STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1917-1918

GEO. B. THATCHER, Attorney-General

CARSON CITY, NEVADA

STATE PRINTING OFFICE : : : : : JOE FARNSWORTH, SUPERINTENDENT

1919


TYPOGRAPHICAL
UNION
LABEL
WASHOE

LETTER OF TRANSMITTAL

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 2, 1919.

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 1917 and 1918.

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
L. B. Fowler	1919–1922

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

OFFICE FORCE

Geo. B. Thatcher	Attorney-General
Edward T. Patrick	Deputy Attorney-General
Wm. McKnight	Deputy Attorney-General
Margaret Curran	Stenographer

BIENNIAL REPORT

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 opinions have been prepared by this office in response to inquiries submitted by various state officers and others.

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

OPINIONS OF THE ATTORNEY-GENERAL

1. **Elections—Presidential Elections—Presidential Electors—Time and Place of Meeting.**

The Presidential Electors meet at the State Capitol on the second Monday in January of the year following the election for Presidential Electors.

No provision has been made for allowance to Electors of their expenses and mileage.

Sections 209 and 210 of the U. S. Compiled Stats. 1916, provide for the selection by the Electors of a messenger to deliver the ballot.

The mileage of such messenger is provided for in sec. 213, U. S. Compiled Stats. 1916.

The provisions of sections 2770-71, Rev. Laws, in regard to the time of meeting have been amended to conform with the United States law by the Statutes of 1917, 391-2.

CARSON CITY, December 12, 1916.

HON. ROBERT L. DOUGLAS, *Fallon, Nevada.*

HON. JOSEPH I. EARL, *Bunkerville, Nevada.*

HON. JAMES T. GOODWIN, *Lovelock, Nevada.*

GENTLEMEN: This office is in receipt of a number of inquiries with reference to time and place of meeting of the Presidential Electors, their duties and other matters in connection therewith.

Section 203, U. S. Comp. Stats., 1916, provides as follows:

> The electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

Sections 2770 and 2771, Revised Laws of Nevada, 1912, provide that the Electors shall convene at the seat of government on the first Wednesday in December next after their election.

Section 71, Stats. 1915, p. 488, provides that the Justices of the Supreme Court of this State shall meet at the office of the Secretary of State on the third Monday of December succeeding such election, and canvass the vote cast for the Electors of President and Vice-President of the United States, and that the Governor shall grant a certificate of election to and commission the persons having the highest number of votes.

The Electors not being qualified until their certificates of election are issued by the Governor, it would be impossible for them to meet and vote as provided by secs. 2770 and 2771, Revised Laws of Nevada, 1912. However, the Supreme Court of the United States has held, in construing section 203, U. S. Comp. Stats., 1916, above quoted, as follows:

> A state law which fixes the time at which the Presidential Electors of the State shall meet and vote, which is different from that prescribed by an Act of Congress, is invalid as to such provision. (*McPherson* v. *Blacker*, 146 U. S. 1.)

I am, therefore, of the opinion that the Presidential Electors should meet in Carson City, Nevada, on the second Monday in January next, to wit: January 8, 1917.

No provision seems to have been made by the statutes of this State for any allowance to the Electors for their expenses and mileage from their residence to Carson City. It has heretofore been customary for the Electors to stand this expense themselves.

Secs. 209 and 210, U. S. Comp. Stats., 1916, provide that the Electors shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate, at the seat of government, forthwith after the second Monday in January, on which the Electors shall give their votes, one of the certificates of votes given by them.

Sec. 213, U. S. Comp. Stats., 1916, provides that the person appointed by the Electors to deliver the certificates of votes to the President of the Senate shall be allowed, *on the delivery of the list intrusted to him*, twenty-five cents for every mile of the estimated distance, by the most usual road, *from the place of meeting of the Electors* (Carson City) *to the seat of government of the United States* (Washington, D. C.).

From these last-named provisions it will be seen that the person to carry the certificates of votes to Washington is appointed by the Electors themselves, and that such person is allowed, upon delivery of the certificate at Washington, twenty-five cents for every mile of the estimated distance, one way, between Carson City and Washington, D. C.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy*.

2. Officers—Vacancies—Failure to Qualify—Disqualification—Constitutional Law.

If a person elected to the office of Justice of the Peace fails to execute his bond and have the same approved by the County Commissioners on the date prescribed by the law, he does not *ipso facto* forfeit his office. It is the duty of the County Commissioners to declare the office forfeited for failure to file bond by resolution duly passed, and then the board may proceed to fill the vacancy thereby caused.

A star-route contractor cannot be considered as holding "office" within the provisions of art. 4, sec. 9 of the Nevada Constitution.

CARSON CITY, January 6, 1917.

HON. WM. W. ASTLE, *Metropolis, Nevada.*

DEAR SIR: In answer to your favor of the 6th instant, let me say that if the person elected to the office of Justice of the Peace fails to execute his bond and have the same approved by the County Commissioners on the date prescribed by law, he does not *ipso facto* forfeit his office. It is the duty of the County Commissioners to declare the office forfeited for failure to file bond by resolution duly passed, and then the County Commissioners may proceed to fill the vacancy thereby caused.

You further inquire whether a Justice who receives a salary can be contractor on a star mail route. In answer to this question let me say that art. 4, sec. 9, of the Constitution of Nevada provides: "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."

In my opinion, however, a star-route contractor cannot be considered as holding an "office" under the Government of the United States.

Yours very truly,

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

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3. Quarantine—State Quarantine Officer—Expense of Quarantine.

Under the provisions of sec. 8, chap. 280, Stats. 1913, p. 456, the actual expense of impounding stray dogs must be borne by their owners.

CARSON CITY, January 13, 1917.

HON. H. H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR SIR: Your recent favor addressed to Dr. W. B. Mack, State Quarantine Officer, concerning the quarantine existing by proclamation of the Governor over the dogs and cats of Tonopah, has been referred by Dr. Mack to the Governor and by him to this office for response. This quarantine is being enforced in Tonopah by a member of the Nevada State Police under the direction of the State Quarantine Officer.

The Act providing for a quarantine is found in chap. 280, p. 456,

of the Statutes of 1913. Section 8 of said Act provides: "All costs of fumigation, disinfectant or treatment ordered to be performed by said State Quarantine Officer shall be borne by the owner of such commodity."

You inquire: "Would it be possible in your opinion to compel the owner to pay a reasonable expense of impounding under that provision?" In view of the fact that the treatment ordered by the State Quarantine Officer is that dogs and cats shall not be allowed to run at large upon the streets of Tonopah, and in order to enforce this the Deputy Quarantine Officer must impound such stray dogs and cats as he may find, I am of the opinion that the actual expense thereof must be borne by their owner.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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4. Election—Recall Elections—Recall Petitions—Constitutional Law.

Under Stats. 1913, p. 400, each recall petition should be complete in itself, having a heading and signature.

Each separate petition should be verified by one of the signers thereof.

Under the provisions of sec. 8 of art. 2 of the Constitution twenty-five per cent (25%) of the qualified electors of the State, county, or district electing the officer to be recalled must sign the petition for a recall.

The office of the Justice of the Supreme Court is selected because it is the only state office to which a candidate is elected every two years.

CARSON CITY, January 13, 1917.

HON. G. A. BALLARD, *District Attorney, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 12th instant, asking interpretation of certain sections of the recall law (Stats. 1913, chap. 528, p. 400).

It seems that two petitions have been filed with your County Clerk seeking recall of two School Trustees of the Virginia School District No. 2. It further appears that each petition consists of the collection of separate sheets or petitions with the headings removed; that parts containing the signatures being combined under one heading. It further appears that separate petitions which were not separately verified, but that the signatures on several petitions were combined into one and that one verified by the signer of only one of the parts. It seems to me that these petitions are not in proper form because, the headings being removed, there is nothing before the County Clerk by which he can in fact determine that the signatures presented to him were really attached to a petition seeking the recall of the two School Trustees in question.

Moreover, section 3 of said Act contemplates that each separate petition shall be verified by one of the signers thereof.

You also call my attention to the language of the recall amendment

of the Constitution, being sec. 8 of art. 2, as the same is set forth in sec. 257, Rev. Laws. Such recall amendment provides: "Not less than twenty-five per cent (25%) of the qualified electors who vote in the * * * district electing said officer at the preceding election for Justice of the Supreme Court shall file their petition in the manner herein provided demanding his recall by the people."

The purpose of this provision of the Constitution is to indicate how many signatures of electors of the district the petition must contain. Thus, if 200 such electors voted at the election of 1916 for Justice of the Supreme Court, the petition must embrace the signatures of 50 of these. The office of Justice of the Supreme Court is selected because it is the only state office to which a candidate is elected every two years.

It is therefore the opinion of this office that on account of the informality of the petitions above noted the same should not be received and acted upon by your County Clerk.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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5. **Conveyances—Water Rights—Conveyance of—State Engineer.**

A transfer of assignment of a water right without the acknowledgment required by sec. 1025, Rev. Laws, is invalid and no such assignment should be recognized by the State Engineer.

The form of conveyance of a water right should be the same as those used for deeds of real estate.

CARSON CITY, January 13, 1917.

HON. W. M. KEARNEY, *State Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th ultimo, asking opinion of this office as to form of conveyance of water rights. You state: "The question has come up as to whether or not an assignment of the water right without the acknowledgment is valid, and whether or not it is a proper transfer." There can be no doubt that a transfer of water right is a transfer of real property.

Section 1019, Rev. Laws, provides: "Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided."

Section 1025, Rev. Laws, provides the form of acknowledgment.

From the foregoing I am of the opinion that a transfer or assignment of a water right without the acknowledgment provided by law is invalid and no such assignment should be recognized by your office. The form of conveyance of a water right should be the same as those used for deeds to real estate.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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6. Licenses—State Liquor License—Alcohol—Words and Phrases—"Alcohol" Defined.

Alcohol is a spirituous liquor within the meaning of sec. 6, Stats., 1915, 238.

There is an implied reservation in all state liquor laws relating to saloon licenses that the liquors therein mentioned are potable.

"Denatured alcohol" is defined.

A state liquor license is not required from one selling denatured alcohol, but is required for the sale of pure alcohol.

If the pure alcohol is mingled with some substance which would make it unpalatable and unfit for use as a beverage, it also may be sold without the payment of a liquor license.

CARSON CITY, January 20, 1917.

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

DEAR SIR: I am in receipt of your favor of the 3d instant, asking opinion of this office upon question of the liability of a dealer in alcohol for the payment of state liquor license under sec. 3777, Rev. Laws. The law on this subject is governed by section six of an act to provide revenue for the support of the government of the State of Nevada, etc. (Stats. 1915, p. 238), which provides as follows:

> SEC. 6. Every person, firm, company, or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt, or vinous liquors, shall, in addition to other licenses provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment, or otherwise.

It would appear therefrom that any company selling at retail or wholesale any spirituous liquor is required to take out a state liquor license.

It seems from further correspondence that the firm in question has discontinued its liquor license, but wishes to continue in the business of selling denatured alcohol and 188 per cent pure alcohol. It further appears that the denatured alcohol has mostly been sold to painters and for fuel purposes, and that the 188 per cent pure alcohol is sold to people who want it for medicinal purposes to be used for rubbing sick persons and for sprains and other similar uses.

In order to form an opinion upon this subject it will be necessary to obtain definitions of certain terms.

In the case of *Pennell* v. *State*, 123 N. W. 116, alcohol is defined as follows:

> Alcohol is a product of fermentation. Malting is a process preliminary to fermentation. Alcohol is separated, not produced, by distillation, and the liquor thus separated containing a percentage of alcohol is called spirituous liquor.

In the case of *Marks* v. *State*, 133 Am. St. Rep. 20, spirituous liquor is defined as "that which is in whole or in part composed of alcohol extracted by distillation. Whisky, brandy, and rum are examples. That these are spirituous or intoxicating is known to courts and juries and proof thereof is not necessary."

On page 27 of the same case we find the following: "Whether pure alcohol comes within the phrases 'spirituous' or 'intoxicating' liquors is a question not well settled * * *; but the weight of the authorities seems to be to the effect that unless otherwise made by language or provisions of the statute, it will be included in the terms 'spirituous' and 'intoxicating' liquors."

In the case of *Cureton* v. *State*, 70 S. E. 332, it is stated: "Alcohol is judicially recognized as a spirituous and intoxicating liquor."

There can be no doubt therefore that alcohol is a "spirituous" liquor within the meaning of the statute above quoted.

There is an implied reservation in all our liquor laws relating to saloon licenses that the liquors therein mentioned shall be potable—in other words, that they shall be used as a beverage.

I have been unable to find any judicial definition of the term "denatured alcohol," but Webster's New International Dictionary defines the verb "denatured" as follows: "To deprive of natural qualities; to change the nature of; specif., to render unfit for eating or drinking, without impairing usefulness for other purposes, as alcohol or fat. Spirits are denatured by the addition of small amounts of some substance that will render the liquid unwholesome or unpalatable, as methyl alcohol or pyridine, and, being then available for industrial or domestic purposes only, are freed from internal revenue tax."

It is the opinion of this office, therefore, that the company in question is not liable for the payment of a liquor license for the sale of denatured alcohol, but is liable for such license on the sale of pure alcohol. If, however, the pure alcohol is mingled with some substance that would make it unpalatable and unfit for use as a beverage it also may be sold without the payment of a liquor license.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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7. **Public Schools—Kindergarten—Kindergarten Teachers.**

A kindergarten teacher cannot be considered a grade teacher so as to affect the classification of the school in which she is employed. (Rev. Laws, 3315.)

CARSON CITY, January 22, 1917.

MR. J. E. WALL, PRINCIPAL, *Las Vegas, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking a certain question in regard to school law. You inquire whether in the classification of your school a kindergarten teacher may be counted as a regular grade teacher.

The classification of school districts is governed by section 76 of the school law (Rev. Laws, 3315), which provides: "All school districts in Nevada are hereby divided into two classes. Districts employing ten or more regular *grade* teachers shall be known as districts of the first class, and districts employing less than ten teachers shall be known as districts of the second class."

The kindergarten has never been considered as any grade in public

schools. It is in a class by itself and is below the first grade, as pupils from the kindergarten are promoted to that grade.

The grades in public schools consist of twelve, being numbered from one to eight in the elementary schools, and from nine to twelve in the high school. For these reasons it is the opinion of this office that in classification of your school a kindergarten teacher cannot be counted as a regular grade teacher.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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8. Licenses—Liquor Licenses.

Under the provisions of chap. 178, Stats. 1915, 236, dealers in spirituous, malt or vinous liquors must take out a county liquor license and a state liquor license in addition to a federal license.

The County Commissioners have absolute authority to grant or withhold the issuance of county liquor licenses and without such county liquor license no person can engage in the liquor business, even if he has had issued to him a state liquor license.

CARSON CITY, January 22, 1917.

HON. GEORGE A. WHITELEY, DISTRICT ATTORNEY, *Ely, Nevada.*

DEAR SIR: I am in receipt of your favor of the 17th instant, asking opinion of this office in relation to liquor licenses.

It seems that all liquor licenses at Ruth, an unincorporated town, were revoked sometime since by your County Commissioners, and such board refuses to grant any licenses in that town. It further appears that a certain person claims that by virtue of sec. 8, chap. 178, Stats. 1915, the Sheriff must issue a state liquor license upon request, and the payment of the fee provided, and that having obtained a state retail license he may dispose of liquors in the town of Ruth without taking out a county retail license as provided in section 3 of the same chapter, where the sales of liquors to be made are in quantities of a quart and less than five gallons.

It is the opinion of this office that the plan outlined would be contrary to law. Section 3 of said Act provides for a county liquor license. Section 6 requires "Every person manufacturing or selling either at retail or wholesale any spirituous, malt, or vinous liquors shall, *in addition to the other licenses provided by law*, take out a state liquor license."

It has for several years past been required that dealers in spirituous, malt, or vinous liquors take out a county license and a state liquor license in addition to the federal license. The county commissioners have absolute authority to grant or withhold the issuance of county liquor licenses, and without such county liquor license no person can engage in such business even if he has had issued to him a state liquor license.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

9. **Licenses—Sheep Licenses.**

A sheep-owner who possesses no realty in Nevada but lives in a county different from that in which the license is collected comes now under the seventh subdivision of sec. 16, Stats. 1915, 241, if he owns less than one thousand sheep.

The exemption in said section applies to an answer and holder of land in the State who holds said land in fee simple, and that a squatter's title alone would not be sufficient to entitle him to the exemption.

CARSON CITY, January 24, 1917.

HON. G. J. KENNY, DISTRICT ATTORNEY, *Fallon, Nevada.*

DEAR SIR: I am in receipt of your favor of the 17th instant, asking construction of the sheep-license law. You call my attention to the two laws on this subject appearing respectively on pages 240 and 353 of the Statutes of 1915. The latter Act can have no bearing upon the subject as it is plainly unconstitutional. This Act purports to amend sections 3768–3774, Rev. Laws, which sections were expressly repealed by section 37 of the State Revenue Act, chap. 178, Stats. 1915, p. 247. It was approved March 24, 1915, two days after approval of chapter 178 aforesaid. Said sections having been expressly repealed, chapter 232 can have no effect and is void. This is in accordance with opinion 21 contained in the biennial report of the Attorney-General for 1915–1916, a copy of which is herewith enclosed.

It appears that your Sheriff collected of a sheep man the per capita of 15 cents; that said person possesses no realty in Nevada, but lives in Washoe County. In my opinion he comes under the seventh subdivision of sec. 16, Stats. 1915, p. 241, which provides for a license of $25 per annum if he owns less than one thousand sheep.

In answer to your second question, let me say that it has been decided by this office that the exemption is proviso to sec. 16, Stats. 1915, p. 241, applies only to an owner and holder of land in the State who holds such land in fee simple, and that a squatter's title alone would not be sufficient to entitle him to the exemption.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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10. **Public Schools—School Trustees—Vacancy.**

The law is silent as to how long a Trustee must be out of the district before his office becomes vacant. If a Trustee leaves a district with no intention of returning, a vacancy occurs immediately.

If a Trustee leaves a district through the necessity of obtaining a living at some other place with no intention of losing his residence in the district, no vacancy would occur, provided the Trustee continues to perform his duties as such.

CARSON CITY, January 31, 1917.

MR. WM. DONOVAN, *Silver City, Nevada.*

DEAR SIR: In answer to the question: "How long must a School Trustee be out of the district before his office becomes vacant?" let me say that our statute is silent on this subject.

If, however, a Trustee leaves the district with no intention of returning a vacancy occurs immediately, but if a Trustee leaves a district through necessity of obtaining his living at some other place with no intention of losing his residence in the district, no vacancy would occur provided that the Trustee continues to perform his duties as such Trustee.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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11. **Public Schools—School Trustees—Vacancy.**

A School Trustee who has left his district with the intention of returning thereto and manifests such intention by leaving his children within the district does not forfeit his position as Trustee.

CARSON CITY, February 6, 1917.

MR. A. K. POLLARD, *Clerk, Board of School Trustees, Silver City, Nevada.*

DEAR SIR: It appears that Mr. F. C. Bowen, a member of your school board, left Silver City to attend some business with the expectation of returning in March; that his wife is dead, but he has children which he placed in the care of relatives in Silver City on his departure.

It further appears that there is a vacancy in your school board caused by the resignation of one of its members, and that you have called an election to fill such vacancy.

You inquire under the circumstances above stated whether the election should be held for one or two members of your board. I am of the opinion that there is but one vacancy in the Board of School Trustees of your school district, namely, that caused by the resignation of one of your members.

The fact that Mr. Bowen is not now residing in Silver City does not cause a vacancy in his office, because it appears that he has the intention of returning to Silver to reside and has manifested such intention by leaving his children there.

In the preparation of the ballots for the coming election the ballots shall have the designation "Vote for One." Any ballots cast at such election containing the name of two persons for Trustee are void and should be disregarded in the counting of the same.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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12. **Initiative Petitions—Constitutional Law—Legislature—Secretary of State.**

Under the provisions of section 1 of article 4, and article 19 of the Constitution it is the duty of the Secretary of State to submit an initiative petition in turn to both houses of the Legislature.

CARSON CITY, February 6, 1917.

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

DEAR SIR: I am in receipt of your favor of the 5th instant, inquiring concerning disposition of prohibition petition as follows:

The prohibition petition containing the required number of names was duly filed in my office, submitted to the Legislature through the lower house (the Assembly) and by that body acted upon and lost by a vote of 5 for and 31 against.

There seems still to be some question as to whether the law has been fully complied with, and I wish, in your official capacity, you would give me an opinion under the circumstances as to whether this petition should again be presented to the Legislature, this time through the upper house (the Senate), so that the full Legislature would have a chance to act on it.

Your prompt attention to this matter will greatly oblige.

The provision of the Constitution on this subject is to be found in article 19 of the Constitution and provides as follows:

> Initiative petitions, for all but municipal legislation, shall be filed with the Secretary of State not less than thirty (30) days before any regular session of the Legislature; the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes.

Section 1 or article 4 of the Constitution provides as follows:

> The legislative authority of this State shall be vested in the Senate and Assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of government of the State.

It therefore appears that the Legislature consists of both Senate and Assembly.

Therefore in transmitting this prohibition to the Assembly only for action it has been submitted to but one branch of the Legislature and that one branch has acted adversely on such petition.

It is my opinion that this petition should now be submitted by you to the Senate, where it will become a Senate bill, and that house should have the opportunity to take such action on the bill as it may see fit.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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13. Water—Water Law—Water Commissioners—Claims Against County.

Sections 52 to 58 of the state water law provides a system of police regulation and distribution of the waters.

These sections do not go into effect until after there has been a determination of the State Engineer or court under the provisions of sections 18 to 39.

The claim of a Water Commissioner for services and expenses is not a proper claim against a county where there has been no adjudication or determination of a stream under the provisions of section 18 to 39 of the state water law.

CARSON CITY, Feburary 7, 1917.

HON. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada.*

MY DEAR SIR: Yours of January 11, asking the opinion of this office upon a claim presented to Humboldt County by Scott E. Jamison, as

Water Commissioner, for salary and expenses in the regulation of the diversion dam, etc., of the Humboldt-Lovelock Irrigation Light and Power Company Canal, was duly received.

I have been delayed in answering request and giving you the opinion by reason of press of business in this office.

I am of the opinion that the validity of this claim as a claim against Humboldt County must rest upon a construction of sections 18 to 39 and sections 52 to 58 of the state water law of 1913 as amended in 1915 (See Stats. 1913, p. 192, Stats. 1915, p. 378). Sections 18 to 39 provide a system of adjudication for the various stream systems in this State. Sections 52 to 58 provide a system of police power of regulation and distribution of the waters.

I am of the opinion that sections 52 to 58 do not come into effect until after there has been a determination by the State Engineer or the court under the provisions of sections 18 to 39.

Section 53 provides: "Said water district shall not be created until a necessity therefor shall arise and shall be created from time to time as the *priorities and claims to the streams of the State shall be determined.*"

I further call your attention to the provision of section 54 which reads as follows:

> It shall be the duty of the State Engineer to divide or cause to be divided the waters of the natural streams or other sources of supply in the State, among the several ditches and reservoirs taking therefrom, according to *the rights of each respectively*, in whole or in part, and to shut or fasten, or cause to be shut or fastened, the headgates or ditches, and to regulate or cause to be regulated, the controlling works of reservoirs, as may be necessary to insure a proper distribution *of the waters thereof*. Such State Engineer shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir where *rights have been adjudicated in accordance with existing decrees.*

These provisions of our law are adopted from the laws of Oregon and have been construed by the Supreme Court of that State, and I take it that this construction is part of our water law. I refer you to the case of *Wattles* v. *Baker County*, 117 Pac. 417.

I also call your attention to the case of *Parshall et al.* v. *Cowper*, 143 Pac. 302, and *Van Buskirk* v. *Red Buttes L. & L. S. Co.*, 156 Pac. 1122, 1125, which to my mind sustain this construction.

I refer you also to the opinion of Justice Norcross in the case of *Ormsby County* v. *Kearney*, 37 Nev. 314, 338, in which Judge Norcross uses the following language:

> In considering the constitutionality of sections 18 to 51 inclusive, they should be viewed with reference to the purpose designed to be accomplished by sections 52 to 56. The latter sections are clearly administrative. Before they can be put into force the relative rights of the water users upon a stream must be ascertained.

In view of the provisions of our water law just before referred to the decisions of the Supreme Court of Oregon and Wyoming above

referred to and the opinion of Judge Norcross in the case of *Ormsby County* v. *Kearney*, I am of the opinion that the claim of Scott E. Jamison for services and expenses as Water Commissioner is not a proper claim against Humboldt County, no adjudication or determination ever having been made of the Humboldt River under the provisions of sections 18 to 39 of the Statutes of 1913 and 1915 constituting the state water law.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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14. Licenses—Glove Contests.

The question whether the contestants are to receive any part of the gate receipts or any gratuity or reward or compensation in any way does not affect the amount of license.

Until the enactment of the statute of 1897, glove contests were prohibited by law and there is no statute providing for such contest at a lower license fee than $100.

CARSON CITY, February 7, 1917

HON. CLARK J. GUILD, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of your favor of the 1st instant, asking opinion of this office on the prize-fight law. You state:

> Parties have made application to the Sheriff's office of this county for a license giving them permission to participate in a four-round glove contest, and are willing, they state, to sign an affidavit to the effect that they are not to receive any part of the gate receipts or any gratuity or reward or compensation in any way, shape or form for such contest.

The original prize-fight law, passed in 1897, provided a license fee of one thousand dollars. In 1913 (Stats. 1913, p. 234) sections 1, 2, 3, and 9 of said act were amended. The material purport of such amendments was to limit the contest to a ten-round go and reduce the license fee to one hundred dollars.

The question whether the contestants were to receive any part of the gate receipts or any gratuity or reward or compensation in any way was never held to affect the amount of license. Until the enactment of the statute of 1897, glove contests were prohibited by law and there is no statute providing for such contests at a lower license fee than one hundred dollars.

I am, therefore, of the opinion that your Sheriff was correct in refusing to issue the license for any amount less than one hundred dollars, and he should not permit this contest to be held without full payment of such sum.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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15. Health Officers—Vital Statistics Law—Undertakers.

Where communication between a health officer and undertaker is difficult and apt to be delayed, the undertaker may communicate the facts required of him by section 9 of the vital statistics law (Rev. Laws, 2960) by telephone or telegraph, if he follows up the same by written certificate embodying the same facts.

CARSON CITY, February 20, 1917.

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

DEAR SIR: In answer to your request for an interpretation of section 9 of the vital statistics law (Rev. Laws, 2960), let me say that in my opinion in a case where communication between the health officer and undertaker is difficult and apt to be delayed, the undertaker may communicate the facts therein required of him by telephone or telegraph, if he follows up the same by a written certificate embodying the same facts.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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16. Licenses—Liquor Licenses—Restaurants—Saloons.

A retail liquor license is not required under the following statement of facts: A saloonkeeper has a lease on a building occupied by his saloon in the front and a restaurant in the rear operated by a subtenant. Liquor is served in the restaurant by purchasing liquor from the saloon and said liquor is paid for by waiters who order it. Once a week the saloonkeeper under the terms of his lease allows the restaurant keeper a percentage on the sale of the liquor purchased at his bar for consumption in the restaurant. Such percentage is paid for the service on the part of the waiters for serving the liquor in the restaurant part of the building. The restaurant keepers have no further interest and obtain no further profit in the sale of the liquor except as stated.

CARSON CITY, February 23, 1917.

HON. A. N. SALISBURY, *Assistant District Attorney, Reno, Nevada.*

DEAR SIR: I am in receipt of yours of the 19th instant, requesting the opinion of this office with reference to liquor licenses. The statement of facts is as follows:

> Heidtmann & Klaus have a lease on the property and building called "Kane's Buffet" occupied by a saloon in front and by a restaurant in the rear operated by Baccha & Vincent under a sublease from Heidtmann & Klaus, called "Kane's Café." Liquor is served in Kane's Café by purchasing the same from the saloon, and the liquor is paid for by the waiters who order it. Once a week Heidtmann & Klaus, under the terms of their lease, allow to Baccha & Vincent a percentage of the amount paid for liquors purchased at their bar for consumption in Kane's Café. This percentage is paid for the service on the part of the waiters for serving the liquor in the restaurant part of the building. Baccha & Vincent have no further interest and obtain no other profit in the sale of the liquor except as stated.

I am of the opinion that under this statement of facts one license for Heidtmann & Klaus is all that is required. Kane's Café, operated by Baccha & Vincent, is not engaged in the liquor business, and is not liable to pay a retail liquor license.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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17. Building and Loan Associations.

Under section 7, Stats. 1915, 341, a building and loan association which was formerly in business in this State, but withdrew its solicitors therefrom and since then its sole business has been the collection of loans made prior to its withdrawal from the State, is not "doing business within the State" within the terms of said section and, therefore, is not required to file the report mentioned in such section with the State Bank Examiner.

CARSON CITY, March 1, 1917.

HON. GILBERT C. ROSS, *State Bank Examiner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your request for an interpretation of section 7 of "An Act providing for the incorporation of domestic, building, and loan associations," etc., approved March 24, 1915, 341, which provides as follows:

> SEC. 7. On or before the first day of March of each year, every building and loan association doing business within this State, whether domestic or foreign, shall cause to be filed in the office of the State Bank Examiner a statement of its affairs as is required in the next preceding section, and shall cause a copy thereof duly certified by the State Bank Examiner to be published at least four times in some newspaper in this State and having a general circulation therein, such publication to be completed on or before the first day of May and proof thereof filed in the office of the State Bank Examiner.

Your inquiry is promoted by a response you have had to demand for report from a certain savings and loan company of California. It appears therefrom that said company was formerly in business in this State, but withdrew its solicitors therefrom in the year 1915, and since then its sole business has been collection of loans made prior to its withdrawal from the State.

I am of the opinion that such acts of said company do not constitute "doing business within this State," as the company is in effect only closing up business heretofore done and, therefore, such company is not compelled to file with you the report mentioned in section 7.

The letter referred to is herewith enclosed.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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18. Public Schools—School Trustees—School Teachers—Vacations.

Under section 104 of the School Code (Rev. Laws, 3343) school Trustees are authorized to grant Christmas holidays for two weeks and pay teachers for both such weeks.

If, in the event of an epidemic, school is closed for a period of three weeks, the teachers are entitled to pay for all of such period.

CARSON CITY, March 1, 1917.

MR. JAMES V. COMERFORD, *Ely, Nevada.*

DEAR SIR: In answer to your favor of the 23d ultimo, asking "If a two-weeks' vacation is allowed by a Board of School Trustees at Christmas, can such board refuse to allow salary for such time?" let me say that the same question was submitted by another Deputy Superintendent in December last in the following form:

> Would section 104 of chapter 8 of school laws permit School Trustees to grant Christmas holidays of two weeks and pay teachers for one or both of such weeks.

To this Mr. Thatcher responded: "Think section 104 mentioned permits School Trustees to grant Christmas holidays of two weeks and pay teachers for both of such weeks."

Your second question is as follows: "If, in the event of an epidemic, school is closed for a period of three weeks are teachers entitled to pay for any part or all of such period?"

From the above interpretation of section 104 I am of the opinion that teachers are entitled to pay during the period of an epidemic.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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19. Railroads—Railroad Commission—Reports—Secretary of State.

Both the enactment of Stats. 1917, 84 (Rev. Laws, 3555), requiring railroad companies to make and file annual reports with the Secretary of State, and Rev. Laws, 3556, requiring the Secretary of State to furnish blanks for such reports, have been repealed.

The only provision now existing in regard to such reports is section 4568, Rev. Laws, as amended (Stats. 1917, 83), requiring an annual report to be made to the Railroad Commission.

CARSON CITY, March 13, 1917.

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

DEAR SIR: By the enactment of Senate Bill No. 64 (Stats. 1917, p. 84), which has this day been signed by the Governor, section 3555, requiring railroad companies to make and file annual report to the Secretary of State, and section 3556, requiring your office to furnish blanks for such report, have been repealed.

The only provision now existing in regard to such reports is section 20 of the Railroad Commission Act, being section 4568, Revised Laws of Nevada, which requires an annual report to be made to the Railroad Commission.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

20. **Corporations—Foreign Corporations—Secretary of State.**

Sections 1346 and 1348, Rev. Laws, do not apply to a foreign corporation which owns a piece of mining property in the State, but which is not operating the same, holding for some future date. Under the provisions of section 5024, Rev. Laws, all foreign corporations owning property in this State are required to appoint and keep an agent upon whom all legal processes may be served and to file the certificate therein described with the Secretary of State.

CARSON CITY, March 22, 1917.

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

DEAR SIR: In compliance with your verbal request I submit herewith the opinion of this office on the following questions:

First—What papers are required to be filed, either with the Secretary of State or county officials, by a foreign corporation which owns a piece of mining property in the State of Nevada which it is not operating but simply holding until some future date?

Second—What papers are required to be filed, either with the Secretary of State or county officials, by a foreign corporation which owns and leases to residents of Nevada certain real estate, but which does not transact any other business?

Section 1346 of the Revised Laws of Nevada, 1912, provides as follows:

> Every incorporated company or association created and existing under the laws of any other State, or of any foreign government, shall file in the office of the County Recorder of each county in this State, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the County Recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof.

Section 1348 of the Revised Laws of Nevada, 1912, provides as follows:

> Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States, or foreign country, which shall hereafter enter this State for the purpose of doing business therein, must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of

the County Clerk of the county where its principal place of business in this State is located.

The question arises under section 1346 as to what constitutes "engage in carrying on business of any character," and under section 1348 what constitutes "enter this State for the purpose of doing business therein."

The general conclusion of the courts is that for a foreign corporation to make a purchase of real estate and hold and lease the same are not acts which constitute the doing, transacting, or carrying on of business within the domestic State in violation of such statutory provisions as set out above. (See 19 Cyc. 1268–1269.)

Therefore it is the opinion of this office that the provisions of sections 1346 and 1348 do not apply to such foreign corporations as hereinabove described.

Section 5024 of the Revised Laws of Nevada, 1912, provides as follows:

> Every incorporated company or association created and existing under the laws of any other State, or Territory, or foreign government, or the Government of the United States, owning property or doing business in this State, shall appoint and keep in this State an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the Secretary of State, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

Under this last quoted section *all foreign corporations owning property in this State* are required to appoint and keep in this State an agent upon whom all legal processes may be served for such corporation, and shall file the certificate therein described with the Secretary of State.

It is, therefore, the opinion of this office that the provisions of this section must be complied with by all foreign corporations owning property in this State.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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21. **Public Schools—Deputy Superintendent of Public Schools.**

Should Assembly Substitute for Assembly Bill No. 217 become a law, it would abolish the office of Deputy Superintendents of Public Instruction now provided, save and except one General Deputy Superintendent of Public Instruction, even though section 3 of said Act should be declared void.

CARSON CITY, March 26, 1917.

HON. EMMET D. BOYLE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: Hon. John Edwards Bray, State Superintendent of Public Instruction, has informed me that you desire an opinion as to the

constitutionality of Assembly Substitute for Assembly Bill No. 217, and I therefore transmit the same herewith.

The Act in question is entitled "An Act to amend certain sections of an Act entitled 'An Act concerning public schools and repealing certain Acts relating thereto,' approved March 20, 1911, and all Acts amendatory thereof and supplementary thereto."

The Act consists of seven sections. Section 1 amends section 8 as follows:

> Section 8. Each county of the State is hereby established and created as a special educational supervision district.

Section 2 amends section 9, and provides for the appointment of one General Deputy Superintendent of Public Instruction, and fixes his term of office.

Section 3 amends section 11 to read as follows:

> SECTION 11. The County Board of Education or Board of High-School Trustees of any county, may, by resolution adopted at any regular or special meeting, appoint any qualified person or persons as District Deputy Superintendent of Public Instruction, and fix the compensation of such officer or officers, and define their powers and duties, and the compensation shall be paid out of the general school fund of such county or district: *provided*, that the powers and duties so conferred and prescribed shall not conflict with the powers and duties prescribed by the Superintendent of Public Instruction or the State Board of Education.

Section 4 of the Act amends section 13 of the original Act, and fixes the salary of the General Deputy Superintendent of Public Instruction, and provides for his traveling expenses.

Section 5 repeals section 12 of the original Act.

Section 6 repeals section 16 of the original Act, and section 7 provides that the Act shall be effective June 15, 1917.

Sections 2, 4, 5 and 6 of the Act are undoubtedly constitutional, and there can be no constitutional objections to any of these sections. Section 1, which makes each county in the State a special educational supervision district, and section 3, which amends section 11, and provides for the appointment of District Deputy Superintendents of Public Instruction for the Supervision Districts, should be construed together; and, so construed, it appears that the District Deputy Superintendent of Public Instruction is an officer having jurisdiction within a county only, and such Deputy District Superintendent of Public Instruction is appointed by the *County Board of Education* or Board of High School Trustees of any *county*. His compensation is likewise payable out of the general school fund of such *county*. Certainly such officer borders close to the line of being a county officer, and, therefore, a County Superintendent of Schools. Section 32 of article IV of our Constitution, Revised Laws, sec. 290, provides as follows:

> SEC. 32. The Legislature shall have the power to increase, diminish, consolidate, or abolish the following county officers: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys, County Surveyors, Public Administrators and Superintendents of Schools. The Legislature shall provide

for their election by the people, and fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of Records and of the Boards of County Commissioners in and for their respective counties.

You will observe from this section that, while the Legislature has power to increase, diminish, consolidate or abolish any of the enumerated county officers, yet if these offices exist the Constitution further provides: "The Legislature shall provide for their election by the people," and such office if it exists cannot be made appointive but must be elective by popular vote. (*State ex rel. Clarke* v. *Irwin*, 5 Nev. 111, 125.) Section 3, in my opinion, is of doubtful constitutionality.

I have already stated that in my opinion sections 2, 4, 5, 6 and 7 are undoubtedly constitutional.

I am of the opinion that even though section 3 be of doubtful constitutionality, it would not affect the Act as a whole, and that, should the Court declare the Act unconstitutional, its decision would not go further than to declare section 3 void.

I am of the opinion that, should Assembly Substitute for Assembly Bill No. 217 become a law, it would completely abolish the offices of Deputy Superintendents of Public Instruction now provided by law, save and except one General Deputy Superintendent of Public Instruction, even though section 3 of said Act should be declared void.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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22. **Officers — Appointment of Officers — Deputy Superintendent of Public Instruction.**

Every appointment to office must be based upon a different authority so to do. There must be a statute creating the office and fixing the compensation thereof, although the general appropriation bill provided for the salary and expenses of a Deputy Superintendent of Public Instruction. The State Superintendent of Public Instruction is not authorized to appoint any person, because the act creating such office was vetoed by the Governor.

CARSON CITY, March 29, 1917.

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

DEAR SIR: I am in receipt of your favor of the 21st instant, asking opinion of this office on the following question:

Would a definite appropriation for an appointive state officer, providing for his salary and traveling expenses for the ensuing two years, be a sufficient warrant for his appointment in the absence of statutory provision therefor?

In answer thereto I would say that every appointment to office must be based on definite authority so to do; that is to say, there must be a statute creating the office and fixing the compensation therefor.

Inasmuch as the statute creating the office of General Deputy Super-

intendent of Public Instruction was vetoed by the Governor, there is no authority vested in you to make the appointment in question.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By EDW. T. PATRICK, *Deputy*.

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23. Eight-Hour Law—Females.

The eight-hour law for females (Stats. 1917, 16) applies to all females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company.

The only exception thereto is contained in the proviso covering the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, to graduate nurses or nurses in training in hospitals.

Any employer of any female in any of the lines of business mentioned in the act can not compel a bookkeeper or stenographer to work more than eight hours in a single day.

CARSON CITY, March 29, 1917.

HON. E. F. LUNSFORD, *Reno, Nevada*.

DEAR SIR: Owing to press of business in this office, answer to your favor of the 2d instant, asking interpretation of the eight-hour law, has been delayed until now. You inquire:

> Will you kindly advise me whether in your opinion any of the persons mentioned in the eight-hour law can work as bookkeeper or stenographer more than eight hours in any single day.

The Act in question is Assembly Bill No. 9, which will appear as chapter 14 in the Statutes of 1917. Section 1 of the said Act provides:

> No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company in this State, more than eight hous during any one day, or more than fifty-six hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or fifty-six hours during any one week: *provided, however*, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetables, nor to nurses, nor to nurses in training in hospitals.

The law therefore would seem to apply to all females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company; the only exception thereto is contained in the proviso covering the harvesting, curing, canning or drying of any variety of perishable fruit or vegetables, nor to graduate nurses, nor nurses in training in hospitals.

I am, therefore, of the opinion that any employer of any female in any of the lines of business mentioned in the Act cannot compel a bookkeeper or stenographer to work more than eight hours in any single day.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*

By EDW. T. PATRICK, *Deputy*.

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24. Public Schools—Deputy Superintendents of Public Instruction.

Section 3251, Rev. Laws, in the absence of any appropriation by the Legislature, makes an appropriation for the payment of the salaries and traveling and office expenses of the Deputy Superintendent of Public Instruction.

CARSON CITY, March 29, 1917.

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

DEAR SIR: I am in receipt of your favor of the 21st instant, asking opinion of this office on the following facts and conditions:

1. Section 3251 of the Revised Laws of Nevada (sec. 13 of School Code) fixes the compensation of Deputy Superintendents at "two thousand dollars per annum."

Question: (a) Assuming that this section has not been legally altered or repealed, would the five Deputies provided for therein, each still be entitled to draw such salary in the absence of any specific appropriation therefor in the General Appropriation Act of 1917?

2. The same section provides for the payment of a Deputy Superintendent's traveling expenses to the amount of "not more than eight hundred dollars" in "any one year" and for the payment of his necessary office expenses, "not more than three hundred fifty dollars" in "any one year."

Question: (b) On the same assumption contained in question (a) above, as to altering or repealing, would a Deputy Superintendent now be entitled to draw for such traveling expenses and such office expenses yearly, in the respective amounts named therefor as a limit, in the absence of any specific sum appropriated for these purposes in the General Appropriation Act of 1917?

In answer thereto let me say that it is the opinion of this office that these questions are completely covered by opinion in the case of *State ex rel. Davis* v. *Eggers*, 29 Nev. 469, in which it is held "that the Act constituted a sufficient appropriation of the salary of the chairman; but, as it failed to prescribe any maximum expenditure for traveling expenses, the Act was void in so far as it authorized payment of such expenses by the State, under the Constitution, art. 4, sec. 19, providing

that no money shall be drawn from the State Treasury except under appropriations made by law."

Answer to each of your questions would, therefore, be in the affirmative.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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25. County Clerk—Articles of Incorporation—Fee for Filing.

Chapter 106, Stats. 1917, 193, reverses the order formerly existing for the filing of articles of incorporation. They must now be first filed and recorded in the office of the Secretary of State. A copy thereof certified by the Secretary of State is to be filed in the office of the Clerk of the county in which the principal place of business of the company is intended to be located.

Formerly the articles were required to be filed and recorded with the County Clerk and duly certified copy thereof filed in the office of the Secretary of State.

Under such new arrangement the County Clerk is not required to record the articles and is only entitled to his usual fee provided by law for filing and indexing all papers required to be kept by him.

CARSON CITY, March 29, 1917.

HON. JAS. GLYNN, *Attorney at Law, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking opinion of this office on the amount which the County Clerk is allowed to charge for filing articles of incorporation under Senate Bill No. 38 amending several sections of the general incorporation law. This bill provides a radical change in the procedure heretofore enforced in this State concerning the filing and recording of these articles. Under section 3 as amended it is provided that after the articles are signed and acknowledged they must be filed and recorded in the office of the Secretary of State and a copy thereof certified by the Secretary of State is to be filed in the office of the Clerk of the county in which the principal place of business of the company is intended to be located. Formerly the articles were required to be filed and recorded with the County Clerk and a duly certified copy thereof filed in the office of the Secretary of State. It seems that your County Clerk insists that under the Statutes of 1909, p. 197, wherein he is authorized to charge $10 "for filing, indexing and recording articles of incorporation," he is still entitled to charge that sum. He overlooks the provisions on the same page that he is entitled to charge 25 cents only "for filing and indexing all papers to be kept by him."

The law having made a complete reversal of the method of procedure in regard to these articles and providing only that a County Clerk shall file the certified copy received from the Secretary of State, I am of the opinion that he is not entitled to his fee of $10 for filing, indexing and recording articles, but is entitled to 25 cents only for filing and indexing all papers to be kept by him.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

26. Budget Bill—Public Schools—Emergency School Warrants.

The provision of section 16 of the budget bill, chap. 149, Stats. 1917, repealing the law for issuance of emergency school warrants, is suspended until January 1, 1919, and any school district may issue such warrants as heretofore until such time.

CARSON CITY, March 29, 1917.

MR. W. J. HUNTING, *Superintendent of Public Schools, Carson City, Nevada.*

DEAR SIR: I am in receipt of your verbal inquiry for interpretation of Assembly Bill No. 134, which will appear as chapter 149 of the Statutes of 1917. This bill is generally known as the "Budget Bill."

Section 14½ thereof provides that it shall not apply to school districts until January 1, 1919, and section 16 repeals the provision for the issuance of emergency school warrants. In view of the provisions of section 14½, I am of the opinion that so much of the provisions of section 16 repealing the law for issuance of emergency school warrants is suspended until January 1, 1919, and that any school district may issue such warrants as heretofore until that time.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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27. Criminal Practice—Justice of the Peace—Witnesses.

The provisions of section 7357, Rev. Laws, applies to a witness attending before a Justice Court on a trial for misdemeanor.

The Justice of the Peace by an order subscribed by him may direct the Treasurer of the county to pay a witness coming within the provisions of section 7357, Rev. Laws, a reasonable sum for his expenses.

CARSON CITY, March 30, 1917.

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

DEAR SIR: I am in receipt of your favor of the 23d instant, asking opinion on the following questions:

> Will you kindly give me an opinion on how you construe section 7357 of the Revised Laws of Nevada? Would you hold that a person who attends as a witness before a Justice Court on a trial for misdemeanor would come within the purview of this statute? If so, what would you consider the proper method to be followed under the statute to have the amount due paid to the witness?

Such section is as follows:

> When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the State, or defendant, upon a subpena, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other

case, the District Judge, by an order subscribed by him, may direct the Treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

It is the opinion of this office that this section applies to a witness attending before a Justice Court on a trial for misdemeanor, for the reason that the statute mentions the "magistrate," and also because the magistrate has original jurisdiction in misdemeanors.

It is also the opinion of this office that the Justice of the Peace by order subscribed by him may direct the Treasurer of the county to pay the witness a reasonable sum for his expenses.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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28. Jurors—County Commissioners—Married Women.

In the selection of a jury-list such list must be selected without distinction from all the persons of the county qualified to serve as jurors.

Exemption from jury service is a personal privilege and may be claimed by the juror.

It is no objection to the regularity of a jury that persons were thereon who are exempt from service.

County Commissioners should not, in drawing a jury list, exempt the names of married women therefrom.

A jury-room may be partitioned so that the women jurors may stay in one part of the room and the men in the other.

A woman Deputy Sheriff may be appointed to take care of the women and a man to take care of the men.

If the jury-room is partitioned, such partition should be only partial and not run clear to the ceiling so as to make two separate rooms of the jury-room.

CARSON CITY, March 30, 1917.

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

DEAR SIR: Owing to press of business imposed on this office by the recent session of the Legislature, answer to your favor of February 16 has been delayed until now.

I think your Commissioners are making a mistake in drawing the names of jurymen by omitting the names of married women therefrom, and if the practice is continued the panel is subject to challenge by reason of that fact. I base this opinion upon the following extract from 24 Cyc. 213:

> The Commissioners in selecting the names to compose the jury-list have full power to decide as to who are fit to serve as jurors or whether certain persons possess the qualifications prescribed by the statutes, and in the absence of any showing of fraud or corruption their decision will not be interfered with; *but the list must be selected without distinction from all the persons of the county qualified to serve as jurors,* and where the statute specifically prescribes the class of persons from whom the list is to be selected, a failure to select the list from this class is a fatal irregularity.

Also from the fact that exemption from the jury is a personal privilege and may or may not be claimed by the juror.

It is no objection to the regularity of a jury that persons were thereon who are exempt from service.

I can see no objection to your jury-room being partitioned so that the women can stay in one room and the men in the other, nor to having a woman Deputy Sheriff to take care of the women and a man to take care of the men. If the jury-room is partitioned, it seems to me that the partition should be only partial and not run clear to the ceiling so as to make two separate rooms of the jury-room.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

CARSON CITY, May 28, 1917.

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

DEAR SIR: In answer to your favor of April 1, in regard to the exemption from jury duty, let me say that it has been delayed until time could be found to thoroughly investigate the matter. I think that the previous opinion rendered on this question was too broad and that you are right in stating that, if the County Commissioners in drawing the jury-list make a habit of omitting therefrom married women, the only person that could raise objection to such list would be a married woman who was on trial in a criminal case or had a civil action pending for trial before the court.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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29. **Clerk of the District Court—Newspapers—Files.**

Newspaper representatives are entitled to access to all papers filed with the Clerk of the District Court except such complaints as may have been sealed by order of the Court, at such and all times as will not seriously interfere with the operation of the duties of the Clerk.

CARSON CITY, April 3, 1917.

MR. GRAHAM SANFORD, *Manager Reno Evening Gazette, Reno, Nevada.*

DEAR SIR: This office is in receipt of your favor of the 27th ultimo, stating that your District Court Clerk declines to permit newspaper representatives to examine complaints after they have been filed in his office, including all complaints, whether sealed or unsealed. You inquire whether your County Clerk is within his rights in refusing this information to the newspapers.

This office is of the opinion that newspaper representatives are entitled to access to all complaints filed, except sealed complaints, at such

and all times as will not seriously interfere with the operation of the duties of the Clerk.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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30. **Corporations—Articles of Incorporation—Saving and Loan Associations.** Suggestions as to what should be included within articles of incorporation of saving and loan associations.

CARSON CITY, April 12, 1917.

MR. R. C. KNIGHT, *Carson City, Nevada.*

DEAR SIR: Pursuant to request of yourself and the State Bank Examiner, I have examined the proposed articles of incorporation of the State Saving and Loan Association, and I make the following suggestions with reference to them:

In paragraph 2 after the words "shareholders, members," strike out the words "and others." Our statute evidently contemplated that the loans be made only among the members of the corporation. I also note that you have made no provision in your articles of incorporation giving the corporation power to hold any real estate, mortgages, notes, etc., and that the only thing the corporation can invest in is "stocks or bonds of other corporations."

I would suggest further that you be more definite as to the location of your principal office. The statute requires that the street number be given if possible, or that it be so definitely located that it can be found. Your articles provide merely that the principal place of business shall be at Reno, Washoe County, State of Nevada.

I would suggest that paragraph 7 be amended to read somewhat as follows: "The governing board of the corporation shall be seven in number, and shall be styled directors." This will more fully comply with the exact wording of the statute.

Provision should also be made in your articles of incorporation stating whether or not your capital stock shall be assessable or non-assessable. This is essential.

I would further suggest that you divide your stock into general stock and permanent reserve-fund stock, or some such designation, and provide that the permanent reserve-fund stock shall not be redeemable or withdrawable until all other stock shall have been redeemed and paid. is will mean that you will have a permanent stock always outstanding you are ready to dissolve. I am of the opinion that this is per- under our statute.

requested me to give you an opinion as to whether or not ving certificates or investment certificates. I think that vision for the issuance of these certificates in your tion. This character of investment, if decided ion of the by-laws make each investor therein or association. You can also provide that aid in stated payments.

urs very truly.

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

CORRECTION

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

CORRECTION

and all times as will not seriously interfere with the operation of the duties of the Clerk.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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30. **Corporations—Articles of Incorporation—Saving and Loan Associations.** Suggestions as to what should be included within articles of incorporation of saving and loan associations.

CARSON CITY, April 12, 1917.

MR. R. C. KNIGHT, *Carson City, Nevada.*

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In paragraph 2 after the words "shareholders, members," strike out the words "and others." Our statute evidently contemplated that the loans be made only among the members of the corporation. I also note that you have made no provision in your articles of incorporation giving the corporation power to hold any real estate, mortgages, notes, etc., and that the only thing the corporation can invest in is "stocks or bonds of other corporations."

I would suggest further that you be more definite as to the location of your principal office. The statute requires that the street number be given if possible, or that it be so definitely located that it can be found. Your articles provide merely that the principal place of business shall be at Reno, Washoe County, State of Nevada.

I would suggest that paragraph 7 be amended to read somewhat as follows: "The governing board of the corporation shall be seven in number, and shall be styled directors." This will more fully comply with the exact wording of the statute.

Provision should also be made in your articles of incorporation stating whether or not your capital stock shall be assessable or non-assessable. This is essential.

I would further suggest that you divide your stock into general stock and permanent reserve-fund stock, or some such designation, and provide that the permanent reserve-fund stock shall not be redeemable or withdrawable until all other stock shall have been redeemed and paid. This will mean that you will have a permanent stock always outstanding until you are ready to dissolve. I am of the opinion that this is permissible under our statute.

You have requested me to give you an opinion as to whether or not you can issue saving certificates or investment certificates. I think that you can make provision for the issuance of these certificates in your articles of incorporation. This character of investment, if decided upon, should by a provision of the by-laws make each investor therein a member of your society or association. You can also provide that these certificates can be paid in stated payments.

Yours very truly,

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

31. Fish—Catfish.

Under the provisions of section 63, Stats. 1917, p. 470, it is unlawful for any one to attempt to fish in any waters of the State during the closed season.

The fact that catfish are unprotected does not alter this rule, for the reason that in fishing for catfish the angler runs the risk of taking or catching some of the protected fish, and in case he does so he is liable to fine and imprisonment.

CARSON, CITY, April 14, 1917.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking interpretation of chapter 239, entitled "An Act to provide for the protection and preservation of game, etc.," approved March 27, 1917, appearing on page 459 of the Statutes of 1917, so far as fishing for catfish is concerned.

Section 63 of said Act (Stats. 1917, p. 470) provides:

> All licenses issued as herein provided shall authorize the person to whom issued * * * to take or catch fish during the open season fixed therefor by law until the day of expiration printed thereon.

Inasmuch as no one can fish for catfish in any waters wherein other fish are contained, it is the opinion of this office that it is unlawful for any one to attempt to fish in any such waters during the closed season, for the reason that section 63, above quoted, gives the holder of a license permission only "to take or catch fish during the open season fixed therefor by law."

The fact that catfish are unprotected does not alter this rule, for the reason that in fishing for catfish the angler runs the risk of catching or taking some of the protected fish, and in case he does so he is liable to fine and imprisonment.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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32. Elections—Initiative Measures, When Effective.

An initiative measure becomes a law in case it receives a majority of the votes cast at a general election at which it was submitted to the vote of the people as soon as it has been determined to have received a majority of the votes cast by the official canvass provided in Stats. 1917, 366.

CARSON CITY, April 18, 1917.

MR. N. H. CHAPIN, *Ely, Nevada.*

MY DEAR MR. CHAPIN: I am in receipt of yours of April 14, inquiring as to when the prohibition measure will become a law in case it receives a majority of the votes cast at the next general election.

Section 3 of article 19 of the Constitution provides:

> If said initiative measure be rejected by the Legislature, or if no action be taken thereon within said forty days, the Secretary of State shall submit the same to the qualified electors for

approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure, it shall become a law, and take effect from the date of the official declaration of the vote. (Stats. 1913, p. 65.)

Section 26 of an Act relating to elections, approved March 24, 1917, Stats. 1917, p. 366, provides:

> * * * And on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and shall open and canvass the vote for United States Senator * * * and for and against any questions submitted.

This constitutes the official declaration of the vote, and I am of the opinion that, in the event the prohibition measure receives a majority of the votes cast thereon, it will become a law on the third Monday of December, 1918.

Yours very truly,

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

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33. Fish—Fishing with Spawn, Eggs or Ova—Licenses for Market Fishermen—Aliens.

Section 30, Stats. 1917, 464, absolutely prohibits fishing with spawn, eggs or ova of any species of fish for market fishermen.

A license for a market fisherman is provided in section 61, Stats. 1917, 470, at $15. An alien who is a market fisherman must pay an additional $15 for a fishing license.

The price of a license to an alien market fisherman is $30.

CARSON CITY, April 21, 1917.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of this date, requesting interpretation of section 30, page 464, Statutes of 1917, and calling my attention to a similar enactment contained in section 3, page 61, of the Statutes of 1911, relative to fishing with the spawn of fish.

Said section 30 provides: "It shall be unlawful for any person or persons, firm, company, or corporation to take, catch, or kill, or to attempt to take, catch, or kill in or from any stream, lake, or river, or any waters of the State of Nevada, any trout, salmon, or white-fish, bass, perch, catfish, or any other fish of any species whatever * * * with or by means of any bait constituted or prepared in whole or in part from the spawn, eggs, or ova of trout, salmon, or any other species of fish whatever. * * *

I am of the opinion that said section absolutely prohibits fishing with the spawn, eggs, or ova of any species of fish.

You further inquire what license is required of an alien market fisher-

man. Section 61 of said Act appearing on page 470 of the Statutes of 1917 provides prices for licenses as follows:

3. To any person, not a citizen of the United States, upon the payment of fifteen dollars ($15) for a fishing license.

4. A license of fifteen dollars ($15) shall be charged for any one engaged in market fishing.

From the foregoing I am of the opinion that the price of a license to an alien market fisherman is thirty dollars ($30).

Yours very truly,

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

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34. **Public Schools—School Bond Elections—Act Concerning.**

The provisions of chap. 199, Stats. 1915, p. 308, is the law covering the election of School Trustees and, as a bond election must comply as nearly as may be in accordance with the provisions of the law covering the election of School Trustees, such chapter applies to bond elections.

A registration of electors conducted under the provisions of such chapter 199 will be legal and valid for use in conducting a bond election.

CARSON CITY, May 1, 1917.

HON. B. D. BILLINGHURST, *Superintendent of Public Schools, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 27th instant, from which it appears that the city of Reno is authorized and empowered to grant, bargain, and sell certain parcels of real estate to Reno School District No. 10 by the terms of chapter 182, page 343, Statutes of 1917.

It further appears that in order to provide funds for purchasing said real estate the Trustees desire to call a bond election under the provisions of chapter 15 of an Act concerning public schools (Rev. Laws 3431–3442). Under provisions of sec. 3433 such bond election must be held "in all respects as nearly as may be in accordance with the provisions of the law now covering the election of School Trustees."

You inquire under what law the registration for such bond election shall be conducted.

The Legislature at its last session (Stats. 1917, p. 425) passed an Act regulating the registration of electors for general, special, and primary elections, but by the terms of section 11 of said Act there will be no general registration of electors until the 1st day of June, 1918, and such Act does not provide any method for registration in case of special elections.

I am, therefore, of the opinion that the operation of such Act is suspended until June 30, 1918, and it, therefore, cannot be applied.

This office has heretofore rendered an opinion that the provisions of chapter 199, Statutes of 1915, p. 308, is the law covering the election of School Trustees, and, as the bond election must comply as nearly as may be in accordance with the provisions of law covering the selection of School Trustees, such chapter applies to this case. It is, therefore, the opinion of this office that a registration of electors conducted under the provisions of said chapter 199 will be legal and valid for use in con-

ducting the election to determine the question of the issuance of bonds for the aforesaid purpose.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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35. **Fish and Game—Deputy Fish and Game Warden.**

As the Fish and Game Warden appoints the Deputy Fish and Game Warden with the consent or recommendation of the County Commissioners, such deputy is in effect a county officer.

In case there is a deficiency in the fund provided for the payment of the salary and expense of the Deputy Fish and Game Warden, such deficiency may be taken from the general fund of the county under the provisions of Rev. Laws, 1508.

CARSON CITY, May 3, 1917.

HON. NASH P. MORGAN, *District Attorney, Eureka, Nevada.*

DEAR SIR: I am in receipt of your favor of the 21st instant, calling my attention to section 64 of the Fish and Game Warden Act (Stats. 1917, p. 470), providing for the creation of county funds for the payment of Deputy Fish and Game Wardens' salaries and expenses.

You inquire: "In case there is a deficiency in this fund, can such a deficiency be paid out of the general fund of the county?"

You also call my attention to section 3 of the Act to provide Fish and Game Wardens (Stats. 1917, p. 473) and inquire by whom the salaries of the deputies shall be fixed and how the same shall be paid. Said section 64 provides as follows:

> All money collected for licenses, as provided herein, shall be apportioned as follows: Two-thirds * * * shall be paid into the county treasury of the county where the license is collected, to be applied to the credit of the Game and Fish Preservation Fund, which fund is hereby created, and the money of said fund shall be applied to the payment of the expenses incurred in the prosecution of offenders and for the revenue to pay Fish and Game Wardens and Deputies, when necessary to hire Deputy Fish and Game Warden, or Wardens, and for revenue to pay for the importation and propagation of wild birds.

Said section 3 provides as follows:

> The State Fish and Game Warden may appoint a deputy or deputies for the different counties with the consent or recommendation of the County Commissioners. * * * The salary of the said Deputy Fish and Game Warden shall be not more than one hundred dollars nor less than twenty dollars per month. Said Fish and Game Warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duty.

From the fact that the Fish and Game Warden appoints the deputy

with the consent or recommendation of the County Commissioners, it appears that he is in effect a county officer.

In case there is a deficiency in the fund provided for the payment of his salary and expenses, I see no reason why the deficiency cannot be taken from the general fund of the county under the provisions of section 1508, Rev. Laws.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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36. State Fish and Game Warden—County Fish and Game Wardens—Salary and Expenses Of.

The moneys remaining in the Fish and Game Fund of the various counties should be used for the payment of the County Fish and Game Wardens.

CARSON CITY, May 3, 1917.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th ultimo, asking opinion of this office as to the distribution of the moneys that may be remaining in the fish and game fund of the various counties. You inquire: "May it be used in the payment of salaries of Deputy Wardens in the further protection of the fish and game, or is it at the disposal of the Fish and Game Commission?"

After careful consideration of the matter and taking into consideration the provisions of section 64, Statutes of 1917, p. 470, and section 3, p. 473, of the same statutes, I am of the opinion that the moneys in the county funds should be used for the payment of the County Game Warden, appointed by yourself on recommendation of the County Commissioners.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*
By EDW. T. PATRICK, *Deputy.*

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37. Employer and Employee—Hospital Fees—Illness.

Under the provisions of section 1943, Rev. Laws, an employer of labor who collects hospital fees is liable for the care and attention of the employee during his illness whether such illness is caused by accident or otherwise.

CARSON CITY, May 3, 1917.

HON. W. E. WALLACE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th ultimo, calling my attention to section 1943, Rev. Laws, and inquiring, under this section, "whether an employee who is compelled to contribute to a company or association for medical care or attention, is entitled to such care and attention for an illness other than that caused as a result of an accident; in other words, if an employee is taken ill with typhoid or pneumonia while in the employ of such company or association, is he entitled to medical attention?"

In response thereto, let me say that said section makes no exception

whatever, and, I am, therefore, of the opinion that any employer of labor who collects such hospital fees is liable for the care and attention of the employee during his illness, whether such illness is caused by accident or otherwise.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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38. **Automobiles—Automobile Licenses—Secretary of State—State Highway.**

Under the provisions of section 24 of the automobile license law, as amended by Stats. 1917, p. 342, all the moneys received by the Secretary of State for licenses on automobiles, except license fees collected from owners residing in any county not included in the State Highway System, shall be paid over by him to the State Treasurer for the benefit of the State Highway Fund.

Under the provisions of section 25 of said law, as amended Stats. 1917, 343, the Secretary of State is authorized to retain from and after January 1, 1917, the sum of 50 cents from each payment for a motor-vehicle license to cover the expense incurred in the administration of said Act.

CARSON CITY, May 4, 1917.

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

DEAR SIR: In answer to your favor of the 7th ultimo, requesting the interpretation of certain amendments of the automobile license Act, appearing in chapter 181, pages 342 and 343 of Statutes of 1917, let me say: I am of the opinion that under section 24 of said Act, as amended, all of the moneys received by you for licenses on automobiles, except license fees collected from owners of automobiles residing in any county not included in the State Highway System, as defined by law, shall be paid over by you to the State Treasurer for the benefit of the State Highway Fund.

I am further of the opinion that under section 25, as amended, you are authorized to retain from and after January 1, 1917, the sum of 50 cents from each payment for motor-vehicle license to cover expense incurred in the administration of said Act.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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39. **Public Schools—School Trustees—School Census Marshal.**

The acts of a Board of School Trustees in the appointment of a School Census Marshal are valid even though a majority of such board is superseded by a recall election.

The person so appointed is the legal School Census Marshal of the district, notwithstanding that the new board upon organization revoked his appointment and appointed another Census Marshal in his stead.

CARSON CITY, May 21, 1917.

HON. JOHN EDWARDS BRAY, *State Superintendent of Schools, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 21st instant, setting forth the following statement of facts:

It appears that the regularly elected Board of School Trustees of the Virginia City School District, prior to the 1st day of March, 1917, appointed a School Census Marshal in accordance with the provisions of section 122 of the School Code, as amended by Stats. 1913, p. 154, said section being section 3361, Rev. Laws.

It further appears that a few days later a Trustees' recall election was held in said district and two of the three members of said Board of School Trustees were recalled and in their stead two new School Trustees were elected. The new members qualified and a reorganization of the new board ensued on or about February 23, 1917.

After such reorganization the new Board of School Trustees revoked the appointment of the Census Marshal appointed by the former board and appointed a different person as Census Marshal.

For convenience these Marshals will be known as Marshal No. 1 and Marshal No. 2.

It further appears that each appointee duly filed his oath of office with the Deputy Superintendent and each proceeded to take the school census in the month of April, 1917.

Census Marshal No. 1 on completing his report took it to the clerk of the Board of School Trustees for his approval and said clerk refused to receive or approve said report.

Said Marshal No. 1 then duly forwarded his report to the Deputy Superintendent for final correction and approval. About the same time said Marshal No. 2 completed her report and presented it to the clerk for approval. The clerk approved her report and forwarded the same to the Deputy Superintendent for final correction and approval. Both reports are now in the hands of the Deputy Superintendent, who refuses to recognize either of the reports pending the decision of this office as to who is the regularly appointed School Census Marshal for said district.

In answer to the questions contained in your letter, it is the opinion of this office that the first Board of School Trustees acted within its rights in making the appointment of Marshal No. 1 and the reorganized board had no right to revoke such appointment, except by preferring charges against said Marshal No. 1 and permitting him an opportunity to be heard and refute any such charges.

The answer to your second question is contained in the foregoing.

In answer to your third question, let me say that, in the opinion of this office, the requirement that the clerk of the School Board shall approve a Census Marshal's report before it is sent to the Deputy Superintendent is directory only, and, Census Marshal No. 1 having tendered his report to the clerk of the reorganized board, who refused to receive the same, it was his duty to send the same to the Deputy Superintendent for final correction and approval. It follows, therefore, that, in the opinion of this office, Marshal No. 1 is the duly constituted School Census Marshal of the school district in question.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

40. **Licenses—State Licenses—Intoxicating Liquors.**

Under the provisions of section 6 (Stats. 1915, 238) the question of the intoxicating or non-intoxicating effect of the spirituous, malt or vinous liquors is not taken into consideration.

Any preparation of spirituous liquors or vinous liquors which includes alcohol in any degree is within the statutes, and would require the procuring of a state liquor license.

CARSON CITY, May 23, 1917.

MR. GEORGE L. SANFORD, *Attorney at Law, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking whether it is necessary for dealers in malts, spirituous or vinous liquors to secure a state liquor license. You particularly desire a ruling as to liquors which are commonly termed nonintoxicating, but which come under the general classification of malt, vinous and spirituous. Considerable time has been required for the investigation of this question which accounts for the delay in answering your inquiry. After careful consideration, I have come to the conclusion that the matter in question is regulated entirely by Stats. 1915, sec. 6, p. 238, which provide:

> Every person, firm, company, or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt, or vinous liquors, shall, in addition to other licenses provided by law, take out a state liquor license as hereinafter provided which license shall not be transferable by sale, assignment, or otherwise.

It will be observed from the foregoing that the question of the intoxicating or nonintoxicating effect of the spirituous, malt or vinous liquors is not taken into consideration in the statute in question.

Any preparation of spirituous liquor or vinous liquor which would include alcohol in any degree would be within the statute and would require the procuring of a state liquor license.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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41. **Weights and Measures—Bread.**

Under the provisions of section 4803, Rev. Laws, a baker is privileged to make loaves of bread of any weight he desires, but if such loaf weighs more or less than a pound, exact weight thereof must be labeled thereon, in plain intelligible English words and figures.

CARSON CITY, May 29, 1917.

HON. EMMET D. BOYLE, *Governor of Nevada, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 28th instant, in regard to weight of loaves of bread. This matter is regarded by Rev. Laws, 4803, which provides:

> A standard loaf of bread sold or offered for sale in this state shall weigh one pound, and a standard loaf of bread need not be labeled with a statement of its weight. Whenever a

> loaf of bread sold or offered for sale weighs less than a pound, it shall be labeled in plain, intelligible English words and figures with its correct weight, together with the name of its manufacturer.

The law contemplates that the baker shall sell a standard loaf to weigh 16 ounces. They are not confined to this size loaf, however, but may offer for sale loaves containing more or less than 16 ounces.

In order that the purchaser may know exactly how much bread is being bought, if a standard loaf is not offered for sale by the bakers, the law requires that its correct weight shall be labeled thereon.

I cannot at all see how the affixing of such label on a nonstandard loaf of bread would vary materially and increase expense. Indeed, it is customary in a number of bakeries for such label to be affixed so that the customer may know by whom the bread was made, and I never heard of extra charges being made for such label.

Section 4803, above quoted, is the legislative statement of the law in this State defining a standard loaf of bread, and there is no power in your office to set aside or suspend temporarily a portion of this law. If the bakers in question persist in selling unlabeled loaves of bread that are short of 16 ounces as required by the statute, they are liable to the penalties prescribed in Rev. Laws, 4812.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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42. **Public Schools—County High Schools—County Board of Education.**

Under the provisions of Stats. 1917, the County Board of Education has absolute control of the materials and plans to be used in the erection of county high schools, without regard to any action on the part of the Deputy Superintendent of Public Instruction.

CARSON CITY, June 1, 1917.

MR. C. LEWIS WILSON, *Las Vegas, Nevada.*

DEAR SIR: In response to inquiries for an interpretation of that portion of section 5 of chapter 15 of the Statutes of 1917 (p. 19), reading as follows:

> Said County Board of Education shall determine as to the character and location, within the town or city as advertised, of said building or improvements and the materials and plans to be used therefor;

let me say that, in my opinion, said section gives the County Board of Education absolute control of the materials and plans to be used in the erection of a county high school without regard to any action on the part of the Deputy Superintendent of Public Instruction.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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43. **Water—Water Courses—State Engineer—Extension of Time Given.**

It is within the province of the State Engineer to extend the time in which proofs may be filed.

The State Engineer can and should accept proofs at any time up to the assembling of proofs and the publication thereof provided in section 28 of the water law (Stats. 1913, 199).

CARSON CITY, June 2, 1917.

HON. J. G. SCRUGHAM, *State Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of yours of May 29, inquiring whether proofs may yet be received upon the Humboldt River in the Humboldt River adjudication. Mr. Kearney was enjoined by the action in the Federal Court in the case of *Bergman et al.* v. *Kearney*, from receiving proofs, etc., *pendente lite*. That injunction has, however, been dissolved and there is no injunction against the State Engineer's office in that case at the present time. However, a somewhat similar restraining order has been issued out of the state court in the Sixth Judicial District by Judge Ducker in the case of *Anker* v. *Kearney et al.*

However, if you will examine the files of your office, I am satisfied that you will find that Mr. Kearney made a general order extending the time indefinitely for the filing of proofs upon the Humboldt River, stating in that order that he would fix the time limit later when the injunction proceedings had been determined. I am further of the opinion, however, that it was within the province of the State Engineer to extend the time in which proofs may be filed, and this especially so in view of the provisions of the statute wherein it is provided that any person failing to make proofs within the time provided, the State Engineer shall make a determination of his rights upon such data, maps, evidence, etc., as he may have on file in his office. "An exception to such determination may be filed in court as hereinafter provided." (See sec. 25.) Having this provision of the statute in mind, it seems to me that the State Engineer can and should accept proofs any time up to the assembling of proofs and the publication thereof provided for by Stats. 1913, sec. 28, p. 199. In other words, to receive at any time, provided they do not interfere with the due and orderly administration and execution of your duties under the Act.

Yours very truly,

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

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44. **Water—Water Courses—State Engineer—Permits of State Engineer—Appropriation of Water.**

It is not the duty of the State Engineer upon the granting of a permit to compel all the parties to give the permit holder the amount of water set forth in the permit.

The State Engineer merely gives an appropriator the right to use the water.

If other parties or persons interfere with that use or with his rights under the permit his remedy is in court and there is no authority vested in the State Engineer to insure to him the amount of water granted in the permit.

The State Engineer has no authority to regulate as between a permit holder and other appropriators upon the stream until there has been adjudication under the provisions of sections 18-39 of the water law. (Stats. 1913, 192.)

CARSON CITY, June 2, 1917.

HON. J. G. SCRUGHAM, *State Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion of this office as to your duties with reference to permit 3690 to Omer V. Cole to appropriate the waters of Wright Creek claimed by John G. Taylor and the Town of Lovelock. Mr. Cole complains that he is not receiving his share of water granted to him under the permit and asks action by your office.

I am of the opinion that it is not the duty of the State Engineer, upon the granting of a permit, to compel all of the parties to give the permit holder the amount of water set forth in the permit. The State Engineer, merely acting on behalf of the State, gives to an appropriator the right to use the water. If other parties or persons interfere with that use or with his rights under the permit, his remedy is in court and there is no authority vested in the State Engineer to insure to him the amount of water granted in the permit. Neither has the State Engineer any authority to regulate as between a permit holder and other appropriators upon the stream until there has been adjudication under the provisions of sections 18 to 39 of the water law. (Stats. 1913, 192.)

Mr. Cole's remedy, if he is being unlawfully deprived of any rights granted to him under the permit, is in the courts.

Yours very truly,

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

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45. **State Board of Health—Quarantine—Contagious Diseases—Disinfection.**

Under rule 5 of the rules and regulations of the State Board of Health it is the duty of the attending physician to attend to disinfection after quarantine.

CARSON CITY, June 4, 1917.

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

DEAR SIR: In response to your request for an opinion of this office as to whose duty it is to disinfect or superintend the disinfection after quarantine, let me say that it is my opinion that this question is fully covered by rule 5 of the Rules and Regulations of the State Board of Health, and the duty above mentioned is fully thrown upon the attending physician.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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46. Public Schools—School Districts—Consolidation of School Districts.

A person who has signed a petition for the consolidation of school districts may thereafter withdraw his name from the petition up to the time petition has been acted upon by the Board of County Commissioners.

CARSON CITY, June 4, 1917.

MR. H. R. SCHWAKE, *Gardnerville, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion as to whether or not persons who have signed a petition for the consolidation of school districts may thereafter withdraw their names from the petition.

I am of the opinion that they can at any time up to the time that the petition has been acted upon by the Board of County Commissioners. The reason for this is obvious. The purpose of the statute is to require a certain number or percentage of residents or taxpayers to petition, in order to set in motion action by the Board of County Commissioners. If they have the right to petition, certainly they have the right to change their mind and withdraw their names from the petition at any time before it is acted upon.

Yours very truly,

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

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47. Public Officers—Bonds—Surety Bonds at Public Expense.

Under the provisions of Stats. 1917, 340, the premium for an official surety bond must be paid by the State, district, county or city, as the case may be, concerning the official's employment.

From and after the approval of said act any officer who has given a surety bond can cancel the same and obtain a refund of his premium for the unexpired term as his own personal property, and the State, county, district or city, as the case may be, would be required to pay the premium on a new surety bond which he may take out.

CARSON CITY, June 4, 1917.

HON. H. H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th ultimo, asking an interpretation of chapter 180 of the Statutes of 1917, p. 340, providing for surety bonds for public officers at public expense. Section 2 of said Act provides that the premium for an official surety bond shall be paid by the State, district, county or city, as the case may be, concerning the official's employment.

I am informed that many officials have heretofore given such surety bonds and paid the premium thereon themselves. Your inquiry is whether such officers are entitled to a refund of such premium for the unexpired portion of their term.

It is my opinion that from and after the approval of said Act any officer who has given a surety bond could cancel the same and obtain a refund of his premium for his unexpired term as his own personal property, and the State, county, district or city, as the case may be, would be required to pay the premium on a new surety bond which he may take out.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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48. **Nevada Industrial Insurance Commission—Monthly Payments in Case of Death.**

Under the provisions of section 25, subdivision 1, of the Industrial Insurance Act as amended by Stats. 1915, 286, compensation should be paid upon the basis of 40 per cent of average monthly earnings of the deceased, such 40 per cent is the measure of compensation.

CARSON CITY, June 6, 1917.

MR. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: I am in receipt of yours of May 15, requesting an opinion of this office on paragraph 1, subdivision a of section 25 of the Nevada Industrial Insurance Act of 1913, as amended in 1915, 286. Paragraph 1 of subdivision a of section 25 reads as follows:

> To the dependent widow or widower, if there be no dependent children; forty per cent of the average monthly wage, but not less than twenty dollars nor more than sixty dollars per month for a period of one hundred months, but in no case to exceed the sum of four thousand dollars.

I am of the opinion that compensation should be paid upon the basis of 40 per cent of the average monthly earnings of the deceased. In other words, that 40 per cent of the average monthly earnings of the deceased is the measure of compensation, and the other words are words of limitation fixing the maximum amount per month, the maximum period of time and the maximum gross amount which shall be paid. I am of the opinion that the ruling heretofore made by the Commission, based upon 100 months divided into the total award, is erroneous, and that the monthly compensation that should be paid is 40 per cent of the average monthly earnings of the deceased.

Were this not true, it was an idle thing for the Legislature to fix a maximum of $60 per month, for if we use 100 months as the factor and divide that into the award, we would have a maximum of $40 per month. It was clearly the intention of the Legislature to provide otherwise.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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49. **Public Schools—School Districts—Consolidation of School Districts.**

Under the provisions concerning the consolidation of school districts (Stats. 1915, 27) any signer of a petition for the consolidation of school districts may withdraw his name at any time up to the time when the consolidation has been actually affected and he may withdraw his name even though notice has been published as provided in the statute.

CARSON CITY, June 7, 1917.

HON. F. E. BROCKLISS, *District Attorney, Minden, Nevada.*

DEAR SIR: I am in receipt of yours of June 6, requesting an opinion of this office as to whether or not signers on a petition for the consolidation of school districts may withdraw their signatures from such petition

after the publication of notice, under the statute. The statute concerning consolidation of school districts and pertinent to the question presented is section 2 of "An Act to provide for the consolidation of school districts, for the transportation of children to and from school and other matters relating thereto," approved February 26, 1915. (Stats. 1915, p. 27.) Said section 2 reads as follows:

> The process of uniting two or more school districts into a consolidated district shall be as follows: Upon receipt of a petition signed by a majority of the voters who are entitled to a vote at school elections, from each of the districts to be affected by the consolidation, the county commissioners of the county in which such districts are located shall cause a notice to be published for three consecutive weeks in a newspaper having general circulation throughout the county, which notice shall state fully the names of the districts proposing to consolidate, the boundaries of the proposed consolidated district, and shall set forth a day and hour at the next regular meeting of the Board of County Commissioners when the said board will canvass the signatures on each petition and hear statements that any of the residents of any of the districts to be affected by the consolidation may wish to make either for or against the proposition of consolidation. At the time set forth in the *notice* the county commissioners *shall proceed to canvass the signatures on each petition*, and if a majority of said board *are satisfied that the petitions presented represent the will of a majority of the voters* of *each* of the *districts affected*, they shall unite such districts into a single consolidated district, shall designate the said district as Consolidated School District No. ....., and shall designate a place at which the School Trustees of the several districts united shall meet to hold an election. If three or more school districts are proposing to consolidate and a majority of the voters of any district are opposed to such consolidation, such district shall not be made a part of the consolidated district, but the county commissioners may consolidate such other districts as are affected by the consolidation without requiring new petitions.

You will observe that the section quoted provides that the county commissioners shall at the time set forth in the notice "*proceed to canvass the signatures on each petition, and if a majority of said board are satisfied that the petitions presented represent the will of a majority of the voters of each of the districts affected*, they shall unite such districts into a single consolidated district," etc. Manifestly this provision of the statute is made for the purpose of ascertaining whether or not it is the *will* of a majority of the voters in *each* district to affect the consolidation. Most certainly, under the statute, such as this, it is both proper and right that a voter signing such petition may withdraw his signature and his request for such consolidation. Any other construction of the statute would distort the real intent of the Legislature.

I am of the opinion that a signer of a petition for consolidation of school districts may withdraw his name from such petitions at any time

up to the time when the consolidation has been actually effected, and that they may withdraw their names even though notice has been published as provided in the statute.

Yours very truly,

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

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50. **Nevada State Agricultural Society—Appropriation.**

The appropriation provided in Stats. 1917, 348, may not be used for the purpose of paying a balance on premiums awarded for the year 1916.

The moneys appropriated by such act may not be used except for the purpose of aiding the State Agricultural Society for the years 1917 and 1918.

CARSON CITY, June 8, 1917.

HON. EMMET D. BOYLE, *Governor of Nevada.*

MY DEAR GOVERNOR: I am in receipt of yours of the 7th instant, requesting an opinion of this office as to whether or not the appropriation of $6,000 for the years 1917 and 1918 for the Nevada State Agricultural Society, provided for by "An Act granting aid to the State Agricultural Society for the purpose of holding State Fairs during the years 1917 and 1918, and to erect, maintain and improve the buildings and grounds of the Society," approved March 24, 1917 (Stats. 1917, 348), may be used for the purpose of paying a balance of approximately $1,200 on premiums awarded by the Society in the year 1916. You will observe from the title of the Act that the aid is granted to the Society for the years 1917 and 1918. Section 1 of the Act also provides that the sum of $6,000 for each of the years 1917 and 1918 is appropriated to aid the Society in holding annual fairs in *each of said years.*

I am of the opinion that the moneys appropriated by this Act may not be used except for the purpose of aiding the State Agricultural Society for the years 1917 and 1918, and that no part of this appropriation may be used for the purpose of paying back bills or premiums incurred in 1916.

Yours very truly,

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

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51. **Foreign Corporations—Appointment of Resident Agents—Secretary of State.**

The Secretary of State is required to file a certificate of appointment of resident agent and is not justified in requiring a corporation to produce evidence of its compliance with the provisions of the law prior to the passage of the Act of 1907 (Rev. Laws, 1348–1350) or with such Act.

The Secretary of State is required to file all certificates of appointment of resident agent whether or not any other filings have been made in his office.

Failure to make any other filings required makes such corporation liable for the penalty provided in the respective Acts, but will not justify the Secretary of State in imposing an additional penalty by refusing to file such certificate.

CARSON CITY, June 9, 1917.

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

DEAR SIR: The Nevada Land and Livestock Company, a corporation organized under the laws of Utah, which prior to the passage of the Act of 1907, requiring corporations thereafter coming into this State to file a copy of its articles of incorporation with the Secretary of State, had not therefore complied with all of the provisions of law relative to foreign corporations and particularly sections 1347 and 1348, Revised Laws of Nevada, 1912, has tendered to your office, for filing, appointment of resident agent upon whom process may be served, together with the required fee.

I am of the opinion that your office is required to file this certificate of appointment, and that you are not justified in requiring the corporation to produce evidence of its compliance with the provisions of law prior to the passage of the Act of 1907 or with the Act of 1907. I am of the opinion that you are required to file all certificates of appointment of resident agent regardless of whether or not any other filings have been made in your office. Failure to make any other filings required makes such corporation liable for the penalty provided in the respective Acts, but will not justify your office in imposing an additional penalty for refusing to file such certificate.

Yours very truly,

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

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52. **Assessment and Taxation—Assessors.**

It is the duty of the Assessor to assess all property within his county between the first Monday in March and the third Monday of August of each year, and all property within the county between these two dates is subject to assessment, and all property which comes into existence either as additions or otherwise, between the first Monday in March and the third Monday in August is liable for taxation for that year.

A man who bought an automobile after having listed his personal property with the Assessor may be compelled to pay another personal property tax on such automobile.

If such person owns real estate the tax on subsequently acquired personal property may be added to and placed on his tax statement.

CARSON CITY, June 16, 1917.

HON. G. J. KENNY, *District Attorney of Churchill County, Fallon, Nevada.*

DEAR SIR: Yours of June 13, addressed to the Nevada Tax Commission, was referred to this office for an opinion upon two questions which you state as follows:

(a) A man, in absolute good faith, listed his personal property with the Assessor on May 11, 1917, and paid the per-

sonal property tax thereon, May 12, 1917; a short time later he bought an automobile; now the question: As he possesses no realty on which to levy and thereby include this recently acquired automobile, may the Assessor compel him to pay another personal property tax on this new car?

(b) Where a man, owning real estate, has been assessed and duly signed his statement, but subsequently acquires personal property, may this newly acquired personal property be added to and placed on his tax statement?

The questions may be answered together. Section 3618 of the Revised Laws of Nevada provides that the Board of County Commissioners shall fix the rate of county taxes for the year on or before the first Monday in March. Section 3624 of the Revised Laws of Nevada, as amended Stats. 1915, p. 178, provides:

> Between the rate of the levy of taxes and the second Monday of July of each year the County Assessor * * * shall ascertain by diligent inquiry and examination the property in his county, real and personal, subject to taxation.

Section 6 of the Act creating the Nevada Tax Commission, Stats. 1917, pp. 328–332, provides:

> Beginning on the third Monday of August, the said Commission shall, together with the County Assessors of the several counties in this State, sit in Carson City as a State Board of Equalization.

I am of the opinion that, under the provisions of the sections above referred to, it is the duty of the Assessor to assess all property within his county between the first Monday in March and the third Monday of August of each year, and that all property within the county between these two dates is subject to assessment, and that all property which comes into existence, either as additions or otherwise, between the first Monday in March and the third Monday in August is liable for taxation for that year. (*State of Nevada* v. *C. & C. Railroad Company*, 29 Nev. 487.)

I am of the opinion, therefore, that both of your questions should be answered in the affirmative.

Yours very truly,

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

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53. **Nevada School of Industry—Salary of Secretary.**

Under the provisions of section 9 of the Act providing Nevada School of Industry (Stats. 1913, p. 385) the Board of Government of such institution may provide a small salary for the secretary, not as compensation to him as a member of the board, but as a necessary and reasonable expense incurred by the board in the performance of its duties.

CARSON CITY, June 25, 1917.

MR. W. W. BOOHER, *Secretary Board of Government, Nevada School of Industry, Elko, Nevada.*

DEAR SIR: Yours of recent date, stating "that at a meeting of the

Board of Government of the Nevada School of Industry, held June 16, 1917, it was ordered 'That the member of the board acting as secretary of the board be allowed the sum of fifty dollars a year for his services as secretary, and that the secretary be instructed to submit this action to the Attorney-General of the State for his opinion as to its legality under the Act creating said board,' " duly received.

Section 9 of the Act in question (Stats. 1913, p. 385) provides:

> The members of said board shall serve without compensation, but necessary and reasonable expenses incurred by them in the performance of their duties as members of said board shall be paid out of the appropriations made for the maintenance of said school, when approved by the board.

The sum of $50 authorized by the board to be paid the member acting as secretary is not in the nature of compensation to that member, but is a necessary and reasonable expense incurred by the board in the performance of its duties. It is, therefore, a valid claim against the State.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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54. **Women's Eight-Hour Law—Eight-Hour Law for Women.**

It is the manifest purpose of the eight-hour law for women (Stats. 1917, p. 16) that women should labor but that specified time. They are not allowed to receive pay for overtime, and if the employer's business requires extra work, in order to comply with such law it will be necessary for him to hire extra employees.

CARSON CITY, June 27, 1917.

MR. WM. C. GOODMAN, *Care of McGill Mercantile Co., McGill, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking for an opinion on the eight-hour law for women (Stats. 1917, p. 16). It appears that you employ two girls at your store and they are now working but eight hours a day, but on Saturdays and nights preceding holidays you keep open until 8 o'clock, which would make the hours of labor for your employees nine and one-half hours. You inquire whether such practice is legal.

It is the manifest purpose of the eight-hour law for women that they should labor but that specified time. They are not allowed to receive pay for overtime, and if your busines requires extra work, in order to comply with the law, it will be necessary for you to hire extra employees, for the reason that the Legislature, in its wisdom, has determined that an eight-hour shift is all that a woman can stand and retain her health.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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55. Assessment and Taxation—Inheritance Tax Law.

Under the provisions of subdivision 2, section 2, chapter 266, Stats. 1913, no inheritance tax is due the State where the only heir is a brother and the total value of the estate does not exceed the sum of $10,000, exempted by subdivision 2, section 4, of the same Act.

CARSON CITY, June 29, 1917.

HON. E. F. LUNSFORD, *District Attorney, Reno, Nevada.*

MY DEAR SIR: Yours of the 21st instant, *in re* Estate of Wm. McKay, to George A. Cole, State Controller, was referred to this office. It appears from your letter that Wm. McKay died on the 28th day of September, 1916, and at the time of his death was a resident of Reno, Washoe County, Nevada. He left an estate, the clear valuation of which, after the payment of all debts and claims, is $9,174.55, which will be distributed to the only heir, John McKay, a brother, a resident of Novat, Pictou County, Nova Scotia.

Subdivision 2 of section 2 of chapter 266 (Stats. 1913, p. 411) of the inheritance tax law provides:

> Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister, or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear valuation of such interest in such property.

Subdivision 2 of section 4 of the same Act, which sets forth the exemptions, provides as follows:

> Property of the clear value of $10,000 transferred to any or of all the persons, described in the second subdivision of section two, shall be exempt.

In view of the foregoing provisions of the inheritance tax law, I am of the opinion that there is no inheritance tax due under the facts given against the estate of Wm. McKay, or the transfer to his only heir, John McKay.

Will you kindly let me know whether or not you agree with this opinion?

Yours very truly,

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

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56. Governor—Fish and Game—Birds—Mammals.

The Governor may legally grant a permit "for taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes," under provision of Stats. 1917, p. 468, but cannot grant a permit for the taking of mammals.

CARSON CITY, June 30, 1917.

HON. EMMET D. BOYLE, *Governor, Carson City, Nevada.*

DEAR SIR: Your oral request for an opinion as to whether or not you may legally grant a permit for the taking of birds and mammals for scientific purposes, received.

Section 50 of "An Act to provide for the protection and preservation of fish and game, providing penalties for the violation thereof, and repealing all Acts or parts of Acts in conflict therewith," approved March 27, 1917 (Stats. 1917, p. 468) contains the provision:

> Nothing in this Act shall be so construed as to prohibit any person (upon written permit of the Governor of the State) from taking or killing any bird or fowl, or collecting the nest and eggs of the same, for strictly scientific purposes.

This language, although negative, was no doubt intended to authorize the granting of permits for the purposes mentioned, but not for the securing of mammals. Upon this latter point an opinion was heretofore rendered (Atty.-Gen. Opin. 1915–1916, No. 80, p. 71), which correctly states the law.

You are therefore advised that, in the opinion of this office, you may legally grant a permit for "taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes," but cannot legally grant a permit for the taking of mammals.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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57. **Nepotism—Nevada School of Industry.**

The Superintendent of the Nevada School of Industry may employ, as an assistant manager, the son of a member of the Board of Control of said institution.

Such employment would not be in conflict with the Nepotism Act (Stats. 1915, p. 17) for the reason that the Board of Control appoints the Superintendent and the Superintendent appoints his assistants.

CARSON CITY, July 2, 1917.

HON. EMMET D. BOYLE, *Carson City, Nevada.*

DEAR SIR: In some way answer to your favor of March 20 has been overlooked until now.

You inquire whether it would be legal for the Superintendent of the Nevada School of Industry to employ, as an assistant manager, the son of a member of the Board of Control of said institution.

In my opinion such employment would not be in conflict with the Nepotism Act (Stats. 1915, p. 17), for the reason that the Board of Control appoints the Superintendent and the Superintendent appoints his assistants. Such Act provides:

> It shall be unlawful for any state, township, municipal, or county official, elected or appointed, to employ or keep in his employment on behalf of the State of Nevada, or any county thereof, in any capacity, his wife, son, daughter, or any person or persons related to him (by blood or marriage) within the third degree of affinity or consanguinity.

By a reading of the above, it will be seen that it in no way applies to the present circumstances.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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58. Governor—State Assayer and Inspector—University of Nevada.

The Governor may appoint a Professor of the University of Nevada as State Assayer and Inspector, provided that the party appointed possesses the qualifications specified in section 3 of the Act creating such office (Stats. 1917, p. 449).

CARSON CITY, July 11, 1917.

HON. EMMET D. BOYLE, *Governor of Nevada, Carson City, Nevada.*

DEAR GOVERNOR: Your letter, asking whether or not you might legally appoint a Professor connected with the University as State Assayer and Inspector, duly received. Section 3 of the Act creating the position in question (Stats. 1917, p. 449) provides as follows:

> The State Assayer and Inspector shall not at the time of his appointment, or at any time during his term of office, be an owner, officer, director, or employee of any mining corporation, smelter, sampler, or mill which purchases ore or does custom work, and he shall not hold stock or bonds of or in any smelter, sampler, or mill purchasing ore or doing custom work. He shall further be a practical mining man and have had at least five years actual and immediate experience in the mining business and shall be a qualified assayer and metallurgical chemist of at least three years actual experience.

If the party whom you desire to appoint possesses the qualifications necessary, there is no legal reason why you cannot make the appointment.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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59. Assessment and Taxation—Revenue—Refund of Taxes.

Four things are essential before a refund of taxes can be made under the provisions of Stats. 1917, p. 174: First, that the property has been assessed to two or more persons. Second, that the taxes have been paid two or more times. Third, that the assessment and payment have been made in the same year. Fourth, that competent evidence exists of all of such facts, and has been furnished to the Board of Examiners and the State Controller.

CARSON CITY, July 16, 1917.

HON. GEORGE A. COLE, *State Controller, Carson City, Nevada.*

DEAR SIR: Your letter of the 11th instant, enclosing list of claims sent in from Elko County relating to refund of taxes, and asking an opinion from this office as to whether or not there is any appropriation available out of which such claims can be paid, duly received.

The only statute providing an appropriation for the refund of state taxes is contained in an Act passed at the last session of the Legislature entitled "An Act regulating the manner of procedure for obtaining refund of state, county and other taxes which have been twice paid, and making an appropriation therefor."

Section 3 of such Act (Stats. 1917, p. 174) reads as follows:

> Whenever it shall appear to the State Board of Examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence the state tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said Board of Examiners, by its unanimous resolution, may direct the State Controller to draw his warrant for refund of such excess payment in favor of the assignee of all claims for such overpayment.

By this section four things are essential before a refund can be made: First, that the property has been assessed to two or more persons; second, that the tax has been paid two or more times; third, that the assessment and payment have been made in the same year; fourth, that competent evidence exists of all such facts and has been furnished to the Board of Examiners and to the State Controller.

The claims submitted do not show that the property was assessed to more than one person or that the taxes levied thereon were paid more than once during the same year. We, therefore, are of the opinion that there is no appropriation available out of which such claims can be paid.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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60. Nevada Industrial Commission—Claim for Compensation—Filing.

Claim for compensation must be filed within one year after death.

CARSON CITY, July 17, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: This office has received your letter of recent date, asking an opinion upon the following matter:

> With reference to sections 34d and 34½—where, because of the discontinuance of mail service due to the European war, applications for compensation from dependents residing in Austria-Hungary and the Balkan States cannot be filed or completed within a year after the death of a workman within the purview of the Nevada Industrial Act—would an application be valid—
>
> a. If received within a reasonable time after the resumption of the mail service;
>
> b. If notice of intent to file application has been received within the time limit of one year, but the application received after the time limit upon the resumption of the mail service?

Section 34d (Stats. 1913, p. 150) provides:

> No application shall be valid or claim thereunder enforcible unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

ction 34½ (Stats. 1917, p. 448) provides:

> Notice of the injury for which compensation is payable ...er this Act shall be given to the Commission as soon as

CORRECTION

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

CORRECTION

> Whenever it shall appear to the State Board of Examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence the state tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said Board of Examiners, by its unanimous resolution, may direct the State Controller to draw his warrant for refund of such excess payment in favor of the assignee of all claims for such overpayment.

By this section four things are essential before a refund can be made: First, that the property has been assessed to two or more persons; second, that the tax has been paid two or more times; third, that the assessment and payment have been made in the same year; fourth, that competent evidence exists of all such facts and has been furnished to the Board of Examiners and to the State Controller.

The claims submitted do not show that the property was assessed to more than one person or that the taxes levied thereon were paid more than once during the same year. We, therefore, are of the opinion that there is no appropriation available out of which such claims can be paid.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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60. **Nevada Industrial Commission—Claim for Compensation—Filing.**

Claim for compensation must be filed within one year after death.

CARSON CITY, July 17, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: This office has received your letter of recent date, asking an opinion upon the following matter:

> With reference to sections 34d and 34½—where, because of the discontinuance of mail service due to the European war, applications for compensation from dependents residing in Austria-Hungary and the Balkan States cannot be filed or completed within a year after the death of a workman within the purview of the Nevada Industrial Act—would an application be valid—
>
> a. If received within a reasonable time after the resumption of the mail service;
>
> b. If notice of intent to file application has been received within the time limit of one year, but the application received after the time limit upon the resumption of the mail service?

Section 34d (Stats. 1913, p. 150) provides:

> No application shall be valid or claim thereunder enforcible unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Section 34½ (Stats. 1917, p. 448) provides:

> Notice of the injury for which compensation is payable under this Act shall be given to the Commission as soon as

practicable, but within thirty days after the happening of the accident. In case of the death of the employee resulting from such injury, notice shall be given to the Commission as soon as practicable, but within sixty days after such death. The notice shall be in writing and contain the name and address of the injured employee and state in ordinary language the time, place, nature, and cause of the injury and be signed by said injured employee, or by a person in his behalf, or in case of death, by one or more of his dependents or by a person on their behalf. No proceeding under this Act for compensation for an injury shall be maintained unless the injured employee, or some one in his behalf, files with the Commission a claim for compensation with respect to said injury within ninety days after the happening of the accident, or, in case of death, within one year after such death. The notice required by this section shall be served upon the Commission, either by delivery to and leaving with it a copy of such notice, or by mailing to it by registered mail a copy thereof in a sealed, postpaid envelope addressed to the Commission at its office, and such mailing shall constitute complete service; the failure to give such notice or to file such claim for compensation within the time limit specified in this section shall be a bar to any claim for compensation under this Act, but such failure may be excused by the Commission on one or more of the following grounds: (1) That notice for some sufficient reason could not have been made. (2) That failure to give such notice will not result in an unwarrantable charge against the State Insurance Fund. (3) That the employer had actual knowledge of the occurrence of the accident resulting in such injury. (4) That failure to give notice was due to employee's or beneficiary's mistake or ignorance of fact or of law, or of his physical or mental inability, or to fraud, misrepresentation, or deceit.

Treating the word "application" as used in the earlier section, and the phrase "claim for compensation," as used in the latter section, as meaning the same thing, it is at once seen that the two sections, in cases where death does not occur, cannot be reconciled. As no other meaning but the same could possibly be given to such word or phrase, it necessarily follows that the later section supersedes the earlier section as to all injuries occurring after July 17, 1917, the date the later section became effective.

The section provides that notice of the injury shall be given within thirty days after the accident; that notice of death shall be given within sixty days after such death; that the claim for compensation for accident only shall be given within ninety days after the accident; and that the claim for compensation for death shall be given within one year after such death. A failure to give the notice or to file the claim for compensation within the time limit specified shall be a bar to any claim for compensation under the Act, but the Commission may excuse such failure upon one or more of the grounds specified in the section.

These grounds, it is noticed, all refer to the *notice;* they have no application to the claim for *compensation.* The Commission may excuse the failure to file the notice, but cannot excuse the failure to file the

claim for compensation. Under the statute, the claim for compensation must be filed within one year after death.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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61. Public Schools—School Districts—Creation of School Districts.

The word "guardian," as used in section 77 of the School Code (Rev. Laws, 3316), as amended by Statutes of 1917, p. 389 means "one who has been duly appointed by the Court."

Children residing with an aunt, who is not their guardian in such legal sense, would not justify the County Commissioners in considering them as a part of the five school-census children required in such section 3316.

CARSON CITY, July 20, 1917.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: I am in receipt of your favor of the 17th instant, calling my attention to chapter 200, Stats. 1917, p. 380, and inquiring: "Whether the expression 'guardian' as used in said chapter, means one who has been duly appointed by the court, or one merely having the custody of children as distinguished from a parent."

The said chapter 200 is an amendment of section 77 of the school law which authorizes Boards of County Commissioners, when there shall have been presented to them from the parents or guardians of five school-census children, to create new school districts.

It appears that such a petition has been presented to your County Commissioners asking for the establishment of a new district in which there are eight children, four of whom reside with an aunt, the father of these four children residing with his wife and other children in another school district. A guardian is defined as one who is entitled to the custody of an infant.

In the calculation of the number of children involved in this proposed new school district, it seems to me that these four children should be excluded from the computation, as under the provisions of section 124 of the school law (Rev. Laws, 3363), as amended by Stats. 1913, p. 155, it seems to me that these children are not school-census children of the district in which they have been residing with their aunt, for subdivision 2 of the section above mentioned includes in the school census "children temporarily residing out of said district for the purpose of attending institutions of learning." It is probable, therefore, that these children were included in the census of the district in which the father and mother reside.

It is the opinion of this office that the word "guardian" in said section 77 is used in a legal sense as above defined, and the fact that these children are residing with an aunt, who is not their guardian in such legal sense, would not justify the County Commissioners in considering them in the five school-census children required in said section 77.

Yours very truly,

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

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62. Nevada Industrial Commission—Death Benefits Amendment.

An amendment increasing death benefits passed subsequent to injury but prior to death does not authorize the payment for death under the amendment.

CARSON CITY, July 20, 1917.

HON. GEORGE D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 18th instant, requesting an opinion as to the amount of compensation payable to a dependent widow under the following statement of facts:

> The deceased received injuries March 20, 1915, from which he died on March 15, 1916. On March 22, 1915, three days subsequent to the injury, amendments to the original Nevada Industrial Insurance Act increased death benefits to a widow, with more than two children, from $5,000 to $6,000. In making the award to the widow and children, we are in doubt whether to pay compensation under the 1913 or the 1915 Act.

In *State ex rel. Carlson* v. *District Court of Hennepin County*, 154 N. W. 661, 11 Neg. and Com. Cas. 630, a similar state of facts existed. Upon an action the trial court held that the plaintiff, the widow of the deceased workman, who sued in her own behalf and as mother of her minor children, was entitled to recover under the law in force on the day her husband died, although the State had contended that the law in force on the day the deceased was injured governed. The Supreme Court held that:

> The trial court was right. The claim of plaintiff for compensation does not arise from the injury to her husband, but is a new and distinct right of action created by his death. (*Anderson* v. *Fielding*, 92 Minn. 42 Am. St. Rep. 665; *Michigan Central R. Co.* v. *Vreeland*, 227 U. S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914c 176; *American R. Co.* v. *Didricksen*, 227 U. S. 145, 33 Sup. Ct. 224, 57 L. Ed. 456.)

It is seen that because the death of the workman creates a new and distinct right of action, upon which point there can be, of course, no question, the Minnesota court held that the law in force at the time of such death governed. The court apparently entirely lost sight of the proposition that the new action is a right dependent upon the existence of a right in the decedent immediately before his death to have maintained an action for his wrongful injury. (*Michigan Central R. Co.* v. *Vreeland*, 227 U. S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914c, 176, and cases there cited.)

Can it be said that the decedent in the present case could have maintained an action for compensation for his injury under the 1915 amendment? Certainly not, because he was injured previously to the time that such amendment took effect. His cause of action for the injury had accrued and could not be affected by the subsequent change in the law. (Tiffany, Death by Wrongful Act, sec. 31–1). It therefore naturally follows that the Minnesota case, the only case directly in point that we have been able to locate, does not advance, so far as the important point is concerned, a correct doctrine.

In *Quinn* v. *Chicago, M. & St. P. Ry. Co.*, 124 N. W. 653, the court held that an amendment adding collateral relatives to the classes of persons for whose benefit action might be brought did not give such persons a right of action for death from an injury occurring before the amendment went into effect. It was there said "that all rights of action for the death of a person, as in this case, must depend upon the status as regards the law at the time of the injury, for it is then that the remedial right, as against the wrongdoer, must exist and its violation commence, in contemplation of the statute, in order that the final event terminating the possibility of pecuniary benefits accruing to the statutory beneficiary by a continuance of the life may constitute a remediable wrong. The result is that the law of 1907, passed subsequent to the wrong, adding collateral relations to the class of persons for whose benefit such an action as this may be brought, did not give such persons a right of action, because not having a remedial right at the time of the injury which could then form the basis of a right of action contingent upon the death of the injured party."

In view of the foregoing, you are advised that, in our opinion, compensation should be paid under the 1913 Act.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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63. Nevada Industrial Commission—Rejection by Employee—Action for Damages.

The Commission is not liable for any part of a judgment recovered at law by a rejecting employee.

CARSON CITY, July 21, 1917.

HON. GEORGE D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of yours of recent date, wherein you ask the following question:

> Where the employer accepts the terms and conditions of the Nevada Industrial Insurance Act, and one or more of his employees reject the Act (the employer paying compensation premium on the rejecting employee's salary), is the State Insurance Fund liable to the employer for any part of a judgment recovered at law by a rejecting employee, who has been injured?

Section 3b (Stats. 1913, p. 139) provides:

> In the event that such employee elects to reject the terms, conditions, and provisions of this Act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this Act.

No other provisions in the Act nor any amendments thereto express a contrary meaning, and in the absence thereof it is plain that the Act has no application whatever to an injured employee who has previously rejected it and has commenced an action for damages.

In our opinion, the Commission is not liable for any part of a judgment recovered at law by the rejecting employee.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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64. **Nevada Industrial Commission—Compensation—Suspension.**

The Commission should not send compensation payments to dependents residing in Austria-Hungary during the war.

CARSON CITY, July 21, 1917.

HON. GEORGE D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent letter wherein you ask the following question:

> Is the Commission precluded by federal statutes from sending compensation payments to dependents residing in Austria-Hungary during the European war, on account of the severance of diplomatic relations with that country?

When a war is commenced between nations, it arrests, *eo instanti*, all commercial intercourse and voluntary communication with the enemy, without the permission of the government; and the citizens or subjects of one belligerent become the enemies of the other, and of all its citizens or subjects. (*Griswold* v. *Waddington*, 16 John. 438; *The Rapid*, 8 Cranch, 161; *The Julia*, 8 Cranch, 193; *Harden* v. *Boyce*, 59 Barb. 425.)

The Government of the United States is at present at war with the Imperial German Government. With Germany is aligned Austria-Hungary. Diplomatic relations have been severed with Austria-Hungary, although a state of war has not been declared. This country is, therefore, at war with Austria-Hungary in a material, although not in a legal sense.

In our opinion, you would not be justified, although possibly not legally precluded, from sending compensation payments to dependents residing in Austria-Hungary during the present war.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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65. **State Assayer and Inspector—Deputy State Assayer and Inspector.**

Under the provisions of the law creating the office of State Assayer and Inspector (Stats. 1917, p. 449) it is contemplated that all expenses in connection with such office except deputy hire should be paid from the appropriation made in section 11 of the Act, and that such deputy hire should be paid from the State Assayer and Inspector Fund.

The State Assayer and Inspector can hire no deputy or incur any expenses until there is money in such fund.

The funds of the office of State Assayer and Inspector cannot be handled by the Controller of the University, as the Act itself makes direct provision for the handling of such funds by the State Treasurer.

CARSON CITY, July 21, 1917.

MR. FRANCIS CHURCH LINCOLN, *State Assayer and Inspector, Reno, Nevada.*

DEAR SIR: Answer to your recent letter, with reference to the law creating the office of State Assayer and Inspector (Stats. 1917, p. 449), has been delayed by absence.

Section 2 of the Act provides that the State Assayer and Inspector shall receive a specified salary and "his necessary traveling expenses when traveling in the discharge of his official duties, and necessary expenses for deputy hire, postage, stationery, printing, and other expenses."

Section 6 provides that:

> It shall be the duty of the State Assayer and Inspector to take charge at the destination thereof of all ores consigned to samplers, custom mills, or other ore purchasers located in this State, whenever requested so to do by the owner or forwarder of such shipments.

It further provides that the sum of 25 cents per ton shall be paid by the shipper or owner to the State Treasurer, to be placed in a fund to be known as the "Assayer and Inspector Fund."

Section 7 also provides for such fund and for the disposition of the receipts making up the same.

Section 8 provides:

> The State Assayer and Inspector may appoint deputies as necessary, at a wage of not to exceed five ($5) dollars the day and traveling expenses: *provided*, said deputies shall be paid out of the fund known as the "Assayer and Inspector Fund," in the State Treasury, and no deputy hire shall be incurred unless there are sufficient funds on hand to pay the per diem and expenses in said fund.

From the above it seems plain that the Legislature intended that all expenses in connection with your position, except deputy hire, should be paid from the appropriation made in section 11 of the Act, and that such deputy hire, and that only, should be paid from the State Assayer and Inspector Fund. As the Act distinctly specifies that no deputy hire shall be incurred unless there are sufficient funds on hand to pay the same, it is readily seen that you can hire no deputies nor incur any such expense until there is such money in such fund. In order to get money available for such purpose, it will unquestionably be necessary for you yourself to take charge of the first shipment of ores.

Under no circumstances can the funds of your office be handled by the Controller of the University, as the Act itself makes direct provision for the handling of such funds by the State Treasurer.

Owing to your position with the University requiring your presence there, I think the provisions of section 4 of said Act may be disregarded and the records may be kept at the University.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

66. Elections—Nomination by Petition—Political Parties—Registration.

Any party which goes on the ballot by petition cannot use the name of any party already officially recognized, or take such name as would be liable to be misleading or confusing with any other existing parties.

An old party already officially recognized in this State on change of its name could get its candidates on the ballot by petition only.

Said change of name could be made by the state committee or state convention or by petition filed with the Secretary of State.

The law (Stats. 1917, p. 438) allows three months within which members of a new party may register their party affiliations for the primary election.

No person would be allowed to vote at a primary election unless registered and party affiliation designated.

The organization of a new party includes the necessity of registration of voters as members of such new party, if they wish to participate in the primary election.

Two parties cannot nominate by primary the same man for the same office.

A fusion cannot be effected in this State by nominating the same man for the same office, because a nomination by petition of electors must be filed at least ten days before the primary election is held.

CARSON CITY, July 21, 1917.

MR. LEONARD D. FLACKER, *Office Secretary, National Prohibition Committee, 326 W. Madison St., Chicago, Ill.*

DEAR SIR: Owing to the absence of the writer from the city, answer to your favor of the 5th instant, asking further information in regard to the election laws of Nevada, has been delayed until now. You are correct in assuming that any party which goes on the ballot by petition cannot use the name of any party already officially recognized, or take such name as would be liable to be misleading or confusing with any other parties named. You inquire:

> Suppose an old party, as the Democrat or Republican, should desire to change its name, could it do so in Nevada without losing its present status, or would it have to become a new party and get on the ballot by petition?

In my opinion, any old party already officially recognized in this State, on change of its name, could get its candidates on the ballot by petition only.

The change of name could be made by the state committee or state convention or by petition filed with the Secretary of State. You further inquire:

> Assuming that the Prohibition Party would be organized in Nevada, file the proper petition sixty days before the primary with the required number of signatures and have a place upon the primary ballot. But as no one had a chance to register as a Prohibitionist in the previous registration period, who would be allowed to vote the Prohibition Party at such a primary? In other words, could a party organize and have its supporters vote its ticket in the primary without so registering as being of that party affiliation? Does the organization of a new party

include of necessity the registration of voters as members of a new party which may at that time (the time of registering) be unorganized?

In response to that inquiry, I would point out to you that the registration in this State opens on the 1st day of June in any general election year (Stats. 1917, p. 428), while the primary election is held on the first Tuesday in September (Stats. 1917, p. 277). This would allow a period of three months within which members of the Prohibition Party could register and designate their affiliation with such party. At the primary election no person would be allowed to vote the Prohibition Party ticket unless registered and affiliation designated. The organization of a new party does include the necessity of registration of voters as members of such new party, if they wish to participate in the primary.

In answer to your third inquiry, let me say that, in my opinion, two parties cannot nominate by primary the same man for the same office. The objection to this procedure lies in that portion of section 5 of the Act regulating the nomination of candidates, appearing on pages 277 and 278 of Statutes of 1917. The statement required in such section of any prospective nominee for any elective office must recite that: "I am a member of the ..... Party; that I believe in and intend to support the principles and policies of such political party in the coming election; that I affiliated with such party at the last general election of this State, and I voted for a majority of the candidates of such party at the last general election; that I intend to vote for a majority of the candidates of such party at the ensuing election for which I seek to be a candidate."

From the above you will see that it is impossible for two parties to nominate by a primary the same man for the same office, and, therefore, no fusion could be had in such manner. Further answering your third inquiry, I think it would be almost impossible to effect a fusion in this State, for the reason that section 31 of the Act above mentioned provides:

> In the case of nomination by petition of electors, such certificate of nomination shall be filed at least ten days before the primary election.

The nomination by petition of electors must, therefore, be made before the primary election is held.

Trusting this will answer your inquiries in full, I am,

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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67. **Water—Watercourses—State Engineer—Water Permit.**

Under the provisions of section 65 of the water law (Stats. 1913, p. 212), the State Engineer has no authority to set the time prior to which actual construction work shall begin at more than one year form the date of approval.

The extension of time further provided for is entirely within the discretion of the State Engineer.

If good cause is shown therefor, the State Engineer may extend the time of such period as he wishes.

CARSON CITY, July 21, 1917.

HON. J. G. SCRUGHAM, *State Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 19th instant, asking an interpretation of section 65 of the water law (Stats. 1913, p. 212). Such section provides:

> The State Engineer shall set a time prior to which actual construction work shall begin.

And, also,

> The State Engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin.

I am of the opinion that, under the section first above quoted, you have no authority to set the time prior to which actual construction work shall begin at more than one year from the date of approval. The extension of time further provided for is entirely within your discretion, and, if good cause is shown therefor, you may extend the same for such period as you wish.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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68. **Public School Districts—School Funds—Corporations.**

A corporation has no power outside of that granted to it by law.

School districts are not authorized to use school funds to dig a well and sell the water therefrom.

The provisions of section 3381, Rev. Laws, limit the uses for which school funds may be expended.

CARSON CITY, July 20, 1917.

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

DEAR SIR: You have referred to this office a letter from Hon. J. H. White, District Attorney of Mineral County, dated July 16, in which inquiry is made:

> Is there any objection to a certain school district digging a well and putting in windmill and tank and selling water from the well, using funds so gained for the improvement of the school grounds?

In my opinion such use of school funds would be entirely illegal, for the reason that Rev. Laws, 3278 (School Code, sec. 40), makes the Trustees of each school district a body corporate. Rev. Laws, 3305, prescribes the powers and duties of the Trustees. It is a familiar rule of law that a corporation has no power outside of that especially granted to it by law. Among such powers and duties, which are defined at great length in said section, I find no authority for the use of school funds for digging a well and selling the water therefrom.

Rev. Laws, 3381, provides specifically that the Board of Trustees may use the moneys from the county school funds to purchase sites, build or

rent schoolhouses, to purchase libraries, and to pay teachers or contingent expenses, and for the transportation of pupils.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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69. **License—State License—Motion-Picture Theaters.**

Under the provisions of the second paragraph of section 1, Stats. 1915, p. 236, it is the intention of the Legislature that all licenses shall expire at the end of the quarter or at the end of a calendar year.

In case of an application for a motion-picture theater license on July 27 the Sheriff may issue the license at the $40 rate for the months of August and September, being the unexpired portion of the third quarter of the year, and also issue licenses at $40 for the fourth quarter of the year. At the beginning of the next year the Sheriff may issue license for the full year at $75.

CARSON CITY, July 30, 1917.

HON. GEO. A. WHITELEY, *District Attorney, White Pine County, Ely, Nevada.*

DEAR SIR: I am in receipt of your favor of the 27th instant, asking construction of the second paragraph of section 7, chapter 178, page 236, Statutes of Nevada, 1915, as applied to the following state of facts:

It appears that a party in your town desires to open a motion-picture theater. He asks for his license and wants to take out an annual license and to pay therefor approximately five-twelfths of $75, on the supposition that he can take out an annual license and be given credit for the time in the year already elapsed, or he wishes to pay $75 for a year's license, the year to run from July 27, 1917, to July 27, 1918.

Section 1 provides a license of $20 per month, or $40 per quarter-year, or $75 for the whole year.

Section 27 of said Act provides said licenses shall be granted from one, two, three, or four quarters at the option of the person applying for such licenses. The term "quarter" whenever used in the Act with reference to time, is to be construed to mean a quarter of a year, and said quarter shall begin in the months of January, April, July, and October of each and every year. Said section further provides:

> Whenever any person, firm, association, or corporation shall apply for a license to conduct business in the middle of any quarter, or any part of a quarter, then said person, firm, association, or corporation shall be required to pay only for the unexpired portion of the quarter, and said licenses shall be so arranged as to have said license or licenses fall and become due on the beginning of a quarter, and the Sheriff and Auditor shall have the right to issue a license for a fractional quarter so as to have the licenses fall due at the beginning of a quarter as herein provided.

It appears from a reading of this section that it was the intention of the Legislature that all licenses should expire at the end of a quarter, or at the end of a calendar year.

It would, therefore, be impossible for your Sheriff to issue a license

to the party in question for one year from July 27. He may, however, issue a license at the $40 rate for the months of August and September, being the unexpired portion of the third quarter of this year, and also issue a license at $40 for the fourth quarter of this year, such license expiring December 31, 1917. At the beginning of the next year, if the party so desires, a license for the full year at $75 may be issued to him.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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70. **Nevada Industrial Commission—Regular Course of Employment—(Horse Play).**

An employee who is injured while indulging in horse play did not sustain an accident arising out of the employment, and a claim presenting such state of facts should be rejected.

CARSON CITY, July 31, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: Replying to yours of May 15, requesting an opinion of this office upon the following state of facts:

> An employee in the regular course of his duties while bringing a bucket of coal into the office occupied by him met a friend and, putting down the bucket of coal, in a spirit of pleasantry "squared off," as if sparring. The friend, in the same spirit, swung his arm out at the employee, who quickly stepped back and in so doing tripped over an obstacle and sustained a fractured thigh, which later resulted in his death.

I am of the opinion that under the facts stated the accident did not arise out of the employment, neither did it arise in the course of employment, and that a claim presenting any such state of facts should be rejected.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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71. **Nevada Industrial Commission—Public Employers—Accident Premiums.**

The State and its political subdivisions are not obliged to pay premiums to the Commission for accident benefits.

CARSON, CITY, August 2, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter, asking whether or not it is obligatory upon the part of the State, county, municipal corporations, school districts, or cities under special charter and commission form of government to pay premiums for accident benefits in accordance with section 23b, of the Industrial Insurance Act. Section 1b (Stats. 1917, p. 436), provides:

> Where a State, county, municipal corporation, school district, cities under special charter and commission form of gov-

ernment, is the employer, the terms, conditions, and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

Section 23b (Stats. 1917, p. 440), provides:

> For the purpose of providing a fund to take care of said accident benefits as in this Act provided the Nevada Industrial Commission is authorized and directed to collect a premium upon the total pay-roll of every employer except as hereinafter provided in such a percentage as the Commission shall by order fix; every employer paying such premium shall be relieved from furnishing accident benefits, and the same shall be provided by the Nevada Industrial Commission. Every employer paying such premium for accident benefits may collect one-half thereof, not to exceed one dollar per month, from each employee, and may deduct the same from the wages of such employee. * * * The State Insurance Fund provided for in this Act shall not be liable for any accident benefits provided by this section, but the fund, provided for accident benefits, shall be a separate and distinct fund, and shall be so kept.

Section 23d (Stats. 1917, p. 440), provides:

> Every employer operating under this Act alone or together with other employers may make arrangements for the purpose of providing accident benefits as defined in this Act for injured employees, and such employer may collect one-half of the cost of such accident benefits from their collective employees, not to exceed one dollar per month from any one employee, and may deduct the same from the wages of each employee. Employers electing to make such arrangements for providing accident benefits shall notify the Nevada Industrial Commission of such election, and in the event of failure to so notify said Nevada Industrial Commission of such election they shall be liable for premiums for accident benefits as heretofore provided by subdivision (b) of this section.

It is noticed that section 1b refers only to the State Insurance Fund. This fund is not liable for any accident benefits, and must be kept entirely separate and distinct from the fund provided for such purpose. As there are two funds, and as but one is mentioned in section 1b, it is the presumption that the other is excluded. (*V. & T. R. R. Co.* v. *Elliott*, 5 Nev. 358.)

It is the opinion of this office that the employers named in such section are not obliged to pay premiums to the Commission for accident benefits, but may make arrangements for the purpose of providing such benefits pursuant to section 23d of the Act.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy*.

72. **Public Schools—School Teachers—Public School Teachers' Retirement Salary Fund Act—School Trustees.**

Under the provisions of section 4 Public School Teachers' Retirement Salary Fund Act (Stats. 1915, p. 304), in case of failure to pay the $9 provided for each school year, the School Trustees are liable for such sum, if they fail to collect the same from the teacher's salary.

The teachers, also, are liable for such dues.

CARSON CITY, August 3, 1917.

HON. J. E. BRAY, *Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 23d ultimo, inquiring with reference to section 4 of the Public School Teachers' Retirement Salary Fund Act (Stats. 1915, p. 304), in case of failure to pay the $9 provided each school year, is the school board or the school teacher liable for the payment of such dues, and, also, if the school board, is its liability at all affected by its neglect to deduct the dues from the teacher's salary, prior to final payment for the term or year?

Said section 4 provides for the deduction by "every official whose duty it is to pay said teacher's salary."

As the salaries of public-school teachers are paid by the Board of School Trustees, or County Board of Education, it follows that they are the officials whose duty it is to pay the teacher's salary. In case of failure to perform such duty, they are clearly liable for the amount of these dues, and the teacher is also liable for such dues. Such liability of the School Trustees arises from their failure to follow out the plain provisions of this Act.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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73. **Public Schools—School Districts—Consolidation of Public School Districts—Teachers' Contracts.**

In case a consolidation of school districts is effected under the provisions of Stats. 1915, pp. 27–30, and before such consolidation the trustees of one of the districts consolidated had entered into a contract with a teacher for the ensuing year, her contract survives and she may enforce the same.

In such case it will be necessary for the Trustees of the consolidated districts to give the legal notice provided in the contract for the termination thereof.

CARSON CITY, August 3, 1917.

HON. J. E. BRAY, *Carson City, Nevada.*

DEAR SIR: I am in receipt of yours of the 21st ultimo, asking the interpretation of the school consolidation Act, on page 27–30 of the Statutes of 1915.

It appears that one such consolidation has been effected and another is now pending, and the teacher has been reemployed in one of the consolidated districts in each case, and given a written contract for the ensuing school year.

Under the provisions of subdivision 11, Rev. Laws, 3305, you inquire: "Has the new organization through its School Trustees the right to ignore a prior contract for teaching on the part of one of the districts,

or must the Trustees of the consolidated district give the reemployed teacher a thirty-day notice of discharge required by her contract?"

I am clearly of the opinion that, notwithstanding the district for which the teacher has been employed has been eliminated by the amalgamation of such districts into a consolidated district, her contract survives, and she may enforce the same, and it will be necessary for the Trustees of the consolidated district to give the legal notice for termination of contract provided therein.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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74. **Nevada Industrial Commission—Compensation—Widow.**

Section 25 supersedes section 30 and controls as to payment of compensation thereunder.

CARSON CITY, August 3, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge the receipt of your recent letter, asking the following question:

> Is section 30, providing for compensation to children under 16 years of age and for lump-sum settlements, not to exceed $300 upon the remarriage of a widow, repealed by implication by clauses 2 and 4 of section 25a, "Death Benefits"?

Section 25a of the original Act (Stats. 1913, p. 146), which makes provision for the amount of compensation, was amended in 1915 and again in 1917. Clauses 2 and 4 thereof, as at present reading (Stats. 1917, p. 441), provide:

> 2. To the widow, if there is no child, thirty per centum of the average wage of the deceased. This compensation shall be paid until her death or remarriage with two years' compensation in one sum upon remarriage.
>
> 4. To the widow or widower, if there is a child or children, the compensation payable under * * * clause 2, and in addition the additional amount of ten per centum of such wage for each such child until the age of 18 years, not to exceed a total of 66⅔ per cent for such widow or widower and the children. If the children have a guardian other than the surviving widow or widower, the compensation on account of such children may be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of 18 years, or if over 18 years, and incapable of self-support, becomes capable of self-support.

Section 30 of the same Act (Stats. 1913, p. 148), still standing as originally enacted, reads:

> Upon the marriage of a widow, she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, not to exceed, however, the sum of $300; *provided, however*, that allowance shall be made by the Commission for the support of minor children under the age of 16 years; the total

amount thereof to be not less than $10, nor more than $35 per month, to be fixed by the Commission.

There is a conflict in the two sections. They are repugnant to each other and cannot be reconciled. Upon the theory that effect should always be given to the latest, rather than to an earlier, expression of the legislative will, it has been held that a section last amended prevails over one in conflict therewith, even though preceding it in order of arrangement (*People* v. *Dobbins*, 73 Cal. 257, 14 Pac. 860).

It is our opinion that section 25a, being the latest expression of the legislative will, controls as to the payment of compensation thereunder.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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75. License—Auctioneer—Revenue.

The words "every auctioneer" used in section 123 of the Revenue Act, as amended by Stats. 1915, p. 90, apply to a man permanently residing in his locality and who, for the accommodation of farmers, carries on auction sales at various ranches.

CARSON CITY, August 3, 1917.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: I am in receipt of your favor of the 28th ultimo, asking interpretation of chapter 74, Statutes of 1915, providing as follows:

> Every traveling merchant, hawker, or peddler, and every auctioneer, shall, before, vending any goods, wares, or merchandise, or acting as auctioneer in any county of this State, procure from the Sheriff of such county a license authorizing such business in such county, and shall pay for such license the sum of $50 per month.

You wish to know whether the expression "every auctioneer," used in the above, applies to a man permanently residing in this locality, and who for the accommodation of farmers carries on auction sales at various ranches; or, is this expression to be considered as applied to the "traveling" type of auctioneer?

If the word "and" before every auctioneer had been "or," I should be of the opinion that under the principle of *ejusden generis* this statute would not apply to an auctioneer of the class to which you refer, and that such auctioneer to be liable for license would have to conduct his business in a manner similar to traveling merchants, hawkers, and peddlers.

But, under the plain reading of the statute, it applies to a man permanently residing in your locality who, for the accommodation of farmers, carries on auction sales at various ranches.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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76. **Nevada Industrial Commission—Acceptance of Act—Payment of Premiums.** The fund is not liable for the payment of compensation for any accident occurring previous to the receipt of notice to accept the Act and previous to the receipt of premiums except in case where employer is the State or one of its political subdivisions.

CARSON CITY, August 8, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: We wish to acknowledge receipt of your recent letter wherein you ask whether or not the State Insurance Fund is liable for compensation for injuries sustained by employees subsequent to July 1, 1917, but prior to receipt of a notice to accept the Act and prior to receipt of premiums.

Previous to the taking effect of the 1917 amendment, every employer was conclusively presumed to have accepted the Act unless and until he gave notice to the contrary. Sections 1c and 1d of the amendatory Act (Stats. 1917, pp. 436, 437), which became effective July 1, 1917, provides that every employer having the right to accept the Act shall be conclusively presumed *not* to have accepted it unless and until notice in writing of an election to accept, substantially in the form prescribed, shall have been given to the Commission.

All employers have the right to accept the Act, except such as are mentioned in section 1b (Stats. 1917, p. 436), which reads as follows:

> Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon employer and employee.

This section enumerates certain employers who have no option in the matter of accepting or rejecting the Act. Such employers cannot, therefore, be said to have a right to accept the Act, and do not come within the provisions requiring notice of acceptance to be given. As to all other employers, a notice in writing of an election to accept the Act must be given to the Commission. The fact that a certain employer was a contributor to the fund previous to the amendment is immaterial, for he was then governed by the old law. When the amendment became effective it was incumbent upon him, if he desired to accept the law, to give the required notice. Such notice is not given until the Commission is in actual receipt of the same. (*O'Neill* v. *Dickson*, 11 Ind. 253, 254.)

The payment of the premiums is provided for in sections 1f, 1g, and 21a (Stats. 1917, pp. 438, 439). The first-mentioned section states that every employer electing to be governed by the provisions of the Act, before becoming entitled to the benefits of the Act in the providing, securing, and paying of compensation to the employees shall on or before July 1, 1917, and thereafter during the period of his election, pay all premiums in the manner hereinafter prescribed; section 1g is to the effect that failure to pay the premiums as required shall operate as a rejection of the Act; and section 21a provides:

> Every employer electing to be governed by the provisions of this Act shall, on or before the 1st day of July, A. D. 1917, and monthly thereafter, pay to the Nevada Industrial Commission for a State Insurance Fund premiums in such a percentage of his estimated total pay-roll as shall be fixed by order of the Nevada Industrial Commission; and the Commission may require all premiums required by this Act to be paid for three months in advance upon the estimated pay-roll of the employer, unless the Commission be satisfied of the financial responsibility of the employer, or unless a good and sufficient surety bond for the payment of premiums be given to the Nevada Industrial Commission.

It is noticed that every employer electing to be governed by the Act shall on or before July 1, 1917, and monthly thereafter, pay premiums in such a percentage of his estimated pay-roll as shall be fixed by the Commission; and that the Commission may require all premiums to be paid for three months in advance.

The words "monthly thereafter," used in this section, must mean on or before the first day of each succeeding month after the month of July, 1917. Undoubtedly, the intention of the Legislature was to make the premiums from all employers electing to be governed by the Act, payable one month, and at the option of the Commission payable three months, in advance. Otherwise, the total pay-roll could have been figured exactly, and the words "estimated total pay-roll" would not have been inserted.

However, the employers mentioned in section 1b, by the terms of that section, cannot elect to be governed by the Act and cannot reject its provisions. As such employers are absolutely required to pay premiums to the fund, no reason exists for the payment of premiums on an estimated pay-roll; and certainly the failure by such employers to pay premiums in advance cannot operate as a rejection of the Act.

It is, therefore, the opinion of this office that the fund is not legally liable for the payment of compensation, for any accident occurring previous to the receipt of notice to accept the Act and previous to the receipt of premiums, except in cases where the employer is one mentioned in section 1b.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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77. Stationary Engineers—Licenses.

> Although the provisions of section 39 in regard to licenses of stationary engineers is in the alternative, it is the intention of the Legislature that if his knowledge and experience is such as to qualify him to operate a particular kind of hoist upon which he is to be engaged, he may procure the necessary license irrespective of whether or not he has actually had the one year's experience.

CARSON CITY, August 9, 1917.

HON. A. J. STINSON, *State Mining Inspector, Carson City, Nevada.*

DEAR SIR: I wish to acknowledge receipt of your oral request for an

opinion as to whether or not it is necessary that an applicant for a license to operate a hoist must have had at least one year's experience before such license can be granted by the Board of County Commissioners.

Section 3900, Revised Laws, reads as follows:

> No license shall be granted or issued to any person to operate any stationary engine, steam boiler, hoist, or 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 and 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 is noticed that this section provides for the making of an affidavit to the effect that the applicant has had at least one year's experience, or, instead thereof, that his knowledge and experience is *not* such as to justify the board before whom such application is made in the belief that he is competent. Although the language of this section is in the alternative, it was undoubtedly the intention of the Legislature that any applicant, whose knowledge and experience is such as to qualify him to operate the particular kind of hoist upon which he is to be engaged, may procure the necessary license, irrespective of whether or not he actually has had the one year's experience.

In the case you mention the applicant is willing to stand an examination; and, if this be true, it will be a very easy matter for him to undergo such examination before parties competent to examine one in that particular kind of work and then make affidavit of such fact to the Commissioners. He can also supplement his own affidavit by affidavits of those before whom he is examined. If he proves himself to be competent, the board will be fully justified to issue the license in question.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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78. **Nevada Industrial Commission—Acceptance of Act—Payment of Premiums.**

Accepting employer is not entitled to the benefits of the Act, even though he has not filed a notice of rejection, unless he pays the premium in advance on or before the 1st day of each month, on the estimated pay-roll for that month.

CARSON CITY, August 10, 1917.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: We wish to acknowledge receipt of your letter of the 8th instant, wherein you ask the following questions:

> Supplementing our inquiry of the 1st of August, relative to the failure of employers to pay premiums in accordance with the terms of sections 1g and 21a of the Nevada Industrial Insurance Act amended to take effect July 1, 1917, your opinion is respectfully requested on the status of an employer

who, on or before July 1, 1917, had filed a written acceptance of the Act and had paid premium on an estimated July pay-roll, but who did not pay premiums on or before August 1 on an estimated pay-roll, but paid premiums on the estimated pay-roll for August on the 3d day of August at 10 a. m., two hours after two fatalities had occurred in the employer's property?

Do the provisions of sections 4a and 4b require notice of rejection on the part of the employer, before he is considered a rejector under the provisions of section 1g?

Is the employer, under the above statement of facts, a rejector of the provisions of the Act under section 1g and, therefore, subject to an action at law by the dependents of the deceased; or is the fund liable for compensation for injuries sustained by employees on the day of the payment of premium by the employer, if the injury was sustained at a time prior to the hour of payment?

Section 21a of the old Act (Stats. 1915, p. 283) provided that the employer, on or before the 15th day of each and every month, pay to the Commission premiums on his total pay-roll for the preceding month. In 1917 such section was amended (Stats. 1917, p. 439) and it now distinctly specifies that all employers electing to be governed by the Act shall, on or before July 1, 1917, and monthly thereafter, pay to the Commission premiums on an estimated pay-roll; and further provides that the Commission may require all premiums to be paid for three months in advance. In a former opinion we stated:

> The words "monthly thereafter," as used in this section, must mean on or before the first day of each succeeding month after the month of July, 1917. Undoubtedly, the intention of the Legislature was to make the premiums from all employers electing to be governed by the Act, payable one month, and at the option of the Commission payable three months, in advance. Otherwise, the total pay-roll could have been figured exactly, and the words "estimated pay-roll" would not have been inserted.

A payment of August premiums made on August 3 is not a payment in advance, because, in order to make a payment of premiums in advance for any given month, such payment must be made on or before, not after, the first day of that month.

Section 4a and 4b (Stats. 1917, pp. 438, 439) reads as follows:

> (a) When the employer has accepted the terms of this Act, * * * in compliance with the provisions of this Act, such election shall continue and be in force until such employer shall thereafter reject the provisions of this Act, * * * as provided in subsection (b) of this section.
>
> (b) When an employer accepts * * * the provisions of this Act, such party may at any time thereafter elect to waive such acceptance * * * by giving notice in writing in the same manner required by the employer in accepting * * * the provisions of this Act, and which shall become effective when filed with the Nevada Industrial Commission.

While section 1f (Stats. 1917, p. 438) is to the effect that an employer electing to be governed by the Act, before becoming entitled to its benefits, shall pay the premiums as required; and section 1g (Stats. 1917, p. 438) provides that failure on the part of any such employer to pay the premiums as by the provisions of this Act required shall operate as a rejection of the Act.

It is a cardinal rule in the construction of statutes that effect is to be given, if possible, to every word, clause, and sentence. The court, so far as practicable, will reconcile the different provisions, so as to make them consistent and harmonious, and to give a sensible and intelligent effect to each. (36 Cyc. 1128; *Ex Parte Prosole*, 32 Nev. 378, 108 Pac. 630.) Again, no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided. (*Torreyson* v. *Board of Examiners*, 7 Nev. 19.)

The accepting employer is not entitled to the benefits of the Act, even though he has not actually filed a notice to reject its provisions, unless he pays the premiums as required. As previously stated, such premiums must be paid in advance on or before the first day of each month on an estimated pay-roll for that month. Although an employer's election to accept the Act continues in force until he files a notice of rejection, a failure to pay the premiums operates as a rejection. In other words, the Act is rejected by the employer when he files his notice to reject, but his failure to pay the premiums as required has the effect of a rejection and subjects the employer to an action for damages.

Under such interpretation the various sections of the statute applicable to the present case can be reconciled and given force and effect; any other interpretation would render certain sections ineffective and nugatory.

We are, therefore, of the opinion that upon the facts stated the State Insurance Fund is not liable for the payment of compensation.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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79. **Licenses—Liquor Licenses—State Liquor Licenses—County Liquor Licenses—Liquor Board.**

The provisions of section 3, Stats. 1915, p. 237, requiring persons desiring to dispose of liquors in quantities less than one quart, do not refer to incorporated cities or towns.

The provisions of section 4 of the same Act, Stats. 1915, p. 237, relate only to unincorporated cities and towns.

The provisions of section 4 of said Act mean that any person outside of any incorporated city or town wishing to engage in the liquor business and sell any quantity whatsoever must procure a county license from the liquor board.

CARSON CITY, August 10, 1917.

HON. THOS. E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR SIR: I am in receipt of your favor of the 7th instant, asking an interpretation of certain sections of the license Act contained in chapter 178 of the Statutes of 1915. You inquire:

1. Do the provisions of section 3 of the above-named Act, requiring persons desiring to dispose of liquors in quantities less than one quart refer only to *incorporated cities and towns?* If this be so, it would still be possible for the city government to regulate and control the traffic.

In answer thereto let me say that incorporated cities and towns have full control over liquor traffic by virtue of their charter if incorporated by special Act, or by the provisions of section 794, subdivision 10, Rev. Laws, if incorporated under such Act.

In the opinion of this office, therefore, section 3 does not refer to incorporated cities and towns.

You further inquire:

2. Do the provisions of section 4 of said Act requiring "any person outside of any *incorporated city or town* wishing to engage in the liquor traffic in any county in the State of Nevada" include licenses to be granted in *unincorporated towns?*

The incorporated cities and towns having control of the liquor traffic within their confines, section 4 of said Act relates only to unincorporated cities and towns.

You further inquire:

3. Do the provisions of section 4, requiring "any person outside of any incorporated city or town wishing to engage in the liquor traffic," mean that a person wishing to engage in the traffic outside of an incorporated city or town and sell in any quantities whatsoever must procure a county license from the liquor board?

This section means that any person outside of any unincorporated city or town wishing to engage in the liquor business and sell any quantity must procure a county license from the liquor board.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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80. **Revenue and Taxation—Public Land—Government Lands.**

Lands selected by railroad company, which selection has not yet been approved by the Land Department of the United States, are not subject to assessment and taxation.

CARSON CITY, August 13, 1917.

HON. F. N. FLETCHER, *Secretary, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, enclosing letter from Hon. D. V. Cowden, Tax Attorney of the Central Pacific Railway, which is herewith returned.

Mr. Cowden is entirely correct in his statement that lands selected by the railroad company, which selection has not yet been approved by the United States Land Department, are not subject to assessment and taxation.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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81. Eight-Hour Law—Females.

It is unlawful to require female employees in certain employments to work more than eight hours during any one day of twenty-four hours.

CARSON CITY, August 17, 1917.

MR. WM. E. WALLACE, *Commissioner of Labor, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 17th instant, asking whether or not an employer may work his female employees more than eight hours during the twenty-four hours of one day, if he so arranges that they will not work more than fifty-six hours during any one week.

The provisions of law applicable to this particular matter are found in an Act limiting the hours of labor of females, etc. (Stats. 1917, p. 16.) Section 1 of said Act reads as follows:

> No female shall be employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company in this State, more than eight hours during any one day, or more than fifty-six hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or fifty-six hours during any one week; *provided, however*, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetables, nor to nurses, nor to nurses in training in hospitals.

It is provided in section 4 that:

> Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this Act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this Act during any day of twenty-four hours, shall be guilty of a misdemeanor.

When these two sections are read together it is plain that the Legislature intended that no employee mentioned in section 1 should work more than eight hours during any one day of twenty-four hours.

The question which you ask should, therefore, be answered in the negative.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

82. Public Health—Local Health Officers—Deputies.

The wife of a local health officer cannot keep the records and sign the reports as subregistrar under a regularly appointed deputy.

CARSON CITY, August 17, 1917.

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

DEAR SIR: We wish to acknowledge receipt of your request for an opinion upon the following state of facts:

> A local health officer having requested and been granted a leave of absence from the County Commissioners, with permission to have a deputy act in his place as County Physician and health officer, desires to know if there will be any objection to his wife keeping the records under this deputy, and signing the records as subregistrar.

In section 6 of an Act creating the State Board of Health, etc. (Stats. 1913, p. 126), it is provided:

> The Board of County Commissioners shall appoint a local health officer for a period of not less than one year who shall only be removed for incompetency, and who shall act as a collector of vital statistics and is empowered to appoint such deputy or deputies as may be necessary, with the approval of the Board of County Commissioners. For collecting and compiling the vital statistics of the county he shall receive from the county a sum of not less than $25 per month, and the Board of County Commissioners are directed to allow a claim for this or for such greater sum as they may deem proper for the work performed; the deputies appointed by the local health officer, with the approval of the County Commissioners, shall be paid, in the same manner, a sum not to exceed $25 per month for registering and compiling the data prescribed by the State Board of Health and by this Act. The deputy health officer shall file with the local health officer monthly reports not later than the fifth day of each month which said report shall be compiled by the local health officer and forwarded to the secretary of the State Board of Health not later than the 10th day of each month. In counties where deputy registrars are appointed, the County Commissioners shall allow them a monthly salary or the sum of one dollar ($1) for each birth and death certificate executed by them.

The statute contemplates when necessary the appointment of deputy health officers, who may also act as registrars; but there is no provision authorizing one who is not a regularly appointed deputy to perform the duties of such registrar. We are, therefore, of the opinion that the wife of a local health officer cannot keep the records and sign the reports as a subregistrar under a regularly appointed deputy.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

83. Inheritance Tax Law Exemptions.

Under section 4, subdivision 1 of inheritance tax law (Stats. 1913, p. 412), one exemption of $20,000 is allowed. If there is no widow, but a minor child, such child is allowed this sum. If there is more than one minor child, the exemption is allowed for all such minor children.

CARSON CITY, August 25, 1917.

HON. C. B. HENDERSON, *Elko, Nevada.*

DEAR SIR: This office is in receipt of your favor of the 22d instant, asking an interpretation of subdivision 1, section 4, of inheritance tax law (Stats. 1913, p. 412).

The portion of said section 4 material to this inquiry reads as follows:

> The following exemptions from the tax are hereby allowed:
> (1) Property of the clear value of twenty thousand dollars transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

In the opinion of this office one exemption of twenty thousand dollars is allowed under this subdivision. If there is no widow, but a minor child, such child is allowed this sum. If there is more than one minor child, twenty thousand dollars exemption is allowed for all such minor children.

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84. State Officers—State Employees—Vacation.

Section 4109, Rev. Laws, limits the leave of absence, or vacation, with full pay, to fifteen days in each calendar year.

An employee who defers taking his regular vacation in any given year cannot legally extend such vacation by fifteen days in the subsequent year.

CARSON CITY, August 28, 1917.

MR. R. H. MULLIN, *Director, State Hygienic Laboratory, Reno, Nevada.*

DEAR SIR: Your letter of the 27th instant, wherein you ask whether or not you are entitled, as a matter of law, to one month's vacation in each year, duly received.

The statute applicable thereto (Rev. Laws, 4109) reads as follows:

> Each and every state employee who has been in the service of the State for six months or more, in whatever capacity, shall be allowed, in each calendar year, a leave of absence of fifteen days, with full pay, providing the head of each department shall fix the date of such leave of absence.

The language of this section is plain. It limits the leave of absence, or vacation, with full pay, to fifteen days in each calendar year; and applies to each and every state employee. One in the employ of the State who defers taking his regular vacation in any given year cannot legally extend his vacation by fifteen days in a subsequent year.

As you are unquestionably a state employee, you naturally come within the provisions of the statute.

Yours very truly,

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

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85. Clerk's Fees—Change of Venue.

Under the provision of the Act regulating the fees of the County Clerk of Humboldt County (Stats. 1915, p. 173), the Clerk is authorized to exact a fee in every civil case which includes a case transferred from another county as well as an action originally commenced.

CARSON CITY, August 30, 1917.

MR. J. W. DAVEY, *County Clerk, Winnemucca, Nevada.*

DEAR SIR: Your letter of recent date, asking whether or not you are entitled to a fee for filing papers in a civil action originally commenced by an individual in Washoe County, but in which the venue was later changed to Humboldt County, duly received.

At the time of filing the papers in question your fees were regulated by the provisions of the 1915 Act (Stats. 1915, p. 173), which reads as follows:

> The County Clerk of Humboldt County, State of Nevada, as County Clerk and ex officio Clerk of the District Court of the Sixth Judicial District of the State of Nevada, in and for Humboldt County, shall from and after the passage of this Act, charge and collect the following fees in civil, probate, and guardianship proceedings; *provided*, that said Clerk shall neither charge nor collect, any fees for services by him rendered to the State of Nevada, or to the county of Humboldt:
>
> On the commencement of any action or proceedings in the District Court, except probate proceedings, to be paid by the party commencing such action or proceeding, seven dollars; said fee to be paid in addition to the court fee of three dollars now provided by law. * * * No fee shall be charged by the Clerk for any services rendered in any criminal case.

The court fee of three dollars, mentioned above, is provided for in Rev. Laws, 2030, reading thus:

> At the time of the commencement of every civil action or other proceeding in the several District Courts of this State, the plaintiff shall pay the Clerk of the court in which said action shall be commenced the sum of three dollars.

This latter section was undoubtedly passed in pursuance of the constitutional provision (sec. 16, art. 6) requiring the Legislature to provide by law for the payment of a special court fee upon the institution of each civil action and other proceeding.

Your fees were thus fixed at the flat sum of $10 for each action or proceeding. In this respect you are situated somewhat differently than is the Clerk who is working under the general fee bill prescribing a fixed fee for each paper filed and each entry made, etc. There is no question as to the right of the other Clerk to exact fees for filing papers in a case transferred, because the statute distinctly prescribes a fee for filing each paper. The question arises in your case only because of the fact that you are operating under a special statute authorizing a flat fee in each action or proceeding.

However, by the passage of the special fee Act, the Legislature manifested an intent to exact a fee in every civil case, except for services rendered to the county or to the State. By the use of the language

"on the commencement of any action or proceeding in the District Court," the Legislature intended to include a case transferred from another county as well as an action originally commenced. Although it is well settled that an officer can only demand such fees as the law has fixed and authorized for the performance of his official duties (*Washoe County* v. *Humboldt County*, 14 Nev. 123, 131), the plain intention of the Legislature cannot be ignored simply because different language might have been used.

It is our opinion that you are entitled to the fee in question.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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86. **County Clerk's Fees—Change of Venue.**

Upon transfer of an action from one county to another the prescribed fees must be paid by the party filing the papers.

CARSON CITY, August 30, 1917.

MR. CLAS. A. MCLEOD, *County Clerk, Yerington, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 28th instant, wherein you submit the following proposition:

> Where a suit is filed in Washoe County and on proper showing is transferred to this county for trial, the plaintiff paying the Clerk's filing fees in said Washoe County, and on removal to this county, my contention is that the regular fees for filing, etc., should be paid me here, by the plaintiff for filing his papers and the defendant for his papers, but the attorney for the plaintiff claims that after paying the filing fees in Washoe County he should not pay the fees here, but that the party removing the case should pay all the said fees. Please let me know your opinion at the earliest possible time, as there is a case transferred here, and I have refused to file the same until I get my fees.

There is no merit whatever in the contention of the attorney "that the party removing the case should pay all the said fees," although this is the law in many other jurisdictions. In those jurisdictions the statutes expressly direct that the party causing the removal shall pay the fees. We have no such statute in Nevada, and the statutory law of other States is of course not applicable.

As you undoubtedly are entitled to fees for filing papers in a case transferred from another county, and as the statute is silent as to who should pay them, it must be presumed that the prescribed fees are to be paid by the party filing the papers.

In our opinion you have the right to refuse to file the papers unless the statutory fees are paid. (*Rose* v. *Richmond M. Co.*, 17 Nev. 55.)

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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87. Licenses—Engineers—Stationary Engineers.

The provisions of section 3904, Rev. Laws, prohibits one from operating a stationary hoisting engine without a license where he is working for himself.

CARSON CITY, September 5, 1917.

MR. A. J. STINSON, *Inspector of Mines, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your request for an opinion upon the following question:

> Does the law prohibit one from operating a stationary hoisting engine without a license where he is working for himself?

This point seems to be covered fully in section 7 of an Act for licensing engineers (Rev. Laws, 3904), which reads as follows:

> Any persons operating any stationary engine, steam boiler, hoist or other stationary machinery or apparatus or hoisting machinery used for the purpose of hoisting or lowering men or material from a shaft or mine, where the lives, health or limbs of men may be involved, who has not first procured the license herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty ($50) dollars nor more than two hundred and fifty ($250) dollars, or by imprisonment in the county jail not less than thirty nor more than one hundred and twenty days, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing in this Act contained shall be held to apply to those operating in person their own private apparatus nor to persons operating any stationary engine, steam boiler or other apparatus or machinery for town or city purposes.

It is our opinion that your question should be answered in the affirmative.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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88. Revenue Taxation—Patented Mines.

In order to exempt a patented mine from taxation, under the provisions of Stats. 1915, p. 317, the work performed thereon must be performed during the calendar year for which it was taxed.

CARSON CITY, September 6, 1917.

MR. F. N. FLETCHER, *Secretary, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your request for an opinion upon the following question:

> The owner of certain patented mining claims submitted an affidavit duly signed and sworn to on August 15, 1917, which, after giving the names and location of said claims and stating

that they lie together and form one contiguous group, reads as follows: "That an amount equal to $100 per claim has been done upon the said group during the year next preceding the making of this affidavit; that such labor was done at the expense of the owner of said patented claims, and consisted of general work performed on the surface, watchman's services, services of laborers in moving machinery and supplies, all at a cost far exceeding a sum equal to one hundred dollars for each of the claims mentioned." Should the board strike from the roll the assessment against the patented mines named in said affidavit?

No patented mine should be exempted from taxation, nor the assessment thereof stricken from the roll, where the labor has already been completed, unless it appears by affidavit that at least $100 in labor has been actually performed upon said patented mine during the calendar year for which assessment is levied. (Stats. 1915, p. 317). The affidavit in question does not show that any labor was performed upon the particular mines during the present year. Instead, it specifies that "during the year next preceding the making of this affidavit" certain work was done. The affidavit was made in 1917; consequently the labor must have been performed during 1916. This is certainly not a sufficient showing.

Further, the affidavit must particularly describe the work performed, and upon what portion of the mine, and when and by whom done (Stats. 1917, p. 318). None of these essentials are stated in the affidavit in question.

In addition, the character of the labor alleged to have been performed upon the particular claims is not sufficient to authorize their exemption from taxation.

The present affidavit does not show, nor can it be presumed, that the services of a watchman are necessary; that the property is but temporarily idle; that there are any buildings or structures upon the ground, or that the owner ever again intends to resume operations. A case applicable to this particular phase of the matter is that of *Hough* v. *Hunt*, 138 Cal. 142, 70 Pac. 1059, 94 Am. St. Rep. 17, wherein the court said:

> There may be cases where work has been temporarily suspended, and there are structures which are likely to be lost if not cared for, and it appears that the structures will be required when work is resumed, and that the parties do intend to resume work, in which money expended to preserve the structures will be on the same basis as money expended to create them anew. But this could not go on indefinitely. As soon as it should appear that this was done merely to comply with the law and to hold the property without any intent to make use of such structures within a reasonable period, such expenditure could not be said to have been made in work upon the mine. Much less could the mine-owner bring picks, shovels, and things of that kind, upon the mine, and have some one to watch them to prevent their being stolen, and have such cost of watching considered as work upon the mine.

It is, therefore, our opinion that the board should not strike from the roll the assessment against the patented mining claims named in said affidavit.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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89. **Revenue Taxation—Real Property—Personal Property.**

The assessment rolls should be completed on or before the third Monday of July. When completed they leave the Assessor's hands, and that officer has no legal authority to place either real or personal property thereon except under the direction of the Tax Commission (Stats. 1917, p. 331).

CARSON CITY, September 11, 1917.

HON. F. N. FLETCHER, *Secretary, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 10th instant, wherein you ask the following questions:

> Under existing laws, up to what date should County Assessors place taxable property on the real rolls?
>
> Up to what date should County Assessors place taxable property on the personal rolls?

Rev. Laws, 3624, as amended Stats. 1915, p. 178, provides:

> Between the first day of January and the second Monday of July of each year, the County Assessor * * * shall ascertain, by diligent inquiry and examination, all property in his county, real and personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms, 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, association, or company owning it.

Rev. Laws, 3632, as amended Stats. 1915, p. 328, makes it the duty of the Assessor, on or before the third Monday of July in each year, to prepare a printed list of all taxpayers and the total valuation on which they severally pay tax, and to deliver or mail a copy thereof to each and every taxpayer in the county.

Rev. Laws, 3638, as amended Stats. 1915, p. 329, provides that the County Board of Equalization shall meet on the fourth Monday of July in each year and shall continue in session from time to time until the business of equalization presented is disposed of; provided, however, that it shall not sit after the second Monday in August.

Section 6 of the Tax Commission Act (Stats. 1917, p. 332) provides that the Tax Commission, together with the County Assessors of the several counties, shall, beginning on the third Monday of August, sit in Carson City as a State Board of Equalization.

When all of these sections are read and construed together it seems plain that the Legislature intended that the assessment rolls should be

completed on or before the third Monday of July. However, a taxpayer cannot complain if they are not so completed, unless he is injured thereby. (*State* v. *Northern Belle M. Co.*, 15 Nev. 385.) When completed, the assessment rolls leave the Assessor's hands, and that officer then has no legal authority to place either real or personal property thereon (*State* v. *Manhattan S. M. Co.*, 4 Nev. 318), except under direction of the Tax Commission (Stats. 1917, p. 331).

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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90. **Revenue Taxation—Personal Property.**

If personal property came into the State between the first day of January and the second Monday in July, it is subject to taxation; if it came into the State after the second Monday in July, it is not taxable for that year.

CARSON CITY, September 11, 1917.

HON. F. N. FLETCHER, *Secretary, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 10th instant, wherein you request an opinion upon the following question:

> The owner of an automobile, already assessed, turns it in as a part payment on a new machine; should the new machine be assessed to him, if it has not already been assessed?

All property should be taxed once, and once only, during each year. (*State* v. *Earl*, 1 Nev. 397; *State* v. *C. & C. Ry. Co.*, 29 Nev. 487, 500).

The assessment of the old automobile imposed a duty or obligation on the owner to pay the taxes thereon, notwithstanding the fact that the property was later removed from the State. (*State* v. *Eastabrook*, 3 Nev. 173.)

All property in the State of Nevada not exempt from taxation which is in this State on the 1st day of January, and all property coming into the State not exempt from taxation after the 1st day of January to and including the second Monday in July, is subject to taxation for that year, and a lien attaches to all taxable property which is in the State on the 1st day of January, and also attaches immediately to all taxable property coming into the State after the 1st day of January to and including the second Monday in July. (Rev. Laws, 3619; Stats. 1915, p. 178; *State* v. *C. & C. Ry. Co.*, 29 Nev. 487, 503.)

If the new automobile came into the State between the 1st day of January and the second Monday of July, it is subject to taxation; if it came into the State after the second Monday in July, it is not taxable for this year.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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91. Inspector of Mines—Miners—Natural Deaths.

Section 4207, Rev. Laws, requires that reports be made of serious and fatal accidents occurring in mines to the Inspector of Mines, and it is unnecessary for the owner, in the case of a miner dying suddenly while working in a mining property, to report the circumstances of such case.

CARSON CITY, September 11, 1917.

HON. A. J. STINSON, *Inspector of Mines, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking what action should be taken in a case of a man dying suddenly while working in a mining property and no report thereof made you under Rev. Laws, 4207.

It seems that the death of this person was not result of accident, but that the man was suddenly overcome while working in the property, and died before reaching the surface.

Said section 4207 seems to require only that reports be made of serious or fatal accidents occurring in mines, and I am, therefore, of opinion that it was unnecessary for the owner under said section to report the circumstances of this particular case.

Rev. Laws, 4238, provides heavy penalties for failure to comply with any of the provisions of the mine inspector act, but, in my opinion, there is no violation of section 4207.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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92. State Library—State Library Fund—American Library Association.

No money can legally be drawn from the State Library Fund as this State's proportion of the sum proposed to be raised to finance the War Service of the American Liberty Association to provide books for the soldiers in the various camps and training stations.

CARSON CITY, September 13, 1917.

HON. FRANK J. PYNE, *State Librarian, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 13th instant, wherein you ask whether or not the sum of $1,000 can be legally drawn from the State Library Fund as Nevada's proportion of the sum to be raised to finance the War Service of the American Library Association to provide books to the soldiers in the various camps and training stations.

Money may be drawn from the State Library Fund and expended in the purchase of books, etc., for the State Library (Rev. Laws, 3956). The librarian shall keep a register of all books, etc., added to the library and shall be responsible for the safe-keeping of all the property thereof (Rev. Laws, 3955; Stats. 1915, p. 310). He shall also keep a register of all the books issued and returned; and no books, except those taken by members of the Legislature or by the Judges of the Supreme Court, shall be retained more than two weeks (Rev. Laws, 3949). Any person who materially injures any book or who fails to return the same within the time prescribed shall be subject to a penalty (Rev. Laws, 3950); and it is the duty of the librarian to carry the

provisions of this Act into execution and to bring suit for all penalties (Rev. Laws, 3951).

In view of the foregoing provisions, it is our opinion that no money can legally be drawn from the State Library Fund for the purposes mentioned in your letter.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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93. **State Superintendent of Public Instruction—Vocational Education.**

The Superintendent of Public Instruction may lawfully use a portion of the appropriation from the vocational educational fund provided by Stats. 1917, p. 398, for the purpose of defraying the expenses of a trip to Washington for conference with the federal authorities.

CARSON CITY, September 13, 1917.

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

DEAR SIR: We wish to acknowledge receipt of yours of recent date, enclosing therein a letter to you from the Director of the Federal Board for Vocational Education, stating that the first quarterly allotment of money to the State will be made by the Secretary of the Treasury on the 1st day of October, only on the submission and approval of its plans by the 20th day of this month, and requesting that you go to Washington for a conference with the federal authorities.

You ask whether or not the expenses of such a trip may be paid from the money appropriated as a vocational educational fund.

Section 4 of the Act accepting the federal law in regard to vocational education (Stats. 1917, p. 398) provides:

> That the sum of thirty thousand dollars ($30,000) is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, as a vocational educational fund, to be available in the biennial period beginning July 1, 1917, for the preparation of teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economics subjects; for the salary of teachers of trade and industrial and home economics subjects, and for the salary of teachers, supervisors, and directors of agricultural subjects, so as to receive the full benefit of the said Act of Congress.

Inasmuch as this State will secure no money from the Federal Government unless you or some other representative go to Washington, the necessity of this trip is plain.

I believe that said section 4 of the Act in question authorizes such expenditure and is sufficient, in itself, as an appropriation for that purpose.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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94. Fish and Game Laws—Duck Season.

The opening date for hunting of ducks commences in this State October 1 and extends to January 1.

CARSON CITY, September 13, 1917.

MR. C. W. GROVER, *State Game Warden, Carson City, Nevada.*

DEAR MR. GROVER: I am in receipt of your request for an opinion as to when the season opens in Nevada for shooting ducks.

Section 37 of the fish and game Act of 1917 (Stats. 1917, chap. 239, pp. 459–466 provides:

> It shall be unlawful for any person or persons, firm, company, corporation, or association, at any time from January 16 and before October 1 of each and every year, to kill, catch, net, cage, pound, weir, trap, or pursue with attempt to catch, capture, injure, or destroy any wild duck, sandhill crane, plover, curlew, snipe, woodcock, geese, brant, prairie chicken within this State; *provided, however*, that the open season on the migratory game birds named in this section shall always automatically change so as to conform to the "Regulations for the Protection of Migratory Birds," as they shall hereafter be prescribed by the U. S. Department of Agriculture, Bureau of Biological Survey.

You will observe that the opening of the season is October 1, provided that the same may automatically change to conform to the regulations for the protection of migratory birds, prescribed by the United States Department of Agriculture, Bureau of Biological Survey.

Under the regulations aforesaid, Nevada comes in zone 7, under the provisions of which the opening of the season is October 1 and which extends to January 16, identically the same as a state law. An amendment to these regulations has been proposed by the Secretary of Agriculture, of date July 6, 1917, but this amendment which would open the season on September 16 has not become effective, for the reason that a period of three months must elapse before it can be finally adopted and approved by the President. These regulations, therefore, will not become effective until October 15, 1917. These regulations should have the effect of closing our season on January 1, but it will not be retroactive so as to open it upon September 16.

I am of the opinion that the opening season for ducks commences October 1, 1917, and will extend to January 1, 1918.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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95. Water and Watercourses—Water Commissioners—Salaries and Expenses.

Under the provisions of section 52 of Stats. 1915, p. 382, Water Commissioners are limited to $5 per day.

The words "including all expenses" should be so construed that it is not a part of the salary.

It is doubtful whether, under the provisions of section 52, the Board of County Commissioners has any power to pay a salary to the Water Commissioners until after the stream has been adjudicated in conformity with the provisions of sections 18 to 39 of the Water Law.

CARSON CITY, September 13, 1917.

MR. CLARK J. GUILD, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of yours of September 10, asking opinion as to the construction of section 52, page 382, Statutes of 1915 (the Water Law), and whether or not the Board of County Commissioners are limited to $5 per day for a Water Commissioner's salary.

I am of the opinion that the words "including all expenses" should be so construed that it is not a part of the salary; in other words, that the intent of the Legislature was to provide a salary of $5 a day including all expenses and that expenses are allowable if properly vouched for and within a reasonable amount in addition to the $5 per day salary.

I am very doubtful, however, as to whether or not under the provisions of section 52 the Board of County Commissioners has any power to pay a salary to the Water Commissioners until after the stream has been adjudicated in conformity with the provisions of sections 18 to 39, both inclusive. In that regard permit me to refer you to the following cases: *Baker County* v. *Wattles*, 117 Pac. 417; see, also, 156 Pac. 1122–1125; 143 Pac. 303.

If the latter construction be correct, any Water Commissioner appointed in your county would not be appointed by virtue of the provisions of section 52, but by reason of some resolution of the Board of County Commissioners, and if he were so appointed, the board could fix his salary and allow him traveling expenses.

Yours very truly,

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

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96. University of Nevada—Emeritus Professor.

The provisions of chapter 204, Stats. 1915, p. 314, are purely personal and cease with the death of the beneficiary. Such statute, however, would apply to any professor of the University hereafter possessing the qualifications expressed therein.

CARSON CITY, September 17, 1917.

MRS. LOUISE F. BLANEY, *Secretary Board of Regents, University of Nevada, Reno, Nevada.*

DEAR MADAM: I am in receipt of your favor of the 15th instant, with reference to the salary heretofore paid Mr. Richard Brown as Emeritus Professor of the University of Nevada. You inquire:

1. Would the University be authorized to put his widow on the pay-roll if it should be made to appear that he left her insufficient support?

2. Can the Board of Regents use the money heretofore paid to Richard Brown for the support and education of his minor children instead of giving it to the widow?

3. If the board put the widow upon the salary roll would it have any power to rescind that action prior to her death?

In the opinion of this office, chapter 204 of the Statutes of 1915, p. 314, was enacted for the purpose of relieving Mr. Brown or some other professor of the institution should he leave a widow with insufficient support; that the application of such statute was purely personal and ceased with the death of the beneficiary, and that the University has no power in any way to compensate Mrs. Brown nor her children under this statute. The statute, however, would apply to any professor hereafter possessing qualifications expressed therein.

Under these circumstances, all of your questions must be answered in the negative.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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97. State Assayer and Inspector's Fees—"Day."

As used in section 8 of the Act creating the office of State Assayer and Inspector (Stats. 1917, p. 450) the word "day" means the ordinary working day and not twenty-four hours.

CARSON CITY, September 25, 1917.

HON. F. C. LINCOLN, *State Assayer and Inspector, University of Nevada, Reno, Nevada.*

DEAR MR. LINCOLN: We wish to acknowledge receipt of your letter of the 22d instant, wherein you state that a question has arisen with regard to your charges. You ask whether the day in section 6 and that in section 8 of the Act creating your office are the same, and if so, whether they are of 8 or 24 hours length.

The portion of section 6 of the law under which you are operating (Stats. 1917, p. 450), applicable to this question, provides:

> The shipper or owner of such ore shall pay the State of Nevada the sum of twenty-five (25) cents the ton for the services as rendered in taking charge of, sampling and assaying the said ores; * * * *provided*, that * * * where less than fifty (50) tons of ore daily are received and sampled by the State Assayer and Inspector, the consignor shall be required to pay the actual costs of such inspection and sampling, including traveling expenses and deputy hire.

The Legislature undoubtedly intended that a definite and fixed charge of 25 cents a ton should be made for taking charge of, sampling and assaying all ores, except where less than fifty tons daily are received and sampled by the State Assayer and Inspector from any one consignor; in which latter event the consignor shall pay the actual costs thereof.

The *prima facie* meaning of the word "daily" is "every day." The word "day" ordinarily means the entire twenty-four hours, which commence at 12 o'clock p. m. and end at 12 o'clock p. m., running from midnight to midnight. (*Sexton* v. *Goodwine*, 68 N. E. 929; 2 Words and Phrases, 1834.) Therefore, if less than fifty tons of ore are received within every twenty-four hours from any one owner or shipper you should charge him "the actual costs" of your inspection and sampling, including traveling expenses and deputy hire.

To provide for deputies, the Legislature incorporated section 8 in the Act, which states that:

The State Assayer and Inspector may appoint deputies as necessary, at a wage of not to exceed five ($5) dollars the day and traveling expenses.

As used in section 8, the word "day" means the ordinary working day, and not twenty-four hours (2 Words and Phrases, 1836, 1837). It is quite generally recognized in this State that the ordinary working day, even in the absence of statute, is eight hours.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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98. **Fish and Game Laws—State Fish and Game Warden—Deputy Wardens.**

The County Commissioners have not the power to discharge a Deputy Warden, regularly and duly appointed by the State Fish and Game Warden, under the provisions of section 3, Stats. 1917, p. 473.

CARSON CITY, September 28, 1917.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your oral request for an opinion on the following question:

> Have the County Commissioners power to discharge a deputy regularly and duly appointed by the State Fish and Game Warden?

Section 3 of the Act providing for a State Fish and Game Warden and deputies (Stats. 1917, p. 473) provides:

> The State Fish and Game Warden may appoint a deputy or deputies of the different counties with the consent or recommendation of the County Commissioners. The State Fish and Game Warden can, at any time, ask for the resignation of the deputy or deputies so appointed if, in his judgment, the duties of the office in that particular county are not being properly attended to, and may, with recommendation of the County Commissioners, appoint another deputy to fill the office of the one just removed.

This statute is plain and its meaning readily understood. It distinctly specifies how and in what manner a Deputy Fish and Game Warden may be appointed and removed. The original appointment can be made only with the consent or recommendation of the County Commissioners; the request for the resignation of the deputy thus appointed can only come from the State Fish and Game Warden.

Therefore, in our opinion, your question should be answered in the negative.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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99. Fish and Game Laws—Gun Clubs—Hunting Licenses.

Sections 60 and 61 of the Fish and Game Act (Stats. 1917, p. 471) do not apply to members of a gun club who have leased a portion of ground for shooting purposes.

All male members of such gun club, over 14 years of age, who lease land for hunting privileges and are not the actual owners thereof, must procure a license before they can legally hunt thereon.

The statutes are silent as to the number of feet allowed on each side of a lake or stream for hunting and fishing purposes.

CARSON CITY, September 28, 1917.

MR. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: Your letter of the 28th instant duly received. Therein you request an opinion upon the following questions:

1. Can all the members of a gun club, who have leased a portion of ground for shooting purposes, claim such land as their own, and are each and every one of said members privileged to hunt thereon without first procuring a license?

2. How many feet of land, if any, is allowed by law on each side of a lake or stream, that may be used by anglers or hunters, the said lake or stream lying wholly or in part within or upon the land owned by an individual?

Section 59 of the Act providing for the protection and preservation of fish and game (Stats. 1917, p. 169) reads as follows:

> Every person in the State of Nevada who hunts or kills any of the wild birds or animals, or who takes or catches any of the fishes that are protected by the laws of this State without first procuring a license therefor, as provided in this Act, is guilty of a misdemeanor.

Sections 60 and 61 of the same Act provide for the issuance of licenses to hunt or fish, while section 68 (Stats. 1917, p. 471) reads:

> The provisions of this Act shall not apply to any person, who, on his own land, during the open season, hunts, pursues or kills any of the wild birds or animals, or takes or catches any of the fish protected by the laws of this State, nor to girls or to boys under fourteen years of age.

This latter section is the only provision exempting any person from procuring a license that we have been able to find. It does so exempt those who hunt or fish on their own land, also girls, and also boys under 14 years of age.

The words "on his own land" were undoubtedly used in this statute in their ordinary sense, calling for proprietorship of the title in the property and not a mere right or privilege to use it. True, the word "owner" has often been construed so as to be satisfied by less than possession of the legal title. Such lesser significance is doubtless within its reasonable meaning, and may be adopted in a proper case. But in a license-exemption statute, such as this, the words cannot be bent from their ordinary meaning to favor the exemption, in the absence of a legislative intent clearly manifest pointing that way. (*Douglas County Agricultural Soc.* v. *Douglas County*, 104 Wis. 429, 80 N. W. 740.)

We are therefore of the opinion that all male members of a gun club over 14 years of age, who lease land for hunting privileges and are not the actual owners thereof, must procure a license before they can legally hunt thereon.

Relative to your second question will say that the statutes are silent as to the number of feet allowed on each side of a lake or stream for hunting or fishing purposes.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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100. Fish and Game Laws—Aliens—Hunting Licenses.

Under the provisions of subdivision 3 of section 61 of the Act providing for the protection and preservation of fish (Stats. 1917, p. 470), a hunting license cannot be issued to a person who has declared his intention to become a citizen of the United States, but has not secured his final certificate of naturalization.

CARSON CITY, September 29, 1917.

MR. DANIEL E. MORTON, *County Clerk, Ormsby County, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your oral request for an opinion upon the following question:

> Can a hunting license be issued to a person who has declared his intention to become a citizen of the United States, but has not secured his final certificate of naturalization?

Subdivision 3 of section 61 of the Act providing for the protection and preservation of fish and game, etc. (Stats. 1917, p. 470), provides that—

> In no case shall a hunting license be issued to any such person not a citizen of the United States.

The rule is cardinal and universal that, if a law is plain and unambiguous, there is no room for construction or interpretation. It would indeed be difficult to conceive what language the Legislature could have used indicating its intention more plainly than by use of the words of the above-mentioned statute. A person who has declared his intention to become a citizen is not a citizen of the United States and does not become such until he secures his final certificate of naturalization.

We are, therefore, of the opinion that your question should be answered in the negative.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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101. Fish and Game Laws—Deer—County Commissioners.

All preceding fish and game laws were wiped out by the enactment of section 279, Stats. 1917, p. 459, to "provide for the protection and preservation of game."

Said last-mentioned Act repeals by implication the amendment of section 14, appearing in the Statutes of 1913. Therefore, the County Commissioners have no authority in any way to interfere with the closed season on deer.

CARSON CITY, October 1, 1917.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of certain papers handed to me by you this date, concerning the state fish and game law, and asking information on the same. The first was your letter of September 28 to Hon. Lawrence E. Glass, County Clerk of Nye County, in which you said: "There is a report to the effect that the County Commissioners of Nye County passed and put into effect an ordinance shortening the closed season for deer, and that deer had been killed in your county from September 15, that date having been the one fixed by the Commissioners."

In response thereto, Mr. Glass wrote under date of September 29 as follows: "The County Commissioners did change the open season on deer by a petition of fifty taxpayers of Nye County, and did it in accordance with law. (Section 14, an Act entitled an Act 'for the protection of any animals' when so petitioned by fifty taxpayers of the county.)" Mr. Glass further states that under said Act "the season was changed from October 15 to September 15 and to run from September 15 to October 15 and to close at that time."

I am of the opinion that the County Commissioners acted under a misconception of the law in passing this ordinance. On page 409 of the Statutes of 1913 appears an Act entitled "An Act providing for the protection and preservation of game," etc., approved March 26, 1913. Section 3 of said Act amends section 14 of the Act to which reference is made as follows:

> It shall be the duty of the Board of County Commissioners of any county within this State, when petitioned by fifty taxpayers within their county, for the protection of any variety of birds, fowls or animals, to draw and pass an ordinance protecting such birds, fowls or animals for the length of time prayed for in the petition, or to change or shift the open season on said birds, fowls or animals, but not to increase the length of said open season, and to fix a penalty for the violation of said ordinance; said penalty to be in conformity with section 13 of this Act. When said ordinance is properly drawn and signed by the chairman of the Board of County Commissioners it shall be published in the county for a period of four issues, and posted in three public places in the county, one of which shall be in front of the courthouse, and thereafter it shall be in full force and effect.

The County Commissioners of Nye County were entitled to act under said law, but it has been generally considered that the Legislature at

the 1917 session intended to wipe out all fish and game laws by the enactment of chapter 239 (Stats. 1917, p. 459), being an Act entitled "An Act to provide for the protection and preservation of fish and game," approved March 27, 1917. Section 50 of said Act provides as follows:

> Should it be deemed advisable by a Board of County Commissioners for any county within this State to lengthen or extend the time of the close season for any specie of game mentioned in this Act, the said Board of County Commissioners, acting for their respective county, may, after first making application for and receiving written authority of the State Fish and Game Warden, by special ordinance extend such close season; *provided, however*, that in no event shall the County Commissioners or any organization of men within this State extend the open season or shorten the closed season for any specie of game whatsoever.

Section 70 of the last-mentioned Act expressly repeals all Acts and parts of Acts "in conflict" with any of the provisions of this Act.

It is the opinion of this office that said last-mentioned Act repeals by implication the amendment to section 14 appearing in Stats. 1913 above mentioned. Therefore, the County Commissioners have no authority in any way to interfere with the closed season for deer.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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102. Live Stock.

The Act "to regulate the herding, grazing and driving of live stock" (Stats. 1917, p. 124) is not a criminal act and merely provides an additional remedy to the person injured for trespass.

CARSON CITY, October 9, 1917.

HON. E. F. LUNSFORD, *District Attorney, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 6th instant, asking construction of an Act entitled "An Act to regulate the herding, grazing and driving of live stock," approved March 14, 1917. (Stats. 1917, p. 124.) Said Act makes it unlawful for any person owning, or having charge of any live stock, to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within one mile of a bona-fide home or a bona-fide ranch house.

Section 2 of the Act creates a liability of the owner or agent of such live stock to the person injured for actual and exemplary damages.

It is the opinion of this office that said Act is not a criminal Act, and merely provides an additional remedy to the person injured for trespass.

This Act was, however, at the last session of the Legislature, originally introduced with criminal features, but, after many modifications, it was passed in its present form.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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103. Revenue and Taxation—Exemption—Widow's Exemption.

Under the provisions of section 3621, Rev. Laws, a widow cannot be granted an exemption in more than one county in the same year, even though the aggregate of all her claims does not exceed the total sum of one thousand dollars.

CARSON CITY, October 13, 1917.

NEVADA TAX COMMISSION, *Carson City Nevada.*

GENTLEMEN: We wish to acknowledge receipt of your letter of the 11th instant, asking an opinion on the following question:

> Can a widow who has already been allowed an exemption of $50 in one county be granted an exemption of $950 in another county for the same year?

Section 3621, Revised Laws, provides:

> All property of every kind and nature whatsoever, within this State, shall be subject to taxation except:
>
> Sixth—The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family; *provided*, that no such exemption shall be allowed to any but actual bona-fide residents of this State, and shall be allowed in but one county in this State to the same family, and the party or parties claiming such exemption, or some one in their behalf, shall make an affidavit before the County Assessor of such residence, and that such exemption has been claimed in no other county in this State for that year.

This provision permits the allowance of an exemption in but one county during any one year "not to exceed the amount of one thousand dollars." A widow cannot be granted an exemption in more than one county in the same year, even though the aggregate of all her claims does not exceed the total sum of $1,000.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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104. Industrial Insurance—Industrial Insurance Commission.

Under the provisions of Stats. 1915, p. 281, every employer was conclusively presumed to have elected to accept the Industrial Insurance Act unless a notice to the contrary has been given. Any company not rejecting the Act is legally liable for the premiums on its employees' wages.

CARSON CITY, October 15, 1917.

HON. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 15th instant, asking for an opinion upon the liability of the Queen Regent Merger Mines Company for premiums accrued during the years 1915 and 1916, it appearing from the correspondence that this company did not reject the terms of the Act.

Under the terms of the statute then in force (Stats. 1915, p. 281) every employer was conclusively presumed to have elected to provide,

secure and pay compensation to employees, according to the provisions of the Act, unless and until notice in writing to the contrary shall have been given; further provision being made that all premiums might be recovered in an action at law (Stats. 1913, p. 140).

In view of these provisions, it is our opinion that the company is legally liable for the premiums in question and that an action can be maintained therefor.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By WM. MCKNIGHT, *Deputy*.

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105. **Industrial Insurance—Industrial Insurance Commission—Injured Employee—Prevailing Expenses.**

Under the provisions of section 23c of Stats. 1917, p. 440, it is not incumbent upon the Commission to pay the cost of transportation of an injured employee from the place of treatment back to the place of injury.

CARSON CITY, October 15, 1917.

HON. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: In response to your verbal request for an opinion as to whether or not it is incumbent upon the Commission to pay the cost of transportation of an injured employee from the place of treatment back to the place of injury, will say that the Commission should not pay such costs.

Section 23c of the Act (Stats. 1917, p. 440) provides that the employer shall render all necessary first aid, including cost of transportation of the injured employee from the place of injury to the nearest place of proper treatment in certain cases, but contains no provision with reference to return transportation. Neither is there any other provision, anywhere, which authorizes the payment of such expenses; and, in the absence thereof, it must be presumed that the Legislature intended that they be paid by the injured employee.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By WM. MCKNIGHT, *Deputy*.

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106. **License—Auto License—Auto Dealers.**

A private license for a dealer's car is not required under section 15, Stats. 1915, p. 350, until the car is sold or let for hire.

A dealer who has procured a general distinguishing number may use the car on which the same is displayed for any purpose he wishes, except to let it for hire, until the car is sold. If he lets it for hire, a regular license must be procured.

CARSON CITY, October 25, 1917.

HON. H. H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent letter, in which you ask this question:

Will you advise me if under the automobile law which pro-

vides for the issuance of a dealer's auto license, when the dealers use their cars for private purposes as well as mercantile purposes, will they be required to obtain a private license as well?

Section 15 of the Act relative to the licensing of automobiles (Stats. 1915, p. 350) provides that dealers may obtain general distinguishing number, while section 16 of the same Act reads as follows:

> All automobiles, motorcycles, or other motor vehicles owned or controlled by such manufacturer or dealer, except those for his own private use, shall, until sold or let for hire, be regarded as registered under such general distinguishing number, which must be displayed at all times upon such automobiles, motorcycles, or other motor vehicles, while being operated on public highways of this State in the manner herein provided.

It is our opinion that a private license for a dealer's car is not required until the car is sold or let for hire. A dealer who has procured a general distinguishing number may use the car on which the same is displayed for any purpose he wishes, except to let it for hire, until the car is sold. If he lets it for hire, a regular license must be procured.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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107. Industrial Insurance—Industrial Insurance Commission—Files.

All premiums paid in advance by contributors, under section 21a of the Industrial Insurance Act (Stats. 1917, p. 439), except those paid exclusively to take care of accident benefits, must be considered as part of the State Insurance Fund.

CARSON CITY, October 25, 1917.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Insurance Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 24th instant, wherein you ask the following question:

> Should premiums paid in advance by contributors be considered as part of the State Insurance Fund?

Section 21a of the Industrial Insurance Act (Stats. 1917, p. 439) reads in part as follows:

> Every employer electing to be governed by the provisions of this Act shall, on or before the first day of July, A. D. 1917, and monthly thereafter, pay to the Nevada Industrial Commission for a state insurance fund premiums in such a percentage of his estimated total pay-roll as shall be fixed.

This section contemplates that all premiums shall be paid in advance; it distinctly specifies that they are "for a State Insurance Fund." The premiums so paid in advance certainly cannot be paid *for* the State Insurance Fund unless they are considered as *part* of such fund.

However, it is unnecessary to rely entirely upon the section quoted for the conclusion reached, because in section 40a of the same Act (Stats. 1915, p. 292) it is provided that:

> The premiums, contributions, penalties, properties, or securities paid, collected, or acquired by operation of this Act shall constitute a fund to be known as the "State Insurance Fund."

The fact that premiums are paid in advance does not change their character; because premiums are premiums, whether paid in advance or otherwise. They are paid by the insured and collected by the Commission by operation of the Act; and, under the terms of the Act, they constitute the State Insurance Fund.

This latter section is modified, only so far as accident premiums and benefits are concerned, by section 23b (Stats. 1917, p. 440), which provides that:

> The State Insurance Fund provided for in this Act shall not be liable for any accident benefits provided by this section, but the fund provided for accident benefits shall be a separate and distinct fund, and shall be so kept.

You are, therefore, advised that, in our opinion, all premiums paid in advance by contributors, except those paid exclusively to take care of accident benefits, must be considered as part of the State Insurance Fund.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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108. Industrial Insurance—Industrial Insurance Commission—Records—Files.

The records and files of the Industrial Insurance Commission are not open to any person to examine all the papers and files in any particular case.

CARSON CITY, October 26, 1917.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: Your oral request for an opinion as to whether or not a person is legally entitled to examine all papers and files in any particular case, duly received.

Section 9 of the Industrial Insurance Act (Stats. 1913, p. 141) provides that:

> All proceedings of the Commission shall be shown on its record of proceedings, which shall be a public record and shall contain a record of each case considered, etc.

The word "proceedings," as used herein, means minutes of the Commission (*Hughston* v. *Cornish*, 59 Miss. 372, 374). The record of such minutes, under the terms of the statute, is open to the public.

Section 19 of the same Act (Stats. 1913, p. 143) provides that a copy of any transcript of the testimony on an investigation made by a stenographer appointed by the Commission shall be furnished to any party on demand and on payment of the fee therefor.

Aside from the two sections noted, we have not found any provision authorizing either an inspection or the furnishing of a copy of any of the records of the Commission. By these sections the Legislature has provided that the minutes are public and that any party may procure a copy of the stenographer's transcript. The Legislature thus manifested an intent to restrict the public to an examination of the minutes and to the designated transcript. Otherwise, these particular provisions would be superfluous. If one might examine any paper on file, or procure a copy thereof, a provision which expressly permits an examination of the minutes and the securing of a copy of the stenographer's transcript would be of no avail.

You are therefore advised that, in our opinion, your question should be answered in the negative.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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109. Industrial Insurance—Industrial Insurance Commission—Union Schools—Liability.

Under facts stated the State Insurance Fund is not liable for compensation to an injured workman.

CARSON CITY, October 27, 1917.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter, wherein you ask if the State Insurance Fund is liable for compensation to a workman injured under the following state of facts:

> The resident taxpayers of two school districts met to consider the construction of a union schoolhouse. Each was assessed a specified amount to pay for materials and the services of a carpenter. This money was turned over to the trustees of the two districts, and they held the same and paid all bills in cash. The first carpenter employed slipped from the roof and sustained an injury. Not until several months later did the union district offer to pay to the Commission premiums covering the work in question, which offer was refused.

Section 1b of the Industrial Act (Stats. 1917, p. 436) provides:

> Where a * * * school district * * * is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

It cannot be said that the injured man was an employee of a school district, as there is a recognized distinction between a school district and a union school (Rev. Laws, 3314–3328). Neither can it be seriously contended that he was an employee of the union school, because it is

admitted that the inhabitants raised the funds and built the house, and the carpenter was hired by them and paid in cash for his labor. Had the carpenter been employed by the union school, it is but natural to assume that he would have been paid by voucher as required by statute (Rev. Laws, 3324).

In view of the foregoing, we are of the opinion that the claim should be rejected.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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110. Public Schools—Deputy Superintendent of Public Instruction—School Trustees—Vacancies.

The Deputy Superintendent of Public Instruction has the right to appoint a School Trustee in case of vacancy if no election is held on the fourth Saturday after such vacancy occurs. Before such right exists the office must be found to be vacant under the terms of the sixth and seventh clause of section 2799, Rev. Laws.

Such vacancy can be established only at the suit of the Attorney-General in the nature of a *quo warranto* establishing by judicial decision that a vacancy in office exists.

Such suit may be brought under the terms of the Attorney-General by the District Attorney in his name.

CARSON CITY, November 1, 1917.

MISS BERTHA KNEMEYER, *Deputy Superintendent of Public Instruction, Elko, Nevada.*

DEAR MISS KNEMEYER: I am in receipt of your verbal request for an opinion as to your method of procedure in case of vacancies occurring in Boards of School Trustees.

It appears that instances have arisen where Trustees have left the State and are absent five or six months, and upon their return again take up the duties of their office.

Section 2799 of the Revised Laws provides:

> Every office shall become vacant upon the occurring of either of the following events before the expiration of the term of such office: * * * Sixth—The ceasing of the incumbent to be a resident of the State, district, county, city, or precinct in which the duties of his office are to be exercised, or for which he shall have been elected or appointed. Seventh—The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the State, upon leave, as provided by law. Eighth—The decision of a competent tribunal declaring the election or appointment void or the office vacant.

Section 63 of the School Code, being section 3301, Rev. Laws, provides:

> That on the fourth Saturday after the occurrence of any vacancy or vacancies in any Board of School Trustees, an election may be held to elect a Trustee or Trustees for the remainder of the unexpired term or terms.

The following section provides that:

> In case the voters fail to elect, or in case no election is held, the Deputy Superintendent shall fill all vacancies occurring in said Board of Trustees.

Upon the reading of these two statutes, it would appear that you have a right to appoint a Trustee in case of vacancy if no election is held on the fourth Saturday after such vacancy occurs.

But, before your right to appoint exists, the office must be found to be vacant under the terms of the sixth and seventh clauses of section 2799 hereinbefore recited.

Such vacancy can be established only at the suit of the attorney-general in the nature of a *quo warranto* establishing by judicial decision that a vacancy in office exists.

Such suit, however, could be brought under permission of the Attorney-General by your District Attorney in his name.

Where the conditions imposed by said sixth and seventh clauses exist, your District Attorney, upon application to the Attorney General, will receive his permission to bring an action to declare the office vacant, and upon a determination to that effect, an election could be held on the fourth Saturday after such decision is rendered under the provision of Rev. Laws, 3301, and if no such election is held, or the voters fail to elect some person to fill the vacancy, you could appoint under the provisions of Rev. Laws, 3302.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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111. Industrial Insurance — Industrial Insurance Commission — Agricultural Labor.

Agricultural laborers could not come within the provisions of the Industrial Insurance Act.

CARSON CITY, November 2, 1917.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your request for an opinion on the following question:

> A person clearing land for a farm employs two men to operate tractor engines and two helpers on tractor plows or implements pulled by the tractors. Do such employees come within the provisions of the Nevada Industrial Insurance Act?

Section 43 of the Act in question (Stats. 1915, p. 293) reads in part as follows:

> This Act shall apply to all employers of labor in the State of Nevada and their employees and dependents of their employees, but excludes any employee engaged in farm or agricultural labor, stock or poultry raising, or household domestic service.

It is apparent that the Act was not intended to confer its advantages on those "engaged in farm or agricultural labor," or to impose its burdens on their employers. (*In Re Keaney*, 217 Mass. 5, 104 N. E.

438). The employees mentioned are certainly engaged in such labor. (Honnold, Workmen's Compensation, p. 194.)

Therefore, in our opinion, they did not come within the provisions of the Act.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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112. Corporations—Foreign Corporations.

It is necessary for a foreign corporation which has complied with the laws of this State by filing in the office of the Secretary of State a certified copy of its original articles of incorporation, to also file in the same office a proper certificate of any increase of its capital stock.

CARSON CITY, November 2, 1917.

MR. J. W. LEGATE, *Deputy Secretary of State, Carson City, Nevada.*

DEAR SIR: We are in receipt of your request for an opinion on the question:

> A Maine corporation which filed in this office a certified copy of its original articles of incorporation has recently increased its capital stock from $750,000 to $1,000,000. Is it necessary for this corporation now to file a certificate of such increase?

Rev. Laws, 1348, reads as follows:

> Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this State for the purpose of doing business therein, must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental Acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of the County Clerk of the county where its principal place of business in this State is located.

It is noticed that this statute is silent as to the manner in which an amendment to the original articles of a foreign corporation shall be made. This being true, the same formalities are required with reference to the execution and filing of an amendment as are required with reference to the original articles of incorporation. (*Palmer* v. *Bank of Zumbrota*, 72 Minn. 266, 75 N. W. 380.)

An increase in the capital stock of a corporation is necessarily fundamental in character; it reforms, alters and changes something in the original charter. Naturally and properly it is an amendment. (*In Re Pennsylvania Tel. Co.*, 2 Chest. Co. Rep. 129, 131; *Chicago City Railway Co.* v. *Allerton*, 18 Wall 233, 21 L. Ed. 902; *Wood* v. *Union Gospel Church Bldg. Association*, 63 Wis. 9, 22 N. W. 756; Nevada Stats. 1913, p. 277.)

In view of the foregoing, we are of the opinion that it is necessary for the company in question to file in your office a proper certificate of its increase of capital stock.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*

By WM. MCKNIGHT, *Deputy.*

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113. Cities—Towns—Counties—Contagious Diseases.

Under the provisions of section 3, article 12, Constitution of Nevada, the respective counties of the State must provide for the care and maintenance of the indigent sick.

When a person is taken sick with a contagious disease and lacks funds to pay for medicine and medical attention, the duty rests upon the county, and not upon the city, to care for him.

CARSON CITY, November 5, 1917.

MR. L. D. SUMMERFIELD, *City Attorney, Reno, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of recent date, wherein you ask the following question:

> When a person is taken sick with a contagious disease and lacks the funds to pay for medicine and medical attention, upon which body—the city or the county—does the duty rest to provide the same?

We have carefully considered all matters cited in your letter and are of the opinion that you are entirely correct in your conclusion. Section 3, article 13, of the Constitution (Rev. Laws 367) provides:

> The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age and infirmity or misfortune, may have claim upon the sympathy and aid of society.

According to this constitutional provision the respective counties of the State shall provide by law for the care and maintenance of indigent sick. Under and by virtue of this provision the Legislature of this State has so provided.

We are, therefore, of the opinion that when a person is taken sick with a contagious disease and lacks the funds to pay for medicine and medical attention, the duty rests upon the county and not upon the city to provide the same.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*

By WM. MCKNIGHT, *Deputy.*

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114. Transportation—War Tax—Exemption.

State employees are entitled to exemption imposed on transportation by the war tax upon making proper certificate therefor.

CARSON CITY, November 5, 1917.

MR. C. C. COTTRELL, *Deputy State Highway Engineer, Carson City, Nevada.*

DEAR SIR: In answer to your inquiry concerning the war tax imposed

upon transportation, let me say that section 500 of the War Revenue Act provides for a tax of 3 per cent on freight and 1 cent for each 20 cents on express packages; 8 per cent of the cost of railroad tickets; 10 per cent of the cost of seats, berths, and state-rooms in parlor cars, sleeping-cars, and on all vessels.

Section 502 of said Act provides an exemption to state officers and employees in the following terms:

> No tax shall be imposed under section 500 upon any payment received for services rendered to the United States, or any State, Territory, or District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

Such exemption may be claimed by filling out a special blank furnished by the railroad, express, sleeping-car, or steamboat companies.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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115. Public Highways—Highways Over Public Lands.

The right of way for the construction of highways over public lands is granted by U. S. Comp. Stats. 1916, sec. 2477.

CARSON CITY, November 7, 1917.

MR. R. K. WEST, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: Your oral request for an opinion on the question: "How can a right of way for a state highway over public land be secured?" duly received.

By federal statute (U. S. Comp. Stats. 1916, sec. 4919, Rev. Laws, 2477) it is provided that:

> The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

The purpose of the congressional grant or dedication is to enable the public to acquire a roadway over public lands. The method by which the roadway is to be established is not specified; and it has been held, therefore, that Congress intended that any act by which the public might acquire a public roadway over private property, other than by purchase, is sufficient to constitute an acceptance of this grant or dedication. It is a rule recognized by the Land Department and by the Supreme Court of the United States that, whenever a grant or dedication is accepted, such acceptance relates back to the date of the grant or dedication, and any one who takes the land after the acceptance of the donation does so subject to the right which the public has acquired. (*City of Butte* v. *Mckosowitz*, 102 Pac. 593.)

In *Wallowa County* v. *Wade*, 72 Pac. 793, the court reviewed various cases showing what acts constitute an acceptance of the statute in question, and then said:

> The Act of Congress is more than a mere general offer to the public, being in effect a dedication of the land, which

becomes operative and relates back to the date of the Act whenever the public, either by user or by some appropriate act of highway authorities, affirmatively manifests an intention to use a certain definite portion of the public land as a highway. The right is necessarily indefinite, and, in a sense, floating and liable to be extinguished by a sale or disposition of the land until the highway is surveyed and marked on the ground, or in some other way identified or designated; but when the public authorities lay out and locate a road over public land of the United States by surveying and marking it on the ground, or by some legislative Act, or when it is shown by user, the right becomes complete, and an intention to accept the dedication is manifested, and subsequent settlers on the land take subject to the easement.

It is probable that the mere construction of the highway over public lands, under and by virtue of the Act creating the Department of Highways (Stats. 1917, p. 309), would be deemed a sufficient acceptance of the Act. However, in order to avoid any possible question that might hereafter arise, we would suggest that you file with the County Recorder of the county through or into which the road passes, and also in the land offices, a formal acceptance of the dedication, together with a carefully prepared map showing the identical land over which the highway crosses.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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116. State Department of Highways—County Fund—State Fund.

No part of the county tax for highway purposes levied under Stats. 1917, p. 313, can be paid into the State Treasury for the State Highway Fund, nor can a portion thereof be used to reimburse any county fund from which the county has authorized an expenditure for state highway purposes.

CARSON CITY, November 10, 1917.

MR. R. K. WEST, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent letter, in which you state that the estimated cost of proposed work during the coming year will exceed the funds to be derived by the 7-cent state tax and the 7-cent county tax to be collected in 1917. You ask, first, whether the county may advance its share of the cost from other funds and then reimburse the fund from which the advance was made from the 10-cent tax to be levied next year; and, second, whether the county can collect and pay into the State Treasury for deposit to the State Highway Fund the 10-cent tax levy to be collected during next year to reimburse the State Highway Fund for the money advanced to permit the earlier completion of the project.

By section 10 of the Act creating the Department of Highways (Stats. 1917, p. 313) it is provided that the county shall levy and collect a tax, and that the proceeds thereof shall be set aside in a separate fund in the county treasury and shall be used only for the purpose of

assisting the State in constructing so much of the state highway as may run through the county.

All of such money so collected by the county is available for state highway purposes, and shall be expended under the direction of the State Highway Engineer. (Stats. 1917, p. 314.)

Counties through which the state highway routes pass may, through the Board of County Commissioners, authorize the expenditure of moneys in excess of the amount of the county-state highway fund provided for by section 10 of this Act upon the state highway within their respective counties. (Stats. 1917, p. 320.)

It is seen that by direct provision of the Highway Act, the county tax collected shall be kept in the county treasury in a special fund, and shall be expended for a specific purpose in a designated manner, but the county may authorize the expenditure of more money than that raised by the highway tax.

We are, therefore, of the opinion that no part of the county tax can be paid into the State Treasury for the State Highway Fund, nor can a portion thereof be used to reimburse any county fund from which the county has authorized an expenditure for state highway purposes.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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117. State Treasurer—State Moneys.

Under no circumstances can the State pay the cost of transferring money from the State Treasurer's office to the county treasury.

CARSON CITY, November 10, 1917.

HON. ED. MALLEY, *State Treasurer, Carson City, Nevada.*

DEAR SIR: We are in receipt of your request for an opinion on the following question:

> Is the State supposed to return the money due a county, free of charge, when the warrant of the State Controller for school apportionment is presented for payment?

Section 3385 of the Revised Laws provides:

> All school moneys due each county in the State shall be paid over by the State Treasurer to the County Treasurers on the tenth day of January and the tenth day of July of each year or as soon thereafter as the County Treasurer may apply for the same upon the warrant of the State Controller drawn in conformity with the apportionment of the Superintendent of Public Instruction.

You can pay only the face of the warrant (Rev. Laws, 4372) when such warrant is presented to you (Rev. Laws, 4370).

When you pay to the party presenting a warrant the amount called for therein, the duty of the State ends. Under no circumstances, can the State pay the cost of transferring the money from your office to the County Treasurer.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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118. Revenue Taxation—Redemption from Tax Sale.

A taxpayer whose property is sold for second installment of taxes has one year from the date of sale in which to make the redemption.

CARSON CITY, November 13, 1917.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your request for an opinion on the question:

> What period is allowed by law for the redemption of property which is assessed for taxes in 1916 and is sold for the nonpayment of the second installment of such taxes in 1917.

Section 39 of the Revenue Act (Rev. Laws, 3651), which was passed in 1891, contemplated but one sale in each year, pursuant to the then existing law that compelled the payment of taxes at one time. It provided that a notice of sale should be given, specifying "that such sale is subject to redemption within six months after the date of sale."

In 1897 the Legislature passed the Act allowing the payment of taxes in two installments (Rev. Laws, 3864–4865). It provides that immediately after the second installment becomes delinquent, the Treasurer shall advertise the delinquent property "for sale in all cases, in the same manner as he is now required by law to advertise the same."

By an amendment of the last Legislature (Stats. 1917, p. 35) the words "six months" were stricken from the original section, and the words "one year" inserted therefor; and the amendatory Act further provided that the amendment "shall not apply to redemptions from tax sale hereafter held, but only to property sold after the passage of this Act."

No change whatever was made in the Act permitting the payment of taxes in two installments, but it has been held that a statute which is amended is thereafter and as to all Acts subsequently done to be construed as if the amendment had always been there. (*Holbrook* v. *Nichol*, 36 Ill. 161; *People* v. *Sweetser*, 1 Dak. 308; *Kamerick* v. *Castleman*, 21 Mo. App. 587.)

Therefore, we are of the opinion that a taxpayer whose property is sold for the second installment of taxes has one year from the date of sale in which to make redemption.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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119. Public Schools—Emergency Interest-Bearing Warrants.

Section 3473–7 relating to the issuance of interest-bearing school warrants in emergencies has not been repealed by section 16 of the Budget Act (Stats. 1917, p. 249).

CARSON CITY, November 14, 1917.

MISS BERTHA KNEMEYER, *Deputy Superintendent Public Instruction, Elko, Nevada.*

DEAR MISS KNEMEYER: Your favor of the 10th instant, asking opinion of this office on a certain question, received.

You inquire whether the act to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473–3477) has been repealed by section 16 of the Budget Act, Stats. 1917, p. 249.

In my opinion, the first-mentioned Act is not repealed because section 14½ of the Budget Act expressly provides: "The provisions of this Act, with reference to school districts and high school districts, shall not be effective until February 1, 1919."

This section was incorporated in the Budget Act expressly for the purpose of allowing schools to issue interest-bearing emergency warrants until the date specified—February 1, 1919.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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120. Mines and Minerals—Location Placer Claims.

A deposit of gravel containing no minerals cannot be located under the placer mining laws.

CARSON CITY, November 17, 1917.

MR. R. K. WEST, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: Your request for an opinion duly received. Therein you ask the following question:

> Are deposits of gravel, situate within a short distance of Elko, Nevada, which proximity makes them valuable for road-building purposes, subject to entry as placer claims under the mineral laws of the United States?

It is elementary that only mineral lands are subject to disposition under the mining laws. When the question of the character of land is raised it must be tried out, and until patent has been issued the question as to the character of land at the date of entry is an open one, subject to investigation and determination by the Land Department. (*In Re American Smelting and Refining Co.*, 39 L. D. 299; Lindley on Mines, 3d ed. secs. 108, 424.)

In *Zimmerman* v. *Branson*, 39 L. D. 310, the Land Department held that:

> Deposits of gravel and sand, suitable for mixing with cement for concrete construction, but having no peculiar property or characteristic giving them special value, and deriving their chief value from proximity to a town, do not render the land in which they are found mineral in character within the meaning of the mining laws, or bar entry under the homestead laws, notwithstanding the land may be more valuable on account of such deposits than for agricultural purposes.

This ruling was approved in *Hughes* v. *Florida*, 42 L. D. 401, wherein it was held that a deposit of shell rock, used for building purposes, construction of roads and streets and the foundation of houses, was not a mineral within the meaning of the general mining laws.

We are, therefore, of the opinion that title to the land in question cannot be acquired under the placer mining laws.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

121. Carson City Paving Bonds.

Under the Act "supplementary to the Act to incorporate Carson City" (Stats. 1917, p. 226), the City Treasurer of Carson City cannot accept the State, county or regular city taxes from a taxpayer unless such taxpayer also pays his street-paving tax.

CARSON CITY, November 17, 1917.

MR. DANIEL E. MORTON, *County Treasurer and Ex Officio City Treasurer, Carson City, Nevada.*

DEAR SIR: We are in receipt of your request for an opinion on the following question:

> A taxpayer offers to pay the state, county and regular city taxes levied against his property, but refuses to pay the installment for street paving. Should I accept the former without the latter?

The Act supplementary to the Act to incorporate Carson City (Stats. 1917, p. 226) authorizes the issuance of bonds for the paving of Carson Street, and provides for the levying of special assessments to pay a portion of the cost thereof. Section 26 of said Act reads as follows:

> The special assessment, mentioned in the next preceding section, may be paid to the City Treasurer at the time the first installment of taxes for state and county purposes for the year 1917 are payable, or if not so paid shall be paid in equal annual installments extending over a period of ten years, together with interest on all unpaid installments at the rate of five per cent per annum, interest payable semiannually. Said installments and interest shall be payable and collected at the times and in the manner other city taxes are collected; *provided*, the balance due upon such unpaid payment may be paid to the City Treasurer at any time.

This section gives to the taxpayer the option of paying his entire special assessment at one time or in installments. If the latter method is chosen—

> Said installments and interest shall be payable and collected at the times and in the manner other city taxes are collected.

How are *other* city taxes collected? By referring to the original Act (Stats. 1875, p. 87) it is seen that provision is made for the levying of a city tax—

> and the tax so levied shall be collected at the same time and in the same manner and by the same officers, exercising the same functions (acting ex officio as city officers) as prescribed and provided in the revenue laws of this State for the collection of state and county taxes; and said city tax so levied shall be assessed and collected with the state and county taxes of each year; and the revenue laws of this State shall, in every respect not inconsistent with the provisions of this Act, be deemed applicable, and so held, to the levying, assessing, and collection of the city taxes.

A taxpayer can pay the tax on subdivisions of his property without

paying on all (*State* v. *Central Pacific R. R. Co.*, 21 Nev. 94), but he cannot arbitrarily select a given sum out of the total amount of taxes the rolls show he owes, and expect the tax collector to receive it as a partial payment. (*Liquidating Commissioners* v. *Tax Collector*, 106 La. 130.)

In our opinion, you should not accept the state, county and regular city taxes due from any taxpayer unless that taxpayer also pays his street-paving tax.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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122. **Fish and Game Laws—Jack Rabbits—Indians—Licenses.**

There is no law prohibiting hunting of jack-rabbits by Indians and no license is required therefor.

CARSON CITY, November 17, 1917.

MR. DICK BENDER, *Stewart, Nevada.*

DEAR SIR: In answer to your inquiry, let me say that there is no law prohibiting the hunting of jack-rabbits by Indians, and no license is required for such hunting.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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123. **Revenue—Taxation—Exemption—Veterans.**

Under Stats. 1917, p. 65, a veteran is exempt from taxation from and after the time such act became effective, but is not entitled to an exemption for taxes levied and assessed previous to the passage of such law.

CARSON CITY, November 19, 1917.

MR. F. N. FLETCHER, *Secretary, Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: We are in receipt of your request for an opinion on the question:

> Is a legal resident of Nevada, who served in and was honorably discharged from the Union Army, and who has property valued at $1,325 and an income of but $800 per annum, entitled to an exemption for taxes levied in 1916?

The Act exempting the property of veterans from taxation was approved March 10, 1917 (Stats. 1917, p. 65), and reads as follows:

> The property to the amount of one thousand dollars of every resident in this State who has served in the Army, Navy, Marine Corps, or Revenue Marine Service of the United States in time of war, and received an honorable discharge therefrom, and not having an income to exceed $900 per annum, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of three thousand dollars ($3,000) or more. No exemption shall be made under the provisions of this Act of the property of a person who is not a legal resident of this State.

It is well settled that words in a statute ought not to have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature cannot be otherwise satisfied. (*Chew Heong* v. *United States*, 112 U. S. 536, 28 L. Ed. 770; *Gage* v. *Nichols*, 135 Ill. 128, 25 N. E. 672; *People* v. *Thatcher*, 95 Ill. 109; *Fitch* v. *Elko County*, 8 Nev. 271.)

The party in question comes within the meaning of the word "veteran," as used in the Act. He is exempt from taxation on a property valuation of one thousand dollars from and after the time the Act became effective, but is not entitled to an exemption for taxes levied and assessed previous to the passage of the law.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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124. **Public Schools—County High Schools—Elko High School.**

The County High School Board is authorized under the provisions of sections 3473-7, Rev. Laws, to issue emergency interest-bearing school warrants for the purpose of equipping the Elko County High School.

CARSON CITY, November 23, 1917.

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

DEAR MR. CARVILLE: I am in receipt of your favor of the 20th instant, asking opinion of the right of your county board of education to issue emergency interest-bearing school warrants. It seems that under the provisions of Stats. 1915, p. 344, $55,000 was borrowed for the purpose of constructing a dormitory at Elko, and one at Wells. Of this amount, $40,000 was allowed for the Elko dormitory and $15,000 for the Wells dormitory.

It further appears that under the provisions of Stats. 1913, p. 368, an election was had for the construction of a high-school building at Elko; that the question submitted to electors was carried at such election and that a bond issue in the sum of $100,000 was authorized. It further appears that the dormitory at Elko is practically complete and the high-school building at that place is in course of construction. It further appears that both bond issues were made with the intention of building and equipping both the dormitory and high-school building, but the Board of Education now finds that they will not have enough money with which to equip either the dormitory or the high-school building.

The Board of Education desires to know whether there is any law under which it can borrow approximately $12,000 for the purpose of equipping both such dormitory and high-school building.

The Act of 1915, above mentioned, authorizes the Board of County Commissioners of Elko County to issue bonds for an amount not to exceed the sum of $55,000 for the purpose of providing funds for the *construction* and *equipment* of high-school dormitories in the towns of Elko and Wells.

The Act of 1913, above referred to, is a general Act providing for

bonding counties for building and equipping county high schools and dormitories.

Rev. Laws, 3423, provides: "The county high school shall be under the same general supervision and shall be subject to the same laws, rules and regulations governing the other schools of the state school system."

Sections 3473–3477 is an Act authorizing the issuance of interest-bearing school warrants in emergencies.

Section 3473, being section 1 of said Act, provides:

> Whenever the county school fund of any school district is exhausted and there is not available money to meet the necessary expenses involved in *maintaining* the public schools of the district, the Board of Trustees of such district may, by unanimous vote, by resolution setting forth the character of the emergency, authorize the Clerk of the board to issue orders, for the payment of current bills of the schools of the district, to the County Auditor, and said County Auditor shall draw warrants for the same on the County Treasurer in the usual manner. Such orders shall be in the hands of the County Auditor as valid vouchers for warrants so drawn.

It seems to me that this section furnishes ample authority for the issuance of interest-bearing school warrants in emergencies, providing that the word "*maintaining*" in the above section authorizes the issuance of such warrants for equipment purposes.

The word "*maintain*" is defined as meaning "to support; to sustain; to uphold; to keep up; to bear the expense of." (5 Words and Phrases, 4277.) It is also defined as "to bear the expense of; to support; to keep up; *to supply with what is needed.*" (Id. 4281.)

These definitions bring the word "*maintain*" squarely within the meaning of providing equipment for a high school and dormitory, especially so as, without the necessary furniture, such high school and dormitory could not be used, but would stand idle until the money necessary for equipment was raised.

It is, therefore, the opinion of this office that an emergency exists, and that, under the provisions of section 3423 and sections 3473–3477, Rev. Laws, the County Board of Education is authorized to issue interest-bearing school warrants to meet the same.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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125. **Nevada School of Industry—Permanent Board of Government.**

The employment of Mr. C. B. Hoag and his wife as manager and school teacher at the Nevada School of Industry by the permanent Board of Government of said institution approved.

CARSON CITY, November 26, 1917.

HONORABLE EMMET D. BOYLE, *Governor of Nevada, Carson City, Nevada.*

MY DEAR GOVERNOR BOYLE: I am in receipt of yours of November 26, asking an opinion of this office as to the legality of the employment

of Mr. C. B. Hoag and his wife, Mr. Hoag acting as manager of the institution and his wife as school teacher.

The facts with reference to the employment as appear from the minutes of the permanent Board of Government of the Nevada School of Industry are as follows:

> On July 31 the Board of Government decided upon a plan of reorganization of the school. This plan contemplated that for a period of one year a trained and experienced specialist should have the entire direction, charge and control of the education and discipline of the inmates of the institution.
>
> Immediately upon this determination by the board, Mr. Mathew Kyle, superintendent, tendered his resignation, giving no reason therefor, merely stating that it was for what he considered "good and sufficient reasons." This resignation was tendered, to be effective at the pleasure of the board. At the same meeting the board took under consideration the resignation of Superintendent Kyle and adopted the following resolution:
>
> WHEREAS, The Honorable Mathew Kyle has this day tendered his resignation as superintendent of the Nevada School of Industry for acceptance at the pleasure of the board; and
>
> WHEREAS, This resignation comes, not at the request of the board, but is the result of the refusal of Mr. Kyle to agree to a temporary reorganization of the plan of school management whereunder the board proposes employing for the period of one year a trained and experienced specialist in industrial training and the management of boys, who shall have entire charge and direction of the education and discipline of the inmates of the institution during such period and be responsible to the board, while Superintendent Kyle shall have only supervision of buildings, grounds, the financial management and the discharge of certain duties directly imposed on him by the law and to be held responsible only for the discharge of said enumerated duties; therefore, be it
>
> *Resolved*, That this board accepts the resignation of Superintendent Kyle, to take effect September 1, 1917, with the provision that this acceptance be automatically withdrawn if, on or before August 5, the said Superintendent Kyle sees fit to withdraw his resignation and agree to the plan of reorganization suggested.

It appears that thereafter Mr. Kyle withdrew his resignation, accepted Mr. Hoag and his wife in the school in the capacities outlined in the resolution and action of the board, and Mr. Kyle specifically approved bills for their compensation, which were thereafter approved by the State Board of Examiners and the warrant drawn thereafter by the State Controller.

Section 11 of chapter 254 of the Statutes of 1913, defining the duties of the superintendent, provides in part:

> He shall appoint, subject to the approval of the board, all teachers, officers, and employees who shall hold office during his pleasure.

This provision was sufficiently complied with when Mr. Kyle withdrew his resignation, accepted Mr. Hoag and his wife in the capacities designated by the board, and approved their bills for compensation. Moreover, this provision is not an absolute limitation upon the powers of the board, but is to be considered in relation to the subsequent section of the same act which provides:

SEC. 13. This Act shall be construed in conformity with the intent as well as the express provisions thereof and shall confer upon the board authority to do all those lawful acts which it deems necessary to promote the prosperity of the school and the well-being and education of its inmates, including the organization of trades schools, purchase of materials for the use therein, and the doing of all other things not prohibited which are required to carry out the purposes of this Act.

This provision is a later provision, and, under the well-known rule of statutory construction, it controls.

It is entirely within the province of the board to lay out such plans for the well-being and education of the inmates as it deems proper and necessary, and, having that power, can carry it into effect.

I am of the opinion that the board acted well within its rights in the employment of Mr. Hoag and his wife as shown by the resolution of July 31, 1917.

Yours very truly,

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

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126. Industrial Insurance—Nevada Industrial Commission—Public Schools—School Districts.

The school districts of this State are required to contribute to the State Insurance Fund.

CARSON CITY, November 27, 1917.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your request for an opinion upon the question: "Are the school districts of this State required to contribute to the State Insurance Fund?"

Section 1b of the Act relative to industrial insurance (Stats. 1917, p. 436), reads as follows:

> Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

The language of this section is plain and it can be construed in no way except as therein indicated. It is, therefore, our opinion that your question should be answered affirmatively.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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127. **Rewards.**

A claim for the reward provided in section 3905, Rev. Laws, is legal and should be paid out of the fund provided for such purpose.

CARSON CITY, November 30, 1917.

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

GENTLEMEN: With reference to the claim of Alexander Forsyth for $250, for reward in the matter of the arrest of Jack Bagley, will say that in our opinion the claim is legal. (Rev. Laws, 3905; *Silas* v. *Hallock*, 14 Nev. 332; *State ex rel. Wilkins* v. *Hallock*, 20 Nev. 73, 15 Pac. 472.)

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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128. **Industrial Insurance—Nevada Industrial Commission—School Teachers—Salaries.**

Premiums on the salaries of all school teachers employed in the public schools within this State must be paid to the Nevada Industrial Insurance Commission.

CARSON CITY, December 4, 1917.

HON. GEORGE D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent letter wherein you ask whether or not premiums should be paid to the Commission on the salaries of school teachers.

We recently advised you that the Industrial Insurance Act is obligatory upon school districts. It naturally follows that it is equally binding upon school teachers, unless it can be said that they are not employees.

No citation of authorities is required on the point that school teachers are employees and have always been so regarded in this State. (*State ex. rel. Kendall* v. *Cole*, 38 Nev. 215, 237, 148 Pac. 551; *Farley* v. *Board of Education*, 162 Pac. 797.)

We are, therefore, of the opinion that premiums on the salaries of all school teachers within this State must be paid to the Nevada Industrial Insurance Commission.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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129. **Conveyances—County Recorders—Recording.**

County Recorders may accept for recordation any instrument tendered them whether or not the same has been properly acknowledged and notwithstanding the character of the instrument.

CARSON CITY, December 5, 1917.

HON. G. J. KENNY, *District Attorney, Churchill County, Fallon, Nevada.*

DEAR MR. KENNY: I am in receipt of your favor of the 4th instant,

asking construction of Rev. Laws, 1035, concerning recording of conveyances. Said section reads as follows:

> A certificate of the acknowledgment of any conveyance or other instrument in any way affecting the title to real or personal property, or the proof of the execution thereof, as provided in this Act, signed by the officer taking the same, and under the seal of such officer, shall entitle such conveyance or instrument, with the certificate or certificates aforesaid, to be recorded in the office of the Recorder of any county in this State; *provided, however*, that any state or United States contract or patent for land may be recorded without any such acknowledgment or proof.

You inquire: Does the word "entitle," as herein used, prevent the Recorder from accepting, for record, instruments that are not acknowledged?

The word "entitle" is defined as "to furnish with grounds for securing a claim with success." If a deed is acknowledged according to law, and properly recorded, every person is bound to take notice of the contents thereof. Therefore the acknowledgment of such a deed furnishes it with grounds for securing a claim with success, in accordance with said definition.

This is as far as the rights conferred by Rev. Laws, 1035, go. There is nothing in the statutes concerning Recorders, or in the chapter on conveyances, which prohibits the County Recorder from accepting for record any instrument which may be tendered him for such purpose. He has no judicial powers and cannot refuse to record any instrument of any character whatsoever which is tendered him for that purpose if his legal fees are paid.

The question of the effect of such recording as to notice to the world of the contents of such instruments is entirely outside of this inquiry.

It is, therefore, the opinion of this office that County Recorders may accept, for recording, any instruments tendered for that purpose, whether or not the same have been properly acknowledged, and notwithstanding the character of the instrument.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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130. **Employer and Employee—Wages—Liens.**

Law in this State in reference to liens of employees of corporations stated.

CARSON CITY, December 5, 1917.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 3d instant, relative to nonpayment of wages due an employee of the Nevada Short Line Railroad Company, for labor performed prior to date of receivership. Therein you ask certain questions on points of law in connection with the matter, as follows:

> (1) Does the law expressly prohibit the payment of wage claims contracted before the date of receivership until such time as the earnings of the road create a surplus sufficient to warrant the court in ordering them to be paid?

There is no express enactment on this subject. As a usual rule, property in the hands of a receiver is subject to the order of the court. If the property warrants it, upon application of the court an order would undoubtedly be entered authorizing the receiver to borrow money with which to pay off claims of this character.

> (2) Is there a time limit within which wage claims must be presented; if so, what is the limit and to whom should such claims be presented?

We have two enactments on this subject. Rev. Laws, 1187, being section 6 of the general law concerning corporations, provides a lien for not exceeding two months wages to employees doing labor, or services of whatever character, in the regular employ of such corporation.

By the terms of such section, this lien is limited to employees of corporations formed under the General Corporation Act.

I apprehend that the railroad in question was incorporated under our railroad corporation Act, and this section would, therefore, not apply.

Rev. Laws, 5493, provides a lien:

> In all assignments of property, whether real or personal, which shall hereafter be made by any person or chartered company or corporation, or by any person or persons, owning or leasing real or personal property, to trustees or assignees on account of inability at the time of the assignment to pay his, her, or their debts, the wages of * * * laborers employed by such person or persons, or chartered company or corporation, shall be held and deemed preferred claims, and paid by such trustees or assignees, before any other creditor or creditors of the assignor; *provided*, that the claims of each * * * laborer thus preferred shall not exceed in value $200, and the services shall have been rendered, or labor performed, within ninety days next preceding said assignment.

I understand that in the case of the railroad in question judgment was obtained against the railroad company, and under such judgment a receiver was appointed to take charge of the assets of the company. As this was not an assignment of the property, such section would not apply.

If the property in question had been sold out under execution sale, the provisions of Rev. Laws, 5494, would apply, and such preferred claims would have been paid out of the proceeds of the sale.

As these are all the enactments on the subject, it would appear there is no time limit within which wage claims must be presented. Under section 5494 the laborer having a preferred claim must present the same to the officer executing the writ.

In answer to your third question, let me say there is no provision for recording wage claims in the court in case a receiver has been appointed.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

131. **Labor Commissioners—Employer and Employee—Wages.**

There is nothing in the Act "creating the office of Labor Commissioner" (Stats. 1915, 311) specifically conferring upon the Commissioner the power to enforce laws relative to the payment of wages.

CARSON CITY, December 5, 1917.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 4th instant, asking whether the Act creating the office of Labor Commissioner (Stats. 1915, p. 311) gives you authority to enforce the laws relative to the payment of wages. Section 4 of said Act provides:

> Said Commissioner shall inform himself of all laws of the State for the protection of life and limb in any of the industries in this State, all laws regulating the hours of labor, the employment of minors, and all other laws enacted for the safety of the public and for the protection of employees; and it shall be the duty of said Labor Commissioner to enforce all such laws in the State, and whenever after due inquiry he shall be satisfied that any such law has been violated he shall present the facts to the District Attorney of any county in which such violation occurred, and it shall be the duty of such District Attorney to prosecute the same.

This section governs laws for the protection of life and limb; laws regulating the hours of labor; laws regulating the employment of minors; laws enacted for the safety of the public, and laws enacted for the protection of employees.

I find nothing in the Act which specifically confers upon the Commissioner the power to enforce laws relative to the payment of wages.

Applying the familiar rule, "the inclusion of one is the exclusion of the other," I am of the opinion that the laws which the Commissioner is required to enforce by the section above quoted are hereinbefore enumerated, and, therefore, he has no jurisdiction over the enforcement of laws relating to the payment of wages of labor.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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132. **Fish and Game Laws—Beaver.**

All beaver in this State are protected under Stats. 1917, p. 468, to and including January 1, 1920.

CARSON CITY, December 8, 1917.

MR. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent communication, wherein you state that beaver are causing considerable damage to certain property in Elko County, and asking whether it is possible, for the preservation of such property, to kill said beaver.

By the provisions of section 51 of an Act providing for the protec-

tion and preservation of fish and game (Stats. 1917, p. 468) it is provided:

> It shall be unlawful for any person or persons, firm, company, corporation, or association to catch, kill, destroy, trap, net, weir, or cage any beaver in this State on or before the first day of January, 1920.

The intention of the Legislature in enacting this statute is plainly indicated by the language used. It was intended to protect, and does protect, all beaver in this State to and including January 1, 1920.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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133. **Revenue—Taxation.**

The county in which sheep should be assessed is that of the residence of the owner.

CARSON CITY, December 8, 1917.

HON. FRANK CURRAN, *District Attorney of Lander County, Austin, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 5th instant, in which you state that a citizen of Lander County, who drives his sheep into Nye County, is there assessed on such sheep and pays the taxes thereon, and later is assessed on the same sheep in Lander County, and you desire to know whether or not he is thus relieved from paying the taxes in Lander County. From your letter we assume that the owner of the sheep has real property in Lander County, but has none in Nye County, and that the sheep were bred, born, and raised in Lander County, and were driven into Nye County for the purpose of grazing.

If these be the facts, it necessarily follows that the home or habitat of the sheep was in Lander County; that they properly belong to said Lander County, and that they were subject to taxation in that county and nowhere else. (*Barnes* v. *Woodbury*, 17 Nev. 383, 30 Pac. 1086; *Ford* v. *McGregor*, 20 Nev. 446, 23 Pac. 508; *Whitmore* v. *McGregor*, 20 Nev. 451, 23 Pac. 510; *State* v. *Shaw*, 21 Nev. 22, 29 Pac. 321.)

We are, therefore, of the opinion that the taxes must be paid in Lander County.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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134. **Revenue—Taxation—Patented Mining Claims—Exemption.**

The affidavit authorizing exemption of taxes assessed on patented mining claims (Stats. 1915, p. 316) should be filed within the year for which exemption is claimed.

CARSON CITY, December 8, 1917.

HON. FRANK CURRAN, *District Attorney of Lander County, Austin, Nevada.*

DEAR SIR: We are in receipt of your letter of the 5th instant, wherein you ask this question:

Local parties, who are conducting extensive mining operations, neglected to file the necessary affidavit to receive exemption of taxes on patented mining claims, and are assessed therefor. Is it possible for them to now secure exemption for this year?

An Act authorizing the assessment of patented mines (Stats. 1915, p. 316) provides that where at least $100 in labor has been actually performed upon the patented mine, during the calendar year for which assessment is levied, the owner thereof may have the same stricken from the roll by filing with the County Board of Equalization, or with the State Board of Equalization, an affidavit in the form prescribed by the statute. In case the required amount of labor has not been performed at the time of the meeting of either of said boards, the owner may file an affidavit of intention of performing said labor before the expiration of the then current calendar year.

It is noticed that the statute requires the filing of the affidavit of intention to perform the labor, or the affidavit of the performance of such labor with the County or State Board of Equalization. Clearly the exemption can be had only in the manner defined. As was said in *District Township* v. *City of Dubuque*, 7 Iowa, 262, 284; cited and approved in *Nevada-California Power Co.* v. *Hamilton*, 235 Fed. 317, 336:

> The expression of one thing is frequently the exclusion of another; and if, by a law or Constitution, a thing is to be done in a particular manner or form, this, as we have seen, includes a negative, that it shall not be done otherwise. * * * This rule, it is also said, is further modified by another that where the means for the exercise of a granted power are given, no other or different means can be implied, as being more effectual or convenient.

As the parties in question have not filed the necessary affidavits, it is not now possible for them to secure the exemption for this year.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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135. **Public Highways—Counties—County Commissioners.**

The Board of County Highway Commissioners, created by chapter 157 of the Statutes of 1913, has the right to lay out and improve roads in its county and to pledge the credit of the county for the expense thereof.

Such board has the entire administration of road matters in its county.

CARSON CITY, December 14, 1917.

HON. R. K. WEST, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: In response to your verbal inquiry as to the force and effect of that certain Act entitled "An Act to provide for the establishment of a uniform system of road government and administration in each of the several counties of the State of Nevada," etc., chapter 257 of the Statutes of 1913, let me say that, in my opinion, the Board of

County Highway Commissioners therein created has the right to lay out and improve roads in any county in which the said Act has been adopted and to pledge the credit of the county for the expense thereof.

The county of Elko, in the State of Nevada, has fully adopted the terms and provisions of said Act, and, therefore, the entire administration of road matters in said county is within the province of the said Board of County Highway Commissioners of Elko County.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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136. Clerk of the Supreme Court—Fees.

The Clerk of the Supreme Court is required under section 2034, Rev. Laws, to make monthly settlements with the State Treasurer of the fees collected by him.

CARSON CITY, December 24, 1917.

HON. WM. KENNETT, *Clerk of the Supreme Court, Carson City, Nevada.*

DEAR MR. KENNETT: We are in receipt of your letter of the 22d instant, in which you ask whether, in making settlement of your fees, you should follow section 2034 or section 4894 of the Revised Laws.

Section 4894, which was approved February 24, 1875, provides that all fees collected by you shall be paid into the State Treasury *at the end of every quarter.*

This section is in conflict with section 2034, which provides that *on the first Monday of each month* you shall pay all fees to the State Treasurer. The section last mentioned was approved February 27, 1883, or eight years later than the contrary provision.

It is well settled that where two statutes are inconsistent with each other the later repeals the earlier.

You are therefore advised that, in our opinion, you should make monthly settlements as provided by section 2034 of the Revised Laws.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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137. Carson City—Paving Fund.

The fund derived through payments of assessments by property owners under chapter 131, Statutes of 1917, abutting on Carson Street, may lawfully be used in the payment of expenses for paving said street.

CARSON CITY, December 28, 1917.

HON. DANIEL E. MORTON, *County Clerk and ex officio City Clerk, Carson City, Nevada.*

DEAR SIR: After careful examination of chapter 131, Statutes of 1917, providing for the paving of a portion of Carson Street in Carson City, etc., I am of the opinion that the fund derived through payments of assessments by property owners abutting on said Carson Street may lawfully be used in the payment of expenses for paving said street.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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138. State Assayer and Inspector—Fees.

The State Assayer and Inspector cannot charge less than 25 cents per ton on any shipment in cases of fifty tons under Stats. 1917, p. 450.

CARSON CITY, January 9, 1918.

HON. FRANCIS CHURCH LINCOLN, *State Assayer and Inspector, Reno, Nevada.*

DEAR MR. LINCOLN: Your letter of the 5th instant duly received. You ask whether it is possible, in shipments in excess of eighty tons, shipped in two cars but sampled as one lot, to impose a definite maximum charge lower than 25 cents per ton.

The statute creating your office (Stats. 1917, p. 450) provides for a charge of 25 cents a ton for services rendered by you, except in cases where less than fifty tons of ore daily are received and sampled. In the latter event, the shipper is required to pay the actual costs of the inspection and sampling.

In view of these very definite provisions, it is our opinion that you cannot charge less than 25 cents per ton on any shipments in excess of fifty tons.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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139. Public Schools—State Board of Vocational Education—State Director of Vocational Education.

Under Stats. 1917, p. 398, the State Board of Vocational Education has the right to pay the salary and traveling expenses of the State Director of Vocational Education from the appropriation made in said Act.

CARSON CITY, January 9, 1918.

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

DEAR MR. BRAY: We are in receipt of your recent letter wherein you ask an opinion upon the following questions:

> Has the State Board of Vocational Education the right to pay the salary of the State Director of Vocational Education under the Smith-Hughes Act from the $30,000 appropriation made by the Legislature of Nevada in 1917?
>
> Has the State Board of Vocational Education the right to provide traveling expenses and office expenses for said State Director of Vocational Education from appropriation of $30,000 in said Act of the last Legislature?

The last Legislature (Stats. 1917, p. 398) appropriated the sum of $30,000 as a vocational educational fund, to be available in the biennial period, beginning July 1, 1917—

> For the preparation of teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economics subjects; for the salary of teachers of trade and industrial and home economics subjects, and for the salary of teachers, supervisors, and directors of agricultural

subjects, so as to receive the full benefit of the said Act of Congress.

The State Director of Vocational Education will be engaged in supervising vocational work in this State and aiding as a teacher in such phases of the work as may be necessary. By joint agreement on the part of the Federal Board of Vocational Education and the State Board of Vocational Education, the salary and expenses of the State Director, who is a supervisor and a teacher, shall be paid from state funds.

The language of the Act in question is broad enough to include both the salary and expenses of such Director.

Both of the questions which you ask should, therefore, be answered affirmatively.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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140. State Railroad Commission—Public Service Commission—Fees.

The State Railroad Commission and Public Service Commission cannot increase the appropriations made for the support of the said Commissions by adding thereto the amount in money received by the Treasurer in payment for transcripts of proceedings.

CARSON CITY, January 9, 1918.

MISS E. E. STONE, *Assistant Secretary, Railroad Commission and Public Service Commission, Carson City, Nevada.*

DEAR MISS STONE: We wish to acknowledge receipt of your letter of the 8th instant, in which you ask whether the appropriations made for the support of your Commission should be increased by the amount of any money received by the State Treasurer, in payment of transcripts of proceedings. The law providing for the sale of such transcripts (Stats. 1915, p. 450) reads as follows:

> The amount so charged and collected shall be turned over by the Commission to the State Treasurer, and by him carried into the fund appropriated for the general expenses of the Commission.

There is nothing in this language indicating the intention on the part of the Legislature to have the Commission appropriations increased by such receipts. The statute, by the use of the word "fund," plainly indicates the lack of such intention. "Fund" and "appropriation" are not synonymous terms. A distinction is of necessity made between them in the statutes (Stats. 1915, p. 95; *Marshall* v. *Dunn*, 69 Cal. 223.)

The purpose of the Legislature was apparently to designate the fund into which the receipts should be apportioned. This purpose is plainly shown by the statute in question, and is further shown by the language used in the last general appropriation bill. (Stats. 1917, pp. 217-221.)

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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141. Employer and Employee—Liens—Mines and Mining.

Section 2221, Rev. Laws, was amended by Stats. 1917, p. 435, so as to require, in addition to posting the notice therein mentioned, the making of an affidavit of such posting and the recording of the same with the County Clerk.

If the labor performed or the material furnished for which a lien is claimed was performed or furnished after March 27, 1917, the date of said amendment, the posting of a notice alone would not be a sufficient compliance with the law. If such labor was performed or material furnished thereafter, and no copy of the notice was filed with the County Recorder, the property would be subject to a lien.

CARSON CITY, January 11, 1918.

HON. ROBT. F. COLE, *Industrial Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 17th ultimo, enclosing copy of notice which was posted on certain mining claims belonging to Mr. Fred Toberg of Crescent, Nevada.

It seems that certain parties who leased the property from Mr. Toberg failed to pay for certain labor performed thereon, and for certain materials furnished.

You inquire whether or not the property can be held in payment for such labor and materials. You state that a notice was posted on the dump of the claim, in a box, and on the outside and inside of the building.

In my opinion, the mining claims on which this labor was performed, and for which the material was furnished, cannot be held for payment thereof, for the reason that the owner of the claims has complied fully with the provisions of section 9 of an Act entitled "An Act to secure liens to mechanics and others," etc., being Rev. Laws, 2221, if the work was performed and materials supplied prior to March 27, 1917.

On said date said section 9 was amended providing the following: "and also shall, within five days after such posting, file a duplicate copy of said posted notice with the Recorder of the county where such land or building is situated, together with an affidavit attached thereto, showing such posting and original posting. Such filing shall be *prima facie* evidence of such posting."

Therefore, if the labor was performed and material furnished after March 27, 1917, the posting of the notice alone would not be a sufficient compliance with the law. If this work was done thereafter, and no copy of the notice filed with the County Recorder, the property in question would be subject to a lien.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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142. Mothers' Pension Law.

The clause "or are dependent upon their own efforts for maintenance of their children" in the mothers' pension law (Stats. 1915, p. 151) is a part of the qualifications preceding which entitle the mother to partial support by the county.

The object and intent of such Act is to maintain the home and keep the mother with the children, and the mother is not obliged to go away from home to secure work under such law if such procedure would leave the children without a mother's protection.

CARSON CITY, January 12, 1918.

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

DEAR MR. CARVILLE: Since my last return from Elko Mr. Thatcher has been away so much that only today was I able to ask him for his interpretation of section 1 of the mothers' pension law (Stats. 1915, p. 151). He holds that the phrase, "or are dependent upon their own efforts for maintenance of their children," is a part of the qualifications preceding which entitles the mother to partial support by the county. He further holds that the object and intent of the Act is to maintain the home and keep the mother with the children, and that the mother is not obliged to go away from home to seek work, if such procedure would leave the children without the mother's protection.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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143. **Public Schools—Evening or Night Schools.**

The appropriation of $10,000 provided in section 4 of the Act to provide for the establishment of evening schools (Stats. 1917, p. 354) is to be taken from the General Fund of the State.

CARSON CITY, January 18, 1918.

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

DEAR SIR: We are in receipt of your letter, in which you refer us to the law establishing night schools, which provides that a designated sum be appropriated from the "State School Fund." You state that no part of such fund can be used for educational purposes and ask—

> What fund can the money be taken from for the purpose of night schools?

The law in question (Stats. 1917, p. 354) provides for the establishment of evening schools. The State is required to pay not to exceed a specified amount for the salary of each teacher, and for the purpose of paying such salaries—

> The sum of ten thousand dollars is hereby appropriated from the State School Fund to carry out the provisions of this Act; and claims against said appropriation shall be paid as other claims against the State are paid upon certificate of the State Superintendent of Public Instruction.

The Legislature having previously established and authorized the keeping of accounts with the "State Permanent School Fund" and the

"State Distributive School Fund" (Rev. Laws, 3373, 3375; Stats. 1915, p. 95), there was not, at the time of the enactment of this statute, any fund known as "State School Fund." It is apparent, therefore, that the Act in question designated a wrong fund; or, rather, a fund that was not in existence.

But it does not follow that the appropriation is null and void, if it can otherwise be determined what fund the money appropriated is to be drawn from. (*State* v. *Westerfield*, 23 Nev. 468, 473.) In the cited case it was held that the salary of a teacher at the Orphans' Home should be paid from the General Fund, although the statute authorizing the expenditure designated the General School Fund. There the money could not be paid from the fund designated by the Legislature, because of constitutional restrictions; while here the money cannot be paid from the named fund, because there is no such fund.

It follows, in our opinion, that the appropriation for the salaries of teachers in evening schools may be paid from the General Fund.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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144. County Clerk's Fees—State Orphans' Home.

The County Clerk is not entitled to any fee in the proceeding leading to the commitment under section 4098, Rev. Laws, of half-orphans to the State Orphans' Home.

CARSON CITY, January 18, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: Some time since you wrote for an opinion as to whether the Clerk of your court was entitled to any fee on a petition filed under the provisions of Rev. Laws, 4098.

Section 4098 is section 12 of the original Act for the government and maintenance of the State Orphans' Home.

Amendments thereto of 1913 and 1915 were for the purpose of enlarging the scope of the Home and permitting the admission therein of children who otherwise could not be received.

Section 7 of said Act (Rev. Laws, 4093) provides the procedure of admission to the Home and the last sentence of said section is as follows:

> The expenses of proceedings herein provided for and of the transportation of orphans to the Home shall be a county charge.

There is nothing in section 12, or the amendments thereto, which changes this rule, and I am, therefore, of opinion that for the services rendered in such proceedings your Clerk is not entitled to any fee.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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145. **Revenue—Taxation—Patented Mines—Exemption.**

The affidavit contemplated for the exemption from taxation of patented mines in the Act of 1915, p. 316, requires the filing of such affidavit within the calendar year for which such exemption is claimed.

CARSON CITY, January 18, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: I am in receipt of your favor asking interpretation of chapter 206 of the Statutes of 1915, being the Act to provide for the assessment of patented mines.

It appears from your letter that on July 25, 1917, the owner of a certain patented mine sent your County Clerk an affidavit showing that between April 1, 1916, and June 30, 1916, the labor specified in said Act was performed and prayed that the assessment against his property be stricken from the roll.

In my opinion the County Board of Equalization could not act upon this petition, for the reason that the whole purport of the Act seems to contemplate that it can only strike from the rolls patented mines on which the $100 worth of labor was performed during the calendar year. I am confirmed in this opinion by the provisions of section 5 of said Act, which provides for an affidavit from the owner of his intention to perform such labor before the expiration of the then current calendar year, and on filing a bond for the performance of such labor.

The law of 1913 was defective in that it did not allow credit for the performance of such annual labor as might have been done after the meeting of the Board of Equalization and before the expiration of the then calendar year. To meet this difficulty, the law of 1913 was repealed and the present Act was passed by the Legislature of 1915.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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146. **Criminal Practice—County Commissioners—Extradition—Misdemeanors.**

Under the amendment to section 7444, Rev. Laws (Stats. 1917, p. 25), County Commissioners are now authorized to bind the county for the expense of extradition in misdemeanors as well as in felonies.

CARSON CITY, January 24, 1918.

HON. ROBERT F. COLE, *Commissioner of Labor, Carson City, Nevada.*

DEAR SIR: There has been pending in your office for some time the claims of Grainger, *et al.*, against one ..... for labor performed on behalf of said ..... on a mining claim, none of which claims were ever settled.

Your predecessor in office, Hon. W. E. Wallace, referred the matter to this office for an opinion as to whether or not ..... can be extradited and brought back to this State for trial on a misdemeanor charge.

At the time of his inquiry such action did not seem possible for the reason that Rev. Laws, 7444, as it stood at that time, authorized County Commissioners to provide for the payment by the county of the

expense of extradition when the crime was of the grade of felony.

The charge against ..... under our laws could be nothing more than a misdemeanor, and therefore it does not seem possible that this man might be extradited.

At the last session of the Legislature, however, section 7444 was reenacted, omitting the words "of the grade of felony," and the County Commissioners are now authorized to bind the county for the expense of extradition in misdemeanors as well as felonies.

I am, therefore, of the opinion that if you desire to pursue this matter further, you may now legally apply to the Board of County Commissioners of Washoe County for the extradition of .....

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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147. Revenue—Taxation—Bullion Tax—Federal Taxes.

No reduction from the gross proceeds of mines in order to arrive at the net proceeds for the purpose of taxation in this State may be made except those provided for by section 3687, Rev. Laws, and federal taxes are not within the deductions of such statutes and may not be deducted in arriving at the net proceeds as a basis of taxation.

CARSON CITY, January 25, 1918.

Nevada Tax Commission, Carson City, Nevada.

GENTLEMEN: I am in receipt of yours of January 21, together with the enclosed letter from Mr. C. B. Jenkins, Business Manager of the Nevada Consolidated Copper Company, relating to the legality of deducting federal taxes from the gross proceeds of mines in order to arrive at the net proceeds for the purpose of taxation.

Concretely, the question presented by the correspondence is: May a mining company deduct federal taxes from the gross proceeds of mines in arriving at the net proceeds, the basis of taxation?

Section 3687 of the Revised Laws provides as follows:

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

The section referred to is section 75 of "An Act to provide revenue for the support of the Government of the State of Nevada and to repeal certain Acts relating thereto," which was approved March 23, 1891.

It will be observed from the section just referred to that it is the *net proceeds* of mines that should be assessed and taxed; and the term *net proceeds* is defined as "being the gross yield or value of the ore less the actual cost of extracting; the actual cost of transportation to the place of reduction or sale; and the actual cost of reduction or sale."

It will be further observed that it is *net proceeds* and not *net income* that is to be taxed under the provisions of this section.

This section was adopted under the provisions of section 1 of article 10 of the Constitution as it then existed, which 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, excepting mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

It will be observed from the original section 1 of article 10 that it was left to the Legislature to tax the *proceeds of mines*, and they could tax either the gross or the net in the exercise of their legislative discretion. Section 1 of article 10 was later amended and, as amended and approved by the people at the general election of 1906, reads as follows:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and, when patented, each patented mine shall be assessed at not less than five hundred dollars ($500) except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon *the net* proceeds; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

It will be observed that there is some ambiguity with reference to the provisions of this section. "Mining claims when not patented, the proceeds of which shall be assessed and taxed," seems to conflict with "On such patented mines during the year in addition to the tax upon the *net proceeds*." Under the view that I take of the matter, however, this conflict is not material, for the Legislature has not attempted to differentiate between patented and unpatented mining claims, and taxes only the *net proceeds* in both classes of mines.

The question arises, however, as to the construction to be placed upon the words "net proceeds," as they appear in section 1 of article 10. The Constitution does not define *net proceeds*, but, as a matter of construction, I am of the opinion that the term *net proceeds*, as used in the Constitution, is identical with that defined by section 3687, for the Legislature evidently had in mind in adopting the amending resolu-

tion the law as it existed at that time, and this is always a guide for construction. The legal presumption will be indulged in that the revisers of the Constitution used the words intelligently, with full knowledge of the statutory definition of "net proceeds" then in effect. This rule of construction is supported by abundant authority: *State* v. *Glenn*, 18 Nev. 34; *State ex rel.* v. *Cole*, 38 Nev. 215; *State* v. *Parkinson*, 5 Nev. 15–34; *O'Brien* v. *Trousdale*, 41 Nev. 90, 167 Pac. 1007; 8 Cyc. 736, 740; 12 Corpus Juris. 706, 712.

As I have heretofore said, it is the *net proceeds* of mines and not the "net income" of mine owners and mining corporations that is the basis of assessment and taxation. I am of the opinion that no deductions may be made except those provided for by the statute and that federal taxes are not within the deductions provided for by the statute, and may not be deducted in arriving at the *net proceeds*, the basis of taxation.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*

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148. Nepotism—Nevada School of Industry.

There is nothing in the Nepotism Act (Stats. 1915, p. 17) which prevents the Board of Government of the Nevada School of Industry from employing the son-in-law of one of its members as a physician at the school.

CARSON CITY, January 26, 1918.

MR. W. W. BOOHER, *Secretary Board of Government Nevada School of Industry, Elko, Nevada.*

DEAR SIR: We are in receipt of your letter of recent date, wherein you ask an opinion upon the following question:

> Can the Board of Government of the Nevada School of Industry legally employ the son-in-law of one of its members as a physician at the school?

There is nothing in the Nepotism Act (Stats. 1915, p. 17) which prevents the employment mentioned, and, as there is no other statute of this State applicable at all to such matter, it is our opinion that the contemplated employment can be legally made.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*
By WM. MCKNIGHT, *Deputy.*

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149. Pure Food.

The decision in this matter found to depend upon a question of fact.

CARSON CITY, January 31, 1918.

MR. H. B. BULMER, *Acting Commissioner, University of Nevada, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of recent date, asking information as to whether vinegar manufactured as the Fleischmann Company claim in paragraph 3 of their letter, complies with our law.

After examination of the question, it appears to me that a question of fact, rather than of law, is involved.

In the report of your analysis of December 31 you find "artificial coloring matter" present. In the letter of the Fleischmann Company, dated January 9, the writer thereof says:

> The vinegar derives its color and flavor from the malt vinegar, and is quite extensively sold in the State of California where our laws concerning the manufacture of vinegar seem to be on a parallel with the laws of the State of Nevada. No artificial coloring matter is used in this vinegar.

Our law on the subject is found in Stats. 1913, p. 318, sec. 9, which provides:

> Food, liquor and drugs shall be deemed mislabeled or misbranded within the meaning of this Act in any of the following cases: * * *
>
> Second—If it be labeled or colored or branded so as to deceive, mislead or tend to deceive or mislead the purchaser.

If you found that this vinegar contained artificial coloring matter, it is clearly prohibited from sale in this State under our law. If, however, it is not artificially colored, its sale is legal.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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150. **Department of Highways—Federal Government—State Highway Fund.**

The money of the State Highway Fund may be legally used in making reports to the Federal Government of military notes and economic resources of the State.

CARSON CITY, February 2, 1918.

MR. R. K. WEST, *State Highway Engineer, Carson City, Nevada.*

MY DEAR MR. WEST: We wish to acknowledge receipt of your recent letter, in which you state that your department has been requested by the United States Army authorities to furnish certain military notes on all roads in Nevada, with reports of the economic resources of the State, and ask whether any part of the funds under the jurisdiction of the State Highway Department may be legally expended for such purpose.

Section 6 of the Act creating the Department of Highways (Stats. 1917, p. 310) provides that the State Highway Engineer—

> shall cause to be made and kept by the Department of Highways a general plan of the State, and shall collect information and compile statistics relative to the mileage, character, and condition of the highways and bridges in the different counties of the State.

It is apparent that a great portion, if not all, of the matter desired by the War Deparment is that covered by the above-mentioned section.

We are therefore of the opinion that the money in the State Highway Fund may be legally used for the purpose mentioned.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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151. Trademarks, Imitation of—Unfair Competition.

It is illegal for any one to imitate the emblem used by another party in the same line of business, whether such emblem has been recorded or not.

CARSON CITY, February 16, 1918.

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

DEAR SIR: I am in receipt from you of a letter from the District Auto Service, Incorporated, concerning the alleged infringement by other parties of an emblem which has been in use by said District Auto Service for over twenty-one months on its autos; also a letter from C. A. Eddy, attorney-at-law of Ely, Nevada, requesting two copies of the sign or trademark which he desires to have recorded in your office under sections 4335–4337 of the Revised Laws of Nevada, said trademark to be used in connection with automobile jitney service.

The letter of the District Auto Service first referred to is a protest against the recordation by you of said proposed trademark.

In the letter of the District Auto Service it is stated that one of the emblems engraved on brass carried on the autos of said District Auto Service since April, 1916, has been forwarded to you by express. The law of this State in the question above referred to provides:

> Every person or association or union or workman or others that has adopted or shall adopt any label or trademark or form of advertisement may file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof, with the Secretary of State. (Rev. Laws, 4635.)

The law of "unfair competition" is defined as follows:

> Unfair competition consists in the passing off and attempting to pass off upon the public the goods or business of one person as and for the goods or business of another. (38 Cyc. 756.)

This is the law, whether the trademark has been recorded or not. If, therefore, upon comparison of the labels furnished by Mr. Eddy with that furnished by the District Auto Service it is apparent that the labels are so similar that the public may be deceived by reason of such similiarity, it is your duty to reject the application for recordation of the letter, emblem, trademark, or advertisement.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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152. Nevada Industrial Commission—Salaries—Governor—Veto Power.

The Governor has no power to approve or fix the compensation of any person employed by the Nevada Industrial Commission to be paid from the Accident Benefit Fund.

CARSON CITY, February 18, 1918.

DR. DONALD MACLEAN, *Chief Medical Adviser, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of recent date, in which you ask whether or not the Governor has the power of

approval and veto over the Accident Benefit Fund of the Industrial Insurance Commission.

Section 21 of the Act creating the Nevada Industrial Commission (Stats. 1913, p. 143; Stats. 1915, p. 283; Stats. 1917, p. 439) provides that every employer coming within the provision of the Act shall pay into the State Treasury, for the State Insurance Fund, certain specified sums, while section 40 (Stats. 1913, p. 151) provides that the State of Nevada shall not be liable for the payment of any compensation under the Act, save and except from the said insurance fund; and section 41 (Stats. 1913, p. 151) expressly limits all expenses of administration of the Insurance Commission to 10 per cent of the amount of premiums paid into the said State Insurance Fund.

Section 11 of the original Act (Stats. 1913, pp. 137, 142) provides that:

> The Commission may employ a secretary, actuary, accountants, inspectors, examiners, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the Governor, and shall be paid out of the State Treasury.

The purpose of section 11, when read in connection with the other provisions above mentioned, is plain. Undoubtedly, the Legislature deemed it wise to leave it to the Governor, and to charge that officer directly with the approval of the employment of various assistants, and the compensation to be paid them from the State Insurance Fund. The object, naturally, was to provide every conceivable means to insure keeping within the prescribed limit the expenses of administration to be paid from such fund.

The accomplishment of this object is all that the section contemplated and all that it was designed for. It was never intended to reach, and does not reach, the employment of any assistant or the compensation to be paid to him from any fund other than the State Insurance Fund.

As the last Legislature expressly provided that all accident benefits, which include medical, surgical, hospital, or other treatments, shall be furnished by the Nevada Industrial Commission to those accepting the amendment, and that the State Insurance Fund shall not be liable for any such benefits, but that the fund provided for said benefits shall be a separate and distinct fund, and shall be so kept (Stats. 1917, p. 440), it is at once apparent that the provisions of section 11 have no application to the employment of any one receiving compensation from such separate and distinct fund.

You are, therefore, advised that, in our opinion, the Governor has no power to approve or fix the compensation for any person employed by the Nevada Industrial Commission to be paid from the Accident Benefit Fund.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

153. **Vocational Educational Fund—Appropriations, Lapsing of—Legislature.**

The Legislature by use of appropriate language has power to extend an appropriation beyond December 31 of the year following the session of the Legislature making the appropriation.

The Vocational Educational Fund appropriated by section 4, Stats. 1917, p. 398, is for two years beginning July 1, 1917, and ending June 30, 1919.

CARSON CITY, February 18, 1918.

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

DEAR SIR: Your letter of recent date duly received. Therein you call our attention to section 4 of chapter 209 of the laws of last session (Stats. 1917, p. 398) and ask whether or not the appropriation therein made extends beyond December 31, 1918.

The section in question reads in part as follows:

> That the sum of thirty thousand ($30,000) dollars is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, as a vocational educational fund, to be available in the biennial period beginning July 1, 1917.

The law itself was passed for the purpose of accepting the Federal Act providing for the promotion of vocational education, and the appropriation in question was made to cover a similar appropriation by the National Government—the latter appropriation being made to extend from July 1, 1917, up to and including June 30, 1919.

The language of our statute is plain and unambiguous, and the intent of the Legislature is readily apparent therefrom. As the Legislature, by use of appropriate language, has power to extend an appropriation beyond December 31 of the year following the session of the Legislature making the appropriation, and as the language in section 4 can have no other meaning, we are of the opinion that the sum appropriated therein is for the two years beginning July 1, 1917, and ending June 30, 1919.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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154. **Public Schools—Budgets—Budget Act—Revenue—Taxation—School Districts—High-School Districts.**

The "Act regulating the fiscal management of counties, towns, cities, school districts and other governmental agencies" (Stats. 1917, p. 249) does not apply to school districts and high-school districts until February 1, 1919.

It is unnecessary to publish the budgets of the school or high-school districts until that time.

The Act to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473–3477) is unrepealed until said date.

CARSON CITY, February 21, 1918.

MR. H. E. FREUDENTHAL, *Pioche, Nevada.*

MY DEAR MR. FREUDENTHAL: Your favor of the 16th instant, addressed to the Nevada Tax Commission, has been referred to this office for response. In answer thereto let me state as follows:

You are correct in assuming that the "Act regulating the fiscal management of counties, cities, town, school districts and other governmental agencies" (Stats. 1917, p. 249) does not apply to school districts and high-school districts until February 1, 1919.

The "Act to authorize the issuance of interest-bearing school warrants in emergencies," approved March 23, 1911 (Rev. Laws, 3473-3477), stands unrepealed until the said date.

Therefore it is unnecessary to publish the budget of school or high-school districts until that time, and any school or high-school district in need of money may issue interest-bearing school warrants until such time under the above-quoted Act.

It is immaterial whether the 3-mills levy for the teachers' pension fund under the Act of 1915, or the 5-mills levy to provide for civic and physical training and instruction under the Act of 1917, be levied by the County Commissioners or included in the state tax rate.

In any event, the moneys thus derived are state funds and must be transmitted to the State Treasurer when collected.

It is possible that the reason that these additional levies have been added to the state tax rate is because the same might be overlooked by the County Commissioners in making up a budget.

The State having acted in making such levies, the County Commissioners are deprived of the power of duplicating them by adding the same to the county rate.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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155. Revenue—Taxation—Widows' Exemption.

In order to claim the widow's exemption provided by section 3621, Rev. Laws, it is necessary that the widow yearly make an affidavit or have one made in her behalf.

CARSON CITY, February 25, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR MR. KENNY: Your recent letter, asking whether or not it is necessary for a bona-fide and actual resident widow of the county to yearly make affidavit, or have one made in her behalf, in order to entitle her to an exemption from taxation, duly received.

Section 3621 of the Revised Laws reads in part as follows:

> All property of every kind and nature whatsoever, within this State, shall be subject to taxation except:
>
> Sixth—The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family: *provided*, that no such exemption shall be allowed to any but actual bona-fide residents of this State, and shall be allowed in but one county in this State to the same family, and the party or parties claiming such exemption, or some one in their behalf, shall make an affidavit before the County Assessor of such residence, and that such exemption has been claimed in no other county in this State for that year.

It is seen that before an exemption can be allowed, an affidavit for the same must be made before the County Assessor, which affidavit must

show the residence of the party and "that such exemption has been claimed in no other county in this State for that year."

Clearly, the affidavit must annually be made as provided, because after the taxes are levied they become a lien, and when the Board of Equalization has acted an obligation immediately arises on the part of the party taxed to pay the amount due; and thereafter County Commissioners can neither release the property from the lien nor discharge the party from such obligation. (*State* v. *C. P. R. R. Co.*, 9 Nev. 79.)

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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156. Crimes and Punishments Act—Revised Laws.

The explanation of the method of adoption of the Crimes and Punishments Act and why the same does not appear at large in the Statutes of 1911.

CARSON CITY, February 26, 1918.

HON. H. H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR MR. ATKINSON: Your favor of the 23d instant, in regard to the Esser case, received.

When the petition for a writ of prohibition in this case was filed I noticed that Esser's attorneys claimed that the "Crimes and Punishment Act" was never passed by the Legislature and could understand no reason, therefore, except misinformation on their part. Section 375 of the "Crimes and Punishment Act" (Rev. Laws, 6640) in the enrolled bill of this section is word for word as it appears in the Revised Laws.

At the session of 1911 the first application was made of the law permitting a printed copy of a bill to be submitted to the respective officers of the Senate and Assembly for their signatures and to the Governor for his approval (Stats. 1911, p. 61, sec. 5). Under this Act the Crimes and Punishments Act, the Civil Practice Act, the Criminal Practice Act, the Public School Act, and the Act for the incorporation of the town of Las Vegas were enrolled by substituting a printed copy of the Act as passed and the same were duly signed by the proper officers of the Senate and Assembly and approved by the Governor. At the same session a law was passed directing the Secretary of State not to include in the Statutes of 1911 any of these long Acts, for the reason that they would appear shortly in the Revised Laws, which was then under course of preparation (Stats. 1911, p. 100). For these reasons I presume that Esser's attorneys contend that the "Crimes and Punishments Act" was not printed, published and approved as required by the Constitution. I think there is no merit whatever in this contention.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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157. School Teacher—State Board of Education.

Under amended Rev. Laws, 3266, appearing in Stats. 1917, p. 175, any person who has been connected with the public schools for a period of sixty months in any educational capacity is entitled to a life diploma.

In granting such life diploma the State Board of Education has the right to count both the supervising and teaching experience of the teacher.

CARSON CITY, February 26, 1918.

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

DEAR SIR: I am in receipt of your favor of the 19th instant, asking opinion of this office on the following matter:

> Section 1, chapter 91, page 175, Statutes of Nevada, 1917 (School Code, 1917, sec. 28), provides that any resident of the State of Nevada who has taught in the public schools for a period of six months shall be entitled under this and the other conditions named in the section to be granted a life diploma. (Rev. Laws, 3266, amended.)

On the above statement of facts you ask the following question:

> Has the State Board of Education the right in granting a life diploma to count both supervising and teaching experience of a teacher in the sixty months' requirement for such diploma?

You seem to be in doubt as to whether the word "taught" in the above-mentioned section would include a person who has spent some of the sixty months as a supervisor or principal. I see no reason for any such narrow construction of this word; the general rule is that in construing a statute a word should not be given a limited or specialized meaning unless such meaning is made by legislative enactment. (*Venable* v. *Schafer*, 28 Ohio Cir. Ct. Rep. 202; *Flanary* v. *Barret*, 146 Ky. 712.)

It is therefore the opinion of this office that any person who has been connected with the public schools for a period of sixty months in any educational capacity is entitled to a life diploma under said section and that the State Board of Education in granting such life diploma has the right to count both the supervising and teaching experience of a teacher.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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158. Public Schools—Emergency Loans—Budget Act.

The Act "to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473–3477) as amended by Stats. 1913, p. 54, stands unrepealed until February 1, 1919, and emergency loans until such time may be made by school districts under its provisions.

CARSON CITY, February 26, 1918.

MR. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR MR. POWELL: We are in receipt of your recent letter in which

you refer us to the various laws relating to emergency loans for school districts and ask whether it is now possible for such an emergency to be provided for.

In 1911 the Legislature passed an Act entitled "An Act to authorize the issuance of interest-bearing school warrants in emergencies," etc., which Act is incorporated in the Revised Laws as sections 3473 to 3477. This Act was amended in certain particulars at the following session. (Stats. 1913, p. 54.)

In 1917 the Legislature passed an Act regulating the fiscal management of counties, towns, school district, and other governmental agencies, by the terms of which provision is made for making emergency loans. Section 14½ of said Act (Stats. 1917, p. 254) provides that the provisions of the Act with reference to school districts and high-school districts shall not be effective until February 1, 1919, while the concluding paragraph expressly repeals the Act passed in 1913, as shown above.

Undoubtedly the intention of the Legislature was to continue the 1911 statute in force until February 1, 1919; otherwise there would be no method of providing for emergency loans in the meantime.

The intention of the Legislature controls the courts, not only in the construction of an Act, but also in determining whether a former law is repealed or not; and when such intention is manifest it is to be carried out, no matter how awkwardly expressed or indicated. (*Thorpe* v. *Schooling*, 7 Nev. 15.)

In our opinion, the law passed in 1911 (Rev. Laws, 3473–3477), as amended in 1913 (Stats. 1913, p. 54), stands unrepealed until February 1, 1919, and emergency loans may, until such time, be made under its provisions.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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159. **County Board of Education—School Contracts.**

It is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of its board is a stockholder.

CARSON CITY, February 27, 1918.

MR. JOHN H. CAZIER, *Foreman Elko County Grand Jury, Wells, Nevada.*

DEAR MR. CAZIER: Pursuant to your request for an opinion from this office on the question as to whether or not it is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of such board is a stockholder, we beg to reply as follows:

There is no direct provision in our laws relative to the matter, and it therefore becomes necessary to ascertain whether there be anything of an indirect nature. Unless the contract between the parties indicated is either directly or indirectly prohibited, the same is, of course, legal.

By referring to section 3309 of the Revised Laws it is seen that:

> No trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member.

In a former opinion from this office (Opinions Attorney-General, 1913–1914, p. 81) it was held that a contract of a school district in which one of the Trustees is pecuniarily interested, directly or indirectly, is void. If the same rule can be said to apply to members of a County Board of Education as well as to Trustees, then no legal contract can be entered into between the County Board of Education and a corporation of which one of the members of such board is a stockholder. The reason for the rule relative to Trustees is because of the positive provision of the statute above quoted, but there is no such statute covering contracts by the County Board of Education and the rule is not applicable.

The only provision that might be said to be sufficiently comprehensive to make the above-mentioned statute applicable to the County Board of Education is found in section 3423 of the Revised Laws, reading as follows:

> The county high school shall be under the same general supervision and shall be subject to the same laws, rules and regulations governing the other schools of the state school system.

This statute makes the high school subject to the same laws as are other schools, but it contains nothing from which even an inference might be drawn that the members of the County Board of Education are subject to the same laws as are School Trustees. It certainly cannot be said that the County Board of Education is the county high school, yet this must be done in order to make the law relative to contracts with School Trustees applicable to County Boards of Education. Both sections are incorporated in the same general law, and the latter section expressly mentions county high schools, but does not mention County Boards of Education.

In accordance with the maxim "*expressio unius est exclusio alterius*," where a statute enumerates the things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned. (36 Cyc. 1122.)

Thus the statute expressly mentioning *county high school* excludes from its operation *County Board of Education*. Had the Legislature intended to make the Board of Education subject to the same laws governing School Trustees, it would have used language indicating such intention.

In view of the foregoing we are of the opinion that it is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of such board is a stockholder.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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160. State Quarantine Officer—Public Health—Glanders—Horses.

Horses which upon the test appear to be infected with glanders may be destroyed under the provisions of section 8, chapter 280, Stats. 1913, p. 459.

CARSON CITY, March 4, 1918.

HON. EDWARD RECORDS, *State Quarantine Officer, Reno, Nevada.*

DEAR SIR: In answer to your favor of the 26th ultimo, asking pro-

cedure for destruction of horses which upon test appear to be infected with glanders, let me say that, in the opinion of this office, the provisions of section 8, chapter 280, Stats. 1913, seem to be the only provision contained in our laws for such destruction.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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161. **State Highway Department—Acquisition of Right of Way—Condemnation Proceedings—District Attorneys.**

Counties through which the state highway routes pass may authorize expenditures of moneys in excess of amounts of the state highway fund provided for in section 10 of the "Act to provide a general highway law for the State of Nevada." (Stats. 1917, p. 309.)

The County Commissioners may make such expenditures for the acquisition of rights of way for such portion of the state highway as lies within their respective counties.

District Attorneys have no authority to institute condemnation proceedings to acquire rights of way in the name of the State without authority from the office of Attorney-General, but such authority will readily be granted to any District Attorney.

CARSON CITY, March 4, 1918.

HON. C. C. COTTRELL, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 26th ultimo, asking certain questions in regard to "An Act to provide a general highway law for the State of Nevada." (Stats. 1917, p. 309.) It seems that certain counties of the State have, by resolution of their various Boards of County Commissioners, agreed to furnish in the name of the State certain pieces of right of way, and that there are many reasons why the various County Commissioners could better do this, chief among which is that they are thoroughly acquainted with local conditions and the people from whom the right of way is to be secured. In view of this you ask the following questions:

1. Have the various Boards of County Commissioners the authority to expend county funds for the purpose of acquiring title in the name of the State to certain parcels of land needed for a right of way of the state highway system, and would the fact that they did that be a violation of section 21 of an Act to provide a general highway for the State of Nevada, approved March 23, 1917?

2. In case the County Commissioners of a county undertook to furnish a right of way for our purposes in that county, would the District Attorney have the authority to institute condemnation proceedings to acquire the right of way in the name of the State, or would authority need be secured by him from your office, and would you grant such authority?

The first question is apparently covered by section 21 of the highway Act, which reads as follows:

SEC. 21. In all cases of a highway constructed under the provisions of this Act, which is located or relocated over a new right of way, such right of way shall be acquired by the Department of Highways in the name of the State, either by

> donation by the owners of the land over which such highway shall pass, or by agreement between such owners and the Department of Highways or through the exercise by the Department of Highways in the name of and on behalf of the State of the power of eminent domain in the same manner as provided for acquiring property for other public uses, and the entire cost of such right of way shall be paid out of the State Highway Fund. Any damages that may be sustained by any person by the construction or alteration of any highway under the provisions of this Act shall be investigated and determined by the State Highway Engineer, the same to be approved by the Board of Highway Directors, and shall be paid as other claims against the State are paid.

It will be observed therefrom that in cases of highways to be constructed, which are located or relocated over a new right of way, such right of way shall be acquired by the Department of Highways in the name of the State, either by donation of the owners of the land over which such highway shall pass or by agreement between the owners and the Department of Highways or through the exercise by the Department of Highways in the name of and in behalf of the State of the power of eminent domain, and apparently the entire cost of such right of way must be paid out of the State Highway Fund.

It is stated above that apparently the entire cost of right of way must be paid out of the State Highway Fund, but on further examination of said Act it appears that said section 21 is modified by section 32 of said Act, which provides as follows:

> SEC. 32. Counties through which the state highway routes pass may, through the Board of County Commissioners, authorize the expenditure of moneys in excess of the amount of the County-State Highway Fund provided for by section 10 of this Act upon the state highway within their respective counties.

In accordance with the cardinal rule in the construction of statutes that later sections contrary to earlier sections in the same Act govern as being the latest expression of legislative will, the provisions of section 21 must be construed in connection with section 32.

It appears therefrom that the counties through which the state highway routes pass may authorize expenditures of moneys in excess of the amounts of the State Highway fund provided for in section 10 of the Act, and, there being no restriction as to the purpose for which such expenditures of money may be made, it is the opinion of this office that the County Commissioners may make such expenditures for the acquisition of rights of way for such portion of the state highway as lies within their respective counties.

In answer to your second question, let me say that the various District Attorneys have no authority to institute condemnation proceedings to acquire rights of way in the name of the State without authority so to do from this office, but such authority would readily be granted to any District Attorney desiring to institute such action upon application in the name of the State.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

162. Public Health—County Health Officer—Physicians and Surgeons.

A physician may forward his obstetrical reports directly to the county health officer.

CARSON CITY, March 7, 1918.

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

DEAR DOCTOR: You have shown me a letter from a physician in the State complaining that a deputy did not forward his obstetrical reports promptly to the local health officer, and inquiring whether or not he might make such reports direct to the county health officer.

I am of opinion that, under section 13 of the State Board of Health Act, such reports may be made direct to the county health officer.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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163. Revenue—Taxation—Central Pacific Railroad—Unapproved and Uncertified Land.

Uncertified lands acquired by the Central Pacific Railroad Company are exempt from taxation.

CARSON CITY, March 7, 1918.

HON. F. N. FLETCHER, *Secretary of the Nevada Tax Commission, Carson City, Nevada.*

DEAR SIR: Your oral request for an opinion as to whether or not the lands of the Central Pacific Railroad Company, which have been surveyed, but on which the surveys have not been officially approved, are subject to taxation, duly received.

This question seems to be thoroughly covered by the case of *State* v. *Central Pacific R. R. Co.*, 21 Nev. 94, 25 Pac. 442, wherein it was held that the unsurveyed lands acquired by this company are exempt from taxation by the State. The court there took the position that none of the land granted to this company was subject to taxation until it had been located within the congressional township by an actual survey and establishment of the lines under the authority of the United States and the survey had been approved by the proper United States Surveyor-General.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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164. County High Schools—Emergency Interest-Bearing Warrants.

Emergency interest-bearing warrants may be issued for building the dormitory and gymnasium at Wells.

CARSON CITY, March 9, 1918.

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

DEAR MR. CARVILLE: I am in receipt of your favor of the 8th instant, asking whether interest-bearing warrants to be used in connection with the fund now existing under Stats. 1915, p. 344, for building a dormitory and gymnasium at Wells, Nevada, could be issued.

It seems that there is now some $15,000 in the fund, but this sum is insufficient for building the dormitory. It further appears that two advertisements had been made for the construction of such dormitory and gymnasium, but in each case the bids had been considerable higher than the amount of money available.

On November 23, 1917, I gave you an opinion that interest-bearing warrants could be issued for the purpose of equipping the dormitory and high-school building at Elko.

I see no difference whatever between the two cases and am, therefore, of the opinion that interest-bearing warrants may be issued by the County Board of Education to make up the deficiency existing between the money now on hand under the above-mentioned Act and the amount necessary for the construction of a dormitory and gymnasium at Wells.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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165. Official Advertising—Newspapers.

Under the provisions of section 9, Stats. 1915, p. 346, authorizing the issuance of certain bonds "to provide for construction, equipment, and furnishing of high-school dormitories in the towns of Elko and Wells," the County Board of Education is governed by the general law in reference to official advertising (Rev. Laws, 1530) which requires advertising for a period of thirty days.

CARSON CITY, March 11, 1918.

MR. GEORGE C. JENSEN, *Secretary, County Board of Education, Elko, Nevada.*

DEAR SIR: Your letter of the 9th instant, with bill and letter from Mr. Triplett enclosed, just received. You ask for an opinion as to whether or not the bill is too large, and also whether the bill submitted by the Elko Independent is legal. This latter bill is not enclosed and it is, therefore, impossible to advise you with reference to the same. If it is for similar advertising as that covered in the bill for Mr. Triplett, then the law applicable to one would, of course, govern the other.

Mr. Triplett's bill covers the publication "Bids for Constructing Wells High-School Dormitory." A charge is made for four publications under the assumption that more would not be paid for, although the advertisement was actually run five times.

The law authorizing the publication is found in section 9 of the Act providing for the construction of certain buildings (Stats. 1915, p. 346) reading in part, as follows:

> Said County Board of Education shall determine as to the character of said building, the materials to be used therefor, and the plans therefor, and when such determination is made, said board shall advertise for bids for the construction of said county high-school building, and let the construction thereof by contract to the lowest and most responsible bidder. The laws in force governing contracts by Boards of County Commissioners are hereby made applicable to and the same shall govern the action of the County Board of Education in carrying out the provisions of this Act.

This section makes the laws in force governing contracts by County Commissioners applicable to contracts by the County Board of Education. County Commissioners in letting their contracts which in the aggregate exceed the sum of $500 must advertise for bids for a period of thirty days. (Rev. Laws, 1530.)

As a publication in a weekly newspaper for a *period of thirty days* can be made only by an insertion once a week for five weeks, it follows that Mr. Triplett is legally entitled to receive pay for five insertions of the advertisement in question.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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166. **Corporations—Articles of Incorporation.**

Unless the articles of incorporation designate the place within the city or county in which the principal office or place of business is to be located with sufficient certainty as to be easily located the certificate is to be refused.

A corporation organized to engage in the oil-drilling business must designate in its articles the amount of subscribed capital with which it will commence business.

Section 1220, Rev. Laws, has no application to a corporation organized to engage in the oil-drilling business.

CARSON CITY, March 27, 1918.

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

DEAR SIR: We are in receipt of your request for an opinion upon the following questions, which will be taken up in their order:

1. Should the certificate mentioned in subdivision 2 of section 4 of the Act providing a general corporation law (Rev. Laws, 1108) be refused if the articles designate the name of the city and county, but not the name of the place within such city or county wherein the principal office or place of business is to be located?

The subdivision in question reads as follows:

> The name of the county and of the city or town and of the place within the county, city or town, in which its principal office or place of business is to be located in this State (giving street and number if practicable), and if not so described as to be easily located within the said county, city or town, the Secretary of State shall refuse to issue his certificate until such location is marked and established.

This language is clear: unless the place within the city or town and county in which the principal office of place of business is to be located is designated with sufficient certainty as to be easily located, the certificate should be refused.

2. Is it necessary that a corporation organized to engage in the oil-drilling business, with its entire stock consisting of property necessary to that business, to designate in its articles the amount of subscribed capital stock with which it will commence business?

Subdivision 4 of section 4 of the Act referred to above (Rev. Laws, 1108) provides that the amount of subscribed capital stock, if the corporation has capital stock, shall be shown. This subdivision, so far as concerns a corporation organized for the purpose mentioned, is not qualified by any other provision in the corporation law, and it is necessary that the amount of subscribed capital stock shall be shown.

3. In what manner does section 1220 of the Revised Laws apply to a corporation organized to engage in the oil-drilling business?

Such section, as to such a corporation, has no application whatever, as it is superseded by the later corporation law.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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167. Revenue—Taxation—Live Stock.

The situs of cattle for the purpose of taxation is in the county of the residence of the owner thereof.

CARSON CITY, March 30, 1918.

MR. A. C. TRIELOFF, *Carson City, Nevada.*

DEAR SIR: We are in receipt of your recent letter, from which it appears that you reside in and own considerable land and personal property, including cattle, in Washoe County; that you own no real estate in Douglas County, but that during the winter months you range and feed your cattle therein; that in the spring of each year you drive such cattle back to Washoe County, in which county is situate your home ranch and where you care for your cattle and conduct your business. You ask whether the cattle should be assessed in Douglas County or in Washoe County.

From the foregoing statement of facts, it is our opinion that the situs of your cattle, for the purpose of taxation, is in Washoe County and that said cattle are assessable only in such county. (*Barnes* v. *Woodbury*, 17 Nev. 383; 30 Pac. 1068; *Ford* v. *McGregor*, 20 Nev. 446; 23 Pac. 505; *Whitmore* v. *McGregor*, 20 Nev. 451, 23 Pac. 510; *State* v. *Shaw*, 21 Nev. 222; 29 Pac. 322.)

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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168. Carson City—Elections—Registration of Electors—Municipal Elections.

On account of the provisions of the registration law (Stats. 1917, p. 435) there are no qualified electors at the present time within the City of Carson, and without qualified electors there can, of course, be no election, and no municipal election can be held in Carson City this year.

CARSON CITY, April 1, 1918.

HON. W. E. BALDY, *District Attorney Ormsby County, Carson City, Nevada.*

DEAR MR. BALDY: We desire to acknowledge receipt of your letter of the 26th instant, in which you request an opinion upon the following question:

Can an election be held in Carson City in May of this year as prescribed by the city charter?

The city charter (Stats. 1875, p. 88) provides in section 5 that annually on the first Monday in May there shall be elected three Trustees, and in section 6 that:

> All provisions of the law which now are or hereafter may be in force regulating elections and providing for the registration of electors, so far as the same may be consistent with the provisions of this Act, shall apply to the election of the Trustees.

As the charter contains no other provisions bearing upon this matter, it is necessary to refer to other laws. The last Legislature passed a new registration statute (Stats. 1917, p. 435) the material portions of which provide as follows:

> SEC. 11. Registration offices shall open for registration of voters for any election from and after the first day of June in any general election year up to the twentieth day preceding such election.
>
> SEC. 19. The County Clerk shall at least five days before the ensuing election prepare for each precinct a poll-book or precinct register containing the names of all electors which shall be delivered to the judges of election prior to the opening of the polls.
>
> SEC. 26–27. No person shall be entitled to vote at any election mentioned in this Act unless his name shall, on the day of election, except at school elections in school districts of the second and third class, appear in the copy of the official precinct register furnished by the County Clerk to the judges of the election, except where his name has been erroneously omitted from the precinct poll-book and he secures from the Clerk a certificate of such error.
>
> SEC. 30. The word "election" as used in this Act, where not otherwise qualified, shall be taken to apply to municipal elections.

It is noticed that the city charter provides that three Trustees shall be elected in May of each year and that all laws providing for the registration of electors, so far as the same may be consistent with the charter provisions, shall apply to such elections. The charter contains no provision for the registration of electors, so it must be said that the registration law of 1917, above referred to, is consistent therewith.

However, as this law distinctly provides that the registration offices shall be open only from and after June 1 of this year, and that no person can vote at a municipal election unless he has registered in accordance with its provisions, it is readily apparent that there can be no qualified electors to vote at a city election held in May.

Without qualified electors there can, of course, be no election, for which reason it naturally follows that no municipal election can be held in Carson City this year.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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169. **State Board of Stock Commissioners—Rewards.**

The State Board of Stock Commissioners has no authority to offer reward for the arrest and conviction of persons feloniously branding or stealing any stock.

Section 3 of the Act creating the State Board of Stock Commissioners (Stats. 1915, pp. 396–402) does not require the board to publish its orders, rules or regulations in one newspaper in each county, but the same must be published in the newspaper which has a general circulation in every county in the State.

The members of the board may not act by resolution signed individually without a meeting of the board.

CARSON CITY, April 2, 1918.

STATE BOARD OF STOCK COMMISSIONERS, *Reno, Nevada.*

GENTLEMEN: I am in receipt of your request for an opinion as to whether or not your board may offer a standing reward for the arrest and conviction of any person feloniously branding or stealing any stock or for the conviction of other crimes or misdemeanors, for the protection of the rights and interests of stock owners.

Section 19 of the Act creating the State Board of Stock Commissioners and defining its powers and duties (Stats. 1915, pp. 396–402), provides:

> SEC. 19. The board may take all necessary and lawful steps, procure all necessary and lawful process for attendance of witnesses, and employ counsel to assist in the prosecution of any person guilty of any offense against the laws of this State in feloniously branding or stealing any stock, or any other crime, or misdemeanor, under the laws of the State for the protection of the rights and interests of stock owners, and it is the duty of the board to make rules and regulations governing the recording and use of livestock brands.

I am of the opinion that this section, which is the only one that could possibly give you any authority to offer a reward, is not broad enough to authorize you to offer any reward at all. This section authorizes you to take lawful steps necessary for the production and attendance of witnesses. It also authorizes you to employ counsel to assist you in the prosecution of persons violating any of the laws for protection of stock owners, but it does not authorize you to offer rewards in these or in any other cases.

With reference to your request for an interpretation of the following language of section 3 of the same Act:

> All orders, rules, or regulations made as herein provided must be published at least twice in some newspaper having general circulation in each county in the state—

I am of the opinion that this provision requires you to publish in some newspaper which has a general circulation in every county in the State, but does not require you to publish in one newspaper in each county, although it would be permissible to so publish, especially as the quarantine regulations are legislative Acts and are in the nature of laws of which notice should be given.

Replying to your further request for an interpretation of the Act

as to whether or not the members of the board may act by written resolution signed individually without a meeting of the board, I am of the opinion that they cannot. The State Board of Stock Commissioners is a board created by law, and individually they have no power; they can only act as a board. They can make rules and regulations for the government of the board, but this would not authorize them to act in any other way than as a board.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

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170. **Employer and Employee—Eight-Hour Law—Mines and Mining.**

The provisions of the eight-hour law (Rev. Laws, 1941, 6554) shall not be suspended except in "case of emergency where life or property is in imminent danger."

CARSON CITY, April 2, 1918.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of a letter written to you by a mining company, with your request for an opinion upon the question therein asked, namely:

1. In the case of minor accidents to machinery, requiring two or three hours' time to repair, which otherwise would lay off the entire shift, it is permissible to have the engineer make the repairs as overtime, after putting in his eight-hour shift?

2. In the event of one shift requiring, say, an extra hour, to complete drilling a round of holes, which if not blasted would compel the next shift to finish the round and blast at the beginning of the shift and then lay off a considerable time waiting for the smoke and gas to clear, thereby causing them to lose perhaps a half-day and materially delaying the progress of the work, it is permissible to allow the first shift to put in the necessary overtime and complete their "round"?

3. In case one man is unexpectedly unable to go to work, is it permissible to allow a man who has already put in one shift to take his place and put in sixteen hours, rather than cause most or all of the force on that shift to lay off?

Rev. Laws, 1941, reads as follows:

> The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, topmen, and all workingmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger.

Rev. Laws, 6554, reads as follows:

> The period of employment of working men in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

Penalties for the violation of the above-mentioned statutes are also provided for in sections immediately therein following.

None of the questions submitted contain any facts in any way showing "*cases of emergency where life or property is in imminent danger.*" Unless such cases exist the period of employment in and around mines shall not exceed eight hours per day.

Therefore, each and all of said questions should be answered "No."

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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171. **Public Schools—County High Schools—Dormitory—Gymnasium.**

Constructing a building for a high school is not an expense of conducting such high school, and therefore the cost of construction, unless provided for by a special tax levy, cannot be paid from the county high-school fund.

Under an Act for the construction of a dormitory, a gymnasium cannot be constructed with money raised under the provisions of said Act.

CARSON CITY, April 2, 1918.

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

DEAR MR. CARVILLE: We wish to acknowledge receipt of your recent letter, wherein you enclose a request from the County Board of Education for an opinion on the following questions:

1. Can the County Board of Education use the general funds for the purpose or purposes of construction? The proposition is this: The board desires to provide for construction through emergency warrants or otherwise, but such warrants cannot be issued until the general fund is exhausted. In that event it will of course be necessary to pay for such construction out of the general fund and to reestablish that fund again through the proposed emergency loan.

2. The bond issue which provides for the dormitory at Wells says nothing about a gymnasium. Wells desires to construct a dormitory and gymnasium in conjunction. Can this be done?

We presume that the words "general funds," used in question 1, mean county high-school fund. If this be true, it is but necessary, in order to secure an answer to such question, to refer to section 3420 of the Revised Laws. This section provides that the Commissioners shall include in their annual tax levy the amount estimated as needed to pay the *expense of conducting* the high school and that such amount, when collected, shall be paid into the county high-school fund, and may be drawn therefrom for the purpose of defraying the *expense of conducting* the county high school.

Constructing a building for a high school is not an expense of conducting such high school, for which reason it is clear that the cost of construction, unless provided for by a special tax levy (Rev. Laws, 3415–3416) cannot be paid from the county high-school fund.

Relative to the second question, will say that a dormitory is a room

or a building used for sleeping quarters, and does not include a gymnasium. (*Hillsdale College v. Rideout*, 82 Mich. 94, 46 N. W. 373.)

The Act providing for a dormitory at Wells (Stats. 1915, p. 394) contains nothing with reference to a gymnasium. This omission clearly shows that no gymnasium was intended. Besides, section 8 of the Act in question distinctly provides that any money remaining, after the building, equipment, and furnishing of the dormitory, shall be used for running and maintaining the high school.

Under such circumstances, a gymnasium, either in conjunction with or separate from the dormitory, cannot be constructed with money raised under the provisions of the aforesaid Act.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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172. **State Highway Department—Highway Engineer—Maintenance.**

An engineer in charge of a survey party is not entitled to expenses while temporarily in Carson City.

CARSON CITY, April 2, 1918.

MR. C. C. COTTRELL, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: We are in receipt of your letter of the 1st instant, in which you give details, with reference to the employment of an engineer for the position of chief of survey party, and ask whether or not he is entitled to expenses while temporarily in Carson City and after you had given him notice that no such expenses would be paid.

From the facts submitted, it is our opinion that the party is not legally entitled to the expenses in question.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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173. **Public Schools—County High Schools—Interest-Bearing Warrants, Elko County.**

Interest-bearing warrants of a county high school are not such "bonds" as the State Board of Investment is authorized to buy.

CARSON CITY, April 3, 1918.

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

DEAR MR. CARVILLE: I am in receipt of yours of March 20, with reference to the power of the State Board of Investment or the Nevada Industrial Commission to invest in interest-bearing warrants for the Elko County High School at Elko. The State Board of Investment and the Nevada Industrial Commission are authorized to buy or invest in bonds of any State of the United States, the State of Nevada, or any county of the State of Nevada. You will observe the word "bond." Bonds have been repeatedly construed to be emergency instruments. Elko County has no authority to issue negotiable commercial paper either in form of notes or bonds under Act of March 25, 1911, authorizing the issuance of interest-bearing school warrants in emergencies, etc.

A county cannot make or issue negotiable commercial paper unless

the power is specifically conferred upon it, and the power to borrow money does not carry with it or necessarily imply the power to issue negotiable commercial paper. (*First National Bank of San Francisco* v. *Nye County*, 38 Nev. 123.) The State Board of Investment and the Nevada Industrial Commission must necessarily keep strictly within the letter of the statute. I take it that they are in a different position than a private individual who may take a chance.

I disagree with Mr. Caine's opinion, first, because section 14½ specifically provides that the budget law shall not take effect, with reference to school districts and high-school districts, until February 1, 1919, and I think that section controls the repealing provisions of section 16. Again, in the decision of *First National Bank* v. *Nye County*, just referred to, the Supreme Court of this State held that, when a county has had the benefit of money obtained by the Board of County Commissioners, it is liable for money had and received, and there are innumerable decisions to this effect. I don't believe that the bank would be taking any chance in making the loan.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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174. Rabies Commission—Appropriation.

The appropriation for the Rabies Commission made in 1917 is not available for the payment of a claim incurred in 1916.

CARSON CITY, April 10, 1918.

HON. EMMET D. BOYLE, *Governor of the State of Nevada, Carson City, Nevada.*

DEAR GOVERNOR: We wish to acknowledge receipt of your letter of the 9th instant, in which you request an opinion as to whether or not the appropriation made in 1917 for the support of the Rabies Commission is available to pay a bill for services and expenses of a member of the predatory animal extermination board incurred in 1916.

Section 2 of the Act creating the Rabies Commission (Stats. 1917, p. 54) reads in part as follows:

> For the cooperative support of the work of control and eradication of rabies and noxious animals as aforesaid there is hereby appropriated thirty-five thousand ($35,000) dollars annually for each of the fiscal years 1917 and 1918, from any moneys in the State Treasury not otherwise appropriated.

By this section the Legislature intended to, and did, provide an appropriation to meet, within the years 1917 and 1918, liabilities incurred during those years.

As a liability incurred during prior fiscal years cannot be settled from funds appropriated for future years (*State* v. *Hallock*, 20 Nev. 73, 74, 15 Pac. 472), we are of the opinion that the appropriation for the Rabies Commission made in 1917 is not available for the payment of any claim incurred in 1916.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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175. Dates Prescribed by the Primary and General Election Laws Settled.

CARSON CITY, April 13, 1918.

A. CARLISLE & CO. OF NEVADA, *131 North Virginia St., Reno, Nevada.*

GENTLEMEN: We are in receipt of your recent letter, in which you request an opinion upon various phases of the present election laws. We have attempted to arrange the several matters presented into questions, and shall take such questions up in their order, as follows:

1. By what date must County Clerks commence the publication of notice of close of registration?

Section 11 of the registration law (Stats. 1917, p. 428) provides as follows:

> Registration offices shall be open for registration of voters for any election, Sundays and legal holidays excepted, from and after the first day of June in any general election year, except as otherwise provided in this Act up to the twentieth day next preceding such election;

and section 17 of the same Act (Stats. 1917, p. 430) reads in part thus:

> The County Clerk shall close all registration for the full period of twenty days prior to any election. * * * The County Clerk of each county must cause to be published, in newspapers published within his county and having a general circulation therein, a notice signed by him to the effect that such registration will be closed on the day provided by law, specifying such day in such notice, and stating that electors may register for the ensuing election by appearing before the County Clerk at his office or by appearing before a deputy registrar in the manner provided by law. The publication of such notice must continue for a *full period of thirty days next preceding the close of registration* for any election.

The word "election," as used in the registration law, where not otherwise qualified, applies to general, special, primary nominations and municipal elections, and to elections in school districts of the first class. (Stats. 1917, p. 434, sec. 30.)

For the present year the primary election will be held on September 3 (Stats. 1917, p. 277, sec. 3), and the general election will be held on November 5 (Stats. 1917, p. 276, sec. 1; Stats. 1917, p. 358, sec. 1). As the County Clerk shall close all registration *for the full period of twenty days prior to any election*, the registration offices must close on the night of August 13 for the primary election and on the night of October 15 for the general election, beyond which dates no one can register for the respective elections.

The statute requires that the publication of the notice by the Clerk must continue for a full period of thirty days next preceding the close of registration. This makes it necessary to commence such publication on or before July 13 for the primary election, and on or before September 14 for the general election.

2. Should the Secretary of State transmit the certified list of candidates on the 3d or 5th of August?

Section 10 of the direct primary law (Stats. 1917, p. 279) reads in part as follows:

> At least thirty days before any September primary preceding a November election the Secretary of State shall transmit to each County Clerk of any county a certified list containing the name and postoffice address of each person for whom nomination papers have been filed.

As hereinbefore stated, the primary election in 1918 will be held on Tuesday, September 3. The statute requires that the lists shall be transmitted at least thirty days prior to that date. In order to comply with the statute, the lists must be transmitted "without" the thirty days' period next preceding the election, and not "within" it, because if transmitted within such period they certainly cannot be transmitted at least thirty days prior to the commencement thereof. (*Seawell* v. *Gifford*, 22 Idaho, 295, 125 Pac. 182; Ann Cas. 1914A, 1132.) The Secretary of State should, therefore, transmit the lists in question on or before August 3.

> 3. What is the last day on which an elector can, for the purpose of changing his politics, have his registry card canceled?

It is provided in subdivision 6 of section 21 of the registration law (Stats. 1917, p. 432) that the County Clerk must cancel any registry card upon the request of any elector who desires to change his politics, provided said change is made thirty days before any primary election.

The authorities are uniform that where an act is required to be done a certain number of days "before" a certain other day, upon which another act is to be done, the whole number of days must intervene before the day fixed for doing the second act. (*Ward* v. *Wolters*, 63 Wis. 39, 22 N. W. 844.) Consequently, thirty days must intervene between the cancelation in question and the primary election. As the primary election will be held on September 3, the last day on which an elector can have his registry card canceled, for the purpose of changing his politics, will be August 3.

> 4. Does the term "any general election," as used in section 64 of the Act relating to elections, mean primary election also?

It does not. The Act in question, in section 1 thereof (Stats. 1917, p. 358) provides when a general election shall be held and by its language clearly shows that the term "any general election" means any November election.

> 5. What is the last day on which a candidate for nomination can file his declaration of candidacy?

Section 5a of the direct primary law (Stats. 1917, p. 278) provides that:

> Every candidate for nomination for any elective office not less than thirty days prior to the primary shall file a declaration or acceptance of candidacy.

We have seen that the coming primary election will be held the 3d of September. The statute provides that not less than thirty days prior to September 3 every candidate shall file his declaration or acceptance of candidacy. It is plain that at least thirty days must inter-

vene between the date of the filing and the day of the primary election. (*State* v. *Brodigan*, 37 Nev. 458, 142 Pac. 520; *Seawell* v. *Gifford*, 22 Idaho, 295, 125 Pac. 182; Ann Cas. 1914A, 1132; *Griffin* v. *Dingley*, 114 Cal. 481, 46 Pac. 457; *Anderson* v. *Falley*, 9 N. D. 464, 83 N. W. 913.)

Therefore, the last day on which a candidate may file his declaration or acceptance of candidacy will be August 3.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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176. Fish and Game—Game Warden—Deputy Game Warden.

Appointment of a Deputy Fish and Game Warden can be made by State Fish and Game Warden only after the County Commissioners have consented to or recommended such appointment. When appointment is thus made the deputy can be removed by State Fish and Game Warden only.

A Deputy Fish and Game Warden legally appointed, who has not resigned nor been removed, but continues to exercise the functions and perform the duties of his position, is entitled to receive from the County Fish and Game Preservation Fund a salary agreed upon, provided it is within the limits allowed by law.

CARSON CITY, April 18, 1918.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of recent date, in which you request an opinion upon the following question:

> Can a Deputy Fish and Game Warden, who was appointed upon the recommendation of a Board of County Commissioners at a stated salary, and who has not been asked for or tendered his resignation, still hold the position and collect that salary agreed upon?

Section 3 of the Act creating the position of State Fish and Game Warden (Stats. 1917, p. 473) reads in part as follows:

> The State Fish and Game Warden may appoint a deputy or deputies of the different counties with the consent or recommendation of the County Commissioners. The State Fish and Game Warden can, at any time, ask for the resignation of the deputy or deputies so appointed if, in his judgment, the duties of the office in that particular county are not being properly attended to, and may, with recommendation of the County Commissioners, appoint another deputy to fill the office of the one just removed. The salary of said Deputy Fish and Game Warden shall be not more than one hundred dollars nor less than twenty dollars per month.

This language admits of but one meaning. The appointment of a Deputy Fish and Game Warden can be made only by the State Fish and Game Warden after the County Commissioners have consented to or recommended such appointment. When an appointment is thus once

made the deputy can be removed only by the State Fish and Game Warden.

County Commissioners are entirely powerless to remove such deputy, but a new one cannot be appointed to take the place of the one removed by the State Fish and Game Warden except upon their recommendation.

The section quoted fixes the monthly salary of the Deputy Fish and Game Warden at not less than twenty dollars nor more than one hundred dollars, but is silent as to how or in what manner or from whom such salary shall be paid.

However, by referring to section 64 of the Act providing for the protection and preservation of fish and game (Stats. 1917, p. 470) it is seen that all money collected for fishing and hunting licenses

> shall be apportioned as follows: Two-thirds, or sixty-six and two-thirds per cent, of the money collected, shall be paid into the county treasury of the county where the license is collected, to be applied to the credit of the game and fish preservation fund, which fund is hereby created, and the money of said fund shall be applied to the payment of the expenses incurred in the prosecution of offenders, and for the revenue to pay Fish and Game Wardens and deputies, when necessary to hire Deputy Fish and Game Warden, or Wardens, and for revenue to pay for the importation and propagation of wild birds; one-third, or thirty-three and one-third per cent, of the money collected, shall be paid into the State Treasury to be applied to the credit of the State Fish and Game Warden Fund, which fund is hereby created, and the money of said fund shall be applied for the revenue of the salary to be paid to the State Fish and Game Warden and for his necessary expenses.

It is, therefore, the opinion of this office that a Deputy Fish and Game Warden appointed by you upon recommendation of the County Commissioners and who has not resigned nor been removed by you, but continues to exercise the functions and to perform the duties of his position, is entitled to receive from the county game and fish preservation fund the salary agreed upon, providing such salary is not less than twenty dollars nor more than one hundred dollars per month.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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177. Commissioner of Deeds—Governor.

It is not necessary that a Commissioner of Deeds in a foreign country be a citizen of the United States in order to be appointed to such office by the Governor.

CARSON CITY, April 23, 1918.

MR. HOMER MOONEY, *Secretary to the Governor, Carson City, Nevada.*

DEAR SIR: We are in receipt of your letter of the 19th instant, in which you request an opinion upon the question:

A citizen of Canada has made application for appointment as Commissioner of Deeds for the State of Nevada, residing in the Province of Quebec. Is it necessary that he be a citizen of the United States?

The statute providing for the appointment of a Commissioner of Deeds (Rev. Laws, 1000) reads as follows:

> The Governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the Territories and districts thereof, and in each foreign state, kingdom, province, territory, and colony, one or more Commissioners of Deeds, to continue in office four years, unless sooner removed by him. Every Commissioner of Deeds so appointed shall have the power to administer oaths, and to take and certify depositions and affidavits to be used in this State, and also to take the acknowledgment or proof of any deed or other instrument, to be recorded in this State, and duly certify the same under his hand and official seal.

The Commissioners of Deeds in a foreign country must necessarily exercise jurisdiction outside of the territorial limits of the State and Nation; and, in the absence of express statutory requirements, citizenship is not an absolutely essential qualification for the position. (29 Cyc. 1377.)

As the statute is silent with reference to the question of citizenship, it is not necessary that a Commissioner of Deeds in a foreign country be a citizen of the United States.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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178. Inspector of Mines—Mines and Mining—Blacksmith Shops.

The Inspector of Mines has the power to prevent installation of underground blacksmith shops in mines.

CARSON CITY, April 24, 1918.

HON. A. J. STINSON, *Inspector of Mines, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent request, asking for an opinion as to whether or not you have power to prevent the installation of underground blacksmith shops in the mines of this State.

Replying thereto, will say that by the law creating your office (Rev. Laws, 4198–4238) you are given wide powers, and your question should, therefore, be answered affirmatively.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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179. **Civic and Physical Training—Counties.**

Any county which has failed to collect the 5-mill tax for civic and physical training imposed by Stats. 1917, p. 245, is liable for the payment thereof.

CARSON CITY, April 29, 1918.

HON. GEORGE A. COLE, *State Controller, Carson City, Nevada.*

MY DEAR MR. COLE: I have gone over the correspondence between yourself and Mr. Greathouse, Recorder and Auditor of Elko County, and the correspondence between yourself and Major Miller, County Treasurer of Elko County. I have likewise gone over the statement that Elko County made to your office for the half-year ending January 17, 1918. It appears from these statements that Elko County neglected to collect a state tax of 5 mills for civic and physical-training instructors' fund, and that the county failed to account to the State for this amount.

The failure of Elko County officers to collect this tax does not relieve Elko County from the liability to pay it, and until Elko County does account to your office for the amount of the tax, which I understand is $960.73, I would advise that you withhold Elko County's apportionment out of this fund until an adjustment can be made.

I am of the opinion that Elko County, through its Board of County Commissioners, can pay this amount out of its general fund and that Elko County should do so upon a showing of the Elko County officers to the Board of County Commissioners.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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180. **Electors—Nomination by Petition of Electors—Registration.**

It is not necessary that a person be registered to qualify him or her as a signer of a nomination certificate of an independent candidate.

The same elector cannot sign two independent petitions for the nomination to the same office.

CARSON CITY, April 30, 1918.

MISS ANN MARTIN, *157 Mill Street, Reno, Nevada.*

DEAR MISS MARTIN: I am in receipt of yours of April 27, requesting an opinion upon three questions with reference to the Nevada election laws.

The first question is as follows:

> The paragraph regarding the petitions of independents states that such petitions must be signed by 10 per cent of the number of electors voting for the same office in the last election. It does not even state "qualified electors." Do electors have to be registered to make legal their signatures on an independent petition?

The nomination of independent candidates is governed by the provisions of section 31 of the Statutes of Nevada, 1917, pp. 276–289, "An Act regulating the nomination of candidates for public office in the State of Nevada," approved March 23, 1917.

Under the provisions of section 31 the certificate of nomination is required to be signed by electors. An elector, within the provisions

of the Constitution of Nevada and of the Nevada Statutes, is "every citizen of the United States (not laboring under the disabilities named in the Constitution) of the age of twenty-one years and upward, who shall have actually and not constructively resided in the State six months and in the district or county thirty days preceding any election." Registration is not a qualification of an elector, but is merely a condition imposed by the Legislature. I am of the opinion, therefore, that it is not necessary that a person be registered in order to qualify him or her as a signer of a nomination certificate of an independent candidate. This answer to your first question answers your second also.

Your third question is as follows:

> Can the same elector sign two independent petitions for the same office, in your opinion?

There is no direct prohibition in the primary law, or in section 31 thereof, which prohibits an elector from signing more than one certificate of nomination for the same office for independent candidates. However, sections 4 and 6 of "An Act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891 (Australian Ballot Law), prohibits any person from in any manner joining the nomination of more than one person for the same office. It is very doubtful whether or no these provisions have been repealed.

I hope this letter gives you the information that you desire. Should you desire any further information, I will be glad to give it.

Yours very truly,

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

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181. **State Labor Commissioner—District Attorney—Attorney-General.**

The State Labor Commissioner is charged with the duty of enforcing labor laws relative to hours of employment in accordance with the hours of service for women. Upon the discovery of violation thereof the facts in connection therewith should be presented by the Labor Commissioner to the District Attorney of the county or to the Attorney-General, and thereupon it becomes the duty of either or both such officers to prosecute such violation.

CARSON CITY, May 3, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: Your recent letter, with reference to the enforcement of the law relative to the hours of labor for females, duly received. You call our attention to various statutes and request to be advised—

> whether or not the authority for enforcing the hours-of-service law for females is a dual authority, whether it is joint authority, or whether the Attorney-General has exclusive jurisdiction in the enforcement of this law.

Section 3 of the law in question (Stats. 1917, p. 71) reads as follows:

> The District Attorneys of the respective counties of this State and the Attorney-General of this State shall enforce the provisions of this Act, and said District Attorneys and said Attorney-General and their deputies and agents shall have

> all powers and authority of Sheriffs or other peace officers to make arrests for violations of the provisions of this Act, and to serve all processes and notices thereunder throughout the State.

By section 4 of the Act creating the office of Labor Commissioner (Stats. 1915, p. 312) it is provided that such officer—

> shall inform himself of all laws of the State * * * regulating the hours of labor, * * * and it shall be the duty of said Labor Commissioner to enforce all such laws in the State, and whenever after due inquiry he shall present the facts to the District Attorney of any county in which such violation occurred, it shall be the duty of such attorney to prosecute the same.

These two sections should be read and construed together and effect should be given to each, conformably to the apparent legislative intent.

The Labor Commissioner is charged with the duty of enforcing all labor laws relative to hours of employment, including the hours-of-service law for women. The facts in connection with the violation of the latter law should be presented by you to the District Attorney of the county wherein the violation occurred, or to the Attorney-General, when it becomes the duty of either or both of such officers to prosecute such violation.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By WM. MCKNIGHT, *Deputy*.

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182. **State Highway Department—State Highway Law—Convict Labor.**

The Department of Highways is authorized to employ convicts in the construction of roads, even though the cost of construction shall exceed $2,000 in amount.

CARSON CITY, May 15, 1918.

HON. C. C. COTTRELL, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 14th instant, asking opinion of this office in regard to certain sections of the State Highway Law.

You call my attention to section 14, which provides that for improvements costing less than $2,000 it is within the discretion of the State Highway Engineer to execute the same himself or let the same by contract, but where the cost of the proposed improvement exceeds said sum advertisement for bids for such work must be made. You also call attention to section 27 of the same Act providing for work to be performed by the use of convict labor.

You inquire whether, in a case where the total estimated cost of construction of a certain section of road is several times $2,000 in amount, will it be in accordance with law for the Department of Highways to construct such section with convict labor.

It is a cardinal rule of construction of statutes that latter provisions control former provisions, and the section authorizing the Department

of Highways to employ convict labor appearing later in the Act than that requiring advertising for bids for improvements exceeding $2,000, it is the opinion of this office that the later section will prevail.

You are therefore advised that, in the opinion of this office, the Department of Highways is authorized to employ convicts in the construction of roads, even though the cost of such construction shall exceed $2,000 in amount.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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183. **Elections—Registration.**

The County Clerk is the registrar of his county.

Justices of the Peace are the registrars for the respective townships.

Deputy registrars are to be appointed by the Clerk in precincts where no Justice of the Peace resides and are distant five miles from the county courthouse.

Any person residing within the county may register by appearing before the County Clerk.

CARSON CITY, May 16, 1918.

HON. L. E. GLASS, *County Clerk, Tonopah, Nevada.*

DEAR MR. GLASS: I am in receipt of your favor of the 7th instant, asking certain questions concerning "An Act regulating the registration of electors" (Stats. 1917, p. 425), and will respond to your questions as follows:

The County Clerk is the registrar of the county of Nye. He receives no compensation for registrations made by him except those provided under the provisions of section 22 of the Act, wherein he is entitled to receive for the use and benefit of the county, the sum of 5 cents for each and every name for poll-lists furnished by him in municipal or school-district elections.

The Justices of the Peace of the county are the deputy registrars for their respective townships and for the whole territory covered by their Justices' precincts. They receive compensation at the rate of 15 cents per name for each registration made.

Deputy registrars are to be appointed by the Clerk in precincts where no Justice of the Peace resides and which are distant five miles from the county courthouse.

Under section 12 of this Act any person residing within the county may register by appearing before the County Clerk.

By section 34 of the Act it is made the duty of the County Commissioners of each county to furnish the County Clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by the registration Act.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

184. Fish and Game—Deputy Fish and Game Warden—Expenses.

The twenty-five dollars per month for expenses mentioned in section 3 (Stats. 1917, p. 473) is not a fixed sum additional to his salary, but states a maximum for expenses which may be allowed a Deputy Fish and Game Warden.

All Deputy Fish and Game Wardens should render itemized accounts of expenses, and the County Commissioners cannot legally allow more than twenty-five dollars a month therefor.

CARSON CITY, May 16, 1918.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: This office is in receipt of your request for an opinion upon the following question:

> Can a Deputy Fish and Game Warden, duly appointed and commissioned in accordance with law, demand and collect the $25 per month mentioned in section 3, page 473, Statutes of 1917, a portion of which reads as follows: "Said Warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duties"?

In our opinion the $25 per month mentioned in the section referred to is not a fixed sum additional to his salary, but only states a maximum for expenses which may be allowed the Deputy Fish and Game Warden. Whether the Deputy Fish and Game Warden is regarded as a state officer or as a county officer, existing laws regulating state and county officers compel him to render an itemized account of his expenses, and such deputy can receive payment of his claim for expenses only by submitting an itemized account thereof, and the law expressly provides a limit of $25 to the amount of his expenses in any one month.

It is therefore the opinion of this office that all Deputy Fish and Game Wardens should render an itemized account of their expenses and that the County Commissioners cannot legally allow more than $25 a month therefor.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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185. Corrupt Practice Act—Independent Candidates—Expenses—Primary Elections.

It is not necessary for an independent candidate to file any statement of expenses before or after the primary election, but such statement must be filed for the general election.

CARSON CITY, May 28, 1918.

MISS ANNE MARTIN, *Reno, Nevada.*

MY DEAR MISS MARTIN: I am in receipt of your favor of the 22d instant wherein you ask the opinion of this office regarding certain features of the Corrupt Practices Act. You inquire:

> 1. Is it necessary for an independent candidate to file an account of expenses at the time of the primary election?

You also inquire:

> 2. Is it necessary to file a statement of expenses as an independent candidate with the Secretary of State five days before and fifteen days after the election.

The answer to both of your questions is contained in section 8 of the Corrupt Practices Act (Stats. 1913, p. 478). Said section provides:

> Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States, and Representative in Congress, shall, five days before and fifteen days after the election *at which he was a candidate*, file with the Secretary of State, etc.

As an independent candidate you will be nominated by petition of electors and you will not come before the electors of the State for consideration at the primary election and your name will not appear upon the ballot at such election. If you secure the requisite number of signatures to your petition for nomination, your name will be certified by the Secretary of State to the various County Clerks as the independent candidate for the office of United States Senator in order that your name may appear upon the ballot to be used at the general election as a candidate for such position. You are not, therefore, within the provisions of said section 8 because you are not a candidate for nomination or election to public office at the primary election, and section 8 therefore does not apply to you, so far as the primary election is concerned. Should you receive the requisite number of signatures to your petition for nomination and your name therefore certified by the Secretary of State to the various County Clerks, you will then be within the purview of section 8, for you will then be a candidate for election to public office, and the balance of said section which requires a statement of expenses to be filed five days before and fifteen days after election "at which he was a candidate" will apply.

It is, therefore, the opinion of this office that it is unnecessary for you to file any statements whatever before or after the primary election, but that you will be required to file a statement of expenses five days before and fifteen days after the general election in November.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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186. **Industrial Insurance Commission—Jockeys.**

> A jockey riding at a race meet is in the employment of the person whose horse he rides, and cannot be considered in the employment of the State.

CARSON CITY, May 29, 1918.

HON. GEORGE D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your recent letter in which you request an opinion upon the question:

> Does the Industrial Commission Law figure that a jockey riding in the next race-meet at Reno is in the employ of the

State or in the employ of the man whose horse he rides in the race?

A jockey riding regularly in the race-meet is usually hired and paid by the person whose horse he rides, and is considered to be in the employ of such person. Under no circumstances can such a jockey be considered as in the employ of the State.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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187. **Labor Commissioner—District Attorneys.**

It is the duty of the District Attorneys of the several counties, upon complaint of the Labor Commissioner, to prosecute all violations of section 1, chapter 276, Stats. 1913, which may be brought to their attention by him.

CARSON CITY, May 31, 1918.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your recent letter in which you state that you have had several complaints alleging violation of section 1, chapter 276, Statutes of 1913, p. 448.

You also call my attention to section 13, chapter 253, Statutes of 1915, p. 314, as follows:

> It shall be the duty of the District Attorneys of the several counties, upon the complaint of the Labor Commissioner, to prosecute all violations of law which may be reported to said District Attorney by the Labor Comissioner.

You inquire whether or not the Labor Commissioner has the power to invoke the services of the District Attorneys of the several counties of this State in an attempt to enforce the provisions of section 1, chapter 275 (above mentioned), in such cases which may have been referred to him by employees who have wages due them.

It is the opinion of this office that under the provisions of section 13, it is the duty of the Distirct Attorneys of the several counties upon your complaint to prosecute all violations of section 1, chapter 276, Statutes of 1913, which may be brought to their attention by you.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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188. **Labor Commissioner—Eight-Hour Law—Watchmen.**

Section 1941, Rev. Laws, does not apply to watchmen employed on or about the surface working of a mine.

CARSON CITY, May 31, 1918.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your recent favor requesting construction of Rev. Laws, 1941, which provides:

> The number of hours of work or labor of mechanics, engi-

neers, blacksmiths, carpenters, top men, and all workingmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours except in cases of emergency where life or property is in imminent danger.

You inquire: "Is the above law applicable to watchmen employed on or about the surface workings of a mine whether or not the men are employed underground or about the surface of the mine?"

In the opinion of this office such law does not apply to watchmen.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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189. **Industrial Insurance Commission—Accident Benefit Fund.**

The Industrial Insurance Commission has authority to charge the Accident Benefit Fund, created by section 23 of the amended Industrial Insurance Act, with a percentage of expenses including salaries of the Commission.

CARSON CITY, June 1, 1918.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: With reference to your request for an opinion as to whether or not your Commission has authority to charge the accident benefit fund created by section 23 of the amended Nevada Insurance Act of 1917 with a percentage of expenses, including salaries of the Commission, we beg to reply that you have such authority.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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190. **Industrial Insurance Commission—Contractors.**

The present Industrial Insurance Act is not compulsory for a contractor under the State, a county, municipal corporation, school district or city under special charter or commission form of government.

CARSON CITY, June 1, 1918.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We beg to acknowledge receipt of your recent letter, wherein you request for an opinion upon the following question:

> Are the terms, conditions and provisions of the Nevada Industrial Insurance Act compulsory under subdivision b of section 1 of the Nevada Industrial Insurance Act, as amended to take effect July 1, 1917, where a contractor under the State, a county, municipal corporation, school district, cities under special charter and commission form of government, is the employer?

Section 1b of the Industrial Insurance Act as amended in 1915 (Stats. 1915, p. 279), read as follows:

> Where the State, county, municipal corporation, school district, cities under special charter and commission form of government, or contractors under the State, county, municipal corporation, school district, or cities under special charter or commission form of government is the employer, the terms, conditions, and provisions of this Act for the payment of compensation and amount thereof for such injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee.

At the next session (Stats. 1917, p. 137) this section was amended by eliminating therefrom the portion which reads:

> or contractors under the State, county, municipal corporation, school district, or cities under special charter or commission form of government.

As this last-mentioned clause was not incorporated in the amendment of the last session, it is plain that the Legislature intended to make the Act compulsory only to such employers as therein particularly enumerated. By affirmatively naming those employers to whom the Act shall be exclusive, compulsory and obligatory naturally implies a negative of all employers not so specifically named.

It is, therefore, the opinion of this office that the present Industrial Insurance Act is not compulsory for a contractor under the State, a county, municipal corporation, school district or city under special charter or commission form of government.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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191. Industrial Insurance Commission—Claims—Notice.

> The Commission may excuse the failure to file a notice of injury but cannot excuse the failure to file a claim for compensation. Under the statute the claim for compensation must be filed within one year after death.

CARSON CITY, June 7, 1918.

HON. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: We wish to acknowledge receipt of your letter of recent date, in which you refer to a particular claim, and ask:

> Can this Commission legally consider a claim for compensation filed later than one year after a fatal injury?

Section 34d of the Nevada Industrial Commission Act (Stats. 1913, p. 150) provides:

> No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

In an opinion from this office given on July 17, 1917, you were

advised that "The Commission may excuse the failure to file the notice but cannot excuse the failure to file the claim for compensation. Under the statute the claim for compensation must be filed within one year after death." That opinion is clearly applicable here and is decisive of the question you ask.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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192. Fish and Game—Licenses—Minors.

Under provisions of section 68 (Stats. 1917, p. 471), a person under the age of 14 years is not required to purchase a market fisherman's license in order to be entitled to sell fish in the market.

CARSON CITY, June 8, 1918.

HON. C. W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of your recent favor asking opinion on the question:

> Would any person, under the age of 14 years, be required to purchase a market fisherman's license in order to be entitled to sell fish in the market?

Section 61 of the Act for the protection and preservation of fish and game (Stats. 1917, p. 470) provides:

> A license of $15 shall be charged to any one engaged in market fishing.

Section 68 of the same Act (p. 471) states:

> The provisions of this Act shall not apply to any * * * girls or boys under 14 years of age.

The language of said section 68 seems to wipe out completely all requirements of section 61 in regard to licenses, including a market fisherman's license.

It is, therefore, the opinion of this office that a person under the age of 14 years is not required to purchase a market fisherman's license in order to be entitled to sell fish in the market.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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193. Elections—Registration.

The County Clerk is ex officio registrar of all voters in the respective counties of the State.

The Justices of the Peace are Deputy Registrars for the purpose of carrying out the provisions of the Act.

Additional registrars shall be appointed by the County Clerk for all precincts which are five miles distant from the county courthouse in which no Justice of the Peace resides.

Any voter may register with the County Clerk.

Justices of the Peace who live within five miles of the county courthouse shall register all voters within such district although any voter may register direct with the County Clerk.

A Justice of the Peace whose precinct is more than five miles distant from the courthouse shall register all voters within his precinct.

County Registrars (other than Justices of the Peace) shall be appointed by the County Clerk to register all electors living in precincts in which there is no Justice of the Peace and which is more than five miles distant from the county courthouse.

No person's right to vote will be jeopardized by the fact that his registration was taken before the wrong officer when it could actually have been taken by the County Clerk, Justice of the Peace, or Deputy Registrar duly qualified.

CARSON CITY, June 10, 1918.

HON. H. H. ATKINSON, *District Attorney, Tonopah, Nevada.*

MY DEAR MR. ATKINSON: I am in receipt of yours of recent date, requesting the opinion of this office upon the construction to be given to chapter 231, Statutes of 1917, "An Act regulating the registration of electors of general, special and primary elections," approved March 27, 1917, and particularly requesting the opinion of this office as to the respective jurisdictions of the County Clerks, the Justices of the Peace and the deputy registrars in registering voters for elections.

The particular section to be construed is section 10, which reads as follows:

All Justices of the Peace are hereby designated as deputy registrars for the purpose of carrying out the provisions of this Act. The County Clerk of each county shall appoint deputy registrars, who shall have the power to administer oaths, in each precinct for such county distant more than five miles from the county courthouse and wherein no Justice of the Peace resides. It shall be the duty of the deputy registrar to register all electors within his precinct applying for registration, and for this purpose he or she shall have authority to demand of the elector all information, and to administer all oaths required by this Act. The deputy registrar shall be a resident elector within the precinct for which he is appointed, and shall receive as compensation for all services the sum of not more than fifteen cents for each elector registered, to be paid by the county after being approved by the County Clerk. Said registry agent shall forward, within two days after the filling out of any registry cards, all such cards so filled out to the County Clerk. Any deputy registrar violating any of the provisions of section 11 of this Act shall be guilty of a misdemeanor and be subject to a fine of not less than $25 nor more than $100, for each offense.

I am of the opinion that the Act is to be construed as follows:

First—The County Clerk is ex officio registrar of all voters in the respective counties of the State.

Second—The Justices of the Peace are deputy registrars for the purpose of carrying out the provisions of this Act.

Third—Additional registrars shall be appointed by the County Clerk for all precincts which are five miles distant from the county courthouse and in which no Justice of the Peace resides.

Fourth—Any voter may register direct with the County Clerk as ex officio registrar.

Fifth—Justices of the Peace who live within five miles of the county courthouse shall register all voters within such district, although any voter may register direct with the County Clerk as above indicated.

Sixth—Justices of the Peace whose precincts are more than five miles distant from the county courthouse shall register all voters within their respective precincts.

Seventh—Deputy registrars (other than Justices of the Peace) shall be appointed by the County Clerk to register all electors living in precincts in which there is no Justice of the Peace and which is more than five miles distant from the county courthouse.

I am further of the opinion that no person's right to vote will be jeopardized by the fact that his registration was taken before the wrong officer if it actually be taken by either the County Clerk, the Justice of the Peace or a deputy registrar duly qualified.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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194. State Board of Stock Commissioners—Rewards.

The State Board of Stock Commissioners has no authority to use its funds for rewards.

CARSON CITY, June 10, 1918.

STATE BOARD OF STOCK COMMISSIONERS, *Reno, Nevada.*

GENTLEMEN: Mr. Fred Dangberg of your Commission and Dr. Edwards Records have again taken up with me the question as to whether or not your board is authorized to offer rewards for the arrest and conviction of persons violating the laws of this State against felonious branding or stealing of stock, etc.

After careful consideration I am unable to modify my former opinion given to you in this matter. I am still of the opinion that the board has no authority to use its funds for rewards, and that the remedy lies with the Legislature. I would suggest that if you feel such action advisable you make recommendation to the next Legislature in your report that the Act be so amended as to permit you to offer rewards in proper cases.

Yours very truly,

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

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195. Industrial Insurance Commission—Employees—Compensation.

An employee within the purview of the old Industrial Insurance Act cannot receive in excess of $5,000 from the Commission for the loss of sight of both eyes.

CARSON CITY, June 11, 1918.

MR. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We desire to acknowledge receipt of your recent letter in which you ask for an opinion upon the following question:

> Where an employee, within the purview of the Nevada Industrial Insurance Act, chapter 111, Statutes of 1913, as amended by chapter 190, Statutes of 1915, received an injury to his left eye for which he was awarded compensation, as provided in section 25 of said statute, of $342 for temporary total disability (duration $5^{21}/_{30}$ months) and $1,500 as permanent partial disability due to the loss of sight of the injured eye (being compensation of $60 per month for 25 months); and where subsequently the sight of the other eye failed from sympathetic ophthalmia, due entirely to the original injury, thereby producing permanent total disability, is claimant entitled to compensation for permanent total disability of 50 per cent of his average monthly wage, but not more than $60 a month, for a period not to exceed 100 months, total amount not to exceed $5,000 (deducting $1,500 previously paid for the loss of the left eye), in addition to compensation paid for temporary total disability, or is $5,000 the maximum amount an injured employee can receive for all disabilities following a single injury?

The provisions of law applicable to this particular question are found in section 25 of the amended Industrial Act (Stats. 1915, p. 286), and read as follows:

> Every employee or workman coming within the provisions of this Act, who shall be injured by accident arising out of or in the course of employment, or his dependents, as hereinafter named, shall be entitled to receive the following compensation: * * *
>
> For temporary total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, but not exceeding one hundred months during the period of such disability, total amount not to exceed five thousand dollars. * * *
>
> For temporary partial disability, one-half of the difference between the wages earned before injury and wages which the injured is able to earn thereafter, but not more than forty dollars a month for a period not to exceed sixty months during the period of such disability. * * *
>
> In the case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability and the amounts named shall be paid in addition to compensation paid for temporary total disability: * * *

For the loss of an eye, fifty per cent of the average monthly wages during twenty-five months.

For permanent total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, for a period not to exceed one hundred months, total amount not to exceed five thousand dollars.

In case of the following specified injuries, the disability caused thereby shall be deemed total and permanent:

1. The total and permanent loss of sight in both eyes. * * *

Where there has been a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability, as it existed at the time of the subsequent injury.

In view of these positive provisions, we are of the opinion that an employee within the purview of the old Act cannot receive in excess of $5,000 from the Commission for the loss of sight of both eyes.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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196. Industrial Insurance Commission—Jockeys—Employment.

A jockey cannot be said to be an employee of a particular horseman if his services can be procured by other horsemen. Under such circumstances he would be classed as an independent contractor and not entitled to the benefits of the Industrial Insurance Act.

CARSON CITY, June 13, 1918.

HON. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR MR. SMITH: We wish to acknowledge receipt of your letter in which you ask the following question:

> Should a jockey, whose services can be had by any horseman entering horses in a race, be considered an employee of each horseman for whom he rides and, therefore, within the purview of the Nevada Industrial Insurance Act, or does he have the status of an independent contractor and, therefore, not entitled to the benefits of the Act?

Replying thereto, will say that a jockey cannot be said to be an employee of a particular horseman if his services can be procured by any horseman. Under such circumstances he would be classed as an independent contractor and not entitled to the benefits of the Industrial Insurance Act.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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197. Public Schools—Peace Officers—Policemen.

A policeman of the city of Sparks is a peace officer and is, therefor, authorized to arrest during school hours without a warrant any truant child between the age of 8 and 16 years under the provisions of section 3447, Rev. Laws.

CARSON CITY, June 13, 1918.

MR. C. H. MEEKER, *City Superintendent of Schools, Sparks, Nevada.*

DEAR SIR: In some way answer to your favor of the 24th ultimo has been overlooked until now.

You call my attention to section 207 of the School Code (Rev. Laws, 3447), which provides that: "It shall be the duty of the attendance officer or any peace officer or other school officer to arrest," etc. You inquire whether or not the words "any peace officer" would apply to a Sparks policeman.

There can be no doubt but that the Chief of Police of Sparks is a peace officer and that the law applies to him and that it is his duty to act under said law whenever requested.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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198. Grand Jury.

A legally impaneled grand juror is entitled to act during the entire year in which he is appointed and all of the succeeding year, except so much thereof as may be necessarily used in the summoning of another grand jury.

CARSON CITY, June 20, 1918.

MR. JOHN H. CAZIER, *Wells, Nevada.*

DEAR MR. CAZIER: I am in receipt of your favor of the 17th instant, wherein it is stated that the grand jury of Elko County, of which you are foreman, was called for July 9 of last year but did not convene until the early part of September.

You wish advice as to whether or not any action taken by such grand jury after July 9 would be legal. The provisions of the statute in regard to the summoning of a grand jury are contained in Rev. Laws, 4931, which provides:

> It shall be the duty of the District Judge and any one of the County Commissioners of a county at least once in each year, and as much oftener as the public interest may require, to select from the jury list, twenty-four persons who shall be summoned to appear as grand jurors at such time as the judge may order.

This section was amended by Stats. 1915, p. 168, but such amendment in no way effects the above-quoted portion of this section. It has been frequently decided that when the word "year" is used in a statute, it is to be construed to mean a calendar year unless a different intent may be gathered from the context or otherwise. Nothing in the context indicating other than the calendar year, we must presume that the Legislature in the enactment of this section means that a grand jury must be summoned at least once in each calendar year. The statute does not designate in what part of the year such grand jury must be summoned, therefore a grand jury summoned in

January of 1917 and another grand jury summoned in December, 1918, would be a compliance with the statute.

For this reason, I am of opinion that the grand jury of which you are foreman is a legal body and will be such as to any acts performed by them after July 9 of this year, and it is entitled to act as a grand jury of Elko County the balance of this year, except so much thereof as may be necessarily used in the summoning of another grand jury for the year 1918.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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199. **Elections—Registrations—Transfers.**

There is no provisions in the registration law allowing a transfer from one county to another other than the transfer given to transportation employees.

A person cannot vote at the primary election who will not have been in the State six months at the time of such election, but who will have been in the State six months prior to the general election.

CARSON CITY, June 21, 1918.

MR. AUSTIN JACKSON, *Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 18th instant, asking advice on the following questions concerning the registration law (Stats. 1917, p. 425):

> 1. Will you kindly advise if there is any provision in the new registration law allowing a voter to get a transfer from one county to another, other than the transfer given to transportation employees?

There is no provision in the registration law allowing a voter to transfer from one county to another other than the transfer given to transportation employees, and your question must be answered in the negative.

> 2. Can a person vote at the primary election who will not have been in the State six months at the time of the primary election, but who will have been in the State six months prior to the general election?

This section is answered by the provisions of section 15 of the primary election law (Stats. 1917, p. 283):

> 3. The qualifications and regulations of voters at primary elections shall be subject to the same tests and governed by the same provisions of law and rules and regulations as are now prescribed by law for other elections.

And by section 1 of the registration law (Stats. 1917, p. 425):

> Every citizen of the United States, twenty-one years of age or over, who will have continuously resided in this State six months and in the county thirty days and in the precinct ten days next preceding the day of the next ensuing election, shall be entitled to vote at such election.

And by section 30 of the same Act (Stats. 1917, p. 434):

> The word "election," as used in this Act, where not other-

wise qualified, shall be taken to apply to general, special, primary nomination and municipal elections, and to elections in school districts of the first class.

In consideration of the foregoing provisions of our statutes, it is the opinion of this office that a person cannot vote at a primary election who will not have been in the State six months at the time of the primary election, but who will have been in the State six months prior to the general election.

As a form for nonpartisan declaration of candidacy, I would recommend the following modification of the form set forth in Stats. 1917, p. 278:

For the purpose of having my name placed on the official primary ballot as a candidate for nomination for the office of ....., I, the undersigned ....., do solemnly swear (or affirm) that I reside at No. ....., ... street, in the city (or town) of ....., County of ....., State of Nevada, and that I am a qualified elector of the election precinct in which I reside; that if nominated as a candidate for said office at said ensuing election, I will accept such nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fradulent practice in campaigns and elections in this State; and that I will qualify for said office if elected thereto.

.....

Subscribed and sworn to before me, this.....day of....., 19.....

....., Notary Public.

(or other officer authorized to administer an oath.)

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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200. **Elections—Primary Election—Election Board, Appointment Of.**

The County Commissioners at their first regular meeting in August should appoint inspectors and clerks for the various election precincts within their county for the primary election to be held in September.

CARSON CITY, June 21, 1918.

HON. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR MR. POWELL: We are in receipt of your letter of the 18th instant, in which you request an opinion upon the following question:

When should the election officers for the coming primary election be appointed?

The primary election law is silent with reference to the appointment of inspectors and clerks for the primary election, but in section 14 of that Act (Stats. 1917, p. 283) it is provided that: "The officers of primary elections shall be the same as provided by law for general elections."

By referring to the general election law (Stats. 1917, p. 359) it is seen that section 1 reads in part as follows:

> It shall be the duty of said Boards of County Commissioners, at their first regular meetings in September preceding each general election (and fifteen days preceding each special election), to appoint three capable and discreet persons possessing the qualifications of electors (who shall not be of the same political party), to act as inspectors of election at each election precinct, and two clerks of election, who shall have charge of the ballots on election day and shall furnish them to the voters in the manner hereinafter provided for, and the Clerk of said board shall forthwith make and deliver to said inspectors personally notice thereof in writing, or deposit the same in the postoffice registered, and postage prepaid, directed to the registry agent of the precinct for which each of said inspectors and clerks are appointed, and it shall be the duty of said registry agent, within ten days after the receipt thereof, to serve the same upon each of said inspectors and clerks of election.

The primary election for the present year will be held September 3 (Stats. 1917, p. 277, sec. 3), but it is not a special election (Stats. 1917, p. 277, sec. 2). The first regular meeting of the County Commissioners for that month will not be held until two days later, or September 5 (Rev. Laws, 1503, as amended Stats. 1917, p. 1). Therefore, an exact compliance with the quoted section, so far as concerns the appointment of election officers for the primary, is impossible. But, as a primary election must be held and as none can be held without inspectors and clerks, previously duly appointed and qualified, such construction must be placed upon the section as will provide for such election officers. Besides, it is elementary that:

> When a statute specifies the time at or within which an act is to be done, it is usually held to be directory, unless time is of the essence of the thing to be done, or the language of the Act contains negative words or shows that the designation of the time was intended as a limitation of power, authority or right. (*People* v. *Lake County*, 33 Cal. 287; 36 Cyc. 1160.)

We are, therefore, clearly of the opinion that the County Commissioners, at their first regular meeting in August, should appoint inspectors and clerks for the various election precincts within their county for the primary election to be held in September.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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201. Employers—Employees—Eight-Hour Law—Open-Cut Mines.

Section 6557, Rev. Laws, regulating the employment of workmen in open-cut or open-pit mines is constitutional.

CARSON CITY, June 25, 1918.

HON. ROBERT F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 15th instant, requesting my opinion relative to the constitutionality of the eight-hour law

applying to workers employed in open-cut mines, being section 6557, Revised Laws of Nevada, 1912. Said section is as follows:

> The period of employment of workingmen in open-pit and open-cut mines shall not exceed eight hours in any twenty-four hours, except in cases of emergency where life or property is in imminent danger.

This section has had several interpretations by this office, and I am entirely satisfied of the constitutionality of this Act. You are hereby referred to interpretations of the same section appearing in the report of the Attorney-General for 1915 and 1916, Opinion No. 26½ on page 25 of said report, and Opinion No. 67 on page 57 of said report, wherein the same section was under consideration and its constitutionality upheld as to workers in open-pit or open-cut mines.

Yours very truly,

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

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202. Elections—Registration—Women.

All that the registrar can require of any person applying for registration is satisfactory answers to such questions as will satisfy him that the applicant is 21 years of age and upwards, and has actually resided in the State six months and in the district or county thirty days next preceding the election. A woman is not required to give her exact age.

CARSON CITY, July 2, 1918.

MR. AUSTIN JACKSON, *Reno, Nevada.*

DEAR MR. JACKSON: I am in receipt of your favor of the 24th ult., asking information concerning the registration law of this State.

You inquire whether or not a woman, upon application for registration, will have to give her exact age, or whether a mere stating of the fact that she is over 21 years of age will comply with the registration law.

Section 12, Stats. 1917, p. 428, of the registration Act provides as follows:

> Any elector residing within the county may register by appearing before the County Clerk or deputy registrar and making satisfactory answers to all questions propounded by the County Clerk touching the items of information called for by such registry card and by signing and verifying the affidavit or affidavits on such card.

The qualification of electors prescribed by the Constitution of this State is found in article 2, section 1, of the Constitution, as amended, approved and ratified by the people at the general election in 1914. Such amendment appears in the Statutes of 1913 at page 581 and such section as so amended reads as follows:

> All citizens of the United States (not laboring under the disabilities named in this Constitution) of the age of twenty-one years 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, are entitled to vote for all officers that now are or hereafter may be elected

by the people, and upon all questions submitted to the electors at such election.

Therefore, all that the registrar can inquire of any person applying for registration is satisfactory answers to such questions as will satisfy him that the applicant is 21 years of age and upwards and has actually resided in the State six months, and in the district or county thirty days next preceding any election.

The age of the applicant is immaterial to him, provided he is satisfied that such applicant is over 21 years of age, and, upon making "satisfactory answer to all questions" which the registrar is entitled to propound the applicant touching his or her qualifications for registration, such applicant must be registered by him and the applicant for registration need not state his or her exact age, but merely qualifies himself or herself by stating that he or she is over 21 years of age.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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203. **Public Schools—County High Schools—County Boards of Education.**

The County Board of Education cannot undertake the construction of a proposed building on a day-labor basis or by letting several contracts of less than $500 each.

CARSON CITY, July 3, 1918.

MR. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 1st instant, wherein you quote from a letter received from the County Board of Education as follows:

> Having advertised twice for bids for the construction of the Mineral County High-School building, and having received no satisfactory bids, the board would like your opinion and that of the Attorney-General as to our right to undertake this construction on a day-labor basis, or by letting several contracts of less than $500 each.

Section 6 of the Act authorizing the issue of bonds to provide for the erection of the county high-school building at Hawthorne (Stats. 1917, p. 306) reads as follows:

> All moneys derived from the sale of said bonds shall be paid to the County Treasurer of said county, and the said Treasurer is hereby required to receive and safely keep the same in a fund known as "County High-School Fund," and to pay out said moneys only in the manner now provided by law and for the purposes for which the same were received.

By restricting the Treasurer to pay out the money "only in the manner now provided by law," the Legislature undoubtedly had in mind the provision incorporated in section 5 of the general Act relating to bonding counties for building high schools (Stats. 1917, p. 19) reading thus:

> Said County Board of Education * * * shall advertise for bids for the construction thereof and let the construc-

> tion thereof by contract to the lowest responsible bidder, said board to have authority to reject any and all bids and to readvertise until a satisfactory bid is obtained;

and to section 3423 of the Revised Laws, which provides that:

> The county high school shall be under the same general supervision and shall be subject to the same laws, rules, and regulations governing the other schools of the state school system;

and to the law governing the other schools, so far as concerns the particular question here involved, found on page 375 of the Statutes of 1915, which reads:

> Whenever the Trustees of any school district shall decide to erect any new school building that is to cost more than five hundred dollars, * * * they shall advertise for bids for the contract to erect the said new building. * * * In all cases where more than five hundred dollars is to be expended upon the erection of any school building, * * * the Trustees shall award the contract for such work to the lowest and best bidder for the contract.

The jurisdiction of School Trustees is limited to the legislative authority conferred upon them (*State* v. *McBride*, 31 Nev. 57, 99 Pac. 705), and the same rule is applicable to the members of the County Board of Education (*Waitz* v. *Ormsby County*, 1 Nev. 370).

As the laws referred to have prescribed the manner in which the Board of Education shall contract for the erection of a high-school building, they exclude all other modes of procedure. (*State* v. *Washoe County*, 6 Nev. 104; *Sadler* v. *Eureka County*, 15 Nev. 30.)

We are, therefore, of the opinion that the County Board of Education cannot undertake the construction of the proposed building on a day-labor basis or by letting several contracts of less than $500 each.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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204. **Elections—Registration—Deputy Registrar.**

A Deputy Registrar cannot appoint his wife to serve for him during his absence from his post of duty.

CARSON CITY, July 3, 1918.

MR. HARRY DUNSEATH, *Justice of the Peace, Tonopah, Nevada.*

DEAR SIR: Your letter of the 30th ultimo, wherein you state that you shall likely be called away from Tonopah for a few days and desire to know whether or not your wife can be appointed a deputy registrar during your absence, duly received.

The law applicable to this matter is found in section 10 of the Act regulating the registration of electors (Stats. 1917, p. 428), which reads as follows:

> All Justices of the Peace are hereby designated as deputy registrars for the purpose of carrying out the provisions of this Act. The County Clerk of each county shall appoint deputy registrars, who shall have the power to administer oaths, in each precinct of such county distant more than five

miles from the county courthouse and wherein no Justice of the Peace resides.

No deputy registrar can be appointed in any precinct in which a Justice of the Peace resides nor in any precinct which is within five miles of the county courthouse.

In view of this statute, it is our opinion that your wife cannot be appointed a deputy registrar during your absence.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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205. **Elections—Sample Ballots—Independent Candidates.**

The sample ballot required in Stats. 1917, p. 282, need not contain the names of independent candidates as the ballot must contain the names only of all party candidates who have opposition for the party nomination.

CARSON CITY, July 6, 1918.

MR. H. L. COX, *Deputy District Attorney, Austin, Nevada.*

DEAR MR. COX: We wish to acknowledge receipt of your recent letter, in which you ask:

> Can the names of persons nominated as independent candidates be placed on the sample ballots to be prepared by the County Clerk and mailed as provided in section 13 of the primary election law of 1917?

The portion of the section in question (Stats. 1917, p. 282) applicable to this matter reads as follows:

> Not less than twenty-five days before the September primary each County Clerk shall prepare sample ballots for such primary, which sample ballots may be smaller in dimensions, but shall be otherwise exact copies of the official ballot to be used at the primary.

Independent candidates are not nominated at the primary, but secure their nominations by filing the necessary certificate of nomination and by paying the prescribed fees. (Stats. 1917, p. 287, sec. 31.)

The primary election law contemplates the nomination at the primary of party candidates where there is a party contest and the nomination of nonpartisan candidates.

The official party ballot shall contain the names of all party candidates only who have opposition for the party nomination (Stats. 1917, p. 282, sec. 12h). The official nonpartisan ballot shall contain the names of all nonpartisan candidates.

As the sample ballot must be an exact copy of the official ballot, it naturally follows that the names of no independent candidates should be placed thereon.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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206. Mothers' Pension Act—Divorced Women.

A woman who has children under 15 years of age not supported by their father is within the provisions of the Mothers' Pension Act (Stats. 1915, p. 151), even though she is divorced from her husband.

CARSON CITY, July 16, 1918.

HON. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada.*

DEAR MR. POWELL: I am in receipt of your favor of the 10th instant, asking what is the status of a mother of children under the age of 15 years who has been divorced from her husband on the grounds of cruelty and who is dependent upon her own efforts for the support and maintenance of her children, with reference to receiving an allowance for the partial support of her children under the provision of chapter 131, Stats. 1915, p. 151.

It seems that in this case a divorce was granted and alimony allowed the wife, but never paid by her divorced husband. You inquire whether the woman is, for the purposes of the above-mentioned Act, "abandoned" when a decree of divorce is entered.

The first section of the Act in question provides:

> It shall be the duty of the County Commissioners of each county in this State, and they are hereby empowered and authorized, to provide funds in an amount sufficient to meet the purposes and requirements of this law, for the support of women whose husbands are dead or are inmates of a penal institution or an insane asylum, or who are abandoned by their husbands, and such abandonment has continued for more than one year, or because of the total disability of their husbands, and who are unable to support their children, when such women are destitute or are dependent upon their own efforts for the maintenance of their children and are mothers of children under the age of 15 years, and such mothers and children reside in such counties in the State.

It will be necessary in the determination of this matter to define the word "abandon." In the case of *Pidge* v. *Pidge*, 44 Mass. 257, it is said "to abandon is wholly to withdraw; to lay aside all care of it; to leave it altogether to itself."

In the case of *Gay* v. *State*, 105 Ga. 599, the court said: "'Abandon,' in its ordinary sense, means to forsake entirely." When referring to a desertion of a wife by her husband, it has been defined to mean the act of the husband in voluntarily leaving his wife with the intention to forsake entirely and never to return to her. Such neglect either leaves the wife without the common necessaries of life or would leave her destitute but for the charity of friends.

It has been decided by this office that the statute in question is highly remedial and should be liberally construed. It has further been decided that the purpose of this statute is to keep the family intact and that the mother shall not be compelled to go away from home to seek work, for the support of her family, which would keep her away from her children. Under the circumstances narrated in your letter it appears that this mother has children under the age of 15 years and she is dependent on her own efforts for the support and maintenance of her children. It

seems to me that under the definitions above quoted, she has been abandoned by her husband within the meaning of the statute and is, therefore, entitled to the relief provided by the provisions of the above-mentioned chapter.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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207. Industrial Insurance Commission.

Amount of compensation to be paid under these particular circumstances calculated.

CARSON CITY, June 17, 1918.

MR. GEO. D. SMITH, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We are in receipt of your letter of the 13th instant, wherein you ask an opinion upon the following question:

> Should the amount of a deceased employee's actual wages be used in the denominator of the proportion, or should the denominator be $120 where the actual wages exceeded $120 per month; in other words, where a deceased workman sent an average of $25 per month of his wages of $168 to his partially dependent father, should the monthly compensation to be paid equal $^{25}/_{168}$ times 25% of $120 or $4.46, or $^{25}/_{120}$ times 25% of $120, or $6.25 for one hundred months?

By subdivision 6 of section 25 of the Industrial Insurance Act (Stats. 1917, p. 442) it is provided:

> If there is no surviving wife (or dependent husband) or child under the age of eighteen years, there shall be paid to the parent or parents, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per centum of the average monthly wage of the deceased during dependency—

while subdivision 6 of the same section (Stats. 1917, p. 443) provides that:

> Any excess of wages over one hundred and twenty ($120) dollars a month shall not be taken into account in computing compensation for death benefits.

Under these statutory provisions, the parents who are wholly dependent for support upon a deceased employee receiving wages of $120 or more per month and leaving no surviving wife or minor child, are entitled to receive as compensation 25 per cent of $120, or $30 a month during dependency. If the parents are but partially dependent for support upon such an employee, the amount of compensation payable to them is fixed by subdivision 7 of the same section (Stats. 1917, p. 442) which reads in part as follows:

> If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as to the amount contributed by the employee to such partial dependents bears

to the average wage of deceased at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case shall exceed compensation for one hundred months.

The amount contributed monthly by the deceased to his father was $25; the amount of the average wage of deceased at the time of the injury resulting in his death, although actually $168, was fixed by statute at $120; and the amount of monthly payments for the benefit of persons totally dependent in similar cases is $30.

Therefore, the amount of compensation to be paid in this particular case is $^{25}/_{120}$ of $30, or $6.25 per month.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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208. Elections—Registration.

Citizens of the State of Nevada who are compelled to live in Washington by reason of their connection with the United States Government are entitled to demand and receive from the registrar registration cards which, when properly filled, must be accepted by him and the applicant registered.

CARSON CITY, July 17, 1918.

HON. DANIEL E. MORTON, *County Registrar, Carson City, Nevada.*

DEAR MR. MORTON: It seems that a number of Nevadans, who are compelled to live in Washington City, on account of their connection with the United States Government, desire you to send them registration cards. You wish to know whether you are authorized to comply with their wishes in view of the provisions of section 12 of the Act relating to registrations of electors (Stats. 1917 p. 428) which provides: "Any elector residing within the county may register by appearing before the County Clerk or deputy registrar," etc.

Section 2 of the same Act is applicable to those residing in the city of Washington, while in the service of the United States. It states: "No person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the naval, military or civil service of the United States."

It may be argued that by the use of the words "appearing before," in the said section 12, the Legislature intended that every elector of the State, irrespective of whether or not his duties keep him in some other State, was required to appear personally in order to register. Such may be the strict technical meaning of the word "appear," but, as is well known, every summons issued by any court requires the defendant to appear within the time specified, and in a vast majority of the cases the appearance is not made personally but by attorney. The validity of such an appearance has never been questioned. One of the meanings of "appear" is "to present one's self." If an elector of Nevada, living in a foreign State, should deliver to the registrar by mail or otherwise the registration card with the blanks properly filled and as required by said section 12, "making satisfactory answers to all

questions propounded by the County Clerk touching the items of information called for by such registration card," he certainly presents himself to the registrar as an applicant for election and gives such registrar the information necessary, in his judgment, as to whether or not the applicant is an elector of the State of Nevada and entitled to registration. Having enacted the provisions of section 2, above quoted, it would be a manifest distortion of the law to assume from the language of section 12 that the Legislature intended that every such elector living outside the State of Nevada is required to present himself *in person* before the registrar for the purpose of registration.

It is the opinion of this office that it is your duty to mail registry blanks to any person living outside of the State applying for them, and, upon receipt of the same with blanks properly filled and the cards signed and verified by the applicant for registration, it is your duty to treat the applicant as properly registered if you are satisfied with the information therein contained.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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209. **Elections—Ballots.**

A candidate's name cannot appear more than once on the ballot, even though he is named by two different parties.

CARSON CITY, July 29, 1918.

F. E. NICHOLS, M.D., *Fallon, Nevada.*

DEAR SIR: In answer to your favor of the 27th instant, let me say that a candidate's name cannot appear more than once on the ballot, even though he is nominated by two different parties. His name must appear once only and after his name is a designation of the party or parties by which he is nominated.

Trusting this will give you the information desired, I am

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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210. **Nevada Industrial Commission—Candidates.**

An employee of the Nevada Industrial Commission may legally be a candidate for and may be elected to any public office.

CARSON CITY, July 31, 1918.

HON. W. P. HARRINGTON, *Carson City, Nevada.*

DEAR SIR: We are in receipt of your oral request for an opinion as to whether or not an employee of the Nevada Industrial Commission may legally be a candidate for public office. The Nevada Industrial Insurance Act (Stats. 1915, p. 283) provides that:

> A member of the Commission or an employee of the Commission shall not serve on any committee of any political party.

A political party is defined by statute (Stats. 1917, 276) to be—

> an organization of voters qualified to participate in the primary election.

The candidates of the respective political parties elect a county cen-

I regret very much that you may not accept this position, for it would be a splendid thing for a man of your capabilities and experience to hold the office.

Yours very truly,

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

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212. Water—Watercourses.

Under section 65 of the Water Law (Stats. 1913, pp. 192–212) the provisions fixing the time of five years for the completion of construction work and ten years for the application of a beneficial use are subject to the latter provision of the section, that the State Engineer may for good cause extend the periods.

CARSON CITY, August 1, 1918.

SEYMOUR CASE, ESQ., *State Engineer, Carson City, Nevada.*

DEAR SIR: Replying to your request for an opinion upon the construction to be given to section 65 of the water law, Stats. 1913, pp. 192–212, I beg to advise as follows:

Section 65 provides as follows:

> In his endorsement of approval upon any application the State Engineer shall set a time prior to which actual construction work shall begin, which shall not be more than one year from the date of such approval; and that work shall be prosecuted diligently and uninterruptedly to completion unless temporarily interrupted by the elements; a time prior to which the construction of said works must be completed, which shall be within five years of the date of such approval, and a time prior to which the complete application of water to a beneficial use must be made, which time shall not exceed ten years from the date of the said approval. He may limit the applicant to a less amount of water than that applied for, to a less period of time for the completion of the work, and a less period of time for the perfecting of the application than named in the application. The State Engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin, within which construction work shall be completed, or water applied to a beneficial use, under any permit therefor issued by said State Engineer; *provided, however*, that application for such extension must in all cases be made prior to the time set in the application limiting the period which it is desired to extend.

You will observe that in the first part of the section the State Engineer in his endorsement of approval is required to state a time prior to which actual construction work shall begin, and a time prior to which the construction work must be completed, which shall not be more than five years from the date of such approval; and a time prior to which the complete application of the water to a beneficial use must be made, which shall not exceed ten years from the date of the approval. Subsequent provisions of the section, however, provide that the State Engineer shall have authority, for good cause shown, to extend the

time in which the construction work shall begin—in which construction work shall be completed—and in which water shall be applied to a beneficial use. These are subject only to the proviso that applications shall in all cases be made before the time limit shall have expired. I am of the opinion that the provisions fixing the time of five years for the completion of construction work and ten years for the application to a beneficial use are subject to the latter provision of the section, providing that the State Engineer may for good cause extend the periods. To otherwise hold would be to give too strict a construction to the statute and would be giving a construction which would favor forfeitures instead of discouraging them.

In addition to that which I have already stated, it is a well-settled rule of statutory construction that, where there are conflicting provisions in a statute or in a section of a statute, the last expression of the Legislature controls and that the last in point of position controls in cases of conflict in the statute or in a section of a statute. (36 Cyc. 1130; *Ex Parte Hewlett*, 22 Nev. 333, 40 Pac. 96; *United States* v. *Jackson*, 143 Fed. 783.)

Yours very truly,

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

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213. **Elections—Ballots—Nonpartisan Ballot.**

No elector can be denied to vote a nonpartisan ballot for judicial and school offices.

If an elector who has registered his political party and in that political party there is no contest, and, therefore, no ballot printed, he is not thereby deprived of the right to vote a nonpartisan ballot.

CARSON CITY, August 2, 1918.

MR. AUSTIN JACKSON, *Reno, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion upon the following questions:

> (a) In the event that there is no contest in any particular party (referring particularly to the Socialist Party) is it necessary to print ballots for the Socialist Party containing only the name of the nonpartisan nominees?
>
> (b) In the event that no such ballots are printed, may a person registered as a member of a political party vote a nonpartisan ballot?

Subdivision h of section 12 of the Primary Act of 1917 (Stats. 1917, p. 282) provides:

> (h) 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.

The manifest intention of this provision was to save the expense of preparing, printing and distributing ballots and counting and returning the same where there is no primary contest, and I am of opinion that where there is no contest of the party at all no ballots for that particular party shall be printed and the candidate of such party

stands nominated immediately upon the closing of the last day for filing nomination papers.

The last paragraph of section 16 of the Primary Act above referred to provides:

> No elector shall be entitled to vote a party ballot at the primary election unless he has theretofore designated to the registry agents his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agents; *provided, however, that no elector shall be denied the right to vote a nonpartisan ballot for judicial and school offices at such primaries.*

The provision of the foregoing is clear and conclusive. No elector shall be denied the right to vote a nonpartisan ballot for judicial and school offices. If an elector who has registered his political party, and in that political party there is no contest and, therefore, no ballot printed, he is not thereby deprived of the right to vote a nonpartisan ballot. On the contrary, this right is specifically reserved and, regardless of the registrant declaring his political party, he may demand and vote a nonpartisan primary ballot at the primary election.

Yours very truly,

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

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214. **Elections—Candidates—Secretary of State.**

It is not necessary for the Secretary of State to certify to the various County Clerks the names of the applicants for the nomination in a case where only two candidates file nomination papers for the same nonpartisan office. Such persons stand as the nonpartisan nominees at the general election and at the proper time their names should be certified to the various County Clerks to be placed upon the ballot for such general election.

CARSON CITY, August 3, 1918.

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

DEAR SIR: I am in receipt of your favor of the 2d instant, requesting opinion "as to whether in the case wherein two candidates file nomination papers for a nonpartisan office, to which only one person can be elected, the names of such candidates should be certified by your office to the various County Clerks."

The purpose of the primary election is to select candidates whose names will appear upon the general election ballot. Efforts have constantly been made to lessen the expense of this election as much as possible. Such is the provision that where there is no party contest for an office the name of the applicant for the nomination shall not be printed upon the primary ballot.

At present Hon. P. A. McCarran and Hon. Edward A. Ducker are the only ones who have filed as nonpartisan candidates for Justice of the Supreme Court, and Hon. John Edwards Bray and W. J. Hunting are the only persons who have filed as nonpartisan candidates for Superintendent of Public Instruction. Between these two sets of candidates there is no contest at present, and it would be an unnecessary expense to place their names upon the ballot at the primary election.

It is, therefore, the opinion of this office that it is not necessary for

your office to certify to the various County Clerks the names of the applicants for nomination in a case where only two candidates file nomination papers for the same nonpartisan office. Such persons stand as the nonpartisan nominees at the general election and at the proper time their names should be certified to the various County Clerks to be placed upon the ballot for the general election.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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215. **Elections—Nomination by Petition of Electors—Judicial Officers—Justices of the Peace.**

The prohibition in section 31, Stats. 1917, p. 288, against incorporating in the same petition more than one nomination for the same office does not prevent other candidates from being nominated for the same office by petition.

Any number of persons may be nominated for the same office by separate and distinct petitions.

Justices of the Peace are judicial officers.

Candidates for Justice of the Peace can be nominated only in the primary election and may not be nominated by petition.

CARSON CITY, August 5, 1918.

MR. W. H. FRYE, *Attorney at Law, Lovelock, Nevada.*

MY DEAR MR. FRYE: I am in receipt of yours of August 4th, requesting my opinion upon several questions.

As to your first question, the prohibition in Stats. 1917, p. 288, sec. 31, is against incorporating in the same petition more than one nomination for the same office. This does not prevent other candidates from being nominated for the same office by petition. Any number of persons can be nominated for the same office by separate and distinct petitions.

As to your second question, I am of the opinion that Justices of the Peace are judicial officers and within the meaning of subdivision c of section 1 of the Primary Act. (Stats. 1917, p. 276.)

I am therefore of the opinion that candidates for Justice of the Peace can only be nominated in the primary election and may not be nominated by petition.

Hoping this answers your questions and thanking you for your kindly expressions of good-will, I am

Yours very truly,

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

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216. **Practice—Justice of the Peace—New Trials.**

It is not within the power of a Justice of the Peace to reopen a case or grant a new trial.

CARSON CITY, August 5, 1918.

HON. E. A. BLANCHARD, *Justice of the Peace, Yerington, Nevada.*

MY DEAR JUDGE: I am in receipt of yours of the 3d instant, with reference to the powers of a Justice Court to grant a new trial after

a judgment has been entered. I agree with your opinion that sections 5321–5324 of the civil code on new trails are not applicable to proceedings in the Justice Court.

New trials and appeals in the Justice Court are governed by chapter 83, section 5788, *et seq.*, of the Civil Practice Act. Appeals are provided for in these sections, but there is no provision either in this chapter or at any other place authorizing the Justice of the Peace to grant new trials of actions in his court. I call your attention also to the provisions of Rev. Laws, 5815, which provides as follows:

> Justice's Courts, being courts of peculiar and limited jurisdiction, only those provisions of this Act which are in their nature applicable to the organization, powers and course of proceedings in Justice's Courts or which have been made applicable by special provisions in this title, are applicable to Justice's Courts and the proceedings therein.

You will observe that the Legislature, by the provisions of this section, specifically stated that the Justice Courts are of limited jurisdiction and that the provisions of the code do not apply unless in their very nature they are made applicable to the proceedings in the court or are specially referred to in the Act. New trials are not necessarily applicable to the powers and proceedings in the Justice Courts, and there is no provision specifically adopting as part of the procedure in the Justice Court the provisions of sections 5321–5324. The very fact that the District Court provides that upon appeals the cases shall be tried *de novo* shows that the new trials were to be granted in the District Court itself.

I quite agree with you in your decision that it was not within your power to reopen the case or grant a new trial.

Yours very truly,

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

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217. **Elections—Registration—Transfers.**

All of the provisions of the old registration law relating to transfers after close of registration have been repealed by Stats. 1917, p. 425.

CARSON CITY, August 13, 1918.

HON. G. A. BALLARD, *District Attorney, Virginia City, Nevada.*

DEAR MR. BALLARD: I am in receipt of your favor of the 5th instant, asking certain questions in regard to the registration law. In my opinion all of the provisions of the old law relating to transfers after close of registration have been repealed by the new Act (Stats. 1917, p. 425). You state:

> I have read your opinion in regard to a person canceling his original registration, in cases where a transfer is not permitted, and registering in another county. You will see that the logic of this opinion would prevent him registering in another county after registration closes, and hence his cancelation of his registration after that time would only disfranchise him.

I do not think that your conclusion logically follows, for the reason that our Constitution requires an elector to be a resident of the State six months and of the county thirty days. As no transfers are allowed except upon cancelation of the original registration and reregistration in another county, in order to be a qualified elector it is absolutely necessary that the person applying for registration should be a resident of the new county thirty days or he will be barred by the Constitution.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

218—Criminal Practice—Appeal—Dismissal of Action.

A dismissal in an action by a District Judge on appeal for a conviction of a misdemeanor does not constitute a bar to subsequent prosecution for the same offense.

CARSON CITY, August 16, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR MR. KENNY: I am in receipt of your favor of the 10th instant, asking construction of Rev. Laws, 7517. It appears that a man had been tried and convicted in the Justice Court for a misdemeanor and, upon appeal to the District Court, the court dismissed the action under the above-entitled section, on the ground that the facts stated in the complaint did not constitute a public offense.

You inquire whether this dismissal constitutes a bar to a subsequent prosecution for the same offense.

In 12 Cyc. 261, it is said:

> The accused is placed in jeopardy where he has pleaded and has been put on trial before a court of competent jurisdiction upon an indictment valid and sufficient in form and substance to sustain a conviction, and the jury has been sworn and impaneled and charged with the case.

It would follow, therefore, that if the indictment is not valid and sufficient in form and substance to sustain a conviction, the accused has not been put in jeopardy, and such is the case now before us.

If the facts stated in the complaint did not constitute a public offense, the court had no jurisdiction of the case and the conviction was a nullity. On page 265 of the same volume of Cyc. it is said:

> In like manner a plea of former jeopardy cannot be maintained where a former conviction of the defendant for the same offense was based upon an indictment which has been set aside as insufficient. (Supported by a number of cases cited in note 52.)

We are, therefore, of the opinion that the dismissal in question does not constitute a bar to a subsequent prosecution for the same offense.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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219. **Elections—Registration.**

Certain features of the registration law explained.

CARSON CITY, August 16, 1918.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR MR. WHITE: I am in receipt of your favor of the 14th instant, asking certain questions in regard to the registration law, and would answer the same as follows:

1. Citizens registered by a deputy registrar, who is an alien, are legally registered and entitled to vote at the ensuing primary election.

2. A registration is legal, whether made by the County Clerk, Deputy County Clerk or deputy registrar, if the registration card fails to give an answer to each of the queries or statements set forth on the registration card.

3. Authority from a deputy registrar is equal to that of the County Clerk, except that ordinarily he can register those only within his precinct.

4. Under the circumstances stated in this question the deputy registrar may register a resident of another precinct.

5. The County Clerk has no authority to reject such registration, but may assign the person so registered to the proper precinct.

6. The County Clerk has authority to accept incomplete registrations as noted in this question, but he should have the defects corrected by the registrant.

7. The requirements for production of certificate of naturalization is directory only; and, if its production is not required by the registrar who registered the applicant, the County Clerk must accept such registration.

8. Answered in the response to No. 7.

9. If the County Clerk or deputy registrar is satisfied that a Mexican Indian is a citizen of the United States, he should be registered.

10. The County Clerk has no authority to cancel a registry card upon any other ground or for any other cause than is set forth in section 21 of the registration law.

My opinion on the above inquiries is based upon the following quotation from 15 Cyc. pp. 307, 308:

> Statutes prescribing the mode of proceeding of public officers are regarded as directory only unless there is something in the statute which shows a different intent. Hence as a general rule a statute prescribing the powers and duties of registration officers should not be so construed as to make the right to vote by registered voters depend upon a strict observance by the registrars of all the minute directions of the statute in preparing the voting list, and thus render the constitutional right of suffrage liable to be defeated, without the fault of the elector, by the fraud, caprice, ignorance, or negligence of the registrars; for if an exact compliance by these officers with all statutory directions should be deemed

essential to the right of an elector to vote, elections would often fail, and electors would be deprived without their fault of an opportunity to vote.

Trusting this will answer your inquiries, I am

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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220. **Election—Registration—County Clerk.**

When the registration cards in the office of the County Clerk show that an elector has registered in more than one precinct in his county, it is the duty of the County Clerk to cancel the registration from the precinct within which the elector does not reside and let his true registration card stand.

CARSON CITY, August 20, 1918.

HON. S. T. KELSO, *County Clerk, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, wherein you inquire:

> What is the duty of the County Clerk when the registration cards in his office show that an elector has registered in more than one precinct in the county?

In answer thereto, let me say that if you are satisfied such duplicate registration has happened, it is your duty to cancel the registration from the precinct in which the elector does not reside and let his true registration card stand.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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221. **Highways—Highway Law.**

The Highway Act does not prohibit the Department of Highways from taking over the whole or any portion of the various routes in their present condition for maintenance or expending for that purpose moneys now in the State Highway Fund and in the various county-state highway funds.

Section 14 of said Act providing for bids on improvements exceeding the sum of $2,000 applies to construction only and not to maintenance.

CARSON CITY, August 22, 1918.

HON. C. C. COTTRELL, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: Your favor of the 12th instant, asking opinion upon certain points of the highway law, received. In answer thereto, let me reply as follows:

1. There is nothing in the Highway Act (Stats. 1917, p. 309), or in any other law which would prevent your department from taking over either the whole or any portion of the various routes in their present condition for maintenance and expending for that purpose moneys now in the State Highway Fund and in the various county-state highway funds.

2. I am of opinion that section 14 of the Highway Act, providing for

bids on improvements exceeding the sum of $2,000, applies to construction only and not to maintenance. It is impossible from the Act in question to determine what is the unit of improvement and your Commission will have to be governed in that regard by the experience of other States.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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222. **Corrupt Practice Act—Candidates—Statement of Expenses.**

A candidate who has no contest at the primary election is not required to file the statement of expenses specified in section 8 of the Corrupt Practice Act (Stats. 1913, p. 478).

CARSON CITY, August 28, 1918.

HON. G. A. BALLARD, *District Attorney, Virginia City, Nevada.*

DEAR MR. BALLARD: I am in receipt of your favor of the 26th instant, asking construction of section 8 of the Corrupt Practices Act (Stats. 1913, p. 478).

You inquire whether every person who is a candidate for nomination at the primary election, whether his name is on the official ballot or not, is required to file the statement of expenses therein specified five days before and fifteen days after election at which he is a candidate.

If there is no primary contest for an office, the names of the respective candidates of the different parties do not appear upon the primary ballot; but, in case of the nomination for state office, they are retained by the Secretary of State and certified by him at the proper time before the general election to the various County Clerks. In case of a county office, the County Clerk retains these names and places them upon the ballot for the general election, together with those certified to him by the Secretary of State.

Section 8, before mentioned, provides:

> Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States and Representative in Congress shall, five days before and fifteen days after the election *at which he was a candidate file*, etc.

If the person's name does not appear on the primary ballot, it cannot be held that he was a candidate for nomination at the election. His nomination is automatic and he does not appear before the people for acceptance or rejection as a candidate. It is, therefore, the opinion of this office that said section 8 does not apply to him and it is unnecessary for him to file the statement of expenses provided in said section 8 for the primary election, but he must do so five days before and fifteen days after the general election.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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223. **Officers—Elections—County Board of Education.**

If no person files as a candidate for membership of the County Board of Education, the incumbent holds the office until the general election in 1920.

CARSON CITY, August 29, 1918.

HON. G. E. ANDERSON, *Deputy Superintendent of Public Instruction, Las Vegas, Nevada.*

DEAR SIR: I am in receipt of your favor of the 26th instant, wherein you state that there are no candidates for members of the County Board of Education in Clark County for the coming election, although one long-term and one short-term member should be elected. You inquire as to the status of the members of the board whose terms are about to expire.

This matter was settled by the provisions of Rev. Laws, 3418, which states:

> Each person elected as herein provided shall enter upon the duties of his office on the first Monday in January next following his election, and shall hold office until his successor is elected and qualified.

The statute points out but one way in which the successor can be selected—namely, by election, and, as there are no candidates for these offices, there can be no successors elected at the coming election, and these persons will hold their positions, unless they resign, until the general election in 1920.

Yours very truly,

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

By EDW. T. PATRICK, *Deputy.*

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224. **Elections—Nomination—Nomination by Petition of Electors—Time—Nonpartisan Officers.**

A nomination by petition of electors filed on August 24, 1918, complies with section 31 of the primary election law (Stats. 1917, p. 287) requiring the filing of such petition at least ten days before the primary election.

A nomination to a nonpartisan office cannot be made by petition of electors.

CARSON CITY, August 29, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada.*

DEAR MRS. PLUMMER: In response to your favor of the 26th instant, concerning election laws, let me advise you as follows:

> 1. It appears that the nomination by petition of electors for the office of Constable was presented to your clerk on the afternoon of the 24th and your County Clerk wants to know if he shall file the same, contending that it should have been filed with him on the 23d.

Section 31 of the primary law (Stats. 1917, p. 287) provides for the filing of such petition at least ten days before the primary election. Such election this year is to be held on the 3d day of September. By applying the familiar rule in computation of time that the first day is

to be excluded and the last to be included, it would appear that this petition was filed ten days before the primary election and, therefore, should be received by the Clerk.

2. It appears that two nonpartisan petitions for the office of Justice of the Peace were received by your County Clerk. These, you properly advised the Clerk, should not be received by him, for the last paragraph of section 31, above quoted, (p. 288) expressly provides that no nomination for a judicial or school office shall be made by petition of electors, but candidates for all such offices shall be nominated at the primary election.

Your Clerk could not receive these petitions, not only because the time for filing had expired, but because such nominations could not be made by petition of electors. I think, however, that your Clerk should retain these petitions and put the names of those thus nominated upon the ballot for the general election if these petitions represent 5 per cent of the total vote cast for Representative in Congress at the last preceding general election in the county. Under the provisions of section 25, page 286, of the primary election law, if they do not contain such requisite 5 per cent, then no one is nominated for the office, and no one could be voted on for such office at the general election and the position will have to be filled by your County Commissioners.

Trusting this will give you the information desired, I am

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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225. Water and Watercourses—Water Commissioners.

Section 52 of the Water Law, providing for the appointment of Water Commissioners (Stats. 1913, p. 205) applies to adjudicated streams only.

Upon the appointment of Water Commissioner it is the duty of the County Commissioners to draw warrants from month to month for the salary and expenses of the Commissioner. At the close of the season it is the duty of the State Engineer to prepare and certify a list of the owners and areas of land served by such Water Commissioner and transmit the same to the Board of County Commissioners.

CARSON CITY, September 9, 1918.

HON. GEORGE A. WHITELEY, *District Attorney, Ely, Nevada.*

DEAR SIR: Your favor of the 6th instant in relation to section 52 (Stats. 1913, p. 205) of the water law received.

Mr. Thatcher has several times held that this section does not apply except to a stream in which the rights of the various owners have been adjudicated. Assuming that your inquiry applies to such a stream and that a Commissioner has been appointed therefor, I am of the opinion that it is the duty of the County Commissioners to draw warrants from month to month for the payment of the salary and expenses of the Commissioner and at the close of the season it is the duty of the State Engineer to comply with the other portion of the section, namely, to

prepare and certify a list of the owners and areas of land served by such Water Commissioners and transmit the same to the Board of County Commissioners. Such board shall thereupon proceed to collect the money expended by the Water Commissioner and make the amount unpaid a lien upon the property served.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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226. **Elections—Independent Candidates—Nonpartisan Candidates—Nomination by Petition of Election—Justices of the Peace.**

A nomination to a nonpartisan office cannot be made by petition of electors but candidates therefor should be nominated at the primary election.

CARSON CITY, September 9, 1918.

MR. W. A. WILSON, *Lovelock, Nevada.*

DEAR SIR: I am in receipt of your favor of the 4th instant, stating that your petition for independent candidate for Justice of the Peace of Lake Township, which was signed by 10 per cent of the voters of your township, has been rejected by your County Clerk. You inquire whether such rejection of your petition by the County Clerk was in accordance with law.

This matter is governed by the provisions of the Act regulating the nomination of candidates for public office (Stats. 1917, p. 276), section 4 of which provides that "All judicial offices and school offices are hereby designated as nonpartisan offices." Section 31 provides for the nomination of candidates other than party candidates by petition of electors. The last paragraph of section 31 on page 288 provides that "No nomination for judicial or school offices shall be under the provisions of this section, but all such candidates shall be nominated at the primary election."

A Justice of the Peace is a judicial office and is therefore governed by the provision of law last above quoted, such provision expressly excluding nomination for judicial or school offices by petition of electors. It is the opinion of this office that your County Clerk acted in accordance with law in rejecting your petition for nomination as Justice of the Peace.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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227. **Elections—Registration—County Clerks.**

The various County Clerks are entitled to charge and receive the fee of ten cents per name provided by Stats. 1917, p. 283.

CARSON CITY, September 14, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR MR. KENNY: I am in receipt of your favor of the 10th instant, asking certain questions in regard to the primary election law. You inquire:

1. Is the Clerk of Churchill County entitled to 10 cents a name for certified copies of list of papers used in election under section 15, chapter 155, statutes of 1917, p. 283?

2. Do candidates for the State Senate and Assembly meet with candidates at the county convention provided under section 23 of the same chapter, page 285?

The law in regard to fees of the County Clerk is found in section 3 of chapter 99, page 122, Statutes of 1913. Section 1 of said Act provides that the officer named "shall receive the following salary and fees in full compensation for the services." Said section 3 provides "the County Clerk and ex officio Clerk of the County Commissioners and ex officio Clerk of the Board of Equalization shall receive a salary of $1,800 per annum. * * * and all fees authorized by law shall be collected by said County Clerk and paid to the County Treasurer on the first Monday of each month and every month."

In my opinion, the fees herein mentioned are those which the County Clerk collects from litigants and others having business with him as Clerk, and do not refer to the fees which he, as ex officio registrar of voters, is authorized to charge.

The primary law of this State was enacted in 1917 (Stats. 1917, p. 276). Section 15 of said Act (p. 283) requires the proper officers to furnish a certified copy of the register for use at primary elections, which said register shall show the names of all voters entitled to vote at said election. Said registry agent shall be paid 10 cents per name for certified copies of the register for use at the primary election.

It is evident that by use of the words "registry agent," the county registrar is intended, for he alone, as shown by the body of the Act, has control of and possesses the means of making up such certified copies.

The act fixing the compensation of your County Clerk (Stats. 1913, p. 122) above mentioned, provides in its terms, compensation for his services only as County Clerk and ex officio Clerk of the County Commissioners and ex officio Clerk of the Board of Equalization, but does not provide for his services as county registrar.

The Primary Election Act having been passed later and providing for a fee of 10 cents per name for such certified copies of the register, I must conclude that the law of 1913 was intended by the Legislature to be amended to this extent and to provide the compensation mentioned in the section 15 thereof for all County Clerks as ex officio county registrars.

I am, therefore, of opinion that your County Clerk is entitled to charge and receive his fee of 10 cents per name for such certified copies.

Answering your second question, this office has decided that by sections 23 and 24 of the Primary Act, candidates for the Assembly and Senate are entitled to participate both in the county and state conventions.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

228. **Elections—Assembly Districts—Washoe County.**

The Act to establish Assembly Districts of the County of Washoe (Stats. 1917, p. 9), provides that the election of Assemblymen by the electors of each respective district therein specified.

CARSON CITY, September 16, 1918.

HON. E. D. MACK, *Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 14th instant, asking interpretation of chapter 8, Statutes of 1917, entitled "An act to establish Assembly Districts in the county of Washoe and providing for the election therefrom of members of the Assembly for the State of Nevada." (Stats. 1917, p. 9.)

Said Act establishes three districts, the third of which consists "of all that portion of the county of Washoe south of the city of Reno." Section 2 of said Act provides for the election of five Assemblymen from District No. 3. Section 3 of the Act requires the County Commissioners to establish the polling-places within Washoe County in such manner that each and every polling-place at all elections at which any Assemblymen are to be elected or nominated for election shall be wholly within one of such Assembly Districts.

From the entire context of the Act I am of the opinion that it was the intention of the Legislature that the electors in District No. 1 should elect one Assemblyman; in District No. 2, one Assemblyman; in District No. 3, five Assemblymen.

This means that only the voters living in District No. 3 can vote for the five Assemblymen at large from such district and that the voters of the other districts have no concern in and cannot vote for such five Assemblymen from the Third District.

Trusting this will give you the information desired, I am

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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229. **Elections—Candidates—Withdrawal—Vacancies.**

One who has become the nominee for political office through the primary election or through having no opposition in the primary cannot have his name omitted from the general election ballot.

The provisions of section 25 of the registration law (Stats. 1917, p. 286) in regard to filling a vacancy applies only to vacancy occurring by the death or loss of reason of the nominee.

CARSON CITY, September 16, 1918.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, asking the following questions in regard to the primary law:

1. What is the duty of the County Clerk, when a candidate whose name has been regularly filed as a nominee of a political party for a certain office, asks that his name be withdrawn from the list of nominees, stating that he does so by direction of the Federal Administrator (Director-General) of the Railroads, the said nominee being a federal railroad employee?

2. If the name of a candidate for such office (assuming that there is a vacancy) is offered for filing by the county central committee, is the County Clerk required to accept such filing and certify such nominee as being the candidate of his party for such office?

1. As the candidate in question has regularly filed as a nominee of a political party for a certain office his nomination paper must have been similar to that set forth on page 278, Statutes of 1917, being a part of section 5 of the primary election law. This declaration states "that if nominated as a candidate of said ..... party at said ensuing election, I will accept such nomination and not withdraw; * * * and that I will qualify for said office if elected thereto." This language is exactly similar to that passed upon by the Supreme Court in the case of *State* v. *Hamilton*, 33 Nev. 418, in which it was held:

> One nominated at a primary election as a candidate of a political party for a public office cannot have his name omitted from the general election ballot, even though he has since the primary become incapacitated from making an active campaign.

The only kind of incapacity stated by the candidate in your letter as a reason for withdrawing is that he does so by direction of the Federal Administrator of Railroads because he is a federal railroad employee.

This reason can have no bearing upon the question whatsoever, as the United States Government has no right to interfere with state laws in a matter of this kind. The person in question is the nominee of his party for the office, and, in accordance with the decision in the case above mentioned, he cannot withdraw therefrom. It is therefore the duty of your County Clerk to refuse his request for withdrawal.

2. In my opinion there can be no vacancy for such office except that occurring by death or loss of reason of the nominee. Whether the office in question is a partisan or nonpartisan office you do not state, but in either event if a vacancy occurs in such manner it can be filled by following the provisions of section 25 (Stats. 1917, p. 286) of the primary law.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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230. **Cities—Towns—Amendment to Charter—City of Elko—County Clerks.**

The County Clerk is not required to place on the ballot for a general state election an amendment to the charter of the city of Elko.

The "general election" mentioned in section 29 of the charter of the city of Elko (Stats. 1917, p. 145) means the general city election.

CARSON CITY, September 19, 1918.

HON. M. J. KEITH, *County Clerk, Elko, Nevada.*

DEAR MISS KEITH: I am in receipt of your favor of the 17th instant, enclosing copy of letter from the City Clerk of the city of Elko, also copy of resolution initiating charter amendment to be submitted to the voters of the city of Elko.

You state that you have been requested to place the question of the adoption of such charter amendment on the ballot for the general election to be held this year and request the advice of this office as to whether or not the law provides for such resolution to be placed on the ballot and, if so, if the resolution is in proper form.

The Act incorporating the city of Elko is found in Stats. 1917, p. 127. Section 79 of said Act (p. 171) permits amendment of the charter in the following language: "This charter may be amended in the following manner: Proposed amendments may be initiated either by the board or by the initiative petition as provided in section 29. Any proposal thereby submitted to the electors for approval shall take the regular course in this charter prescribed, and, if approved by the majority, this charter shall be considered so amended."

Upon referring to said section 29 of the charter (p. 145) I find that any proposed ordinance, resolution or amendment may be submitted to the board "and if such petition shall contain a request that the said ordinance, resolution or amendment be submitted to a vote of the people * * * the board shall * * * call a special election *unless a general city election* is to be held within ninety days thereafter."

Section 3 of said Act provides for an election to be held on the first Tuesday after the first Monday in May, 1919, and at each successive interval of two years thereafter. This is the "general city election" mentioned in section 29.

A general election of state or county officers is to be held on November 5, 1918, in this State, but such election can in no sense be considered a general city election, and I know of no provision whereby this attempted amendment of the charter of the city of Elko may be placed upon the ballot of such general state election.

The statute is specific that the Board of Supervisors must call a special election unless a general city election is to be held within ninety days, and there is no reason to doubt that such state election is not the general city election mentioned in its charter.

The statute requires this amendment to be submitted to the electors of Elko at a special election when a general city election is to be held within ninety days. Submitting this question at a general state election will not comply with the requirements of this statute, and, therefore, I am of opinion that it is not your duty to place such proposed amendment to the charter upon the ballot to be used at the next general state election.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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231. **Elections—Justices of the Peace—Nomination by Petition of Electors—Holdovers.**

A Justice of the Peace may not be nominated by petition of electors.

Candidates for the office of Justice of the Peace should be nominated at the primary election.

If no such nomination is made at the primary election no one is contesting for the office, and the incumbent is entitled to hold office without further election for two years from the expiration of the term of office to which he was elected.

CARSON CITY, September 21, 1918.

MR. W. S. RAINE, *Palisade, Nevada.*

DEAR SIR: Your favor of the 18th instant, in reference to matter of Justice of the Peace of your township, received. Your explanation was what was needed and I now can advise you on the law.

As it appears to me at present the facts are as follows: Mr. Daniel Downing is the incumbent of this office and no one filed for the office in the primary election. You and another person are circulating petitions for the office with the expectation of having them filed by the County Clerk, and your names appear on the ballot to be used at the general election as aspirants for the office, and that the one receiving the highest vote at such election will be declared the candidate elected. I am sorry to say that such is not the law.

The provision for nomination by petition of electors is found in section 31 of the Primary Act, Statutes of 1917, p. 287. This applies to any office not a judicial office. A Justice of the Peace holds a judicial office. The last paragraph of said section 31 provides that:

> No nomination for a judicial or school office shall be under the provisions of this section, but all such candidates shall be nominated at the primary election.

In view of this provision it is apparent that your petition of electors would be invalid and your County Clerk should disregard the same.

There is a further matter to be considered in connection with this situation. Rev. Laws, 2782, provides for the election of Justices of the Peace and Constables, and this section states that such officers hold their office "until their successors are elected and qualified." As there was no nomination for this office made at the primary election and there will be no one contesting for the office at the general election, it is my opinion that Mr. Downing is entitled to hold this office without further election for two years from the 1st of January, 1919, and, there being no vacancy in the office, the County Commissioners are powerless to fill the same by appointment.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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232. **Corporations—General Corporation Law.**

The amendment to section 89 of the general corporation law, as bearing on Stats. 1917, p. 193, is effective and said amended section is now a portion of the general corporation law.

CARSON CITY, September 27, 1918.

MR. R. M. HARDY, *Attorney-at-Law, Lovelock, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking opinion on chapter 106 of the Statutes of 1917 (p. 193), of an Act to

amend an Act entitled "An Act providing a General Corporation Law." You call my attention to the fact that sections 3, 6, 19 and 70 of the General Corporation Act are properly amended, and ask my opinion as to whether section 89 has been properly amended by that portion of chapter 106, appearing on page 195. That portion says: "1190. Section 89. A corporation may be dissolved as follows," and then goes on to provide for such dissolution.

The only provision of our Constitution as to amendments is section 17 of article 4 thereof, which states, "No law shall be revised or amended by reference to its title only; but, in such case, the Act as revised or section as amended shall be reenacted and published at length."

It is the evident intention of the Legislature to amend section 89 of the corporation law by substituting therefor a new method of dissolving corporations. This intention is manifested by the figures "1190," which evidently referred to the section of the Revised Laws to be amended by the words "Section 89," which refers to the particular section of the General Corporation Law to be amended and by the fact that the new matter as introduced in said section by the amendment on page 195 is within the general scope of the old section 89.

Such intention being manifest, and the constitutional provision above mentioned having been fully complied with, it is the opinion of this office that the amendment of section 89, appearing on said page 195, is effective and that said amended section is now a portion of the General Corporation Law.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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233. **Elections—Justices of the Peace.**

Nomination of candidates for the office of Justice of the Peace must be made at the primary election.

CARSON CITY, October 8, 1918.

MR. HARRY G. PRAY, *Attorney at Law, Room 4, Byington Building, Reno, Nevada.*

DEAR SIR: I am in receipt of yours of the 2d, requesting an opinion as to whether or not a man can be a candidate for the office of Justice of the Peace after the close of the primary and without being a candidate for nomination at the primary.

I am of the opinion that he may not. Nomination of candidates for all public offices is governed by chapter 155, Stats. 1917, p. 276. The Primary Act provides by section 4 that all judicial and school offices shall be nonpartisan and the names of nonpartisan officers shall appear alike on all ballots of every political party without party designation.

The last paragraph of section 31 of the same Act provides as follows: "No nomination for judicial or school office shall be under the provisions of this section, but all such candidates shall be nominated at the primary election."

I hope this fully answers your question.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*

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234. **Employer and Employee—Eight-Hour Law—Janitors.**

The provisions of section 6778, Rev. Laws, applies to janitors employed by the counties of this State.

CARSON CITY, October 16, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 11th instant, directing my attention to Rev. Laws, 6778, which provides:

> On public works, all works or undertakings carried on or aided by the county, state or municipal governments, eight hours shall constitute a day's labor.

You state that from personal observation you know that the janitor work carried on by the county of Washoe at the courthouse is being conducted on a twelve-hour basis, and you ask a ruling as to whether or not the above-mentioned section is applicable to janitor service in the various counties of the State.

In response thereto, let me say that, in the opinion of this office, such action is a clear violation of Rev. Laws, 6778.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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235. **State Labor Commissioner—Appropriation.**

The unusued portion of the appropriation made by the Legislature of 1917, for the salary of the Labor Commissioner and support of the Labor Commission, may lawfully be used for the support of the Commission.

CARSON CITY, October 22, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 20th instant, wherein it appears that the Legislature for 1917 made an appropriation—

> For salary of Labor Commissioner; support of Labor Commission, $5,000.

It further appears that the sum of $125 still remains in this fund representing the unpaid portion of the Commissioner's salary during the year 1917 caused by a vacancy in the office.

You inquire whether this unpaid portion of the salary may be used in the support of the Commission.

According to the terms of the appropriation the $5,000 is liable both for salary and support, and it is, therefore, the opinion of this office that the $125 referred to may lawfully be used for the support of the Commission.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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236. Officers—Disqualification of—Removal of—Malfeasance in Office—Crimes and Punishments.

The provisions of section 6287, Rev. Laws, do not apply to an officer removed from office under the provisions of sections 2851–2854. The former section applies to officers removed after trial on indictment or accusation by grand jury or information by District Attorney. Section 6287 is a penal statute and is to be strictly construed. A removal under the last-named sections does not disqualify an officer from being a candidate for election nor will it disqualify him from holding office if elected.

[COPY OF WESTERN UNION TELEGRAM]

RENO, NEVADA, October 28, 1918.

JAMES W. WOODARD, SR., *Las Vegas, Nevada.*

Patrick's telegraphic opinion to you of October 22 in response to your telegram of October 21 just called to my attention. I cannot agree with Patrick's opinion. I am of the opinion after a careful examination of the complaint that Gay was removed from office for nonfeasance in office. Rev. Laws, 6287, disqualifies a public officer from afterward holding public office when there is a conviction of a felony or malfeasance in office. The statute under which Gay was removed was one providing for summary removal. There was no conviction of Gay of any felony or malfeasance in office. Such a conviction could only be had after an indictment or accusation by grand jury or by an information by District Attorney and a jury trial. Section 6287 in my opinion is a penal statute and is to be strictly construed and no person can be construed as coming within its provisions unless it is clear beyond a reasonable doubt that the facts bring him within it. I call your attention to *Ex Parte Davis*, 33 Nev. 309. I am of the opinion that Gay's removal, as shown in the transcript to the Supreme Court, does not prevent him from either being a candidate for election to the office of Sheriff nor will it disqualify him from holding such office if he be elected. In justice to Mr. Gay, I am wiring him a copy of this opinion.

Yours very truly,

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

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237. Officers—Term of Office.

Any person elected to office at the general election does not take possession of such office until the first Monday of January succeeding the general election.

CARSON CITY, November 9, 1918.

MR. C. E. KIBLINGER, *County Commissioner, Gold Hill, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking information in regard to the status of your Sheriff.

It appears that the Sheriff of the county died and Mr. J. J. Carew was appointed Sheriff "until his successor is elected and qualifies." Mr. Carew ran for this office at the last election and was defeated by

Mr. T. J. Hurley. The question is now who takes the office for the balance of the term of Mr. O'Connor.

Rev. Laws, 2781, provides that the various county officers shall be chosen by the electors of the respective counties at the general election of the year 1866 and at the general election every two years thereafter "and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election." If any one filed for the unexpired term of Mr. O'Connor and was elected, he would be entitled to fill the office until the first Monday of January next; if no one was elected for such unexpired term, then there is a vacancy in the office up to the first Monday of January next and the same may be filled by the Board of County Commissioners.

Mr. Hurley, who was elected at the last general election to such office, does not take office until the first Monday of January next.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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258. **Counties—Employees—Stenographers—Compensation.**

There is no law which prevents a stenographer in the office of the District Attorney from reporting proceedings in the Justice's Court. Upon performance of such work, the stenographer is entitled to receive the compensation provided by law therefor, in addition to her regular salary.

CARSON CITY, November 15, 1918.

MISS M. U. SHIELDS, *Tonopah, Nevada.*

DEAR MISS SHIELDS: We are in receipt of your letter of the 12th instant, requesting an opinion upon the following question:

> Is it not allowable for an employee drawing salary by the month from the county, to receive compensation also as per statute for work done in Justice's Court? For instance, is there anything in the law to prevent an employee on salary at $100 per month in the District Attorney's office, from receiving the per diem and per folio rate for reporting and writing up a preliminary hearing and inquisition in the Justice's Court during that month?

There is no law which prevents a stenographer in the office of the District Attorney reporting proceedings in the Justice's Court. In the absence of such a provision you are legally entitled to perform such work and to receive the compensation provided by law therefor in addition to your regular salary.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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239. Elections—County Commissioners—Canvass—Returns.

In making the canvass of election returns, the Board of County Commissioners is nothing more or less than a board of canvassers, and they have no right to go back of the certificate of the judges of election or check the tally marks. Such board can only add up the totals from each precinct, and, in adding such totals, they can use only those expressed in the certificate of the inspectors and clerks.

RENO, NEVADA, November 15, 1918.

HON. S. W. BELFORD, *Attorney at Law, Reno, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion on the following state of facts:

> The County Commissioners of Washoe County, in making a canvass of the votes of the recent election for the office of Assemblyman, have determined that L. K. Gregory received in this county a majority of four votes over Joseph F. McDonald. The determination of the board was reached, as I am advised, by checking the tally marks in a certain precinct in the city of Reno which showed an excess of five votes over the total as certified to by the inspectors and clerks of election. In other words, the Board of County Commissioners in making an abstract of the votes followed the tally marks instead of the written totals, and went beyond the totals, as appearing in the certificate, to ascertain the actual number of votes from the tally marks.

This question is governed by sections 16 and 25 of the General Election Law of 1917, Statutes of 1917, pp. 363, 366. Section 16 provides as follows:

> The ballots and poll-lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed, the clerks shall set down in their poll-books, the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed in writing at full length, and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:
>
> At an election held at the house of A. B., in the town (or precinct) of ....., in the county of ....., and the State of Nevada, on the ..... day of ....., A. D. ....., the following-named persons received the number of votes annexed to their respective names for the following-described offices, to wit:
>
> A. B. had ..... votes for Member of Congress.
> C. D. had ..... votes for State Treasurer.
> E. F. had ..... votes for State Controller.
> G. H. had ..... votes for State Superintendent of Public Instruction.
> I. J. had ..... votes for member of State Senate.
> K. L. had ..... votes for member of the Assembly.

(And in like manner for any person voted for.)

M. N.,
O. P.,
Q. R.,
Inspectors of Election.

Attest: A. B.,
C. D.,
Clerks of Election.

Section 25 provides in part as follows:

> That on the tenth day after the close of any election, or sooner if all the returns be received, the Board of County Commissioners shall proceed to open said returns and make abstracts of the votes.

It will be observed from section 16 that the Legislature has taken every precaution to protect the integrity of the certificate. It has required a certificate by the inspectors and clerks of election, and has specified the form thereof; the Legislature has required that the name of every person voted for shall be written at full length; that the number of votes he received shall be expressed in writing and at full length, and also in figures.

I am of the opinion that the certificate controls, and that the Board of County Commissioners, under section 25, are nothing more or less than a board of canvassers, and that they have no right to go back of the certificate, and inspect or check the tally-marks. The Board of County Commissioners, as a board of canvassers, can only add up the totals going from each precinct, and in adding up the totals, they can only add up the totals as expressed in the certificate of the inspectors and clerks. If the Board of County Commissioners were permitted to check the tally-marks, what would there be to prevent them from going still further back and recount the ballots?

Yours very truly,

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

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240. **Corporation—Secretary of State—Appointment of Agent—Foreign Corporations.**

> The proper fee for the Secretary of State to charge for filing a certificate of appointment of agent of a foreign corporation is five ($5) dollars.

CARSON CITY, November 15, 1918.

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

DEAR SIR: We are in receipt of your request for an opinion as to what is—

> the proper fee to charge for filing appointment of agent, under the provisions of the Act of 1889.

It is unnecessary at this time to discuss the provisions of the Act mentioned, because your fees are regulated by section 102 of the General Corporation Law (Stats. 1913, p. 58), wherein it is provided that:

> On filing any certificate or articles or other paper relative to corporations in the office of the Secretary of State, the following fees and taxes shall be paid to the Secretary of State, for the use of the State: * * * For all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious or charitable society or educational association having no capital stock; *and provided further*, that foreign corporations shall pay the same fees to the Secretary of State as are required to be paid by corporations organized under the laws of this State.

You are, therefore, advised that the proper fee to charge for filing a certificate of appointment of process agent for a foreign corporation is $5.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*
By WM. MCKNIGHT, *Deputy*.

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241. Elections—County Clerks—Fees.

County Clerks are entitled to charge and receive for their own use the fee of 10 cents per name provided for furnishing certified copies of the register for use at the primary election named in section 15 (Stats. 1917, p. 283).

CARSON CITY, November 21, 1918.

HON. L. E. GLASS, *County Clerk, Nye County, Tonopah, Nevada.*

DEAR SIR: We are in receipt of your letter of recent date, wherein you request an opinion as to whether or not you are entitled to any fee in addition to your regular salary for preparing certified copies of the register used at the primary election.

By section 8 of the general registration law (Stats. 1917, p. 426) it is provided that:

> The County Clerk of each county of the State of Nevada is hereby declared to be an ex officio county registrar of such county.

The primary election law makes provision for the furnishing of certified copies of the register showing the names of all persons entitled to vote at such primary. Section 15 of said Act (Stats. 1917, p. 283) reads in part as follows:

> Said register shall be made by taking the names of all voters on the register on the fifteenth day preceding the primary election. Said registry agent shall be paid ten cents per name for certified copies of the register for use at the primary election.

From a reading of the entire Act, it is apparent that the *registry agent* named in section 15 is the *ex officio county registrar* provided for in the registration law, because such *county registrar* is the only person having control of and possessing the original list of names from which certified copies could be made. As the County Clerk is ex officio county registrar and as the statutes distinctly provide for the payment of a fee for the furnishing of certified copies, it is clear that you are entitled

to such fee unless there be something in the Act fixing your salary as County Clerk that prevents it.

The compensation of the County Clerk of Nye County is fixed by the Act of 1915 (Stats. 1915, p. 429), section 1 of which reads as follows:

> The County Clerk shall receive a salary of three thousand dollars per annum for all his services in said office, and shall be allowed a deputy, to be named by him, at a compensation of eighteen hundred dollars per annum, and shall collect in advance, and monthly turn over to the County Treasurer of the county, fees and compensation received by him in said office.

This statute limits the County Clerk, for all services as such Clerk, to a flat salary of three thousand dollars per annum. Nothing whatever is said with reference to any ex officio services which might later be performed pursuant to any other statute, and no language is used which could, under any stretch of the imagination, be said to include any ex officio office attached to that of County Clerk. (Opinions of Attorney-General, 1918, 227; *Bradley* v. *Esmeralda County*, 32 Nev. 159.)

We are, therefore, of the opinion that you are entitled to charge for and to receive the fee of 10 cents per name for furnishing certified copies of the register for use at the primary election.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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242. **Elections—Ballots—Marking Of.**

Stats. 1917, p. 372, provides the method in which ballots shall be marked by the elector, and ballots upon which a cross was made with a lead pencil or pen or by marking with the wrong end of the stamp should be rejected.

CARSON CITY, November 23, 1918.

MRS. BETSY O'REILLY GAMBLE, *Las Vegas, Nevada.*

DEAR MRS. GAMBLE: Mr. Arthur M. Allen, Special Agent of the Department of Justice, has handed us your letter of the 17th instant, wherein you ask whether an election ballot marked with ink should be counted. Replying thereto, will say that the law (Stats. 1917, p. 372) specifically provides that the voter—

> shall prepare his ballot by stamping a cross or X in the square, and in no other place, after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters, the cross or X shall be placed in the square after the answer which he desires to give. Such stamping shall be done with a stamp in black ink, which stamp, ink, and ink-pad shall be furnished in sufficient number by the County Clerk for each election precinct in the county.

In *State* v. *Baker and Josephs*, 35 Nev. 300, the court held that bal-

lots upon which the cross was made with lead pencil or pen or by marking with the wrong end of the stamp, as with a pen or brush, should be rejected.

Trusting that the above gives you the desired information, we are

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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243. **Prohibition—Initiative Prohibition Law—Time of Taking Effect.**

The initiative prohibition measure will become a law and take effect at 12.01 a. m., December 17, 1918.

CARSON CITY, November 23, 1918.

HON. HARLEY A. HARMON, *County Clerk, Las Vegas, Nevada.*

DEAR MR. HARMON: We are in receipt of your recent letter, in which you request to be advised as to the exact time the initiative prohibition law takes effect.

Section 3 of article 19 of the Constitution provides that if a majority of the qualified electors voting upon an initiative measure

> shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote.

In section 26 of the Act relating to elections (Stats. 1917 p. 367) it is provided:

> and on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and shall open and canvass the vote * * * for and against any questions submitted.

The third Monday of next December, the day on which the votes will be officially opened and canvassed, comes on the 16th day of that month. The official declaration of the vote will, therefore, be made on December 16, 1918.

It is *from the date* of such official declaration that an initiative measure receiving a majority of the votes cast becomes a law and takes effect.

"From the date" was said by Lord Mansfield, in *Pugh* v. *Duke of Leeds*, Comp. 714, to be synonymous with the phrase "from the day of the date." (*Kim* v. *Osgood's Admr.*, 19 Mo. 60; *Oatman* v. *Walker*, 33 Me. 67; *Bigelow* v. *Willson*, 18 Mass. 485.)

The *day* of the date in this particular case is the *16th*, because "*date*" means the same in its legal as in its ordinary sense and imports the day of the month, the month and the year. (*Heffner* v. *Heffner*, 48 La. Ann. 1088.)

A "day," in legal consideration, constitutes twenty-four hours, extending from midnight to midnight. (*Muckenfuss* v. *State*, 55 Tex. Cr. R. 229, 116 S. W. 51, 20 L. R. A. n. s. 783, 131 Am. St. Rep. 813, 16 Ann. Cas. 768; *State* v. *Richardson*, 16 N. D. 1, 109 N. W. 1026; *Cheek* v. *Preston*, 34 Ind. App. 343, 72 N. E. 1048; 2 Words and Phrases, 1834.)

And fractions of a day in statutes or legal proceedings are not generally considered. (*Towell* v. *Hollweg*, 81 Ind. 154; *Brainard* v. *Bushnell*, 11 Conn. 16; *Cummings* v. *Holmes*, 11 Ill. App. 158; *Inhabitants* v. *Inhabitants*, 62 Mass. 371.)

The word "from," in speaking of the time from a certain day, generally excludes the day to which it relates. (*People* v. *Hornbeck*, 61 N. Y. Supp. 978, 30 Misc. Rep. 212; *Bigelow* v. *Willson*, 18 Mass. 485; *Peables* v. *Hannafoid*, 18 Mass. 106; *Kendall* v. *Kingsley*, 120 Mass. 94; *Rand* v. *Rand*, 4 N. H. 267.)

In view of the foregoing, it is our opinion that the initiative prohibition measure will become a law and take effect at 12:01 o'clock a. m. December 17, 1918.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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244. **Prohibition—Licenses—Refund—Initiative Prohibition Law.**

A licensee may recover back the unearned license fee where the license has been revoked wholly by reason of a change in governmental policy by the State, and where there is no fault on the part of the licensee.

The initiative prohibition law takes effect at 12.01 a. m., December 17, 1918.

Counties and municipalities should make refund for the unearned portion of each license after the taking effect of the law upon presentation of proper bills.

CARSON CITY, November 26, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: Your recent letter relative to the initiative prohibition measure duly received. The questions therein asked will be taken up and answered in their order, as follows:

1. Is any refund legally due and payable to the holder of a liquor license, state and county, as a consequence of the "dry" initiative measure being successful at the recent election?

Although there are some few decisions to the contrary, principally among which might be mentioned *Fitzgerald* v. *Witchard*, 130 Ga. 552, 16 S. E. 227, 16 L. R. A. n. s. 519, and *Peyton* v. *Hot Spring County*, 53 Ark. 236, 13 S. W. 764, the great weight of authority is to the effect that a licensee may recover back the unearned portion of the license fee where the license has been revoked wholly by reason of a change in governmental policy by the State, and where there is no fault on the part of the licensee. (*Pearson* v. *Seattle*, 14 Wash. 438, 44 Pac. 884; *Martel* v. *East St. Louis*, 94 Ill. 67; *Hirn* v. *State*, 1 Ohio St. 15; *Sharp* v. *Cartage*, 48 Mo. App. 26; *Marshall* v. *Snediker*, 25 Tex. 460, 78 Am. Dec. 534; *Auburn* v. *Mayer*, 58 Neb. 161, 76 N. W. 462; *Allsman* v. *Oklahoma City*, 21 Okl. 142, 95 Pac. 468, 16 L. R. A. n. s. 511, 17 Ann. Cas. 184.)

In our opinion, therefore, each of the various license holders will be entitled, when his license becomes void by reason of the taking effect

of the initiative prohibition law, to a refund for the unearned portion of such license.

2. If a refund is due, when does it begin to run?

The initiative prohibition law will take effect at 12:01 o'clock a. m. on December 17, 1918. (Atty.-Gen. Opin. Nov. 23, 1918.)

The counties and municipalities should make refunds for the unearned portion of each license after the taking effect of the law, upon the presentation of proper bills. So far as the State is concerned, no refunds can be made prior to legislative action, as no money can be drawn from the state treasury but in consequence of appropriations made by law. (*State* v. *Eggers*, 29 Nev. 469; *State* v. *La Grave*, 23 Nev. 125.)

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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245. **Prohibition—Initiative Prohibition Act—Liquors, Storage Of.**

The initiative prohibition measure does not prevent one, prior to midnight on December 16, 1918, from storing intoxicating liquor in his home for his own future personal use or from personally using it after such date; such liquor so stored before the law takes effect cannot legally be given or furnished to another after the law becomes effective.

CARSON CITY, November 29, 1918.

HON. E. F. LUNSFORD, *District Attorney, Washoe County, Reno, Nevada.*

DEAR SIR: In response to your oral request for an opinion as to whether or not a person may, under the new prohibition law, store intoxicating liquor in his home for his own consumption, will say that there is nothing in the initiative prohibition measure which prevents one, prior to midnight on December 16, 1918, from storing intoxicating liquor in his home for his own future personal use, or from personally using it after said date; but such liquor so stored before the law takes effect cannot be legally given or furnished to another after the law becomes effective.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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246. **Prohibition—Initiative Prohibition Law—Intoxicating Liquors.**

After the prohibition law becomes effective, it is not unlawful for one to have intoxicating liquor in his house for his own personal use, provided such liquor is placed in his home prior to the time the law takes effect.

Persons invited to the home as guests cannot legally be served with intoxicating liquor.

The prohibition law will take effect 12:01 a. m., December 17, 1918.

CARSON CITY, November 29, 1918.

HON. C. P. FERREL, *Sheriff, Washoe County, Nevada.*

DEAR MR. FERREL: Replying to your recent letter, relative to the

initiative prohibition measure, will say that your various questions, in our opinion, should be answered as follows:

1. It will not be unlawful, after the prohibition law becomes effective, for one to have intoxicating liquor in his home for his own personal use, provided such liquor is procured and placed in such home prior to the time that the law takes effect.

2. Friends invited to the home as guests cannot legally be served with intoxicating liquor.

3. The prohibition law will take effect at 12:01 a. m. December 17, 1918.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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247. **Public Schools—School Teachers—Salaries—Quarantine—Epidemic.**

Teachers should be paid full salaries for one thirty-day intermission caused by an epidemic, even though the schools be actually closed for a longer period.

If the school board, in good faith, reopens the school before the expiration of thirty days from the date of closing and later finds it necessary to again close them for a period not exceeding thirty days, the teachers are entitled to their full salaries.

But, if the school board reopens a closed school and later closes it for the apparent purpose of attempting to avoid the letter of the statute, the teachers are entitled to salaries for but one thirty-days intermission.

CARSON CITY, December 10, 1918.

MR. THOMAS E. POWELL, *District Attorney, Humboldt County, Winnemucca, Nevada.*

DEAR MR. POWELL: We wish to acknowledge receipt of your letter of the 9th instant, in which you state that many school boards, in order to be able to pay the teachers for the full time during the period of the epidemic of influenza, have paid them for a thirty-day intermission according to law and then convened the schools for one day, when they were again closed, the purpose being to avoid the statute and pay the teachers for successive thirty-day intermissions. You ask whether such procedure violates the law.

By section 104 of the Act concerning public schools (Stats. 1917, p. 398), it is provided:

> A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this Act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this State.

This section specifically provides that there shall be no deduction or discontinuance of salary when the intermission or closing, on account of an epidemic, is duly ordered and does not exceed thirty days at any one time.

Literally construed, the statute would prevent a teacher from securing any salary for any part of a period of intermission, if the entire period exceeded thirty days; literally construed, it would give a teacher full salary for an entire period of intermission lasting several months, if such period was broken every month by one day's teaching. It is readily seen that the literal meaning is absurd and, if given effect, would work injustice, depending entirely upon the will or caprice of the school board. Under such circumstances, it is universally held that the spirit or reason of the law will prevail over the letter. In our opinion, the spirit and reason of this particular statute demands the following conclusions:

Teachers should be paid full salaries for one thirty-day intermission caused by an epidemic, even though the schools be actually closed for a longer period.

If the school board, in good faith, reopens the schools before the expiration of thirty days from the date of closing and later finds it necessary to again close them for a period not exceeding thirty days, the teachers are entitled to their full salaries.

But, if the school board reopens a closed school and later closes it for the apparent purpose of attempting to avoid the letter of the statute, the teachers are entitled to salaries for but *one* thirty-day intermission.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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248. **Prohibition—Initiative Prohibition Act—Druggists—Intoxicating Liquors.**

(1) Druggists may carry in stock and sell for medicinal purposes, upon prescription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

(2) Druggists may carry in stock and may sell for medicinal purposes upon prescription and for mechanical, pharmaceutical and scientific purposes, upon affidavit, pure grain alcohol.

(3) Druggists may carry in stock and sell, without a prescription, any preparation which is exempted by the provisions of the national pure food law, if the sale of the same does not require the payment of a United States liquor dealer's tax.

CARSON CITY, December 14, 1918.

HON. W. E. BALDY, *District Attorney, Ormsby County, Carson City, Nevada.*

DEAR SIR: We are in receipt of your recent request for an opinion upon the following questions:

1. Can a druggist have in his store whisky, brandy, wine, etc., for use of physicians' prescriptions?

2. Can a druggist have in stock and sell, without physicians' prescriptions, patent medicine containing alcohol, or such articles as bay-rum or witch-hazel?

The initiative prohibition measure provides that a common carrier or transportation company may bring or carry into this State, or carry from one place to another within the State, pure grain alcohol and wine, and such preparations for druggists as may be sold by them for the special purposes and in the manner as set forth in section four, and that druggists may receive and possess the same.

Section 4 of the Act reads in part as follows:

> The provisions of this Act shall not be construed * * * to prevent the sale and keeping and storing for sale by druggists of pure grain alcohol for mechanical, pharmaceutical, medicinal and scientific purposes, or of wine for sacramental purposes, by religious bodies, or any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, and the sale of which does not require the payment of a United States liquor dealer's tax.

The section further provides that no druggist shall sell any such *grain alcohol* for *medicinal* purposes except upon a written prescription, in a prescribed form, of a physician of good standing in his profession and not of intemperate habits, or addicted to the use of any narcotic drug; and that it shall be lawful for a druggist to sell *grain alcohol* for *pharmaceutical*, *scientific* and *mechanical* purposes, or wine for sacramental purposes by religious bodies, only to any person, not a minor, and who is not of intemperate habits, or addicted to the use of narcotic drugs, who shall, at the time and place of such sale, make and file an affidavit in the form prescribed by the Act.

Although the Act does not specifically require a prescription or an affidavit for the sale of anything except alcohol and wine, it does provide that any druggist who shall sell or give away *any liquors* without such affidavit or prescription shall be deemed guilty of a misdemeanor and be subject to a penalty. As a penalty implies a prohibition, the literal construction of the statute requires that the prescribed affidavit or prescription must be filed with the druggist before he can sell or give away *any* liquors. The word "liquors," as used in the Act,

> shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors; * * * and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing so much as one-half of one per centum of alcohol by volume, shall be deemed spirituous liquors, and all shall be embraced in the word "liquors."

This language, literally construed, is certainly sufficiently broad and comprehensive to include every liquor which contains any quantity of alcohol. It is a matter of common knowledge that alcohol is the intoxicating principle or the basis of all intoxicating drinks, and that what-

ever contains alcohol will, if a sufficient quantity be taken, produce intoxication. Consequently, all liquor containing alcohol is within the letter of the statute. But, if the letter of the statute be followed, many absolutely necessary toilet and culinary articles will be wholly shut out from sale. The excepted purposes in the statute are "mechanical, pharmaceutical, medicinal and scientific purposes." It cannot be said that toilet and culinary purposes are included within any one of the four. A person who desires bay-rum or cologne for toilet purposes or lemon extract for cooking purposes cannot get a physician's prescription therefor, nor file an affidavit that he intends to use it for mechanical, pharmaceutical or scientific purposes, and yet only in those ways does the Act provide for sales. Neither can a person, if the statute be literally followed, purchase any one of the numerous meritorious patent medicines, without a prescription. As a prescription cannot, in many instances be obtained, the purchase of many of such medicines will be absolutely prohibited.

Druggists selling intoxicating liquor or grain alcohol, used for filling prescriptions, must take out special-tax stamps as retail liquor dealers. Without the payment of a United States liquor dealer's tax, they cannot sell filled prescriptions containing grain alcohol. Literally construed, the Act will prevent the sale of any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, if the same contains alcohol, for the reason that such sale requires the payment of a United States liquor dealer's tax. And, if the payment of the tax be sufficient to prevent the sale of any pharmacopœia or national formulary preparation, it is also sufficient to prevent the sale of grain alcohol.

It is apparent, particularly in view of the fact that section 13 of the act contemplates the payment of such a tax, that the letter of the law is absurd and must give way to its spirit and reason.

Besides, the initiative prohibition measure is a penal statute. All of its provisions, with reference to druggists, are exceptions to the general law. Under the rules governing the construction of penal statutes, provisions creating exceptions must be liberally construed. (*Ex Parte Davis*, 33 Nev. 309, 110 Pac. 1131.)

In the opinion of this office, the spirit and reason of the law, liberally construed with reference to druggists, justify the following conclusions:

1. Druggists may carry in stock and may sell for medicinal purposes, upon perscription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

2. Druggists may carry in stock and may sell, for medicinal purposes upon prescription and for mechanical, pharmaceutical and scientific purposes upon affidavit, pure grain alcohol.

3. Druggists may carry in stock and may sell, without a prescription, any preparation which is exempted by the provisions of the national pure food law, if the sale of the same does not require the payment of the United States liquor dealer's tax.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By WM. MCKNIGHT, *Deputy*.

249. Public Schools—School Teachers—Salaries—Epidemic—Quarantine.

School trustees may lawfully pay salaries of teachers for an intermission of thirty days caused by declaration of quarantine on account of an epidemic, and, if it is necessary to close the school again at the expiration of said time, they may declare another thirty days' intermission and pay salaries therefor.

CARSON CITY, December 16, 1918.

MR. WILLIAM M. HANSEN, *Gardnerville, Nevada.*

DEAR SIR: In answer to your favor of the 12th instant asking the law in regard to the payment of teachers during quarantine, let me say that section 104 of the School Code was amended by the Statutes of 1917, p. 398, by adding the additional proviso "that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor."

Under such amendment this office has held that School Trustees may lawfully pay salaries of teachers for an intermission of thirty days, and, if the epidemic or quarantine is not lifted at the end of that time, the board may cause the school to assemble again and after one day's session declare another thirty-day period of quarantine, during which, of course, the teachers' salaries will continue.

Trusting this will give you the information desired, I am

Yours very truly,

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

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250. Counties — County Commissioners — Budget — Road Expenses — Claims Against Counties.

The Board of County Commissioners is authorized, under the provisions of section 1508, Rev. Laws, to allow a claim for expenses in holding train for the accommodation of a witness in a criminal case.

Taxes of 1918, already paid in, cannot be used for paying road expenses.

County Commissioners are confined to the budget provided in Stats. 1917, p. 249, and any deficiency or any fund thereof, must be made by section 11 of said Act in relation to emergency loans.

Certain facts held not to be within the provisions of section 1530, Rev. Laws, providing that in letting of contracts where the aggregate exceeds the sum of five hundred dollars, the County Commissioners shall advertise for bids for said contracts.

CARSON CITY, December 19, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada.*

DEAR MRS. PLUMMER: Owing to press of business it has been impossible to answer your favor of the 6th instant, asking information on several matters, until this time. I trust the delay has not incon-

venienced you or the commissioners. Permit me to answer your various inquiries as follows:

> First—A bill for expenses in holding train and telegram, amounting to $21.50, was presented to your board and passed, and the auditor vetoed the claim.

These expenses were incurred in the prosecution of a criminal action, and the auditor vetoed the claim on the ground that the State was a party to the suit and that the county was not interested in it. The auditor was clearly wrong in his ruling, as the county is also a party to every criminal suit, although the State is the nominal plaintiff, and you were correct in advising the Commissioners that they had a right to allow this claim under the twelfth subdivision of section 1508, Rev. Laws, which gives the Board of County Commissioners power to control the prosecution or defense of all suits in which the county is a party.

If they did not have such power they would have no right to allow witness fees in any ordinary criminal action.

> Second—Your county officers wish to know whether the taxes of 1918, already paid in, can be used for paying road expenses. It seems that, owing to severe storms in your county, there was much road-work done and the county fund was not sufficient to pay the expenses incurred.

In my opinion the Act regulating the fiscal management of county, cities, towns and school districts and other governmental agencies (Stats. 1917, p. 249) gives the answer to this question. Section 3 of the Act requires the County Commissioners to prepare a budget; section 4 makes it unlawful for any Commissioner or Board of Commissioners, or any officer of the county, to allow or contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment.

I assume that the county of Eureka followed this law in 1918 and prepared a budget and the county road fund, therein provided, proving insufficient, section 4 expressly prohibits the use of any moneys not in the budget for making up the deficiency.

This deficiency, however, may be made by using the provisions of section 11 of the Act in regard to emergency loans. As the deficiency is small, the same may be met by the provisions of Rev. Laws, 1540, which allows the County Commissioners to transfer any surplus moneys which may be in any of the county funds from one fund to another.

> Third—It seems that the jail of Palisade, Nevada, was destroyed by fire; that the Commissioners had the jail at Buckhorn torn down by a certain person at day's labor; that another person hauled the lumber therefrom and was paid at the rate prevailing in the county; that when the lumber was delivered in Palisade, the person who tore down the jail at Buckhorn rebuilt the jail at Palisade at day's wages, and that, in addition to the lumber from the Buckhorn jail, the County Commissioners ordered additional lumber and cement, which additional material was used for building a room for holding the county fire-fighting machine, and for a toilet.

When all the work was finished, it was found the entire cost was

over $500 and you wish to know whether the County Commissioners, in view of Rev. Laws, 1530, are authorized to allow and pay the claim for the same.

Section 1530 provides that in letting contracts, when the aggregate exceeds the sum of five hundred dollars, the County Commissioners shall advertise such contracts to be let.

In my opinion, said section does not apply, because it appears that at least four different contracts were involved in this transaction—one for tearing down the jail; another for hauling the lumber; another for erection of the new building, and another for supplying additional material. As neither of these four contracts aggregated $500, the Commissioners do not violate said section 1530.

Under these circumstances, there is no reason why the claim of one person, even though over $500, should not be allowed and paid in a lump sum by the Commissioners.

Trusting this will give you the information desired, I am

Yours very truly,

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

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251. **Public Schools—Evening Schools.**

The schools contemplated in the Evening School Act (Stats. 1917, p. 354) are to be free schools, maintained by the state and county funds, and no tuition fee can be required of any one desiring their benefit.

The State Superintendent of Public Instruction cannot authorize State money to be paid for teachers for the maintenance and support of evening schools where tuition fees are charged.

CARSON CITY, December 19, 1918

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

DEAR SIR: Your favor of the 1st instant, asking construction of the evening-school act (Stats. 1917, p. 354) received.

It seems that a certain school district opened a tuition evening school, and through its city superintendent requested state aid for the salary of its teacher or teachers, and that the school is for commercial work only.

Later a petition was filed with the State Board of Education, but signed mainly by the students of the tuition evening classes, asking for an evening school for commercial classes only.

It further appears that the regular commercial teacher is being paid extra salary from the school funds of the district in question for doing the evening commercial work, or a part of it, and that a part or all of the tuition paid reverts to the school district in compensation for extra salary paid the commercial teacher in the high school.

You state that your view of the law is that these evening schools ought to be free schools for the people of the community, to be maintained under the limitations of the Act by state and county funds, and that no tuition charge can be required of any one desiring the benefit of the same, and state that, if this view is correct, you cannot authorize state money to be paid therefor.

In the opinion of this office, you have correctly stated the scope of the evening-school Act, and such schools are to be free schools, maintained by state and county funds, and no tuition fee can be required of any one desiring their benefit.

In the opinion of this office, you cannot authorize state money to be paid for teachers for the maintenance and support of evening schools where tuition fees are charged.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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252. **Prohibition—Initiative Prohibition Law—Druggists—Denatured Alcohol.**

Druggists may sell denatured alcohol without prescription or affidavit.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States Pharmacopœia or national formulary preparation in conformity with the Nevada Pharmacy Law, which includes whisky, brandy, and many other of the most intoxicating liquors.

CARSON CITY, December 20, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR SIR: Your letter of the 17th instant, relative to the application of the initiative prohibition law, just received. The questions therein asked will be answered in their order as follows:

> 1. Under section 4 of the Act, a druggist may sell "pure grain alcohol" upon a prescription of a physician; again he (the druggist) may sell "grain alcohol" upon the purchaser making a certain affidavit. Now, it seems, according to a federal law, a druggist cannot sell "grain alcohol" unless it is denatured with either poison or some neutralizing concomitant, to the end, in both cases, that it will be rendered "non-beverage." With this the preamble, the question is: Where grain alcohol is sold, in the form and condition the federal law demands, does a druggist have to first insist upon the physician's prescription or the affidavit, as section 4 sets forth?

The initiative prohibition law permits the sale, by druggists, of pure grain alcohol for medicinal purposes upon prescription, and for mechanical, pharmaceutical and scientific purposes upon affidavit. The only purpose of the prescription or the affidavit is to prevent, as far as possible, the use of alcohol as a beverage. When alcohol is denatured, in conformity with the federal law, it cannot be so used. The denaturation of alcohol under the federal law completely accomplishes the result for which the prescription or the affidavit under the Nevada law was intended.

Therefore, in our opinion, druggists may sell denatured alcohol without prescription or affidavit.

> 2. The law is silent in permitting the sale, by a druggist, of wines, except by implication, if then, yet according to the U. S. Pharmacopœia, sherry and white wines are used in making "wine of pepsin," "wine of opium," and "wine of ipecac."

May a druggist, under this law, keep in stock, and continue to use in the legitimate compilation of these various wines, such wines as "sherry" and "white" wines?

This question is fully answered in a recent opinion (Atty.-Gen. Opin. December 14, 1918) wherein we concluded that:

> Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States Pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*

By WM. MCKNIGHT, *Deputy*.

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253. Officers—County Surveyor—Office For—Counties.

The Board of County Commissioners is not legally required to furnish the County Surveyor with an office.

CARSON CITY, December 20, 1918.

MR. R. E. TILDEN, *County Surveyor, Humboldt County, Winnemucca, Nevada*.

DEAR SIR: We wish to acknowledge receipt of your letter, in which you state you are the duly elected, qualified and acting County Surveyor of Humboldt County, Nevada, and ask whether or not the county is legally required to furnish you with an office.

The Act creating the office of County Surveyor (Rev. Laws, 1664–1674) provides that such officer shall keep his office at the county-seat. There is, however, no provision, anywhere, which requires the County Surveyor to keep his office open for the accommodation of the public or that makes him the custodian of any public records to which the public are at all reasonable times entitled to access.

Under these circumstances, the law, as laid down by Judge Hawley in the case of *Owen* v. *Nye County*, 10 Nev. 338, is clearly applicable. It was there said:

> We are of opinion that the officer, who seeks to hold his county liable for the rent of his office, must be one who is by law made the custodian of the public records, to which the public are at all reasonable times entitled to access, or one that is by law required to keep his office open for the accommodation of the public and for the transaction of public business, whether he has business there of his own or that for which he is entitled to pay or not; and he must also show that he demanded of the Commissioners a suitable office for such purpose and that they had failed and refused to furnish it.

In view of the foregoing, it is our opinion that the county is not legally required to furnish you with an office.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy*.

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254. **Public Schools—School Teachers' Salaries—Quarantine—Epidemic.**

Public school teachers are entitled to pay for their salaries during intermission caused by proclamation of quarantine on account of epidemic.

CARSON CITY, December 20, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada.*

DEAR MRS. PLUMMER: Your favor of the 16th instant, in relation to pay of school teachers, received.

Section 104 of the School Code (Rev. Laws, 3343) was amended by Stats. 1917, p. 398, so that it now reads as follows:

> A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this Act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this State.

Under our interpretation of the law, if the school is closed down for thirty days and then called in session for one day and then closed down for thirty days during the period of epidemic or quarantine embraced thereunder, the Trustees may lawfully pay the teachers full salaries.

Trusting this will give you the desired information, I am

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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255. **Prohibition—Initiative Prohibition Act—"Near Beer."**

A liquor called "near beer" containing less than one-half of one per cent of alcohol is not within the definition of "liquors" contained in section 1 of the Initiative Prohibition Act, and it is lawful for the manufacturer thereof to sell, deliver, and ship this liquor within the State of Nevada.

CARSON CITY, December 20, 1918.

CARSON BREWING COMPANY, *Carson City, Nevada.*

GENTLEMEN: I am in receipt of your letter of the 19th instant, wherein you stated that the "Tahoe Near Beer" manufactured by you contains less than one-half of 1 per cent alcohol.

You ask an opinion whether it is lawful for you to sell, deliver and ship this beer in the State of Nevada. Section 1 of the initiative Act defines the word "liquors" as "all beverages containing so much as one-half of 1 per cent of alcohol by volume." In my opinion this expression is the controlling feature of the whole of the definition.

Inasmuch as your near beer contains less than one-half of 1 per cent

per volume, it is not within the operation of the law in question and, therefore, it is lawful for you to sell, deliver and ship this beer within the State of Nevada.

Yours very truly, EDW. T. PATRICK,
Deputy Attorney-General.

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256. Elections—Special Elections To Fill Vacancies—County Commissioners.

At special elections to fill vacancies, caused by death of the officer-elect, the candidate is to be designated by the party committee of the county, district, or State.

The primary law does not apply to special elections.

A candidate may be nominated by petition of electors in conformity with section 31 (Stats. 1917, p. 287).

Under section 2797, Rev. Laws, the details of such special election is largely reposed in the hands of the County Commissioners. They have the right to regulate these questions and fix the time for the closing of designation of candidacy and provide other necessary regulations in their order calling the special election.

No filing fee is required of candidates designating their candidacy.

At such special election all persons qualified at the last preceding general election are entitled to vote. The provision of Stats. 1917, p. 439, requiring the County Clerk to compare the tally-sheets with the official register and cancel cards of those not having voted at the general election do not apply.

CARSON CITY, December 20, 1918.

HON. G. A. BALLARD, *District Attorney, Virginia City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 16th instant, asking the opinion of this office on several questions which have arisen in connection with the special election to be held in your county for the purpose of filling the vacancy in the office of State Senator of Nevada, caused by the recent death of your state senator-elect and would answer the same as follows:

1. How are candidates to be designated at said election? Section 25 of the Act regulating the nomination of candidates (Stats. 1917, p. 286) provides for the filling of vacancies occurring after the holding of any primary election by the party committee of the county, district or State, as the case may be.

We are, therefore, of opinion that the candidates should be designated by the respective county central committees of Storey County.

2. Your second question is based upon the assumption that the candidates are designated as at primary elections, but we do not think the primary election law applies in this case, as section 2 specially provides: "This Act shall not apply to special elections to fill vacancies."

3. As already stated, the candidates' designation must be by the respective county central committees.

3a. A candidate may be nominated by petition of electors in conformity with section 31 of the primary election Act (Stats. 1917, p. 287).

4. The law does not fix the time for the closing of designation of candidacy. Under section 2797 the matter is largely reposed in the hands of the County Commissioners. They have the right to regulate these various questions and fix the time for the closing of the designa-

tions of candidacy and provide other necessary regulations in their order calling the special election.

5. As the primary law has already been above decided not to apply, no filing fee is required.

6. Section 16 (Stats. 1917, p. 430) requires the County Clerk to compare the tally-sheets with the official register and cancel the cards of those not having voted at such election. This provision is evidently for the purpose of purging the official register of those are are dead or who have removed from the county or State.

Inasmuch as the new registration will not open until the 1st day of June of the year 1920, it is the opinion of this office that said section 16 does not apply to the present case. Therefore, in preparing the poll-list for this special election, the County Clerk should include therein the names of all who were qualified to vote at the general election in November and disregard all cancelations that he has made under the provisions of said section 16.

Trusting this will enable you to conduct the election in due form, I am

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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257. Employer and Employee—Counties—Municipalities—Police Department—Eight-Hour Law.

The provisions of section 6778, Rev. Laws, applies to the police department of a municipality.

CARSON CITY, December 27, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: In response to your inquiry for an interpretation of Rev. Laws, 6778, in connection with the employees of the police department of a municipality, who are required to report at 6 o'clock a. m. and are on duty until 6 o'clock p. m., let me say that, in the opinion of this office, said section applies to such case and the requiring of twelve hours each day from such employees is a violation of said section.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

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258. Prohibition—Initiative Prohibition Law—Intoxicating Liquors—Liquor License—Druggists.

Druggists may sell such liquors as are permitted by the prohibition law without the payment of a state liquor license.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

CARSON CITY, December 30, 1918.

HON. E. F. LUNSFORD, *District Attorney of Washoe County, Reno, Nevada.*

DEAR MR. LUNSFORD: Your letter, asking whether druggists are now

required to have a state liquor license and also whether they can sell intoxicating liquor other than pure grain alcohol and wine, duly received.

Section 8 of an Act to provide revenue (Stats. 1915, p. 236) provides for the payment of such a license by druggists, but that section, in view of the initiative prohibition law, is no longer in force and effect; therefore, druggists can now sell such liquors as are permitted by the prohibition law without the payment of a state liquor license.

The other question is covered by the recent opinion of this office (Atty.-Gen. Opin., Dec. 14, 1918) in which we said:

> Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

Yours very truly,

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

By WM. MCKNIGHT, *Deputy.*

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259. **Prohibition—Initiative Prohibition Law—Intoxicating Liquors—Ministers—Wines.**

Wine for sacramental purposes may be carried into a community or shipped into a community by a minister of the gospel.

CARSON CITY, December 30, 1918.

HON. G. J. KENNY, *District Attorney, Fallon, Nevada.*

DEAR MR. KENNY: I am in receipt of your favor of the 27th instant, asking two questions concerning the initiative prohibition law. The first is:

> May a person, for his own personal use, and not with the intention to give or sell it to another, carry intoxicating liquor on his person or in his automobile?

This identical question is now pending before the District Court of Washoe County, in a case wherein two men were arrested for having liquor on their person, were fined for this as a violation of the prohibition law, committed to jail, and have appealed to the court for writ of *habeas corpus.*

Under these circumstances, it would be well to await the decision of the District Court on this question before giving a definite answer.

Your second question is as follows:

> May a minister of the gospel carry into a community, and also have shipped into a community, sacramental wines, to be used by himself and given to his congregation, at communion service?

In the opinion of this office, there is no doubt that wine, for sacramental purposes, may be carried into a community or shipped into a community by a minister of the gospel.

Yours very truly,

EDW. T. PATRICK,
Deputy Attorney-General.

CASES IN COURT WHEREIN THE STATE WAS A PARTY

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

In the District Court of Ormsby County. State ex rel. Sparks v. State Bank and Trust Company. Pending on petition for allowance of receiver's fees and compensation for his attorneys.

In the District Court of Ormsby County. Estate of Hiram Chase. Pending on application of certain persons to be declared heirs.

In the District Court of Ormsby County. State ex rel. Sparks v. Nye and Ormsby County Bank. In this proceeding a number of appearances were made on questions concerning the conduct of the estate.

In the United States District Court. Central Pacific Railroad Company v. Wilson. Pending on order to show cause.

In the United States District Court. Bergman v. Kearney. Pending on stipulation as to appeal.

In the District Court of Washoe County. Estate of Forney. Pending on stipulation as to appeal.

In the United States District Court. Nevada-California Power Company v. Franklin. Tax Suit. Judgment for plaintiff. Appeal to United States Circuit Court of Appeals.

In the United States District Court. Central Pacific Railroad Company v. Richards. Pending on demurrer to complaint.

In the District Court of Ormsby County. Pittsburg Silver Peak G. M. Co. v. Nevada Tax Commission. Pending on motion for new trial.

In the District Court of Nye County. Nevada Telegraph-Telephone Company v. Nevada Tax Commission. Submitted on briefs.

In the Supreme Court. Nevada Industrial Commission v. Washoe County. Judgment affirmed.

In the District Court of Humboldt County. Bliss v. Nevada Tax Commission. Judgment entered according to compromise agreement.

In the District Court of Lander County. Golconda Cattle Company v. Nevada Tax Commission. Judgment entered in accordance with compromise agreement.

In the District Court of Humboldt County. Kimball v. Nevada Tax Commission. Judgment entered in accordance with compromise agreement.

In the District Court of Humboldt County. Lovelock Land and Development Company v. Nevada Tax Commission. Judgment for plaintiff.

In the District Court of Humboldt County. Meyer v. Nevada Tax Commission. Judgment entered in accordance with compromise agreement.

In the District Court of Washoe County. Goldfield Consolidated Water Company v. Nevada Tax Commission. Judgment for plaintiff.

In the District Court of Ormsby County. Hayes v. Nevada Industrial Commission. Pending on demurrer to complaint.

In the District Court of Humboldt County. Pacific Live Stock Company v. Nevada Tax Commission. Judgment for plaintiff.

In the United States Supreme Court. Wells Fargo & Company v. State. Appeal from District Court of Humboldt County. Judgment affirmed.

In the United States District Court. Mickle v. Dickerson. Judgment for plaintiff.

In the Supreme Court. Vineyard Land and Live Stock Company v. District Court. Application for writ of prohibition. Writ denied.

In the Supreme Court. State v. Bachman. Appeal from District Court of Elko County. Judgment affirmed.

In the United States District Court. Weeks v. Kearney. Case dismissed.

In the District Court of Humboldt County. Humboldt, Lovelock Irrigation Light and Power Company v. Kearney and Jamison. Judgment for plaintiff.

In the Supreme Court. State v. Sella. Appeal from the District Court of Humboldt County. Judgment reversed.

In the Justice's Court of Imlay Township, County of Humboldt. State v. Pitt and Taylor. Defendants fined and on appeal to District Court defendants dismissed.

In the District Court of Lyon County. Central Pacific Railway Company v. Nevada Tax Commission. Pending on demurrer.

In the District Court of Elko County. Central Pacific Railway Company v. Nevada Tax Commission. Judgment for plaintiff.

In the District Court of Lander County. Faris v. Nevada Tax Commission. Argued and submitted and awaiting decision.

In the United States District Court. United States v. Truckee River Land Owners. Awaiting time for State to intervene.

In the District Court of Lander County. Walsh v. Littrell. Two suits. In first suit motion for nonsuit sustained. Second suit settled by agreement.

In the District Court of Washoe County. Western Pacific Railroad v. Brodigan. Pending on demurrer to complaint.

In the District Court of Nye County. Estate of A. B. Millett. Inheritance tax paid.

In the District Court of Washoe County. American Express Company v. Nevada Tax Commission. Pending on demurrer to complaint.

In the United States District Court. Nevada-California Power Company v. Franklin. Judgment for plaintiff. Case pending on appeal to United States Circuit Court of Appeals.

In the United States District Court. Nevada-California Power Company v. Roberson. Judgment for plaintiff. Pending on appeal to United States Circuit Court of Appeals.

In the Supreme Court. Eddy v. State Board of Embalmers. To compel board to issue license to petitioner. Writ granted.

In the District Court of Lander County. Dahl v. Kearney. Pending on demurrer to complaint.

In the Supreme Court. State v. Copper Belt Railroad. Opinion modified and case settled.

In the Supreme Court. State v. Comisford. Appeal from District Court of Nye County. Judgment reversed.

In the District Court of Ormsby County. Hall v. Kearney. Judgment for defendants.

In the Supreme Court. O'Brien v. Trousdale. Application for writ of prohibition. Writ denied.

In the Supreme Court. Smith v. Cole. Case dismissed by plaintiff.

In the District Court of Ormsby County. McCracken v. State. Judgment for plaintiff.

In the District Court of Washoe County. Nevada Industrial Commission v. Nixon Nevada Mines Company. Settled.

In the District Court of Humboldt County. Central Pacific Railway Company v. Nevada Tax Commission. Pending on demurrer to complaint.

In the District Court of Nye County. Brown v. Nevada Industrial Commission. Judgment for plaintiff.

In the District Court of Ormsby County. Backish v. Nevada Industrial Commission. Pending on demurrer to complaint.

In the Supreme Court. McCracken v. State. Judgment as modified affirmed.

In the Supreme Court. State v. Milosovich. Judgment reversed.

In the District Court of Humboldt County. Cole v. Estate of Curtner. Case dismissed.

In the Supreme Court. State v. McKinnon. Judgment reversed.

In the District Court of Mineral County. Tonopah and Goldfield Railroad Company v. State. Dismissed by plaintiff.

In the District Court of Humboldt County. Cole v. Estate of Abel. Dismissed by plaintiff.

In the District Court of Nye County. Tonopah and Goldfield Railroad Company v. State. Dismissed by plaintiff.

In the District Court of Esmeralda County. Tonopah and Goldfield Railroad Company v. State. Dismissed by plaintiff.

In the District Court of Ormsby County. State v. Truckee River General Electric Company. To restrain removal of service from city of Carson. Case settled.

In the Supreme Court. State v. McFarlin. Appeal from District Court of Churchill County. Judgment reversed.

In the Supreme Court. Ex Parte Worthington. Habeas corpus. Petitioner discharged.

In the District Court of Ormsby County. Estate of Hans Kaas. Escheat. Awaiting trial.

In the District Court of Washoe County. Estate of Shlegel. Escheat. Judgment of escheat entered.

In the Supreme Court. State v. Mitchell and Smith. Appeal dismissed.

In the District Court of Humboldt County. Taylor v. Kearney. Judgment for plaintiff.

In the District Court of Washoe County. Cole v. Franck. Inheritance tax paid.

In the Supreme Court. State v. Gus. Appeal dismissed.

In the Supreme Court. Miller v. State. To recover inheritance tax. Judgment affirmed.

In the Supreme Court. Cole v. Nickel. Inheritance tax. Judgment affirmed.

In the Supreme Court. State ex rel. Reno v. Reno Traction Company. Case settled.

In the District Court of Humboldt County. Taylor v. Kearney. Judgment for plaintiff.

In the District Court of Humboldt County. Taylor v. Kearney and Cole. Judgment for plaintiff.

In the Supreme Court. In Re Gay. Application for writ of prohibition. Writ denied.

In the Supreme Court. Ex Parte Rovnianek. Habeas corpus. Petitioner discharged.

In the Supreme Court. Ex Parte Nagel. Habeas corpus. Writ denied.

In the Supreme Court. State v. Bond and Owensby. Appeal from District Court of Washoe County. Judgment affirmed.

In the Supreme Court. Anker v. Kearney. Appeal from District Court of Humboldt County. Pending.

In the Supreme Court. Park v. State. Argued and submitted.

In the District Court of Elko County. State v. Gregory. To remove County Commissioner for malfeasance in office. Dismissed by plaintiff.

In the District Court of Elko County. State v. Hunter. To remove County Clerk from office. Case dismissed.

In the District Court of Elko County. State v. Jones. To remove County Commissioner for malfeasance in office. Dismissed by plaintiff.

In the United States District Court. Nevada-California Power Company v. Roberson. Pending under agreement to abide result of appeal to United States Circuit Court of Appeals.

In the United States District Court. Nevada-California Power Company v. Barrier. Same as foregoing case.

In the Supreme Court. State v. Snyder. Appeal from Washoe County. Judgment affirmed.

In the District Court of Storey County. Eckley v. Nevada Industrial Commission. Judgment for defendant.

In the District Court of Elko County. Russell Land and Cattle Company v. Nevada Tax Commission. Pending.

In the District Court of Washoe County. Togononi v. Nevada Industrial Commission. Case dismissed.

In the Supreme Court. State of Nevada v. Kuhl. Appeal from District Court of Elko County. Judgment affirmed.

In the Supreme Court. State v. Back. Appeal from District Court of Elko County. Judgment affirmed.

In the United States Circuit Court of Appeals. Franklin v. Nevada-California Power Company. Appeal from United States District Court, District of Nevada. Pending.

In the District Court of Washoe County. State v. Reno. To prevent pollution of Truckee River. Pending demurrer to complaint.

In the District Court of Washoe County. State v. Sparks. To prevent pollution of Truckee River. Pending on demurrer to complaint.

In the Supreme Court. Ex Parte King. Habeas corpus. Dismissed by petitioner.

In the District Court of Ormsby County. Maclean v. Brodigan. Soldiers' vote case. Judgment for plaintiff.

In the District Court of Douglas County. State v. Carson and Tahoe Lumber and Fluming Company. Judgment for plaintiff.

In the Supreme Court. Maclean v. Brodigan. Judgment reversed.

In the District Court of Ormsby County. Nevada Industrial Commission v. Pine Grove Nevada Gold Mining Company. Judgment for plaintiff.

In the District Court of Washoe County. Nevada Industrial Commission v. Cortez Mining and Reduction Company. Pending on demurrer to complaint.

In the United States Supreme Court. State v. Crown Willamette Paper Company. Pending.

In the District Court of Elko County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Mineral County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Lander County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Lyon County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Humboldt County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Eureka County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Esmeralda County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Washoe County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Nye County. Wells Fargo & Co. v. State. Pending on demurrer to complaint.

In the District Court of Elko County. State ex rel. Cazier v. Jones. Judgment for plaintiff.

In the District Court of Elko County. State ex rel. Cazier v. Gregory. Judgment for plaintiff.

In the Supreme Court. In re Parus. Application for writ of prohibition. Writ denied.

In the District Court of Churchill County. Estate of Martin. Pending on demurrer to petition.

In the Supreme Court. In Re Jones and Gregory. Application for writ of prohibition. Writ denied.

In the Supreme Court. Ex Parte Schulz. Habeas corpus. Petitioner discharged.

In the Supreme Court. Ex Parte Twyeffort. Habeas corpus. Petitioner discharged.

In the District Court of Washoe County. State v. Ginocchio. To condemn right of way. Pending.

In the District Court of Washoe County. State v. Ferretto. To condemn right of way. Pending.

In the District Court of Washoe County. State v. Smith. To condemn right of way. Settled.

In the District Court of Mineral County. Spencer v. Case. To review decision of State Engineer. Pending on demurrer to complaint.

In the District Court of Humboldt County. State v. Central Pacific Railway. To condemn right of way. Pending.

In the District Court of Elko County. State v. County of Elko. To recover civic- and physical-training tax. Pending.

In the District Court of Washoe County. State v. Brown. To condemn right of way. Pending.

In the Supreme Court. State v. Riley. Appeal from District Court, Humboldt County. Appeal dismissed.

In the Supreme Court. State v. Sella. Appeal from District Court, Humboldt County. Pending.

In the District Court of Elko County. Nevada Industrial Commission v. Holden. Settled.

In the Justice's Court, Carson Township, Ormsby County. State v. Little. Failure to provide for wife and child. Defendant convicted.

In the District Court of Ormsby County. State v. Shaffer. To condemn right of way. Pending.

In the Supreme Court. State ex rel. Coogan v. Morton. Election case. For mandamus. Writ denied.

In the Justice's court, Dayton Township, Lyon County. State v. Morechino. Interfering with Water Commissioner. Defendant convicted.

In the District Court of Humboldt County. State v. Elges. To condemn right of way. Pending.

In the Justice's court, Dayton Township, Lyon County. State v. Buralli. Assault with intent to kill. Defendant bound over to grand jury. Grand jury finds "no true bill."

In the District Court of Mineral County. Rackliff v. Case. Pending on demurrer to answer and motion to strike.

In the United States District Court. Examiner Printing Company v. State Council of Defense. For injunction. Temporary injunction made permanent.

In the District Court of Washoe County. Estate of Randrup. Escheat. Judgment in escheat entered.

In the Supreme Court. Ex Parte Ingham. Habeas corpus. Action dismissed

In the District Court of Washoe County. Estate of Hansen. Information for escheat. Pending.

In the United States District Court. Nevada-California Power Co. v. Barrier. Pending.

In the United States District Court. Nevada-California Power Co. v. Roberson. Pending.

In the District Court of Washoe County. State ex rel. Thatcher v. Reno Brewing Co. Injunction issued. Appeal to Supreme Court.

In the Supreme Court. State ex rel. Thatcher v. Reno Brewing Co. Pending.

In the District Court of Mineral County. Estate of Thomas Mitchell. Information for escheat. Pending.

In the United States District Court. Nevada Industrial Commission v. Southern Pacific Company. Pending.

In the District Court of Washoe County. Ex Parte Swissig and Donell. Habeas corpus. Writ denied.

In the Supreme Court. Ex Parte Swissig and Donell. Habeas corpus. Pending.

DUTIES OF 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 on public lands of the United States and made an abstract of such applications. He has also examined applications for patents of the public lands in this State and made an abstract of such applications.

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;
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.

In addition, work with the Red Cross chapters and State Council of Defense has consumed much time.

EXTRADITION MATTERS

During the period embraced in this report numerous 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.

SUGGESTIONS AS TO CHANGE IN LAWS

Section 4132 of the Revised Laws of Nevada requires the Attorney-General to make such suggestion as shall appear calculated to improve the laws of this State. Pursuant thereto, I present the following for your consideration:

Constitutional Amendments:

The Constitution should be amended giving the power to the Governor to veto or decrease any appropriation, or any item of any appropriation bill.

The present system of dividing the legislative department into two houses is ancient and historical only. A one-house legislature, properly apportioned, supplemented by the constitutional provisions for initiative and referendum, would meet every need of the State in enactment of legislation.

The Supreme Court should be made appointive, and for life, subject to confirmation by the people, and after confirmation, subject to removal, recall, or impeachment, and to retirement upon proper age. District Judges should be elected for terms of at least eight years.

The Constitution should be amended giving the Governor the power to fill vacancies for the unexpired term, instead of limiting it until the next general election.

The office of the Attorney-General should be an appointive office. The office of the Surveyor-General should be made appointive, and when made appointive, should be consolidated with the office of State Engineer. The office of the Clerk of the Supreme Court should be appointive, and by the Court itself.

Our constitutional provision, with reference to taxation, is inadequate and unfair. It should be so amended as to be general in character and to permit classification of property for the purpose of assessment and taxation.

Section 9 of article IV of our Constitution should be either repealed or amended. This section prohibits a person holding any lucrative office under the government of the United States from holding an office under the State Government. This could specifically except from its prohibition officers engaged in the military or naval service of the United States in time of war, or who are subject to call as part of the Officers' Reserve Corps in times of peace.

Legislative:

The budget system should be adopted for all state departments, offices, and institutions. Control should also be given to some State Board, preferably the Board of Examiners, over the expenditures of

commissions and departments. The expenditures of commissions, under the present laws, are not subject to any control except the exercise of the discretion of the commission itself.

The Tax Commission, Railroad, and Public Service Commissions should be consolidated.

A commission form of government should be established for county governments. This can be done without an amendment to the Constitution. Such commission should be vested with such legislative powers as might be necessary to the conduct of county government.

The term of county officers should be extended to four years.

Legislation should be enacted making radical extension in the powers of the State Board of Health. This should include the power to enact reasonable ordinances of state-wide or local character for the protection and preservation of health.

The State Council of Defense should be legalized, but with powers limited to that of cooperation with the National Government in the meeting of such problems and conditions as may follow the declaration of peace.

Election Laws:

The general election law needs but few changes, and these should be made by way of amendment only, and not as has been done the last eight years by the adoption of a new law.

The present primary law is an adequate piece of election machinery and needs but few amendments, and these of detail rather than of policy. Provision should be made for a more fair and representative election of delegates to national party conventions.

Registration:

Our present law, providing for the registration of electors, is the best that the State has ever had. I can recommend but one amendment, and that is that provision should be made permitting the transfer of registration from county to county.

Soldiers' Vote:

The provisions of the election law for the taking of the soldiers' vote is not only inadequate, it is absolutely useless. An adequate system should be adopted and this can be easily done by providing for the taking of the ballot by mail.

Civil Practice:

Section 13 of chapter 142, Stats. 1915, which provides for the filing of assignments of error within twenty days after an appeal has been taken, should be so amended as to provide that the assignments of error may be filed within ten days after the transcript of appeal be docketed in the Supreme Court. At the present time it would be practically impossible to comply with the provisions of section 13, were it not for stipulations or orders of court, extending time.

The chapter of the Civil Practice Act on "New Trials and Appeals" should be amended, not in substance, but for the purpose of harmonizing the various provisions.

The Legislature should also provide an adequate law for the pro-

tection of such grants of land as may in the future be made by Congress to the State or the State's educational system. The enactment of such a law, containing adequate provisions for bona-fide settlement under a State Homestead Act, and with proper provisions for the protection of the grant, would eliminate such unfortunate political controversies as arose over the Pittman Land Bill, and would assure to the people of the State protection and preservation of such grants as may be made.

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52. **Assessment and Taxation—Assessors.**

It is the duty of the Assessor to assess all property within his county between the first Monday in March and the third Monday of August of each year, and all property within the county between these two dates is subject to assessment, and all property which comes into existence either as additions or otherwise, between the first Monday in March and the third Monday in August is liable for taxation for that year.

A man who bought an automobile after having listed his personal property with the Assessor may be compelled to pay another personal property tax on such automobile.

If such person owns real estate the tax on subsequently acquired personal property may be added to and placed on his tax statement.

55. **Assessment and Taxation—Inheritance Tax Law.**

Under the provisions of subdivision 2, section 2, chapter 266, Stats. 1913, no inheritance tax is due the State where the only heir is a brother and the total value of the estate does not exceed the sum of $10,000, exempted by subdivision 2, section 4, of the same Act.

59. **Assessment and Taxation—Revenue—Refund of Taxes.**

Four things are essential before a refund of taxes can be made under the provisions of Stats. 1917, p. 174: First, that the property has been assessed to two or more persons. Second, that the taxes have been paid two or more times. Third, that the assessment and payment

have been made in the same year. Fourth, that competent evidence exists of all of such facts, and has been furnished to the Board of Examiners and the State Controller.

Assessors, 52.

Attorney-General, 181.

Auctioneer, 75.

Automobile Dealers, 106.

Automobile Licenses, 38, 106.

38. **Automobiles—Automobile Licenses—Secretary of State—State Highway.**

Under the provisions of section 24 of the automobile license law, as amended by Stats. 1917, p. 342, all the moneys received by the Secretary of State for licenses on automobiles, except license fees collected from owners residing in any county not included in the State Highway System, shall be paid over by him to the State Treasurer for the benefit of the State Highway Fund.

Under the provisions of section 25 of said law, as amended Stats. 1917, 343, the Secretary of State is authorized to retain from and after January 1, 1917, the sum of 50 cents from each payment for a motor-vehicle license to cover the expense incurred in the administration of said Act.

Ballots, 209, 213, 242.

Beaver, 132.

Blacksmith Shops, 178.

Birds, 56.

Bonds, 47.

Bread, 41.

Budget, 250.

Budget Act, 154, 158.

26. **Budget Bill—Public Schools—Emergency School Warrants.**

The provision of section 16 of the budget bill, chap. 149, Stats. 1917, repealing the law for issuance of emergency school warrants, is suspended until January 1, 1919, and any school district may issue such warrants as heretofore until such time.

Budgets, 154.

17. **Building and Loan Associations.**

Under Stats. 1915, sec. 7, p. 341, a building and loan association which was formerly in business in this State, but withdrew its solicitors therefrom and since then its sole business has been the collection of loans made prior to its withdrawal from the State, is not "doing business within the State" within the terms of said section and, therefore, is not required to file the report mentioned in such section with the State Bank Examiner.

Bullion Taxes, 147.

Candidates, 210, 214, 222, 229.

Canvass, 239.

168. **Carson City—Elections—Registration of Electors—Municipal Elections.**

On account of the provisions of the registration law (Stats. 1917, p. 435) there are no qualified electors at the present time within the

City of Carson, and without qualified electors there can, of course, be no election, and no municipal election can be held in Carson City this year.

121. Carson City Paving Bonds.

Under the Act "supplementary to the Act to incorporate Carson City" (Stats. 1917, p. 226), the City Treasurer of Carson City cannot accept the State, county or regular city taxes from a taxpayer unless such taxpayer also pays his street-paving tax.

137. Carson City—Paving Fund.

The fund derived through payments of assessments by property owners under chapter 131, Statutes of 1917, abutting on Carson Street, may lawfully be used in the payment of expenses for paving said street.

Central Pacific Railroad, 163.

Change of Venue, 85, 86.

230. Cities—Towns—Amendment to Charter—City of Elko—County Clerks.

The County Clerk is not required to place on the ballot for a general state election an amendment to the charter of the city of Elko.

The "general election" mentioned in section 29 of the charter of the city of Elko (Stats. 1917, p. 145) means the general city election.

113. Cities—Towns—Counties—Contagious Diseases.

Under the provisions of section 3, article 13, Constitution of Nevada, the respective counties of the State must provide for the care and maintenance of the indigent sick.

When a person is taken sick with a contagious disease and lacks funds to pay for medicine and medical attention, the duty rests upon the county, and not upon the city, to care for him.

City of Elko, 230.

179. Civic and Physical Training—Counties.

Any county which has failed to collect the 5-mill tax for civic and physical training imposed by Stats. 1917, p. 245, is liable for the payment thereof.

Claim against Counties, 250.

Claim for Compensation, 60.

Claims, 191.

29. Clerk of the District Court—Newspapers—Files.

Newspaper representatives are entitled to access to all papers filed with the Clerk of the District Court except such complaints as may have been sealed by order of the Court, at such and all times as will not seriously interfere with the operation of the duties of the Clerk.

136. Clerk of the Supreme Court—Fees.

The Clerk of the Supreme Court is required under section 2034, Rev. Laws, to make monthly settlements with the State Treasurer of the fees collected by him.

85. Clerk's Fees—Change of Venue.

Under the provision of the Act regulating the fees of the County Clerk of Humboldt County (Stats. 1915, p. 173), the Clerk is authorized to exact a fee in every civil case which includes a case transferred from another county as well as an action originally commenced.

177. **Commissioner of Deeds—Governor.**

It is not necessary that a Commissioner of Deeds in a foreign country be a citizen of the United States in order to be appointed to such office by the Governor.

Compensation, 74, 195.

Compensation of Stenographers, 238.

Compensation, Suspension Of, 64.

Condemnation Proceedings, 161.

Consolidation of Districts, 46, 49, 73.

Constitutional Law, 2, 4, 12.

Contagious Diseases, 45, 113.

Contracts, 190.

Conveyance of Water Rights, 5.

129. **Conveyances—County Recorders—Recording.**

County Recorders may accept for recordation any instrument tendered them whether or not the same has been properly acknowledged and notwithstanding the character of the instrument.

5. **Conveyances—Water Rights—Conveyance of—State Engineer.**

A transfer of assignment of a water right without the acknowledgment required by sec. 1025, Rev. Laws, is invalid and no such assignment should be recognized by the State Engineer.

The form of conveyance of a water right should be the same as those used for deeds of real estate.

Convict Labor, 182.

Corporations, 68.

166. **Corporations—Articles of Incorporation.**

Unless the articles of incorporation designate the place within the city or county in which the principal office or place of business is to be located with sufficient certainty as to be easily located the certificate is to be refused.

A corporation organized to engage in the oil-drilling business must designate in its articles the amount of subscribed capital with which it will commence business.

Section 1220, Rev. Laws, has no application to a corporation organized to engage in the oil-drilling business.

30. **Corporations—Articles of Incorporation—Saving and Loan Associations.**

Suggestions as to what should be included within articles of incorporation of saving and loan associations.

232. **Corporations—General Corporation Law.**

The amendment to section 89 of the general corporation law, as bearing on Stats. 1917, p. 193, is effective and said amended section is now a portion of the general corporation law.

112. **Corporations—Foreign Corporations.**

It is necessary for a foreign corporation which has complied with the laws of this State by filing in the office of the Secretary of State a certified copy of its original articles of incorporation, to also file in the same office a proper certificate of any increase of its capital stock.

20. **Corporations—Foreign Corporations—Secretary of State.**

Sections 1346 and 1348, Rev. Laws, do not apply to a foreign corporation which owns a piece of mining property in the State, but

which is not operating the same, holding for some future date. Under the provisions of section 5024, Rev. Laws, all foreign corporations owning property in this State are required to appoint and keep an agent upon whom all legal processes may be served and to file the certificate therein described with the Secretary of State.

240. **Corporation—Secretary of State—Appointment of Agent—Foreign Corporations.**

The proper fee for the Secretary of State to charge for filing a certificate of appointment of agent of a foreign corporation is five ($5) dollars.

222. **Corrupt Practice Act—Candidates—Statement of Expenses.**

A candidate who has no contest at the primary election is not required to file the statement of expenses specified in section 8 of the Corrupt Practice Act (Stats. 1913, p. 478).

185. **Corrupt Practice Act—Independent Candidates—Expenses—Primary Elections.**

It is not necessary for an independent candidate to file any statement of expenses before or after the primary election, but such statement must be filed for the general election.

Counties, 113, 135, 179, 253, 257.

250. **Counties — County Commissioners — Budget — Road Expenses — Claims Against Counties.**

The Board of County Commissioners is authorized, under the provisions of section 1508, Rev. Laws, to allow a claim for expenses in holding train for the accommodation of a witness in a criminal case.

Taxes of 1918, already paid in, cannot be used for paying road expenses.

County Commissioners are confined to the budget provided in Stats. 1917, p. 249, and any deficiency or any fund thereof, must be made by section 11 of said Act in relation to emergency loans.

Certain facts held not to be within the provisions of section 1530, Rev. Laws, providing that in letting of contracts where the aggregate exceeds the sum of five hundred dollars, the County Commissioners shall advertise for bids for said contracts.

258. **Counties—Employees—Stenographers—Compensation.**

There is no law which prevents a stenographer in the office of the District Attorney from reporting proceedings in the Justice's Court. Upon performance of such work, the stenographer is entitled to receive the compensation provided by law therefor, in addition to her regular salary.

County Board of Education, 42, 203, 223.

159. **County Board of Education—School Contracts.**

It is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of its board is a stockholder.

County, Claims Against, Water Commissioners, 95.

25. **County Clerk—Articles of Incorporation—Fee for Filing.**

Chap. 166, Stats. 1917, p. 193, reverses the order formerly existing for the filing of articles of incorporation. They must now be first filed and recorded in the office of the Secretary of State. A copy thereof certified by the Secretary of State is to be filed in the office of the

Clerk of the county in which the principal place of business of the company is intended to be located.

Formerly the articles were required to be filed and recorded with the County Clerk and duly certified copy thereof filed in the office of the Secretary of State.

Under such new arrangement the County Clerk is not required to record the articles and is only entitled to his usual fee provided by law for filing and indexing all papers required to be kept by him.

County Clerks, 220, 227, 241.

86. County Clerk's Fees—Change of Venue.

Upon transfer of an action from one county to another the prescribed fees must be paid by the party filing the papers.

144. County Clerk's Fees—State Orphans' Home.

The County Clerk is not entitled to any fee in the proceeding leading to the commitment under section 4098, Rev. Laws, of half-orphans to the State Orphans' Home.

County Commissioners, 28, 101, 135, 146, 239, 250, 256.

County Fish and Game Warden, 36.

County Fund, 116.

County Health Officer, 162.

County High Schools, 42, 124, 171, 173, 203.

164. County High Schools—Emergency Interest-Bearing Warrants.

Emergency interest-bearing warrants may be issued for building the dormitory and gymnasium at Wells.

County Liquor Licenses, 79.

County Recorders, 129.

County Surveyor, 253.

Court Files, 29.

Creation of School Districts, 61.

Crimes and Punishments, 236.

156. Crimes and Punishments Act—Revised Laws.

The explanation of the method of adoption of the Crimes and Punishments Act and why the same does not appear at large in the Statutes of 1911.

218—Criminal Practice—Appeal—Dismissal of Action.

A dismissal in an action by a District Judge on appeal for a conviction of a misdemeanor does not constitute a bar to subsequent prosecution for the same offense.

146. Criminal Practice—County Commissioners—Extradition—Misdemeanors.

Under the amendment to section 7444, Rev. Laws (Stats. 1917, p. 25), County Commissioners are now authorized to bind the county for the expense of extradition in misdemeanors as well as in felonies.

27. Criminal Practice—Justice of the Peace—Witnesses.

The provisions of section 7357, Rev. Laws, applies to a witness attending before a Justice Court on a trial for misdemeanor.

The Justice of the Peace by an order subscribed by him may direct the Treasurer of the county to pay a witness coming within the provisions of section 7357, Rev. Laws, a reasonable sum for his expenses.

175. **Dates Prescribed by the Primary and General Election Laws Settled.**

"Day," 79.

Death Benefits, 62.

Death Benefits Amendment, 62.

Deer, 101.

Denatured Alcohol, 252.

150. **Department of Highways—Federal Government—State Highway Fund.**

The money of the State Highway Fund may be legally used in making reports to the Federal Government of military notes and economic resources of the State.

Deputy Assayer and Inspector, 65.

Deputy Fish and Game Warden, 35, 184.

Deputy Game Warden, 176.

Deputy Registrar, 204.

Deputy Superintendents of Public Instruction, 22, 24, 110.

Deputy Superintendent of Public Schools, 21.

Deputy Warden, 98.

Disinfection, 45.

Dismissal of Action, 218.

Disqualification, 2.

Disqualification of Officers, 236.

District Attorneys, 161, 181, 187.

211. **District Judge—Federal Position.**

A District Judge cannot accept an appointment as a United States Commissioner.

Divorced Women, 206.

Dormitory, 171.

Druggists, 248, 252, 258.

Duck Season, 94.

Eight-Hour Law, 170, 188, 201, 234, 257.

23. **Eight-Hour Law—Females.**

The eight-hour law for females (Stats. 1917, p. 16) applies to all females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company.

The only exception thereto is contained in the proviso covering the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, to graduate nurses or nurses in training in hospitals.

Any employer of any female in any of the lines of business mentioned in the act cannot compel a bookkeeper or stenographer to work more than eight hours in a single day.

81. **Eight-Hour Law—Females.**

It is unlawful to require female employees in certain employments to work more than eight hours during any one day of twenty-four hours.

Eight-Hour Law for Women, 54.

Election Board, Appointment of, 200.

Elections, 168, 223.

228. **Elections—Assembly Districts—Washoe County.**

The Act to establish Assembly Districts of the County of Washoe (Stats. 1917, p. 9), provides that the election of Assemblymen by the electors of each respective district therein specified.

209. **Elections—Ballots.**

A candidate's name cannot appear more than once on the ballot, even though he is named by two different parties.

242. **Elections—Ballots—Marking Of.**

Stats. 1917, p. 372, provides the method in which ballots shall be marked by the elector, and ballots upon which a cross was made with a lead pencil or pen or by marking with the wrong end of the stamp should be rejected.

213. **Elections—Ballots—Nonpartisan Ballot.**

No elector can be denied to vote a nonpartisan ballot for judicial and school offices.

If an elector who has registered his political party and in that political party there is no contest, and, therefore, no ballot printed, he is not thereby deprived of the right to vote a nonpartisan ballot.

214. **Elections—Candidates—Secretary of State.**

It is not necessary for the Secretary of State to certify to the various County Clerks the names of the applicants for the nomination in a case where only two candidates file nomination papers for the same nonpartisan office. Such persons stand as the nonpartisan nominees at the general election and at the proper time their names should be certified to the various County Clerks to be placed upon the ballot for such general election.

229. **Elections—Candidates—Withdrawal—Vacancies.**

One who has become the nominee for political office through the primary election or through having no opposition in the primary cannot have his name omitted from the general election ballot.

The provisions of section 25 of the registration law (Stats. 1917, p. 286) in regard to filling a vacancy applies only to vacancy occurring by the death or loss of reason of the nominee.

241. **Elections—County Clerks—Fees.**

County Clerks are entitled to charge and receive for their own use the fee of 10 cents per name provided for furnishing certified copies of the register for use at the primary election named in section 15 (Stats. 1917, p. 283).

239. **Elections—County Commissioners—Canvass—Returns.**

In making the canvass of election returns, the Board of County Commissioners is nothing more or less than a board of canvassers, and they have no right to go back of the certificate of the judges of election or check the tally marks. Such board can only add up the totals from each precinct, and, in adding such totals, they can use only those expressed in the certificate of the inspectors and clerks.

226. Elections—Independent Candidates—Nonpartisan Candidates—Nomination by Petition of Electors—Justice of the Peace.

A nomination to a nonpartisan office cannot be made by petition of electors, but candidates therefor should be nominated at the primary election.

32. Elections—Initiative Measures, When Effective.

An initiative measure becomes a law in case it receives a majority of the votes cast at a general election at which it was submitted to the vote of the people as soon as it has been determined to have received a majority of the votes cast by the official canvass provided in Stats. 1917, p. 366.

233. Elections—Justices of the Peace.

Nomination of candidates for the office of Justice of the Peace must be made at the primary election.

231. Elections—Justices of the Peace—Nomination by Petition of Electors—Holdovers.

A Justice of the Peace may not be nominated by petition of electors.

Candidates for the office of Justice of the Peace should be nominated at the primary election.

If no such nomination is made at the primary election no one is contesting for the office, and the incumbent is entitled to hold office without further election for two years from the expiration of the term of office to which he was elected.

66. Elections—Nomination by Petition—Political Parties—Registration.

Any party which goes on the ballot by petition cannot use the name of any party already officially recognized, or take such name as would be liable to be misleading or confusing with any other existing parties.

An old party already officially recognized in this State on change of its name could get its candidates on the ballot by petition only.

Said change of name could be made by the state committee or state convention or by petition filed with the Secretary of State.

The law (Stats. 1917, p. 428) allows three months within which members of a new party may register their party affiliations for the primary election.

No person would be allowed to vote at a primary election unless registered and party affiliation designated.

The organization of a new party includes the necessity of registration of voters as members of such new party, if they wish to participate in the primary election.

Two parties cannot nominate by primary the same man for the same office.

A fusion cannot be effected in this State by nominating the same man for the same office, because a nomination by petition of electors must be filed at least ten days before the primary election is held.

215. Elections—Nomination by Petition of Electors—Judicial Officers—Justices of the Peace.

The prohibition in section 31, Stats. 1917, p. 288, against incorporating in the same petition more than one nomination for the same

All figures refer to opinion numbers.

office does not prevent other candidates from being nominated for the same office by petition.

Any number of persons may be nominated for the same office by separate and distinct petitions.

Justices of the Peace are judicial officers.

Candidates for Justice of the Peace can be nominated only in the primary election and may not be nominated by petition.

180. **Electors—Nomination by Petition of Electors—Registration.**

It is not necessary that a person be registered to qualify him or her as a signer of a nomination certificate of an independent candidate.

The same elector cannot sign two independent petitions for the nomination to the same office.

224. **Elections—Nomination—Nomination by Petition of Electors—Time—Nonpartisan Officers.**

A nomination by petition of electors filed on August 24, 1918, complies with section 31 of the primary election law (Stats. 1917, p. 287) requiring the filing of such petition at least ten days before the primary election.

A nomination to a nonpartisan office cannot be made by petition of electors.

1. **Elections—Presidential Elections—Presidential Electors—Time and Place of Meeting.**

The Presidential Electors meet at the State Capitol on the second Monday in January of the year following the election for Presidential Electors.

No provision has been made for allowance to Electors of their expenses and mileage.

Sections 209 and 210 of the U. S. Compiled Stats. 1916, provide for the selection by the Electors of a messenger to deliver the ballot.

The mileage of such messenger is provided for in sec. 213, U. S. Compiled Stats. 1916.

The provisions of sections 2770–71, Rev. Laws, in regard to the time of meeting have been amended to conform with the United States law by the Statutes of 1917, 391–2.

200. **Elections—Primary Election—Election Board, Appointment Of.**

The County Commissioners at their first regular meeting in August should appoint inspectors and clerks for the various election precincts within their county for the primary election to be held in September.

4. **Election—Recall Elections—Recall Petitions—Constitutional Law.**

Under Stats. 1913, p. 400, each recall petition should be complete in itself, having a heading and signature.

Each separate petition should be verified by one of the signers thereof.

Under the provisions of sec. 8 of art. 2 of the Constitution twenty-five per cent (25%) of the qualified electors of the State, county, or district electing the officer to be recalled must sign the petition for a recall.

The office of the Justice of the Supreme Court is selected because it is the only state office to which a candidate is elected every two years.

183. **Elections—Registration.**

The County Clerk is the registrar of his county.

Justices of the Peace are the registrars for the respective townships.

Deputy registrars are to be appointed by the Clerk in precincts where no Justice of the Peace resides and are distant five miles from the county courthouse.

Any person residing within the county may register by appearing before the County Clerk.

193. **Elections—Registration.**

The County Clerk is ex officio registrar of all voters in the respective counties of the State.

The Justices of the Peace are Deputy Registrars for the purpose of carrying out the provisions of the Act.

Additional registrars shall be appointed by the County Clerk for all precincts which are five miles distant from the county courthouse in which no Justice of the Peace resides.

Any voter may register with the County Clerk.

Justices of the Peace who live within five miles of the county courthouse shall register all voters within such district although any voter may register direct with the County Clerk.

A Justice of the Peace whose precinct is more than five miles distant from the courthouse shall register all voters within his precinct.

County Registrars (other than Justices of the Peace) shall be appointed by the County Clerk to register all electors living in precincts in which there is no Justice of the Peace and which is more than five miles distant from the county courthouse.

No person's right to vote will be jeopardized by the fact that his registration was taken before the wrong officer when it could actually have been taken by the County Clerk, Justice of the Peace, or Deputy Registrar duly qualified.

208. **Elections—Registration.**

Citizens of the State of Nevada who are compelled to live in Washington by reason of their connection with the United States Government are entitled to demand and receive from the registrar registration cards which, when properly filled, must be accepted by him and the applicant registered.

219. **Elections—Registration.**

Certain features of the registration law explained.

220. **Election—Registration—County Clerk.**

When the registration cards in the office of the County Clerk show that an elector has registered in more than one precinct in his county, it is the duty of the County Clerk to cancel the registration from the precinct within which the elector does not reside and let his true registration card stand.

227. **Elections—Registration—County Clerks.**

The various County Clerks are entitled to charge and receive the fee of ten cents per name provided by Stats. 1917 p. 283.

204. **Elections—Registration—Deputy Registrar.**

A Deputy Registrar cannot appoint his wife to serve for him during his absence from his post of duty.

All figures refer to opinion numbers.

199. **Elections—Registrations—Transfers.**

There is no provision in the registration law allowing a transfer from one county to another other than the transfer given to transportation employees.

A person cannot vote at the primary election who will not have been in the State six months at the time of such election, but who will have been in the State six months prior to the general election.

217. **Elections—Registration—Transfers.**

All of the provisions of the old registration law relating to transfers after close of registration have been repealed by Stats. 1917, p. 425.

202. **Elections—Registration—Women.**

All that the registrar can require of any person applying for registration is satisfactory answers to such questions as will satisfy him that the applicant is 21 years of age and upwards, and has actually resided in the State six months and in the district or county thirty days next preceding the election. A woman is not required to give her exact age.

205. **Elections—Sample Ballots—Independent Candidates.**

The sample ballot required in Stats. 1917, p. 282, need not contain the names of independent candidates, as the ballot must contain the names only of all party candidates who have opposition for the party nomination.

256. **Elections—Special Elections To Fill Vacancies—County Commissioners.**

At special elections to fill vacancies, caused by death of the officer-elect, the candidate is to be designated by the party committee of the county, district, or State.

The primary law does not apply to special elections.

A candidate may be nominated by petition of electors in conformity with section 31 (Stats. 1917, p. 287).

Under section 2797, Rev. Laws, the details of such special election is largely reposed in the hands of the County Commissioners. They have the right to regulate these questions and fix the time for the closing of designation of candidacy and provide other necessary regulations in their order calling the special election.

No filing fee is required of candidates designating their candidacy.

At such special election all persons qualified at the last preceding general election are entitled to vote. The provision of Stats. 1917, p. 439, requiring the County Clerk to compare the tally-sheets with the official register and cancel cards of those not having voted at the general election do not apply.

Elko County, 173.

Elko High School, 124.

Emergency Interest-Bearing Warrants, 119, 164.

Emergency Loans, 158.

Emergency School Warrants, 26.

Emeritus Professor, 96.

Employees, 195, 238.

Employer and Employee, 131, 201.

257. **Employer and Employee—Counties—Municipalities—Police Department—Eight-Hour Law.**

The provisions of section 6778, Rev. Laws, applies to the police department of a municipality.

234. **Employer and Employee—Eight-Hour Law—Janitors.**

The provisions of section 6778, Rev. Laws, apply to the janitors employed by the counties of this State.

201. **Employer and Employee—Eight-Hour Law—Open-Cut Mines.**

Section 6557, Rev. Laws, regulating the employment of workmen in open-cut or open-pit mines is constitutional.

170. **Employer and Employee—Eight-Hour Law—Mines and Mining.**

The provisions of the eight-hour law (Rev. Laws, 1941, 6554) shall not be suspended except in "case of emergency where life or property is in imminent danger."

37. **Employer and Employee—Hospital Fees—Illness.**

Under the provisions of section 1943, Rev. Laws, an employer of labor who collects hospital fees is liable for the care and attention of the employee during his illness whether such illness is caused by accident or otherwise.

141. **Employer and Employee—Liens—Mines and Mining.**

Section 2221, Rev. Laws, was amended by Stats. 1917, p. 435, so as to require, in addition to posting the notice therein mentioned, the making of an affidavit of such posting and the recording of the same with the County Clerk.

If the labor performed or the material furnished for which a lien is claimed was performed or furnished after March 27, 1917, the date of said amendment, the posting of a notice alone would not be a sufficient compliance with the law. If such labor was performed or material furnished thereafter, and no copy of the notice was filed with the County Recorder, the property would be subject to a lien.

130. **Employer and Employee—Wages—Liens.**

Law in this State in reference to liens of employees of corporations stated.

Employment, 196.

Engineers, 87.

Epidemic, 247, 249, 254.

Evening Schools, 143, 251.

Exemption, 103, 123, 134, 145.

Exemption from War Tax, 114.

Expenses of Deputy Fish and Game Warden, 184.

Expenses of Quarantine, 3.

Extension of Time, Given, 43.

Extradition, 146.

Failure to Qualify, 2.

Federal Government, 150.

Federal Position, 211.

Federal Taxes, 147.

Fees, 136, 138, 140.

Fees—Fee for Filing Articles of Incorporation, 25.

Fees of County Clerks, 241.

Females, 23, 81.

Files, 107, 108.

Filing Claim for Compensation, 60.

31. **Fish—Catfish.**

Under the provisions of section 63, Stats. 1917, p. 470, it is unlawful for any one to attempt to fish in any waters of the State during the closed season.

The fact that catfish are unprotected does not alter this rule, for the reason that in fishing for catfish the angler runs the risk of taking or catching some of the protected fish, and in case he does so he is liable to fine and imprisonment.

33. **Fish—Fishing with Spawn, Eggs or Ova—Licenses for Market Fishermen—Aliens.**

Section 30, Stats. 1917, p. 464, absolutely prohibits fishing with spawn, eggs or ova of any species of fish for market fishermen.

A license for a market fisherman is provided in section 61, Stats. 1917, p. 470, at $15. An alien who is a market fisherman must pay an additional $15 for a fishing license.

The price of a license to an alien market fisherman is $30.

Fish and Game, 56.

35. **Fish and Game—Deputy Fish and Game Warden.**

As the Fish and Game Warden appoints the Deputy Fish and Game Warden with the consent or recommendation of the County Commissioners, such deputy is in effect a county officer.

In case there is a deficiency in the fund provided for the payment of the salary and expense of the Deputy Fish and Game Warden, such deficiency may be taken from the general fund of the county under the provisions of Rev. Laws, 1508.

184. **Fish and Game—Deputy Fish and Game Warden—Expenses.**

The twenty-five dollars per month for expenses mentioned in section 3 (Stats. 1917, p. 473) is not a fixed sum additional to his salary, but states a maximum for expenses which may be allowed a Deputy Fish and Game Warden.

All Deputy Fish and Game Wardens should render itemized accounts of expenses, and the County Commissioners cannot legally allow more than twenty-five dollars a month therefor.

176. **Fish and Game—Game Warden—Deputy Game Warden.**

Appointment of a Deputy Fish and Game Warden can be made by State Fish and Game Warden only after the County Commissioners have consented to or recommended such appointment. When appointment is thus made the deputy can be removed by State Fish and Game Warden only.

A Deputy Fish and Game Warden legally appointed, who has not resigned nor been removed, but continues to exercise the functions and perform the duties of his position, is entitled to receive from the County Fish and Game Preservation Fund a salary agreed upon, provided it is within the limits allowed by law.

192. Fish and Game—Licenses—Minors.

Under provisions of section 68 (Stats. 1917, p. 471), a person under the age of 14 years is not required to purchase a market fisherman's license in order to be entitled to sell fish in the market.

100. Fish and Game Laws—Aliens—Hunting Licenses.

Under the provisions of subdivision 3 of section 61 of the Act providing for the protection and preservation of fish (Stats. 1917, p. 470), a hunting license cannot be issued to a person who has declared his intention to become a citizen of the United States, but has not secured his final certificate of naturalization.

132. Fish and Game Laws—Beaver.

All beaver in this State are protected under Stats. 1917, p. 468, to and including January 1, 1920.

101. Fish and Game Laws—Deer—County Commissioners.

All preceding fish and game laws were wiped out by the enactment of section 279, Stats. 1917, p. 459, to "provide for the protection and preservation of game."

Said last-mentioned Act repeals by implication the amendment of section 14, appearing in the Statutes of 1913. Therefore, the County Commissioners have no authority in any way to interfere with the closed season on deer.

94. Fish and Game Laws—Duck Season.

The opening date for hunting of ducks commences in this State October 1 and extends to January 1.

99. Fish and Game Laws—Gun Clubs—Hunting Licenses.

Sections 60 and 61 of the Fish and Game Act (Stats. 1917, p. 471) do not apply to members of a gun club who have leased a portion of ground for shooting purposes.

All male members of such gun club, over 14 years of age, who lease land for hunting privileges and are not the actual owners thereof, must procure a license before they can legally hunt thereon.

The statutes are silent as to the number of feet allowed on each side of a lake or stream for hunting and fishing purposes.

122. Fish and Game Laws—Jack Rabbits—Indians—Licenses.

There is no law prohibiting hunting of jack-rabbits by Indians and no license is required therefor.

98. Fish and Game Laws—State Fish and Game Warden—Deputy Wardens.

The County Commissioners have not the power to discharge a Deputy Warden, regularly and duly appointed by the State Fish and Game Warden, under the provisions of section 3, Stats. 1917, p. 473.

Fishing with Spawn, Egg or Ova, 33.

Foreign Corporations, 20, 240.

51. Foreign Corporations—Appointment of Resident Agents—Secretary of State.

The Secretary of State is required to file a certificate of appointment of resident agent and is not justified in requiring a corporation to produce evidence of its compliance with the provisions of the law prior to the passage of the Act of 1907 (Rev. Laws, 1348–1350) or with such Act.

The Secretary of State is required to file all certificates of appoint-

ment of resident agent whether or not any other filings have been made in his office.

Failure to make any other filings required makes such corporation liable for the penalty provided in the respective Acts, but will not justify the Secretary of State in imposing an additional penalty by refusing to file such certificate.

Game Warden, 176.

General Corporation Law, 232.

Glanders, 160.

Glove Contests, 14.

Government Lands, 80.

Governor, 152, 177.

56. **Governor—Fish and Game—Birds—Mammals.**

The Governor may legally grant a permit "for taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes," under provision of Stats. 1917, p. 468, but cannot grant a permit for the taking of mammals.

58. **Governor—State Assayer and Inspector—University of Nevada.**

The Governor may appoint a Professor of the University of Nevada as State Assayer and Inspector, provided that the party appointed possesses the qualifications specified in section 3 of the Act creating such office (Stats. 1917, p. 449).

198. **Grand Jury.**

A legally impaneled grand juror is entitled to act during the entire year in which he is appointed and all of the succeeding year, except so much thereof as may be necessarily used in the summoning of another grand jury.

Gun Clubs, 99.

Gymnasium, 171.

15. **Health Officers—Vital Statistics Law—Undertakers.**

Where communication between a health officer and undertaker is difficult and apt to be delayed, the undertaker may communicate the facts required of him by section 9 of the vital statistics law (Rev. Laws, 2960) by telephone or telegraph, if he follows up the same by written certificate embodying the same facts.

High-School Districts, 154.

Highway Engineer, 172.

Highway Law, 221.

221. **Highways—Highway Law.**

The Highway Act does not prohibit the Department of Highways from taking over the whole or any portion of the various routes in their present condition for maintenance or expending for that purpose moneys now in the State Highway Fund and in the various county-state highway funds.

Section 14 of said Act providing for bids on improvements exceeding the sum of $2,000 applies to construction only and not to maintenance.

Highways Over Public Lands, 115.

Holdovers, 231.

"Horse Play," 70.

Horses, 160.

Hospital Fees, 37.

Hunting License, 99, 100.

Illness, 37.

Imitation of Trademarks, 181.

Independent Candidates, 185, 205.

Industrial Insurance, 104, 105, 108, 109, 111, 126, 128.

104. **Industrial Insurance—Industrial Insurance Commission.**

Under the provisions of Stats. 1915, p. 281, every employer was conclusively presumed to have elected to accept the Industrial Insurance Act unless a notice to the contrary has been given. Any company not rejecting the Act is legally liable for the premiums on its employees' wages.

111. **Industrial Insurance — Industrial Insurance Commission — Agricultural Labor.**

Agricultural laborers could not come within the provisions of the Industrial Insurance Act.

107. **Industrial Insurance—Industrial Insurance Commission—Files.**

All premiums paid in advance by contributors, under section 21a of the Industrial Insurance Act (Stats. 1917, p. 439), except those paid exclusively to take care of accident benefits, must be considered as part of the State Insurance Fund.

105. **Industrial Insurance—Industrial Insurance Commission—Injured Employee —Prevailing Expenses.**

Under the provisions of section 23c of Stats. 1917, p. 440, it is not incumbent upon the Commission to pay the cost of transportation of an injured employee from the place of treatment back to the place of injury.

128. **Industrial Insurance—Nevada Industrial Commission—School Teachers— Salaries.**

Premiums on the salaries of all school teachers employed in the public schools within this State must be paid to the Nevada Industrial Insurance Commission.

109. **Industrial Insurance—Industrial Insurance Commission—Union Schools— Liability.**

Under facts stated the State Insurance Fund is not liable for compensation to an injured workman.

108. **Industrial Insurance—Industrial Insurance Commission—Records—Files.**

The records and files of the Industrial Insurance Commission are not open to any person to examine all the papers and files in any particular case.

126. **Industrial Insurance—Nevada Industrial Commission—Public Schools— School Districts.**

The school districts of this State are required to contribute to the State Insurance Fund.

Industrial Insurance Commission, 104, 105, 107, 108, 111, 126.

207. **Industrial Insurance Commission.**

Amount of compensation to be paid under these particular circumstances calculated.

189. **Industrial Insurance Commission—Accident Benefit Fund.**

The Industrial Insurance Commission has authority to charge the Accident Benefit Fund, created by section 23 of the amended Industrial Insurance Act, with a percentage of expenses including salaries of the Commission.

191. **Industrial Insurance Commission—Claims—Notice.**

The Commission may excuse the failure to file a notice of injury but cannot excuse the failure to file a claim for compensation. Under the statute the claim for compensation must be filed within one year after death.

190. **Industrial Insurance Commission—Contractors.**

The present Industrial Insurance Act is not compulsory for a contractor under the State, a county, municipal corporation, school district or city under special charter or commission form of government.

195. **Industrial Insurance Commission—Employees—Compensation.**

An employee within the purview of the old Industrial Insurance Act cannot receive in excess of $5,000 from the Commission for the loss of sight of both eyes.

186. **Industrial Insurance Commission—Jockeys.**

A jockey riding at a race meet is in the employment of the person whose horse he rides, and cannot be considered in the employment of the State.

196. **Industrial Insurance Commission—Jockeys—Employment.**

A jockey cannot be said to be an employee of a particular horseman if his services can be procured by other horsemen. Under such circumstances he would be classed as an independent contractor and not entitled to the benefits of the Industrial Insurance Act.

Inheritance Tax Law, 55.

83. **Inheritance Tax Law Exemptions.**

Under section 4, subdivision 1 of inheritance tax law (Stats. 1913, p. 412), one exemption of $20,000 is allowed. If there is no widow, but a minor child, such child is allowed this sum. If there is more than one minor child, the exemption is allowed for all such minor children.

Initiative Measures—When Effective, 32.

12. **Initiative Petitions—Constitutional Law—Legislature—Secretary of State.**

Under the provisions of section 1 of article 4, and article 19 of the Constitution it is the duty of the Secretary of State to submit an initiative petition in turn to both houses of the Legislature.

Initiative Prohibition Law, Time of Taking Effect, 243.

Initiative Prohibition Act, 245, 246, 255.

Initiative Prohibition Law, 243, 244, 246, 252, 258, 259.

Injured Employee, 105.

178. **Inspector of Mines—Mines and Mining—Blacksmith Shops.**

The Inspector of Mines has the power to prevent installation of underground blacksmith shops in mines.

91. Inspector of Mines—Miners—Natural Deaths.

Section 4207, Rev. Laws, requires that reports be made of serious and fatal accidents occurring in mines to the Inspector of Mines, and it is unnecessary for the owner, in the case of a miner dying suddenly while working in a mining property, to report the circumstances of such case.

Interest-Bearing Warrants, 173.

Intoxicating Liquors, 40, 246, 248, 258, 259.

Janitors, 234.

Jockeys, 186, 196.

Judicial Offices, 215.

28. Jurors—County Commissioners—Married Women.

In the selection of a jury-list such list must be selected without distinction from all the persons of the county qualified to serve as jurors.

Exemption from jury service is a personal privilege and may be claimed by the juror.

It is no objection to the regularity of a jury that persons were thereon who are exempt from service.

County Commissioners should not, in drawing a jury list, exempt the names of married women therefrom.

A jury-room may be partitioned so that the women jurors may stay in one part of the room and the men in the other.

A woman Deputy Sheriff may be appointed to take care of the women and a man to take care of the men.

If the jury-room is partitioned, such partition should be only partial and not run clear to the ceiling so as to make two separate rooms of the jury-room.

Justices of the Peace, 27, 215, 216, 226, 231, 233.

Kindergarten, 7.

Kindergarten Teachers, 7.

187. Labor Commissioner—District Attorneys.

It is the duty of the District Attorneys of the several counties, upon complaint of the Labor Commissioner, to prosecute all violations of section 1, chapter 276, Stats. 1913, which may be brought to their attention by him.

188. Labor Commissioner—Eight-Hour Law—Watchmen.

Section 1941, Rev. Laws, does not apply to watchmen employed on or about the surface working of a mine.

131. Labor Commissioners—Employer and Employee—Wages.

There is nothing in the Act "creating the office of Labor Commissioner" (Stats. 1915, 311) specifically conferring upon the Commissioner the power to enforce laws relative to the payment of wages.

Legislature, 12, 153.

Liability, 109.

106. **License—Auto License—Auto Dealers.**

A private license for a dealer's car is not required under section 15, Stats. 1915, p. 350, until the car is sold or let for hire.

A dealer who has procured a general distinguishing number may use the car on which the same is displayed for any purpose he wishes, except to let it for hire, until the car is sold. If he lets it for hire, a regular license must be procured.

License for Market Fisherman, 33.

Licenses, 77, 192, 244.

75. **License—Auctioneer—Revenue.**

The words "every auctioneer" used in section 123 of the Revenue Act, as amended by Stats. 1915, p. 90, apply to a man permanently residing in his locality and who, for the accommodation of farmers, carries on auction sales at various ranches.

87. **Licenses—Engineers—Stationary Engineers.**

The provisions of section 3904, Rev. Laws, prohibits one from operating a stationary hoisting engine without a license where he is working for himself.

14. **Licenses—Glove Contests.**

The question whether the contestants are to receive any part of the gate receipts or any gratuity or reward or compensation in any way does not affect the amount of license.

Until the enactment of the statute of 1897, glove contests were prohibited by law and there is no statute providing for such contest at a lower license fee than $100.

8. **Licenses—Liquor Licenses.**

Under the provisions of chap. 178, Stats. 1915, 236, dealers in spirituous, malt or vinous liquors must take out a county liquor license and a state liquor license in addition to a federal license.

The County Commissioners have absolute authority to grant or withhold the issuance of county liquor licenses and without such county liquor license no person can engage in the liquor business, even if he has had issued to him a state liquor license.

16. **Licenses—Liquor Licenses—Restaurants—Saloons.**

A retail liquor license is not required under the following statement of facts: A saloonkeeper has a lease on a building occupied by his saloon in the front and a restaurant in the rear operated by a subtenant. Liquor is served in the restaurant by purchasing liquor from the saloon and said liquor is paid for by waiters who order it. Once a week the saloonkeeper under the terms of his lease allows the restaurant keeper a percentage on the sale of the liquor purchased at his bar for consumption in the restaurant. Such percentage is paid for the service on the part of the waiters for serving the liquor in the restaurant part of the building. The restaurant keepers have no further interest and obtain no further profit in the sale of the liquor except as stated.

79. **Licenses—Liquor Licenses—State Liquor Licenses—County Liquor Licenses—Liquor Board.**

The provisions of section 3, Stats. 1915, p. 237, requiring persons desiring to dispose of liquors in quantities less than one quart, do not refer to incorporated cities or towns.

The provisions of section 4 of the same Act, Stats. 1915, p. 237, relate only to unincorporated cities and towns.

The provisions of section 4 of said Act mean that any person outside of any incorporated city or town wishing to engage in the liquor business and sell any quantity whatsoever must procure a county license from the liquor board.

9. **Licenses—Sheep Licenses.**

A sheep-owner who possesses no realty in Nevada but lives in a county different from that in which the license is collected comes now under the seventh subdivision of sec. 16, Stats. 1915, 241, if he owns less than one thousand sheep.

The exemption in said section applies to an answer and holder of land in the State who holds said land in fee simple, and that a squatter's title alone would not be sufficient to entitle him to the exemption.

40. **Licenses—State Licenses—Intoxicating Liquors.**

Under the provisions of section 6 (Stats. 1915, 238) the question of the intoxicating or non-intoxicating effect of the spirituous, malt or vinous liquors is not taken into consideration.

Any preparation of spirituous liquors or vinous liquors which includes alcohol in any degree is within the statutes, and would require the procuring of a state liquor license.

69. **License—State License—Motion-Picture Theaters.**

Under the provisions of the second paragraph of section 1, Stats. 1915, p. 236, it is the intention of the Legislature that all licenses shall expire at the end of the quarter or at the end of a calendar year.

In case of an application for a motion-picture theater license on July 27 the Sheriff may issue the license at the $40 rate for the months of August and September, being the unexpired portion of the third quarter of the year, and also issue licenses at $40 for the fourth quarter of the year. At the beginning of the next year the Sheriff may issue license for the full year at $75.

6. **Licenses—State Liquor License—Alcohol—Words and Phrases—"Alcohol" Defined.**

Alcohol is a spirituous liquor within the meaning of sec. 6, Stats., 1915, 238.

There is an implied reservation in all state liquor laws relating to saloon licenses that the liquors therein mentioned are potable.

"Denatured alcohol" is defined.

A state liquor license is not required from one selling denatured alcohol, but is required for the sale of pure alcohol.

If the pure alcohol is mingled with some substance which would make it unpalatable and unfit for use as a beverage, it also may be sold without the payment of a liquor license.

Liens, 130, 141.

Liquor Board, 79.

Liquor Licenses, 8, 16, 79, 258.

Liquors, 245.

Live Stock, 167.

102. **Live Stock.**

The Act "to regulate the herding, grazing and driving of live

stock" (Stats. 1917, p. 124) is not a criminal act and merely provides an additional remedy to the person injured for trespass.

Local Health Officers, Deputies, 82.

Location Placer Claims, 120.

Maintenance, 172.

Malfeasance in Office, 236.

Mammals, 56.

Marking of Ballots, 242.

Married Women, 28.

Miners, 91.

120. **Mines and Minerals—Location Placer Claims.**

A deposit of gravel containing no minerals cannot be located under the placer mining laws.

Mines and Mining, 141, 170, 178.

Ministers, 259.

Minors, 192.

Misdemeanor, 146.

Monthly Payment in Case of Death, 48.

206. **Mothers' Pension Act—Divorced Women.**

A woman who has children under 15 years of age not supported by their father is within the provisions of the Mothers' Pension Act (Stats. 1915, p. 151), even though she is divorced from her husband.

142. **Mothers' Pension Law.**

The clause "or are dependent upon their own efforts for maintenance of their children" in the mothers' pension law (Stats. 1915, p. 151) is a part of the qualifications preceding which entitle the mother to partial support by the county.

The object and intent of such Act is to maintain the home and keep the mother with the children, and the mother is not obliged to go away from home to secure work under such law if such procedure would leave the children without a mother's protection.

Motion-Picture Theaters, 69.

Municipalities, 257.

Municipal Elections, 168.

Natural Death, 91.

"Near Beer," 255.

57. **Nepotism—Nevada School of Industry.**

The Superintendent of the Nevada School of Industry may employ, as an assistant manager, the son of a member of the Board of Control of said institution.

Such employment would not be in conflict with the Nepotism Act (Stats. 1915, p. 17) for the reason that the Board of Control appoints the Superintendent and the Superintendent appoints his assistants.

148. **Nepotism—Nevada School of Industry.**

There is nothing in the Nepotism Act (Stats. 1915, p. 17) which prevents the Board of Government of the Nevada School of Industry

from employing the son-in-law of one of its members as a physician at the school.

152. **Nevada Industrial Commission—Salaries—Governor—Veto Power.**

The Governor has no power to approve or fix the compensation of any person employed by the Nevada Industrial Commission to be paid from the Accident Benefit Fund.

Nevada Industrial Commission, 126, 128.

76. **Nevada Industrial Commission—Acceptance of Act—Payment of Premiums.**

The fund is not liable for the payment of compensation for any accident occurring previous to the receipt of notice to accept the Act and previous to the receipt of premiums except in case where employer is the State or one of its political subdivisions.

78. **Nevada Industrial Commission—Acceptance of Act—Payment of Premiums.**

Accepting employer is not entitled to the benefits of the Act, even though he has not filed a notice of rejection, unless he pays the premium in advance on or before the 1st day of each month, on the estimated pay-roll for that month.

210. **Nevada Industrial Commission—Candidates.**

An employee of the Nevada Industrial Commission may legally be a candidate for and may be elected to any public office.

60. **Nevada Industrial Commission—Claim for Compensation—Filing.**

Claim for compensation must be filed within one year after death.

64. **Nevada Industrial Commission—Compensation—Suspension.**

The Commission should not send compensation payments to dependents residing in Austria-Hungary during the war.

74. **Nevada Industrial Commission—Compensation—Widow.**

Section 25 supersedes section 30 and controls as to payment of compensation thereunder.

62. **Nevada Industrial Commission—Death Benefits Amendment.**

An amendment increasing death benefits passed subsequent to injury but prior to death does not authorize the payment for death under the amendment.

48. **Nevada Industrial Insurance Commission—Monthly Payments in Case of Death.**

Under the provisions of section 25, subdivision 1, of the Industrial Insurance Act as amended by Stats. 1915, 286, compensation should be paid upon the basis of 40 per cent of average monthly earnings of the deceased, such 40 per cent is the measure of compensation.

71. **Nevada Industrial Commission—Public Employers—Accident Premiums.**

The State and its political subdivisions are not obliged to pay premiums to the Commission for accident benefits.

70. **Nevada Industrial Commission—Regular Course of Employment—(Horse Play).**

An employee who is injured while indulging in horse play did not sustain an accident arising out of the employment, and a claim presenting such state of facts should be rejected.

63. **Nevada Industrial Commission—Rejection by Employee—Action for Damages.**

The Commission is not liable for any part of a judgment recovered at law by a rejecting employee.

Nevada School of Industry, 57, 148.

All figures refer to opinion numbers.

53. **Nevada School of Industry—Salary of Secretary.**

Under the provisions of section 9 of the Act providing Nevada School of Industry (Stats. 1913, p. 385) the Board of Government of such institution may provide a small salary for the secretary, not as compensation to him as a member of the board, but as a necessary and reasonable expense incurred by the board in the performance of its duties.

125. **Nevada School of Industry—Permanent Board of Government.**

The employment of Mr. C. B. Hoag and his wife as manager and school teacher at the Nevada School of Industry by the permanent Board of Government of said institution approved.

50. **Nevada State Agricultural Society—Appropriation.**

The appropriation provided in Stats. 1917, 348, may not be used for the purpose of paying a balance on premiums awarded for the year 1916.

The moneys appropriated by such act may not be used except for the purpose of aiding the State Agricultural Society for the years 1917 and 1918.

Newspapers, 29, 165.

New Trials, 216.

Nomination, 224.

Nomination by Petition, 66.

Nomination by Petition of Electors, 180, 215, 224, 226, 231.

Nonpartisan Ballot, 213.

Nonpartisan Candidates, 226.

Nonpartisan Officers, 224.

Notice, 191.

Office for County Surveyor, 253.

22. **Officers — Appointment of Officers — Deputy Superintendent of Public Instruction.**

Every appointment to office must be based upon a different authority so to do. There must be a statute creating the office and fixing the compensation thereof, although the general appropriation bill provided for the salary and expenses of a Deputy Superintendent of Public Instruction. The State Superintendent of Public Instruction is not authorized to appoint any person, because the act creating such office was vetoed by the Governor.

253. **Officers—County Surveyor—Office For—Counties.**

The Board of County Commissioners is not legally required to furnish the County Surveyor with an office.

236. **Officers—Disqualification of—Removal of—Malfeasance in Office—Crimes and Punishments.**

The provisions of section 6287, Rev. Laws, do not apply to an officer removed from office under the provisions of sections 2851-2854. The former section applies to officers removed after trial on indictment or accusation by grand jury or information by District Attorney. Section 6287 is a penal statute and is to be strictly construed. A removal under the last-named sections does not disqualify an officer from being a candidate for election nor will it disqualify him from holding office if elected.

223. **Officers—Elections—County Board of Education.**

If no person files as a candidate for membership of the County Board of Education, the incumbent holds the office until the general election in 1920.

237. **Officers—Term of Office.**

Any person elected to office at the general election does not take possession of such office until the first Monday of January succeeding the general election.

2. **Officers—Vacancies—Failure to Qualify—Disqualification—Constitutional Law.**

If a person elected to the office of Justice of the Peace fails to execute his bond and have the same approved by the County Commissioners on the date prescribed by the law, he does not *ipso facto* forfeit his office. It is the duty of the County Commissioners to declare the office forfeited for failure to file bond by resolution duly passed, and then the board may proceed to fill the vacancy thereby caused.

A star-route contractor cannot be considered as holding "office" within the provisions of art. 4, sec. 9 of the Nevada Constitution.

165. **Official Advertising—Newspapers.**

Under the provisions of section 9, Stats. 1915, p. 346, authorizing the issuance of certain bonds "to provide for construction, equipment, and furnishing of high-school dormitories in the towns of Elko and Wells," the County Board of Education is governed by the general law in reference to official advertising (Rev. Laws, 1530) which requires advertising for a period of thirty days.

Open-Cut Mines, 201.

Patented Mines, 88, 145.

Patented mining claims, 134.

Payment of Premiums, 78.

Peace Officers, 197.

Permits of State Engineer, 44.

Permanent Board of Government, 125.

Personal Property, 89, 90.

Physicians and Surgeons, 162.

Police Department, 257.

Policemen, 197.

Political Party, 66.

216. **Practice—Justice of the Peace—New Trials.**

It is not within the power of a Justice of the Peace to reopen a case or grant a new trial.

Presidential Elections, 1.

Presidential Electors, 1.

Primary Elections, 185, 200.

248. **Prohibition—Initiative Prohibition Act—Druggists—Intoxicating Liquors.**

(1) Druggists may carry in stock and sell for medicinal purposes, upon prescription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

(2) Druggists may carry in stock and may sell for medicinal purposes upon prescription and for mechanical, pharmaceutical and scientific purposes, upon affidavit, pure grain alcohol.

(3) Druggists may carry in stock and sell, without a prescription, any preparation which is exempted by the provisions of the national pure food law, if the sale of the same does not require the payment of a United States liquor dealer's tax.

245. **Prohibition—Initiative Prohibition Act—Liquors, Storage Of.**

The initiative prohibition measure does not prevent one, prior to midnight on December 16, 1918, from storing intoxicating liquor in his home for his own future personal use or from personally using it after such date; such liquor so stored before the law takes effect cannot legally be given or furnished to another after the law becomes effective.

255. **Prohibition—Initiative Prohibition Act—"Near Beer."**

A liquor called "near beer" containing less than one-half of one per cent of alcohol is not within the definition of "liquors" contained in section 1 of the Initiative Prohibition Act, and it is lawful for the manufacturer thereof to sell, deliver, and ship this liquor within the State of Nevada.

252. **Prohibition—Initiative Prohibition Law—Druggists—Denatured Alcohol.**

Druggists may sell denatured alcohol without prescription or affidavit.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States Pharmacopœia or national formulary preparation in conformity with the Nevada Pharmacy Law, which includes whisky, brandy, and many other of the most intoxicating liquors.

246. **Prohibition—Initiative Prohibition Law—Intoxicating Liquors.**

After the prohibition law becomes effective, it is not unlawful for one to have intoxicating liquor in his house for his own personal use, provided such liquor is placed in his home prior to the time the law takes effect.

Persons invited to the home as guests cannot legally be served with intoxicating liquor.

The prohibition law will take effect 12:01 a. m., December 17, 1918.

258. **Prohibition—Initiative Prohibition Law—Intoxicating Liquors—Liquor License—Druggists.**

Druggists may sell such liquors as are permitted by the prohibition law without the payment of a state liquor license.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

259. **Prohibition—Initiative Prohibition Law—Intoxicating Liquors—Ministers—Wines.**

Wine for sacramental purposes may be carried into a community or shipped into a community by a minister of the gospel.

243. **Prohibition—Initiative Prohibition Law—Time of Taking Effect.**

The initiative prohibition measure will become a law and take effect at 12.01 a. m., December 17, 1918.

All figures refer to opinion numbers.

244. **Prohibition—Licenses—Refund—Initiative Prohibition Law.**

A licensee may recover back the unearned license fee where the license has been revoked wholly by reason of a change in governmental policy by the State, and where there is no fault on the part of the licensee.

The initiative prohibition law takes effect at 12.01 a. m., December 17, 1918.

Counties and municipalities should make refund for the unearned portion of each license after the taking effect of the law upon presentation of proper bills.

Public Employer, 71.

Public Health, 160.

162. **Public Health—County Health Officer—Physicians and Surgeons.**

A physician may forward his obstetrical reports directly to the county health officer.

82. **Public Health—Local Health Officers—Deputies.**

The wife of a local health officer cannot keep the records and sign the reports as subregistrar under a regularly appointed deputy.

135. **Public Highways—Counties—County Commissioners.**

The Board of County Highway Commissioners, created by chapter 157 of the Statutes of 1913, has the right to lay out and improve roads in its county and to pledge the credit of the county for the expense thereof.

Such board has the entire administration of road matters in its county.

115. **Public Highways—Highways Over Public Lands.**

The right of way for the construction of highways over public lands is granted by U. S. Comp. Stats. 1916, sec. 2477.

Public Lands, 80.

47. **Public Officers—Bonds—Surety Bonds at Public Expense.**

Under the provisions of Stats. 1917, 340, the premium for an official surety bond must be paid by the State, district, county or city, as the case may be, concerning the official's employment.

From and after the approval of said act any officer who has given a surety bond can cancel the same and obtain a refund of his premium for the unexpired term as his own personal property, and the State, county, district or city, as the case may be, would be required to pay the premium on a new surety bond which he may take out.

68. **Public School Districts—School Funds—Corporations.**

A corporation has no power outside of that granted to it by law.

School districts are not authorized to use school funds to dig a well and sell the water therefrom.

The provisions of section 3381, Rev. Laws, limit the uses for which school funds may be expended.

Public School Teachers' Retirement Salary Fund Act, 72.

Public Schools, 26, 126.

154. **Public Schools—Budgets—Budget Act—Revenue—Taxation—School Districts—High-School Districts.**

The "Act regulating the fiscal management of counties, towns, cities, school districts and other governmental agencies" (Stats. 1917,

p. 249) does not apply to school districts and high-school districts until February 1, 1919.

It is unnecessary to publish the budgets of the school or high-school districts until that time.

The Act to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473–3477) is unrepealed until said date.

42. **Public Schools—County High Schools—County Board of Education.**

Under the provisions of Stats. 1917, the County Board of Education has absolute control of the materials and plans to be used in the erection of county high schools, without regard to any action on the part of the Deputy Superintendent of Public Instruction.

203. **Public Schools—County High Schools—County Boards of Education.**

The County Board of Education cannot undertake the construction of a proposed building on a day-labor basis or by letting several contracts of less than $500 each.

124. **Public Schools—County High Schools—Elko High School.**

The County High School Board is authorized under the provisions of sections 3473–7, Rev. Laws, to issue emergency interest-bearing school warrants for the purpose of equipping the Elko County High School.

171. **Public Schools—County High Schools—Dormitory—Gymnasium.**

Constructing a building for a high school is not an expense of conducting such high school, and therefore the cost of construction, unless provided for by a special tax levy, cannot be paid from the county high-school fund.

Under an Act for the construction of a dormitory, a gymnasium cannot be constructed with money raised under the provisions of said Act.

173. **Public Schools—County High Schools—Interest-Bearing Warrants, Elko County.**

Interest-bearing warrants of a county high school are not such "bonds" as the State Board of Investment is authorized to buy.

24. **Public Schools—Deputy Superintendents of Public Instruction.**

Section 3251, Rev. Laws, in the absence of any appropriation by the Legislature, makes an appropriation for the payment of the salaries and traveling and office expenses of the Deputy Superintendent of Public Instruction.

110. **Public Schools—Deputy Superintendent of Public Instruction—School Trustees—Vacancies.**

The Deputy Superintendent of Public Instruction has the right to appoint a School Trustee in case of vacancy if no election is held on the fourth Saturday after such vacancy occurs. Before such right exists the office must be found to be vacant under the terms of the sixth and seventh clause of section 2799, Rev. Laws.

Such vacancy can be established only at the suit of the Attorney-General in the nature of a *quo warranto* establishing by judicial decision that a vacancy in office exists.

Such suit may be brought under the terms of the Attorney-General by the District Attorney in his name.

All figures refer to opinion numbers.

21. **Public Schools—Deputy Superintendent of Public Schools.**

Should Assembly Substitute for Assembly Bill No. 217 become a law, it would abolish the office of Deputy Superintendents of Public Instruction now provided, save and except one General Deputy Superintendent of Public Instruction, even though section 3 of said Act should be declared void.

119. **Public Schools—Emergency Interest-Bearing Warrants.**

Section 3473–3477 relating to issuance of interest-bearing school warrants in emergencies has not been repealed by section 16 of the Budget Act (Stats. 1917, p. 249).

158. **Public Schools—Emergency Loans—Budget Act.**

The Act "to authorize the issuance of interest-bearing school warrants in emergencies" (Rev. Laws, 3473–3477), as amended, Stats. 1913, p. 54, stands unrepealed until February 1, 1919, and emergency loans until such time may be made by school districts under its provisions.

251. **Public Schools—Evening Schools.**

The schools contemplated in the Evening School Act (Stats. 1917, p. 354) are to be free schools, maintained by the state and county funds, and no tuition fee can be required of any one desiring their benefit.

The State Superintendent of Public Instruction cannot authorize State money to be paid for teachers for the maintenance and support of evening schools where tuition fees are charged.

143. **Public Schools—Evening or Night Schools.**

The appropriation of $10,000 provided in section 4 of the Act to provide for the establishment of evening schools (Stats. 1917, p. 354) is to be taken from the General Fund of the State.

7. **Public Schools—Kindergarten—Kindergarten Teachers.**

A kindergarten teacher cannot be considered a grade teacher so as to affect the classification of the school in which she is employed. (Rev. Laws, 3315.)

34. **Public Schools—School Bond Elections—Act Concerning.**

The provisions of chap. 199, Stats. 1915, p. 308, is the law covering the election of School Trustees and, as a bond election must comply as nearly as may be in accordance with the provisions of the law covering the election of School Trustees, such chapter applies to bond elections.

A registration of electors conducted under the provisions of such chapter 199 will be legal and valid for use in conducting a bond election.

46. **Public Schools—School Districts—Consolidation of School Districts.**

A person who has signed a petition for the consolidation of school districts may thereafter withdraw his name from the petition up to the time petition has been acted upon by the Board of County Commissioners.

49. **Public Schools—School Districts—Consolidation of School Districts.**

Under the provisions concerning the consolidation of school districts (Stats. 1915, 27) any signer of a petition for the consolidation of school districts may withdraw his name at any time up to the

time when the consolidation has been actually affected and he may withdraw his name even though notice has been published as provided in the statutes.

73. Public Schools—School Districts—Consolidation of Public School Districts—Teachers' Contracts.

In case a consolidation of school districts is effected under the provisions of Stats. 1915, pp. 27–30, and before such consolidation the trustees of one of the districts consolidated had entered into a contract with a teacher for the ensuing year, her contract survives and she may enforce the same.

In such case it will be necessary for the Trustees of the consolidated districts to give the legal notice provided in the contract for the termination thereof.

61. Public Schools—School Districts—Creation of School Districts.

The word "guardian," as used in section 77 of the School Code (Rev. Laws, 3316), as amended by Statutes of 1917, p. 389 means "one who has been duly appointed by the Court."

Children residing with an aunt, who is not their guardian in such legal sense, would not justify the County Commissioners in considering them as a part of the five school-census children required in such section 3316.

197. Public Schools—Peace Officers—Policemen.

A policeman of the city of Sparks is a peace officer and is, therefor, authorized to arrest during school hours without a warrant any truant child between the age of 8 and 16 years under the provisions of section 3447, Rev. Laws.

72. Public Schools—School Teachers—Public School Teachers' Retirement Salary Fund Act—School Trustees.

Under the provisions of section 4 Public School Teachers' Retirement Salary Fund Act (Stats. 1915, p. 304), in case of failure to pay the $9 provided for each school year, the School Trustees are liable for such sum, if they fail to collect the same from the teacher's salary.

The teachers, also, are liable for such dues.

249. Public Schools—School Teachers—Salaries—Epidemic—Quarantine.

School trustees may lawfully pay salaries of teachers for an intermission of thirty days caused by declaration of quarantine on account of an epidemic, and, if it is necessary to close the school again at the expiration of said time, they may declare another thirty days' intermission and pay salaries therefor.

254. Public Schools—School Teachers' Salaries—Quarantine—Epidemic.

Public school teachers are entitled to pay for their salaries during intermission caused by proclamation of quarantine on account of epidemic.

247. Public Schools—School Teachers—Salaries—Quarantine—Epidemic.

Teachers should be paid full salaries for one thirty-day intermission caused by an epidemic, even though the schools be actually closed for a longer period.

If the school board, in good faith, reopens the school before the expiration of thirty days from the date of closing and later finds it necessary to again close them for a period not exceeding thirty days, the teachers are entitled to their full salaries.

All figures refer to opinion numbers.

But, if the school board reopens a closed school and later closes it for the apparent purpose of attempting to avoid the letter of the statute, the teachers are entitled to salaries for but one thirty-days intermission.

39. **Public Schools—School Trustees—School Census Marshal.**

The acts of a Board of School Trustees in the appointment of a School Census Marshal are valid even though a majority of such board is superseded by a recall election.

The person so appointed is the legal School Census Marshal of the district, notwithstanding that the new board upon organization revoked his appointment and appointed another Census Marshal in his stead.

18. **Public Schools—School Trustees—School Teachers—Vacations.**

Under section 104 of the School Code (Rev. Laws, 3343) school Trustees are authorized to grant Christmas holidays for two weeks and pay teachers for both such weeks.

If, in the event of an epidemic, school is closed for a period of three weeks, the teachers are entitled to pay for all of such period.

10. **Public Schools—School Trustees—Vacancy.**

The law is silent as to how long a Trustee must be out of the district before his office becomes vacant. If a Trustee leaves a district with no intention of returning, a vacancy occurs immediately.

If a Trustee leaves a district through the necessity of obtaining a living at some other place with no intention of losing his residence in the district, no vacancy would occur, provided the Trustee continues to perform his duties as such.

11. **Public Schools—School Trustees—Vacancy.**

A School Trustee who has left his district with the intention of returning thereto and manifests such intention by leaving his children within the district does not forfeit his position as Trustee.

139. **Public Schools—State Board of Vocational Education—State Director of Vocational Education.**

Under Stats. 1917, p. 398, the State Board of Vocational Education has the right to pay the salary and traveling expenses of the State Director of Vocational Education from the appropriation made in said Act.

Public Service Commission, 140.

149. **Pure Food.**

The decision in this matter found to depend upon a question of fact.

Quarantine, 45, 247, 249, 254.

3. **Quarantine—State Quarantine Officer—Expense of Quarantine.**

Under the provisions of sec. 8, chap. 280, Stats. 1913, p. 456, the actual expense of impounding stray dogs must be borne by their owners.

174. **Rabies Commission—Appropriation.**

The appropriation for the Rabies Commission made in 1917 is not available for the payment of a claim incurred in 1916.

Railroad Commission, 19.

All figures refer to opinion numbers.

19. **Railroads—Railroad Commission—Reports—Secretary of State.**

Both the enactment of Stats. 1917, 84 (Rev. Laws, 3555), requiring railroad companies to make and file annual reports with the Secretary of State, and Rev. Laws, 3556, requiring the Secretary of State to furnish blanks for such reports, have been repealed.

The only provision now existing in regard to such reports is section 4568, Rev. Laws, as amended (Stats. 1917, 83), requiring an annual report to be made to the Railroad Commission.

Real Property, 89.
Recall Elections, 4.
Recall Petitions, 4.
Recording, 129.
Records, 108.
Redemption from Tax Sale, 118.
Refund of Taxes, 59.
Refund on License, 244.
Registration, 66, 180, 183, 193, 199, 202, 204, 208, 217, 219, 220.
Registration of Electors, 168.
Regular Course of Employment, 70.
Rejection by Employee, 63.
Removal of Officers, 236.
Reports, 19.
Restaurants, 16.
Returns, 239.
Revenue, 59, 75, 154.

133. **Revenue—Taxation.**

The county in which sheep should be assessed is that of the residence of the owner.

147. **Revenue—Taxation—Bullion Tax—Federal Taxes.**

No reduction from the gross proceeds of mines in order to arrive at the net proceeds for the purpose of taxation in this State may be made except those provided for by section 3687, Rev. Laws, and federal taxes are not within the deductions of such statutes and may not be deducted in arriving at the net proceeds as a basis of taxation.

163. **Revenue—Taxation—Central Pacific Railroad—Unapproved and Uncertified Land.**

Uncertified lands acquired by the Central Pacific Railroad Company are exempt from taxation.

123. **Revenue—Taxation—Exemption—Veterans.**

Under Stats. 1917, p. 65, a veteran is exempt from taxation from and after the time such act became effective, but is not entitled to an exemption for taxes levied and assessed previous to the passage of such law.

103. **Revenue and Taxation—Exemption—Widow's Exemption.**

Under the provisions of section 3621, Rev. Laws, a widow cannot be granted an exemption in more than one county in the same year, even though the aggregate of all her claims does not exceed the total sum of one thousand dollars.

167. Revenue—Taxation—Live Stock.

The situs of cattle for the purpose of taxation is in the county of the residence of the owner thereof.

88. Revenue Taxation—Patented Mines.

In order to exempt a patented mine from taxation, under the provisions of Stats. 1915, p. 317, the work performed thereon must be performed during the calendar year for which it was taxed.

145. Revenue—Taxation—Patented Mines—Exemption.

The affidavit contemplated for the exemption from taxation of patented mines in the Act of 1915, p. 316, requires the filing of such affidavit within the calendar year for which such exemption is claimed.

134. Revenue—Taxation—Patented Mining Claims—Exemption.

The affidavit authorizing exemption of taxes assessed on patented mining claims (Stats. 1915, p. 316) should be filed within the year for which exemption is claimed.

90. Revenue Taxation—Personal Property.

If personal property came into the State between the first day of January and the second Monday in July, it is subject to taxation; if it came into the State after the second Monday in July, it is not taxable for that year.

80. Revenue and Taxation—Public Land—Government Lands.

Lands selected by railroad company, which selection has not yet been approved by the Land Department of the United States, are not subject to assessment and taxation.

89. Revenue Taxation—Real Property—Personal Property.

The assessment rolls should be completed on or before the third Monday of July. When completed they leave the Assessor's hands, and that officer has no legal authority to place either real or personal property thereon except under the direction of the Tax Commission (Stats. 1917, p. 331).

118. Revenue Taxation—Redemption from Tax Sale.

A taxpayer whose property is sold for second installment of taxes has one year from the date of sale in which to make the redemption.

155. Revenue—Taxation—Widows' Exemption.

In order to claim the widow's exemption provided by section 3621, Rev. Laws, it is necessary that the widow yearly make an affidavit or have one made in her behalf.

Revised Laws, 156.

Rewards, 127, 169, 194.

127. Rewards.

A claim for the reward provided in section 3905, Rev. Laws, is legal and should be paid out of the fund provided for such purpose.

Road Expenses, 250.

Salaries, 128, 152.

Salaries of School Teachers, 247, 249, 254.

Salary of Secretary, 53.

Salary and Expenses of County Fish and Game Warden, 36.

Salary and Expenses of Water Commissioners, 95.

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Saloons, 16.

Sample Ballots, 205.

Saving and Loan Association, 30.

School Census Marshal, 39.

School Contracts, 159.

School Districts, 46, 49, 61, 73, 126, 154.

School Funds, 68.

157. School Teacher—State Board of Education.

Under amended Rev. Laws, 3266, appearing in Stats. 1917, p. 175, any person who has been connected with the public schools for a period of sixty months in any educational capacity is entitled to a life diploma.

In granting such life diploma the State Board of Education has the right to count both the supervising and teaching experience of the teacher.

School Teachers, 18, 72, 128, 249, 254.

School Trustees, 10, 11, 18, 39, 72, 110.

Secretary of State, 12, 19, 20, 38, 51, 214, 240.

Sheep Licenses, 9.

Special Elections to Fill Vacancies, 256.

State Assayer and Inspector, 58.

138. State Assayer and Inspector—Fees.

The State Assayer and Inspector cannot charge less than 25 cents per ton on any shipment in cases of fifty tons under Stats. 1917, p. 450.

97. State Assayer and Inspector's Fees—"Day."

As used in section 8 of the Act creating the office of State Assayer and Inspector (Stats. 1917, p. 450) the word "day" means the ordinary working day and not twenty-four hours.

65. State Assayer and Inspector—Deputy State Assayer and Inspector.

Under the provisions of the law creating the office of State Assayer and Inspector (Stats. 1917, p. 449) it is contemplated that all expenses in connection with such office except deputy hire should be paid from the appropriation made in section 11 of the Act, and that such deputy hire should be paid from the State Assayer and Inspector fund.

The State Assayer and Inspector can hire no deputy or incur any expenses until there is money in such fund.

The funds of the office of State Assayer and Inspector cannot be handled by the Controller of the University, as the Act itself makes direct provision for the handling of such funds by the State Treasurer.

State Board of Education, 157.

45. State Board of Health—Quarantine—Contagious Diseases—Disinfection.

Under rule 5 of the rules and regulations of the State Board of Health it is the duty of the attending physician to attend to disinfection after quarantine.

169. State Board of Stock Commissioners—Rewards.

The State Board of Stock Commissioners has no authority to offer reward for the arrest and conviction of persons feloniously branding or stealing any stock.

Section 3 of the Act creating the State Board of Stock Commissioners (Stats. 1915, pp. 396–402) does not require the board to publish its orders, rules or regulations in one newspaper in each county, but the same must be published in the newspaper which has a general circulation in every county in the State.

The members of the board may not act by resolution signed individually without a meeting of the board.

194. State Board of Stock Commissioners—Rewards.

The State Board of Stock Commissioners has no authority to use its funds for rewards.

State Board of Vocational Education, 139.

116. State Department of Highways—County Fund—State Fund.

No part of the county tax for highway purposes levied under Stats. 1917, p. 313, can be paid into the State Treasury for the State Highway Fund, nor can a portion thereof be used to reimburse any county fund from which the county has authorized an expenditure for state highway purposes.

State Director of Vocational Education, 139.

State Employees, 84.

State Engineer, 5, 43, 44, 67.

State Fish and Game Warden, 98.

36. State Fish and Game Warden—County Fish and Game Wardens—Salary and Expenses Of.

The moneys remaining in the Fish and Game Fund of the various counties should be used for the payment of the County Fish and Game Wardens.

State Fund, 116.

State Highway, 38.

161. State Highway Department—Acquisition of Right of Way—Condemnation Proceedings—District Attorneys.

Counties through which the state highway routes pass may authorize expenditures of moneys in excess of amounts of the state highway fund provided for in section 10 of the "Act to provide a general highway law for the State of Nevada." (Stats. 1917, p. 309.)

The County Commissioners may make such expenditures for the acquisition of rights of way for such portion of the state highway as lies within their respective counties.

District Attorneys have no authority to institute condemnation proceedings to acquire rights of way in the name of the State without authority from the office of Attorney-General, but such authority will readily be granted to any District Attorney.

172. State Highway Department—Highway Engineer—Maintenance.

An engineer in charge of a survey party is not entitled to expenses while temporarily in Carson City.

182. State Highway Department—State Highway Law—Convict Labor.

The Department of Highways is authorized to employ convicts in the construction of roads, even though the cost of construction shall exceed $2,000 in amount.

State Highway Fund, 150.

State Highway Law, 182.

235. **State Labor Commissioner—Appropriation.**

The unusued portion of the appropriation made by the Legislature of 1917, for the salary of the Labor Commissioner and support of the Labor Commission, may lawfully be used for the support of the Commission.

181. **State Labor Commissioner—District Attorney—Attorney-General.**

The State Labor Commissioner is charged with the duty of enforcing labor laws relative to hours of employment in accordance with the hours of service for women. Upon the discovery of violation thereof the facts in connection therewith should be presented by the Labor Commissioner to the District Attorney of the county or to the Attorney-General, and thereupon it becomes the duty of either or both such officers to prosecute such violation.

92. **State Library—State Library Fund—American Library Association.**

No money can legally be drawn from the State Library Fund as this State's proportion of the sum proposed to be raised to finance the War Service of the American Liberty Association to provide books for the soldiers in the various camps and training stations.

State Library Fund, 92.

State Licenses, 40, 69.

State Liquor Licenses, 6, 79.

State Moneys, 117.

84. **State Officers—State Employees—Vacation.**

Section 4109, Rev. Laws, limits the leave of absence, or vacation, with full pay, to fifteen days in each calendar year.

An employee who defers taking his regular vacation in any given year cannot legally extend such vacation by fifteen days in the subsequent year.

State Orphans' Home, 144.

160. **State Quarantine Officer—Public Health—Glanders—Horses.**

Horses which upon the test appear to be infected with glanders may be destroyed under the provisions of section 8, chapter 280, Stats. 1913, p. 459.

140. **State Railroad Commission—Public Service Commission—Fees.**

The State Railroad Commission and Public Service Commission cannot increase the appropriations made for the support of the said Commissions by adding thereto the amount in money received by the Treasurer in payment for transcripts of proceedings.

State Quarantine Officers, 3.

Statement of Expenses, 185, 222.

93. **State Superintendent of Public Instruction—Vocational Education.**

The Superintendent of Public Instruction may lawfully use a portion of the appropriation from the vocational educational fund provided by Stats. 1917, p. 398, for the purpose of defraying the expenses of a trip to Washington for conference with the federal authorities.

117. **State Treasurer—State Moneys.**

Under no circumstances can the State pay the cost of transferring money from the State Treasurer's office to the county treasury.

Stationary Engineers, 87.

77. Stationary Engineers—Licenses.

Although the provisions of section 39 in regard to licenses of stationary engineers is in the alternative, it is the intention of the Legislature that if his knowledge and experience is such as to qualify him to operate a particular kind of hoist upon which he is to be engaged, he may procure the necessary license irrespective of whether or not he has actually had the one year's experience.

Stenographer, 238.

Storage of Liquors, 245.

Surety Bonds at Public Expense, 47.

Taxation, 88, 89, 90, 118, 123, 133, 134, 145, 147, 154, 155, 163, 167.

Teachers' Contracts, 73.

Term of Office, 237.

Time, 224.

Time and Place of Meeting of Presidential Electors, 1.

Towns, 113, 230.

151. Trademarks, Imitation of—Unfair Competition.

It is illegal for any one to imitate the emblem used by another party in the same line of business, whether such emblem has been recorded or not.

Transfers, 199, 217.

114. Transportation—War Tax—Exemption.

State employees are entitled to exemption imposed on transportation by the war tax upon making proper certificate therefor.

Unapproved and uncertified lands, 163.

Undertakers, 15.

Unfair Competition, 151.

Union Schools, 109.

University of Nevada, 58.

96. University of Nevada—Emeritus Professor.

The provisions of chapter 204, Stats. 1915, p. 314, are purely personal and cease with the death of the beneficiary. Such statute, however, would apply to any professor of the University hereafter possessing the qualifications expressed therein.

Vacancies, 2, 110, 229.

Vacancy in School Trustees, 10, 11.

Vacation, 84.

Vacations, 18.

Veterans, 123.

Veto Power, 152.

Vital Statistics Law, 15.

Vocational Education, 93.

153. Vocational Educational Fund—Appropriations, Lapsing of—Legislature.

The Legislature by use of appropriate language has power to extend an appropriation beyond December 31 of the year following the session of the Legislature making the appropriation.

The Vocational Educational Fund appropriated by section 4, Stats. 1917, p. 398, is for two years beginning July 1, 1917, and ending June 30, 1919.

Wages, 130, 131.
War Tax, 114.
Washoe County, 228.
Watchman, 188.
Water Commissioners, 13, 225.
Watercourses, 43, 44, 67, 212.
Water Law, 13.
Water Permit, 67.
Water Rights, 5.

225. **Water and Watercourses—Water Commissioners.**

Section 52 of the Water Law, providing for the appointment of Water Commissioners (Stats. 1913, p. 205) applies to adjudicated streams only.

Upon the appointment of Water Commissioner it is the duty of the County Commissioners to draw warrants from month to month for the salary and expenses of the Commissioner. At the close of the season it is the duty of the State Engineer to prepare and certify a list of the owners and areas of land served by such Water Commissioner and transmit the same to the Board of County Commissioners.

95. **Water and Watercourses—Water Commissioners—Salaries and Expenses.**

Under the provisions of section 52 of Stats. 1915, p. 382, Water Commissioners are limited to $5 per day.

The words "including all expenses" should be so construed that it is not a part of the salary.

It is doubtful whether, under the provisions of section 52, the Board of County Commissioners has any power to pay a salary to the Water Commissioners until after the stream has been adjudicated in conformity with the provisions of sections 18 to 39 of the Water Law.

212. **Water—Watercourses.**

Under section 65 of the Water Law (Stats. 1913, pp. 192–212) the provisions fixing the time of five years for the completion of construction work and ten years for the application of a beneficial use are subject to the latter provision of the section, that the State Engineer may for good cause extend the periods.

43. **Water—Watercourses—State Engineer—Extension of Time Given.**

It is within the province of the State Engineer to extend the time in which proofs may be filed.

The State Engineer can and should accept proofs at any time up to the assembling of proofs and the publication thereof provided in section 28 of the water law (Stats. 1913, p. 199).

44. **Water—Watercourses—State Engineer—Permits of State Engineer—Appropriation of Water.**

It is not the duty of the State Engineer upon the granting of a permit to compel all the parties to give the permit holder the amount of water set forth in the permit.

The State Engineer merely gives an appropriator the right to use the water.

If other parties or persons interfere with that use or with his rights under the permit his remedy is in court and there is no authority vested in the State Engineer to insure to him the amount of water granted in the permit.

The State Engineer has no authority to regulate as between a permit holder and other appropriators upon the stream until there has been adjudication under the provisions of sections 18–39 of the water law. (Stats. 1913, p. 192.)

67. Water—Watercourses—State Engineer—Water Permit.

Under the provisions of section 65 of the water law (Stats. 1913, p. 212), the State Engineer has no authority to set the time prior to which actual construction work shall begin at more than one year form the date of approval.

The extension of time further provided for is entirely within the discretion of the State Engineer.

If good cause is shown therefor, the State Engineer may extend the time of such period as he wishes.

13. Water—Water Law—Water Commissioners—Claims Against County.

Sections 52 to 58 of the state water law provides a system of police regulation and distribution of the waters.

These sections do not go into effect until after there has been a determination of the State Engineer or court under the provisions of sections 18 to 59.

The claim of a Water Commissioner for services and expenses is not a proper claim against a county where there has been no adjudication or determination of a stream under the provisions of section 18 to 39 of the state water law.

41. Weights and Measures—Bread.

Under the provisions of section 4803, Rev. Laws, a baker is privileged to make loaves of bread of any weight he desires, but if such loaf weighs more or less than a pound, exact weight thereof must be labeled thereon, in plain intelligible English words and figures.

Widows, 74.

Widow's Exemption, 103, 155.

Wines, 259.

Withdrawal of Candidates, 229.

Witnesses, 27.

Women, 202.

54. Women's Eight-Hour Law—Eight-Hour Law for Women.

It is the manifest purpose of the eight-hour law for women (Stats. 1917, p. 16) that women should labor but that specified time. They are not allowed to receive pay for overtime, and if the employer's business requires extra work, in order to comply with such law it will be necessary for him to hire extra employees.

Words and Phrases, 6.

All figures refer to opinion numbers.


TYPOGRAPHICAL
UNION
LABEL
WASHOE