in this view by the provisions of section 3831, which provides in case of great necessity or emergency, with the consent of the State Board of Revenue, the Board of County Commissioners may authorize a temporary loan, and by section 3832, which requires the levy of an emergency tax at the first tax levy following the creation of the emergency indebtedness. You will also observe from sections 3833 and 3834 that all county business must be conducted upon a cash basis, and no loans can be made by the Board of County Commissioners except the emergency loans or bonded indebtedness authorized by law.

In connection with the foregoing I desire to further call your attention to the provisions of "An Act in relation to levying and assessing taxes for state and county purposes," approved March 19, 1891 (Revised Laws, section 3818), as follows:

All state and county taxes required to be levied by the Boards of County Commissioners of the several counties of this State in pursuance of the revenue laws of this State, shall hereafter be levied by such Boards of County Commissioners on or before the first Monday of March in each year; *provided*, that if, *after the equalization of taxes in the several counties of this State, it shall appear that the levy previously made by the Board of County Commissioners of any county of this State for county purposes will result in the collection of a revenue, either in excess or a deficiency of the requirements of such county for the current year*, then, and in such event, the Board of County Commissioners in any such county shall have the power, and *it is hereby made the duty of such Board of County Commissioners, to immediately meet and either reduce or raise the rate of taxation, so previously levied, to such a sum as such board in its judgment may consider sufficient to insure the collection of such an amount of revenue as will answer all the requirements of such county for the current year.*

From the foregoing section it clearly appears that it is the mandatory duty of the Board of County Commissioners, if, after equalization, it appears that the levy previously made will result in the collection of revenue in excess or deficiency of the requirements of the county for the current year, to raise or lower the tax rate. I am clearly of the opinion from the foregoing sections that it is the absolute duty of the Board of County Commissioners, once having fixed the amount of the budget, to

fix the tax rate at such a rate as will raise the amount of the budget and no more, of course leaving a reasonable margin to insure the collection of the amount owing to the possibility of delinquencies.

Therefore, if, after equalization by the Board of County Commissioners and the Tax Commission at their respective meetings in October, there shall be a raise in the assessed valuation, I am of the opinion that it is the mandatory duty of the Board of County Commissioners to correspondingly reduce the county rate.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

112. Licenses—Automobile Licenses—Dealer's License.

Under Stats. 1913, 281, a dealer in second-hand automobiles is not required to take out an individual license for each one of the cars in which he deals, but is required to register one vehicle of each style or type dealt in by him. After such registration he may procure as many additional license tags for each style or type of vehicle registered as he may desire.

CARSON CITY, January 24, 1914.

WESTERN AUTO SUPPLY CO., *Reno, Nevada*.

GENTLEMEN: Your favor of the 8th instant, requesting the interpretation of the automobile law requiring licenses of second-hand cars, received.

The law contemplates that every car within the State, whether purchased new or second-handed, shall have a license, as is shown by the language of section 2 of the Act (Stats. 1913, p. 281): "The owner of every motor vehicle within the State shall file a statement," etc. Section 7 of the Act provides:

The manufacturer of or dealer in motor vehicles shall register one vehicle of each style and type manufactured or dealt in by him, and be entitled to as many duplicate license tags for each style as he may desire. * * *

It seems that you are dealing in second-handed cars, and inquire whether it is necessary for you to take an individual license out for each one of these cars. In response to your inquiry, let me say that you are not required to take out an individual license for each one of these cars, but under the provisions of section 7 above quoted you are required to register one vehicle of each style or type dealt in by you, and after such registration you may procure as many additional license tags for each style or type of vehicle registered by you as you may desire.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

113. Licenses—Engineer's License—County Commissioners.

Under secs. 3898-3904, Rev. Laws, providing for issuance of engineer's license, the County Commissioners have no right to demand an affidavit that the applicant has had at least one year's experience in the operation of steam boilers and machinery, but an affidavit of the knowledge and experience of the applicant, such as to justify the board in the belief that he is competent to take charge of stationary hoisting machinery of the character on which the applicant is to be engaged, is sufficient.

CARSON CITY, March 21, 1913.

HON. ED. RYAN, *Inspector of Mines, Carson City, Nevada.*

DEAR SIR: I am in receipt of a letter of February 28 from the Seven Troughs Coalition Mining Company, addressed to you, asking an interpretation of "An Act authorizing and empowering Boards of County Commissioners to regulate, issue licenses, and to revoke the licenses of stationary engineers and others having charge or control of stationary engines, steam boilers, hoists, and other hoisting apparatus and machinery," being sections 3898-3904, Revised Laws of Nevada, 1912.

The letter above mentioned states:

The affidavit of competency required by the State is so exacting that it is hard to get men who can qualify—that is, while we can get plenty of men familiar with the operation of gas and electric hoists, very few have had experience with steam. The state law, as exemplified by the affidavits supplied us by the County Clerk, allows for no elasticity of competency, but calls for a certain number of years' experience in the operation of steam and gasoline engines, boilers, hoisting machinery, and hoisting apparatus. The questions we are presenting to you for elucidation are: Is it essential that the operators of such equipment be licensed? And if so, cannot the affidavit of efficiency be qualified so as to meet the requirements of the situation?

Section 3 of said Act provides:

No license shall be granted or issued to any person to operate any stationary engine, steam boiler, hoist, apparatus or machinery, until the applicant therefor shall have taken and subscribed to an oath that he has had at least one year's experience in the operation of steam boilers and machinery, or whose knowledge or experience, is not such as to justify the board before whom such application is made in the belief that he is competent to take charge of all classes of steam boilers and other stationary hoisting machinery.

It will be noted that this section is in the alternative, and I think the County Commissioners have no right to demand an affidavit that the applicant has had at least one year's experience in the operation of steam boilers and machinery, but an affidavit of the knowledge and experience of the applicant, such as to justify the board in the belief that he is competent to take charge of stationary hoisting machinery of the character on which the applicant is to be engaged, is sufficient. In other words, if the applicant is to run a gasoline or electric hoisting apparatus, it is not necessary for him to make an affidavit that he has had at least one

year's experience in the operation of hoisting apparatus operated by steam boilers.

Herewith find copy of this opinion for the use of your correspondent.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

114. Licenses—Liquor License—Liquor Dealer.

A proprietress of a "parlor house" purchasing liquor in a quart bottle from a local wholesaler, and selling the same to her guests, is subject to the payment of a state and county liquor license.

CARSON CITY, March 21, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of a verbal request from you for an opinion upon a certain state of facts presented by Mr. Ed. Malley, Sheriff of Nye County, such statement of facts being as follows:

Miss Doe conducts a parlor house, and heretofore has paid state and county retail liquor license. She now desires to avoid the license obligation and proposes to purchase from local wholesaler beer in quart bottles as occasion demands and sell the same to guests as heretofore in the ordinary course of parlor-house entertainment.

Under the above circumstances I see no reason why Miss Doe is not a retail liquor dealer and subject to the payment of the state and county license provided for such purposes, and would recommend that you advise the Sheriff to take steps for the collection of said license.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

115. Licenses—Billiard and Pool Tables.

An owner of a billiard or pool table, not kept for the exclusive use of himself or his family, is subject to the payment of the license provided in sec. 3727, Rev. Laws.

CARSON CITY, March 21, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: With reference to the enclosed correspondence concerning collection of licenses for billiard and pool tables in Lyon County, after due consideration thereof, I am of the opinion that the parties owning such billiard and pool tables and allowing same to be used are liable for the payment of the license thereon, under section 3727, Revised Laws. I note from the correspondence that such persons intend to resist the payment of such license, and would, therefore, suggest that the quickest way to test the question is for the District Attorney to bring an action against one of such owners to compel the payment of such license.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

116. Revenue—Taxation—Transient Stock—Rate On.

Under Act for assessment, collection, and distribution of taxes on transient stock (secs. 3845-61, Rev. Laws), the county rate of the home county, rather than that in which the stock grazed as transient, should be the basis of the charge and settlement.

CARSON CITY, April 10, 1914.

HON. GRAY MASHBURN, *District Attorney, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 21st ultimo, asking interpretation of "An Act defining and classifying transient stock and providing for the assessment, collection and distribution of taxes on the same," etc., being sections 3845-3861, Revised Laws.

You ask "whether, in adjusting the payment of the taxes collected in the home county of such transient stock, the county rate of the home county or that of the county in which the stock grazed as transients should be the basis of the charge and settlement?"

The whole matter is governed by section 3850, Rev. Laws, which provides: "The taxes on all live stock owned by residents of the State and driven or removed from one county to another for the purpose of being grazed, that are grazed for any portion of the year in the county where owned, shall be paid in the county where owned"; which, of course implies that the rate of taxation in the owner's county is the one to prevail.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

117. Officers—County Officers—Sheriff—County Commissioners—Election.

In the event of the death of a Sheriff—

1. There is no one authorized by statute to exercise such office.
2. The County Commissioners may appoint a successor under secs. 1518 or 2805, Rev. Laws.
3. Any such appointment would be until the next general election only.
4. At the general election in 1914 it will be necessary to elect one person to fill out the balance of unexpired term and also elect a Sheriff for the succeeding term.

CARSON CITY, April 22, 1914.

HON. GRAY MASHBURN, *District Attorney, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 20th instant, asking the opinion of this office concerning certain complications which have arisen out of the death of your Sheriff.

Upon full consideration of the matter I am of the opinion:

First—That there is no one authorized by our statutes to exercise the office of Sheriff of your county.

Second—That your County Commissioners may appoint a successor under sections 1518 and 2805, Revised Laws.

Third—Any appointment under these sections would be until the next general election only and the qualification of the person elected to fill such office. (See sections 2806 and 2813, Revised Laws, and 35 Cyc. 1505.)

Fourth—At the election to be held in November next it will be necessary

to provide for the election of some person to fill out the balance of the unexpired term of your Sheriff, and also elect a Sheriff for the succeeding term.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

118. Public Schools—School Trustees—Elections.

Interpretation of secs. 3001-02 relating to election of School Trustees.

CARSON CITY, April 11, 1914.

HON. J. S. ABEL, *Deputy Superintendent Public Instruction, Winnemucca, Nevada.*

DEAR SIR: I am in receipt of your favor of the 5th instant, asking certain questions in regard to the school election law of this State.

In answer to your inquiries let me say:

First—If the voters of the district failed to elect Trustees on the first Saturday in April, vacancies occur in these offices on the first Monday in May.

Second—In case no election of School Trustees is held on the first Saturday in April, the electors of the district may not hold an election for Trustees on the fourth Saturday after the first Monday in May.

Third—In case no election of School Trustees is held on the first Saturday in April, the Deputy Superintendent has the power to appoint Trustees before the fourth Saturday after the first Monday in May.

Fourth—In filling vacancies that occur on the Board of School Trustees, the Deputy Superintendent has no power to appoint for a term beyond the next succeeding election.

In explanation of the above responses, let me say that in my opinion the vacancies mentioned in section 63 refer only to vacancies caused by resignation, removal, or death. In the event of such vacancies occurring, section 64 would then come into operation if no election was held, and the Deputy Superintendent is authorized to fill the vacancies. There is nothing in our statutes showing for what period the Deputy Superintendent may appoint, but the general policy of the law of this State and of every State is to allow the electors to fill the vacancies, and the power of an officer to appoint is usually limited to the period extending to the next general election.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

119. Constitutional Law—Pardons and Parole—Convicts—Board of Parole Commissioners.

The Act to establish a Board of Parole Commissioners (secs. 7631-34, Rev. Laws) is constitutional, and a majority vote of the board (the Governor not concurring therein) is all that is necessary to parole a convict under said Act.

CARSON CITY, April 25, 1914.

Honorable Board of Parole Commissioners, and HON. D. S. DICKERSON,
Warden of Nevada State Prison, Carson City, Nevada.

GENTLEMEN: I am in receipt of your request for an opinion as to the status of M. R. Preston, an inmate of the Nevada State Prison, owing to

action of the Board of Parole Commissioners taken at its regular meeting on April 24, 1914.

M. R. Preston stands convicted for the crime of murder of the second degree, and under a sentence of twenty-five years in the Nevada State Prison. Preston was received in the Nevada State Prison on May 29, 1907, and has been incarcerated therein ever since said day serving said sentence. At a meeting of the Board of Parole Commissioners M. R. Preston duly and regularly made an application for a parole, and the same was heard and considered, and on the 24th day of April, 1914, upon a vote being taken, the Chief Justice, Senior Justice, Junior Justice, and Attorney-General voted in favor, and for a parole of said M. R. Preston as members of the Board of Parole Commissioners, and Governor Tasker L. Oddie voted against the application and against the parole of Preston.

The question arises as to the effect of a majority vote in favor of the parole without the assenting vote of the Governor, and whether or not the Board of Parole Commissioners has the power and authority by a majority vote, without the assenting and affirmative vote of the Governor as one of such majority, to parole an inmate of the Nevada State Prison; and there is directly presented the question of the constitutionality of an Act creating the Board of Parole Commissioners, entitled "An Act to establish a Board of Parole Commissioners for the parole of and government of paroled prisoners," approved March 11, 1909 (secs. 7631, 7632, 7633, and 7634 of the Revised Laws of the State of Nevada), and whether said Act is in conflict with section 14 of article 5 of the State Constitution of Nevada.

Section 14 of article 5 of the Constitution of Nevada provides:

The Governor, Justices of the Supreme Court, and Attorney-General, or a major part of them, of whom the Governor shall be one, may upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments and grant pardons after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons.

It is manifest that no pardon, remission of fine or forfeiture, and commutation of punishment or sentence can be granted except by a major part of the officers named in the Constitution, one of whom must be the Governor; but the question presented here is in my opinion not one of pardon, remission of fine or forfeiture, or commutation of sentence. I am of the opinion that there is a clear distinction between them and parole, and especially the parole contemplated by section 7631 of the Revised Laws, creating the Board of Parole Commissioners. Section 7631 provides:

The Governor, the Justices of the Supreme Court, and the Attorney-General are hereby constituted a Board of Parole Commissioners, a majority of whom shall have power to act under the provisions of this statute. They shall have power to establish rules and regulations under which any prisoner, who is now, or hereafter may be, imprisoned in the State Prison, and who may have served one calendar year of the term for which he was sentenced and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed

to go upon parole outside of the buildings and enclosures, but to remain, while on parole, in the legal custody and under the control of the Board of Parole Commissioners, and subject at any time to be taken within the enclosure of said Prison. They shall have full power to make and enforce rules and regulations governing the conduct of paroled prisoners, and to retake, or cause to be retaken and imprisoned, any convict so upon parole, whose written order certified to by the secretary of the board shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all Sheriffs, officers and members of the State Police, Constables, Chiefs of Police, and all prison or police officers, to execute any such order in like manner as ordinary criminal process; *provided, however*, that no prisoner imprisoned under sentence for life shall be paroled until he shall have served at least seven calendar years. If any prisoner so paroled shall leave the State without permission from said board, he shall be held as an escaped prisoner and arrested as such.

It will be noted from the foregoing provision of the parole law that by the express terms thereof a convict "may be allowed to go upon parole outside of the buildings and enclosures;" but he remains, under said section and by the express terms thereof, in the legal custody and control of the Board of Parole Commissioners, and subject at any time to be taken within the enclosure of the Prison. The convict, being in the legal custody and under the control of the board and subject at any time to be taken back within the enclosure of the institution, cannot said to be pardoned, nor can this be said to come within any legal construction of a commutation of sentence or remission of fine. The section does not purport to discharge or shorten his time; it simply authorizes the Board of Parole Commissioners to allow the prisoner to go outside the enclosures of the Prison, but he remains in the legal custody and control of the board. (*State v. Peters*, 43 Ohio St. 629, 650, 651.)

The Ohio decision above cited is in every way in point here, and is even stronger, because under section 11 of article 3 of the Ohio Constitution the Governor is granted exclusive right "to grant reprieves, commutations, and pardons for all crimes and offenses, except crimes of treason and cases of impeachment, upon such occasions as he may think proper, subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by law." It will be observed that the constitutional provision of Ohio is almost identical in language with that of Nevada, and it will be further observed that the parole law of that State is practically that of Nevada.

I am, therefore, of the opinion that M. R. Preston has been paroled, and that a majority vote of the Board of Parole Commissioners is all that is necessary to parole a convict under the provisions of section 7631 of the Revised Laws of Nevada, and that the assent of the Governor is not necessary to make such parole effective.

M. R. Preston is, therefore, entitled to his liberty under parole and under the rules, regulations, and conditions of the Board of Parole Commissioners.

I am further confirmed in the foregoing opinion by the fact that under

a similar provision of the Constitution of California a Board of Parole Commissioners has been created, and they have been acting without the assent of the Governor since as far back as 1893. I further find from an examination of authorities that, while the President of the United States is granted exclusive power to grant *reprieves and pardons* for offenses against the United States by section 2 of article 2 of the Constitution of the United States, yet Congress has passed an Act creating a Board of Parole Commissioners, of whom the President is not one, to parole prisoners. The Act is almost identical, except as to the personnel of the board, with the Nevada statute. (Chapter 387 of the United States Statutes at Large, vol. 36, p. 810.) The Board of Parole Commissioners have in the past, without the assent of the Governor, granted paroles in at least one or two cases, which paroles have been effective.

I am, therefore, of the opinion that the Act in question is constitutional, and is not in violation of section 14 of article 5 of the Nevada Constitution; and applying the well-known rule of constitutional law—that every law is presumed to be constitutional until declared otherwise by a court of competent jurisdiction—I am of the opinion that it is the duty of the Warden of the Nevada State Prison to release R. M. Preston upon parole, and the duty of the Board of Parole Commissioners to give to M. R. Preston, subject to its rules, regulations, conditions, and restrictions, such a certificate of parole as has been adopted by the Board of Parole Commissioners.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General*.

120. Nevada School of Industry—Appointment of Commissioners—Negotiation of Loan.

Under Act creating Nevada School of Industry (Stats. 1913, 384) the Governor is authorized to immediately appoint a permanent Board of Government for such institution, and such board may lawfully negotiate a loan for the completion of the said school, and such loan would be a binding obligation against the fund created by such Act.

CARSON CITY, April 27, 1914.

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

MY DEAR GOVERNOR: I am in receipt of your request for an opinion upon the necessity and legality of appointing at this time the permanent board of government for the Nevada School of Industry, and your inquiry with respect to what will be necessary and who may properly negotiate a loan or borrow money in order to prepare as soon as possible the Nevada School of Industry.

The Act under which the Nevada School of Industry is created, and which provides for its government and supervision, is chapter 254 of the Statutes of Nevada for 1913, entitled "An Act establishing a state institution for delinquent boys, providing for the purchase of a site, erection of buildings, organizing the government of said school, and providing for the maintenance thereof, and creating a tax levy to raise funds for such purposes."

Under the provisions of section 3 it is made the duty of the Governor

to appoint two persons, who, with the Governor, constitute a Commission for the establishment of the Nevada School of Industry at the town of Elko, and by section 4 the said Commission is authorized to advertise for plans. Sections 5 and 6 authorize the Commission to accept bids and let the contract or contracts for the construction of the buildings. This same Commission, which is provided for by section 3, and which, it will be seen by reference to sections 4, 5, 6, 7, and 8, have full power and control over the building and establishment of the Nevada School of Industry, and all matters in connection therewith. Section 9 provides for a permanent board of government, to consist of the Governor and four other persons appointed by him. Their terms of office, to quote from the statute, expire in one year, beginning January 1. The latter sentence of section 9 provides:

The board of government is hereby authorized to accept gifts, and, in order that the home herein provided for may be prepared as soon as possible, to borrow money at a rate not to exceed 6 per cent, to be repaid from the fund created by this Act.

There seems to be some little conflict and ambiguity as to this sentence taken in connection with the prior declarations in said section 9, and the powers granted to the Commission in sections 4, 5, 6, and 7. I think, however, that if you will appoint at this time your permanent board of government, such appointment will be effective, and while the terms of office of the board of government do not expire until one year after January 1, 1915, according to the wording of the statute, there is nothing which prevents your appointment of the members of the board at this time. This board, as I understand it, will be made up of the same personnel, with the exception of one member, as that of the present Commission appointed by you under section 3. If both the Commission and the permanent board will hold their regular meeting and authorize the negotiation of a loan or the borrowing of money at a rate not to exceed 6 per cent, such action in my opinion would be legal, and would be a binding obligation against the fund created by the Act itself.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

121. Nevada Tax Commission—Licenses—State Automobile License Law—Secretary of State.

The Secretary of State may lawfully provide the Nevada Tax Commission with postage stamps to be bought and taken out of the appropriation provided by Stats. 1913, 280, "For the purpose of defraying actual expenses in procuring licenses and record books, and for the payment of necessary postage."

CARSON CITY, May 28, 1914.

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

DEAR SIR: I am in receipt of your favor of the 23d instant, asking the opinion of this office upon a certain resolution passed by the Nevada Tax Commission asking you to furnish said Commission with stamps to defray

the expense of such Commission in its efforts to enforce the provisions of the state automobile law.

While the Act in question (Stats. 1913, 280) makes you the collector of this license, there is no provision provided for the enforcement of the same except section 16 of said Act making a violation thereof a misdemeanor. Inasmuch as the Tax Commission is vested with authority over the collection of all licenses, I assume for that reason it has taken up the collection of these automobile licenses also. My information is that this Commission is making a vigorous campaign to collect all licenses due under this Act, and in so doing has gone to considerable expense for postage.

Section 18 of said Act provides an appropriation of \$500 for the purpose of carrying out this provision, and by section 17 you are authorized "to draw against such automobile road fund, not to exceed the sum of \$500 in any one year, for the purpose of defraying actual expenses in procuring license tags and record books and for the payment of necessary postage."

Taking all these circumstances into consideration, I am of the opinion that you are authorized in furnishing the Nevada Tax Commission with \$20 worth of stamps to be bought and taken out of the appropriation above-mentioned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

122. Licenses—Engineer's License.

The fee for recording an engineer's license in another county under sec. 3902, Rev. Laws, is provided by secs. 1995 and 2007, Rev. Laws, according to the class of the county. Such license does not have to be renewed unless revoked for cause, as provided in sec. 3901, Rev. Laws.

CARSON CITY, May 28, 1914.

HON. JOHN R. MELROSE, *District Attorney, Hawthorne, Nevada*.

DEAR SIR: I am in receipt of your favor of the 23d instant, asking the construction of the law relative to engineer's license.

You inquire: First—"What is the fee for recording with the Clerk where the license is issued in any other county of the State?" and, second, "Does the license ever have to be renewed?"

In answer to your first question, let me say that the fee for recording this license is provided by sections 1995 and 2007, Rev. Laws, according to the class of the county, said sections each providing a fee "for recording all instruments for each folio," etc.

In answer to your second question, let me say that in my opinion the license does not ever have to be renewed unless it should be revoked for cause as provided in said Act.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

123. Elections—Primary Elections—Registration.

Interpretation of certain sections of new election law (Stats. 1913, 493) concerning opening of registration and qualification for voting at primary election.

In response to inquiries from District Attorneys throughout the State for an interpretation of many sections of the statutes regarding registration of voters, the Attorney-General has issued the following letter:

To the District Attorneys of the State of Nevada.

GENTLEMEN: In order that there may be uniformity in the administration of that portion of the recent election law pertaining to registrations and voting at primary elections, the following answers to specific inquiries by various officials is respectfully submitted for your guidance:

1. All former registrations have been abrogated. (Chapter 2, section 1, p. 494, Stats. 1913.)

2. The registration both for primary and general election is required to open June 28 (chapter 2, section 5, p. 495, and chapter 3, section 17, p. 520), but that date being Sunday, it will be best for Registry Agents to commence their work on June 27.

3. Only one registration is required to vote at both primary and general election. (Chapter 2, section 8, p. 498.)

4. No person is permitted to vote at a primary election unless he has declared his party affiliation in accordance with chapter 2, section 3, subdivision 11, p. 495; chapter 3, section 18, p. 521, but the elector is not required to designate his politics in order to register. (Chapter 2, section 4, p. 495.)

5. Registrations for the primary election to be held September 1, 1914, may be made until August 20. (Chapter 2, section 5, p. 496.)

6. All registrations for both primary and general election are contained in one book, entitled "Official Register" (Chapter 2, section 5, p. 496.)

7. All electors must be registered once and once only in every two years, commencing in 1914. The primary election register this year is a copy, certified by the Registry Agent, of only such electors registered by him between June 27 and August 20 as have declared their party affiliation; for succeeding primary elections during the biennial period of 1914-1916 such list will be supplemented by the addition of the names of all electors, declaring party affiliations, registering after August 20, 1914, and also transfers of registration of electors who have declared party affiliation. (Chapter 2, section 1, p. 494, and chapter 3, section 17, p. 520.)

8. A person registered in 1912, who has not reregistered in 1914, and, therefore, not declared his party affiliation, cannot vote at the primary election in September. (Chapter 3, section 18, p. 521.)

9. Not every elector is required to take the oath prescribed in chapter 2, section 7, p. 497. Sections 7 and 8 of said chapter should be construed together, and the oath is required only from those "whom the agent may not know to be entitled to register," as prescribed in section 8, p. 497.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

124. **Constitutional Law — Amendments to Constitution — Publication of — Approval of — Secretary of State — County Clerks.**

1. Under section 1, article 10, of the Constitution it is not necessary that the resolution be signed by the President or Secretary of the Senate and the Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but the entry of the yeas and nays in the journals of the Senate and Assembly shall be sufficient.

2. "An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada" (Rev. Laws, 1878-81) was a special Act adopted by the Legislature for the special election of 1889, and has been repealed by implication by sec. 10, chap. 5, p. 551, of the General Election Law (Stats. 1913, 493).

3. When any constitutional amendment is to be submitted to popular vote, the procedure for the Secretary of State and County Clerks to follow thereon is pointed out in the last-named section.

CARSON CITY, July 6, 1914.

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

DEAR SIR: Replying to your request for an opinion regarding No. 22 Assembly Joint and Concurrent Resolution relative to amending section 2 of article 15 of the Constitution of the State of Nevada, pertaining to the official oath, and your request for a written opinion as to the proper method of certifying said resolution to the various County Clerks for the purpose of placing the same on the ballot, and as to the validity of said amendment, owing to the omission of the signatures of the proper officers of the Senate, I beg to advise as follows:

STATEMENT OF FACTS

From your letter and from an examination of the records I find that Assembly Joint and Concurrent Resolution No. 22 was passed by the Legislature of 1911, and approved March 18, 1911, and published in the Statutes of 1911, p. 458. That said resolution was again presented to the Legislature of 1913, passed by both Senate and Assembly (see Assembly Journal, pp. 12, 14, 20, and 49; Senate Journal, pp. 19, 20, and 37), but after the passage by the session of 1913 it was not presented or filed in the office of the Secretary of State; that it was transmitted to the Senate January 28, 1913, under the signature of T. A. Brandon, Speaker of the Assembly, and W. L. Hacker, Chief Clerk of the Assembly, but was not signed by the President or Secretary of the Senate in the year 1913. In 1911, however, the resolution was signed by the proper officers of both the Senate and Assembly, and approved March 18, 1911, by Tasker L. Oddie, Governor. The resolution was not filed in your office at the close of the Legislature, nor until about April 14, 1914, when Mr. Adamson, Secretary of the Tax Commission, whose quarters were then in the Assembly chambers, was moving out, owing to the Capitol addition, and found same in one of the drawers in the Assembly desk. Mr. Adamson handed the resolution to the Governor, and it was by him transmitted to you.

It clearly appears from the history of the resolution as shown thereon and from the respective Journals of the Senate and Assembly with the yeas and nays taken thereon that such amendment was adopted by the yeas of 1913 by a majority of all members elected to each house.

Therefore, of the opinion that under section 1 of article 16 of the Constitution of the State of Nevada it is not necessary that the resolution be signed by the President and Secretary of the Senate and the

CORRECTION

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

CORRECTION

123. Elections—Primary Elections—Registration.

Interpretation of certain sections of new election law (Stats. 1913, 493) concerning opening of registration and qualification for voting at primary election.

In response to inquiries from District Attorneys throughout the State for an interpretation of many sections of the statutes regarding registration of voters, the Attorney-General has issued the following letter:

To the District Attorneys of the State of Nevada.

GENTLEMEN: In order that there may be uniformity in the administration of that portion of the recent election law pertaining to registrations and voting at primary elections, the following answers to specific inquiries by various officials is respectfully submitted for your guidance:

1. All former registrations have been abrogated. (Chapter 2, section 1, p. 494, Stats. 1913.)

2. The registration both for primary and general election is required to open June 28 (chapter 2, section 5, p. 495, and chapter 3, section 17, p. 520), but that date being Sunday, it will be best for Registry Agents to commence their work on June 27.

3. Only one registration is required to vote at both primary and general election. (Chapter 2, section 8, p. 498.)

4. No person is permitted to vote at a primary election unless he has declared his party affiliation in accordance with chapter 2, section 3, subdivision 11, p. 495; chapter 3, section 18, p. 521, but the elector is not required to designate his politics in order to register. (Chapter 2, section 4, p. 495.)

5. Registrations for the primary election to be held September 1, 1914, may be made until August 20. (Chapter 2, section 5, p. 496.)

6. All registrations for both primary and general election are contained in one book, entitled "Official Register." (Chapter 2, section 5, p. 496.)

7. All electors must be registered once and once only in every two years, commencing in 1914. The primary election register this year is a copy, certified by the Registry Agent, of only such electors registered by him between June 27 and August 20 as have declared their party affiliation; for succeeding primary elections during the biennial period of 1914-1916 such list will be supplemented by the addition of the names of all electors, declaring party affiliations, registering after August 20, 1914, and also transfers of registration of electors who have declared party affiliation. (Chapter 2, section 1, p. 494, and chapter 3, section 17, p. 520.)

8. A person registered in 1912, who has not reregistered in 1914, and, therefore, not declared his party affiliation, cannot vote at the primary election in September. (Chapter 3, section 18, p. 521.)

9. Not every elector is required to take the oath prescribed in chapter 2, section 7, p. 497. Sections 7 and 8 of said chapter should be construed together, and the oath is required only from those "whom the agent may not know to be entitled to register," as prescribed in section 8, p. 497.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

124. Constitutional Law—Amendments to Constitution—Publication of—Approval of—Secretary of State—County Clerks.

1. Under section 1, article 10, of the Constitution it is not necessary that the resolution be signed by the President or Secretary of the Senate and the Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but the entry of the yeas and nays in the journals of the Senate and Assembly shall be sufficient.

2. "An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada" (Rev. Laws, 1878-81) was a special Act adopted by the Legislature for the special election of 1889, and has been repealed by implication by sec. 10, chap. 5, p. 551, of the General Election Law (Stats. 1913, 493).

3. When any constitutional amendment is to be submitted to popular vote, the procedure for the Secretary of State and County Clerks to follow thereon is pointed out in the last-named section.

CARSON CITY, July 6, 1914.

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

DEAR SIR: Replying to your request for an opinion regarding No. 22 Assembly Joint and Concurrent Resolution relative to amending section 2 of article 15 of the Constitution of the State of Nevada, pertaining to the official oath, and your request for a written opinion as to the proper method of certifying said resolution to the various County Clerks for the purpose of placing the same on the ballot, and as to the validity of said amendment, owing to the omission of the signatures of the proper officers of the Senate, I beg to advise as follows:

STATEMENT OF FACTS

From your letter and from an examination of the records I find that Assembly Joint and Concurrent Resolution No. 22 was passed by the Legislature of 1911, and approved March 18, 1911, and published in the Statutes of 1911, p. 458. That said resolution was again presented to the Legislature of 1913, passed by both Senate and Assembly (see Assembly Journal, pp. 12, 14, 20, and 49; Senate Journal, pp. 19, 20, and 37), but after the passage by the session of 1913 it was not presented or filed in the office of the Secretary of State; that it was transmitted to the Senate January 28, 1913, under the signature of T. A. Brandon, Speaker of the Assembly, and W. L. Hacker, Chief Clerk of the Assembly, but was not signed by the President or Secretary of the Senate in the year 1913. In 1911, however, the resolution was signed by the proper officers of both the Senate and Assembly, and approved March 18, 1911, by Tasker L. Oddie, Governor. The resolution was not filed in your office at the close of the Legislature, nor until about April 14, 1914, when Mr. Adamson, Secretary of the Tax Commission, whose quarters were then in the Assembly chambers, was moving out, owing to the Capitol addition, and found same in one of the drawers in the Assembly desk. Mr. Adamson handed the resolution to the Governor, and it was by him transmitted to you.

It clearly appears from the history of the resolution as shown thereon and from the respective Journals of the Senate and Assembly with the yeas and nays taken thereon that such amendment was adopted by the Legislature of 1913 by a majority of all members elected to each house.

I am, therefore, of the opinion that under section 1 of article 16 of the Constitution of the State of Nevada it is not necessary that the resolution be signed by the President and Secretary of the Senate and the

Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but that the entry of the nays and yeas in the Journals of the Senate and Assembly is sufficient.

I come then to the question of what is the proper method of certifying said resolution to the County Clerks for the purpose of having the same placed on the ballot to be voted for at the next general election. It will be observed that the Constitution provides that after any amendment to the Constitution shall have passed the Legislature the first time it shall be published three months preceding the time of making a choice for members of the next Legislature. This is the only provision in the Constitution itself regarding publication. It is clear from this provision that the Constitution itself does not require any publication to be made after final passage by two succeeding sessions of the Legislature. The only question, then, is: Has the Legislature prescribed or required publication of a proposed constitutional amendment, and what, if any, publication is necessary? The Supreme Court of this State, in the case of *State of Nevada, ex rel. Galusha, v. Davis*, 20 Nev. 220, has held that a statute requiring publication of a proposed constitutional amendment is a reasonable requirement sanctioned by the Constitution, and when so required by statute that amendments voted on without such requirement are inoperative. The Act construed in *State v. Davis, supra*, was "An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada" (Rev. Laws, 1878, 1879, 1880, and 1881). I am of the opinion, however, that this Act does not apply at the present time, that Act being a special Act adopted by the Legislature for the special election held in 1889. Even though it be otherwise construed with reference to other constitutional amendments, I am of the opinion that the same has been repealed by implication by section 10, chapter 5, of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913. Said section 10 fully provides for the publication of constitutional amendments to be voted upon and the manner of certifying the same to the various County Clerks for the purpose of placing the same upon the ballot.

I am, therefore, of the opinion that it is your duty to comply with the provisions of said section 10, and, having done so, you will have properly certified the resolution. Under said section 10 it is your duty within ninety days before the election to certify such constitutional amendment to each County Clerk of this State, sending each of such County Clerks enough copies of such constitutional amendment as are necessary to carry out the provisions of said section. It is further, by said section 10, made the duty of the County Clerk to have posted ten days before the election in each precinct three copies of such constitutional amendment, one of which shall be posted at the polling place or places. If there is a newspaper published in the county, it is the duty of the County Clerk to cause to be published said constitutional amendment therein three times—one publication at least thirty days before the election, another not less than twenty days, and the other not more than ten days before said election.

I am returning herewith said resolution and the letter of Mr. L. F. Adamson.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

125. Elections—Primary Elections—Nominations—Nomination Paper—Filing Fee.

The fees required for filing nomination papers by sec. 9, chap. 3, of the Election Law (Stats. 1913, 514), must be paid, even though, in a certain party, there is no contest for nomination to the respective offices to be filled.

CARSON CITY, July 9, 1914.

MR. THOS. M. FAGAN, *State Secretary, Socialist Party, Tonopah, Nevada.*

MY DEAR SIR: I am in receipt of yours of June 21, requesting an opinion on certain portions of the primary election law.

You have succinctly stated your request in your letter, and, therefore, for the purpose of answering it I will quote the statement of your letter and the question asked:

Now, for candidates of the Socialist Party there will be no contest for any office, and consequently no candidates for office can be put on the official ballot, but the nominations must be certified by the Secretary of State.

Inasmuch as the filing fees are supposed to be levied for the purpose of defraying the expenses of the primary election, it would seem as though that would relieve us from the expense, as we are not putting any expense on the State in this matter.

The question presented by your letter is whether or not, there being no contest in the Socialist Party in the primary election and no Socialist primary ballots being necessary, shall the candidates pay the filing fees required by section 9 of chapter 3 of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913, pp. 493-510, Statutes of Nevada, 1913.

You will note that the foregoing section provides that the candidate shall pay the fee required by the section. It has nothing to do with parties, but with the candidate himself. While it may be true that the filing fee is required for the purpose of defraying the expenses of the primary election, yet there is nothing in section 9 or in any part of the primary or general election Act, which so states. It may have that purpose; it may have also the additional purpose of being a restriction upon candidates for nominations. The filing fee is required of the candidate, and not the party. If your contention were good, then if there be no contest for any given office in any of the other parties, the candidate would not have to pay any fee, because his name would be certified on the general election ballot, and would not go upon the primary election ballot.

Furthermore, so far as the law is concerned, the Secretary of State could never know until the last minute of the last day whether or not there would be a contest in the Socialist Party for any given nomination or for all of the nominations. I am further confirmed in my opinion by section 7 of chapter 5, page 550, of the same Act, which provides that independent candidates for office shall pay the same fees as candidates on the primary ballot. In other words, if where the candidate is nominated by petition, and there is no primary or primary expense incident to his nomination, yet the candidate is required to pay the fee.

I am, therefore, of the opinion that it will be necessary for the candidates of the Socialist Party to pay the fees required by said section 9 of

chapter 3 in order to be certain that their candidates will appear upon the official ballot.

Mr. Grant Miller some time ago spoke to me concerning this same matter, and indicated that he would probably desire to contest this provision of the law. I am, therefore, sending him a copy of this letter in order that he may be advised as to what my advice will be to the Secretary of State, and, if he desires, the matter may be tested by appropriate action in the Supreme Court.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

126. Elections—Registration—Notice of Closing—Nomination by Petition of Electors.

1. Section 6, chapter 2, of the General Election Law (Stats. 1913, 496) requiring Registry Agent to publish notice of close of registration, does not apply to primary elections, but to general elections only.

2. Under section 6, chapter 5, of the General Election Law (Stats. 1913, 550) all nominations by petition of electors must be filed not less than ten days prior to the first of September of the year in which the election shall take place.

CARSON CITY, July 14, 1914.

MR. HENRY M. LILLIS, *Registry Agent, Las Vegas, Nevada.*

DEAR SIR: I am in receipt of your favor of the 11th instant, asking interpretation of section 6 of chapter 2 and section 6 of chapter 5 of the new election law.

The first-mentioned section provides for twenty days publication of notice of close of registration by the Registry Agent, and you inquire: "Does it apply to primary as well as general election?" This section is an exact reprint of section 6 of an Act entitled "An Act to provide for registration of names of electors and to prevent fraud at elections," appearing in the Statutes of 1869, p. 141. It is contained in chapter 2 of the election Act, which said chapter pertains exclusively to the registration of electors, and it provides that the publication therein specified must be made "for twenty days before the expiration of the time provided for registration prior to any general election and for ten days before the expiration of the time provided by law for registration prior to any special or municipal election.

Taking into consideration that this section was enacted long prior to the existence of primary elections in any State, and also that it is contained in a chapter of the election laws pertaining exclusively to the registration of voters, and also that the elections therein designated are general, special, and municipal elections, I am of the opinion that this section does not apply to primary elections, and that the publication of notice of the time of closing of registry list applies to general elections only, and that such publication must be made twenty days before the next general election in Nevada.

From a reading of section 6 of chapter 5, which pertains to the nomination of independent candidates by petition of electors, and which provides that such certificates of election shall be filed not less than ten days prior to the first Tuesday in September in the year which such elections

shall take place, I am satisfied that all nominations by petition of electors for independent candidates must be filed not less than ten days prior to the primary election to be held on the 1st day of September, 1914.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

127. Public Highways—Road Government—County Commissioners—Officers.

1. Rev. Laws, 1540, gives County Commissioners the right to transfer money from any other fund to road fund.

2. The Act of 1913, 390, provides for creation of a special road fund by bond issue provided by popular vote.

3. If such road fund is not created, the cost of all county road and bridge work must be paid out of the general fund.

4. Statutes 1913, 36, is illegal as contravening sections 20 and 21, article 4, of the Constitution, and was probably repealed by implication by general road Act of 1913, 390.

5. The employment of a public official is not a contract, and the Legislature may abolish any nonconstitutional office without a claim for salary arising through the occupant thereof.

CARSON CITY, July 16, 1914.

MR. D. C. McDONALD, *Chairman Board of County Commissioners, Ely, Nevada.*

DEAR SIR: I am in receipt of your favor of the 1st instant, asking an interpretation of the various laws relative to your duty under the different Acts in force in regard to the management of your county roads. I am also in receipt of a letter of the 8th instant from your District Attorney enclosing a copy of his opinion of June 23 to your board on this same matter.

The Acts in question are: Sections 30, 37-40, Revised Laws; Stats. 1913, p. 36, abolishing the office of Road Supervisor of White Pine County, authorizing the division of said county into road districts, and providing for the election of Road Supervisors, and fixing their duties and compensation. This is a special Act relating to White Pine County alone, and was approved March 16, 1913. Also an Act to provide for a uniform system of road government (Stats. 1913, p. 390), approved March 26, 1913.

You were correctly advised by your District Attorney that section 1540, Rev. Laws, clearly gives you the right to transfer money from other funds of the county to the road fund, provided there is any surplus in any of the other funds. The Act of 1913, p. 390, provides for the creation of a special road fund by bond issue to be provided by popular vote. If such fund is not created, it is provided that the cost of all county road and bridge works shall be paid out of the county general fund by order of the board. I think that the Act of 1913, 36, is illegal as being in contravention of article 4, sections 20 and 21, of the Constitution; section 20 prohibiting local or special laws; and section 21 providing that where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State. I am also of the opinion that the Act of 1913, p. 36, which was approved March 6, 1913, being a special Act, was repealed by implication by the general Act of 1913, 390, providing for a general system of road government.

I think you are mistaken in the statement "that a Road Supervisor, or any other official elected by a majority of the qualified electors of his county, cannot be removed from office without just cause by any Act or the Legislature of our State." It has frequently been held that the employment of a public official is not a contract, and that upon abolition of the office by the enactment of a new law, or by the declaration of the Act under which he holds the office to be unconstitutional, confers no right upon such official to continue to perform the duties and receive the compensation attached to the office.

In conclusion, let me say that I am very sorry not to coincide in the position you take in the matter, but I am of the opinion that you are correctly advised by your District Attorney in the communication above mentioned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

128. Elections—Registrations—Alienage—Naturalization.

1. If the Registry Agent is satisfied through propounding the questions provided in sec. 11, chap. 2, of the Election Law (Stats. 1913, 499), that the father of an applicant for registration was duly naturalized, he may be registered.

2. A declaration of intention to become a citizen does not make the alien a citizen. He remains an alien until his naturalization becomes complete.

CARSON CITY, July 16, 1914.

HON. HENRY M. LILLIS, *Las Vegas, Nevada.*

DEAR SIR: Answer to your favor of the 26th ultimo, asking opinion on certain questions of that portion of the Election Law concerning registration of voters, has been delayed by press of business in the office.

You ask two questions:

1. If a man comes to this country under legal age with his alien father, and does not have his father's naturalization papers, and all the evidence he presents of his father's naturalization is his own word or oath, if he takes an oath that his father was a citizen of the United States, does this entitle him to registration, and does it constitute and make him a bona fide citizen for registration?

2. If such alien came to this country under age and his father took out his first papers, but died before he could legally take out his second or full papers, does the father's intention papers qualify the son, and make him a citizen?

Sec. 11, chap. 2, of the Election Law (Stats. 1913, p. 499) provides how a naturalized citizen may become registered in case of the loss or destruction of his certificate of naturalization, and requires the Registry Agent to propound to such applicant certain questions. The purport of such questions is to ascertain from the applicant what would be disclosed by the certificate of naturalization, were the same produced. It has been held that an exemplified copy of the record is the best evidence of naturalization, but it has also been held that when the record of naturalization proceedings has been destroyed, secondary evidence is permissible to prove the party has become a citizen. Under the circumstances

enumerated in the first question, if the applicant for registration knows in what court and at what time his father was naturalized, it would be well to require him to procure a copy of the record so that the same might be exhibited to you, but, if he cannot supply such copy of the record, it would be well to propound to him the questions set forth in section 11 under oath, and if from the answers thereto you are satisfied that the applicant's father was naturalized in this country and that the son is entitled to registration, he may be registered by you, or he may be refused registration in your discretion.

In answer to your second question, let me say that the declaration of intention to become a citizen does not make the alien a citizen. An alien remains such until his naturalization becomes complete. Inasmuch as the parent of the person named in your question died before he could take out his second or full papers, citizenship was not acquired by him, and his child stands on the same footing, and will have to take the same steps to be naturalized as would any other alien arriving in this country under age.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

129. Elections—Primary Elections—Primary Ballots—Judicial Districts, Nominations In.

1. Where there is no contest in the party primary no ballots need be printed.

2. In the event of a candidate running as an independent for the office of District Judge in a district composed of two or more counties, it is necessary for him to file his petitions with the County Clerk of each county, and pay each Clerk a proportionate share of the fee of \$100. The petition should be in duplicate or triplicate, as the case may be, so that a complete petition is filed with each Clerk.

CARSON CITY, July 19, 1914.

HON. N. W. WILLIS, *District Attorney Lyon County, Yerington, Nevada.*

DEAR SIR: I am in receipt of yours of the 17th instant, requesting an opinion concerning certain phases of the election law.

The questions presented by your letter are:

1. In the event of no contest in the Socialist Party in the primary election, is it necessary to print Socialist primary ballots?

2. Now, where, and what filing fees must be paid by an independent candidate nominated by petition for District Judge in the counties of Lyon and Churchill?

I will answer your questions in the order named:

1. Subdivision 9 of section 14 of chapter 3 of "An Act relating to elections and removals from office" provides that where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot, and shall be certified by the proper officer as a nominee of his party for such office. Section 15 of the same chapter provides, *inter alia*, for distribution of sample ballots to each voter at least ten days before each primary election, and for the correction of errors in the sample ballot. It will be observed that

section 7 of chapter 3 provides that nomination papers for the September primary election shall be filed at least thirty days prior to the date of the primary election, and the proper officers have twenty days thereafter in which to prepare and distribute samples of the primary ballot. It seems to me to be quite clear that it is the intent of the Legislature, when there is no contest in the party primary, that no ballots need be printed. I am, therefore, of the opinion that, if there is no contest in the Socialist Party for state or county offices, it will be unnecessary to prepare any ballots whatsoever for the Socialist Party.

2. In answer to your second question, let me say that in my opinion in the event of a candidate running independent for the office of District Judge, it will be necessary for him to file his nomination papers—to wit, his petitions—with the County Clerk of Lyon County and the County Clerk of Churchill County, and pay each County Clerk a fee of \$50. This will necessitate the obtaining of duplicate petitions by independent candidates running by petition for the office of District Judge in your district.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

130. Elections—Nomination by Petition of Electors.

Sections 3 to 7, pp. 549-50, Stats. 1913, provide means for independent nomination by petition of electors. Any elector may lawfully run as an independent candidate by a petition for any office, unless such person was defeated at a primary election for the same office.

CARSON CITY, July 23, 1914.

HON. J. M. REQUA, *Justice of the Peace, Palisade, Nevada.*

DEAR SIR: I am in receipt of your favor of the 22d instant, inquiring: "Will it be legal for a person to run as an independent candidate by petition at the coming general election?"

In answer thereto let me say section 7, Statutes of 1913, p. 513, concerning the primary law, provides:

Nothing 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, but a candidate defeated at a primary election held under the provisions of this Act shall be ineligible for nomination to the same office at the same election.

Sections 3 to 7, on pages 549-50, Statutes of 1913, provide a means for independent nomination by petitions of electors. These sections provide briefly that a certificate of nomination signed by electors residing within the district or political division for which candidates are to be presented equal to at least ten per cent of the entire vote cast at the last preceding election in this State, district or political division for which the nomination is to be made. Such certificate shall state the name of the party or principle which the person nominated by petition of electors represents, but in so doing the name of no political party existing at the last preceding election shall be used. For offices to be

voted for by electors of the whole State, such certificate shall be filed with the Secretary of State. Certificates for all other political offices shall be filed with the Clerks of the respective counties for any officers to be voted for, and where the district embraces more than one county the certificate shall be filed with the Clerk of each county. 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 more than one nominee for each office to be filled, and no person who has voted in a convention for or against a candidate for any office shall join in naming any other candidate for that office, and no person shall be nominated for more than one office. The certificates are required to be filed with the Secretary of State or County Clerk not less than ten days prior to the first Tuesday in September preceding election. The fees for filing certificates of nomination are the same as provided by section 8, Statutes of 1913, p. 514, for filing nomination papers for primary elections.

From the foregoing provisions I am of the opinion that any elector may lawfully run as an independent candidate by petition for any office to be filled by the electors at the coming general election, unless such person was defeated at a primary election for nomination to the same office.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

131. Elections—Registrations—Registry Agent—Minors.

1. A person who arrived in Reno or the State on April 1, 1914, cannot be registered for the primary election of September 1, 1914.

2. A young man who becomes of age in September, 1914, cannot be registered for the primary election of September 1, 1914, unless he was born on the 1st of September.

CARSON CITY, July 30, 1914.

HON. LEE J. DAVIS, *Registry Agent, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 22d instant, asking: "Can a citizen be registered for the primary election who arrived in Reno or the State on April 1, 1914?" and also: "Can a young man who becomes of age in September take part in the primary?"

My answer to both of these questions would be "No." Article 2, section 1, of the Constitution, provides: "Every male citizen of the United States of the age of twenty-one and upwards, who shall have actually and not constructively resided in the State six months and in the district or county thirty days next preceding any election, shall be entitled to vote," etc.

From the circumstances enumerated in the first question it would appear that the person in question will have resided in this State the required six months on October 1, 1914. As the primary election takes place September 1, he will not have acquired citizenship on that day, but any time after October 1 he should be permitted to register for the general election.

In the second question, the person about whom you inquire it appears

will not become 21 years of age until some time in September. The constitutional provision above quoted limits the right of suffrage to male citizens of the age of 21 years and upwards. At the primary election on the 1st of September, unless he was born on the 1st of September, he would not have the requisite age, but he also may register for the general election.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General.*

132. Elections—Primary Elections—Ballots.

1. Where there is no contest in a party for a certain office, and there is a candidate for the party nomination for that office, the proper officer must certify his nomination without his name going on the primary ballot.

2. The ballot should not contain the names of those candidates for nomination who have no opposition for nomination for such office.

3. In the preparation of primary ballots the Christian name should be given first, preceding the surname, the surnames being arranged in alphabetical order. In the general election it has always been customary to print the surname first, followed by the Christian name of the candidate.

CARSON CITY, August 8, 1914.

HON. GRAY MASHBURN, *District Attorney Storey County, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 3d instant, asking certain questions in regard to the Primary Election Law, some of which have already been answered verbally.

Repeating some of the information given you, I would say:

1. Where there is no contest in a party for a certain office and there is a candidate for the party nomination for that office, the proper officer must certify his nomination without his name going on the primary ballot.

2. The ballot should not contain the names of those candidates for nomination where there is no party contest for the nomination for that office.

3. In the preparation of primary ballots, you inquire whether the surname or the Christian name of the candidate should be given first. Subdivision 6 of section 14, chapter 3, p. 516, provides: "The names of the candidates for each office shall be grouped in alphabetical order according to the surnames of such candidates for office," and on page 518 is given a sample ballot wherein the candidates for United States Senator appear as "John Doe," "Richard Roe," being in alphabetical arrangement of the surnames of the candidates for that office. The Australian ballot law, in section 12, page 552, provides: "The names of the candidates for each office shall be arranged according to the surname, except," etc.

Inasmuch as the form on page 518 gives the Christian name of the candidate first, and the surnames are arranged in alphabetical order, and as such form refers to primary elections only, I think it would be best to follow the form, and let the Christian name of the candidate precede the surnames, the surnames being arranged in alphabetical order.

For instance, there are four candidates for the nomination for the office of Supreme Court Judge. In my opinion these names should appear on the ticket in the following order: H. F. Bartine, B. W. Coleman, A. A. Heer, and G. F. Talbot. For the general election, however, it has always been customary to print the surname first followed by the Christian name of the candidate, and at such general election I think this custom should be followed.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General*.

133. **Officers—State Officers—Resignation—Withdrawal Of.**

An officer who presented to the proper authority his resignation to take effect on a designated future day may, before such day, withdraw it, notwithstanding the acceptance thereof.

CARSON CITY, August 8, 1914.

HON. JOHN EDWARDS BRAY, *Reno, Nevada*.

DEAR SIR: I am in receipt of verbal request for an opinion on the following matter:

You submitted to me two letters from Mr. J. F. Abel, Deputy Superintendent of Public Schools, reading as follows:

WINNEMUCCA, NEVADA, July 27, 1914.

SUPT. JOHN EDWARDS BRAY, *Carson City, Nevada*.

DEAR SIR: Kindly accept my resignation as Deputy Superintendent of the Third Supervision District, said resignation to take effect on August 8, 1914.

Sincerely yours,

J. F. ABEL.

WINNEMUCCA, NEVADA, August 1, 1914.

To the State Board of Education, Carson City, Nevada.

DEAR SIR: I hereby withdraw my resignation as Deputy Superintendent of Public Instruction, which was tendered to Superintendent John Edwards Bray and which was to take effect August 8, 1914.

You are notified that I shall continue to perform the duties of said office and to exercise the powers belonging to it.

Sincerely yours,

J. F. ABEL.

Deputy Superintendent for District No. 3.

It appears that after the receipt of the first letter the State Board of Education held a meeting, and informally accepted Mr. Abel's resignation, and the question you now ask is whether, in view of such informal acceptance, Mr. Abel was at liberty to withdraw such resignation as indicated by his letter of August 1. In his first letter Mr. Abel tendered his resignation, to take effect August 8, and before the expiration of that time he wrote to you withdrawing his resignation. This matter has already been passed upon in the case of State, ex rel. Ryan, 30 Nev. 409, where under a similar state of facts it was held: "A Sheriff who presented to the Board of County Commissioners his resignation to take effect on a designated future day, may before such day withdraw it, notwithstanding the board's acceptance thereof."

I am, therefore, of the opinion, under the decision above mentioned,

that Mr. Abel's withdrawal of his resignation having reached you before the expiration of the date set by him for his resignation to take effect, his withdrawal of the same was effective, notwithstanding the action of the board in informally accepting the same.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

134. Elections—Registration—Registry Lists, Printing of—County Commissioners.

The printing of the registry list, after being certified by the Registry Agent, rests with the Board of County Commissioners.

CARSON CITY, August 13, 1914.

HON. LEROY PIKE, *Assistant District Attorney, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 7th instant, asking an opinion on certain phases of the Election Law of 1913.

You call my attention to the fact that on page 493, under section 12, this law provides for the publication and printing of the registry list, and that sections 13 and 17 also refer to the same matter. You ask my opinion as to whether the printing of the registry list shall be given by the Registry Agent or by the Board of County Commissioners. Upon consideration of subdivision 2, section 1508, and sections 1509, 1530, 1539, and 2867, Revised Laws, I am of the opinion that the printing of the registry list rests, after being certified by the Registry Agent, with the Board of County Commissioners.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

135. Elections—Independent Nomination—Nomination by Petition of Electors—Who May Sign.

1. No person who has voted in a convention for or against a candidate for any office shall join in nominating by petition, or otherwise, any other nominee for the same office.

2. An elector, who has registered as a member of one of the several political parties for a primary election, is not thereby disqualified from signing nominating petitions of independent candidates for office.

3. An elector, who signs an independent candidate's petition, is not thereby disqualified from voting in party primaries.

CARSON CITY, August 14, 1914.

HON. E. O. PATTERSON, *County Clerk of Ormsby County, Carson City, Nevada.*

DEAR SIR: I am in receipt of your letter of August 11, submitting for my opinion the following question:

Can an elector, who signs an independent candidate's petition, vote at the ensuing primary election?

Your question presents as a corollary a further question:

Can an elector, who has registered as a member of one of the political parties of this State, sign the nominating petition of an independent candidate?

Section 2 of chapter 3 of "An Act relating to elections and removals from office," approved March 31, 1913, 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.

* * *

It is manifest from this section at almost the outset of the Primary Law that independent candidates may be nominated by petition. This is followed by a further provision of the Primary Act itself, subdivision e of section 7, which provides as follows:

(c) 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, but a candidate defeated at a primary election held under the provisions of this Act shall be ineligible for nomination to the same office at the same election.

Section 2 of chapter 5 of "An Act relating to elections and removals from office," approved March 31, 1913, under the title "Australian Ballot Law," defines a convention and the purposes for which it may be held. Section 3 is the legislative authority for the nomination of independent candidates by petition, and is as follows:

A candidate for public office may be nominated otherwise than by a primary election in the manner following: A certificate of nomination 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; *provided*, that such certificates shall not be valid unless signed by five voters. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made are true, to the best of his knowledge and belief, and a certificate of such oath shall be annexed. Such certificate of nomination shall have the same effect as a nomination made by a primary election. The certificate of nomination herein provided for shall state the name of the party or principle which the person nominated by petition of electors represents, but in so doing the name of no political party existing at the last preceding general election shall be used.

Section 4 of the said chapter provides for the place and manner of filing of certificates of nomination or petitions of independent candidates. Section 5 of said chapter 5 defines the requisites of the petition, and prescribes the only disqualification that can be found with reference to who may or may not sign independent candidates' petitions, section 5 being 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 provisions 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 any 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.

The only disqualifications that are expressly made are those enumerated in section 5 that 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 by petition or otherwise any other nominee for the same office, and this, I believe, is the only disqualification which exists. The Election Law and the Primary Law are purely statutory, and unless the Legislature makes further disqualifications than those enumerated in the statutes, no other disqualification should be read into the Act. The Legislature has expressed the only disqualification, and applying the maxim "*Expressio unius est exclusio alterius*," it would seem that the Legislature has expressed the only disqualification it intended to make.

I am, therefore, of the opinion that an elector who has registered as a member of one of the several political parties of this State for a primary election is not thereby disqualified from signing nominating petitions of independent candidates for office, and that such signatures, if otherwise qualified, are proper, and should be counted in making up the necessary percentage required to be upon independent petitions.

I am further of the opinion that an elector who signs an independent candidate's petition is not thereby disqualified from voting in party primaries, if he is properly registered for such primary. It is not a requisite that a member of a party shall vote or intend to vote for every nominee of his party at the ensuing election, and that it is well shown by the nomination papers of candidates, which only require of candidates that they shall intend to vote for a majority of the candidates of said party. See subdivision a, section 7 of chapter 3, of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913. No stricter rule or requirement certainly could be applied to electors within a party than to the candidates of the party.

I am further confirmed in this opinion by section 18 of the Primary Law, which gives the grounds for challenge, and while one of the grounds for challenge is that the intended voter does not belong to the particular party designated upon the register, yet there is no right of challenge by reason of the fact that an elector has signed an independent candidate's nominating petition. A man may be a member of a party and entitled to participate in the selection of candidates, even though he does not intend to support all of the candidates of the party.

I further call your attention to the opinion of my predecessor in office, the late Honorable Cleveland H. Baker, contained in the Report of the Attorney-General for the years 1911-1912 at pages 145, 146, and 147, in which Mr. Baker held, and with which I am of full accord, that there is no provision of law prohibiting electors *who have voted in a primary election* from signing a petition of an independent candi-

date for nomination to an office to which a nominee had been selected at the primary.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General*.

136. Elections—Candidates—Corrupt Practices Act, Statements Under—Time for Filing.

August 27, 1914, is the day designated by Corrupt Practices Act (Stats. 1913, 478) for filing ante-election statement, and September 16, 1914, for filing post-election statements.

CARSON CITY, August 25, 1914.

HON. L. F. ADAMSON, *Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 24th instant, inquiring as to the date on which the preliminary statement required of every candidate for nomination or election to public office under section 8 of the Corrupt Practices Act (Stats. 1913, p. 478).

Said section provides as follows:

Every candidate for nomination or election to public office
* * * shall file five days before and fifteen days after the
election at which he was a candidate with the Secretary of
State (or County Clerk or City Clerk) an itemized sworn
statement setting forth all moneys or other valuable things con-
tributed. * * *

The question to be determined, therefore, is, what is meant by the expression "five days before"? In the case of *Ward v. Walters*, 63 Wis. 39, it was decided that where an Act was required to be done a certain number of days or weeks (before a certain other day upon which another act is to be done), the whole number of days or weeks must intervene before the day fixed for doing the second act. In *Cyc.* 38, p. 317, it is said:

Either the day on which the period begins or the day on which it expires must be included and the other excluded.

In the same volume, on page 14, it is said:

It is a general rule that fractions of days are not recognized in law.

The primary election occurring on the 1st of September, five full days before that date would fall on the 27th of August under the law, not regarding fractions of days.

I am, therefore, of the opinion that August 27, 1914, is the day for filing the pre-primary expenses statement of candidates required by section 8 of the Corrupt Practices Act.

The second statement required of candidates fifteen days after election is to be filed on September 16, 1914.

Respectfully submitted,
GEO. B. THATCHER, *Attorney-General*.

137. Elections—Candidates, Disqualification of—Constitutional Law.

1. A primary election is not such an election for state and county officers as is contemplated in the Constitution.

2. A Postmaster, whose compensation amounts to about \$1,000 per annum, may make a campaign for nomination to office, and will be eligible to the office he seeks if he tenders his resignation as Postmaster to the proper officer prior to general election day.

CARSON CITY, August 26, 1914.

MR. CHAS. T. WASHEIM, *Wadsworth, Nevada.*

DEAR SIR: I am in receipt of your favor of the 21st instant, calling my attention to section 9, article 4, of the Constitution, and stating that a certain Postmaster had filed his papers as a candidate for office of Justice of the Peace, that his compensation amounts to about \$1,000 per annum, and that he has not resigned as Postmaster.

You inquire: "Is his candidacy legal? Can he await result of election before resigning?"

The section of the Constitution to which you refer 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.

This matter was brought before the Supreme Court of the State of Nevada in the case of *State, ex rel. Nourse, v. Clark*, 3 Nev. 569. In that case the resignation of Mr. Clarke as United States District Attorney, while he was a candidate for Attorney-General of the State, was mailed to the proper officer the day preceding the election. It was held therein that such resignation was valid, that Mr. Clarke had resigned such office without the consent of the appointing power, and that the acceptance of such resignation took effect from the time it was deposited in the mail when it became beyond his power to withdraw it.

It has frequently been decided that a primary election is not such an election for state and county officers as is provided in the Constitution. It is merely a means of nominating a party candidate. After such nomination the candidate does not become an officer until elected to the office.

Taking into consideration the decision of the case above referred to, I am of the opinion that the Postmaster in question, if selected as a candidate, may make his campaign as such, and will be eligible to the office which he seeks, provided he tenders his resignation as Postmaster to the proper officer prior to election day.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

138. Elections—Railroad Employees—Short Ballots.

Railroad men voting on transfers provided in sec. 15, chap. 2, General Election Law (Stats. 1913, 502), not in their county of residence, are permitted to vote the short ballot only.

CARSON CITY, August 26, 1914.

MR. J. COPLEY, *Imlay, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th instant, asking an interpretation of section 15, chapter 2, of the Election Laws (Stats. 1913, p. 502), and inquiring whether railroad men holding transfers are allowed to vote for county and precinct officers when voting outside of the county and precinct in which they were originally registered.

The said section was section 10 of "An Act to provide for the registration of electors," approved March 5, 1869. It was amended by Stats. 1911, 332, and the amended section appears in the Revised Laws as section 1714. The said amendment contains the provision in regard to electors employed in moving trains, stages, mails, or otherwise upon any of the transportation routes of this State. Section 250, Revised Laws, being section 1 of article 2 of the Constitution, provides the qualification of electors, and that they shall have actually resided in the State six months, and in the county thirty days. After the enactment of the amendment of 1911 a doubt arose as to the constitutionality of allowing railroad men to vote in any county other than that of their residence, and for that reason the election law was modified at the session of 1913 as it now appears. From a cursory reading of the section in question it would appear that railroad men holding transfers would be entitled to vote for county and precinct officers when voting out of the county, but on perusal of the whole section it appears that any other duly qualified elector detained away from home on election day is only permitted to vote the short ballot containing the state officers. It would be unconstitutional for the Legislature to make a classification between these two classes of men, allowing one to vote a full ticket and the other only a short ballot when away from home, and for these reasons I am led to the opinion that under the section in question railroad men voting on election day away from their county of residence are permitted to vote the short ballot only.

I trust this will give you the information desired, and ask you to call upon me if any other question should arise.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

P. S.—When the transfer is from one precinct or township to another in the same county, railroad men can vote full ticket.

139. Elections—County Clerks—Short Ballots.

The provisions of sec. 15, chap. 2 (Stats. 1913, 502), of the Election Law, referring to short ballots, applies to primary elections. The quantity of such short ballots to be furnished lies in the discretion of the County Clerk.

CARSON CITY, August 29, 1914.

HON. E. O. PATTERSON, *County Clerk, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 28th ultimo, asking interpretation of section 15, chapter 3, of the Election Law, referring to short ballots.

You inquire whether this provision applies to primary elections, and, if so, in what quantity they are to be provided, and how marked to distinguish them from the official ballots.

In response, permit me to say that I am of the opinion that said section does apply to primary elections. The quantity to be furnished is in your discretion, and the short ballots must be printed in every respect identical with the official ballots, except that all legislative, district, and county officers to be voted for either for nomination or election shall be left off, so that it will be impossible for an elector to participate in county affairs when voting a short ballot.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

140. **Weights and Measures—Act Concerning—Interpretation Of.**

The Weights and Measures Act (Stats. 1911, 37) was enacted for the protection of the consumer only, and applies to goods sold in original packages. The purpose of the law was to show the consumer how much actual weight is contained in the original package.

CARSON CITY, September 10, 1914.

THE J. K. ARMSBY COMPANY, *San Francisco, Cal.*

GENTLEMEN: I am in receipt of your favor of the 4th instant, asking for an interpretation of the net-weight law of this State (Stats. 1911, 37).

You inquire whether it is necessary that the net weight should appear on the outside of bean sacks which weigh anywhere from 80 to 85 pounds.

In my opinion this law was enacted for the protection of the consumer only, and applies to goods sold in original packages. The retailer, I presume, pays you for the actual amount of beans contained in the sack, and the purpose of the law was to show the consumer how much actual weight he was getting in the original package. Under these circumstances, I am of the opinion that the law does not apply to the case in question, and it is not necessary for you to mark the net weight of the beans upon the sack itself.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

141. **Elections—Registration—Registry Agent, Fees Of.**

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, "a reasonable sum for copying names from one register to another." Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another.

CARSON CITY, September 15, 1914.

HON. ARTHUR E. BARNES, *Registry Agent, Goldfield, Nevada.*

DEAR SIR: Owing to the press of business in this office, answer to your favor of the 28th ultimo, asking construction of section 17, chapter 2, p. 504, and section 17, chapter 3, p. 520, of the Election Law, Statutes of 1913, has been delayed until now.

In my opinion all old registrations were wiped out by this law, and every elector was required to register anew this year, such registration to continue for two years. With this premise, I think there is no conflict whatever between the two sections mentioned. Under section 17, page 504, you are entitled to the sum of 25 cents for each name by you legally registered, and section 17, page 520, provides "for all new names he shall be paid as now allowed by law."

I am, therefore, of the opinion that you are entitled to 25 cents for each name legally registered, and in addition "a reasonable sum for copying the names from one register to another, as provided in section 17, p. 520.

Although you did not inquire about the matter, I have answered in response to other inquiries that a Registry Agent is entitled to a fee of 25 cents for registering transfers from one precinct to another.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

142. Elections—Registration—Registry Agent, Fees Of.

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, "A reasonable sum for copying names from one register to another." The Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another. The Registry Agent is not entitled to any fee for making or posting the list of registered voters, nor for posting notice required to be posted, nor for any other service in connection with registration, except as above stated

CARSON CITY, September 15, 1914.

HON. JOHN R. MELROSE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 9th instant, asking in regard to compensation of Registry Agents under the Election Law.

Such law contains two provisions in regard to this question, namely, section 17, p. 504, and section 17, p. 520. The law contemplates an entirely new registration of voters this year, all previous registrations being wiped out. Under said sections the Registry Agent is entitled to 25 cents for each name legally registered by him and also "a reasonable sum for copying the names from one register to another, the amount to be fixed by the County Commissioners," as provided in section 17, p. 520.

I think that the Agent is also entitled to a fee of 25 cents per name for making transfers of voters. By that is meant a transfer of a voter legally registered in one precinct to another precinct.

Inasmuch as the law provides that the 25 cents shall be "as full compensation for all services rendered by Registry Agents under the provisions of this Act" (p. 504), I do not think the Agent is entitled to any fee for making and posting the list of registered voters, nor for posting any notice required to be posted, nor for any other services in connection with registration except as above stated.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

143. Revenue—Taxation—Indian Agents—Indian Reservations.

Unless an Indian reservation is expressly excepted from the jurisdiction of a State when admitted, the property of all persons within the limits of the reservation, except that of Indians, is subject to taxation by the State. The goods of an Indian Agent on an Indian reservation and used by him for his personal use in government buildings, upon government land, is subject to taxation.

CARSON CITY, September 18, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your inquiry as to whether or not personal property consisting of household furniture, etc., belonging to an agent on an Indian reservation and used by him for his personal use in government buildings upon government land, is subject to taxation.

In 22 Cyc. 150, I find the following principle laid down:

Unless a reservation is expressly excepted from the jurisdiction of a State when admitted, the property of all persons within the limits of the reservation, except that of Indians, is subject to taxation by the State.

This principle is fortified by the citation of several cases in the United States Supreme Court, and other cases. The enabling Act of this State, vol. 1, Rev. Laws, p. 56, makes no exception whatever of an Indian reservation.

I am, therefore, of the opinion that the property in question is subject to taxation.

I am returning herewith letter from Mr. W. A. Van Voorhis.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

144. Elections—Candidates—Corrupt Practices Act—Statements of Candidates.

A candidate who has no opposition in the primary, and whose name is therefore certified as the party candidate for the office, and whose name therefore does not appear upon the primary ballot, is not compelled to file the statement of expenses required by sec. 8 of the Corrupt Practices Act (Stats. 1913, 478).

CARSON CITY, September 24, 1914.

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

DEAR SIR: I am in receipt of your favor of the 17th instant, advising me that R. A. McKay filed in your office, in accordance with law, his nomination paper for the office of Attorney-General on the Republican ticket, and further that said McKay has failed to file the statements required under section 8 of the Corrupt Practices Act (Stats. 1913, 478).

I am advised that R. A. Gott and R. A. McKay on August 1 both filed nomination papers as candidates for nomination for said office; that afterwards both of these gentlemen attempted to withdraw the nomination papers filed by them respectively, the said Gott about 3:30 o'clock in the afternoon, and McKay about 4 o'clock on the same day. By an action brought in the Supreme Court it was decided that the withdrawal of Mr. Gott was legal, and, this leaving Mr. McKay as the

only applicant for the Republican nomination for such office, he automatically became the Republican nominee for such office under and by virtue of the operation of subdivision 9, section 14, of the Primary Election Act (Stats. 1913, 517). By reason of such fact Mr. McKay's name did not appear on the ballot, and he was required to make no contest in the primary election. Section 8 of the Corrupt Practices Act, to which you call my attention, provides:

Every candidate for nomination or election to public office
 * * * shall five days before and fifteen days after election
 at which he was a candidate, file with the Secretary of State.
 * * *

It thus appears that there was no election at which Mr. McKay was a candidate, and I am, therefore, of the opinion that said section 8 does not apply to his case, and that no statement either before or after the primary election can be lawfully required of him.

You are, therefore, instructed to certify out Mr. McKay's name to the various County Clerks of this State as the Republican nominee for the office of Attorney-General of the State.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

145. Fish and Game—Beaver, Protection Of.

There appears to be no valid enactment regarding the protection of beaver in this State.

CARSON CITY, October 9, 1914.

HON. GEORGE B. RUSSELL, *Game Warden, Elko, Nevada.*

DEAR SIR: Formal answer to your telegram of the 29th ultimo, has been delayed by press of business in this office.

As advised by telegram to you, I am of the opinion that section 2100, Revised Laws, has been repealed, and there is no provision in the laws of this State for the protection of beavers. My reasons for so thinking are as follows:

The said section 2100 is section 16 of an Act purporting to be approved March 24, 1909, entitled "An Act providing for the protection and preservation of game." It is clearly section 16 of "An Act providing for the protection and preservation of different species of wild game," approved March 28, 1901 (Stats. 1901, p. 121). In said section the closed season extended to April 1, 1910. By Act of 1909, p. 212, this section was amended extending the closed season to April 1, 1920. At the same session of the Legislature (Stats. 1909, p. 213) "An Act providing for the protection and preservation of game," approved March 24, 1909, was passed, in which no mention whatever was made of beavers. As this Act was approved one day later than the Act amending section 16, referring to beaver, it must be construed to be the intention of the Legislature to repeal by implication the Act of the previous day protecting beaver, and, therefore, all legislation for the protection of this game seems to have been wiped out.

It is unfortunate that such is the case, and I would ask that you keep

this information to yourself as much as possible, so that there may not be an indiscriminate slaughter of this animal. The matter will be called to the attention of the Legislature at its next session for action.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

146. **Crimes and Punishments—Live Stock.**

Section 6641, Rev. Laws, called to the attention of peace officers of the State.

CARSON CITY, October 10, 1914.

To All Peace Officers of the State:

GENTLEMEN: Section 6641, Revised Laws of Nevada, 1912, provides as follows:

Any person slaughtering any cattle shall keep for the period of ten days, in some place where the same may be seen, the hide intact, with the ears on, and shall on demand of any person or persons be required to produce the hide, with the ears on, for the said period of ten days. It shall be unlawful for any person to sell any bovine animal to the keeper of any butcher shop or any market in this State, without having, and upon request exhibiting to such butcher, the hide containing the brand and other marks upon the hide of such animal, or for any person peddling the meat of any bovine animal, who is not the keeper of any shop or meat market, to sell such meat without having in his possession, then and there, and upon request exhibiting, the hide of such animal containing the brand and other marks thereon. It shall be unlawful for the keeper of any slaughter-house, or person engaged in slaughtering cattle for sale in this State, to purchase any cattle for slaughter, or any slaughtered bovine animal, without having exhibited to him the hide of such animal, and examining the brand and other marks upon such hide, and making and entering in a book kept for that purpose, and as hereafter provided in this section, a description of such brand and marks, with the name of the person from whom the purchase was made and the date of such purchase. It shall be the duty of every keeper of any slaughter-house, engaged in the business of slaughtering any bovine animals, to keep at his slaughter-house, place of business or office, a book in which shall be recorded and preserved a description of the brand and other marks upon the hide of each slaughtered bovine animal, with the name of the person from whom the animal was purchased when such name is known or can be ascertained, and the date of such purchase. Said book shall be open to the Hide Inspector or the owner of any cattle during business hours. Any person violating any of the provisions of this section shall be 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 not exceeding six months, or both.

It has been brought to my attention that this salutary measure is being generally disregarded in all parts of the State, in that keepers of slaughter-houses preserve no record of stock bought by them, and that peddlers of beef, not keepers of shops and meat markets, fail to have in their possession the hide of the animals the flesh of which is being sold by them. Both of these practices are in plain violation of said law.

Your particular attention is called to this statute, to the end that its provisions may be rigidly enforced.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

147. Crimes and Punishments—Conspiracy.

1. Certain facts held not to constitute a public offense.

2. A conspiracy to commit a crime against public justice, namely, disturbing the public peace and interfering with the authorities in the administration of justice, must be manifested by some overt act, before action can be taken.

CARSON CITY, October 15, 1914.

CAPTAIN J. P. DONNELLEY, *Carson City, Nevada.*

DEAR CAPTAIN: I am informed by you that a band of 30 or 40 men left the Southern Pacific train at Hazen some time since, and are making their way south along the line of the railroad track, their avowed destination being the town of Tonopah.

It appears from your statement that these men are mainly young, well dressed, are committing no depredations, are supplied with cash, and are paying for such food as they require.

Under the circumstances narrated above, I cannot see that these men are committing any crime, and there is no reason for interference with them by the police authorities of the State on that account.

However, you inform me that these men are threatening that when they reach Tonopah they expect to make trouble with the authorities there on account of the recent conviction and imprisonment of one of their number. If this is true, they are engaged in a conspiracy to commit a crime against the public justice, namely, disturbing the public peace and interfering with the authorities in the administration of justice. Until these men commit an overt act in the furtherance of this conspiracy, they cannot be interfered with, and your efforts must be directed to procuring evidence of such conspiracy.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

148. Taxation—Revenue—Nevada Tax Commission—State Board of Equalization.

The law creating the Nevada Tax Commission (Stats. 1913, 175) requires said Commission to continue its sessions as a State Board of Equalization until its business is completed. If by reason of compliance with the provisions of this Act a delay ensues so that the various county officials required to take action by the revenue laws cannot do so within the period therein designated, such laws ought to be regarded as directory only, and the period of time within which such county officials are to take action be extended the length of such delay.

CARSON CITY, October 23, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your favor of the 22d instant, calling my attention to certain features of the revenue laws of this State whereby it appears that, if such laws are considered mandatory, it will be impossible for the various county officials to comply with the same, for the reason that it will be impossible for your Commission to complete its labors as a State Board of Equalization and return its findings within the time prescribed by the revenue laws for the action of such county officials.

The laws in question are as follows:

Section 3 of the Act creating your Commission (Stats. 1913, p. 176) provides for one regular session to be held annually, commencing on the second Monday in October of each year, and *continue from day to day until the business is completed.*

Section 6 of said Act provides that at such regular session in October the Commission shall review the tax rolls of the various counties as corrected by the County Boards of Equalization, and may raise or lower the valuations therein for the purpose of state equalization.

Section 3640 of the Revised Laws provides that "within five days after the adjournment of the Board of Equalization, its Clerk shall enter upon the assessment roll all the changes and corrections made by the board, and shall immediately deliver said corrected roll, with his certificate attached, to the County Auditor."

Section 3641 provides that "the County Auditor, as soon as the assessment roll is delivered to him by the Clerk of the Board of Equalization, shall proceed to add up the valuations * * * and on or before the fourth Monday in October (first Monday in November, see sec. 3795) of each year, deliver same to the ex officio Tax Receiver."
* * *

Section 3644 provides that "taxes will become delinquent on the first Monday in December," after which a penalty is added.

Section 2 of the Act creating your Commission provides that "the members of said Commission shall have power to prescribe rules and regulations for their own government and governing the procedure and order of business of all regular and special sessions." * * *

Section 4 of said Act provides that "the enumeration of the said foregoing eight special powers shall not be construed as excluding the exercise of any needful and proper power and authority of said Commission, in the exercise of its general supervision and control over the entire revenue system of the State not in conflict with the law."

Section 10 of said Act provides that "all provisions of this Act are mandatory."

It appears from your statement that "it is a physical impossibility for this Commission to complete its labors as a State Board of Equalization and return its findings within the time limit prescribed by the said law for the county officials' action."

All of the sections of the Revised Laws hereinbefore mentioned were passed previous to the enactment of the statute creating your Commission, which was approved March 20, 1913, and in so far as said old laws conflict with any part or portion of the Nevada Tax Commission Act, the same are repealed or are to be considered as directory only.

The law requires your Commission to continue in session from day to day until its business, as a State Board of Equalization, is complete. If by reason of a compliance with the mandatory provisions of this law, requiring you to continue your business as a State Board of Equalization until the same is completed, a delay ensues so that various county officials required to take action by the statute above mentioned cannot take such action within the periods therein designated, the said statutes ought to be regarded as directory only, and the period of time within which such county officials are to take action is to be extended the length of such delay.

Until your work is completed no action can be taken by the county officials, and, as it is impossible for your board to complete its business within the period of time required by the old law, the same is to be regarded as superseded and to be considered directory only.

It is my opinion that the powers of the Commission extend even to deferring the date of delinquency, should this be considered advisable, in view of delay occasioned by their activities.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

149. Revenue—Taxation—Chattel Mortgages, Taxation Of.

The listing of chattel mortgages by the Assessor, and the placing of the same upon the assessment roll, is a double taxation, and is contrary to the letter and spirit of section 1, article 10, of the Constitution.

CARSON CITY, October 29, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your favor of the 15th instant, advising me that one of the County Assessors has furnished your Commission with a statement of chattel mortgages, which the County Board of Equalization has instructed the Assessor to place on the roll of that county for the year 1914. You further state that all of the property covered by these chattel mortgages has been assessed as personal property. You further point out that under the provisions of chapter 289, p. 578, of the Statutes of 1913, a mortgage, deed of trust, contract, or other obligation by which a debt is secured, and which is a lien or incumbrance against real property is exempted from taxation. You further contend that, while this chapter applies specifically to real property mortgages, it occurred to you that if it was so confined it makes it discriminatory, and further, by assessing mortgages and the

property itself, there would be a double assessment of the property, which is not contemplated either by the law or the Constitution of the State of Nevada.

Section 1 of article 10 of the Constitution provides:

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. * * *

Under the facts narrated in your letter, an owner of unincumbered personal property in the county in question should pay the state, county, and school tax on the just valuation of such personal property as fixed by the Assessor, while a person who is unfortunate enough to be obliged to borrow money upon his personal property would have to pay a tax, not only upon the value of the property fixed by the Assessor, but would indirectly have to pay an additional tax upon the amount of the mortgage against his property, which additional tax would be collected by the mortgagee in the shape of additional interest on the mortgage so as to enable the mortgagee to meet the tax assessed upon the mortgage.

There is no doubt in my mind that this is double taxation, and is contrary to the letter and spirit of the section of the Constitution above quoted, and is not contemplated by either the law or the Constitution of this State.

The tax could be set aside for the reasons stated, but on account of the small amounts involved in each case it is improbable that any mortgagee will feel himself justified in fighting this double tax.

As you are aware, the statute above referred to (Stats. 1913, 578) was passed for the purpose of doing away with this double taxation on account of mortgages on real property, and in my opinion a mortgage on personal property should be disregarded for this same reason.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

150. **Revenue—Taxation—Banks, Real Estate Of.**

The real estate belonging to any bank is assessable in the same manner and form as other real estate is assessed to the owners thereof. If a bank acquires property under foreclosure, and the deed thereto is recorded before the fixing of the county tax rate by the Commissioners, such property should be assessed to the bank, rather than to the previous owner thereof.

CARSON CITY, October 29, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of a letter of September 5 from Mr. John Hayes, Assessor of Washoe County, with reference to the matter of taxes on certain real estate which is now the property of the Nixon National Bank, also a letter of August 22 from Mr. F. M. Lee, vice-president of said bank, in relation to the same matter, and have your verbal request for an opinion on the question therein involved.

It appears that the Assessor assessed this property to the record holders thereof for the year 1914; that the county tax levy was fixed

by the Board of County Commissioners on the first Monday in March of said year. The property in question is now all owned by the Nixon National Bank by deeds dated, respectively, January 1, 1914, January 21, 1914, and May 22, 1914.

Section 3618, Revised Laws of Nevada, provides:

The Board of County Commissioners of each county shall, on or before the first Monday of March, of each year, fix the rate of county taxes for such year, designating the number of cents on each hundred dollars of property levied for each fund; and shall levy the state and county taxes upon the taxable property of the county.

Section 3619 of the Revised Laws provides:

Every tax levied, under the provisions or authority of this Act, is hereby made a lien against the property assessed, and a lien shall attach upon the real property for the tax levied upon the personal property, of the owner of such real estate, which lien shall attach upon the day on which the taxes are levied in each year, on all property then in this State, and on all other property whenever it reaches the State, and shall not be satisfied or removed until all the taxes are paid, or the property has absolutely vested in the purchaser under a sale for taxes.

Section 3624 of the Revised Laws provides:

Between the date of the levy of taxes and the first Monday of September in each year, the County Assessor * * * shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations * * * owning the same; * * * and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, * * * owning it.

Section 3821 of the Revised Laws provides:

The real estate belonging to any bank shall be assessed to it in the same manner and form as other real estate is assessed to the owners thereof.

In the case of the property in question, Mr. Hayes assessed the same against the record owners thereof as the same appeared on the first Monday in March, 1914, and it is contended by the bank, the present owner of said real estate, that it is entitled in making its statement for the purposes of assessment to deduct from such statement "the proportionate value of the real estate belonging to the bank," as provided in section 3820 of the Revised Laws.

I do not see, in view of the provisions of section 3619, above quoted, making the tax levy apply against the property possessed on the day on which the taxes are levied for the year, how this contention can be properly sustained by the bank. It appears, however, that on the date of the fixing of the tax levy by the County Commissioners, two of the parcels of property in question had been deeded to the bank and presumably said deeds were immediately placed upon record, and if said

deeds were recorded on or before the first Monday in March, 1914, such property should have been assessed to the bank rather than to the previous holders thereof. One of said deeds was dated January 1, 1914; the other January 21, 1914. In regard to these two pieces of property, I think the bank is entitled to deduct the value thereof from said statement under the provisions of section 3820, but the deed to the other piece of property being dated May 22, 1914, and presumably filed later, being after the levy of taxes by the said County Commissioners, the property set forth in said deed was properly assessed to the former holder thereof.

The letter referred to is herewith returned.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

151. **Revenue—Taxation—Patented Mining Claims, Assessment Of.**

A fractional patented mining claim should be assessed at not less than \$500.

CARSON CITY, December 2, 1914.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your favor of the 27th ultimo, asking for an opinion on the question of the assessment of fractional patented mining claims, upon which the necessary amount of work required by section 1, chapter 83, Statutes of 1913, has not been performed.

You inquire how such mining claims should be assessed. Section 1 of said Act provides: "Each patented mine shall be assessed not less than \$500." * * * Section 2 provides: "The County Assessor shall assess each patented mine in his county at not less than \$500, and return the said assessment as now required by law." The statute in question does not seem to contemplate the assessment of any patented claim, whether whole or fractional, at less than \$500 per claim, and in my opinion under said statute the Assessor is required to assess a fractional patented mining claim at not less than \$500.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

152. **State Institutions—Nevada Hospital for Mental Diseases, Revenue from Pay Patients.**

The fees received from pay patients at the Nevada Hospital for Mental Diseases should be put to the credit of the appropriation for the support of the institution, and not into the State General Fund.

CARSON CITY, December 6, 1914.

MR. E. D. VANDERLIETH, *Secretary Board of Directors, Nevada Hospital for Mental Diseases, Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 3d instant, inquiring: "Do the fees received from paying patients at said Hospital go into the fund or appropriation for the support of the institution as articles and products sold, or into the General Fund of the State?"

At the last session of the Legislature an Act was passed entitled "An Act in relation to the sale of articles and products of state institutions not required for their own use and consumption," being chapter 187, p. 265, of the Statutes of 1913. Section 1 of said Act provides:

The products of any state institution, or any article not required for its own use or consumption, may be sold by market value, and the proceeds of such sale shall be deposited in the fund or appropriation for the support of such institution, and not in the General Fund.

I understand that it has been the custom heretofore that the fees received from paying patients at your Hospital were paid into the General Fund of the State. The general intent and purpose of the Act above mentioned seems to be to change this rule, and I am of the opinion that such fees should go to the credit of the appropriation for the support of your institution and not into the State General Fund.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

153. Elections—Candidates—Corrupt Practices Act—Statements of Candidates.

Under the Corrupt Practices Act (Stats. 1913, 476) a candidate for nomination or election to public office is not required thereby to file vouchers for his expenses. The only vouchers that seem to be required are those provided in section 9 of the Act, from political committees or persons not candidates, spending a sum greater than \$50.

CARSON CITY, December 7, 1914.

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

DEAR SIR: After careful examination of chapter 282, Statutes of 1913, being the Corrupt Practices Act, I am of the opinion that a candidate for nomination or election to public office is not required thereby to file vouchers of his expenses.

The only vouchers that seem to be required are those provided in section 9 of the Act, which requires political committees or any persons not candidates for public office spending a sum greater than \$50 to file vouchers.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

154. Public Schools—School Trustees—Free Text-Books.

Under Stats. 1913, 124, the Trustees of each school district are required to furnish pupils all text and supplemental books.

CARSON CITY, December 8, 1914.

MR. ELMER R. YOUNG, *Manhattan, Nevada.*

DEAR SIR: In answer to your favor of the 21st ultimo, let me say that under chapter 101, p. 124, Statutes of 1913, the Trustees of each school district in the State are required to furnish their pupils with all text and supplemental books which the pupils are required to use, including those in use in the high school.

If your board is unable to supply said books with the funds on hand,

I would suggest that recourse be had to the provisions contained in sections 3473-3477, Revised Laws, providing for the issuance of interest-bearing school warrants for emergencies. There is no charge under the statute in question for the books required to be used in the different courses, and they must be furnished by the School Trustees.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

155. Elections—County Commissioners—Recount.

Under section 1513, Rev. Laws, the only power the County Commissioners have is to recount all of the ballots. The board has no power to throw out any ballot which has been counted by the election judges or in any way overrule or overthrow any decision of the election board as to the legality of any ballot.

CARSON CITY, December 19, 1914.

HON. E. P. CARVILLE, *District Attorney, Elko, Nevada*.

DEAR SIR: I am in receipt of your telegram, asking the opinion of this office relative to the rights of the County Commissioners in the recount of election returns, under section 1513, Revised Laws of Nevada.

I think the statute itself is plain. It provides for a recount, and further, provides that the Board of County Commissioners shall in no case be allowed to throw out any ballot upon any alleged legal defect if, from the face of said ballot, it can upon inspection be ascertained for whom the elector intended to cast his ballot. It is clearly apparent from the foregoing that the only power of the County Commissioners is to recount the ballots between the two officers. The Board of County Commissioners has no power to throw out any ballot which has been counted by the election judges, or in any way overrule or overthrow any decision of the election officers with respect to the legality of any ballot. It is the duty of the board to count all ballots which were counted by the election officers. Furthermore, the Board of County Commissioners has no power to count or consider any rejected ballots, or in anywise overthrow or interfere with or change or modify the decision of the election officers in rejecting any ballot or ballots. The duties of the board, acting as a Board of Canvassers, are simply clerical and for the purpose of counting the ballots, and for no other purpose.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General*.

156. Rewards—Highway Robbery.

The reward offered under the provisions of section 3905, Rev. Laws, is a standing reward and is payable to any person complying with the provisions of said section.

CARSON CITY, December 19, 1914.

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

DEAR GOVERNOR: I am in receipt of your favor of the 3d instant, enclosing claim of E. T. Morton for the capture of William E. Green,

and claiming reward of \$250 under the provisions of section 3905, Revised Laws. In your letter you request an opinion as to the legality of this claim.

Said section 3905 provides:

The Governor shall offer a standing reward of \$250 for the arrest of each person engaged in the robbery of, or in the attempt of robbery of, any person or persons * * * upon any highway in the State of Nevada, the reward to be paid to the person or persons making the arrest immediately upon the conviction of the person or persons so arrested. * * *

Said Act does not apply to any police officer. Chapter 94, Stats. 1913, p. 188, makes the appropriation for the payment of rewards offered by the Governor of \$2,000. The Act in question was approved February 26, 1877, and in accordance therewith, on July 27, 1877, Governor Bradley issued a proclamation covering the reward mentioned in the statute. I have been unable to find any revocation of this proclamation of Governor Bradley's. Inasmuch as the statute provides "for a standing reward," I am of the opinion that the claim of Mr. Morton is legal, and is a just claim against the appropriation above mentioned, and should be paid.

Respectfully submitted,

GEO. B. THATCHER, *Attorney-General.*

DUTIES AS MINERAL LAND COMMISSIONER

Sections 4141, 4112, 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 402 cases. He has also examined applications for patents of the public lands in this State and made an abstract of such applications in 394 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;
 Nevada Industrial Commission, Stats. 1913, 137; and
 State Investment Board, Stats. 1913, 252.

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 about thirty 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 others 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 have been as follows:

Stationery.....	\$279.66
Postage.....	244.00
Total.....	\$523.66

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.

Pursuant thereto, I present the following for your consideration:

BANKS AND BANKING**Federal Reserve Banks**

The Banking Act should be so amended as to allow state banks to purchase and become the owners of stock in federal reserve banks. This

can be accomplished by an amendment to section 13 of the Banking Act, being section 628 of the Revised Laws.

Savings Deposits

Our present Banking Act should be amended to some extent for the protection of savings depositors. Savings depositors are required to give notice of intention to withdraw their deposits. This places them at a disadvantage with other depositors in the event of a run. Therefore, provision should be made for the segregation of savings deposit funds and such collateral as they may have been invested in, from the general funds of the banking institution where the bank is carrying on both a general and savings business.

CHILDREN

Provision should be made for the transferring of boys who may be incarcerated in the Prison to the Nevada School of Industry. The present Juvenile Act concerning delinquent children should be changed to harmonize with the Nevada School of Industry Act.

CORPORATIONS

Acts concerning foreign corporations doing business in this State should be consolidated and harmonized into one Act covering the whole field. I refer you to sections 1346-47 and 1348-50 of the Revised Laws.

The State of Nevada has one of the best and most liberal incorporation Acts of any of the States. However, a reduction in the amount of fees required where the capital stock runs over five million dollars would, in my opinion, add to the revenue derived from this source.

I am informed by the Secretary of State's office that there are many dead corporations carried on the books of that office, uselessly encumbering the records of the office. This could be easily obviated by requiring a small annual tax on all corporations doing business in this State.

The corporation law should be amended, reversing the order of filing articles of incorporation. Articles of incorporation logically should be filed with the Secretary of State first and a certified copy thereof filed in the county where the principal office is located, and in each county where the corporation does business or owns property.

COUNTY GOVERNMENT

County Funds

An Act authorizing County Treasurers to place county funds in banks on open account under certain restrictions, approved March 12, 1885, sections 1687-88 of the Revised Laws, should in my opinion be amended to more adequately secure such deposits when made. This may easily be done by requiring the banks in which county funds are placed to give a surety depository bond securing the county against any loss of funds by failure or otherwise.

DISTRICT ATTORNEYS

An Act requiring District Attorneys to make certain reports to the Attorney-General, sections 1608-1609 of the Revised Laws, should

be amended to provide that the written statement of facts required after the sentence of any person to the State Prison be filed semi-annually on the fourth Monday of March and August of each year. There is no necessity for these statements of facts to be filed within sixty days after every conviction. The purpose of these reports is to give a full statement of the facts of a particular case for the benefit of the Boards of Pardon and Parole. These reports are especially necessary in view of the present indeterminate sentences imposed in criminal cases.

ELECTIONS

The provisions of the Election Law with reference to removals from office should be eliminated from the present or any future Acts concerning elections, and incorporated in separate Acts, for they are clearly unconstitutional under the decision of the Supreme Court in the case of *State, ex rel. Bell, v. District Court*, 28 Nev. 280, and the same may also be said of like provisions in the election law concerning impeachments. Under the decision in the *Bell* case, *supra*, neither removals from office nor impeachments can be said to come within the title or subject of a general election law.

United States Senators

The Election Laws should be so amended to specifically provide for the election of United States Senator, and provision should also be made for appointments to fill vacancies should they occur in the office of United States Senator.

Registry Fees

The Election Law is rather ambiguous with reference to fees for Registry Agents, and this uncertainty should be cured.

Title—Primary

The title of the Election Law should be amended, and should not include removals from office; and in this connection I am of the opinion that a Direct Primary Act should not be included within the same Act as the General Election Law. The Direct Primary Act should be a separate enactment, for, under the decision of the Supreme Court in the case of *Riter v. Douglass*, 32 Nev. 433, the Supreme Court held that a primary election is not an "election" within the meaning of the constitutional test. Therefore, it is rather doubtful whether an Act providing for primary elections can come within the title or subject of a general election law.

Corrupt Practices Act

The Corrupt Practices Act is ambiguous and uncertain in many respects. It is a penal statute, and as such should be clear in every respect, and leave nothing to construction, interpretation, or intentment. It should be so clear that every person may know by reading the Act what constitutes a violation thereof.

Independent Candidates

Independent candidates for office in districts comprising more than one county should file their petitions with the Secretary of State, and the law should be amended in this respect. As the law stands at the

present time, it is necessary for them to file duplicate or even triplicate petitions. The law is also uncertain as to where or how the fees are to be paid.

FISH AND GAME

The law for the protection of beaver is very uncertain, and it is doubtful whether in its present state it could be enforced at all. (Section 2100, Revised Laws.)

NEVADA INDUSTRIAL INSURANCE ACT

The Nevada Industrial Insurance Act should be amended to specifically define such officers and employees of the state, counties, and municipalities as come within, and are entitled to, the benefits of the Act. The Act should be further amended to permit the Commission to fix rates upon an individual merit rating system.

The Act should also be amended to permit the investment of funds of the Commission, or a certain percentage thereof, in county and state bonds of this and other States, and provision should also be made for at least an annual audit of the books and accounts of the Commission.

OFFICIAL BONDS

I recommend that a law be passed providing for surety bonds for state and county officials, and providing for the payment of the premium thereon by the state or county.

OFFICIAL OATH

Section 2891 of the Revised Laws, providing the official oath of this State, should be amended to conform to the recently adopted constitutional amendment fixing the form of the official oath.

RAILROAD COMMISSION

The Railroad Commission and Public Utility Act should be strengthened by providing that no raise or change in rates should be effective until the filing of the tariff or schedule with the Commission, and receiving the consent of the Commission to such change in rates. This would shift the burden of proof upon the utility to show the reasonableness of the new rate.

RAILROADS

Section 3555 of the Revised Laws, requiring annual reports of railroad companies operating in Nevada to be filed with the Secretary of State, should be repealed. They are a mere duplication, for reports of railroads are already required to be filed in a more detailed and better form with the Railroad Commission under section 4568 of the Revised Laws.

REVENUE

Taxation of Mortgages

Chapter 289, Statutes of 1913, should be amended so as to provide for the taxation of chattel mortgages as well as mortgages on real estate.

Refunding

Some provision should be made for refunding of excess on personal property taxes where the county rate has been lowered after equalization. Under the present law the county tax rate is fixed by the Board of County Commissioners on the basis of the previous year's valuation, at a meeting held between the first Monday in January and the first Monday in March of each year. Personal property taxes are collected on this rate, and are all collected *prior to equalization*. Later the county boards or the Tax Commission may raise the assessed valuations in the county and lower the tax rate. Those who own real estate and whose personal property taxes go in with real estate, obtain the benefit of the reduction, while those who own personal property only, pay the full rate. In many counties during the last year personal property taxpayers paid from 12 to 60 per cent higher rate than those owning real estate or real estate and personal property combined.

Taxation of Mines

In the revision of the Revenue Laws some changes should be made in the laws relating to bullion taxes. Section 10 of the Constitution, prior to the amendment of 1906, provided for the taxation of the "proceeds of mines." This provision permitted the taxation of either the net or gross, as the Legislature saw fit. This section was amended, however, in 1906, and there was inserted in section 10 the word "net" proceeds. The present revenue law with reference to bullion taxes was passed prior to the amendment of 1906 to article 10 of the Constitution. In my opinion it would be wise to enact a new law with reference to the taxation of mines, and to specifically define "net" proceeds.

Nevada Tax Commission

The Tax Commission Act should be amended. The October meeting should be advanced from the second Monday in October to not later than the first Monday in September, and in that respect the laws with reference to County Boards of Equalization should be amended to provide that said County Boards of Equalization shall meet not later than the first Monday in August. These amendments are essential, for the reason that the time as now provided by law between the final meeting of the County Boards of Equalization and the meeting of the Tax Commission, and the date when taxes become due and the date when they become delinquent, is so short as to occasion a great amount of worry and embarrassment to the taxpayer, the Tax Commission, the County Boards of Equalization, the County Auditor, and the County Tax Receiver.

Budget System for County Expenditures

In connection with taxation there should be established a budget system for county government, and the rate of taxation should be such as to bring in *dollars and cents* the amount of the budget, and the amount of the budget when fixed should be final. There should also be delegated to the Nevada Tax Commission the power to lower county tax rates whenever it shall appear that the tax rate as then fixed will bring in an amount in excess of the amount fixed by the budget. County school boards should likewise be governed by the budget system, and instead of being allowed to fix a tax rate at such sum as they deem

proper (to be added on by the County Commissioners), they should be required to give an estimate in dollars and cents of the amount of money necessary for school purposes, and the rate should be fixed to bring in this amount, and no more, with the right to raise or lower the tax rate to conform to a raise or lowering of the assessed valuation.

Our present revenue law is patch work, and should be completely revised. In such revision, section 3838 of the Revised Laws, providing for the assessment of railroad land at a minimum of \$1.25 an acre, should be eliminated, the Supreme Court having recently decided in the case of *State, ex rel. Central Pacific Railroad Co., v. Nevada Tax Commission*, that said statute is unconstitutional.

STATE BOARD OF INVESTMENTS

The Act creating the State Board of Investment should be amended or supplemented by a provision of law giving the State Board of Investment the first call and the right to purchase all county bonds issued or authorized by any county at par and accrued interest.

WATER LAW

Certain portions of the present Water Law were declared unconstitutional by the Supreme Court, the court holding that those sections of the Act which attempt to confer upon the State Engineer the right to adjudicate water rights were unconstitutional, and while other statements in the opinions of the Justices (each Justice having filed a separate opinion) uphold the Act for administrative purposes, this really means nothing, because any decree, finding, or order of the State Engineer can be rendered absolutely nugatory by the mere application for an injunction. As the law stands at the present time under the construction of the Supreme Court, there is no method by which water rights upon any stream or stream-system can be completely and finally adjudicated and determined. Provision, either by an amendment or by the passage of an entirely new Act, should be made for the state control of water rights, and for a constitutional method for the complete adjudication of the same in order that the stream-systems of our State can be put to the highest beneficial use. An adequate law for the state control and for complete adjudication of water rights can be enacted which will meet the constitutional objections to the present law. The Water Law should also be amended so as to provide for a just distribution of the cost of proceedings. Under the present Act, requiring, as it does, the joining of every claimant on the stream as a party to the action, the proceeding, especially when taken into court on appeal from the State Engineer's decision, would be most expensive. The taking of testimony and proofs on the Humboldt River, for instance, with its nine hundred claimants, would necessitate a transcript of probably many thousand of pages at a cost of thousands of dollars. A small owner of from twenty to forty acres of land and a water right, being dissatisfied with the holdings of the State Engineer, would be absolutely without remedy, for the cost of taking the proceeding to the court would probably exceed the value of the land and water right.

The foregoing recommendations have nothing to do with the policy of the legislation as that is one entirely for the Governor and the Legis-

lature, but are made as suggestions from the experience of this office as one of the administrative officers and the official adviser of the various state officers and commissions.

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), several 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 all applying therefor, without charge.

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 1913-1914**CHURCHILL COUNTY**

FALLON, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

State v. Leon Hallenbeck. Burglary. Released on preliminary examination.

State v. Feliz Andrad. Murder. Convicted and sentenced to serve the period of his natural life in State Prison.

State v. Wago, alias Ginger Horn. Rape with violence. Sentenced to a period of from 25 to 50 years in State Prison.

State v. Wago, alias Ginger Horn. Murder. Dismissed on motion of the District Attorney on defendant pleading guilty to charge of rape with violence.

State v. Henry Hopkins. Burglary. Acquitted.

State v. V. B. Terrill, alias Jud Terrill. Murder. Acquitted.

State v. H. J. Kinkead. Setting trap gun. Disagreement of jury; case dismissed.

State v. Bill Wild John and John Doe. Hunting on enclosed premises. Defendants warned and discharged.

State v. John McGinley. Malicious mischief. Dismissed upon defendant being charged with insanity and committed to the State Insane Asylum.

State v. Isabelle Gomez. Disturbing the peace. Placed under bonds of \$500 to keep the peace.

State v. Jose Gartan and John Vaselia. Lewd and vicious cohabitation. Sentenced to 30 days in the county jail.

State v. Francisco Alvarada and Margarita Campalla. Disturbing the peace. Sentenced to 30 days in the county jail.

State v. Frank Boyd. Assault and battery. Tried, convicted, and fined \$25.

State v. Antonio Escovar. Disturbing the peace. Sentenced to 10 days in the county jail.

State v. William Riley. Burglary second degree. Sentenced to not less than 6 months and not more than 1 year and 6 months in State Prison.

State v. William Ferry. Burglary in second degree. Sentenced to not less than 1 year and not more than 2 years in State Prison.

State v. L. L. McBurney and J. R. Graves. Burglary second degree. Case dismissed.

State v. Joe Martino. Assault with a deadly weapon. Case dismissed on preliminary examination. Defendant then charged with carrying concealed weapons and fined \$500, or 250 days in jail. Served five days in jail and paid fine of \$490.

State v. H. Nakamura, K. Mongama, R. Hashimoto, and S. Kuse. Defrauding innkeeper. Fined \$10 each or 5 days in jail. Application for release on *habeas corpus* denied. Case appealed, but appeal dismissed as to H. Nakamura and S. Kuse, they having complied with the sentence of the lower court, and prosecution dismissed as to R. Hashimoto and K. Mougama after part of sentence in lower court had been served.

State v. Harold Martley and Roy Harris. Burglary second degree. Sentenced to not less than 1 year and not more than 2 years in the State Prison.

State v. Jimmie O'Neil, Pat McCue, and Dan Ryan. Vagrancy. Sentenced to 5 days in jail or fine of \$10.

State v. Antonio N. Jurado. Receiving stolen goods. Fined \$40 or 20 days in jail.

State v. Abe Scott Springer. Disturbing the peace. Tried, convicted, and sentenced to 30 days in county jail.

State v. Lillian J. Titus. Removing mortgaged property. Defendant not yet apprehended.

State v. John Kein. Petty larceny. Defendant discharged by magistrate on account of his youth, and upon statement of responsible party to stand sponsor for his conduct.

State v. Louis Danberg. Altering brands on steer. Case not yet tried.

State v. Dr. Bob. Rape. Case not yet tried.

State v. George Davis. Lewd and vicious cohabitation. Discharged on preliminary examination.

State v. J. J. Higgins. Larceny from the person. Sentenced to not less than 2 years and not more than 5 years in State Prison.

State v. McCarthy. Misdemeanor. Fined \$9.65. Same paid.

State v. John Doe. Misdemeanor. Fined \$10. Same paid.

State v. John Doe. Misdemeanor. Fined \$30. Same paid.

Number of persons convicted: Misdemeanors, 18; felonies, 7.

Number of persons acquitted by trial, 2.

Number of person released on preliminary examination, 2.

Fines paid, \$606.65.

Total cost of all prosecutions:

Jurymen.....	\$1,170.20
Witnesses' expenses upon order of court.....	319.30
Reporter's fees.....	132.50
Paid to attorneys defending prisoners, upon order of court..	275.00
Interpreter's fees upon order of court.....	24.00
Total.....	\$1,921.00

For the Year 1914

State v. Frank Brown. Defrauding an inkeeper. Sentenced to and served 30 days in the county jail.

State v. Louis Danberg. Altering brands on cattle. Dismissed.

State v. Boynes. Dismissed on defendant pleading guilty to petit larceny. Fined \$10 and served 60 days in jail.

State v. Doctor Bob. Rape. Tried and discharged.

State v. Francisco Martinez. Assault with intent to kill. Tried and convicted, and sentenced to serve from 3½ to 5 years in State Prison.

State v. Robert Medina. Vagrancy. Sentenced to 6 months in county jail.

State v. Otto Enderwitz. Assault and battery. Tried and convicted, and sentenced to 100 days in jail. Served full time.

State v. Emma Bob. Disturbing the peace. Served 60 days in jail.

State v. John Doe. Sentenced to 60 days in county jail.

State v. Attilio Salvini. Assault and battery. Tried and convicted, and paid fine of \$20.

State v. Christ Traykoff. Selling liquor within 5 miles of U. S. construction camp. Fined 500. Paid in full.

State v. Frank Allen. Disturbing the peace. Served term of 30 days in county jail.

State v. Willie Jim. Malicious mischief. Fined \$180 or 90 days in jail. Served out full time.

State v. Obie Harrell. Assault and battery. Case dismissed by magistrate.

State v. Geo. Coffrin. Using automobile for hire without license. Fined \$20.

State v. J. E. Boyd. Assault with a deadly weapon. Bound over to the grand jury.

State v. J. R. Bothfires. Murder. Held to answer on preliminary.

State v. Mamie Dick. Petit larceny. Sentenced and served 2 days in jail.

State v. Jennie Johns. Disturbing the peace. Fined \$20 or 10 days in jail. Served out sentence in jail.

State v. Ben Hicks and Frank Hicks. Assault with deadly weapon. Bound over to grand jury. Charge dismissed on defendant's pleading guilty to assault and battery, and fined \$50.

State v. C. H. Higdon. Assault and battery. Served 60 days in county jail.

State v. James Pepper. Incest. Dismissed for lack of jurisdiction on preliminary examination. Defendant taken over by U. S. Immigration Department to be deported.

State v. Frank Maze. Carrying concealed weapon. Fined \$50, and ordered confined in county jail until paid.

State v. Andrew Montoya. Petit larceny. Served 15 days in jail.

State v. John R. Erwin. Petit larceny. Served 15 days in jail.

State v. A. L. Brashaer and Babb Cluster. Assault and battery. Tried, convicted, and fined \$100. Paid in full.

Number of persons convicted, 22.

Number acquitted by trial, 1.

Number released on preliminary, 1.

Total amount of fines paid, \$700.

Total cost of all prosecutions:

Jurymen.....	\$144.00
Reporter's fees.....	40.00
Paid to attorneys defending prisoners by order of court.....	100.00
Interpreter's fees.....	20.00
Total.....	\$304.00

Respectfully submitted,

T. C. HART, *District Attorney.*

CLARK COUNTY

LAS VEGAS, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

Number of prosecutions, 30, as follows: Assault with intent to kill, 1; murder, 3; burglary, 3; forgery, 1; misdemeanors, 22.

Number of convictions, 23.

Average punishment: Felonies in the District Court as follows:

State v. James F. Graham, murder, life imprisonment; State v. Ernest Ritter, forgery, not less than 1 year nor more than 2 years; State v. Jesus Salazar, assault with intent to kill, not less than 1 year nor more than 2 years; State v. Patrick Murphy, burglary, not less than 1 year nor more than 15 years; State v. Joe Watkins, burglary, not less than 1 year nor more than 1 year and 1 month. Misdemeanors in Justice Court, 39 days in jail. Number acquitted, none. Number abated or dismissed 7. Number of cases pending, 6.

The costs of the above prosecutions, as near as I can estimate, amounted to \$3,500.

The amount of fines paid under the foregoing prosecutions was \$52.50.

During the period covered by the foregoing report one trial and one grand jury was in attendance on the District Court.

For the Year 1914

Number of prosecutions, 31, as follows: Assault with intent to kill, 3; assault with deadly weapon, 1; murder, 1; burglary, 4; forgery, 6; Drawing check without deposit, 1; robbery, 1; misdemeanors, 14.

Number of convictions, 26.

Average punishment: Felonies in District Court as follows: State v. B. F. Miller, not less than 14 months nor more than 15 months, forgery; State v. James Morrison, burglary, not less than 1 year nor more than 15 months; State v. George Lorenzo, assault with a deadly weapon, not less than 1 year nor more than 15 months; State v. George Miller, forgery, not less than 13 months nor more than 15 months; State v. S. C. Richards, drawing check without deposit, not less than 3½ years nor more than 6 years; State v. Juan Nevares, burglary, not less than 15 months nor more than 18 months; State v. Jesus Castano, assault with intent to kill, not less than 12 months nor more than 15 months; State v. Ed. Bell, assault with intent to kill, not less than 1 year nor more than 15 months; State v. Esson Lee, forgery, not less than 16 months nor more than 3 years; State v. James McManus, burglary, not less than 13 months nor more than 15 months.

Number acquitted, 1; number abated or dismissed, 4; number of cases pending, none.

The cost of the above prosecutions, as near as I can estimate, amounted to \$1,698.55.

The amount of fines paid under the foregoing prosecutions was \$60.

During the period covered by the foregoing report one trial and one grand jury was in attendance.

Respectfully submitted,

O. J. VAN PELT, *District Attorney.*

DOUGLAS COUNTY

GENOA, November 24, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

Number and character of prosecutions: Felonies, 4; misdemeanors, 29; felonies, 3 cases of disposing of spirituous liquor to Indians—one case dismissed by grand jury, the other two plead guilty and were sentenced to terms in the State Prison not less than 1 year nor more than 13 months.

One defendant charged by information with murder, plead guilty to manslaughter and was sentenced to a term in the State Prison of not less than 6 years nor more than 8 years.

Misdemeanors: Disturbing the peace, 16; vagrancy, 9; assault and battery, 3; the punishments for misdemeanors being a fine of from \$16 to \$40, or serve out one day for each two dollars of the fine not paid in the county jail.

There was one case of trespass, the costs being all paid, the Court dismissed the action.

One case of malicious mischief in which defendant was convicted in Justice Court, appealed to District Court; jury disagreed and case dismissed on motion of District Attorney.

One felony charge dismissed by grand jury.

Number of cases pending: None.

Cost of entire criminal business, \$3,194.50.

Amount of fines paid, \$180.

For the Year 1914

Number and character of prosecutions: Felonies, 5; misdemeanors, 58. Felonies: First—Disposing spirituous liquor to an Indian, plead guilty and sentenced to a term in the State Prison for not less than 12 months nor more than 18. Second—Same as first offense, plead guilty, sentenced to State Prison for a term of not less than 1 year nor more than 2 years; sentence suspended. Third—Same offense, plead guilty, sentenced to State Prison for a term of not less than 12 nor more than 13 months. Fourth—Same offense, plead guilty, sentenced to State Prison for a term of not less than 12 months nor more than 14 months. Fifth—Assault with intent to kill, tried by a jury, found guilty as charged, sentenced to State Prison for a term of not less than 5 nor more than 8 years; sentence suspended and defendant turned over to the authorities from California, he having escaped from an institution in that State.

Misdemeanors, 58, as follows: Disturbing the peace, 40; assault and battery, 2; petit larceny, 2; drawing and exhibiting a deadly weapon, 1; trespass, 1; vagrancy, 7; assault, 1; taking property from an officer, 1; destruction of property, 1; discharging firearms on public street, 1; interfering with water commissioner, 1.

In some cases the defendants paid small fines and costs and in a few cases they paid the fine and were discharged, but most of the defendants served their sentences in the county jail.

Number of cases pending, 1.

Entire cost of criminal business, \$3,359.65.

Amount of fines paid into the county treasury, \$145.

Respectfully submitted,

FRANK E. BROCKLISS, *District Attorney.*

ELKO COUNTY

ELKO, December 21, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

FELONIES

- F. P. Forbes, burglary, second degree, guilty, 1 to 5 years.
 W. C. Burns, passing bad check, guilty, 1 to 10 years.
 Walter Morelock, burglary, second degree, guilty, 1 to 5 years.
 Augustus Martell, forgery, guilty, 1 to 14 years.
 R. Freland, grand larceny, guilty, 1 to 14 years.
 John Anderson, forgery, guilty, 1 year to 18 months.
 William Smith, burglary, first degree, guilty, 1 year to 1 year, 1 day.
 J. G. Barrett, forgery, guilty, 1 year to 15 months.
 W. E. Bergin, forgery, guilty, 1 year to 14 months.
 Edward Shane, forgery, guilty, 1 year to 14 months.
 John Donahue, burglary, first degree, guilty, 3 years to 6 years.
 William H. Gass, embezzlement, guilty, 15 to 20 months.
 Ambroso Caguaia, selling liquor to Indian, guilty, 1 year to 14 months.
 Joe S. Matney, gross misdemeanor, indecent exposure, guilty, 7 months in Elko County jail.
 Harry Matthews, attempt to commit rape, tried on one charge and jury failed to agree; tried second time and acquitted. Two more informations on same charge dismissed after second trial and acquittal.
 Frank A. Hutto, forgery, trial of case begun and dismissed on account of lack of evidence.
 Jack Griffin, robbery, case pending.
 Frank Brophy, burglary, indicted by grand jury, indictment dismissed and defendant allowed to plead guilty to larceny.
 F. B. McComb, grand larceny, tried, but jury failed to agree. Pending.

Frank Huber, murder, tried, but jury failed to agree. Pending.
 Jan Byrd, assault with intent to kill, tried, but jury failed to agree.
 Pending.
 Milton Abbey, burglary, acquitted.

IGNORED BY GRAND JURY

William Lawrence, burglary. Henry Smith, burglary.

PRELIMINARY HEARINGS WHEREIN DEFENDANT WAS DISCHARGED

Zana Edwards, grand larceny. Mary C. Mercer, passing bad check.
 Charley Walker, Indian, burglary.

William Dawson, who was indicted by the October, 1912, grand jury, and whose case was continued to the April, 1913, term of the District Court, charge, robbery, was turned over to the Arizona authorities, satisfactory proof having been given that the said William Dawson was wanted in the State of Arizona on a charge of murder under the name of Roberts. He was recently convicted in Gila County, Arizona, on that charge and sentenced to life imprisonment.

Of the above cases 10 indictments were returned by the grand jury, and 13 informations were filed in the office of the District Attorney. I have found the information law very beneficial in that more prompt action can be taken upon the commission of a crime, and a great deal of unnecessary expense will be avoided by not having to call a grand jury twice during the year. During this year a second grand jury was called on account of crimes which had been committed prior to the passage of the information law.

MISDEMEANORS

Cases in which defendants found guilty: Assault and battery, 4; vagrancy, 67; petit larceny, 10; selling merchandise without a license, 1; carrying concealed weapon, 4; nuisance, 1; contempt of court, 2; exhibiting a deadly weapon in a rude and angry manner, 1; indecent exposure, 1; defrauding an innkeeper, 1; drunk and disorderly, 12; simple assault, 1; trespassing, 2; disturbing the peace, 16; obtaining money under false pretenses, 1.

Misdemeanors dismissed, 12; misdemeanors, not guilty, 14; misdemeanors, suspended sentence, 169.

A great many sentences in misdemeanor cases have been suspended, as above indicated, on account of the limited amount of space in the county jail. A number of the persons whose sentences were suspended were undesirable people, and were given an opportunity to leave town before judgment was pronounced. All of the Justices are men who undertake their duties in a conscientious manner, and I believe their practice in this regard is most commendable.

Average jail sentences in cases of conviction in Justice Courts, approximately 45 days.

In felony cases all prisoners were sentenced according to the indeterminate sentence law, and no average can be given.

The approximate cost of conducting the criminal business during the year 1913 is \$11,201.06.

The amount of penal fines collected is \$602.50.

For the Year 1914

FELONIES

Burglary of the second degree, 8 convictions.

Burglary of the first degree, 3 convictions.

Murder, 1 conviction.

Passing bad checks with intent to defraud, 1 found not guilty.

Grand larceny, 5 convictions.

Assault with a deadly weapon with intent to do bodily harm, 1 conviction.

Forgery, 3 convictions.

Assault with intent to commit rape, 1 conviction.

In the case of Jack Griffin reported in my report of December 10, 1913, as pending, I will state that this case was dismissed. The case of F. B. McCombs, reported as pending in my last report, was also dismissed. The case of Frank Huber, reported in my last report as pending, was tried a second time, and the defendant found guilty of murder in the first degree, and sentenced to life imprisonment. The case of Jan Byrd, reported as pending in my last report, was tried a second time, and the defendant found guilty of simple assault. Motion for new trial granted and defendant pleaded guilty to a charge of assault with a deadly weapon with intent to do great bodily harm.

In all the above cases wherein defendants have been found guilty, sentences ranging from 8 to 10 months to 10 to 11 years have been imposed, with the exception of the murder case above referred to, in which case defendant was found guilty of murder in the first degree, and sentenced to be shot to death, which case is now on appeal to the Supreme Court of the State of Nevada. The average sentence in the above-mentioned felony cases is approximately 4 years. All of the above cases have been prosecuted on informations filed by the District Attorney's office, and there has been no grand jury empaneled during the term above mentioned.

MISDEMEANORS

Cases in which defendants were found guilty: Petit larceny, 23; vagrancy, 84; disturbing the peace, 11; selling goods without a license, 1; assault and battery, 13; lewdness, 1; resisting an officer, 6; carrying concealed weapons, 5; letting house for purpose of prostitution within 400 yards of a church edifice, 1; unlawfully having deer in his possession, 2; defrauding an innkeeper, 1; defrauding creditors, 1; provoking assault, 1; obtaining money under false pretenses, 2; drunk and disorderly, 7; obtaining goods under false pretenses, 1; receiving stolen goods, 1; cheating, 1.

A great many of the sentences in misdemeanor cases have been suspended on account of the limited amount of space in the county jail. A number of the persons whose sentence was suspended were undesirable people and were given an opportunity to leave town before judgment was pronounced. Have no record of the number of misdemeanor cases dismissed and those acquitted, for the reason that the Justices have not rendered a full account of this matter.

There are 3 felony cases pending at this time, 1 for burglary, 1 for grand larceny, and 1 for assault with a deadly weapon with intent to

do bodily harm, and of the above 3 cases I wish to report that in all probability 2 of them, and perhaps all 3, will be dismissed for lack of evidence.

Average jail sentences in cases of conviction in the Justice Courts, approximately 2 months.

In all felony cases prisoners were sentenced according to the indeterminate sentence law, and no specific average can be given.

The approximate cost of conducting the criminal business during the period above mentioned is \$9,656.27.

The amount of penal fines collected is \$783.

Respectfully submitted,

E. P. CARVILLE, *District Attorney.*

ESMERALDA COUNTY

GOLDFIELD, November 9, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

PROSECUTIONS IN DISTRICT COURT

State v. J. W. Pierce, embezzlement, 3 to 6 years.

State v. W. H. Loudon, burglary, first degree, 1 to 3 years.

State v. E. J. Turbush, burglary, second degree, 1 year.

State v. Antonio J. Beterio, assault with intent to kill, convicted of assault, fined \$50 and \$200 costs.

State v. Walter Layton, forgery, 1 year, sentence suspended.

State v. Earl Neumeyer and J. C. Jepperson, conducting a gambling game, defendants asked for and were granted separate trials. Earl Neumeyer tried; jury disagreed, and indictments against Neumeyer, Jepperson, Tom Rutherford, Jim Clayton, and Frank W. Mudd, dismissed by District Attorney on account of amendment of Gambling Law which removed the particular offenses with which these defendants were charged from the statute.

State v. Vincent Evieish, assault with intent to kill, acquitted.

Number of cases ignored by grand jury, 6.

Approximate cost of prosecutions in District Court, \$1,992.75.

Four felony cases pending at date of this report.

PROSECUTIONS IN JUSTICE COURT

Assault and battery, convicted, 5; dismissed, 2.

Disturbing the peace, convicted, 12; dismissed, 1; acquitted, 1.

Vagrancy, convicted, 12.

Defrauding innkeeper, released on own recognizance, 1; satisfaction acknowledged by injured party and defendant dismissed, 1.

Gambling, convicted, 5.

Petit larceny, convicted, 2; dismissed, 1; acquitted, 1.

- Carrying concealed weapons, convicted, 2; dismissed, 1.
- Affray, two defendants, convicted.
- Threats to kill, convicted, gave bond to keep the peace.
- Resisting an officer, convicted, 1.
- Number of convictions, 42; number dismissed, 4; number acquittals, 2.
- Average sentence (excluding cases of suspended sentences), 30 days.
- Average fine and costs paid by defendant (excluding cases of suspended sentence, etc.), \$21.
- Amount of fines collected in Justice Court, \$55.
- Amount of costs collected in Justice Court, \$370.25.

For the Year 1914

PROSECUTIONS IN DISTRICT COURT

- J. B. Hogan, burglary, second degree, 1 year, suspended.
- F. R. Roth, forgery, 2 to 3 years.
- Michel Delic, assault with intent to kill, convicted of assault.
- Thomas Cunningham, assault with intent to kill, acquitted.
- Cleofus Boscus, burglary first degree, 1 year to 1 year and 3 months.
- Proforia Gonzales, burglary first degree, 5 to 8 years.
- William McCormick, burglary second degree, 2 years, sentence suspended.
- Pat Finn, murder first degree, jury disagreed, defendant held for second trial.
- Joe Pierpoint, attempt to rape, 6 to 10 years.
- Ben C. Kleer, attempt to rape, indictment dismissed on motion.
- Number of prosecutions, 10.
- Number of persons convicted, 7.
- Average punishment (based on minimum and excluding suspended sentences), 3½ years.
- Number of persons acquitted, 1.
- Number of cases pending November 1, 1914, 1.
- Cost of prosecutions, \$8,173.45.
- Amount of fines paid, \$1. and \$124 costs.
- Dismissed, 1.

JUSTICE COURT

- Malicious mischief, 1; defrauding innkeeper, 10; uttering false checks, 2; failure to provide, 3; assault and battery, 5; carrying concealed weapons, 4; disturbing the peace, 11; petit larceny, 9; bond to keep the peace, 1; vagrancy, 4; wearing lodge emblems illegally, 1; obtaining money under false pretenses, 3.
- Number of prosecutions, 54.
- Number of persons convicted, 30.
- Average punishment on conviction, 27¼ days (exclusive of suspended sentences).
- Amount of fines paid, \$41; costs collected, \$48.50.
- Number of persons acquitted, 3.
- Number of cases dismissed, 9.
- Number of cases pending, 2.
- Defendants released on own recognizance, and defendants not found after warrant issued, 10.
- The Justice of the Peace and Constable of Goldfield Township are

both salaried officers, hence there is no expense for prosecutions in this court except the salaries of these officers.

Respectfully submitted,

M. A. DISKIN, *District Attorney.*

EUREKA COUNTY

EUREKA, December 2, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

NUMBER AND CHARACTER OF PROSECUTIONS

Vagrancy, 11 cases, 11 convictions.
 Assault and battery, 2 cases, 2 convictions.
 Drunk and disorderly, 20 cases, 19 convictions, 1 dismissal.
 Assault, 2 cases, 1 conviction, 1 acquittal by jury.
 Disturbing peace, 18 cases, 18 convictions.
 Petit larceny, 3 cases, 2 convictions, 1 acquittal by jury.
 Defrauding innkeeper, 1 case, 1 dismissal.
 Cheating, 2 cases, 2 convictions.
 Malicious mischief, 3 cases, 3 convictions.
 Escape, 1 case, 1 conviction.
 Total misdemeanor convictions, 59; discharges 4.
 No felony prosecutions.
 Total jail sentences in days, 309; average per case, 10 days.
 Costs and fines paid to county, \$219.10.
 Cost of prosecutions to county, approximately, \$100.

For the Year 1914

NUMBER AND CHARACTER OF PROSECUTIONS

Indictments for felonies—Burglary, 1 case, dismissed for want of evidence.

Preliminary examination—Grand larceny, 1 case, dismissed; obtaining money under false pretense, 1 case, dismissed.

Misdemeanors—Assault and battery, 2 cases, 2 convictions; making threats, 1 case, 1 conviction; petit larceny, 1 case, 1 conviction; engaging in business without license, 2 cases, dismissed upon payment of license; drunk and disorderly, 5 cases, 5 convictions; vagrancy, 3 cases, 3 convictions; malicious injury to property, 3 cases, 1 conviction, 2 acquittals by jury; escape, 1 case, 1 conviction.

Total jail sentences in days, 135; average per case, 17 days.

Amount of costs and fines paid to county, \$29.

Total cost of prosecutions to county, approximately, \$100.

Respectfully submitted,

N. P. MORGAN, *District Attorney.*

HUMBOLDT COUNTY

WINNEMUCCA, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

NUMBER AND CHARACTER OF PROSECUTIONS

Prosecutions for felonies—Assault with intent to kill, 1; assault with intent to inflict great bodily harm, 1; burglary, 5; destroying railroad signal device, 1; embezzlement, 3; forgery, 4; grand larceny, 7; issuing false checks, 3; murder¹, 4; total, 29.

¹This includes one murder case arising in Humboldt County, but transferred to Washoe County, Humboldt County paying the expense of the prosecution.

Prosecutions for misdemeanors—Assault and battery, 25; attempting to escape jail, 1; carrying concealed weapons, 8; defrauding innkeepers, 12; disturbing the peace, 235; embezzlement, 2; fishing without a license, 1; herding sheep within 3 miles of postoffice, 1; malicious mischief, 6; minors frequenting saloons, 1; misdemeanors, offenses not specified, 6; nonsupport of family, 1; obtaining money under false pretense, 7; petit larceny, 25; peddling meat without exhibiting hide, 1; peddling without a license, 3; permitting minors in saloons and pool rooms, 2; running water on public road, 1; reckless riding on public street, 1; resisting peace officer, 2; selling liquor without license, 10; selling opium and derivations, 4; slander, 1; speeding automobile on public street, 5; unlawful entry and forcible detainer, 1; vagrancy, 97; total, 459.

Number of persons convicted and average punishment on conviction—Felonies: Convicted, 21; reduced to misdemeanor charges, 4; prosecuted for felony but convicted of misdemeanor, 1; acquittals, 3; average punishment on conviction, death penalty, 1; life imprisonment, 2; average punishment for remainder, based on minimum imprisonment, 1½ years; based on maximum punishment, 7½ years.

Misdemeanors—Convicted, 316; acquitted, 114; dismissals and not apprehended, 29; average imprisonment for those imprisoned, 28 days; average fine for those fined, \$24.01.

Number of prosecutions pending at expiration of year covered by this report—Felonies, 5; misdemeanors, 13.

Cost of prosecutions to the county, \$18,994.90.

Amount of fines paid thereon, \$1,776.50.

The items relating to misdemeanors are only approximately correct, for the reason that three of the Justices of the Peace in the county have made no report from which data can be accurately obtained.

For the Year 1914

NUMBER AND CHARACTER OF PROSECUTIONS

Prosecutions for felonies—Murder, 2; manslaughter, 1; grand larceny, 4; burglary, 5; forgery, 1; total, 13.

Prosecutions for misdemeanors—Assault and battery, 23; disturbing

the peace, 163; petit larceny, 20; carrying concealed weapons in unincorporated towns, 3; obtaining property under false pretenses, 2; defrauding innkeepers, 8; peddling meat without exhibiting hide on demand, 1; vagrancy, 164; assault, 2; discharging firearms on the streets of towns, 4; depositing filth in running water, 1; holding under bonds to keep the peace, 2; escaping from custody of an officer, 3; indecent exposure, 1; resisting an officer, 4; malicious mischief, 2; violating vehicle speed ordinance, 2; permitting minors in saloon, 1; selling liquor without license, 6; conducting a pawnbroker's business without license, 1; trespass, 3; embezzlement, 5; forcible entry and unlawful detainer, 1; maintaining disorderly house, 2; maintaining nuisance, 1; total, 425.

Number of persons convicted and average punishment on conviction—Felonies: Convicted, 9; acquitted, 4; dismissed and ignored, 15; average punishment on conviction based on minimum imprisonment, $2\frac{2}{3}$ years; average punishment on conviction based on maximum imprisonment, $3\frac{1}{2}$ years.

Misdemeanors—Convicted, 345; acquitted, 18; dismissed, 59.

Average imprisonment for those imprisoned, $26\frac{2}{10}$ days.

Average fine of those fined, \$36.

Number of prosecutions pending at expiration of year covered by this report—Felonies, 13; misdemeanors, 1.

Cost of prosecutions to the county, \$15,112.55.

Total amount of fines paid into the county treasury, \$670.

The cost of all prosecutions to the county is only approximately correct, for the reason that a number of officers are on salary system, and the amount thereof chargeable to criminal prosecutions cannot be ascertained.

Respectfully submitted,

J. A. CALLAHAN, *District Attorney.*

LANDER COUNTY

AUSTIN, December 1, 1914.

To the Honorable the Attorney-General,

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

NUMBER AND CHARACTER OF PROSECUTIONS

Selling liquor to Indians, 1, convicted, sentenced from 1 year to 1 year and 6 months; assault with a deadly weapon, 1, dismissed for lack of evidence; felony embezzlement, 2 indictments, defendants absent; forgery, 2 indictments, defendant absent.

Total costs of prosecution of above, approximately \$150.

Fines collected from numerous petty cases in Justice Courts at Austin and Battle Mountain, \$310.

Bail forfeited and collected in District Court, \$500.

For the Year 1914

NUMBER AND CHARACTER OF PROSECUTIONS

Assault with intent to kill, 1; assault with a deadly weapon, 2, dismissed on preliminary; burglary, 4, dismissed for lack of evidence on preliminary; dynamiting, 1, discharged on preliminary; selling liquor on election day, 1, ignored by grand jury.

Number convicted, 1, assault with intent to kill.

A number of misdemeanor cases were disposed of in the Justice Court.

Number of prosecutions pending—Murder, 1; selling whisky to Indians, 2.

* Cost of prosecutions, approximately \$250.

One case in which indictment has been previously found, for obtaining signatures by false pretenses, was discharged on *habeas corpus*.

Amount of fines paid, \$65.50.

Respectfully submitted,

A. J. MAESTRETTI, *District Attorney*.

LINCOLN COUNTY

PROCHE, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

FELONIES

State v. Charles Ayers, charged with assault with a deadly weapon with intent to kill. Indictment found and trial before jury resulted in acquittal.

State v. Jesse Clark, charged with rape. Indictment found, and trial before jury resulted in a conviction and a sentence of not less than 5 nor more than 10 years was imposed by the Court.

State v. Malinda B. Smith, charged with assault with a deadly weapon with intent to kill. Indictment found and trial before a jury resulted in acquittal.

State v. George McQueen, charged with grand larceny. Indictment found, plea of guilty entered and sentence of not less than 2 nor more than 4 years imposed by the Court.

State v. Louis Moran, charged with grand larceny, information filed, plea of guilty entered and sentence of not less than 14 nor more than 16 months imposed by the Court.

State v. John Sheehan, charged with burglary, information filed, plea of guilty entered, and sentence of not less than 12 nor more than 14 months imposed by Court.

State v. A. A. Carpenter, charged with grand larceny, information filed, plea of guilty entered and time for pronouncing sentence set for January 24, 1914.

State v. Floyd Denton. This defendant was arrested on a charge of

murder. A preliminary hearing was held before W. D. Maynard, Justice of the Peace at Caliente. After the submission of the testimony, the said magistrate ordered the defendant discharged on the ground that the evidence submitted did not establish probable cause as required by law.

I have not been called upon in a single instance to prosecute a misdemeanor charge, the several Justices of the Peace having taken care of these cases themselves. However, the records disclose that all these cases, with the exception of one, have resulted in pleas of guilty.

There are now pending 3 felony charges in this county as follows: State v. Felix Signa, charged with grand larceny. A plea of not guilty has been entered and the trial set for January 20, 1914. State v. John Domingo, charged with murder. Plea of not guilty entered, and trial set for January 20, 1914. State v. Edward Terry, charged with grand larceny, plea of not guilty entered, and trial set for January 20, 1914.

One indictment has been dismissed during the time embraced within this report, being State v. O. H. Smith, charged with embezzlement. Said dismissal was made upon the ground that the evidence in possession of the prosecution was insufficient to justify a prosecution.

COST OF PROSECUTIONS

Paid District Court reporter.....	\$104.80
Fees paid attorneys appointed by the court.....	265.00
Expenses paid special officer.....	67.35
Expenses of Sheriff serving jurors and witnesses.....	217.60
Board and room for jurymen.....	236.50
Traveling expenses District Attorney.....	29.70
Fees and mileage for jurors and witnesses.....	1,980.20
Expert testimony.....	55.00
Total.....	<u>\$2,906.15</u>

No fines have been collected on account of District Court prosecutions during the period embraced herein.

For the Year 1914

CONVICTIONS IN DISTRICT COURT

Felix Signa, grand larceny, not less than 14 nor more than 16 months.
Albert Carpenter, grand larceny, not less than 14 nor more than 16 months.

Louis Moran, burglary, not less than 14 nor more than 16 months.

John Domingo, manslaughter, not less than 6½ nor more than 9 years.

John Sheehan, grand larceny, not less than 12 nor more than 14 months.

Howard Nash, burglary, suspended sentence.

Acquitted by trial jury, 1.

Prosecutions pending, 2.

Average sentence, 1½ years.

Total cost of prosecutions, as near as can be ascertained, \$2,133.10.

In explanation of the above I wish to say that in the two first cases mentioned, the indictments were found before making, and the expenses incident thereto were included in my former report.

In the Justice's Court this office has been called upon to prosecute and appear on behalf of the State in but one case, being a charge of

disorderly conduct in which a trial by jury was had, and an acquittal resulted.

Respectfully submitted,

W. M. E. ORR, *District Attorney.*

LYON COUNTY

YERINGTON, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

State v. Arthur N. Sample, assault with intent to kill, not guilty, discharged.

State v. Frank Weir, burglary first degree, not guilty.

State v. Joseph Clint, grand larceny, plead guilty and sentenced to not less than 1 year nor more than 14 months.

State v. Dave Jim (Indian), manslaughter, plead guilty and sentenced to not less than 5 nor more than 8 years.

State v. Little Johnny Walters (Indian), manslaughter, plead guilty and sentenced to not less than 5 nor more than 8 years.

State v. Robert Lee Bright, assault with intent to kill, plead not guilty, found guilty of assault at trial and sentenced to pay a fine of \$250 or be confined in the county jail 125 days.

Average number of convictions, 4.

Average cost and expense of felony trials in the District Court, \$712.36.

Average time of maximum sentence, 52 months.

JUSTICE COURT

Preliminary examinations, 8; bound over to District Court, 6; misdemeanor trials, 30; number of convictions, 24; average fines paid by each, \$8.10; average cost of Justice Court trials and preliminary examinations, each, \$26.32; average time served by those sent to jail, 30 days.

Number of prosecutions pending in Lyon County on December 1, 1913: Misdemeanor cases in Justice Court, none; felony cases in District Court, none.

For the Year 1914

State v. Pete Sutin and Mike Radakovich, highway robbery, mistrial, dismissed.

State v. Geo. Peterson, alias Ben Blair, burglary, guilty, not less than 1 year nor more than 16 months in State Prison.

State v. Geo. Dean, gross lewdness, not guilty.

State v. Herman J. C. Rehfeldt, burglary in second degree, first trial, disagreement, second trial, guilty, not less than 1 year nor more than 18 months.

State v. Oscar Hudson, Indian, murder, plead guilty and sentenced for the term of his natural life in State Prison.

State v. James Mack, forgery, plead guilty, not less than 20 nor more than 30 months.

State v. Wesley Hironymous, grand larceny, case continued until December 15, 1914.

Average number of convictions, 4.

Average cost and expense of felony trials in District Court, \$554.50.

Average time of maximum sentence, $21\frac{1}{3}$ months, and 1 for natural life.

JUSTICE COURT

Preliminary examinations, 13; bound over to District Court, 10; misdemeanor trials, 7; number of convictions, 5, average fines paid, none; average cost of Justice Court trials and preliminary examinations, each (exclusive of Justice's salary), \$13; average time served by those sent to jail, less credits for good behavior and labor, 45 days.

Number of prosecutions pending in Lyon County on December 1, 1914: Misdemeanor cases in Justice Court, 1; felony cases in District Court, 1.

A very considerable number of other misdemeanors committed in Lyon County during the years 1913 and 1914, occurred within the limits of the City of Yerington, and were disposed of by the Municipal Court of that city, and are therefore not enumerated in this report.

Respectfully submitted,

N. W. WILLIS, *District Attorney.*

MINERAL COUNTY

HAWTHORNE, November 28, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

NUMBER AND CHARACTER OF PROSECUTIONS

One felony charge, murder, which resulted in acquittal.

Cost of this prosecution, approximately, \$852.

There have been a number of misdemeanor cases in Justice Courts, independent of my office. The average fine or penalty approximated 30 days in the county jail. I believe there were no fines paid.

The various Justices have not reported to this office and therefore I have no data in the office relative to misdemeanor cases.

For the Year 1914

Character and number of prosecutions in District Court, 2: murder, 1, convicted and sentenced to the State Prison for the term of his natural life; grand larceny, 1, convicted and sentenced to State Prison for the term of 1 year, the commencement of the term to date from the 31st of December, 1914, and the sentence suspended, provided the defendant pay to the Clerk of the Court the sum of \$50 on or before December 31, 1914.

The grand jury ignored the charge in three cases, 2 for burglary, 1 for assault to do bodily harm.

Number of prosecutions pending at the time covered by this report: Felony charges, none; misdemeanor charges, unknown.

Cost of prosecution, including witness fees, expense of Sheriff in summoning witnesses and jurymen, meals to prisoners, fees to attorney appointed by the Court to defend indigent defendants, stenographers in Justice Courts and District Court, approximately, \$2,000.

There were approximately 18 misdemeanor cases tried in the various Justice's Courts, and the average sentence of those sent to the county jail at Hawthorne was 60 days; there was \$11 paid in fines.

Respectfully submitted,

JOHN R. MELROSE, *District Attorney.*

NYE COUNTY

TONOPAH, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

NUMBER AND CHARACTER OF PROSECUTIONS

State of Nevada v. Frank Dexter. Information filed charging the defendant with the crime of larceny of ore over the value of \$50, March 31, 1913. Defendant plead guilty May 1 and judgment entered sentencing defendant to the penitentiary for not less than 1 nor more than 5 years. May 1 suspension of sentence by the District Court.

State v. Frank Baker. Information filed March 27 charging defendant with the crime of burglary. April 1, plea of guilty, and judgment entered sentencing defendant to penitentiary for a period of not less than 1 nor more than 2 years.

State v. J. E. Stull. Information filed charging defendant with crime of forgery on August 23. Plead guilty and judgment entered sentencing defendant to the penitentiary for a period of not less than 4 nor more than 5 years. August 26 judgment suspended. November 18 judgment of suspension revoked and defendant sentenced to the penitentiary for a period of not less than 4 nor more than 5 years.

State v. James T. Boyd. September 19 information filed charging defendant with the crime of assault with a deadly weapon, and attempt to kill Fred Reynolds. October 7 verdict of guilty. October 11 judgment sentencing defendant to the penitentiary for a period of not less than 4 nor more than 7 years.

State v. George Wallace. September 25 information filed charging defendant with the crime of burglary. October 14 defendant plead guilty and on October 17 the Court pronounced judgment sentencing the defendant to the penitentiary for a period of not less than 15 months nor more than 4 years.

State v. A. J. Swartz. September 25 information filed charging the

defendant with the crime of burglary. October 14, defendant plead guilty. October 17, the Court pronounced judgment, sentencing the defendant to the penitentiary for a period of not less than 15 months nor more than 4 years.

State v. Charles R. Burke. September 25, information filed charging the defendant with the crime of burglary. October 14, defendant plead guilty. October 17, the Court pronounced judgment, sentencing the defendant to the penitentiary for a period of not less than 15 months nor more than 4 years.

NUMBER OF PERSONS ACQUITTED, AND PROSECUTIONS DISMISSED

State v. Mike Keslj, Sam Jellick, D. Morris, George Pall, H. Wright, H. H. Miller, and A. D. McKenzie.

In the case of State v. Mike Keslj. On indictment filed December 13, 1913, the defendant was tried and a verdict of not guilty was entered on February 22. Defendant was charged with carrying on and conducting a gambling game in the Town of Tonopah. The other parties hereinabove named were charged separately with the crime of playing at the game of chance, to wit, poker, and after the verdict of not guilty in the case of Mike Keslj, charged with carrying on the game, the indictment against the parties named was dismissed upon my application.

State v. Mike Fagan. The defendant was charged with the crime of selling whisky to an Indian. On February 14 the jury returned a verdict of not guilty.

State v. C. W. Girton. The defendant was charged on March 27, 1913, with the crime of assault with intent to kill. On April 15 the jury returned a verdict of not guilty.

State v. Joe Murphy. On September 13, 1913, the defendant was charged with the crime of selling whisky to Indians. Thereafter the case was dismissed upon my motion, and the defendant was informed against by the United States authorities. I am not advised as to the result of his prosecution in the Federal Court.

State v. C. R. Simons. The defendant was charged with the crime of obtaining money under false pretenses, and a preliminary examination held in the Justice Court of Tonopah Township, and the defendant was bound over to answer indictment or information. Thereafter, on October 19, a writ of *habeas corpus* was issued and upon the hearing of petition and return thereon, the defendant was discharged.

State v. Blondie Le Blanc. Defendant was charged with assault and battery on appeal from the Justice Court. Defendant was, on the 3d day of November, 1913, discharged from custody upon my motion to dismiss for want of evidence to convict.

State v. Fred B. Weir. April 22, indictment filed charging the defendant with the crime of embezzlement. The cause was continued from time to time on defendant's motion, and on November 12, the trial of the case was commenced, and on the 4th day of December, a verdict of guilty was rendered by the jury. On January 19, 1914, the Court pronounced judgment, and sentenced the defendant to the penitentiary for a period of not less than 1 nor more than 5 years, and suspended sentence upon the terms and conditions named in the judgment.

For the Year 1914

NUMBER AND CHARACTER OF PROSECUTIONS

State v. James Valdan. January 12, 1914, defendant was informed against for the crime of obtaining \$100 under false pretenses from A. Guintoni. January 16, defendant plead guilty and the Court pronounced judgment, sentencing defendant to the penitentiary for a period of not less than 1 year nor more than 13 months, and upon said date the Court suspended sentence.

State v. A. J. May. On January 15 the defendant was charged with failure to support his wife and children. Upon coming into court, the defendant entered into a recognizance to pay his wife and children \$50 per month.

State v. William Pappas. March 19, 1914, information was filed charging defendant with assault with intent to kill Lillian Frazier. Upon a plea of not guilty, the trial of the case came on on April 15. On April 17, the jury returned a verdict of guilty. On April 27 the Court pronounced judgment, sentencing the defendant to the penitentiary for a period of not less than 8 nor more than 14 years.

State v. Lou Davenport. June 22, information was filed charging defendant with the crime of murder. July 16, verdict of jury returned and filed of guilty. July 20, judgment and sentence of from 7 to 10 years in the penitentiary.

State v. John Panener. Information filed on July 9, charging defendant with assault with intent to kill Tom White. Trial was had, and on July 30 the jury returned a verdict of guilty. August 24 and 25, a motion for a new trial was argued and overruled. On August 25 the Court pronounced judgment on the verdict, sentencing defendant to the penitentiary for a period of not less than 1 year nor more than 18 months.

State v. Boris Thomasson. November 12, information filed charging defendant with the crime of arson. November 12, defendant was arraigned, and upon said date plead guilty to the charge, and on November 14, the Court pronounced judgment, sentencing the defendant to the penitentiary, upon his plea of guilty, for not less than 20 nor more than 21 years.

State v. Francis Burton. November 10, information filed charging the defendant with the crime of burglary. November 23 and 24, trial was had, and on November 25, the jury disagreed and was discharged.

December 1, 2, and 3, 1914, the defendant was tried on the same charge, and on December 4, the jury disagreed. The case is still pending.

State v. Paul Justrom. Charge grand larceny. Plea of guilty. Court suspended sentence December 4.

CASES PENDING

State v. Tom Shipe; State v. Charles Parsons and Robert M. Bailey; State v. Mike Chorovich; State v. Enrico Pavoli; State v. Harry Atfield and C. T. McDowell.

State v. H. E. McGucken. This case was investigated by the grand jury, and on December 19, the grand jury returned the indictment as presented, with no endorsement thereon, and accompanied their report

with a statement in regard to this case, which statement was read to the defendant, and he was discharged from custody. The case, however, was not dismissed, and the District Attorney will endeavor to find additional evidence upon which to base an indictment.

It is impossible to give the costs of the prosecutions in the above cases, for the reason that no separate data is kept by the different officers with regard to criminal expenses, and to segregate the costs paid in each case would involve more time than it is possible to give. Should, however, you desire itemized statement of costs in each case, I will, at a later date, furnish it upon request.

Respectfully submitted,

J. A. SANDERS, *District Attorney.*

ORMSBY COUNTY

CARSON CITY, December 5, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

Indictments—George W. Ramsey, for the crime of prison escaping.

Felonies—George W. Ramsey, for the crime of prison escaping, defendant found guilty, and sentenced to 1 year in Nevada State Prison.

Costs—\$494.05. Actual costs to the county amounting to \$385.65, paid by the State of Nevada.

Misdemeanors prosecuted in the Justice Court of Carson Township—Louie Ouillette, for the crime of maliciously maiming a dog. Defendant found not guilty by the jury. Costs, \$14.

For the Year 1914

Indictments, none; felonies, none; misdemeanors prosecuted in the Justice Court of Carson Township, 5.

In the above cases conviction was secured in each case, the average sentence being 36 days in jail. No fines were paid, and there were no costs to the county for prosecutions.

Respectfully submitted,

JOHN M. CHARTZ, *District Attorney.*

STOREY COUNTY

VIRGINIA CITY, December 4, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

INDICTMENTS PENDING

Rape, 1—Oscar Lewis. Defendant left State before he was indicted, and the officers have been unable to apprehend him.

Obtaining money under false pretenses, 1—Same report as to all conditions as that above.

PROSECUTIONS IN DISTRICT COURT

Rape, 1—Richard Calliber. Defendant was indicted and tried for rape by a jury; verdict returned of guilty of attempt to commit rape; judgment pronounced that he be confined in the State Penitentiary for a term of not less than 5 nor more than 10 years; committed to said penitentiary, and is now serving that term, it being indeterminate. Cost to county about \$1,482.65.

PRELIMINARY EXAMINATIONS IN JUSTICE COURT

Rape, 1—Richard Calliber, above mentioned, held. Cost included in above.

Assault with a deadly weapon, 1—John White and John Lagomarsino, discharged by Justice of the Peace. Cost, about \$85.

Total misdemeanors prosecuted, 7; convictions, 5; dismissals, 2; fines, \$60; cost, none; average sentence, 45 days.

Under the law, violations of Ordinances of the City of Virginia, and the Town of Gold Hill, are prosecuted in the Justice Court of Township No. 1. Total prosecutions under these ordinances, 36, all resulting in convictions. Of these 35 were for drunkenness, and 1 for using lewd and indecent language. In 8 cases of drunkenness, sentence was suspended, and the offenders left the county. Cost for prosecutions, none. Fines amounted to \$131. Average sentence, 17 days.

For the Year 1914

INDICTMENTS PENDING

Rape, 1—Oscar Lewis. Defendant left State before he was indicted, and the officers have been unable to apprehend him.

Obtaining money under false pretenses, 1—Same report as to all conditions as that above.

PROSECUTIONS IN DISTRICT COURT

Grand larceny, 1—Sylvan P. Taylor. Defendant pleaded guilty to crime as charged in information filed by me, and the Court pronounced judgment that he be confined in the Nevada State Penitentiary for a term of not less than 2 nor more than 5 years, and that said judgment and sentence be stayed and suspended upon certain conditions which are being complied with. Costs, nothing.

PROSECUTIONS IN THE JUSTICE'S COURT

Misdemeanors—Petit larceny, 1; vagrancy, 1; assault and battery, 1; all resulting in conviction; total sentence, 120 days; average sentence, 40 days; cost, nothing.

Offenses—Under the law, all violations of the City Ordinances of Virginia City and all violations of the Town Ordinances of Gold Hill are prosecuted in the Justice's Court of Township No. 1, the only Justice's Court in this county. Total of such offenses prosecuted in this

court for the year were 19, all resulting in convictions. Of these 18 were for drunkenness, and 1 for soliciting prostitution. Total money collected for fines, \$23; average time served by each person convicted, who served a sentence, 12 days; sentences suspended, 2, one of which was for drunkenness, and the other for soliciting prostitution, in both of which cases the offenders left the county; costs of prosecuting cases above, nothing, unless salary of officers be included in such costs.

Respectfully submitted,

GRAY MASHBURN, *District Attorney.*

WASHOE COUNTY

RENO, December 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

CONVICTIONS IN DISTRICT COURT

- Ralph Baker, forgery, 1 year to 1 year 3 months.
 J. H. Beltran, larceny from person, 1 year 2 months to 1 year 6 months.
 Geo. W. Bennett, burglary, 1 year to 1 year 6 months.
 Claude I. Brown, forgery, 1 year 3 months to 1 year 6 months.
 James Burke, burglary, 1 year 3 months to 2 years.
 C. E. Clark, forgery, 1 year to 1 year 3 months.
 William Clark, burglary, 1 year to 3 years.
 John Coakley, burglary, 1 year to 1 year 6 months.
 C. C. Cochran, forgery, 1 year 9 months to 2 years 9 months.
 John Cordell, whisky to Indian, 1 year to 1 year 1 month.
 John Cottrell, burglary, 3 years 6 months to 4 years 6 months.
 J. F. Crowe, forgery, 1 year to 1 year 2 months.
 James Daley, larceny from person, 1 year 1 month to 1 year 3 months.
 Harry Dowd, forgery, 1 year to 2 years.
 Henry Fields, burglary, 1 year 9 months to 2 years 6 months.
 Elmer Hamilton, living with prostitute, fined \$600.
 Leroy Jollye, petit larceny, 30 to 40 days.
 Chas. Lyle, forgery, 1 year to 1 year 1 month (suspended).
 Jose L. Mareno, escape from officer, 1 year to 2 years.
 Juan Martinez, robbery, 5 years to 6 years.
 John McCarthy, larceny from person, 1 year 3 months to 1 year 6 months.
 Theo. H. Morris, forgery, 1 year 6 months to 1 year 9 months.
 Charles Patchen, burglary, 1 year 3 months to 2 years.
 Elliott Petersen, robbery, 5 years to 10 years.
 Henry Pettit, assault with deadly weapon, 1 year 8 months to 1 year 11 months.
 Donciano Rosas, burglary, 2 years 6 months to 3 years.
 Frank Shannon, burglary, 1 year to 2 years.
 Al. Sheehan, burglary, 1 year to 2 years.

Alexander Smith, larceny from person, 1 year 3 months to 1 year 6 months.

Kitty Smith, robbery, 5 years to 8 years.

F. W. Swartwout, assault, 2 months.

Ed. Unterleibinger, burglary, 1 year 6 months to 2 years.

Andres Telles, larceny from person, 1 year 2 months to 1 year 6 months.

Frank Tramner, murder, death penalty.

Carl Tume, forgery, 1 year to 1 year 1 month.

Frank Von Elbertz, passing fraudulent check, 1 year to 3 years.

Henry Walker, forgery, 3 years 6 months to 4 years.

Frank Williams, grand larceny, 1 year to 1 year 6 months.

Average punishment on conviction, 2 years 2 months to 2 years 6 months.

Number of persons acquitted, 2.

Number of cases dismissed, lack of evidence, 2.

Number of prosecutions pending, 4.

Cost of prosecutions, \$6,890.

MISDEMEANOR CASES

Reno Township—Convictions, 55; acquittals, 6; dismissals, 28; pending, 11; fines collected, \$690; average punishment on conviction, 30 days.

Sparks Township—Convictions, 12; acquittals, 3; dismissals, 3; pending, none; average punishment on conviction, 80 days; amount of fines collected, \$75.

Wadsworth Township—Convictions, 38; acquittals, 3; dismissals, 3; average punishment on conviction, 14 days; total fines collected, \$155.

Verdi Township—Convictions, 14; acquittals, 2; dismissals, 12; pending, 4; fines collected, \$112; average punishment on conviction, 15 days.

Gerlach Township—Convictions, 9; acquittals, 2; dismissals, none; pending, none; average punishment on conviction, 30 days; amount of fines collected, \$32.

REMARKS

The sentences appearing in the list of convictions in the District Court are indeterminate, and the minimum and maximum sentence in each instance is given.

The cost of prosecutions excludes the cost of the Tramner murder trial, which was paid by Humboldt County, the crime having been committed there and transferred to this county at the request of the defendant.

The expenses of the Sheriff in the transportation of prisoners is not included, for the reason that the system of accounting in this county does not segregate this account from the other expenses of the Sheriff's office. This item is estimated at not to exceed \$400, which will bring the total cost of criminal prosecutions to a little over \$7,000.

In view of the heavy amount of the criminal business attended to during this year, the cost of prosecutions is remarkably small; this is largely due to the prosecution of criminal cases by information, which eliminates the necessity of a grand jury, and has, for some reason, been responsible for a number of pleas of "guilty."

The police officials of both the City of Reno and the City of Sparks

and the Sheriff of Washoe County deserve the highest praise for their tireless energy and effective work in the apprehension of criminals and the gathering of evidence. To their efforts may be largely attributed the comparatively high percentage of convictions in which indictments or informations were filed.

Respectfully submitted,

WM. WOODBURN, JR., *District Attorney.*

For the Year 1914

CONVICTIONS IN DISTRICT COURT

- G. P. Dye, forgery, 1 year to 2 years.
 Benny Jack, murder, 14 years to 24 years.
 M. Quinn, larceny from person, 1 year to 5 years.
 Roy Ikegami, assault with intent to kill, 1 year to 2 years.
 G. P. Cherry, manslaughter, 5 years to 8 years.
 R. J. Wilson, larceny from person, 1 year to 5 years.
 Thomas King, liquor to Indian, 1 year 4 months to 1 year 11 months.
 Albert Rocchi, grand larceny, 2 years 9 months to 4 years.
 Floyd Crawford, forgery, 1 year 2 months to 2 years 6 months.
 C. M. Jones, embezzlement, 1 year 9 months to 2 years 10 months.
 E. S. Lewis, larceny, 1 year to 3 years.
 W. J. Link, living with prostitute, 1 year 9 months to 2 years 9 months.
 John Ryan, larceny from person, 2 years 3 months to 4 years.
 R. C. Robinson, manslaughter, 4 years to 6 years.
 Geo. Rogers, assault with intent to commit robbery, 2 years to 4 years.
 Francisco Garay, grand larceny, 1 year 1 month to 1 year 3 months.
 S. James Burke, forgery, 1 year to 3 years.
 Frank Benites, infamous crime against nature, 6 years to 7 years.
 W. E. Thomas, burglary, 1 year 2 months to 2 years 6 months.
 Robt. M. McRae, passing fraudulent check, 1 year to 1 year 6 months.
 Harry Williams, burglary, 3 years to 4 years.
 W. L. Treweek, embezzlement, 2 years to 4 years.
 Alex. Snyder, selling whisky to Indian, 1 year to 1 year 30 days.
 Francis Johnson, burglary, 1 year 6 months to 3 years.
 Peter Van Hoord, selling whisky to Indian, fine \$500.
 Harry Lloyd, burglary, 2 years to 2 years 6 months.
 Cecil Douglas, burglary, 2 years to 2 years 6 months.
 William Sweitzer, robbery, 7 years to 14 years.
 S. R. Williams, burglary, 1 year 6 months to 1 year 11 months.
 Sid. Stone, burglary, 2 years 6 months to 3 years.
 John Clancy, robbery, 6 years to 10 years.
 Wm. Bradley, forgery, 2 years to 3 years.
 Willard Rose, burglary (2d degree), 2 years to 3 years.
 Frank Revera, robbery, 8 years to 10 years.
 Louis De Martini, robbery, 8 years to 10 years.
 Louis Meyer, burglary (2d degree), 1 year 1 month to 1 year 9 months.
 J. S. Jones, larceny from person, on motion of District Attorney reduced to petit larceny, and given jail sentence.

Average punishment on conviction, 2 years 9 months to 4 years 8 months.

Number of persons acquitted, 4.

Cases dismissed for lack of evidence, 2.

Number of cases in which jury disagreed, 1.

Number of prosecutions pending, 9.

Cost of prosecutions, \$7,282.45.

MISDEMEANOR CASES

Reno Township—Convictions, 31; acquittals, 7; dismissals, 39; fines collected, \$491; average punishment on conviction, 53 days.

Wadsworth Township—Convictions, 21; dismissals, 4; acquittals, none; fines collected, \$95.

Sparks Township—Convictions, 9; acquittals, 4; dismissals, 6; fines collected, none.

Gerlach Township—Convictions, 3; acquittals, 2; dismissals, none; fines collected, \$110.

No report from Verdi Township.

REMARKS

The sentences appearing in the list of convictions in the District Court are indeterminate, and the minimum and maximum sentences in each instance is given, with the average minimum and average maximum.

In estimating the cost of prosecutions as to trial jurors, it is, if anything, largely in excess of the actual amount expended, but under the auditing system used in this county, all jurors summoned during the year are charged together, those for civil cases as well as criminal trials. During the year this office tried seventeen criminal cases by jury, and it was on this basis of estimate that these figures were given, which are, I think, largely in excess of the actual outlay.

Nor does the above item include the office expenses or salaries of the District Attorney, Deputy, or stenographer.

This office has received a great deal of assistance during the past year from the various peace officers of the county, including the Sheriff, Chief of Police of Reno and the Chief of Police of Sparks, as well as the outlying districts, and they are deserving of the very highest praise for their honest efforts and efficient services.

Respectfully submitted,

M. B. MOORE, *District Attorney.*

WHITE PINE COUNTY

ELY, January 1, 1914.

To the Honorable the Attorney-General.

DEAR SIR: In accordance with law, I submit herewith my annual reports of the criminal business transacted in this county for the years ending November 1, 1913; and November 1, 1914:

For the Year 1913

State v. James Potter, murder, not guilty. Expense, \$599.20.

State v. Frank Kessler, assault with intent to inflict a bodily injury, verdict of minor charge of assault and battery. Expense, \$210.90.

State v. Dan Melich, assault with intent to inflict a bodily injury, defendant absconded, bond forfeited. No expense.

State v. Pete Kambales, assault with intent to kill, guilty, 1 to 2 years. Expense, \$278.73.

State v. Andrew Ghiggeri, unlawfully and feloniously setting a spring gun and thereby injuring one Jack Wright, plead guilty to a minor offense and fined and paid \$150. No expense.

State v. John Rudolph Ferry, rape, not guilty. Expense, \$523.80.

State v. Joe Zelich, murder, not guilty. Expense \$395.55.

State v. William Connelley, burglary, guilty, 3 to 5 years. Expense, \$363.45.

State v. S. P. Kelly, forgery, plead guilty, 1 to 14 years. Expense, none.

State v. Pat Ross, forgery, plead guilty, 1 to 14 years, sentence suspended during good behavior, violated conditions of suspension and same revoked December 29, 1913. Expense, none.

State v. John Galec, grand larceny, plead guilty, 1 to 14 years, sentence suspended during good behavior, violated conditions of suspension, and same revoked January 27, 1914. Expense, none.

For the Year 1914

State v. H. L. Lahey, assault with intent to kill, not guilty. Expense, \$242.05.

State v. Harry Giantselis, assault with intent to do great bodily injury, cause dismissed for lack of evidence. No expense.

State v. Frances E. Nones, assault with intent to kill, guilty, 1 to 14 years. Expense, \$243.55.

State v. Thomas J. Curry, assault with intent to kill, cause dismissed by District Attorney while trial in progress. Expense \$134.35.

State v. Patrick Morton, robbery, jury disagreed, cause dismissed. Expense \$219.25.

State v. Frank Cunnington, grand larceny, defendant absconded, cost of extradition, \$150, bond of \$500, cash, forfeited.

State v. P. P. Bennett, obtaining money under false pretenses, not guilty. Expense, \$137.80.

State v. H. Hartsell, issuing check on bank without funds, plead guilty, 1 to 10 years, sentence suspended. No expenses.

State v. Jos. H. Garrett, issuing check on bank without funds, plead guilty, 1 to 10 years, sentence suspended. No expense.

State v. Veto Moyeto and B. F. Commer, grand larceny, plead guilty, 1 to 14 years, sentence suspended. No expense.

State v. George Angel Antone, obtaining money under false pretenses, guilty, 1 to 5 years. Expense, \$403.35.

State v. Albert McGill, Indian, maliciously placing certain obstructions upon railway track, guilty, 1 to 2 years. Expense, \$271.20.

State v. Gust Democles, assault with intent to kill, plead guilty of assault with a deadly weapon with intent to do great bodily harm, 1 to 5 years. Expense, \$265.10.

Respectfully submitted,

WM. E. BILLINGS, *District Attorney.*

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9. Constitutional Law—Amendments to Constitution.

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124. Constitutional Law—Amendments to Constitution—Publication of—Approval of—Secretary of State—County Clerks.

1. Under section 1, article 10, of the Constitution it is not necessary that the resolution be signed by the President or Secretary of the Senate and the Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but the entry of the yeas and nays in the journals of the Senate and Assembly shall be sufficient.

2. "An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada" (Rev. Laws, 1878-81) was a special Act adopted by the Legislature for the special election of 1889, and has been repealed by implication by sec. 10, chap. 5, p. 551, of the General Election Law (Stats. 1913, 493).

3. When any constitutional amendment is to be submitted to popular vote, the procedure for the Secretary of State and County Clerks to follow thereon is pointed out in the last-named section.

23. Constitutional Law—Courts—Jurisdiction.

Assembly Bill No. 135, entitled "An Act providing for original proceedings in the Supreme Court to secure rulings from that court upon the constitutionality or interpretation of Acts of the Legislature," is unconstitutional in that the said bill is in conflict with section 4 of article 6 of the State Constitution.

21. Constitutional Law—Criminal Practice—Death Penalty.

Assembly Bill No. 177, entitled "An Act to provide for inflicting the death penalty, etc.," is clearly unconstitutional for the reason that the subject of the Act is not expressed in the title, such Act being intended to be an amendment to section 431 of the Criminal Practice Act.

19. Constitutional Law—Employer and Employee—Hours of Labor.

Senate Bill No. 36, "An Act limiting the hours of labor of females employed in any mill, etc.," is a valid exercise of the police power. The proviso therein for payment for extra employment at the rate of one and one-half times the regular earnings of the employee does not destroy its constitutionality.

18. Constitutional Law—Gift Enterprises—Police Power.

Assembly Bill No. 141, prohibiting gift enterprises, is constitutional, and is a valid exercise of the police power.

4. Constitutional Law—Legislature.

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All figures refer to opinion numbers.

- tion, will not preclude the present Legislature from thereafter passing new bills during its session containing the same subject-matter.
98. **Constitutional Law—Legislature—Secretary of State.**
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24. **Constitutional Law—Legislature—Speaker, Duty Of.**
Section 18, article 4, of the Constitution is mandatory, and a bill regularly passed by the Legislature without the name of the Speaker upon it is invalid.
22. **Constitutional Law—Liberty of Contract—Restraint Upon.**
Senate Bill No. 152, entitled "An Act to prevent competition in restraint of trade, etc.," is unconstitutional. Said Act is an unreasonable restraint upon the liberty of contract guaranteed by the 14th Amendment to the U. S. Constitution, and is also in conflict with section 1, article 1, Nevada Constitution. Said Act is also in violation of section 1, article 1, Nevada Constitution, in that certain sections confer upon the Public Service Commission judicial powers in violation of the provisions of said section.
20. **Constitutional Law—Nevada School of Industry.**
The provision in Stats. 1913, 384, section 3, does not render the said Act unconstitutional. A provision that a statute shall take effect upon a subsequent event is constitutional.
119. **Constitutional Law—Pardons and Parole—Convicts—Board of Parole Commissioners.**
The Act to establish a Board of Parole Commissioners (secs. 7631-34, Rev. Laws) is constitutional, and a majority vote of the board (the Governor not concurring therein) is all that is necessary to parole a convict under said Act.
26. **Constitutional Law—Railroad Commission—Railroad Commissioners.**
Assembly Bill No. 329, entitled "An Act to fix the salary of the First Associate Commissioner of the Railroad Commission of Nevada," is unconstitutional in that it conflicts with section 17, article 4, of the Constitution.
7. **Constitutional Law—Taxation—Poll Tax.**
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In the reorganization of corporations the addition of the word "Limited" to the original name of the corporation is not a violation of the provisions of sec. 1108, Rev. Laws, and the Secretary of State must accept for filing, articles bearing such corporate name, notwithstanding the fact that the articles of incorporation bearing the same name, with the exception of the word "Limited," are already on file in his office. A Notary Public who was a party to the instrument, is disqualified to take the acknowledgments thereto.

103. Corporations—Building and Loan Associations—Investment Companies.

Any joint-stock company, association, or corporation, organized for the purpose of engaging in the building and loan business, or to borrow and invest moneys, or dealing in investment certificates, or other similar business, must comply with the provisions of secs. 1361-64, Rev. Laws, requiring a deposit of collateral with the State Treasurer.

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111. Counties—County Government—County Commissioners—Budgets—Duty of Preparation Of.

The counties are bound to follow the budget system. It is the duty of the County Commissioners to make a budget of the amount of estimated expense of conducting public business of the county for the ensuing fiscal year as provided by sec. 3829, Rev. Laws. Under sec. 3818, Rev. Laws, it is the mandatory duty of the Board of County Commissioners, if, after equalization, it appears that the levy previously made will result in the collection of revenue in excess or deficiency of the requirements of the county for the current year, to raise or lower the tax rate.

79. Counties—Public Highways—County Commissioners.

Stats. 1913, 390, was not intended to supersede the statutory requirements now existing as to the establishment, maintenance, and repair of roads, but was intended to institute a new and additional method for such supervision. Said statute was not intended to operate until after a favorable election for the issuance of bonds for road purposes, as therein provided, was held.

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147. Crimes and Punishments—Conspiracy.

1. Certain facts held not to constitute a public offense.

2. A conspiracy to commit a crime against public justice, namely, disturbing the public peace and interfering with the authorities in the administration of justice, must be manifested by some overt act, before action can be taken.

29. Crimes and Punishments—Gambling.

In construing the amendment to section 253 of the Crimes and Punishments Act, Stats. 1913, 235, the phrase "prizes of a value not to exceed two dollars," should be construed in connection with the words "social games," and the purpose of the law was not to prohibit games for drinks and cigars played in saloons, nor to prohibit the offering of a prize of the value not to exceed two dollars by hostesses in the entertainment of their guests.

33. Crimes and Punishments—Gambling—Anti-Gambling Law.

Section 253 of the Crimes and Punishments Act as amended by Stats. 1913, 235, prohibits gambling of every kind and nature. When a stake is contributed by the participants alone, and a contestant is to have the fund thus created, this constitutes gambling prohibited under said section.

85. Crimes and Punishments—Gambling—Slot Machines.

Amendment to section 253 of the Crimes and Punishments Act prohibits all gambling of any character or nature, including buying or selling or dealing in pools, or making books on races, whereby money is wagered between two or more persons in such a manner that one must be the loser and the other the gainer, dependent upon chance. The new play-back clause of this section is enforceable, and a violation thereof is a misdemeanor.

146. Crimes and Punishments—Live Stock.

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144. Elections—Candidates—Corrupt Practices Act—Statements of Candidates.

A candidate who has no opposition in the primary, and whose name is therefore certified as the party candidate for the office, and whose name therefore does not appear upon the primary ballot, is not compelled to file the statement of expenses required by sec. 8 of the Corrupt Practices Act (Stats. 1913, 478).

153. Elections—Candidates—Corrupt Practices Act—Statements of Candidates.

Under the Corrupt Practices Act (Stats. 1913, 476) a candidate for nomination or election to public office is not required thereby to file vouchers for his expenses. The only vouchers that seem to be required are those provided in section 9 of the Act, from political committees or persons not candidates, spending a sum greater than \$50.

136. Elections—Candidates—Corrupt Practices Act, Statements Under—Time for Filing.

August 27, 1914, is the day designated by Corrupt Practices Act (Stats. 1913, 478) for filing ante-election statement, and September 16, 1914, for filing post-election statements.

137. Elections—Candidates, Disqualification of—Constitutional Law.

1. A primary election is not such an election for state and county officers as is contemplated in the Constitution.
2. A Postmaster, whose compensation amounts to about \$1,000 per annum, may make a campaign for nomination to office, and will be eligible to the office he seeks if he tenders his resignation as Postmaster to the proper officer prior to general election day.

139. Elections—County Clerks—Short Ballots.

The provisions of sec. 15, chap. 2 (Stats. 1913, 502), of the Election Law, referring to short ballots, applies to primary elections. The quantity of such short ballots to be furnished lies in the discretion of the County Clerk.

155. Elections—County Commissioners—Recount.

Under section 1513, Rev. Laws, the only power the County Commissioners have is to recount all of the ballots. The board has no power to throw out any ballot which has been counted by the election judges

All figures refer to opinion numbers.

or in any way overrule or overthrow any decision of the election board as to the legality of any ballot.

135. Elections—Independent Nomination—Nomination by Petition of Electors—Who May Sign.

1. No person who has voted in a convention for or against a candidate for any office shall join in nominating by petition, or otherwise, any other nominee for the same office.

2. An elector, who has registered as a member of one of the several political parties for a primary election, is not thereby disqualified from signing nominating petitions of independent candidates for office.

3. An elector, who signs an independent candidate's petition, is not thereby disqualified from voting in party primaries.

130. Elections—Nomination by Petition of Electors.

Sections 3 to 7, pp. 549–50, Stats. 1913, provide means for independent nomination by petition of electors. Any elector may lawfully run as an independent candidate by a petition for any office, unless such person was defeated at a primary election for the same office.

126. Elections—Nomination by Petition of Electors.

Under section 6, chapter 5, of the General Election Law (Stats. 1913, 550) all nominations by petition of electors must be filed not less than ten days prior to the first of September of the year in which the election shall take place.

132. Elections—Primary Elections—Ballots.

1. Where there is no contest in a party for a certain office, and there is a candidate for the party nomination for that office, the proper officer must certify his nomination without his name going on the primary ballot.

2. The ballot should not contain the names of those candidates for nomination who have no opposition for nomination for such office.

3. In the preparation of primary ballots the Christian name should be given first, preceding the surname, the surnames being arranged in alphabetical order. In the general election it has always been customary to print the surname first, followed by the Christian name of the candidate.

125. Elections—Primary Elections—Nominations—Nomination Paper—Filing Fee.

The fees required for filing nomination papers by sec. 9, chap. 3, of the Election Law (Stats. 1913, 514), must be paid, even though, in a certain party, there is no contest for nomination to the respective offices to be filled.

129. Elections—Primary Elections—Primary Ballots—Judicial Districts, Nominations In.

1. Where there is no contest in the party primary no ballots need be printed.

2. In the event of a candidate running as an independent for the office of District Judge in a district composed of two or more counties, it is necessary for him to file his petitions with the County Clerk of each county, and pay each Clerk a proportionate share of the fee of \$100. The petition should be in duplicate or triplicate, as the case may be, so that a complete petition is filed with each Clerk.

123. Elections—Primary Elections—Registration.

Interpretation of certain sections of new election law (Stats. 1913, 493) concerning opening of registration and qualification for voting at primary election.

138. Elections—Railroad Employees—Short Ballots.

Railroad men voting on transfers provided in sec. 15, chap. 2, General Election Law (Stats. 1913, 502), not in their county of residence, are permitted to vote the short ballot only.

126. Elections—Registration—Notice of Closing.

Section 6, chapter 2, of the General Election Law (Stats. 1913, p. 496) requiring Registry Agent to publish notice of close of registration, does not apply to primary elections, but to general elections only.

128. Elections—Registrations—Alienage—Naturalization.

1. If the Registry Agent is satisfied through propounding the questions provided in sec. 11, chap. 2, of the Election Law (Stats. 1913, 499), that the father of an applicant for registration was duly naturalized, he may be registered.

2. A declaration of intention to become a citizen does not make the alien a citizen. He remains an alien until his naturalization becomes complete.

141. Elections—Registration—Registry Agent, Fees Of.

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, "a reasonable sum for copying names from one register to another." Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another.

142. Elections—Registration—Registry Agent, Fees Of.

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, "A reasonable sum for copying names from one register to another." The Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another. The Registry Agent is not entitled to any fee for making or posting the list of registered voters, nor for posting notice required to be posted, nor for any other service in connection with registration, except as above stated

131. Elections—Registrations—Registry Agent—Minors.

1. A person who arrived in Reno or the State on April 1, 1914, cannot be registered for the primary election of September 1, 1914.

2. A young man who becomes of age in September, 1914, cannot be registered for the primary election of September 1, 1914, unless he was born on the 1st of September.

134. Elections—Registration—Registry Lists, Printing of—County Commissioners.

The printing of the registry list, after being certified by the Registry Agent, rests with the Board of County Commissioners.

11. Election—Secretary of State, Duties.

It is the duty of the Secretary of State under section 11 of the Australian Ballot law to furnish all paper required for printing ballots at any municipal election.

97. Elections—Secretary of State—Referendum.

Under the provisions of sec. 1, Stats. 1913, 566, a referendum petition must contain the names of 10 per cent or more of the voters as shown by the number of votes cast at the last preceding general election for Justice of the Supreme Court, or the same will be disregarded by the Secretary of State.

Elections, 117.

Emergency Loans, 2.

"Employee," 93.

Employer and Employee, 19, 105.

Employees of Counties, 88.

Engineer's License, 113, 122.

Exhumation of Bodies, 52.

Expense of Maintenance of Children at State Orphan's Home, 8, 107.

106. Extradition—Duty of Governor.

A requisition for extradition upon a misdemeanor charge may be honored by the Governor, but the mere obtaining of judgment for money demand for unpaid labor in the Justice Court, without the filing of any criminal charge, would not be sufficient, and could not authorize the Governor to issue requisition papers upon the Governor of a sister State.

Fee for Filing Notice of Live Stock Killed, 60.

6. Fees—Controller—Substituted Service.

Rev. Laws, 695, repeals by implication Stats. 1887, p. 86, and in case of substituted service upon the State Controller in actions in which a surety company is a party, it is his duty to collect the sum of three dollars at the time of service, and pay same over to the Secretary of State.

Fees, Filing Nomination Papers, 125.

Fees of Registry Agent, 141, 142.

Filing of Nomination Papers, 125.

86. Fish and Game—Antelope.

Stats. 1913, 410, relating to the hunting of antelope, should be construed by omitting the comma after the word "antelope" in the ninth line of the amended section.

145. Fish and Game—Beaver, Protection Of.

There appears to be no valid enactment regarding the protection of beaver in this State.

Free Text-Books, 62.

Gambling, 29, 33, 85.

General Road Fund, 1, 17.

Gift Enterprises, 18.

Glove Contests, 34, 67.

Governor, 63, 72.

Governor, Duty in Extradition, 106.

Governor, Traveling Expenses, 63.

Highway Robbery, 156.

Hotels, 96, 101.

Hours of Labor, 19.

Independent Nomination, 135.

Indian Agents, 143.

Indian Reservation, 143.

88. Industrial Insurance Commission—Counties, Employees Of.

The Industrial Insurance Commission Act applies to employees of counties, but does not apply to those who hold office by election.

Interpretation of Act Concerning Weights and Measures, 140.

Interpretation of Statutes, 31.

Investment Companies, 103.

Judicial Districts, 129.

14. Legislature—Appropriations.

The Controller is authorized to draw warrants against a Legislative Fund which has been appropriated, although there may be no money in the treasury out of which to pay the same.

32. Legislature—Statutes—Constitutional Law.

A bill, to which the signature of the presiding officer of the Senate is not subscribed, never became a law, even though the same was retained

by the Governor for a longer period than ten days before return of same to the Secretary of State.

Legislature, 4, 24, 98.

Liberty of Contract, 22.

104. Licenses—Automobile Licenses.

Under secs. 3877-78, Rev. Laws, if a company taking out a license in one county maintains its headquarters there, and has no headquarters in another county, the one county license is sufficient, and the company cannot be required to procure a license from another county, even though the greater part of its route lies through such county.

49. Licenses—Automobile Licenses.

Under the provisions of sec. 7, Stats. 1913, 281, a license is required from a manufacturer or dealer for each car of different horsepower but the same make, but if the horsepower of two different styles of cars of the same manufacture is identical, one license would be sufficient.

50. Licenses—Automobile Licenses.

Under Stats. 1913, 281, a license is required for every machine used by a person in the transportation of passengers in this State, whether or not all of said machines are engaged in regular traffic. The license under this Act is a personal privilege only, and not transferable, and the purchaser of a machine already licensed is required to immediately obtain a new license on the same.

48. Licenses—Automobile Licenses—City Ordinances.

The provisions of Stats. 1913, 280, relating to licenses for automobiles refer to a state license only, and do not render void any city license ordinance covering the same matter.

112. Licenses—Automobile Licenses—Dealer's License.

Under Stats. 1913, 281, a dealer in second-hand automobiles is not required to take out an individual license for each one of the cars in which he deals, but is required to register one vehicle of each style or type dealt in by him. After such registration he may procure as many additional license tags for each style or type of vehicle registered as he may desire.

44. Licenses—Automobile Licenses—District Attorneys.

The prosecution of all violations of sec. 15, Stats. 1913, 280, for failure to procure an automobile license is lodged with the respective District Attorneys.

42. Licenses—Automobile Licenses—Secretary of State—United States.

An employee of the United States Government is not required to pay a license upon an automobile used in connection with government business, and the Secretary of State is authorized to issue a license to such employee without pay.

38. Licenses—Automobile Licenses—Secretary of State.

Under the provisions of Stats. 1913, 280, the Secretary of State is authorized to adopt any method of determining the horsepower of automobiles. He is also authorized to issue as many duplicate tags as the manufacturer may require for the additional fee of one dollar for each duplicate tag.

92. Licenses—Banks and Banking.

The provisions of sec. 3728, Rev. Laws, providing for a license on bankers are not repealed by implication, sec. 662, Rev. Laws, also providing a license on banking, and both such licenses are collectible from banks doing business in this State.

115. Licenses—Billiard and Pool Tables.

An owner of a billiard or pool table, not kept for the exclusive use of himself or his family, is subject to the payment of the license provided in sec. 3727, Rev. Laws.

75. **Licenses—Business License—Towns and Cities.**

A town license is limited to the confines of the boundaries of the town issuing the same. No license can be collected of persons who have a fixed place of business in some other State, and solicit orders in this State.

66. **Licenses—Cigars and Tobacco.**

Opinions of Attorney-General for 1911-12, page 64, affirmed.

101. **License—Cigars—Hotels.**

Under sec. 3732, Rev. Laws, a hotel, which is also dealing in cigars and tobacco, must, in addition to the regular hotel license, take out also a cigar license.

65. **Licenses—Dance Halls—Concert Saloons—Lodging-Houses.**

Under statement of facts submitted, it was decided that a certain resort in Reno does not come under the provisions of secs. 3733-34, or 3736, Rev. Laws.

93. **Licenses—Dance Halls—"Employee."**

Under the facts submitted, held that a license is required under the provisions of sec. 3736, Rev. Laws. The word "employed" is synonymous with "engaged." It does not import that the persons so employed must be in the employ of another. It does not necessarily imply the receipt of salary or wages from the employer.

122. **Licenses—Engineer's License.**

The fee for recording an engineer's license in another county under sec. 3902, Rev. Laws, is provided by secs. 1995 and 2007, Rev. Laws, according to the class of the county. Such license does not have to be renewed unless revoked for cause, as provided in sec. 3901, Rev. Laws.

113. **Licenses—Engineer's License—County Commissioners.**

Under secs. 3898-3904, Rev. Laws, providing for issuance of engineer's license, the County Commissioners have no right to demand an affidavit that the applicant has had at least one year's experience in the operation of steam boilers and machinery, but an affidavit of the knowledge and experience of the applicant, such as to justify the board in the belief that he is competent to take charge of stationary hoisting machinery of the character on which the applicant is to be engaged, is sufficient.

67. **Licenses—Glove Contests.**

Under the amendment of the law allowing glove contests to be conducted under license, the only change that has been made is reduction of the license fee; such fee allows preliminaries, and the license must be paid even though the contest consists of only three or four rounds.

34. **Licenses—Glove Contests.**

Under secs. 3881-89, Rev. Laws, as amended, the only effect of such amendment is to change the amount of all licenses fees. It has always been customary to allow preliminaries, and to have one license fee cover all events or contests of one evening. The license fee is the payment for the privilege of conducting such contest, and must be paid, no matter how short the contest may be.

96. **Licenses—Hotels.**

The classification provided in sec. 3734, Rev. Laws, rests upon the aggregate amount of business done by each hotel, and not upon the net returns of proceeds therefrom.

114. **Licenses—Liquor License—Liquor Dealer.**

A proprietress of a "parlor house" purchasing liquor in a quart bottle from a local wholesaler, and selling the same to her guests, is subject to the payment of a state and county liquor license.

47. Licenses—Liquor Licenses.

Under Stats. 1913, 376, a government license, a state license, and a county license are all required to run a road-house or place where intoxicating liquors are sold outside the limits of an incorporated city.

108. Licenses—Liquor Licenses.

Opinion of July 12, 1913, to Nevada Tax Commission (No. 68), confirmed. Stats. 1913, 376, applies to the whole of Storey County.

70. Licenses—Liquor Licenses—Application for Licenses.

Under Stats. 1913, 376, no license other than the merchant's license is required, where sales are not made in quantities of less than a quart. Under said statute it is not necessary that a petition be presented every quarter when license is issued, but only on the first day of January of each year, or when the first application is made for license, and then on January 1 thereafter.

109. Licenses—Liquor Licenses—Druggist's Liquor License.

The retail drug-store license covers the filling of prescriptions when prescribed by a duly licensed and practicing physician only, and in no other case, and does not cover the sales of liquor, wines, or alcoholic stimulants except when so prescribed. The license to be collected from druggists, who sell liquors, wines, or alcoholic stimulants without such prescription, is fixed at \$100 per year. Upon such payment, however, the \$25 required for druggist's license is waived.

53. Licenses—Liquor Licenses—Wholesale Liquor License.

Opinions of Attorney-General, 1911-12, page 33, affirmed.

76. Licenses—Mercantile Licenses.

A brewery engaged in dispensing malted liquors in any county other than that where its principal place of business is located, is subject to the provisions of sec. 3732, Rev. Laws, requiring a merchandise license.

61. Licenses—Sheep Licenses.

Under the amendment of Stats. 1901, 65, to the Sheep License Act, every person engaged in the business of grazing, herding, and pasturing sheep, who has procured a license in one county of the State in accordance with said Act is entitled to graze said sheep in any other county without procuring an additional license.

99. Licenses—Slot Machines—County Commissioners.

It is in accordance with law to conduct, and allow to be conducted, slot machines, but no play-backs are allowed. By the term "play-back" is meant the use of bingles procured by one operating the machine in continuing his play thereat. If a city were authorized under the old law to pass an ordinance for the licensing of slot machines, such ordinance was suspended during the time of the antigambling law, and came into full force and effect again upon the enactment of the amendment of 1913. Unless a Board of County Commissioners is operating as a governing board of some town, no county license is collectible, but in such towns the Board of County Commissioners, as such governing board, has the power to pass an ordinance fixing a license upon slot machines. The play-back clause in the amendment of 1913 is enforceable, and the violation thereof is a misdemeanor.

30. Licenses—State Licenses—Slot Machines.

All legislation requiring a state license for the operation of slot machines has been wiped off the statute books, and there is now no provision upon which such license can be collected.

Licenses, 121.

Liquor Dealer, 114.

Liquor Licenses, 47, 53, 70, 108, 109, 114.

Live Stock, 60, 146.

95. Mandamus.

Mandamus is not the proper remedy where petitioner has a plain, speedy, or adequate remedy at law, and such remedy is provided in case of a rejected claim against the State under sections 4459, 5653, and 5655, Rev. Laws.

Marine Hospital Service, 52.

Mercantile License, 76.

Mill Sites, 78.

105. Mines and Mining—Employer and Employee.

Stats. 1913, 569, applies to men employed underground, and also to all men employed in surface mine-workings, a part of whose duty it is to handle explosives.

Minors, 131.

Mortgages, 69.

Naturalization, 128.

Negotiation of Loan, Nevada School of Industry, 120.

Nevada Hospital for Mental Diseases, 152.

56. Nevada Industrial Commission—Appropriation.

The Statutes of 1913, 311, making an appropriation to put into effect the provisions of the statute creating the Nevada Industrial Commission, is a valid and legal Act. The money appropriated thereunder should be paid out of the treasury upon certificate of two members of the Commission.

120. Nevada School of Industry—Appointment of Commissioners—Negotiation of Loan.

Under Act creating Nevada School of Industry (Stats. 1913, 384) the Governor is authorized to immediately appoint a permanent Board of Government for such institution, and such board may lawfully negotiate a loan for the completion of the said school, and such loan would be a binding obligation against the fund created by such Act.

Nevada School of Industry, 20, 82.

55. Nevada State Agricultural Society—University of Nevada.

The claim of the Nevada State Agricultural Society for rent of the State Fair grounds to the University of Nevada under secs. 360, 4641, and 4653, Rev. Laws, is legal and valid, and is payable out of the Contingent University Fund.

57. Nevada Tax Commission.

The Nevada Tax Commission is authorized to prepare its private ownership plats in any manner it may see fit, provided that copies of said plats shall be filed in the respective counties, or some other means provided, so that any property owner would not be misled in the payment of his taxes in a case where property is assessed to an unknown owner.

77. Nevada Tax Commission—County Recorders.

The County Recorder is required to attend the meetings of the Board of Equalization as provided in sec. 3638, Rev. Laws, notwithstanding the provisions as to the taxation of mortgages has been repealed.

121. Nevada Tax Commission—Licenses—State Automobile License Law—Secretary of State.

The Secretary of State may lawfully provide the Nevada Tax Commission with postage stamps to be bought and taken out of the appropriation provided by Stats. 1913, 280, "For the purpose of defraying actual expenses in procuring licenses and record books, and for the payment of necessary postage."

37. Nevada Tax Commission—Statutes—Repeal

Subdivision 4 of sec. 4 of the Act creating the Nevada Tax Commission (Stats. 1913, 175) repeals the Act entitled "An Act to amend secs. 6, 16, and 17 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," approved March 17, 1913. (Stats. 1913, 175.)

46. Nevada Tax Commission—Taxation.

The "Mack Bill," Stats. 1913, 162, is repealed by sec. 4 of the Act creating the Nevada Tax Commission, Stats. 1913, 175.

87. Nevada Tax Commission—Taxation.

Under the provisions of section 6 creating this Commission, it has the right to alter the valuation of any property, the valuation of which has been fixed this year by the State Board of Assessors.

83. Nevada Tax Commission—Taxation.

The Commission is authorized to call for sworn statements under subdivision 4 of section 4 of the Act creating the Commission, Stats. 1913, 175. In the event of a taxpayer refusing to present sworn statement, he has no standing before the Commission at the time of equalization. Under the provisions of section 6 of the Act creating the Commission, it is authorized to continue its hearings until all complaints have been heard. It is the duty of the Assessors to assess all property which may have escaped taxation when the same is brought to their attention, even though their rolls have been turned in.

59. Nevada Tax Commission—Taxation—Assessment—Constitutional Law.

Neither the Nevada Tax Commission nor the Legislature has the power to prescribe any different rates in the manner of assessing moneys, credits, etc., than that prescribed for other property. Section 1, article 10, of the Constitution merely authorizes the Legislature to prescribe regulations necessary to ascertain the just valuation of property, but it does not justify the application of any other rating, either in assessment or taxation.

Nevada Tax Commission, 148.

Nomination by Petition of Electors, 123, 130.

Nomination by Petition of Electors, Who may sign, 135.

Nomination Papers, 125.

Nominations, 125.

Nominations in Judicial Districts, 129.

Notaries Public, 110.

Notice of Close of Registration, 126.

Notice of Live Stock Killed, 60.

Nye County Bonds, 90.

Office Expenses, Deputy Superintendent of Public Instruction, 84.

27. Officers—Actual Traveling Expenses.

The term "actual traveling expenses," as used in various sections of the general appropriation bill for 1913 (Stats. 1913, 183), means the actual expense of transportation only, and not the expense of meals and lodging while traveling. Reversed. (State, ex rel. Abel, v. Eggers, 36 Nev. 372.)

43. Officers—Actual Traveling Expenses—Claims Against the State.

Under the decision in the case of Cutting v. LaGrave, 23 Nev. 88, an officer is not allowed to collect for any expense of traveling except the actual expense of transportation.

95. Officers—Actual Traveling Expenses—Statutes Repealed.

That portion of the Public School Act (Rev. Laws, 3251) allowing the

Superintendent of Public Instruction, while away from home on business, his necessary living expenses, is not repealed by that provision of the Appropriation Act of 1913 (Stats. 1913, 186), making "Appropriation for actual traveling expenses of Deputy Superintendents of Public Instruction."

39. Officers—Civil Office—Constitutional Law.

The appointment of a member of the Legislature as assistant of the Attorney-General under the provisions of Stats. 1913, 279, does not contravene the provisions of section 8, article 4, of the Constitution. Such appointment does not create any civil office within the meaning of said section. Said Assemblyman, acting in this capacity, is not a contractor or within the meaning of secs. 2827-2828.

117. Officers—County Officers—Sheriff—County Commissioners—Election.

In the event of the death of a Sheriff—

1. There is no one authorized by statute to exercise such office.
2. The County Commissioners may appoint a successor under secs. 1518 or 2805, Rev. Laws.
3. Any such appointment would be until the next general election only.
4. At the general election in 1914 it will be necessary to elect one person to fill out the balance of unexpired term and also elect a Sheriff for the succeeding term.

64. Officers—Sheriff—Allowance for Expenses.

A Sheriff serving under a stipulated salary and turning all of the fees of his office collected by him into the county treasury, is entitled to receive payment for all disbursements which he is compelled to make in the performance of duties imposed upon him by law. Such disbursements are legal and proper claims against the county, to be presented to the County Commissioners for allowance, and in the allowance of same, the board is limited to the consideration as to whether or not the expenditures were necessary, and, if so, whether such charges are reasonable.

28. Officers—State License and Bullion Tax Agent—Appropriation for Salary Thereof.

Section 4247, Revised Laws, does not constitute an appropriation, but merely a limitation upon the amount which the incumbent of the office of State License and Bullion Tax Agent may expend in any one year for traveling expenses.

73. Officers—State Officers—Clerks—Compensation for Extra Work.

A clerk who performs work for a state officer not incumbent upon him to perform by reason of his position, and outside of his office hours, is entitled to compensation therefor.

10. Officers—State Officers—Commission of Industry, Agriculture and Irrigation, Claim Of.

In view of the decision in the case of State, ex rel. Norcross, v. Eggers, all claims against the appropriation for the Commission of Industry, Agriculture and Irrigation charged against the same for the salary of the Commissioner are valid claims against the bureau fund. There should be in the bureau fund the amount which has heretofore been charged against that fund on account of the salary of the Commissioner.

72. Officers—State Officers—Governor—Claims.

Claims of Governor for traveling expenses are payable as follows: Those for actual traveling expenses out of the appropriation for such purpose made by Stats. 1913, 186; and those for hotel expenses and meals out of the appropriation made by Stats. 1908, 31.

133. Officers—State Officers—Resignation—Withdrawal Of.

An officer who presented to the proper authority his resignation to take effect on a designated future day may, before such day, withdraw it, notwithstanding the acceptance thereof.

Officers, 89, 127.

Patented Mining Claims, 71, 151.

Police Power, 18.

Poll Tax, 7, 102.

Poll Tax Receipts, 102.

54. Public Health—State Board of Health—County Commissioners.

Section 6 of the Act creating the State Board of Health as amended by Stats. 1913, 126, is mandatory, and the County Commissioners are required to appoint a local health officer. The same section fixes his salary at not less than \$25 per month.

52. Public Health—State Board of Health—Exhumation of Bodies—Crimes and Punishments—Marine Hospital Service.

Section 23 of Act creating State Board of Health repeals secs. 6552-3, Rev. Laws. The State Board of Health is authorized to cooperate with the Marine Hospital Service in promulgating regulations covering intra-state carriers which are exactly similar to those governing interstate carriers.

127. Public Highways—Road Government—County Commissioners—Officers.

1. Rev. Laws, 1540, gives County Commissioners the right to transfer money from any other fund to road fund.

2. The Act of 1913, 390, provides for creation of a special road fund by bond issue provided by popular vote.

3. If such road fund is not created, the cost of all county road and bridge work must be paid out of the general fund.

4. Statutes 1913, 36, is illegal as contravening sections 20 and 21, article 4, of the Constitution, and was probably repealed by implication by general road Act of 1913, 390.

5. The employment of a public official is not a contract, and the Legislature may abolish any nonconstitutional office without a claim for salary arising through the occupant thereof.

Public Highways, 79.

68. Public Records—Recorders.

Under the provisions of Rev. Laws, 3232, all parties other than the Recorder are permitted to supply the general public with abstracts taken from the county records.

51. Public Schools—Bonds.

A school district, having held an election to authorize the issuance of bonds for a definite sum, is required to sell the whole amount of bonds provided by such election.

84. Public Schools—Deputy Superintendent of Public Instruction—Office Expenses.

The expenditure of the amount appropriated for office expenses to each Deputy Superintendent lies largely in his discretion, and if he finds it necessary to employ assistance to aid him in keeping up his office work during his absence, he is empowered to do so.

62. Public Schools—Free Text-Books—State Text-Book Commission.

The enactment of the law requiring pupils to be furnished free text-books does not obviate a contract made by the State Text-Book Commission.

100. Public Schools—School Trustees.

There is no law compelling School Trustees to remain in office if they do not see fit to do so.

118. Public Schools—School Trustees—Elections.

Interpretation of secs. 3001-02 relating to election of School Trustees.

154. Public Schools—School Trustees—Free Text Books.

Under Stats. 1913, 124, the Trustees of each school district are required to furnish pupils all text and supplemental books.

91. Public Schools—Teachers—Compensation.

The provisions of section 39 of the Public School Act requiring a teacher to file a certificate with the Deputy Superintendent are directory only. If a Deputy Superintendent is in any manner aware that any teacher under his jurisdiction has been properly licensed by the State Board of Education, as provided in section 17 of the Public School Act, and capable, as provided by section 36 of said Act, he cannot withhold the payment of the compensation of such teacher for services rendered, for this reason.

94. Public Schools—Trustees—Contract.

A contract of a school district, in which one of the trustees is pecuniarily interested, directly or indirectly, is void.

Primary Ballots, 129.

Primary Elections, 123, 125, 129, 132.

Printing of Registry List, 134.

Protection of Beaver, 145.

Publication of Amendments to Constitution, 124.

Quarantine, 36.

Railroad Commissioners, 26.

Railroad Employees, 138.

60. Railroads—Live Stock—Notice of Live Stock Killed—Fee for Filing Notice.

Under Stats. 1913, 296, it is the duty of the railroad company to pay the fee for filing notice of live stock killed as therein required.

Rate of Taxation of Transient Stock, 116.

Recount, 155.

Referendum, 97.

Refunding Bond, 17.

Registration, 123, 126, 128, 131, 134, 141, 142.

Registry Agent, 131, 141.

Registry Agent, Fees of, 142, 144.

Registry Lists, Printing of, 134.

Repeal of Statutes, 35.

58. Revenue—Taxation—Assessment—Banks and Banking—Mortgages.

Mortgages held by banking corporations are not subject to assessment and taxation. Method of assessment of banks pointed out.

71. Revenue—Taxation—Assessment—Patented Mining Claim.

It is the spirit of the Act in regard to the assessment of mining claims (Stats. 1913, 106) that each and every claim in a patented group is considered as a patented mine, and that an assessment of not less than \$500 is levied against each and every patented mining claim in the group.

74. Revenue—Taxation—Assessment—Transient Cattle.

Cattle shipped into this State for the purpose of grazing are subject to assessment, notwithstanding the fact that such cattle may already have been assessed in another State.

150. Revenue—Taxation—Banks, Real Estate Of.

The real estate belonging to any bank is assessable in the same manner and form as other real estate is assessed to the owners thereof. If a bank acquires property under foreclosure, and the deed thereto is recorded before the fixing of the county tax rate by the Commissioners, such property should be assessed to the bank, rather than to the previous owner thereof.

40. Revenue—Taxation—Bullion Tax.

A bullion tax is collectible on the output of gypsum mines.

149. Revenue—Taxation—Chattel Mortgages, Taxation Of.

The listing of chattel mortgages by the Assessor, and the placing of the same upon the assessment roll, is a double taxation, and is contrary to the letter and spirit of section 1, article 10, of the Constitution.

143. Revenue—Taxation—Indian Agents—Indian Reservations.

Unless an Indian reservation is expressly excepted from the jurisdiction of a State when admitted, the property of all persons within the limits of the reservation, except that of Indians, is subject to taxation by the State. The goods of an Indian Agent on an Indian reservation and used by him for his personal use in government buildings, upon government land, is subject to taxation.

78—Revenue—Taxation—Mill Sites.

The possessory rights to a mill site may be assessed for the purpose of taxation.

69. Revenue—Taxation—Mortgages.

Sections 2 and 3 of Statutes of 1913, 578, are merely provisions permitting the division of the taxes assessed against a mortgaged property so that the owner may pay the taxes on the value of his property less the amount of the mortgage thereon, and the mortgagee may pay the tax upon the mortgage itself. Under said Act the Assessor is authorized to assess mortgaged property at its full cash value, but is not authorized to assess the same at full cash value, and also assess the mortgage existing upon such property.

148. Revenue—Taxation—Nevada Tax Commission—State Board of Equalization.

The law creating the Nevada Tax Commission (Stats. 1913, 175) requires said Commission to continue its sessions as a State Board of Equalization until its business is completed. If by reason of compliance with the provisions of this Act a delay ensues so that the various county officials required to take action by the revenue laws cannot do so within the period therein designated, such laws ought to be regarded as directory only, and the period of time within which such county officials are to take action be extended the length of such delay.

151. Revenue—Taxation—Patented Mining Claims, Assessment Of.

A fractional patented mining claim should be assessed at not less than \$500.

102. Revenue—Taxation—Poll Tax—Poll-Tax Receipts—Loss Of.

Since the adoption of the amendment to article 2, section 7, of the Constitution, the State has no interest in the poll-tax receipts. In case some of the blank receipts issued to an Assessor are lost or accidentally destroyed, the manner of the settlement of the Assessor lies entirely with the county officers. The amendment to said section of the Constitution repeals section 3725, Rev. Laws, requiring a statement of the poll-tax receipts to be sent to the Controller. If a book of poll-tax receipts is sent to the manager of a company, so that he may collect the poll taxes of the men employed by him for the Assessor, and such manager refuses

- to make any report of the same, under such circumstances it is the duty of the Assessor under sec. 3718, Rev. Laws, to make an estimate of the number of persons in the employ of such company as he may deem just and reasonable, and certify such number to the Treasurer, who is authorized to add the poll taxes for such number of persons to the tax to be paid by such company.
116. **Revenue—Taxation—Transient Stock—Rate On.**
Under Act for assessment, collection, and distribution of taxes on transient stock (secs. 3845-61, Rev. Laws), the county rate of the home county, rather than that in which the stock grazed as transient, should be the basis of the charge and settlement.
Revenue from Pay Patients, 152.
Resignation, 133.
Restraint Upon Liberty of Contract, 22.
156. **Rewards—Highway Robbery.**
The reward offered under the provisions of section 3905, Rev. Laws, is a standing reward and is payable to any person complying with the provisions of said section.
89. **Rewards—Officers—Sheriffs.**
No officer, whose duty is the apprehension of criminals, can share in any reward offered for such apprehension.
45. **Rewards—State Police.**
A police officer is not entitled to a reward offered for the arrest or conviction of a criminal when the service performed is within the scope or line of the duties of such officer.
Road Government, 127.
School Trustees, 94, 100, 118, 154.
Secretary of State, 11, 38, 42, 97, 98, 110, 121, 124.
Sheep License, 61.
Sheriffs, 64, 89, 117.
Short Ballots, 138, 139.
Slot Machines, 30, 85, 99.
Speaker of Legislature, Duty of, 24.
State Automobile License Law, 121.
State Board of Education, 16, 17.
State Board of Equalization, 148.
State Board of Health, 52, 54.
41. **State Board of Investment—California State Highway Bonds.**
The Act under which the California State Highway Bonds are authorized to be issued is valid, and the bond issue has been duly and regularly authorized by law.
90. **State Board of Investment—Nye County Bonds.**
The Act, approved March 24, 1909, entitled "An Act authorizing Nye County to fund and refund its existing indebtedness, and to repeal all Acts and parts of Acts in conflict therewith," authorizes Nye County to issue bonds. Said Act is valid, and the State Board of Investment may invest the moneys of the State Permanent School Fund in the refunding 6 per cent bonds of Nye County authorized by said Act.
16. **State Board of Investment—Statutes—State Board of Education.**
The Act providing for a state loan and refunding all outstanding indebtedness of the State (Stats. 1913, 43) is a valid Act, and the State Board of Education is authorized to invest in the bonds to be issued under said Act.
State Board of Pharmacy, 31.

2. **State Board of Revenue—Counties—Emergency Loans.**
Section 3831, Rev. Laws, does not require that the resolution declaring an emergency loan by a county be authenticated.
152. **State Institutions—Nevada Hospital for Mental Diseases, Revenue from Pay Patients.**
The fees received from pay patients at the Nevada Hospital for Mental Diseases should be put to the credit of the appropriation for the support of the institution, and not into the State General Fund.
State Licenses, 30.
State License and Bullion Tax Agent, 28.
17. **State Loan—State Board of Education—Refunding Bond—General Fund.**
Form of bond and resolution declaring loan for redemption of outstanding bonds under Stats. 1913, p. 43.
81. **State Officers—Corporations—Revival Of.**
The provisions of sec. 1120, Rev. Laws, "Failure to comply with the requirements of this section for a period of 90 days shall render the certificate issued by the Secretary of State void," do not render the certificate void but merely voidable, and until some action has been brought by the Attorney-General against the corporation to annul its charter, such certificate continues in full force and effect. Upon application for revival of certificate, if the Governor is satisfied with the reasons given for the noncompliance with this section, it is his duty to issue a new certificate as requested.
63. **State Officers—Governor—Traveling Expenses.**
The Governor is entitled to collect claims for "actual traveling expenses" out of the appropriation contained in sec. 58, Stats. 1913, 186, and for hotel and other necessary expenses out of the appropriation created by Act of 1908, 31.
State Officers, 10, 72, 73, 133.
8. **State Orphans' Home, Children of—Expense of Maintenance.**
No child not an orphan can be received by the Board of Directors of the State Orphans' Home unless it is sent by the County Commissioners of the county in which the child resides.
107. **State Orphans' Home—Counties—Children—Expense of Maintenance.**
The Board of Directors of the State Orphans' Home is not required to receive any child, except an orphan, from any county except at the expense of such county. Sec. 4099, Rev. Laws, as amended (Stats. 1913, 268), applies only to the admission of dependent and neglected children, as defined by the statutes of this State.
State Printing Office, 36.
12. **State Prison—Convicts—Boards of Pardon and Parole—Application for Parole.**
One under indeterminate sentence in applying for pardon or parole must follow the same course as if a definite sentence had been imposed.
1. **State Prison Convicts—General Road Fund.**
Under Stats. 1911, 73, "Fifty cents per day per convict" should be paid in the "General Road Fund" created thereby, and on such funds warrants for claims incurred for working convicts on the public roads should be drawn.
State Police, 45.
State Text-Book Commission, 62.
Statements of Candidates, 144, 153.
Statutes, 16, 32, 35.

All figures refer to opinion numbers.

31. Statutes—Interpretation of—State Board of Pharmacy.

Notwithstanding section 2 of Assembly Bill No. 90, which creates a State Board of Pharmacy, the said board is justified in using the fees collected by it to meet its expenses, but is not entitled to incur any expense in excess of such amount.

82. Statutes—Nevada School of Industry.

Under Stats. 1913, 254, the donation of a ten-acre tract of land and payment of \$5,000 to the Commission created by said Act by the people of Elko County, are conditions precedent to the carrying out of the terms of said Act. The \$5,000 should be deposited to the credit of the Commission at such place or bank as the Commission shall designate. There are no funds available in the State Treasury applicable to carrying out the provisions of said Act at the present time.

25. Statutes Repealed.

"An Act providing for the examination and auditing of the books and accounts of certain officers, and providing penalties for its violation," approved March 20, 1911, and "An Act to provide for the appointment of a State Auditor, to fix his compensation, and prescribe his duties," approved March 26, 1907, and amendments thereto on page 50 of the Statutes of 1909, are separate and independent Acts, have no relation to each other, are intended to apply to different conditions, and the Acts of 1911 in no way repeals, modifies, or affects that of 1907.

Statutes Repealed, 95.

Substituted Service on Controller, Fees, 6.

Taxation, 7, 40, 46, 59, 69, 71, 74, 78, 83, 87, 102, 116, 143, 148, 149, 150, 151.

Taxation of Chattel Mortgages, 149.

Teachers, 91.

Towns and Cities, 75.

Transient Stock, 74, 116.

University of Nevada, 55.

35. Virginia City School of Mines.

The appropriation of \$425 for the support and maintenance of this school during 1911-1912 (Stats. 1911, p. 80) has reverted, and there is no appropriation provided for the payment of rent of premises occupied by said school.

140. Weights and Measures—Act Concerning—Interpretation Of.

The Weights and Measures Act (Stats. 1911, 37) was enacted for the protection of the consumer only, and applies to goods sold in original packages. The purpose of the law was to show the consumer how much actual weight is contained in the original package.

Withdrawal of Resignation, 133.

Wholesale Liquor License, 53.

All figures refer to opinion numbers.