STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1919=1920

LEONARD B. FOWLER, Attorney-General

CARSON CITY, NEVADA

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

1921

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TYPOGRAPHICAL
UNION
LABEL
WASHOE

LETTER OF TRANSMITTAL

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 3, 1921.

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 1919 and 1920.

Very respectfully, L. B. FOWLER,
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

L. B. Fowler	Attorney-General
Robert Richards	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. Public Schools—County High-School Board—Term of Office—Vacancy—Appointment.

CARSON CITY, January 9, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

SIR: Referring to your inquiries under date of the 7th instant, as to whether or not a vacancy exists on a County High-School Board involving the questions:

> First—Where the present member of the board was appointed to fill an unexpired term, and
>
> Second—Where the present member was elected for a term of four years—you are advised as follows, namely:

The School Code of 1917 as amended, compiled and issued by the Superintendent of Public Instruction, in section 178, at page 63, provides:

> If, at any time, a vacancy shall occur on said board, it shall be the duty of the Superintendent of Public Instruction to appoint a member for the unexpired term.

There is no other provision in the code referring to vacancies on County High-School Boards and, therefore, the general provisions of law controlling vacancies must obtain.

Section 2799 of Revised Laws of 1912 enumerates eight instances how vacancies may occur in office, but among them the instances propounded by you are not given.

Section 178, supra, further provides:

> 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 case of the People v. Osborne, 4 Pac. 1074, has construed such language, as follows:

> What is the meaning of the clause, "and the appointee shall hold only for the unexpired term," etc.? Counsel for the relator say this is a limitation imposed upon incumbents appointed to fill vacancies, restricting them to the unexpired terms simply, thus denying to this class of incumbents the constitutional extensions vested in original appointees by the words, "and until their successors shall be elected and qualified." Counsel for defendant in error say this construction is unwarranted, and argue that Osborne, upon his appointment and qualification, became entitled to hold the office in the same manner and to the same extent of term that his predecessor might have held it, including the conditional extension mentioned. In our judgment, the latter view is the correct one.

Accordingly, you are advised that where the present member of the Board was appointed to fill an unexpired term, or where the present member was elected for a term of four years, no vacancy exists, and the incumbent in either case is entitled to "hold office until his successor is elected and qualified."

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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2. Public Schools—School Intermission—Epidemic—Deduction of Salary.

CARSON CITY, January 14, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

SIR: We have your letter of this date, requesting an opinion as to the meaning of section 104, page 39, of the School Code of 1917, amended, as the same appertains to the condition arising from the influenza epidemic.

You propound the inquiry, namely:

> If school has been convened at the end of * * * thirty-day intermission period for any length of time, and subsequently has been closed again by proper authority, would the salaries have to be paid in full for the thirty-day period following such reopening and closing again?

We have to advise you in the affirmative; but, as the condition mentioned is of general interest and importance, we submit to you the reasons controlling our opinion. The section under consideration reads:

> 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 under-

stood to mean teachers, principals, and superintendents of the elementary and secondary schools of this state..

Where, on account of sickness or an epidemic, several periods of closing, not exceeding thirty days are ordered, it might be said that, in construing this section to the end that the salaries should be paid, Boards of School Trustees may have the power to evade the law; but it is a rule of interpretation of statutes that officials in exercising their functions are presumed to fulfil their legal duties, and, therefore, it is not to be assumed that in reconvening the schools and then closing them on account of sickness or epidemic, after even a short period, Boards of School Trustees would evade the statute governing them, but rather, should it be assumed that on reconvening the schools, they will continue them open, if the attendance, information from the teachers, and their general observations impel the conclusion that the epidemic has subsided to such extent that public health will not be endangered, and if their conclusion is otherwise, in closing the schools again they have acted as provided by law.

The school system is on a solid basis; and the construction of the law appertaining thereto should not be such as would impair its organization or retard its progress; hence it is apparent if teachers under contract, as they are, must hold themselves in readiness to resume their classes, after an enforced idleness, by reason of an epidemic through which the State is passing, they will, as should be expected of them, seek new fields of endeavor to earn a livelihood, thus disorganizing the teaching force of the State and impeding the consummation of the law—namely, the due education of the child. Any other interpretation of this section could hardly be commended for public good, and, as it would be an unjustice to the teachers of our schools, who have devoted their lives to education, it should be avoided. It is elementary that, in the interpretation of statutes, that interpretation should obtain which is reasonable, fair, and just, and any interpretation which is absurd, or which would not lead to the results contemplated, should not be followed.

If a case should arise where a Board of School Trustees would resort to a subterfuge to evade the statute, the judicial power of the State is ample to protect the interests of the people.

Accordingly, we are of the opinion that when on account of sickness or epidemic, several periods of closing of the schools, not exceeding thirty days, are ordered, and the schools are reconvened for any time between each period, there should be no deduction or discontinuance of the salaries of the teachers.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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3. **Public Schools — Superintendent of Public Instruction — Limitation of Authority to Apportion Funds—Title to School Equipment.**

CARSON CITY, January 16, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

SIR: In answer to your inquiry of the 15th instant we are of the opinion that under section 80, page 35, of the School Code of 1917, your

authority is exclusively limited to dividing and apportioning the moneys mentioned in said section, and that the property, books, furniture, etc., must remain where the title thereto is now vested, since the law is silent in regard to a division or apportionment of the same.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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4. **Public Funds—State Rabies Commission—Reversion of Biennial Appropriation.**

CARSON CITY, January 21, 1919.

DR. EDWARD RECORDS, *Secretary, State Rabies Commission, Reno, Nevada.*

DEAR SIR: Replying to yours of the 18th instant, I beg to advise that the appropriation made under and by virtue of chapter 51, Statutes of Nevada, 1917, applied only to the years 1917 and 1918; therefore, any money remaining in said fund has reverted to the general fund. The Act having specifically designated the two years mentioned, there is absolutely no way to stretch the Act so that it will apply to a subsequent period.

A bill may be introduced at any time which provides for the appropriation of money for the support of your Commission.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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5. **Notary Public—Justice of Peace—Same Person Holding Each Office.**

CARSON CITY, January 23, 1919.

HARRY G. PRAY, ESQ., *Attorney at Law, Reno, Nevada.*

DEAR SIR: Replying to yours of the 22d instant, I beg to advise that there being no incompatibility in the offices of the Justices of the Peace and Notary Public, the same person may legally hold both the said offices.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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6. **Revenue—Druggists Required to Obtain License to Sell Spirituous, Malt, or Vinous Liquors.**

CARSON CITY, January 23, 1919.

MR. JOHN BARRIER, *Sheriff, Tonopah, Nevada.*

DEAR SIR: The Revenue Act of 1915 provides for the payment of a license tax by druggists of twenty-five ($25) dollars per annum for the sale by them of spirituous, malt or vinous liquors for medicinal purposes. The license must still be paid.

If there is any doubtful point on which you wish to be informed and which is not covered by this answer to your letter to the Tax Commission, please inform me and I will gladly advise you thereon.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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7. Lotteries—Slot Machines So Declared—Constitutional Law.

CARSON CITY, January 25, 1919.

To the District Attorneys of the State of Nevada:

For several years there have been in use and operation in public places in this State, divers machines and devices, commonly called "slot machines," so well known as to require no further description, which, upon being operated by the player, for a consideration of money or other token of value deposited by him, he, by lot or chance, either loses the consideration so deposited, or wins money or other tokens of value, according to the result of the operation.

So extensive have the use and operation of these machines and devices become, and so many inquiries have been made as to their legality, that it becomes my duty to render an opinion thereon.

It is provided by section 24 of article IV of the Constitution that "no lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed"; and the Legislature, in sections 6494–6501, inclusive of the Revised Laws of 1912, has passed provisions of law, whereby the constitutional prohibition aforesaid shall be maintained.

The Supreme Court has had occasion to construe these provisions of the organic and statute law in the following cases: Ex Parte Blanchard, 9 Nev. 101, and State v. Overton, 16 Nev. 136.

In the latter case, Hawley, J., speaking for the Court, among other things, says: * * *

> 'What is a lottery? Every scheme for the distribution of prizes by chance is a lottery. (Governors of the Almshouse of New York v. American Art Union, 7 N. Y. 239; Dunn v. The People, 40 Ill. 467; State v. Shorts, 32 N. J. L. 401; Randle v. State, 42 Tex. 585; Chavannah v. State, 49 Ala. 396; Commonwealth v. Manderfield, 8 Phil. 459; United States v. Olney, 1 Abb. U. S. C. C. 279.)
>
> A lottery is a game of hazard in which small sums are ventured for the chance of obtaining greater. Bell v. State, 5 Sneed, 509. "A contrivance for the distribution of prizes by chance; a reliance upon the result of hazard; a decision of the values of the adventurer's investment of the favors of fortune" is a lottery. Wooden v. Shotwell, 4 Zab. 795. "Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public what the party who pays the money is to have for it, or whether he is to have anything, it is a lottery." State v. Clarke, 33 N. H. 335; Hull v. Ruggles, 56 N. Y. 427. * * *
>
> It makes no difference what name is given to the scheme.
>
> A rose by any other name would smell as sweet;
> A thorn by any other name would prick as deep.
>
> When the element of chance enters into the distribution of prizes it is a lottery, without reference to the name by which it is called. "He may choose to call his business a gift sale," said the Court in Dunn v. People, supra, "but it is none the less a lottery, and we cannot permit him to evade the penalties of the law by so transparent a device as a mere change of name. If it differs from ordinary lotteries, the difference lies chiefly

in the fact that it is more artfully contrived to impose upon the ignorant and credulous, and is, therefore, more thoroughly dishonest and injurious to society."

In the case of Barry v. State, S. W. 571, the appellate court held, in construing the antilottery section contained in the Constitution of Texas, that the Legislature has no authority to license lotteries, and any attempt on its part to do so would be nugatory.

The following are also important cases on the subject:

Meyer v. State, 37 S. E. 96.
Loiseau v. State, 22 South. 138.
Palk v. Jasper Co., 22 South. 495.
Johnson v. State, 34 South. 1018.
New Orleans v. Collins, 27 South. 532.

The courts in various cases have decided that the operation of a slot machine is a lottery, so that question is not a subject of debate. From a legal standpoint it is positive that such a machine is a lottery. In the face of our constitutional provision on the subject, it is likewise positive that the Legislature cannot pass an Act which will legalize slot machines. We, as law advisers, cannot construe the law so as to permit them, and peace officers in the discharge of their duties must recognize the unlawfulness of their existence.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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8. **Lotteries—Punch Boards So Declared.**

CARSON CITY, January 29, 1919.

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

DEAR SIR: Replying to yours of the 26th instant, I beg to advise that a punch board, or chance board, is a lottery, and is in violation of the antilottery law of this State. The point has been ruled upon in 67 South. 35, and 74 South. 763. There is no escape from the conclusion that such a game violates the law of this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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9. **Prohibition Law—Attorney-General Without Authority to Issue Permits for Shipment of Liquor Thereunder.**

CARSON CITY, January 30, 1919.

The Cann Drug Company, Reno, Nevada.

GENTLEMEN: This office is without any power to issue permits in regard to liquor shipments. If this office should issue any such permit, it would be an absolute nullity.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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10. Prohibition Law—United States Pharmacopœia and National Formulary—Brandy and Whisky Not Contained Therein, and Are Prohibited.

CARSON CITY, January 30, 1919.

HON. L. D. SUMMERFIELD, *District Attorney, Reno, Nevada.*

DEAR SIR: Immediately following my recent letter addressed to you giving an opinion as to the legality of the sale of intoxicating liquors by druggists, I orally informed you that I had been informed by District Attorney Thos. E. Powell of Humboldt County that the latest edition of the Pharmacopœia and National Formulary have expunged brandy and whisky therefrom.

The ruling of this office when made during the administration of my immediate predecessor, and which ruling was sustained by me, was based upon the books and information that we had at hand.

In the Pharmacopœia furnished this office certain intoxicating liquors are listed which do not appear in the revised edition. At that time we knew nothing of a more recent edition of said book, and we therefore assumed that the information contained in the one that we used applied to the existing situation. An examination of the latest edition, however, establishes as accurate the information given this office by District Attorney Powell. The ruling of this office is therefore modified and changed to comply with the revised edition of the Pharmacopœia. This office holds that pure grain alcohol, wine for sacramental purposes, and intoxicating drinks or drugs listed in the Pharmacopœia and National Formulary may be sold by druggists in the manner provided for in the Prohibition Act. All other intoxicating liquors are barred from sale.

The Pharmacopœia lists in the neighborhood of 5,000 or 6,000 preparations, and it will become a question of fact rather than of law as to whether or not preparations sold by druggists are contained in the Pharmacopœia or are otherwise allowed by law.

No druggist has been misled by the ruling of this office if he has followed the latest editions of the Pharmacopœia and National Formulary.

Druggists are more thoroughly advised as to the contents of the works mentioned than are lawyers. In fact, the testimony of a druggist or chemist is necessary in order to prove whether or not a drug preparation is contained in either of said works.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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11. Prohibition Law—United States Pharmacopœia and National Formulary—Brandy and Whisky Not Contained Therein, and Are Prohibited.

CARSON CITY, January 30, 1919.

HON. JOSEPH C. PIERCY, *Tonopah, Nevada.*

DEAR SIR: This office, during the administration of Attorney-General Thatcher, made a ruling that whisky and brandy can be legally sold by druggists under the Nevada Prohibition Act. This ruling was based upon an inspection of the Pharmacopœia in the possession of Carson City druggists and after discussing the subject with them.

Not knowing of any revision which eliminates whisky and brandy, I sustained this ruling. An inspection, however, of the latest edition of the Pharmacopœia sustains the statement that whisky and brandy has been expunged therefrom. The ruling of this office has, therefore, been changed to conform to the newly discovered edition.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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12. Public Funds—Security Required Therefor—United States Certificates of Indebtedness Are Bonds.

CARSON CITY, January 31, 1919.

His Excellency, EMMET D. BOYLE, *Governor of Nevada.*

SIR: Replying to yours of even date, wherein you inquire as to whether or not interim receipts, being United States of America's certificates of indebtedness, are bonds within the meaning of the provisions of the Act of the Legislature authorizing the deposit of state moneys in banks and requiring as security therefor bonds of the United States, or of this State, or any county, municipality, or school district within this State, I beg to advise that such certificates are bonds within the intent and purpose of said Act.

The Government of the United States stands behind the certificates mentioned and this being the highest class of security, an opinion that would construe the law as barring the acceptance of such certificates would be manifestly unreasonable.

I am therefore of the opinion that such certificates may be safely classed as United States bonds.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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13. Prohibition Law—Patent Medicines of Alcoholic Content May Only Be Kept by Druggists.

CARSON CITY, February 1, 1919.

MR. B. R. RUSSELL, *Sheridan, Nevada.*

DEAR SIR: Replying to your recent letter in regard to handling and selling patent medicine of alcoholic contents, I beg to advise that the Nevada Prohibition Act appears to prohibit the keeping and sale of such preparations by persons other than druggists. I am therefore constrained to advise you that the only way that you can be safe in the matter will be to decline to keep and sell such preparations.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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14. Prohibition Law—District Attorney's Interpretation—Patent Medicines of Alcoholic Contents May Only Be Kept by Druggists.

CARSON CITY, February 1, 1919.

GEO. RUSSELL CO., *Elko, Nevada.*

GENTLEMEN: The law seems to confine the handling and sale of alcoholic preparations to druggists. Such being true, this office is not in position to declare that the District Attorney of your county has

made a ruling that is contrary to law. It seems impossible to construe the Act in a way different from the construction given it by your District Attorney.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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15. Prohibition Law—Sacramental Wine Shipment Only to Druggists.

CARSON CITY, February 5, 1919.

MR. JNO. A. LENNON, *San Francisco, Calif.*

DEAR SIR: Your letter addressed to Governor Boyle has been delivered to me for reply.

I beg to advise you that, under the law of this State, you cannot legally make a shipment of wine to St. Mary's Hospital, even though it is to be used for sacramental purposes. Such wine must be purchased from a druggist. Any shipment by you must, therefore, be made to a licensed druggist of this State, and St. Mary's Hospital may obtain it therefrom by filing an affidavit required by law. In shipping to a druggist, label it "Wine for Sacramental Purposes."

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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16. Public Schools—School Trustees—Vacancy—Fill by Deputy Superintendent of Public Instruction.

CARSON CITY, February 6, 1919.

HON. GEO. E. MCCRACKEN, *Deputy Superintendent Public Instruction.*

DEAR SIR: When a vacancy occurs in any Board of School Trustees and there is no election to fill such vacancy, as provided for in section 63 of an Act concerning public schools and repealing certain Acts relating thereto, approved March 20, 1911, the vacancy must be filled by the Deputy Superintendent of Public Instruction making an appointment, the appointee to hold office for the unexpired term.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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17. Prohibition Law — Interstate Liquor Shipment — Connecting Common Carrier Necessary.

CARSON CITY, February 6, 1919.

MR. H. E. HILLYGUS, *Mason, Nevada.*

DEAR SIR: The opinions of this office are rendered to state officers and District Attorneys, and opinions rendered to other persons are somewhat extraneous to the duties connected with the Attorney-General.

I am, however, willing to say that I do not believe that there can be a legal shipment of intoxicating liquors from San Francisco, Calif., to Woodfords, Calif., via Minden. The continuity of the transportation will be broken at Minden. There will be no common carrier to take the shipment from the Virginia and Truckee Railroad and stand responsible for its delivery to Woodfords. If such shipments were construed to be within the law, then an opening for a subterfuge would be created, and

shipments made addressed to Woodfords could in reality be delivered to different points in this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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18. Prohibition Law—Flavoring Extract and Other Alcoholic Preparations Confined to Druggists.

CARSON CITY, February 6, 1919.

HON. S. M. SUMMERFIELD, *State Senator.*

DEAR SIR: The Nevada Prohibition Act limits the sale of preparations containing a considerable percentage of alcohol to druggists; therefore, flavoring extracts, which always contain a high percentage of alcohol, cannot be sold by other merchants.

The people of this State in adopting the Prohibition Act were probably unaware of the fact that they were voting to make this restriction. I am, however, unable to find any opening that will permit of a different construction of the Act as to the question propounded by you, other than as herein given.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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19. Legislature—State Senate—Number of Votes to Pass Bill or Resolution.

CARSON CITY, February 10, 1919.

HON. MAURICE J. SULLIVAN, *Lieutenant-Governor.*

SIR: The question propounded by you was considered by the Supreme Court of West Virginia in the case of Osburn v. Staley, 5 W. Va. 85, 13 Am. Rep. 640.

The following language was used by Justice Maxwell, who rendered the opinion:

> The senate, when full, consists of twenty-two members, and it is conceded that at the commencement of the session of the legislature, at which the bill in question was passed, this branch was full. The pleadings in the cause are indefinite and uncertain, but it sufficiently appears, from the pleadings and the admissions of the parties, that at the time the vote was taken the journal will show that one member of the senate had resigned his seat, and that only eleven senators voted aye on the passage of the bill. The point of difference between the counsel is the construction to be given to the provision of the constitution: "No bill shall be passed by either branch without an affirmative vote of a majority of the members elected thereto." Counsel for appellees contend that "members elected" means persons elected as members at the last preceding elections, whether members at the time the vote is taken or not; while the counsel for the appellants contend that "members elected" means members who would be entitled to vote at the time the vote is taken on the passage of the bill, if present. It seems that, when the vote was taken on the passage of the bill, the president of the senate ruled that eleven yeas were sufficient to pass it. An appeal was taken from this

decision of the chair to the senate, and the chair sustained. The true theory of representative government is that a majority of the representatives of all the people to be bound by any law, should assent to it, and it cannot be doubted but that the people, when they put this provision in the constitution, intended to secure themselves against the passage of any law to which a majority of all the people should not consent. The representatives of the people should be governed by the spirit of the constitution, and in doubtful cases should decline the exercise of power. For these reasons, with all respect, it was the duty of the senate to have declared the bill not passed. But the senate having declared the bill passed, this court is called upon to decide whether or not it can stand as a valid law. While the legislature is governed by the spirit of the constitution, the courts cannot declare an act of the legislature invalid unless its invalidity is placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the act be sustained. The courts must be guided by the express words of the constitution, and not by its supposed spirit. * * * In the light of these well-established rules, what is the meaning which should be given by the courts to the words "members elected"? If they can be held to mean persons who are members at the time the vote is taken, then the bill was passed by a sufficient number of votes. The words appear to mean that a person must be a "member," as well as "elected"; and if a senator resigns his seat, and his resignation is accepted, is he still a "member"? It is certainly not clear beyond a reasonable doubt, that the words "members elected" can only refer to persons elected at the last preceding elections, although they may have ceased to be members at the time the vote is taken on the passage of the bill; and a reasonable doubt as to this is sufficient to sustain the validity of the act in question. And, again, according to another rule of construction stated, that whenever an act of the legislature can be so construed as to avoid conflict with the constitution, and give it force of law, such construction will be adopted by the courts. The construction that "members elected" refers to those who were members at the time the vote was taken, should be adopted to sustain the validity of the act.

The intent and purpose of section 18 of article 4 of the Constitution of the State of Nevada is to prevent any bill or joint resolution being passed unless it receives a majority vote based upon the full membership provided for by law.

The present membership of our State Senate, as fixed by law, being sixteen, it is my opinion that nine votes in the affirmative are required to pass a bill or joint resolution. If a bill or resolution receiving eight votes should be declared passed, the courts of this State might not attempt to declare such action as unconstitutional or illegal, but, nevertheless, it would be clearly in violation of the real meaning of our constitutional provision on the subject.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

20. Fish and Game—Warden—Appointment of Deputies—County Commissioners May Consent or Recommend.

CARSON CITY, February 13, 1919.

MR. C. W. GROVER, *State Fish and Game Warden.*

DEAR SIR: Answering your inquiry relating to the interpretation of section 3 of an Act to provide a Board of Fish and Game Commissioners, etc., approved March 27, 1917, we have to state that this section is clear and without ambiguity, and, accordingly, the appointing power thereunder of a deputy or deputies of the different counties rests exclusively with the State Fish and Game Warden, subject, however, to the consent or recommendation of the County Commissioners. It is therefore apparent that the County Commissioners have no right to appoint a deputy or deputies in the first instance. Their rights in the premises are exhausted when they exercise their consent or recommendation as aforesaid.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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21. Highways—Highway Department—Highway Routes Determined by Legislature—Eminent-Domain Proceedings—Immediate Possession—Legislative Policy in Eminent Domain.

CARSON CITY, February 14, 1919.

Department of Highways.

DEAR SIRS: Replying to your letter, A-S-O, under date of the 13th instant, we have to advise you concerning your inquiries, in the order named by you, to wit:

1. You have not the right of determination and selection of routes, since the Act creating your department specifies the several routes for public highways. These are exclusive, and leave you no discretion, except that you adopt, between the points in routes specified, the most feasible courses.

2. If you mean by the term *full power* of condemnation of property, the right to take the necessary property without recourse to a court of competent jurisdiction in eminent-domain proceedings, you have no such power. The Act creating your department provides that you may secure rights of way by donation or agreement, and where those fail your remaining course is a proceeding in eminent domain under the general law. You therefore have the full power of condemnation of property for the purposes defined in the Act, subject to the orders and decrees of a court of competent jurisdiction, acting pursuant to the general law regulating eminent-domain proceedings.

3. You have the right of immediate possession during the pendency of the proceedings for eminent domain, subject to the orders and decrees of a court of competent jurisdiction, in eminent-domain proceedings as aforesaid.

The Legislature, to give your department the power suggested, would be required to amend the Act creating your department, and,

perhaps, the general law regulating eminent-domain proceedings. Whether or not it would give you the right of determination and selection of routes, or that it is expedient that it should do so, after it has already defined its policy in specifying the routes for the several highways, it is not for us to say; and whether or not the Legislature could specially give your department the right to exercise eminent domain for highway purposes, and leave the exercise of eminent domain for other public uses in the courts of competent jurisdiction, is a very serious question, in view of our constitutional provision relative to the passage of general and special laws. The exercise of eminent domain, however, is not necessarily a judicial function, unless the law so declares; the taking of private property for public use is an exercise of the sovereign power of the State, subject only to the constitutional provisions substantially that private property shall not be taken for public use without just compensation. Therefore, the exercising of the right of eminent domain could be, by the Legislature, reposed in the judicial power of the State, where it now reposes under general law, or delegated to any board, officer, or commission of legislative creation.

Lastly, it is the law now, and always has been, that courts in eminent-domain cases must instruct the jury substantially that in determining damages it "shall also consider benefits which accrue to the property by reason of the construction of the highway."

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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22. Prohibition Law — United States Pharmacopœia — National Formulary — National Pure Food Law—Enumerated Alcoholic Preparations May Be Sold by Licensed Druggists.

CARSON CITY, February 17, 1919.

Reno Italian and French Sausage Factory, Reno, Nevada.

GENTLEMEN: You may not conduct a drug-store in this State unless you have a duly licensed druggist therein.

The Nevada Prohibition Act permits druggists to sell the preparations enumerated in the United States Pharmacopœia and National Formulary. It also permits the sale by them of preparations which are exempted by the provision of the National Pure Food Law and the sale of which does not require the payment of United States liquor-dealer tax. They can, therefore, sell several thousand different preparations. As to what they can sell under the act, is a question of fact and not of law.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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23. Inquests—Reporter's Fees Thereon.

CARSON CITY, February 21, 1919.

HON. A. J. STEBENNE, *District Attorney, Las Vegas, Nevada.*

DEAR SIR: In the matter of the inquest of C. A. Pett, deceased, I am informed by the State Mining Inspector that Clark County has

rejected the bill presented by the reporter for services therein. This is undoubtedly a legal claim and should be paid. The situation was somewhat peculiar in that, at the first inquest, the body could not be produced. At the second inquest, however, the body was actually inspected by the jury.

Section 7549 of the Revised Laws recites:

> After inspecting the body and hearing the testimony, the jury shall render their verdict, etc.

The implication, therefore, results that according to the intent of the law the body shall be produced at the inquest.

In the case that we are now considering it is very probable that two inquests were necessary, but one thing is certain, and that is that the second inquest was absolutely legal and should be so treated by Clark County.

Section 7558 specifies the expenses and fees to be paid. I am assuming it to be a fact that the claim of the reporter is pursuant to such section, and if my assumption is correct, then it is the duty of your county to make the necessary payment.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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24. **Bonds—State Indebtedness—Constitutional Limitation Thereof.**

CARSON CITY, February 25, 1919.

MR. C. C. COTTRELL, *State Highway Engineer, Department of Highways.*

DEAR SIR: Section 3 of article 9 of the Constitution of the State of Nevada limits the amount of indebtedness that may be contracted by the State of Nevada to one (1) per cent of the assessed valuation of the property of the State. Section 7 of article 17 excepts from the provision of section 3 of article 9 of the Constitution all debts and liabilities of the Territory of Nevada lawfully incurred and assumed by the State of Nevada.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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25. **Public Schools—School Census—Indian Children Included Under Certain Conditions.**

CARSON CITY, February 25, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: Replying to your inquiry under the date of February 25, 1919, relative to the taking of school census of Indian children, we have to advise as follows:

It is provided in section 2 of an Act to amend an Act entitled "An Act concerning public schools, and repealing certain Acts relating thereto," approved March 17, 1913, Statutes of 1913, page 153, that the following classes of children shall be included in the census:

> Children residing with their parents or guardians in such district.

That the following classes of children shall be excluded from the census:

> Indian children who shall not have attended public schools at least eighty days of the twelve months preceding the date of taking the census during the last preceding year.

You are therefore advised that whether the Indian children referred to by you are citizens, sustaining tribal relation, or are not enrolled in any Indian reservation, they shall be included in the census provided they are resident children and have attended public school at least eighty days in the twelve months preceding the date of taking the census during the last preceding year.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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26. Public Contracts—Member of Legislature Party to—Public Policy.

CARSON CITY, February 26, 1919.

Department of Highways.

DEAR SIRS: In response to inquiry made, as to whether or not a member of the Legislature may lawfully enter into a contract for the construction of a highway for your department, we have to advise you that section 2827 of the Revised Laws of 1912 provides:

> It shall not be lawful for any officer of state, or member of the legislature, alderman, or member of the common council of any city in this state, or for the trustees of any city, town, or village, or for any county commissioners of any county, to become a contractor under any contract or order for supplies, or any other kind of contract authorized by or for the state, or any department thereof, or the legislature, or either branch thereof, or by or for the alderman or common council, board of trustees, or board of county commissioners of which he is a member, or to be in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized.

This section is an adoption and more definite expression of the common law by the Legislature regarding contracts between governmental departments and public officers, and fixes the policy of this State in regard to public contracts.

After no little examination of decision law on the subject, we are constrained to hold that a contract entered into by you with a member of the Legislature would be both unlawful and void as contravening the public policy of this State declared by the Legislature as aforesaid.

The decisions are very strict in the premises. In the case of Noble v. Davison, 177 Ind. 19, the Court said:

> Even in the absence of the statute, the contract would, as appellee maintains, be void, because contrary to public policy. * * * This court has ever steadfastly adhered to the rule which invalidates all agreements injurious to the public, against the public good or which have a tendency to injure the public. Contracts belonging to this class are held void, even though no injury results. The test of the validity of

such agreements is the tendency to public injury, regardless of the actual intent of the parties, and regardless of actual results. [And cases there cited.]

See, also, 9 Cyc. 473, et seq.; Ann. Cas. 1912D, 659.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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27. Publication—Notices—Newspaper Must be Printed in County.

CARSON CITY, March 5, 1919.

HON. SEYMOUR CASE, *State Engineer.*

DEAR SIR: The provision of law which provides that water publications shall be printed and published in the county where the water is appropriated bars publication in a paper that is not printed and published in the county. The fact, however, that a part of the paper is what is known in printing as "patent" does not place the paper in the category of being printed outside of the county where it is published, if the other part of the paper is actually printed within the county where publication takes place.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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28. Public Schools—Discontinuance of Kindergarten.

CARSON CITY, March 8, 1919.

MR. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction, Fallon, Nevada.*

DEAR SIR: The maintenance of a kindergarten when the attendance exceeds ten pupils is optional with the Board of Trustees. When the attendance drops below ten pupils, it is mandatory that the board discontinue such kindergarten at the close of the school year, but where the attendance exceeds ten pupils it is within the discretion of the board to deem whether or not a kindergarten should remain in existence.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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29. Prohibition Law—Traffic in Near Beers Prohibited.

CARSON CITY, March 10, 1919.

HON. R. B. HENRICHS, *Superintendent of State Police.*

DEAR SIR: Responding to your inquiry as to whether or not traffic in so-called near beers is prohibited, we have to advise you that the Supreme Court in the recent case of the State ex rel. v. The Reno Brewery Company, in its opinion, among other things, has made the following order:

> A consideration of the entire act and its scope * * * convinces us that the district court had jurisdiction to grant the injunction. The order of the District Court granting the injunction is affirmed.

The order of this court modifying the injunction is vacated and set aside, and the injunction as originally granted is continued in full force and effect.

You are advised that further traffic in so-called near beers is prohibited, and you should govern yourself accordingly.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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30. Lotteries—Slot Machines—Constitutional and Statutory Law.

CARSON CITY, March 11, 1919.

HON. H. U. CASTLE, *District Attorney, Elko, Nevada.*

DEAR SIR: This office has ruled that slot-machines where played either for money or merchandise are lotteries within the meaning of our constitutional prohibition on the subject and the statutory law which penalizes the operation of lotteries.

It is not within the power of this office, or any district attorney, or any peace officer, to permit a person to conduct such a lottery. The law is plain and the law must govern.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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31. United States Treaties With Foreign Governments—State Statutes Conflicting Therewith Invalid.

CARSON CITY, March 13, 1919.

To His Excellency, EMMET D. BOYLE, *Governor of Nevada.*

SIR: In regard to your inquiry as to whether or not Senate Bill No. 22 will conflict with any treaty between the United States and some foreign power, I beg to advise that the law on this subject is given in volume 1, Ruling Case Law, page 807, in the following language.

> The provisions in regard to the transfer, devise, or inheritance of property are recognized as fitting subjects of negotiation and regulation by the treaty-making power of the United States, and a treaty will control or suspend the statutes of the individual States whenever it differs from them. Hence, if the citizen or subject of a foreign government is disqualified under the laws of a State from taking, holding, or transferring real property, such disqualification will be removed if a treaty between the United States and such foreign government confers the right to take, hold, or transfer real property. But the treaty which will suspend or override the statute of a State must be a treaty between the United States and the government of the particular country of which the alien claiming to be relieved of the disability imposed by the State law is a citizen or subject. A treaty with some other country, of which such alien is not a citizen or subject, cannot have the effect of removing the disability complained of in the absence of the most favored nation clause in the treaty with his country.

> When such a treaty, made by the proper federal authorities, has been ratified, it becomes the law of the land, and the courts have no power to question it, or in any manner to look into the powers or rights of the nation or tribe with which it is made, the action of the treaty-making power being exclusive upon such inquiry.

In view of the law herein given, Senate Bill No. 22, if it is signed by you, will be perfectly valid in so far as the treaties of the United States are concerned, when provisions are not incorporated in the particular treaties with the country of the alien and the United States giving special protection and benefits to such alien. It will be invalid in the case of any alien who is specially protected by treaty.

If the bill becomes a law, the objection will perhaps be raised that it is in conflict with section 16 of article 1 of the Constitution of the State of Nevada, which reads as follows:

> Foreigners who are, or may hereafter become, bona-fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

The law of this State relating to state lands provides that an applicant who purchases such lands must be a citizen of the United States, or a person who has declared his intentions to become such. Since this provision was placed in our State Land Act, there has been no adjudication of its validity by our Supreme Court.

In a doubtful case this office will treat an Act passed by the Legislature as valid and constitutional until it has been declared otherwise by the courts.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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32. Judicial Procedure—Jury Duty—Married Women May Claim Exemption Therefrom.

CARSON CITY, March 19, 1919.

MRS. E. F. HOWARD, *Dayton, Nevada.*

DEAR MADAM: A married woman, under the law, has the privilege of claiming exemption from serving on juries. It rests entirely with her as to whether or not she will serve in that capacity.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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33. State Engineer — Perpetuation of Testimony — State Engineer Without Power to Take.

CARSON CITY, March 19, 1919.

HON. SEYMOUR CASE, *State Engineer.*

DEAR SIR: In regard to the letter written to you by Attorney W. M. Kearney, in which he suggests that a deposition be taken for the purpose of perpetuating testimony in a water matter, I beg to advise that there is no provision of law that can be construed to make such a deposition valid, and if taken it will be devoid of legal effect.

There is no pending proceeding in your department and there is no action in any court to which such deposition would have application, I therefore rule that it would be absolutely valueless.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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34. Elections — Woman Suffrage — Constitutional Amendment Valid — Enrollment in Legislative Journals Unnecessary—Laches.

CARSON CITY, March 19, 1919.

MRS. F. G. PATRICK, *Reno, Nevada.*

DEAR MADAM: In regard to whether or not the Woman Suffrage amendment to the Constitution of the State of Nevada is in danger of being nullified by the Supreme Court of this State, I beg to advise that I do not believe that there is any such danger.

It is true that in the case of the State v. Tufly, 19 Nev. 391, the Supreme Court of this State ruled that it is an absolute requirement of our Constitution that an amendment thereto be entered on the journals of both houses of the Legislature—the word "entered" to be construed as meaning that it must be spread in full. This case was decided in 1886 and was evidently decided without any vigorous argument or contest on the part of the attorneys connected therewith.

There are extensive authorities that hold that words of identification contained in the journals as a constitutional amendment are sufficient, and it is my belief that such will be the position taken by our court as to the Woman Suffrage amendment, if it becomes the subject of litigation.

A further ground for upholding this amendment will be that of laches. The women of this State have voted at two general state elections, at various primary, city, school, and other elections, and the court can wisely hold that it is now too late to attack the validity of the constitutional amendment mentioned.

I do not think that the Supreme Court of Nevada will render a decision that will emasculate our Constitution as to many important subjects.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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35. Public Funds—Bond Issue—Loan to Settlers—Act Providing for, Valid—Loans Must Be Made to Industrial Settlers.

CARSON CITY, March 28, 1919.

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

SIR: In regard to your inquiry as to whether or not Assembly Bill No. 183, which provides for a bond issue by the county of Churchill for the purpose of raising money to be used in making loans to settlers for reclamation purposes, contravenes the Constitution of this State, I beg to advise that, in my opinion, it does not.

Section 9 of article 8 of the Constitution reads as follows:

> The state shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company,

association, or corporation, except corporations formed for educational and charitable purposes.

Section 10 of article 8 of the Constitution reads as follows:

> No county, city, town, or other municipal corporation shall become a stockholder in any joint-stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

Article 8 relates entirely to municipal and other corporations. The State cannot donate or loan money or its credit to any company, association, or corporation other than as is specified in section 9.

A county, city, or town or other municipal corporation cannot loan its credit to any company, corporation, or association except those allowed in section 10.

Any money that is raised pursuant to the Churchill County bond issue, as provided for in the Act mentioned, cannot be loaned to companies, corporations, or associations, but can be loaned to individual persons.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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36. Architect, State — Act Creating Liberally Construed — Payment of All Expenses Thereunder.

CARSON CITY, March 29, 1919.

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

SIR: The Act creating the office of State Architect, passed by the Legislature, should be broadly and liberally construed for the purpose of making it effective and valuable.

The presumption is that the Legislature deemed it for the best interest of the State to create this office, so that the State would have good service and get the best results.

It is a fact, perfectly clear and evident, that the office created will be of no value to the State unless its occupant is provided with rooms and the necessary clerks and assistants in carrying into execution the real intent and purpose of the Act. The Legislature well knew that a competent architect would not attempt to perform the duties of State Architect unless provided with rooms and assistants in connection with his office.

The expenses incident to the office of State Architect should be paid in the same manner that the salary of such official is paid—that is, should be paid pro rata out of the appropriations or bond issues made for the erection of the various state buildings.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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37. Prohibition Law—Interpretation Thereof—Superintendent State Police—Questions Thereunder Answered.

CARSON CITY, March 29, 1919.

HON. R. B. HENRICHS, *Superintendent of State Police.*

DEAR SIR: The various questions propounded by you are given herein, with my answers thereto.

1. May a man keep whisky or like strong liquors in a room at a hotel where he lives?

Answer—A man, keeping a room in a hotel and having no other residence, is in exactly the same position as a man having an independent home. I, therefore, rule that such a man may keep in his room intoxicating liquors, if such have been legally obtained by him.

2. What can be done in case a person is strongly suspected, on reasonable grounds, of carrying whisky or strong liquors from outside States to Nevada?

Answer—I believe that a search warrant is required in such a case and that you should not act without such a warrant.

3. What can be done in the case of a man who is carrying intoxicating liquors from one place to another place within the State?

Answer—A search warrant is likewise required in such a case. If a man is removing intoxicating liquors from his regular place of residence to a newly selected residence and he transports intoxicating liquors, legally obtained, and which he is keeping only for personal use, I believe that he is not violating the law. It is very likely, however, that the Supreme Court of this State will adopt the contrary position.

4. What can be done in the case of a person transporting liquor in this State for other persons, with or without hire?

Answer—In the absence of absolute information or knowledge on the part of the officer that liquor is being transported by a person for the use of others, I believe that a search warrant is required.

5. How far can an officer go if he believes a person is keeping a large amount of whisky or like liquor in his possession?

Answer—In such a case, a search warrant is required. There is no limit to the quantity of liquor which a man may have in his own home, for his own use, if such liquor was legally obtained. If a man has liquor at a place other than his home, it is a strong circumstance indicative of violation of the prohibition law.

6. If a druggist is selling liquor or alcohol without prescriptions, what action can be taken?

Answer—A complaint should be forthwith filed, charging such a druggist with the violation of the prohibition law.

One of the most precious rights guaranteed to the people of this country is to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches. The Constitution of this State (sec. 18, art. 1) protects this right in the following language:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

Certain provisions of our statutory law are as follows:

Grounds for issuance of search warrants.

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which

it is concealed, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it. *Sec. 7416, Revised Laws.*

No search warrant shall be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and place to be searched. *Sec. 7417, Revised Laws.*

The magistrate must before issuing the warrant examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. *Sec. 7418, Revised Laws.*

The depositions must set forth the facts tending to establish the ground of the application, or probable cause for believing that they exist. *Sec. 7419, Revised Laws.*

If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate. *Sec. 7420, Revised Laws.*

I have cited our constitutional provision and the statutory law in order to emphasize the importance of the subject and the care and caution that is required in searches and seizures.

We live in an age of rapid transition, and it may be that the courts will undergo great changes and in many respects alter, change, and modify the long-established theories in regard to searches and seizures.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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38. Fish and Game—Catfish Not Protected.

CARSON CITY, March 29, 1919.

MR. O. W. TENNANT, *State Fish Commissioner.*

DEAR SIR: In regard to your inquiry as to whether or not it is legal to fish for catfish in Washoe Lake, I beg to advise that such is not a violation of the Fish and Game Act of 1917, for the reason that catfish in said lake are not protected by the Act.

The mere fact that protected fish are in the same body of water with unprotected fish does not preclude persons from fishing for the

latter. A person who is fishing in such a body of water for unprotected fish should immediately return to the water any protected fish that he may catch while legally engaged in fishing for unprotected fish.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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39. Sheepherders—Desertion of Flock—Misdemeanor—Validity of Act.

CARSON CITY, March 31, 1919.

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

SIR: In regard to the constitutionality of Assembly Bill No. 242, passed at the recent session of our Legislature, which makes it a misdemeanor for a sheepherder to desert a herd or flock of sheep, I beg to advise that, if it is signed by you, it will very likely be declared a valid enactment by the Supreme Court of this State.

It is a fundamental principle that criminal statutes should cover a public wrong rather than a mere private wrong. In recent years, however, the courts have recognized great latitude in the Legislature on this subject. Various criminal statutes have been upheld by the courts which make criminal the violation of a contract.

The Act under consideration must be considered on its merits rather than from the standpoint of its validity. If there is a public necessity which requires this special protection to be given to sheep owners, and which is not given to other owners of property, then there is a reason why the Act should become a law. If, however, there is no public necessity which demands such discrimination, then there can be no argument in favor of the Act.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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40. Architect, State—Act Creating—Applies to University of Nevada.

CARSON CITY, March 31, 1919.

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

SIR: In reply to your inquiry as to whether or not Assembly Bill No. 287, which provides for a State Architect, will apply to any buildings to be constructed pursuant to an Act or Acts of the Legislature passed at the 1919 session, providing for the erection of certain buildings in connection with the University of Nevada, I beg to advise that said Assembly Bill No. 287 will apply to the university buildings in the same way that it applies to the other state buildings provided for in Acts enacted at the late session of the Legislature.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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41. Corporations—Fire Insurance Companies—Act and Amendments Regulating Same—Declared Constitutional.

CARSON CITY, April 1, 1919.

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

SIR: The Act passed at the recent session of our Legislature entitled "An Act further regulating fire insurance companies, and pro-

viding a penalty for violation of the provisions of section 1a of this Act and to amend an Act entitled 'An Act relative to reinsurance and the transaction of business by fire insurance companies or associations otherwise than through resident agents,' approved March 6, 1901," has been fully considered by me, and I am satisfied that there are no valid constitutional objections to it. I have examined the cases cited by former Attorney-General Geo. B. Thatcher, and I find that none of them has any resemblance to the Act under consideration. I shall briefly review said cases.

State v. Hallock, 19 Nev. 384, relates to an amended Act. The title of the amended Act, however, was changed by the insertion of new words and the placing in the Act of the new words constituted the objectionable feature.

State v. Silver, 9 Nev. 227, is a case whereby the Legislature, under a title to regulate marks and brands, attempted to fix a penalty for the unlawful killing of stock. This legislation was clearly outside the title.

State v. Hoadley, 20 Nev. 317, is an Act whereby the Legislature, under a title relating to the State Controller, attempted to include other officers. This was also legislation not covered by the title.

State v. Commissioners, 22 Nev. 399, was an Act that attempted to legislate under a title in regard to the purchasing and preserving of newspapers upon the subject of legal advertising and printing. In this case the Court said in this respect:

> Certainly, prima facie, the subject of legal advertising and printing, and the subject of purchasing and preserving newspapers are disconnected and independent matters.

The case of Bell v. District Court, 28 Nev. 280, is an Act providing certain punishment for public officers under the title "An Act relating to elections." It was correctly held that such a title would not allow the Legislature to legislate as to officers who have already been elected.

The other cases cited by General Thatcher, being Ormsby County v. Kearney, 37 Nev. 356, 375, and Knox v. Holmes, 37 Nev. 393, have no application here. These cases related to a provision of law that attempted to give judicial effect to a decision of the State Engineer.

In the Act which we are considering it is provided that an insurance "company may appeal to a court of competent jurisdiction from the order of the Insurance Commissioner revoking its license, and pending the determination of such appeal such revocation shall be suspended." This is not an attempt to confer judicial power upon the Insurance Commissioner. It does not treat as a decree or judgment the acts of the Insurance Commissioner from which an appeal may be taken in the same way that an appeal is taken from a lower court to a higher court. The word "appeal," as used therein, has an entirely different meaning. The correct interpretation is that original proceedings may be instituted in court attacking the ruling of the Insurance Commissioner; that while the case is pending in the court the revocation of the Insurance Commissioner is suspended.

In the case of State v. Ah Sam, 15 Nev. 27, it is said by the court (on page 31 thereof), in ruling on the application of section 17 of article 4, which provides that the title of an Act must embrace but one subject:

> But in dealing with this particular objection to parts of statutes, which, as a whole, embrace but one subject of legis-

lation, the courts of the different States have adopted an exceedingly liberal rule of construction in favor of their validity. The decisions on the point are very numerous, but it would be unnecessary and unprofitable to attempt a review of them; for in scarcely a single instance is an attempt made to lay down any rule or principle more definite than is to be gathered from the remark of Judge Cooley (Conn. Lim. 146), that "there has been a general disposition to construe the constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted."

In Lewis's Sutherland Statutory Construction, vol. 1, 2d ed., sec. 115, in treating of the constitutional provision which provides that the title of an Act shall embrace but one subject, it is said:

> The courts with great unanimity enforce this constitutional restriction in all cases falling within the mischiefs intended thereby to be remedied. And, in cases not within those mischiefs, they construe it liberally to give convenient and necessary freedom, so far as is compatible with the remedial measure, to the law-making power. They agree that whilst it is necessary to so expound this provision as to prevent the evils it was designed to remove, it is no less desirable to avoid the opposite extreme, the necessary effect of which would be to embarrass the legislature in the legitimate exercise of its powers, by compelling a needless multiplication of separate acts as well as to introduce a perplexing uncertainty as to the validity of many important laws which must be daily acted upon. To facilitate proper legislation, it will not be interpreted in a strict, narrow, or technical sense, but reasonable.

Everything contained in the Act under consideration is germane to the title thereof.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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42. Public Schools—County Division—School Buildings and Property Therein—Appointment by County Board of Education.

CARSON CITY, April 2, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: Certain questions having arisen and being propounded by you under date of March 31, by reason of the Act creating and organizing the county of Pershing out of a portion of Humboldt County, we have to reply to your inquiries in the order named by you.

1. The High School at Lovelock, as heretofore established, is now, by virtue of its organization, the Pershing County High school, and should so continue to be, though in its establishment and organization it is not known and does not appear of record by that name: the name is immaterial in this respect; it appertains to form and not to substance.

2. It is your duty to appoint a Pershing County Board of Education for the purposes defined under existing law.

Your inquiries 3 and 4 are as follows:

> 3. What is the manner of payment of salaries of the teachers employed therein?
>
> 4. In what manner are warrants to be drawn in favor of the various elementary school districts in Pershing County on the county school funds to the credit of these districts (such funds now being in custody of the Humboldt County Treasurer)?

References to the Act creating and organizing the county of Pershing readily answer these inquiries.

Section 15 thereof provides for the ascertainment of moneys and funds in the county treasury of Humboldt County, "excepting funds of various precincts, districts, cities, towns, and townships," which latter funds are left intact, as they belong to the various precincts, districts, cities, towns, and townships as included in the exception.

Section 10 thereof provides as follows:

> The election precincts, school districts, road districts, cities, towns, and townships, embraced within the territory comprising the county of Pershing, shall be as heretofore fixed and established during the time the same composed a part of Humboldt County until otherwise changed by the board of county commissioners of Pershing County, and the officers heretofore elected, or appointed to office in said precincts, districts, cities, towns, and townships shall hold their respective offices in the county of Pershing until their successors are appointed or elected and qualified. And the registration lists, school censuses, and the records of said officers respectively are hereby made the same in the county of Pershing that they were heretofore in the county of Humboldt. And the county treasurer of the county of Humboldt is hereby directed to pay to the county treasurer of the county of Pershing, on demand, all sums of money held by him as custodian for said precincts, districts, cities, towns, and townships, rendering proper accounts with each of said funds; *provided*, that all county officers of Humboldt County, elected at the general election in 1918, who have qualified and entered on the performance of their official duties, may continue to hold office as officials of Humboldt County, regardless of their present places of residence and county boundaries in the county of Humboldt, until the expiration of their several terms of office.

Therefore, during the transition period through which Pershing County is passing in perfecting its organization under the Act creating it the officials heretofore qualified have ample authority to draw and pay the warrants against the various funds to which your inquiries appertain, and their successors in the county of Pershing, when qualified, will have the same authority to do likewise.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

43. Flag, Union—Red Ground and Shield—Not Prohibited by Law.

CARSON CITY, April 12, 1919.

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

SIR: In regard to your letter, referring to me the communication received by you from Silver City Miners Union No. 92, wherein information is requested as to whether or not the flag of the Union, which has a red ground with a shield and the letters "M. U." is prohibited by any Act enacted at the recent session of the Legislature, I beg to advise that it is not, and that the Union is free to continue to use it.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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44. Prohibition Law—Certain Amendments Thereto Invalid—Certain Drinks Not Prohibited.

CARSON CITY, April 12, 1919.

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

SIR: This office will decline to treat the Harrington amendment to the Nevada Prohibition Law as being valid. I am of the opinion that it annuls a part of the Act that it pretends to amend, and is, therefore, in violation of the initiative and referendum provisions of our Constitution.

The ruling of this office is that a drink which is not brewed, is free of malt, and has less than one-half of one per cent of alcohol may be sold in this State.

I decline to rule whether or not any specifically labeled drink is permitted under the law. I am willing to rule at any time upon a statement of facts furnished this office as to whether or not a drink, based upon such statement, is prohibited. If the statement is erroneous, then no responsibility rests upon me in the event of a violation of the law.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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45. Corporations—Amendment to Articles Concerning Assessable or Nonassessable Stock.

CARSON CITY, April 19, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: In regard to your inquiry as to whether or not a corporation, whose articles provide that the stock shall be assessable, has the right under the laws of this State to change its articles of incorporation so that the stock shall be nonassessable, I beg to advise that the law of this State permits of such a change. The converse, however, is not true—that is, stock which has been issued as fully paid up under articles which do not provide for assessments cannot afterwards be made assessable.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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46. Corporations—General Corporation Law—Conflicting Provisions Should Be Reconciled.

CARSON CITY, April 26, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: In reply to your inquiry in regard to reconciling the provisions contained in section 3 and section 37 of the general corporation law, I beg to advise as follows:

The Legislature, at its session in 1917, amended section 3 by changing the place of filing the original articles of incorporation. Prior to the amendment the filing of the original articles was made in the office of the County Clerk in which the principal place of business of the corporation was located. This was changed by an amendment in 1917, which provides that the original filing be made in the office of the Secretary of State and a certified copy of the articles 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.

It was clearly an oversight on the part of the framers of said amendment and the Legislature that section 37 was not also amended to make it consistent with the changed provision of section 3. Section 37 cannot be literally followed; that is positive. Therefore, it should be so construed so that it will receive intelligent application as applied to section 3. In that the original articles are no longer filed and recorded with the County Clerk, it becomes impossible for a County Clerk to do the things provided for in section 37. The Secretary of State can carry into effect the intent and purpose of said section, therefore an amended certificate prepared pursuant to the provisions of section 37 should be filed and recorded in the office of the Secretary of State and a certified copy thereof filed in the office of the County Clerk in the proper county.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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47. Elections—Registration of Voters—Voters in Military or Naval Service Not Registering.

CARSON CITY, April 26, 1919.

HON. LESTER D. SUMMERFIELD, *District Attorney, Reno, Nevada.*

DEAR SIR: The questions propounded by you in your letter of the 25th instant are hereby answered as follows:

A man legally a resident of Reno, who has been discharged from military or naval service, but has reached home too late to register, but is otherwise qualified to be a voter, cannot vote at the coming municipal election, and a man who is legally a resident of Reno, but has not registered, although otherwise qualified to be a voter, who is still in the military service, but who may be in Reno on election day, is likewise barred from voting. If either man mentioned registered prior to the late November election, but did not vote at such election, and has not again registered, he is also barred from voting. The County Clerk could pursue no other course than to strike his name from the registration list.

The County Clerk, pursuant to a direct mandate of the law, has closed his registration books. There is no law that empowers him to

reopen them prior to the municipal election of May 6, 1919. The registration list, as it now exists in his office, can alone be recognized by the election officers. Unfortunate circumstances that prevented brave and noble men from registering are to be regretted, but cannot be remedied.

Section 3 of article 2 of our State Constitution has no application to the case now presented. That section only applies to voting at the place of actual service, and directs the Legislature to pass the necessary laws on the subject.

I regret that the law is not sufficiently doubtful or flexible to permit of a ruling that would give them the privilege to vote. The law, however, is plain and positive. I am powerless to amend or change it. If I should usurp a legislative function, it would be overthrown by the judicial power of the State. The validity of the election is paramount. Individual persons often suffer so that legality, instead of illegality, may result. It is an incident of our social organization. In this case the situation would be different if legislation had been different, but I am compelled to deal with reality and not with potentiality.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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48. Labor Commissioner—Public or Private Printing—Where Done.

CARSON CITY, April 26, 1919.

HON. ROBT. F. COLE, *Labor Commissioner.*

DEAR SIR: In regard to the printing that is to be done incident to the recent Act of the Legislature of Nevada, which relates to the granting of licenses to employment agencies, I beg to advise as follows:

The printing necessary for your use as Labor Commissioner, in connection with your supervisorial power over employment agencies, should be done at the State Printing Office pursuant to the Act which provides that the printing used by the Labor Commissioner shall be done at the State Printing Office. The printing, however, which is required by the employment agencies themselves and which is to be delivered by you to them primarily for their use, and not for the use of your office, cannot be done at the State Printing Office, but must be done by contract with private printing-houses.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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49. County Division—Act Impliedly Repeals Certain Legislation for Bond Issue for Lovelock.

CARSON CITY, May 1, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We are advised by you that the Board of County Commissioners of Humboldt County has declined to proceed to carry out the provisions of an Act entitled "An Act authorizing and directing the board of county commissioners of Humboldt County, State of Nevada, to issue bonds for the purpose of providing means for the erection and maintenance of a high-school manual-training building and the addition

of two classrooms to the present building in the city of Lovelock, County of Humboldt, State of Nevada, providing for the expenditure of the moneys realized from the sale of such bonds, and providing for the payment of such bonds upon maturity," approved February 8, 1919.

You inquire whether or not this Act is now operative.

The reason for the attitude of the board is substantially that, assuming the legality of the Acts of the Legislature creating and organizing Pershing County out of the territory of Humboldt County (Stats. 1919, pp. 75–83), it has no jurisdiction as the Board of County Commissioners of Humboldt County to take any proceedings to issue the proposed bonds and make the necessary tax levy therefor for the erection and maintenance of the high-school manual-training building, etc., in question at Lovelock, Pershing County.

We have already ruled that Pershing County was erected, *ipso facto*, upon the approval of the Act creating and organizing it as aforesaid. This being so, it is apparent that the powers of the Board of County Commissioners of Humboldt County have been impliedly repealed in so far as the same relate to the territory and affairs of Pershing County, and that such board can exercise no powers except those reserved in the Act creating and organizing Pershing County and the powers contemplated in the Act providing for the high-school manual-training building, etc., are not so reserved.

The question then presents itself: Has the Board of County Commissioners of Pershing County the power to proceed under the Act entitled and approved, as aforesaid? This question must be answered in the negative, since no power is reserved to such board for that purpose, either in the Act itself or in the Act creating and organizing Pershing County, and since the Act providing for the bonds is a specific direction to the Board of County Commissioners of Humboldt County to issue them and make the necessary tax levy therefor which, for the reasons aforesaid, that board cannot do.

Legislative Acts providing for bond issues must be strictly pursued as they are, judicially, strictly construed, and it would be a very liberal construction indeed if the Board of County Commissioners of Pershing County could be permitted to carry out the provisions of the Act entitled and approved as aforesaid in the absence of specific authority therefor.

Accordingly, we are of the opinion that the Act providing for the issuance of the bonds for the high-school manual-training building, etc., and the necessary tax levy therefor, became inoperative upon the passage and approval of the Act creating and organizing Pershing County out of a portion of the territory of Humboldt County.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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50. **Lotteries—Slot Machines—Automatic Sellers.**

CARSON CITY, May 2, 1919.

HON. P. A. MCCARRAN, *Attorney at Law, Reno, Nevada.*

DEAR SIR: We have your letter of the 1st instant, in the matter of slot-machines, inquiring, substantially, whether or not it is our opinion

that "mechanical devices or slot-machines, where, as a result of the play, value is guaranteed in merchandise for money played and no chance to lose is offered," are prohibited.

The answer to this inquiry is not an open question in our minds. Irrespective of the fact that merchandise is guaranteed for the play and no chance to lose is offered, if the player, by lot or chance, may receive merchandise or other thing of value in excess of the guaranty, then the scheme is a lottery. At random we re-cite: Meyer v. State, 37 S. E. 96, Loiseau v. State, 22 South. 138, contained in the former opinion of the Attorney-General on the subject.

We do not, however, hold that devices, wherein lot or chance is eliminated in their operation, which might be termed automatic sellers or silent salesmen, through which the purchaser, for a fixed consideration, invested through them receives a fixed value in merchandise and no more or less, are prohibited. Among these are included United States postage stamp, chocolate, match, etc., machines.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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51. Railroad and Public Service Commissions — Appropriations Therefor — Declared Valid.

CARSON CITY, May 6, 1919.

Public Service Commission of Nevada.

GENTLEMEN: The appropriations for the support of the Railroad Commission and the Public Service Commission, contained in the General Appropriation Act, constitute valid appropriations. The Public Service Commission has been made the successor of the Railroad Commission, and, by reason thereof, assumes all the powers and responsibilities that previously existed in the Railroad Commission. There is absolutely no rule of law or legal reasoning that will lead to a conclusion that the Public Service Commission cannot avail itself of the money appropriated in the Act mentioned. If, by reason of the change that has been made in the law, certain items or a part thereof cannot be applied to the purpose for which they have been appropriated, such appropriations will necessarily revert to the General Fund; otherwise, the money may be used in a way that will carry into execution the intent and purpose of the Legislature in making appropriations.

I am compelled to decide that, under the law, the members of the Public Service Commission cannot be paid for the period between the 1st day of April and the 7th day of April, 1919. During this interim the Railroad Commission and the Public Service Commission lacked existence. Not being in existence, there could be no members thereof, and therefore salaries cannot be allowed under any possible theory.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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52. Prohibition Law — Druggists Alone May Sell Preparations of Certain Alcoholic Content.

CARSON CITY, May 6, 1919.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: It is unlawful for any merchant other than a druggist to sell any potable preparation that contains alcohol in excess of the minimum prescribed by the Nevada prohibition law. It is likewise unlawful for merchants other than druggists to sell flavoring extracts which contain a high percentage of alcohol.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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53. Employment—Employment Agencies—Licenses Required in Certain Cases.

CARSON CITY, May 7, 1919.

HON. ROBT. F. COLE, *Labor Commissioner.*

DEAR SIR: In the case of a free employment agency conducted in connection with some other business, where there is no charge made of any kind, it does not come within the provisions of an Act of the Legislature of 1919 which relates to employment agencies.

In the second case mentioned by you, where a collection of a fee is made from the employer and not from the employee, it comes within the provisions of the Act.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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54. Judicial Procedure—Practice of Medicine Without License—Prosecution Therefor and Procedure on Trial.

CARSON CITY, May 7, 1919.

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

DEAR SIR: In a criminal action, wherein a person is prosecuted on the charge of practicing medicine without a license, it is incumbent upon the State to prove facts that go to establish the allegation that the defendant has actually engaged in the practice of medicine.

The State is not required to place on the witness stand the Secretary, or any other officer connected with the State Board of Medical Examiners, to swear to the fact that no license has ever been issued to the defendant. When the evidence is adduced as to the defendant practicing medicine, the burden then shifts and the defendant is placed in a position where, if he has a license, he must produce it; otherwise, the jury will be warranted in finding him guilty as charged. An important case on this subject is that of People v. Boo Doo Hong, 122 Cal. 607. I believe that the law is therein correctly enunciated.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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55. State Engineer—Contracts of, Must Be Signed by Him.

CARSON CITY, May 19, 1919.

HON. J. G. SCRUGHAM, *State Engineer.*

DEAR SIR: We have your letter of even date inquiring whether or not an agreement appertaining to the subject-matter of your department with certain departments of the United States Government, relating to irrigation investigations in the State of Nevada, should be drawn in the name of the State Engineer or the State of Nevada, signed by the Governor, and in reply thereto we would advise you as follows:

The functions of your office are fixed by positive law, the execution of which is reposed in you as State Engineer, and the appropriations made are specifically enumerated for your department.

Accordingly, the vital force for all contracts appertaining to your office under the law must emanate from yourself and not from the Governor, and therefore a contract such as you mentioned should be entered into and signed by you as State Engineer, and not otherwise.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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56. Public Schools—Teachers' Contracts—Salary—Vacancy of School Trustee.

CARSON CITY, May 19, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your letter of the 13th instant, requesting our opinion upon certain questions therein contained, and beg leave to reply thereto in the order named by you:

> 1. What is the effect of Section 97, School Law of 1917, on the contract of the school district, with the teacher employed for the time? Is she entitled to pay for the full period of the contract, or not?

You are advised that if the teacher is ready, able, and willing to fulfil her contract, and has not committed any breach thereof sufficient to terminate the same, the contract is a subsisting obligation against the district, and she is entitled to pay for the full period of the contract according to its terms.

> 2. How long must a School Trustee be absent from the State before his office is declared vacant? If he has property or family living in Nevada, does he lose the office of School Trustee?

We think subdivision 7 of section 2799 of the Revised Laws of 1912 fully answers your questions:

> Every office shall become vacant upon the occurrence of either of the following events before the expiration of the term of such office * * * 7. 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.

Therefore, if the School Trustee has ceased to discharge his duties

for three months when not prevented by sickness, or has been absent from the State without the leave permitted by law, then his office is vacant.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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57. Employment—Employer and Employee—Discharge of Employee—Traveling Expenses.

CARSON CITY, May 20, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: Referring to your question whether or not an employer, upon one of his employees being discharged or quitting his employment, is entitled to receive, in addition to his wages, his fare or other expenses in going to the place at which he was hired, I have to advise you that the law is silent on the subject, and, without a provision requiring the payment of such fare or expenses, in the law, the employer is not required to pay the sum unless such terms were agreed upon at the time the contract of hiring was entered into by the parties.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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58. Industrial Insurance—Assignment of Award—Payment of Award—Alien Property Custodian Not Entitled to Award.

CARSON CITY, June 4, 1919.

Nevada Industrial Commission.

DEAR SIRS: Referring to your letter of March 7, 1919, and your supplementary letter of May 13, propounding certain inquiries for official opinion, we beg leave to reply in the order mentioned by you, namely:

First—The alien property custodian is not entitled from your Commission to accrued compensation in the case of alien dependents, for the reason that such payment is prohibited from being made to him under the provisions of the Act creating your Commission, reading as follows:

> Compensation payable under this Act, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant therefor, be assignable; shall be exempt from attachment, garnishment, and execution, and shall not pass to any other person by operation of law.

It is apparent that the language quoted was included in the Act to prevent involuntary deraignment or sequestration of your award, thus assuring the reason and spirit of the law being adequately fulfilled, to wit, payment of the compensation to the insured and his or her dependents, for whom the Act is intended to directly benefit.

Second—If you mean by this inquiry that compensation is due for injuries prior to the death, then such compensation became vested,

whether collected or not, and the reason and spirit of the Act would require the compensation to be paid to the widow, as such payment is made in behalf of the person for whom the Act is intended to benefit and would not be the involuntary deraignment or sequestration of the award prohibited as aforesaid.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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59. Public Service Commission—Violation of Act—Prosecution Therefor.

CARSON CITY, June 4, 1919.

Public Service Commission of Nevada.

DEAR SIRS: Referring to your letter of May 14, enclosing complaints from Mr. Hoffman and others regarding jitney operations and the course of procedure to be pursued, we beg to advise you that in the first instance the District Attorneys and officers of the respective counties, wherein these violations of the law occur, should be requested to take such steps as are provided by law, and then, if their efforts are not successful or the opposition to them is too great, this office should be called upon to cooperate with them.

We take this view for the reason that we do not desire to supersede constituted authority in local jurisdictions unless necessary, and, as you are aware, the force of this office is limited and is hardly equal for the general business of the State entrusted to it by law.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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60. Nevada Life Insurance Company—Acquiring Real Estate in Foreign Jurisdiction Not Prohibited.

CARSON CITY, June 13, 1919.

HON. GEO. A. COLE, *State Controller.*

DEAR SIR: Answering the inquiry of the Nevada State Life Insurance Company propounded by you as to "whether or not it would be permissible for this company to acquire real estate outside of the State of Nevada over and above $100,000 paid-up capital required by the insurance laws of this State," we beg to advise you that there is nothing in the statute precluding this company from so acquiring such real estate.

However, it should also be noted that the laws of the State where the investment is to be made must also permit the transaction and be complied with.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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61. Public Schools—Expenses of School Trustee Meetings—Payment Thereof.

CARSON CITY, June 16, 1919.

HON. T. W. CHAPMAN, *Deputy Superintendent of Public Instruction, Las Vegas, Nevada.*

DEAR SIR: We have your letter of the 3d instant, enclosing voucher for Educational District No. 1, Overton, Clark County, Nevada, and calling for our opinion as to the legality of the charge represented thereby.

On the face of the voucher we see nothing to indicate that the charges are not necessary and proper. It is apparent that if the officials drawing the warrant are given under the law the power to supervise and regulate school affairs, they are also impliedly given all necessary powers to properly consummate such supervision and regulation. Therefore, if it was necessary for the board to convene at Bunkerville and Mesquite, the means whereby they might convene is impliedly given them under the law, for they could not be required to advance their own funds for necessary traveling expenses and accommodations. However, we do not intend to say to you that any funds may be drawn arbitrarily, but their necessity must be apparent, and we see nothing in the voucher presented that would indicate that the claim presented was an arbitrary exercise of the powers of the board.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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62. Public Contracts—County Physician—Interpretation.

CARSON CITY, June 16, 1919.

MRS. EDNA COVERT PLUMMER, *Attorney at Law, Eureka, Nevada.*

DEAR MADAM: We have your favor of the 6th instant, relating to the contract of Eureka County with its County Physician, and have noted its contents.

After no little consideration of the provisions of the contract quoted by you and the facts set forth in your letter, we are inclined to the opinion that the supplies furnished come under the provision: "Furnishing all necessary medicines and stimulants for said patients." This phrase of the contract necessarily must be read with the one that precedes it providing: "Services shall consist of attending professionally, both as physician and surgeon, the patients in the county hospital of said county." Medicines and stimulants for services rendered pursuant to such provision, from the view we take, do not necessarily mean preparations or prescriptions taken internally, but the medicines and stimulants necessary for the services contracted for, namely, both as physician and surgeon and whether the same be internally consumed or externally applied.

The provision of the contract is too broad to admit of any other construction.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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63. Ore Sampler—Act Creating—Custom Mill Required to Report.

CARSON CITY, June 16, 1919.

HON. F. C. LINCOLN, *State Ore Sampler, Reno, Nevada.*

DEAR SIR: We have your letter of the 6th instant, propounding the inquiry whether or not the mill of the MacNamara Mining and Milling Company at Tonopah, Nevada, should make monthly reports as prescribed by law.

Based on the fact that the company informs you that: "We are not buying ore outright, but are simply running a custom mill. At the present time we are milling the Tonopah Divide ore at a fixed extraction and value per ton, paying them at the end of each month on their net returns," we have to advise you that such reports should be made as provided in the Act entitled "An Act creating the office of state ore sampler and providing for the appointment of such officer, defining his duties, and other matters relating thereto," approved March 27, 1919. The words custom mill is therein defined as follows: "The words 'custom mill' shall include any mill, smelter, or any other plant used for the reduction of ores and extracting the mineral therefrom, which treats and reduces ores other than those produced and extracted from a property owned and operated wholly by it"; and further: "It is hereby made the duty of the owner, lessor, lessee, agent, manager, or other person in charge of each and every sampler, ore purchaser, and custom mill of any kind or character in Nevada, to forward monthly on the first day of each and every month to the state ore sampler, a statement of the tonnage of ores received other than those produced from its own property and the camp from which shipped." Accordingly, under the statement of fact and the law as aforesaid, it is our opinion that it is apparent that the mill of the MacNamara Mining and Milling Company is amenable to the law in the premises.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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64. Employment—Semimonthly Pay-Day Act—Interpretation—Special Occasion Relieving Compliance Therewith.

CARSON CITY, June 17, 1919.

HON. ROBERT F. COLE, *Labor Commissioner.*

DEAR SIR: We have your letter of June 12, calling for an opinion for your information and guidance in carrying out the provisions of an Act commonly called the semimonthly pay-day law, and have noted its contents.

This Act is self-explanatory, and we perceive but little therein requiring interpretation.

You advise us that, "acting under the provision of this section a small number of employers are attempting to maintain their old system of monthly pay-days by taking a poll of their employees to ascertain whether or not they are agreeable to entering into an agreement to receive their pay monthly." The course pursued by the employers referred to evidently is taken by them under a misapprehension or strained construction of section 8 of the Act. If it had been the inten-

tion that such agreements could be entered into as a general rule, we see no reason why the Legislature used the language contained in the section in question. A special occasion under no construction can be made to apply generally. What may be a special occasion is not necessary to define, but certainly a special occasion does not appear in the facts quoted from your letter. It might be that where to pay semi-monthly a particular hardship would be experienced both by the employer and the employee, arising from climatic conditions, inaccessibility, or something of a like situation, in regard to them the agreement referred to may be legally made, but a mere convenience induced from fiscal operations is not a special occasion under the Act.

The public policy of the State has been declared in the premises, and there must be something in addition showing a special occasion than the mere agreement of the employer and employee for a pay-day other than is prescribed in the Act, for it is provided therein "that it shall be unlawful for any employer to require any employee to enter into any such agreement as a condition to entering into or remaining in his service."

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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65. Public Schools — Principal Teaching Voluntarily, Without Agreement, Receives No Compensation Therefor.

CARSON CITY, June 19, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your favor of June 9, propounding the inquiry calling for an official opinion as follows:

> Where a principal teaches extra classes because he has not been able to secure a full faculty, and for this extra work asks that additional pay be granted him, would it be legal to pay same from funds belonging to the district, upon mutual agreement of two members of the board without holding a board meeting to consider the action, and without changing the contract salary for which the principal was hired for the year?

It is apparent from the statement quoted that, notwithstanding the fact that the principal taught the extra classes because he could not obtain a full faculty, nevertheless his services in that behalf were rendered voluntarily without authorization from competent authority as required by law. Accordingly, we hold that the principal in question is not entitled to pay for these services, and he should be paid only as provided in the contract.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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66. County Division—Counties Created Have Respective Officers and Governments—Must Function Accordingly.

CARSON CITY, June 23, 1919.

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

DEAR SIR: Answering your inquiry as to whether or not the property of Pershing County should be included in the assessment roll of Humboldt County, or should each county have a separate assessment roll, or may the Assessor of Humboldt County exercise his official functions in what has been declared Pershing County, you are respectfully advised that, as Pershing County is not only created but organized out of the territory of Humboldt County, the officers of the respective counties must discharge their duties for and within their territorial limits, and accordingly each county must have its separate assessment roll. The Assessor of one county has no jurisdiction to exercise his functions over the property of the other county.

This ruling is made clear by the Pershing County Statutes of 1919, pages 75-83, particularly section 11, page 78, and section 16, page 83.

This opinion is brief on account of your expressed anxiety in the premises.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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67. County Recorders—Deeds Not Subject to Recording Unless Acknowledged.

CARSON CITY, June 26, 1919.

HON. F. GERMAIN, *County Recorder and Auditor, Winnemucca, Nevada.*

DEAR SIR: We have your favor of the 17th instant calling for our opinion as to whether or not if a deed is not duly acknowledged you should record the same on application and the tender of the necessary fee.

You are advised that you should decline to record any deed not acknowledged as required by law.

While a deed not acknowledged may be valid between the parties, it is not entitled to be recorded until acknowledged, and when so acknowledged and recorded it then gives notice to the world of the transaction between the parties themselves. There are many reasons why the law should be so construed, among which might be stated that if unacknowledged or unverified instruments, unless specifically permitted by law, could be legally recorded, then the avenue would be open for frauds of all kinds, and the security of titles to property would be impaired.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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68. Revenue—Delinquent Tax Sales—Advertising Sale—Redemption.

CARSON CITY, July 1, 1919.

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

DEAR SIR: The amendatory Act, approved April 1, 1919, Statutes of 1919, page 412, provides that immediately after the second Monday

in June of each year, the tax receiver shall advertise the property upon which delinquent taxes are a lien for sale, when in all cases the delinquent tax, exclusive of poll-taxes and penalties, does not exceed the sum of $300, such notice to be published in a newspaper at least once a week for a period of twenty-five days prior to the date of sale.

The law does not contemplate that, after the publication has begun, there shall be any revision thereof by the tax receiver. Therefore, any delinquent taxpayer who redeems his property at any time within the period of publication becomes liable and must pay for the publication in the same amount for which he would become responsible if no redemption was made within the period of said publication.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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69. Revenue—License Tax Paid on Exempted Sheep—Refund Thereof.

CARSON CITY, July 9, 1919.

HON. A. L. SCOTT, *District Attorney, Pioche, Nevada.*

DEAR SIR: We have your letter of June 27, relating to the demand of Gregorio Urrutia for the refund of $350 to cover exemption on 1,000 head of sheep.

The gentleman in question is an alien but a bona-fide resident of this State. You are advised that under section 16, article 1 of the Constitution "Foreigners who are, or may hereafter become, bona-fide residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and inheritance of property, as native-born citizens," and that in consequence of which this alien is entitled to the same protection and exemptions in the premises as a citizen and resident of this State. The Constitution is paramount over legislative enactments. However, we are not passing upon the question, since we do not know the facts whether or not the payment made by Mr. Urrutia was a voluntary or an involuntary one. If this payment was voluntarily made, in law he may not be entitled to recover the same. If there is any doubt concerning this phase of the matter, justice demands that it be resolved in his favor.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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70. County Division—Date of Closing Books.

CARSON CITY, July 9, 1919.

HON. R. M. HARDY, *District Attorney, Lovelock, Nevada.*

DEAR SIR: Answering your letter of July 5, relating to the closing of the books by Humboldt and Pershing Counties, we beg to advise you that we are of the opinion that the books should be closed as of the date of approval of the Act creating Pershing County.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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71. Marriage—Marriage License—Form Approved.

CARSON CITY, July 11, 1919.

A. CARLISLE & CO., *Reno, Nevada.*

DEAR SIRS: We have your favor of July 1, enclosing your form of marriage license, together with a copy of a letter from P. R. Coryell, Deputy County Clerk of Storey County, criticising the same in certain particulars.

You are respectfully advised that the form presented is sufficient in substance for all purposes intended under the laws of this State, as it substantially complies therewith.

Concerning the contention that the clergyman or other officer performing the marriage ceremony must retain the license, we find no provision in law requiring him to do so, although, as a practice, he does so until he has recorded a certificate of the marriage as the law provides. Referring to the objection to the wording of the certificate, we have to state that, while the certificate is more full and complete than the statute provides, that fact does not vitiate it in the least. The certificate appended to the license is more than sufficient to meet all the requirements of law.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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72. County Health Officer—Salary—Budget Controls and Precludes Increase.

CARSON CITY, July 11, 1919.

HON. W. R. REYNOLDS, *District Attorney, Eureka, Nevada.*

DEAR SIR: We have your letter of July 7, relative to the petition for the increase of the salary of the county health officer and physician, and have noted its contents.

You are correct in your construction of the Statutes of 1917, page 249, relative to the budget system, and, accordingly, no matter how advisable the requested increase in the premises may be, such increase cannot be made in derogation of the plain provisions of law. If this action could be taken in one instance, it may be taken in all instances, and thereby the budget system, created by the Legislature, would be absolutely nullified.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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73. Revenue—Bullion Tax—Evidence for Recovery—Duty of County to Act.

CARSON CITY, July 11, 1919.

HON. F. N. FLETCHER, *Secretary Nevada Tax Commission.*

DEAR SIR: Referring to the letter of W. G. Adams, Assessor of Lander County, to your Commission transmitted to us, relative to alleged unpaid bullion taxes, we have to advise you that if there are such taxes unpaid, whether for the year 1918 or 1917, it is the duty of the proper county officials to take such steps as to ascertain the fact

of such unpaid taxes and from the evidence obtained to predicate appropriate proceedings for their recovery.

We know of no provision of law making funds available through your Commission to obtain the necessary evidence. The proper method of procedure would be for the County Commissioners of Lander County to authorize the Assessor to investigate the subject-matter of his letter to you and to allow him his necessary expenses upon a claim duly filed for that purpose.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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74. Gambling—Percentage Games—Certain Games Permitted—Duty of Peace Officers.

CARSON CITY, July 12, 1919.

HON. L. D. SUMMERFIELD, *District Attorney, Reno, Nevada.*

DEAR SIR: The Act of the Legislature of the State of Nevada which relates to gambling, Statutes of 1915, p. 462, has been carefully considered by me and, after verbal consultation with you, I have reached the following conclusions:

1. That poker, stud-horse poker, five hundred, solo, and whist may be lawfully played for money, with no limit as to stakes or amounts wagered, where the deal alternates and no percentage is taken.

2. That a flat rate or charge for chairs, tables, cards, lights, etc., having no reference or relationship to the stakes, wagers, or amounts in play, is lawful, and does not constitute taking a percentage.

The following suggestion offered by you should be followed:

> That municipal corporations where charter authority is granted to license and regulate lawful businesses, trades, professions, callings, and such gambling as is permitted by law, should and they are hereby recommended to pass ordinances licensing and regulating the said games when played in the manner aforesaid, with specific provisions for the revocation of such licenses for the violation of proper conditions to be therein set forth.

It is incumbent upon peace officers to see that the five legalized games are played in conformity with the law. The temptation is great for a house where said games are operated to run them on the percentage basis. This is a clear violation of the law and under the Act is a felony.

The policy of my administration will be to rigorously enforce this law as well as the other laws of this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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75. Public Schools—Corporal Punishment Permitted.

CARSON CITY, July 16, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: It is my opinion that school authorities have the right to inflict reasonable corporal punishment in the process of maintain-

ing school discipline. I do not base my opinion upon the sections cited by you, but upon the general law on the subject as dictated by the decisions of various courts.

The law is given in 35 Cyc. 1137, in the following language:

> As a general rule a school-teacher, in so far as it may be reasonably necessary to the maintenance of the discipline and efficiency of the school, and to compel a compliance with reasonable rules and regulations, may inflict reasonable corporal punishment upon a pupil for insubordination, disobedience, or other misconduct; but a teacher cannot inflict corporal punishment to enforce an unreasonable rule, to compel a pupil to pursue a study forbidden by his parents, or to compel him to do something which his parent has requested that he be excused from doing, although the teacher may be justified in refusing to permit the attendance of a pupil whose parent will not consent that he shall obey the rules of the school. The infliction of corporal punishment by a teacher is largely within his discretion, but he must exercise sound discretion and judgment in determining the necessity for corporal punishment and the reasonableness thereof, under the varying circumstances of each particular case, and must adapt the punishment to the nature of the offense, and to the age and mental condition and personal attributes of the offending pupil, and, considering the circumstances and conditions of the particular offense and pupil, the punishment must not be inflicted with such force or in such a manner as to cause it to be cruel or excessive, or wanton or malicious.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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76. Library Commission—Expenditure of Funds—Employment of Extra Help—Powers of Commission.

CARSON CITY, July 19, 1919.

HON. GEORGE A. COLE, *State Controller.*

DEAR SIR: Pursuant to your verbal request for an opinion as to the legality of employment of extra help in the State Library by the State Librarian, acting under the direction and authorization of the State Library Commission, I beg to advise you that the said Commission is given broad latitude in connection with the expenditure of library funds, and the said Commission assuredly has the power, when there is a congestion of work in the Library, to employ extra help for the purpose of accomplishing the purposes for which the Library exists.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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77. Revenue — Mines — Operating Expenses — Industrial Insurance Included Therein.

CARSON CITY, July 21, 1919.

Nevada Tax Commission.

GENTLEMEN: It is my opinion that industrial insurance costs may be legally included in operating expenses in arriving at net proceeds of mines.

I make this ruling for the reason that any other position would be manifestly unjust.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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78. Gambling—Prohibited Games.

CARSON CITY, July 24, 1919.

HON. ANTHONY JURICH, *Attorney at Law, Ely, Nevada.*

DEAR SIR: We have your letter of recent date, requesting our opinion as to the legality of maintaining black-jack or twenty-one and kindred gambling games.

In reply to your inquiry this office is of the opinion that such games are prohibited under the statute since they are not within the exceptions therein contained, and it may be that, if they are games depending upon lot or chance, even though they were within the exceptions, they would contravene the constitutional and statutory provisions relating to lotteries.

The lottery question is now before the Supreme Court in Ex Parte Pierotti, involving the operation of slot-machines, and it is quite probable that the law to be laid down in that opinion may be so broad that it will cover all gambling games depending in the play upon lot or chance, as contradistinguished from skill, in the operation.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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79. Prohibition Law — Sale of Certain Materials Not Prohibited — District Attorneys Required to Be Present at Meetings of County Commissioners.

CARSON CITY, July 26, 1919.

HON. R. M. HARDY, *District Attorney, Lovelock, Nevada.*

DEAR SIR: We have your letter of the 25th instant, wherein you propound certain questions and we will answer them in the order named by you.

1. We have reexamined the provisions of the initiative prohibition law and are unable to find any provisions there prohibiting the possession or sale of materials which, though innocent in themselves, may be used with other materials to produce a liquor or beverage prohibited by the Act. The Act itself prohibits the manufacture, sale, etc., of liquor, and we do not think that its terms could be judicially extended to prohibit materials which would produce, when used according to formula, a result prohibited by the Act. Penal statutes are strictly construed, and it would be a very liberal construction, indeed, through which materials referred by you could be brought within the Act. We do not desire you to infer from this that, because these materials are not prohibited, the prohibited liquor or beverage may be manufactured therefrom. Such manufacture would be a violation of the law.

2. The reason why District Attorneys are required by general law to be present at all meetings of the County Commissioners, when considering bills, is not because of any power the District Attorneys may have upon the allowance or rejection of bills, but that they may advise

the County Commissioners of the legal principles involved concerning such bills. The statutory provisions could hardly be said to be idle ones, because, when a spirit of cooperation subsists between county officials, as it should and as we know it does in Pershing County, the advice of the District Attorney in the meetings of the County Commissioners necessarily may tend to the good of the county.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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80. Revenue—Bullion Tax—Computation of Net Income of Mines.

CARSON CITY, August 2, 1919.

Nevada Tax Commission, Carson City, Nevada.

GENTLEMEN: Answering your inquiry as to what deductions may be made under section 3687, Revised Laws of 1912, in computing the net proceeds of mines as a basis of taxation, we have to advise you that under the section in question necessary repairs and replacements constitute a legitimate deduction, but these do not include, under any reasonable interpretation, construction costs and equipment of a mine. Accordingly, you are advised that the same should not be considered as items of deduction.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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81. Revenue—Widow's Exemption—Exemption Allowed Though Distribution of Estate Pending.

CARSON CITY, August 8, 1919.

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

DEAR SIR: Replying to your letter of August 6, relative to widows' exemption from taxation under section 3621 of the Revised Laws of 1912, you are respectfully advised that in this State title to real and personal property vests in the heir immediately on the death of the ancestor, and that the District Court having jurisdiction thereof in probate does not create title, but merely deraigns it of record to the heir at law, and, accordingly, a widow who could otherwise bring herself under the section aforesaid would be entitled to the statutory exemption, notwithstanding that distribution of the estate is still pending.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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82. Revenue—Delinquent Tax Sale—Form of Advertising.

CARSON CITY, August 9, 1919.

HON. D. J. SULLIVAN, *State Auditor.*

DEAR SIR: Answering your letter of August 5, calling for an opinion regarding chapter 229, Statutes of 1919, relative to the uniformity of advertising of delinquent tax lists, we have to advise you as follows:

That the specifications in section 3 of the Act, regarding the contents of the notice of publication for 10 per cent in addition on the taxes delinquent, is apparently an inadvertence on the part of the Legislature, since in section 1 of the Act the penalty is there levied as 15 per cent, and this section 3 is merely a legislative scheme to enforce the payment of the delinquent taxes and the penalty levied as aforesaid.

Accordingly, that there may be the uniformity suggested in your letter, the notice of publication, besides the matters otherwise required, should contain substantially the following:

> Fourth—And that fifteen per cent on such taxes, together with three per cent per month on such taxes from the date of delinquency, and the cost of advertising, will be collected in addition to the original tax.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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83. Physicians—Physician Without License May Act as Internes, or Otherwise Aid, Under Certain Conditions.

CARSON CITY, August 11, 1919.

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

DEAR SIR: There is no legal obstacle or objection to Dr. R. A. Ostroff, a regularly licensed physician and surgeon under the laws of the State of California, who is a resident of Reno, Nevada, acting in the capacity of interne and otherwise aiding Dr. R. H. Richardson, the Superintendent of the Nevada Hospital for Mental Diseases.

Our understanding is that Dr. Ostroff will not prescribe medicines or directly treat patients, but that he will at all times be acting under the direction of and as an assistant to Dr. Richardson. He may so act without having a Nevada license, but he cannot present himself to the public as an independent practitioner until he has been duly licensed pursuant to an examination by the State Board of Medical Examiners.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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84. Public Schools—School Trustee—Recall Election Thereof Not Provided by Law.

CARSON CITY, August 12, 1919.

MR. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction, Fallon, Nevada.*

DEAR SIR: The question propounded by you to this office, as to whether or not a School Trustee, in a district having a voting population of less than one hundred, is subject to the recall provisions of the Constitution of the State of Nevada relating to that subject and the Act of the Legislature of 1913, supplementary thereof, I beg to advise that, as the State Legislature failed to make a requisite for

any candidate for the office of School Trustee, in such a district, to file a petition for nomination therefor, a recall election cannot be had for such office. The Constitution clearly states: "The recall petition shall be filed with the officer with whom the petition for nomination to such office shall be filed, and the same officer shall order the special election when it is required."

In the absence of any action by the Legislature, requiring the filing of such petition and the designation of the officer who shall become the depositary of a petition for a recall, I am compelled to decide that there can be no recall election. It may be that the courts may reach a different conclusion, and, through a process of judicial legislation, hold contrary to this opinion. The courts will be, probably, reluctant in this case, where the language of the Constitution and the statute on the subject of recall is so plain, to make a ruling that will be in conflict with the position herein taken.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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85. Public Schools—Yearly Salary of Teachers May Be Fixed—School Trustees Have Exclusive Power to Contract for Salary.

CARSON CITY, August 15, 1919.

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

DEAR SIR: In regard to your inquiry as to whether or not a school board has the power to fix a yearly salary for a teacher, payable in twelve monthly installments, I beg to advise that I am of the opinion that such power exists. The law gives the school board full control of the subject of salaries of teachers.

There is no limit fixed by law as to the amount of money that may be paid under the direction of a school board to a teacher for salary. If a school board, for the purpose of illustration, should fix the salary of a school principal at $2,400, payable in ten equal monthly installments, which would be $240 monthly, there would be no question of its validity. This being the case, it would be difficult to reach a conclusion that the board would be barred from fixing the same salary, but providing that it be paid in twelve equal monthly installments. In the latter case, the said principal would, during the vacation period, be absolutely within the control of the board as far as his employment is concerned and could order him to return to duty at any time.

The policy of paying teachers for every month in the year is wise and just and should be encouraged, and the law should be construed, if possible, to allow such a policy. There is assuredly no law which prohibits it, and I believe that the extensive power vested in school boards, as to the fixing of salaries, allows this method.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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86. Public Funds — State Livestock Commission — Bonds Procured Through Public Funds Should Be Deposited With State Treasurer.

CARSON CITY, August 16, 1919.

HON. ED. MALLEY, *State Treasurer of Nevada.*

DEAR SIR: In regard to your inquiry as to whether or not $45,000 in United States Government bonds, purchased from the funds of the State Stock Commission, should be deposited in your office, I beg to reply in the affirmative.

Section 4372 of the Revised Laws relates to this subject in the following language:

> The state treasurer shall securely keep in the safe provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds and securities of the State appertaining to his office and shall not deposit any part or portion of the same with any individual, copartnership, or corporation.

In that the bonds mentioned were purchased from money of the State of Nevada, which money at the time of said purchase was under your custody and control, it seems conclusive that said bonds appertain to your office and should be held and kept by you.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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87. Revenue—Tax Due—Notification to Taxpayer by Mail.

CARSON CITY, August 20, 1919.

HON. D. J. SULLIVAN, *State Auditor.*

DEAR SIR: In answer to your request for an opinion on the question propounded by a County Treasurer as to whether or not post-cards should be mailed to every taxpayer whose address is known, notifying him of the amount of taxes due, I beg to advise that the law requires the mailing of such a post-card to every such taxpayer.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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88. Revenue—Delinquent Taxes—No Penalty on Second Installment.

CARSON CITY, August 20, 1919.

HON. D. J. SULLIVAN, *State Auditor.*

DEAR SIR: In regard to your inquiry as to what penalty attaches in a case where a taxpayer pays the first installment, but fails to pay the second installment, I beg to advise there is no penalty in such a case.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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89. Revenue—Delinquent Taxes—Penalty and Interest—Costs of Sale—No Penalty on Second Installment.

CARSON CITY, August 22, 1919.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: If a taxpayer fails to pay the first installment of his taxes before the date of its delinquency, then the entire taxes forthwith become due and payable and become the subject of a penalty of 15%, and 3% monthly.

If a taxpayer pays the first installment, but becomes delinquent as to the second installment, no penalty attaches to the latter.

In any case where real property is sold for taxes, the cost incident to the sale attaches to the property.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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90. Lotteries—Punch-Board Is a Lottery.

CARSON CITY, August 23, 1919.

MR. A. P. CANNON, *Deeth, Nevada.*

DEAR SIR: Replying to your favor of the 21st instant, we have to advise you that the scheme or device commonly known as a punch-board is a lottery and, therefore, against the law.

It makes no difference if a prize is given with each punch. It is the distribution of prizes by chance of different values which brings the scheme under the statute regulating lotteries.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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91. Prohibition Law—National and State Statutes Relating to Making of Wine.

CARSON CITY, August 30, 1919.

MRS. SILVIO PAGNI, *Mound House, Nevada.*

DEAR MADAM: Replying to your favor of the 29th instant, we have to advise you concerning your inquiries in the order named by you.

1. Grapes may be shipped into this State for the purpose of making wine or any other purpose.
2. Under the laws of this State, farmers may make wine for their own use in any amount whatsoever.

It becomes unnecessary to answer your third question as to the removal of wine made.

You will, therefore, appreciate the fact that the laws of the United States control this situation, and that, if wine were made as suggested by you, its laws may be violated.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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92. Revenue—County Assessor Failing to Assess Lands—Liability—Procedure.

CARSON CITY, October 1, 1919.

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

DEAR SIR: Answering your letter of September 25, 1919, relative to the construction of section 3625 of the Revised Laws of 1912 appertaining to liability of the County Assessor for failing to assess certain lands listed with him by the owners thereof, and the enforcement of such liability, we have to advise you as follows:

After consulting the Attorney-General, we have come to the conclusion that, on the facts submitted, the latter part of the section mentioned can hardly be made to apply, since all the available data was before the County Assessor for the making of due and proper assessment of the lands in question; and therefore we do not appreciate how the Board of County Commissioners can with propriety excuse the official of record, as you intimate they are likely to do.

On further investigation and at the suggestion of the Tax Commission, it seems there is another remedy available under the *ninth* section of the Tax Commission law, a copy of which is enclosed for your information. If you will prepare and forward direct to the Commission all the necessary facts in the premises in sworn form, it may be that, under this section, the Commission will order the property to be listed and assessed.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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93. Revenue — Delinquent Tax Sale — Misdescription on Assessment Roll — Treasurer Bound by Record.

CARSON CITY, October 11, 1919.

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

DEAR SIR: Your letter informs me that a certain parcel of land, described as being in Block B, became delinquent; that thereafter the same was sold because of such delinquency, and the Treasurer gave a deed to the purchaser, describing the property as being in Block B.

You further inform me this parcel of land is in reality in Block A. You have propounded the query as to whether or not the Treasurer has the power to give a corrected deed, describing the property as being in Block A. I desire to advise you that the Treasurer has no such power. He is bound by the description given in the assessment roll.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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94. State Engineer—Water Rights—Right to Water Commences as of Date of Appropriation.

CARSON CITY, October 14, 1919.

COL. JAMES G. SCRUGHAM, *State Engineer.*

DEAR SIR: We note the opinion of Hon. Geo. B. Thatcher, relating as to when a right to waters by appropriation commences.

While there are many authorities upon this subject, it is apparent

that the right to the water relates to the initiation by appropriation in the method prescribed by law and not to the time of application of the water to a beneficial use, particularly for the reason, if the doctrine were otherwise, that the initiation of the appropriation might become futile. However, the right once initiated is subject to forfeiture if future provisions of law are not pursued, but, when once the law has been fully complied with, the right becomes irrevocable and thereafter may only be lost by abandonment or for some similar reason.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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95. Revenue—Nevada Tax Commission—Property Escaping Taxation—Commission May Order Same Subsequently Assessed.

CARSON CITY, October 27, 1919.

Nevada Tax Commission.

GENTLEMEN: We have a letter of the District Attorney of Churchill County of October 4, to which is attached the affidavit of C. M. Way, relative to certain property of the Douglass-Renfro Land Company, a corporation, escaping taxation for the year 1918, transmitted to us by you.

We have examined into the inquiry as to whether or not your Commission may order the proper officer to place this property on the roll under subdivision 9 of section 3 of the Nevada Tax Commission law (Statutes of 1919, chap. 118).

The only question presented, this property having escaped taxation for the year 1918, is whether or not it is now too late to place it on the assessment roll. We have examined decision law upon the subject, wherein similar provisions of law in other States have been acted upon by commissions similar to your Commission, and these decisions hold that such property escaping assessment and taxation may be placed upon the roll at any time, and we accordingly are of that opinion.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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96. Revenue—Nevada Tax Commission Has Power to Raise or Lower Assessments, Where Board of Equalization Fails to Act.

CARSON CITY, October 27, 1919.

Nevada Tax Commission.

GENTLEMEN: Your letter of the 23d instant propounds two queries. The first one relates to your power to reduce the assessment of the Minerva Tungsten Mines Company, it being positive that a mistake was made in the assessment, and that it would be unjust to compel the company to pay taxes based upon the existing assessment valuation.

The second query presents the converse situation, which is as to your power to raise an assessment that is flagrantly disproportionate to the real value of the property and to other property of a similar character.

Your queries have taken into consideration the fact that certain

powers are vested in the State Board of Equalization, which board has ended its session and can no longer act as such a board during the present year.

I am of the opinion that under and by virtue of section 6 of the Nevada Tax Commission law, as it now exists, your Commission now possesses the powers given by law to the said Board of Equalization. This section determines the powers of said board, which is followed by the provision that, if said State Board of Equalization shall fail to perform the duties enumerated in this section, the Nevada Tax Commission may make such equalization as will be necessary. This provision is complete in its application, and is not one of limitation. The section does not attempt in any respect to fetter the powers of the Tax Commission when the Board of Equalization is powerless to act. In the two cases mentioned in your letter you have the power to lower the assessment valuation in the one case and to raise the assessment valuation in the other.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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97. Lotteries—Punch-Boards Are Lotteries.

CARSON CITY, October 29, 1919.

HON. C. P. FERREL, *Sheriff, Reno, Nevada.*

DEAR SIR: We have your letter of October 27, inquiring for our official opinion as to whether or not the scheme or device known as a "punch-board" is a lottery.

We assume that this inquiry is made through you from your correspondent on account of the recent decision of the Supreme Court of this State holding that a nickel-in-the-slot machine is not a lottery, but is permitted by law. We are not inclined to extend the opinion in that case beyond the subject-matter thereof, and are in absolute accord with the ruling of the District Attorney of Washoe County holding that such slot-machines may only be operated with nickels for cigars or drinks, a nickel or a cigar or a drink having a well-defined meaning in the statute permitting such machines; but until the Supreme Court of this State decides that other schemes or devices pronounced lotteries in other jurisdictions are not lotteries, we are inclined to follow the rulings in such jurisdictions holding such other schemes or devices lotteries and inhibited both by organic and statute law of this State, among which are the "punch-boards" referred to by you. These are lotteries pure and simple, and it has been so decided in the cases of In Re Kahn, 67 South. 35 and Brewer v. Woodham, 74 South. 763.

The scheme or device referred to in your letter depends upon chance, and nothing more, for the distribution of the larger prizes mentioned, and this fact makes it contravene the Constitution and statute.

In conclusion, we adopt the language of Dunn v. People, 40 Ill. 467, as Hawley, J., adopted it, in In Re Overton, 16 Nev. 136, as follows:

> If it differs from ordinary lotteries, the difference lies chiefly in the fact that is is more artfully contrived to impose upon

the ignorant and credulous, and is, therefore, more thoroughly dishonest and injurious to society.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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98. **Public Schools—Unapplied Fund in Budget Is a Surplus, and May Be Expended by Board of School Trustees.**

CARSON CITY, October 30, 1919.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your inquiry as to whether or not funds set aside in the budget, for the payment of teacher's salary for the school at Jack's Valley, may be used for the payment of the purchase price of an automobile to transport the pupils of that locality to school at Carson City, Nevada.

From the facts submitted it seems that when the budget was prepared it was the intent of the Trustees of Jack's Valley school to employ a teacher for the school, but, after further consideration and it being for the best interest of the pupils, an arrangement was made, as permitted by law, to have these pupils attend the school at Carson City, and to that end the automobile in question was purchased. In view of the fact that the end for which the moneys specified in the budget is being accomplished by attendance of the pupils at Carson City, and that no circumstance can arise whereby a call may be made upon the moneys for the employment of teachers, in this case we hold that this money may be used in payment for the automobile as it becomes a surplus, since the specific purpose for which it has been designated can no longer exist.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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99. **Public Schools—Board of School Trustees Bound by Budget—Purchase of Certain Equipment Prohibited.**

CARSON CITY, November 6, 1919.

MR. L. E. MCFADDEN, *Superintendent of Fallon Elementary Schools, Fallon, Nevada.*

DEAR SIR: Replying to your inquiry of November 5, you are respectfully advised that since the budget system has been adopted by the Legislature for the government of official bodies, including Boards of Trustees of School Districts, a Board of School Trustees cannot legally order and pay for out of school funds play equipment and apparatus, such as footballs, basket-balls, baseballs, bats, tubular-steel play apparatus, etc., unless funds for the payment of the same have been duly included and provided in the budget.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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100. Prohibition Law—Railroads Permitted to Deliver Denatured Alcohol.

CARSON CITY, November 13, 1919.

Virginia and Truckee Railway Company, Carson City, Nevada.

GENTLEMEN: Mr. A. G. Meyers of this city has called for a ruling of this office as to whether or not you are prohibited under the initiative prohibition law from delivering to him a consignment of denatured alcohol.

This question has arisen in this office during the tenure of the Hon. Geo. B. Thatcher, Attorney-General, in another form, upon which an opinion was rendered (Biennial Report of the Attorney-General, 1917–1918, p. 10), and upon the authority of that opinion, in which we concur, we hold that the delivery of a shipment of denatured alcohol is not prohibited. We enclose you a copy of the opinion referred to.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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101. Public Schools — Public-School Teachers' Retirement Fund — Deduction From Salaries Therefor.

CARSON CITY, November 15, 1919.

Public-School Teachers' Retirement Salary Fund Board.

DEAR SIRS: We have your letter, propounding the inquiry as to whether or not those teachers who were teaching half-time and drawing pay accordingly should be held liable for full contribution to the Public-School Teachers' Retirement Fund.

Section 4 of an Act entitled "An Act to provided for the payment of retirement salaries to public-school teachers of this State, and all matters properly connected therewith," approved March 23, 1915, provides that there shall be deducted each school year, commencing September, 1915, from the salary of every teacher subject to the burdens of the Act $9, and imposes official duty for the making of such deduction at the times of payment.

No distinction is made between teachers teaching full-time and half-time and drawing pay accordingly, but as the Act specifies that the deduction shall be made at the rate of $9 each school year, we are of the opinion that the deduction is intended to be made against the salaries of all teachers at the rate of $9 if their teaching service covers a period of the minimum school year, which is six months.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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102. Pollution of Streams—Dumping of Tailings, etc., Therein.

CARSON CITY, November 19, 1919.

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

DEAR SIR: We have your request for our official opinion, under date of the 19th instant, inquiring whether or not the dumping of tailings into any public stream of this State is contrary to law.

The Act relating to the pollution or contamination of the public waters of this State (Stats. 1917, p. 412) provides that it shall be unlawful to deposit in such waters any sawdust, pulp, oil, rubbish, filth, or poisonous or deleterious substances which affect the health of persons, fish or live stock, or renders the said waters unpalatable or distasteful.

Accordingly, if such tailings are in any wise mixed with poisonous or deleterious substances when deposited, it is unlawful to deposit the same in any of the public waters of this State. Tailings permitted to be so deposited must be free from such substances.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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103. Public Schools—Board of School Trustees Bound by Budget—Purchase of Certain Equipment Prohibited.

CARSON CITY, November 25, 1919.

MR. L. E. MCFADDEN, *Superintendent of Fallon Elementary Schools, Fallon, Nevada.*

DEAR SIR: This office is compelled to stand upon the ruling made by it, dated November 6, 1919.

The object of the Budget Act is to definitely inform the public as to the specific application that will be made of the moneys raised for school purposes. The articles mentioned by you cannot come within the designation of school supplies, stationery, etc. It may be that in certain particulars the Act mentioned operates to the detriment of certain schools. This office is, however, powerless to amend, change, or modify a legislative enactment, and we are therefore compelled in this instance to decide that the money raised pursuant to the budget cannot be used for the purposes mentioned by you.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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104. Revenue — State Charges — County Recorders May Not Collect Fees for Recording State Documents.

CARSON CITY, December 18, 1919.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: Your inquiry as to the legality of a bill rendered by the County Recorder of Ormsby County against the State of Nevada, for the recordation of a deed which conveys property to the State of Nevada, has been considered by me.

I am of the opinion that the State, by reason of its sovereignty, is exempt from the payment of any such charge.

> The fee being a tax imposed solely for revenue, upon well-settled rules of law the state could not be included unless expressly named. (State v. Rhoades, 6 Nev. 373.)

In this same case it is intelligently said:

> And a tax levied by the State upon itself, or its own transactions, is so anomalous that it cannot be supposed it was

intended, unless upon the clearest language. A more appropriate application of the rule of the common law could not be made than to cases of this kind.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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105. Architect, State—Expenses, How Paid.

CARSON CITY, December 22, 1919.

Honorable Board of Regents, University of Nevada, Reno, Nevada.

DEAR SIRS: Replying to your inquiry, this day submitted to us through your controller as to the payment of the expenses of the State Architect incident to the Teacher-Training Building at the University, we have to advise you that under date of April 3 we rendered an opinion to the State Engineer in the premises, stating among other things: "That the expenses incident to the office of State Architect should be paid in the same manner as the salary of such official is paid." We adhere to that opinion.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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106. Rewards—Peace Officers Not Entitled to Rewards in Apprehending Violators of Law.

CARSON CITY, January 7, 1920.

DR. EDWARD RECORDS, *Secretary State Board of Stock Commissioners, Reno, Nevada.*

DEAR SIR: We have your request for an opinion as to whether or not J. C. Harris, Sheriff of Elko County, is entitled to the reward offered by your board for apprehending violators of the statute creating your board.

As a general rule, a peace officer is not entitled to statutory rewards offered for the apprehension of those violating the law unless it is expressly so provided in the statute. We find nothing in the statute making an exception in favor of a peace officer and are, therefore, constrained to hold that in the case mentioned the Sheriff is not entitled to the reward offered by you.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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107. Public Schools — Head of Family — School Property Sale — Procedure Declared.

CARSON CITY, January 16, 1920.

MR. C. W. SMITH, *Deputy State Superintendent of Schools, Fallon, Nevada.*

DEAR SIR: We have your inquiries calling for our official opinion, first, as to the meaning of the term "heads of families," and, second, the method of procedure in the sale of school property referred to in

the School Code of 1919. We here answer your inquiries in the order named by you:

First—As contemplated by the School Code, we are of the opinion that heads of families include both husband and wife and single persons, if such persons reside at a fixed place of abode and have others living there with and depending upon them for support—the support being induced by either moral or legal duty. Therefore, if a bachelor has minor brothers or sisters, or other close relations, depending upon him and is living in a fixed place of abode, we think he should be regarded as the head of a family.

Second—It is true the School Code does not define the method of procedure in the sale of school property. The Trustees, therefore, prior to the sale and as a condition thereof, should prescribe such reasonable procedure as giving due regard to publicity as the value and the nature of the property to be sold warrants; the property, being public property, should be sold to the highest bidder after full opportunity has been given to the public to bid. While a reservation should be made in the notice of sale for the rejection of any and all bids by the Trustees, nevertheless, if such reservation was omitted and a fair value has not been bid for the property, or there is some unforeseen irregularity concerning the sale, the Trustees undoubtedly have the right to reject the bids offered and proceed to a new sale.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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108. Transportation of Prisoners—Officers' Per Diem Fixed by Law.

CARSON CITY, January 23, 1920.

HON. R. B. HENRICHS, *Warden of Nevada State Prison.*

DEAR SIR: The letter of Sheriff Way of Churchill County, relative to the charges that may be legally made for the transportation of prisoners from a county sent to the Nevada State Prison, has been considered by this office.

I am of the opinion that it was clearly the intent and purpose of the Legislature to limit the amount that the officer transporting said prisoners may receive for the purpose of paying the necessary expenses incident to transportation to the sum of $5 per day. It was assuredly not the intent of the Legislature to give such officer extra compensation. It is the duty of counties to pay their own county officers, and no such obligation rests with the State of Nevada.

The segregation contained in section 7591 of the Revised Laws of the State of Nevada is clear and intelligible, and coincides with the decisions of our Supreme Court. The first subdivision covers the subject of expenses incident to railroad and other travel, from the county seat to the place where the person or persons are delivered. The second subdivision deals with the other expenses incident to said trip, and specially fixes the sum of $5 per diem as the amount to be paid to the officer who serves in such capacity.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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109. Public Schools — Public - School Teachers' Retirement Fund — Physical or Mental Disability Must Occur During Service for Teacher to Receive Benefit of Act.

CARSON CITY, February 5, 1920.

Public-School Teachers' Retirement Salary Fund Board.

DEAR SIRS: We have your inquiry through your executive secretary, under date of January 31, 1920, requesting our opinion on the following question propounded under section 13, as amended, of the Statutes of Nevada for 1919 of an Act entitled "An Act to provide for the payment of retirement salaries to public-school teachers of this State, and all matters properly connected therewith," namely:

> May a teacher who has taught in the State for fifteen years, and who has retired from teaching for any reason other than physical or mental disability, receive the benefits of this Act when, in later years, such teacher becomes incapacitated for teaching on account of old age or other infirmity?

You are respectfully advised that such teacher is precluded from receiving the benefits of the Act. The Act is intended to provide a pension for those who have taught the requisite time and who have become physically or mentally incapacitated during service, although not necessarily on account of the service, and it is not intended to insure the physical or mental condition of any teacher who has voluntarily retired and thereafter becomes physically or mentally disabled. The disability, though not necessarily arising from the service, must be incident thereto and prior to retirement.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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110. Legislature—Special Session—Speaker Is Proper Officer to Call to Order.

CARSON CITY, February 6, 1920.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: Section 4113 of the Revised Laws provides that on the first day of each session of the Legislature the Secretary of State shall call the Assembly to order, and shall preside over the same until a presiding officer shall be elected. I am of the opinion that this section only applies to a session of the Legislature where the Assembly has not a duly elected presiding officer. If at a special session the duly elected Speaker is present, there is no occasion for any other person to preside. It is incumbent upon him to call the meeting to order and to preside during all the proceedings.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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111. Marriage — Ordained Minister — Qualification to Perform Marriage Ceremony.

CARSON CITY, February 7, 1920.

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

DEAR SIR: Your letter, which recites that a duly ordained minister of the Baptist Church, who for some time past has been without a pastorate, but whose standing in his church as a minister is good, and who has performed the ceremony at various marriages since ceasing to be a pastor, has been considered by this office in regard to whether or not said minister is a regular minister within the meaning of the law, and whether or not he legally acted in officiating at marriages.

The minister in question complied with the law and obtained the necessary license. He obtained the license by presenting to a District Court his credentials as a regularly ordained minister of a certain society or congregation. He is still a regularly ordained minister of his church, and I therefore rule that he is a regular minister and is entitled to act as a minister in the performance of the marriage ceremony.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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112. Mines—Operation—Hoist-Man Required by Law.

CARSON CITY, February 21, 1920.

HON. A. J. STINSON, *Inspector of Mines.*

DEAR SIR: We have the letter transmitted to us by you of Mr. J. B. Kendall, under date of February 19, 1920, inquiring whether or not it is necessary under the law relating to the Inspector of Mines for an independent contractor, sinking a shaft on the property of the Sutherland Divide Mining Company, to work one shift without a hoist-man.

It is specifically provided by said Act "that at all times when men are in a mine working through a shaft equipped with hoisting machinery, an engineer shall be kept on duty to answer signals."

The language of the Act is plain. There is no exception to this language, and we are constrained to hold that, in the case mentioned, no shift may be worked without the contemplated hoist-man.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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113. County Farm Bureaus—No Valid Appropriation Made—State Controller Advised to Decline Drawing Warrants.

CARSON CITY, February 21, 1920.

HON. GEO. A. COLE, *State Controller.*

DEAR SIR: We have your inquiry of February 14 for our official opinion covering the following statement:

> Several bills have reached this office in the form of claims against the State, by virtue of an Act entitled "An Act to provide for cooperative agricultural and home economics

> extension work in the several counties in accordance with the Smith-Lever Act of Congress, approved May 8, 1914; providing for the organization of county farm bureaus; for county and state cooperation in support of such work; making an annual appropriation therefor, levying a tax and for other purposes."
>
> We are in doubt of the legal sufficiency of the appropriation mentioned in this Act, and respectfully ask your opinion as to whether or not we may lawfully draw warrants for payment of the claims mentioned.

The purpose of the Act, as is apparent from its title, is a laudable one and of deep public interest; but the policy of the law should be of no concern to administrative officers. If the law is deficient, such deficiency can only be remedied by the Legislature itself.

The Act, in so far as it is pertinent to this inquiry, provides:

> SEC. 2. That for the purpose of carrying out the provisions of this act there may be organized in each county within the State of Nevada a corporation to be known as the county farm bureau. * * *
>
> SEC. 3. The board of directors of the county farm bureau and the director of agricultural extension shall prepare an annual financial budget covering the county's share of the cost of carrying on the cooperative extension work in agriculture and home economics provided in this act, together with the share of each of all other cooperating agencies; *provided*, that the county's share shall not exceed a sum equal to the proceeds of one cent of the county's tax rate. * * *
>
> SEC. 4. That for the purposes of state cooperation, in the support of county agriculture and home economics extension work, there is hereby annually appropriated, out of any money in the state treasury, not otherwise appropriated, a sum equal to the total appropriations of the several counties for the support of county agricultural and home economics extension work as provided in section three of this act; but shall not be greater in any year than the proceeds of the state tax rate. * * *

From these excerpts it should be appreciated that no means is provided through which the State Controller may ascertain any fixed amount of money attempted to be appropriated. The fixing of such amount depends upon the fulfilment or nonfulfilment of divers contingencies. He may never be able to ascertain any fixed amount. It may rise or fall like the tides of the sea or the mercury in a thermometer, according as the various agencies referred to in the Act avail or ignore at their sole option its provisions.

It is upon such contingencies, and many others that might be referred to, that a fixed amount for the appropriation must necessarily depend. Such situation is not legally permissible.

We view the case of State v. LaGrave, 23 Nev. 25, as so nearly analogous as to be controlling. We quote:

> It is said that fixing the maximum amount to be paid each company and directing the controller to draw his warrant for the amount and the treasurer to pay it constitutes an appropriation.

These matters alone do not accomplish that end. To constitute an appropriation there must be money placed in the fund applicable to the designated purpose. The word "appropriate" means "to allot, assign, set apart or apply to a particular use or purpose." An appropriation in the sense of the constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is plainly manifested. * * *

Under existing facts it is improbable that the provisions of the statute were intended as an appropriation, because the number of military companies that could have received its benefits was indefinite and uncertain. These facts are: The law permits one company in each of the fourteen counties of the state, and excepts from this provision companies existing at the time of the passage of the act. (Stats. 1893, 96.) We understand that at present there are eight companies in the state, but that number may be increased up to the maximum at any time.

If an appropriation had been intended, the act would conflict with the provisions of the law of 1866 defining the duties of state controller. Among these duties he is forbidden to draw any warrant on the treasury except there be an unexhausted specific appropriation to meet the same. And it is made his duty, among other things, to keep an account of all warrants drawn on the treasury, and a separate account under the head of each specific appropriation in such form and manner as at all times to show the unexpended balance of each appropriation. (Sections 1812–1831, Gen. Stats.)

The foregoing requirements cannot be observed if the act of 1895 be construed as making an appropriation, because there is no specific appropriation upon which a warrant could be drawn; and also the accounts cannot show the unexpended balance as required.

"By a specific appropriation we understand an act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand. * * * The fund upon which a warrant must be drawn must be one the amount of which is designated by law, and therefore capable of definitive exhaustion—a fund in which an ascertained sum of money was originally placed, and, a portion of that sum being drawn, an unexhausted balance remains, which balance cannot thereafter be increased except by further legislative appropriation." (Stratton v. Green, 45 Cal. 149.)

You are, therefore, advised by this office to decline to draw the warrants in question.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

114. Artesian Wells—State Aid to Counties in Sinking—Appropriation Invalid.

CARSON CITY, February 24, 1920.

HON. H. W. EDWARDS, *District Attorney, Ely, Nevada.*

DEAR SIR: We have your letter of February 19, calling for our official opinion, relative to the sufficiency of section 1 of an Act entitled "An Act authorizing the expenditure of money by the State under certain conditions for the purpose of aiding counties in sinking artesian wells," approved March 13, 1915, to authorize the State Controller to issue warrants pursuant thereto.

The appropriating section of this Act is insufficient, in that there is no specific sum set apart for the purposes intended, nor is the State Controller by any computation enabled to ascertain with certainty and definiteness the amount of money appropriated, so that the same may be segregated in a proper fund and the unexpended balance of the moneys sought to be appropriated at all times ascertainable. The situation is controlled by the case of State v. LaGrave, 23 Nev. 25, and it seems there is no escape from that decision. You are, therefore, advised that under the Act entitled and approved as aforesaid the State Controller may not legally draw his warrant for any moneys in aid of the sinking of artesian wells by the counties of this State.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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115. Warrant, State—Warrants Payable at State Treasury—State Not Liable for Bankers' Exchange.

CARSON CITY, March 4, 1920.

MR. C. C. COTTRELL, *State Highway Engineer.*

DEAR SIR: In regard to the bill presented to your department by the Nevada Northern Railway Company, to cover cost of exchange charged by Washoe County Bank on your check to the said company, I beg to advise that such a claim is not valid.

A state warrant is payable at the State Treasury. It is not the duty of the State to accommodate people by paying out additional sums of money so that claimants may be paid through the particular channels that they specially desire. When a state warrant is drawn, the money is in the State Treasury for its payment, and the person in whose favor it is drawn must attend to its presentation to the State Treasurer.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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116. School Census—Ages of Children Enumerated Therein.

CARSON CITY, March 15, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: Referring to your inquiry, as to whether or not, where the statute for school-census purposes states the age of children that may be enumerated therein, such age is computed, in addition to the statutory definition, the year following the age, we beg to advise that

we are of the opinion that any lapse of time in addition to the age specified is not contemplated by the statute; and particularly, if the statute designates for census purposes children of the age of 18 years, that such designation does not contemplate that any children shall be enumerated therein who have passed their eighteenth birthday. We find nothing in the statute that is ambiguous and, therefore, no words of the statute requiring interpretation.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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117. Public Schools—Area of School Districts.

CARSON CITY, March 18, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: The correspondence relative to annexing to Lake School District No. 3, Pershing County, Nevada, certain territory that was formerly Rye Patch School District, has been considered by me.

It is admitted that such an addition will make the district more than sixteen miles square. The law is plain on this subject. It is certain that no school district can be originally created that is greater in size than sixteen miles square. After it is created, the legal situation does not change, and the district must at all times be of a size that does not conflict with the law mentioned.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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118. Revenue—County Commissioner—Road Districts—Special Tax Levy.

CARSON CITY, March 19, 1920.

HON. A. J. MAESTRETTI, *District Attorney, Austin, Nevada.*

DEAR SIR: Replying to your telegram, I beg to advise that, in that section 3014 of the Revised Laws is still effective, I can see no reason why the Commissioners of your county should not define road districts and levy special tax pursuant to the law of which said section is a part.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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119. Fish and Game—Creation of Districts for Protection of—Act Regulating.

CARSON CITY, March 30, 1920.

MR. H. K. KENNEDY, *Reno, Nevada.*

DEAR SIR: The Legislature of this State in the Fish and Game Act of 1917 exercised a power that belongs to it when it pursued the particular method of dividing the State into separate and distinct districts for the protection of fish. It was not incumbent upon the Legislature to create districts with geographical boundaries instead of giving special recognition to the lakes and rivers of the State.

Section 17 appears to be clear. It makes it unlawful for any person or persons, firm, company or corporation in this State to buy, sell, or

offer or expose for sale, or to have in his, her, their, or its possession any of the following fish during the closed season, which is taken or caught from any waters of this State within the closed season: River trout, lake trout, brook trout, salmon, white-fish, or large-mouthed or small-mouthed black bass.

Section 30 permits the use of spawn, egg or ova of trout, salmon, or of any other species of fish in fishing if the same is attached to a hook, which hook is attached to a line and which line is attached to a rod.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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120. Live Stock, Grazing of—License for—Certain Legislation Unconstitutional Relating Thereto.

CARSON CITY, April 1, 1920.

HON. F. N. FLETCHER, *Secretary of Nevada Tax Commission.*

DEAR SIR: After careful review of the various livestock-license Acts and sheep-license Acts passed at different sessions of the Legislature of Nevada, I have come to the conclusion that for the purpose of acting under a statute that is constitutional, we must go back to the Act of 1901, Statutes of 1901, page 64.

All legislation as to a license tax for grazing live stock or sheep attempted to be enacted as laws by the Legislature since the session of 1901 is unconstitutional. The Legislature in its zeal to bestow special favors has contravened either a provision or provisions of the Constitution of this State or of the United States, or both.

There has been an attempt to favor citizens as against those who are not citizens, to favor residents as against nonresidents, and otherwise to favor certain people as against the rest of the people; and such has been done in a way that cannot be sustained constitutionally.

Certain methods of classification are permissible for the purpose of taxation, either through the license system or other methods of taxation, but such is not the situation presented in the legislation that we are called upon to consider, to determine which Act may be enforced relative to charging licenses for grazing live stock or sheep.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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121. Industrial Insurance—Act Providing for, Construed for Benefit of Injured and Dependents.

Nevada Industrial Commission. CARSON CITY, April 7, 1920.

DEAR SIRS: In the matter of the claim of Gust Buzas, No. 4857, we have the inquiry whether or not the claim of an injured employee filed pursuant to the provisions of the statute will be held sufficient to keep the same alive for the benefit of his beneficiaries after his death where they have not filed either a notice or a claim within the period of one year.

We are under the opinion that the claim originally filed by the claimant is sufficient and that, were there any question in regard thereto, under section 34½ the Commission has ample power to excuse

CORRECTION

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

CORRECTION

we are of the opinion that any lapse of time in addition to the age specified is not contemplated by the statute; and particularly, if the statute designates for census purposes children of the age of 18 years, that such designation does not contemplate that any children shall be enumerated therein who have passed their eighteenth birthday. We find nothing in the statute that is ambiguous and, therefore, no words of the statute requiring interpretation.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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117. Public Schools—Area of School Districts.

CARSON CITY, March 18, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: The correspondence relative to annexing to Lake School District No. 3, Pershing County, Nevada, certain territory that was formerly Rye Patch School District, has been considered by me.

It is admitted that such an addition will make the district more than sixteen miles square. The law is plain on this subject. It is certain that no school district can be originally created that is greater in size than sixteen miles square. After it is created, the legal situation does not change, and the district must at all times be of a size that does not conflict with the law mentioned.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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118. Revenue—County Commissioner—Road Districts—Special Tax Levy.

CARSON CITY, March 19, 1920.

HON. A. J. MAESTRETTI, *District Attorney, Austin, Nevada.*

DEAR SIR: Replying to your telegram, I beg to advise that, in that section 3014 of the Revised Laws is still effective, I can see no reason why the Commissioners of your county should not define road districts and levy special tax pursuant to the law of which said section is a part.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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119. Fish and Game—Creation of Districts for Protection of—Act Regulating.

CARSON CITY, March 30, 1920.

MR. H. K. KENNEDY, *Reno, Nevada.*

DEAR SIR: The Legislature of this State in the Fish and Game Act of 1917 exercised a power that belongs to it when it pursued the particular method of dividing the State into separate and distinct districts for the protection of fish. It was not incumbent upon the Legislature to create districts with geographical boundaries instead of giving special recognition to the lakes and rivers of the State.

Section 17 appears to be clear. It makes it unlawful for any person or persons, firm, company or corporation in this State to buy, sell, or

offer or expose for sale, or to have in his, her, their, or its possession any of the following fish during the closed season, which is taken or caught from any waters of this State within the closed season: River trout, lake trout, brook trout, salmon, white-fish, or large-mouthed or small-mouthed black bass.

Section 30 permits the use of spawn, egg or ova of trout, salmon, or of any other species of fish in fishing if the same is attached to a hook, which hook is attached to a line and which line is attached to a rod.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

---

120. Live Stock, Grazing of—License for—Certain Legislation Unconstitutional Relating Thereto.

CARSON CITY, April 1, 1920.

HON. F. N. FLETCHER, *Secretary of Nevada Tax Commission.*

DEAR SIR: After careful review of the various livestock-license Acts and sheep-license Acts passed at different sessions of the Legislature of Nevada, I have come to the conclusion that for the purpose of acting under a statute that is constitutional, we must go back to the Act of 1901, Statutes of 1901, page 64.

All legislation as to a license tax for grazing live stock or sheep attempted to be enacted as laws by the Legislature since the session of 1901 is unconstitutional. The Legislature in its zeal to bestow special favors has contravened either a provision or provisions of the Constitution of this State or of the United States, or both.

There has been an attempt to favor citizens as against those who are not citizens, to favor residents as against nonresidents, and otherwise to favor certain people as against the rest of the people; and such has been done in a way that cannot be sustained constitutionally.

Certain methods of classification are permissible for the purpose of taxation, either through the license system or other methods of taxation, but such is not the situation presented in the legislation that we are called upon to consider, to determine which Act may be enforced relative to charging licenses for grazing live stock or sheep.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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121. Industrial Insurance—Act Providing for, Construed for Benefit of Injured and Dependents.

CARSON CITY, April 7, 1920.

Nevada Industrial Commission.

DEAR SIRS: In the matter of the claim of Gust Buzas, No. 4857, we have the inquiry whether or not the claim of an injured employee filed pursuant to the provisions of the statute will be held sufficient to keep the same alive for the benefit of his beneficiaries after his death where they have not filed either a notice or a claim within the period of one year.

We are under the opinion that the claim originally filed by the claimant is sufficient and that, were there any question in regard thereto, under section 34½ the Commission has ample power to excuse

the beneficiaries. The purpose of the Act is for the benefit of the injured and their dependents, and any other construction might work a grave hardship upon those not responsible for the conditions. However, each case should be governed by its own statement of facts.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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122. Highways — Department of Highways — Right to Dispose of Obsolete Equipment.

CARSON CITY, April 7, 1920.

HON. C. C. COTTRELL, *State Highway Engineer.*

DEAR SIR: We have your letter of April 2, inquiring whether or not the Department of Highways has authority to trade in, on the purchase of new equipment, such equipment which has been used to the extent where the cost upkeep is so high that it is for the best interests of the department to dispose of its use; and also whether or not the department may dispose of old material unnecessary for use and place the proceeds therefor in the State Treasury.

To each of these inquiries we answer in the affirmative, upon the ground that your department is discharging certain business functions of the state as contradistinguished to governmental functions, and that, in the discharge thereof, you have the right to use all means and adopt such methods as will tend towards economy and a general saving to your department. As a general rule, however, your action in the premises must be duly approved by your governing body.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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123. Public Service Commission—Cannot Delegate Quasi-Judicial Functions—Approval of Bonds.

CARSON CITY, April 9, 1920.

Public Service Commission of Nevada.

DEAR SIRS: We have your inquiry in the matter of the correspondence between the Tax Commission and Hon. Lester D. Summerfield, District Attorney of Washoe County, propounding the question whether or not the latter may be required to pass upon the sufficiency of sureties on bonds required to be filed with you under section 18 of the Act creating your Commission.

The fact that section 40 of the Act authorizes your Commission to call the District Attorney in aid of any investigation, prosecution, hearing, or trial does not place him under any obligation to discharge any of the quasi-judicial functions of your Commission. These you may not delegate. His duties, in that regard, are those of an attorney in legal matters of public moment. In fact, section 18 of the Act referred to requires the bonds in question to be approved by your Commission, and no other construction could be placed upon the language in that respect than that the bonds must be approved as to the sufficiency of the sureties thereon. Such being our opinion, it is unnecessary to pass upon the question whether or not, should the District Attorney pass

upon the sufficiency of the sureties on such bonds, he would thereafter be liable by reason of their inadequacy. We are sure, however, that the District Attorney in all matters would render you such information that he may personally have in regard to such bonds, to the end that you might pass upon their sureties with your best judgment as contemplated by the Act.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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124. Elections—Registration of Voters—Appointment of Deputy Registrars—Boundaries of Precincts.

CARSON CITY, April 27, 1920.

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

DEAR SIR: Your letter of the 23d instant, relative to an Act of the Legislature which provides for the appointment of deputy registrars in each precinct of a county distant more than five miles from the county courthouse wherein no Justice of the Peace resides, and your specific question as to what should be done in the case of a precinct, where the nearest boundary line is less than five miles and the most distant boundary line is more than five miles from the courthouse, has been considered by me.

I am satisfied that the greatest distance should govern. The object of the Act is to make it convenient for the voters to register. That being the case, the law should be construed to make its purpose effective. The ruling herein given is in conformity with this principle.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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125. Public Service Commission—Liability in Approving Bonds.

CARSON CITY, April 28, 1920.

Public Service Commission of Nevada.

DEAR SIRS: We have your inquiry of the 17th instant, requesting our views as to whether or not your Commissioners might incur personal liability in approving indemnity bonds provided by the Act under which you are operating.

In approving or disapproving such bonds, the Commission is acting in a quasi-judicial capacity, and, in so acting, they cannot become personally liable in judging the sufficiency or insufficiency of such bonds. This rule is one of necessity, sustained by law, and, without it, no tribunal exercising judicial functions could operate with that free and independent action necessary to a due fulfilment of its duties as prescribed by law.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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126. Nevada Historical Society—Valid Street Assessment Cannot Be Made on Property.

CARSON CITY, April 28, 1920.

Nevada Historical Society, Reno, Nevada.

DEAR MISS WIER: We have your favor of the 27th instant, relating to the street assessments imposed by the city of Reno, which may affect the property of the Nevada Historical Society.

We quite agree with the Mayor and City Attorney in their conclusion that no legal assessment can be made against this property, but, at the same time, there is no appropriated fund out of which the assessment may be paid by the State. Public moneys may only be disbursed pursuant to a valid appropriation of the Legislature. This is elementary.

We do not think that you should pay this assessment out of the appropriation made to the Society for its maintenance and support. By so doing, you are diverting the moneys from the application intended by the Legislature. We think the proper method for you to pursue is to have a relief bill passed by the Legislature to cover this assessment.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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127. Revenue—Assessment of Live Stock—Act Governing.

CARSON CITY, April 29, 1920.

MESSRS. STODDARD & SALISBURY, *Reno, Nevada.*

GENTLEMEN: Your letter, relative to the method of assessment of live stock, has been considered by me.

I cannot see any legal objections to the Act of the Legislature of 1915, entitled "An Act defining and classifying transient live stock and providing for the assessment, collection, and distribution of taxes on the same."

I therefore rule that this Act governs in regard to the assessment of live stock, and that any decisions rendered by the Supreme Court of this State prior to the passage of the Act that are in conflict with said statute are no longer controlling.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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128. Corporations — Amendment of Articles — Requirements Before Filing Amendments.

CARSON CITY, April 30, 1920.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: Your letter, relative to the amended articles of incorporation of the Security Savings and Loan Association, together with certain law and facts, has been considered by me.

This corporation incorporated by first obtaining the approval of the State Bank Examiner pursuant to the requirements of the building-and-loan-association Act of this State. It has since been recognized

and represented itself as a corporation under the control of the State Bank Examiner by virtue of the Act mentioned. It is now the desire of the company to amend its articles by overthrowing the jurisdiction which the State has of it under the said building-and-loan-association Act. I am of the opinion that this cannot be done. If the State now possesses supervisory power over said corporation, then said corporation has not the legal right to amend its articles so that this supervisory power will be destroyed.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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129. Bonds Issue—Act Authorizing—Construction of Inconsistent Provision.

CARSON CITY, May 1, 1920.

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

DEAR SIR: The Act of the Legislature of 1919, authorizing the County Commissioners of Humboldt County to issue bonds, being inconsistent wherein it limits the county to the redemption of ten bonds annually, but requires full redemption to be made within fifteen years, must be construed to make effective the main intent of the Act, as far as redemption is concerned, which is to have all the bonds redeemed within fifteen years.

I am, therefore, of the opinion that the county has the legal right to redeem but such number of bonds annually as may be necessary in order to redeem the full amount of $150,000 within fifteen years.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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130. Livestock Shipment—Inspection Thereof—Act Construed.

CARSON CITY, May 1, 1920.

State Board of Stock Commissioners.

DEAR SIRS: We have your inquiry, calling for an official opinion relating to the construction of the sentence in section 21, chapter 268, Statutes of Nevada, 1915, reading as follows:

> Said inspector shall also inspect all stock or cattle about to be shipped from the state, and the consignor upon demand shall establish fully his title to such stock.

You desire to know whether or not the language quoted applies to shipments from one county to another county of this State where such shipments must pass through the State of Utah in transit. We hold this language does not apply to such shipments, notwithstanding, as you suggest, "there is nothing to prevent the owner from diverting the shipment en route and not returning the stock to the State."

It is evident that the phrase "about to be shipped from the State" means to be shipped from and consigned outside of the State, and the

fact that the owner may divert the shipment is not material, for we must assume, according to legal presumption, that the owner will obey rather than that he will violate the law.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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131. Cement Commission—Fixing of Salaries of Commissioners—Act Construed.

CARSON CITY, May 3, 1920.

HON. GEO. A. COLE, *State Controller of Nevada.*

DEAR SIR: We have had under consideration section 2 of the Act (Stats. 1919, p. 193) relating to the Cement Commission, which provides:

> For the expenses of said commission, the sum of five thousand ($5,000) dollars is hereby appropriated, out of any moneys in the general fund of the state treasury not otherwise appropriated.

The question propounded by you is whether or not the compensation fixed by the Governor, to be paid to the Commissioners appointed by him under section 1 of this Act, is payable out of the $5,000 fund appropriated under section 2, quoted as aforesaid. Ordinarily the term "expenses" used in legislative Acts means such items as accrue from time to time in the administration of a commission or governmental board, but under the Act in question it is apparent that the Commission cannot function unless the compensation fixed by the Governor pursuant to the Act is paid from the expense fund created therein, and, moreover, the proximity of these two sections are so closely related and so disconnected from the following six sections that it is fair to presume that the legislative intent was to have the compensation of the Commissioners paid from the fund provided for in section 2 of the Act.

We, therefore, advise you to pay the salaries fixed in accordance with this opinion.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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132. Revenue — Taxes Levied and Assessed Without Jurisdiction Voluntarily Paid — Cannot Be Refunded.

CARSON CITY, May 7, 1920.

To the Board of County Commissioners, and the District Attorney, Tonopah, Nye County, Nevada.

GENTLEMEN: We have had under consideration your request for an official opinion as to whether or not you should refund to Messrs. D'Arcy and McMahon, as assignees of the Tonopah Mines Corporation, certain taxes paid for the years 1912 to 1915, inclusive, upon certain patented mines situate in Esmeralda County, but assessed through mistake in Nye County.

Primarily, we have to suggest that the tax laws of this State, during the period mentioned, provided an elaborate scheme for the correction

of erroneous assessments, and the equalization of values assessed, which was notice to all persons interested of the course for them to pursue on account thereof. In the case under consideration no note was taken of the subsisting provisions of law, and the taxes were paid from time to time pursuant to the assessment.

Accordingly, we are of the opinion that, if there were no other principle of law controlling, the ignoring of the scheme provided by law relating to the premises precludes a refund of the taxes paid at this time, but the taxes were paid without protest and voluntarily, and it is firmly established by decision law that taxes paid without protest and voluntarily, even under an assessment made without authority of law, cannot be recovered. Furthermore, the doctrine of laches would apply in this case, defeating any claim for a recovery of this money.

Such being our views, you are advised that you may not legally refund the taxes paid as aforesaid.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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133. Public Schools — Bond Election — Unnecessary for Full Attendance of Trustees to Call.

CARSON CITY, May 18, 1920.

MR. T. W. CHAPMAN, *Deputy Superintendent of Public Instruction, Las Vegas, Nevada.*

DEAR SIR: The fact that, at the time of the calling of the bond election by the Board of School Trustees of Caliente School District, there were only two Trustees of said board does not invalidate the election.

There is nothing in the law that says that at the time of making such a call there must be a full membership and that a unanimous vote shall be necessary. The two School Trustees acting together had the power to do and perform all the functions incident to a school board, and, if all the other requirements have been complied with, then the bond election was perfectly legal.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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134. Corporations—General Corporation Law—Corporate Name—Secretary of State Bound by Official Record.

CARSON CITY, May 19, 1920.

MESSRS. HOYT, NORCROSS, THATCHER, WOODBURN & HENLEY, *Reno, Nevada.*

GENTLEMEN: Replying to your letter, addressed to Hon. Robert Richards, Deputy Attorney-General, I beg to advise you that I verbally advised the Secretary of State that, in determining whether or not the proposed name of a corporation conflicts with the name of an existing corporation, he should stand upon the records as they exist in his office, and that any departure from this position would mean great confusion. I see no reason to alter my position in this matter.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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135. Notaries Public—Qualifications for Appointment.

CARSON CITY, May 21, 1920.

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

SIR: There is no law in this State which requires any particular length of residence in a particular county on the part of a person in order that he may be appointed a Notary Public.

Any person of the age of 21 years, who is a citizen of the State of Nevada, may be appointed a Notary Public in the county designated by you.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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136. Public Contracts—Under Act Cited Surety Bond Not Required.

CARSON CITY, May 21, 1920.

Reno Plumbing and Heating Co., Reno, Nevada.

GENTLEMEN: The Act relative to the Memorial Building provides that "good and sufficient bonds to protect the State shall be required from all contractors."

There is no Act of the Legislature that requires that such bonds shall be given with surety companies as the bondsmen. Any contractor, therefore, has the privilege under the Act of giving a bond with individual persons as sureties instead of a surety company.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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137. Emergency Loan—Deficiency for Elko County Hospital May Be Covered By.

CARSON CITY, May 25, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance.*

DEAR SIR: The Act of the Legislature of the State of Nevada of 1919, which authorizes the county of Elko to issue bonds to provide for the purchase of a site, and for the construction, equipment, and furnishing of a hospital, etc., must be strictly followed as far as any bond issue is concerned. The county is in that respect governed by the Act.

The situation now presented is that the amount of money raised from said bond issue is insufficient to build and equip the hospital planned by said county. The Legislature could not forecast the exact amount that would be required for the purposes named in the Act mentioned. Elko County is a large, prosperous, and growing county and necessarily desires to construct and equip a hospital of a high order and which will be capable of being used for many years to come. We are living in a high-cost age, and it is, therefore, not strange that an amount greater than the sum raised by the bond issue is required to consummate the undertaking mentioned.

I am, therefore, of the opinion that there is unquestionably an emergency that may be legitimately acted upon by your board and that an approval of such a loan by the Board of Finance will be valid.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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138. Emergency Loan—Washoe County Farm Bureau Cannot Obtain—Its Funds Otherwise Provided For.

CARSON CITY, May 25, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance.*

DEAR SIR: The question as to whether or not the State Board of Finance has the power to permit an emergency loan for the purpose of paying an indebtedness of the Washoe County Farm Bureau, Incorporated, has been considered by me.

The Act of the Legislature of 1917, relative to this subject, provides that where a county is authorized to make an emergency loan that an emergency tax shall thereafter be levied and the said loan shall be paid from a fund to be designated "The Emergency Fund." The Act permitting the incorporation of farm bureaus fixes the method of support of such bureaus, and no way is provided for the raising of funds for the support of such bureaus other than as is in said Act specifically provided.

I am, therefore, of the opinion that the Board of County Commissioners is powerless to levy any emergency tax to pay any loan on behalf of the Washoe County Farm Bureau, and consequently I must rule that your board is not authorized to approve such a loan.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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139. Revenue—Assessment Levied and Taxes Paid Thereunder Without Protest Final.

CARSON CITY, May 25, 1920.

HON. F. N. FLETCHER, *Secretary of Nevada Tax Commission.*

DEAR SIR: The letter relative to the Garavanta Land and Livestock Company, wherein it states that 200 head of cattle were assessed in its name in Lyon County and 100 head of cattle were assessed in its name in Washoe County, and in which letter it is claimed that only 100 head of cattle should have been assessed in Lyon County, and the further assertion that complaint of this fact was filed in your Commission in January, 1920, has been considered by me.

Assessments, like other things in law, must at some time become final. In this case the first installment was paid without objection or complaint, and thereafter a complaint was interposed, contending that the assessment in Lyon County is erroneous.

My ruling is that the assessment as it stands is final, and is not the subject of review.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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140. Public Schools—Sectarian Teaching—Invitations Read to Attend Church of Choice Not Prohibited.

CARSON CITY, May 27, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: The reading of an invitation to the students of a public school to attend the churches of their respective choice does not conflict with the constitutional provision prohibiting sectarian instruction in

any school or university controlled by the State. The invitation must not go beyond a mere invitation, as otherwise it will probably be such that it will conflict with the constitutional restriction.

I am also of the opinion that, upon the written request of a parent, the children of such parent may be excused from attendance at school for a brief time for the purpose of attending a certain church specified by the parent.

Necessarily it is contrary to correct school policy to permit any such courtesy to seriously interfere with the school work. This is something which must be considered by the school authorities in connection with the granting or declining to grant the privilege herein mentioned.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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141. Employment—Employer and Employee—Act Providing for Eight-Hour Day for Women Not Applicable to Telegraph Companies.

CARSON CITY, May 28, 1920.

HON. ROBT. F. COLE, *Labor Commissioner.*

DEAR SIR: We have your inquiry calling for our official opinion as to whether or not the Western Union Telegraph Company in employing women workers for a period in excess of eight hours per day is violating section 1, chapter 14, Statutes of 1917.

This section 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 hours during any one day, or more than fifty-six hours in one week.

It is apparent that the classifications mentioned relate to occupations of a seeming kindred physical nature, and that females employed by a telegraph company are not included in such classifications, nor can they said to be included in an express or transportation company, since these words are of a generic kind and include only the physical handling of personal property.

Such women, therefore, do not come within the purview of said section.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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142. Revenue—Owner May Pay Tax Assessed on Subdivision Without Paying on Entire Property Assessed.

CARSON CITY, June 7, 1920.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: Section 3645 of the Revised Laws provides that the tax receiver shall not receive any taxes for any portion of real estate less than the least subdivision entered upon the assessment roll. It is, therefore, permissible for a taxpayer to pay the tax on subdivisions

of his property without paying the taxes upon his entire property. (State v. C. P. R. R. Co., 21 Nev. 94.)

The law provides that the redemption of property sold for failure to pay taxes shall be made in accordance with the provisions of the Civil Practice Act of this State.

In regard to real property sold under execution, section 5292 of the Revised Laws provides that when the sale is of real property and consisting of several known lots and parcels they shall be sold separately.

Section 5298 requires a certificate of sale to give a particular description of the real property sold.

Section 5299 provides as follows:

> Property sold subject to redemption, as provided in section 5298, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest:
>
> 1. The judgment debtor or his successors in interest, in the whole or any part of the property. * * *

Any taxpayer has the right, pursuant to the provisions of section 3645 of the Revised Laws, to pay his taxes on any particular subdivision assessed to him and to decline to pay the tax on any other subdivisions. This right, without express legislation, would continue after a sale for delinquency.

The sections quoted herein, however, expressly give such a taxpayer the right to redeem any lot or parcel of his property sold, and it is not incumbent upon him to redeem all the property sold for nonpayment of taxes.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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143. Public Schools—Teachers' Retirement Fund—Application for Benefits—Abstract Questions Asked and Answered.

CARSON CITY, June 7, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your request, calling for our official opinion upon the inquiries propounded by you, as follows:

> Can a teacher *make application* for Retirement Salary Fund benefits before she has ceased to draw salary under a contract with a school district in this State? * * * In case application is made before a teacher ceases to draw salary, can the State Teachers' Retirement Salary Fund Board act on her case and grant under the law the benefits provided, such benefits to begin at a time subsequent to the period of contract during which such teacher is drawing salary from the school district?

As these inquiries are abstract in form, we are able to reply to you only in similar form. Accordingly, we answer you in the affirmative to each inquiry. If you should propound a concrete case to us in the

premises, there may be some fact therein appearing, not now disclosed, which might seriously influence our opinion.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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144. **Physicians—Medical Examiners—Violations of Law by Physicians—Law Discussed.**

CARSON CITY, June 9, 1920.

DR. S. L. LEE, *Secretary of State Board of Medical Examiners.*

DEAR SIR: The long list of questions propounded by a certain physician, which you have submitted, has been considered by me.

It is not the province of this office to advise a person who is probably endeavoring to at least shave the line as to law violation whether or not a given thing is in reality criminal in its nature. A duly licensed physician and surgeon should so conduct himself that he will stand above reproach. He should not become a street peddler or an auctioneer. Such things are unprofessional, whether they are criminal or not. One thing is certain: Such a practitioner of medicine should become the subject of close scrutiny, so that in case of an actual violation of the law he may be speedily prosecuted. I am inclined to think that the method of selling medicine that this doctor desires to pursue will very likely be in contravention of an Act of the Legislature of this State, entitled "An Act to provide for the creation of a state board of pharmacy; to regulate the practice of pharmacy; to prohibit the use of deteriorated and adulterated drugs; and to regulate the sale of poisons," approved March 28, 1901, and being sections 4495 to 4514, both inclusive, of the Revised Laws of the State of Nevada.

Section 4513 of said Revised Laws exempts the practitioner of medicine who does not keep a pharmacy or open shop from the provisions of this Act, but this necessarily means that, as far as his own patients are concerned, the Act will not be binding. It further exempts general dealers from the provisions of the Act in so far as it relates to the keeping for sale of proprietary medicines in original packages of drugs and medicines.

If the practitioner mentioned attempts to do all or most of the things suggested by his questions, then I think it is very likely that he will ultimately find himself in a position where he will be guilty of a violation of some law of this State. What particular law may be violated will have to be determined when particular facts are presented to the proper officer.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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145. **Prohibition Law—Questions by Federal Prohibition Director Answered—Law Discussed.***

CARSON CITY, June 10, 1920.

HON. R. C. STODDARD, *Federal Prohibition Director, Reno, Nevada.*

SIR: Various questions propounded by you, on the prohibition subject, are hereby answered in the order given in your letter:

*See Opinion 147, *post.*

1. Does a permit to transport intoxicating liquors for non-beverage purposes, issued under the National Prohibition Act, purport to authorize an act which is declared by the statutes of Nevada to be unlawful?

Answer—No.

2. Does a permit so issued which purports to authorize the *manufacture*, by retail druggists in the State of Nevada, of intoxicating liquors or any beverage containing so much as one per centum of alcohol, or any *liquid, mixture* or *preparation* which will produce intoxication, conflict with the said statutes?

Answer—Yes.

3. Does the word "manufacture," as used in the Nevada Initiative Prohibition Act, include the word "compound"?

Answer—Yes. The meaning of these words and their application will be referred to in my answer to the next question.

4. May retail druggists be lawfully permitted to *sell* any intoxicating liquor, as above defined, or any liquid, mixture or preparation which will produce intoxication, other than pure grain alcohol and wine for sacramental purposes?

Answer—Our Nevada Act prohibits the sale by any druggist of any liquid, mixture, or preparation which will produce intoxication other than pure grain alcohol, wine for sacramental purposes, and such preparations that are listed in the United States Pharmacopœia or National Formulary and preparations exempted by the National Pure-Food Act. Necessarily, our law in this respect should not be too rigorously construed. In the preparation of prescriptions of duly licensed physicians and surgeons it must be held that it is permissible for druggists to compound for such purpose. Too restricted a construction in this respect would mean too extensive an interference with those who are expected to get beneficial, and oftentimes speedy, results in the practice of their profession. As Attorney-General I will so construe the law, as far as I may plausibly do so, in a way that will prevent physicians and surgeons from being handicapped in treating their patients. Those who place their faith and confidence in members of the medical profession are entitled to be treated without undue and unreasonable interference of law. The absolute exclusion of brandy, whisky, and certain other intoxicating liquors places doctors in a position where they cannot pursue the methods that they consider necessary in attending to their patients, but this is something which cannot be overcome by me, because there the law has left no opening that can be used for that purpose. The law should not be so rigorously construed so as to practically strip the shelves of the druggists, but should only be enforced in a way that will prevent the sale of preparations that will mean the defeat of the purposes of the prohibition law.

5. May physicians prescribe and druggists lawfully sell

brandy, on prescription, as provided in the Nevada Act of April 1, 1919?

Answer—No. Said Act is unconstitutional.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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146. Public Schools — Board of Joint School District May Direct Levy of Special Tax — County Commissioners of Respective Counties Must Levy.

CARSON CITY, June 10, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: You are respectfully advised in reply to the inquiries propounded by you as follows:

1. Should the Board of School Trustees of a joint school district direct the levy of a special tax, as authorized by law, all of the territory of such district is subject to said tax, and the County Commissioners of the respective counties comprising such district must levy and cause such tax to be collected accordingly; notwithstanding there may be no children in a portion of such territory or there are no Trustees appointed or elected from the county of which such territory forms a part? If such joint school district is legally created and organized, it necessarily has the authority to function in the manner provided by law.

2. If such special tax is directed to be levied by the Board of School Trustees pursuant to section 140 of the School Code of 1919, the Board of County Commissioners can be required to levy and cause the same to be collected only at the time of the next levy and collection of state and county taxes.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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147. Prohibition Law—Supplemental Opinion to Federal Prohibition Director.

CARSON CITY, June 14, 1920.

HON. R. C. STODDARD, *Federal Prohibition Director, Reno, Nevada.*

SIR: In my letter of June 10, 1920, I answered "no" to your question numbered 1, which question is: "Does a permit to transport intoxicating liquors for nonbeverage purposes, issued under the National Prohibition Act, purport to authorize an act which is declared by the statutes of Nevada to be unlawful?"

I intended to amplify my answer, but failed to do so. Necessarily a permit to transport intoxicating liquors for nonbeverage purposes, which is clearly in conflict with the Nevada prohibition law, will be so construed so far as Nevada is concerned. Whisky and brandy may be used for medicinal purposes, but, notwithstanding the nonbeverage character of their use, it is not permissible to ship them to this State. I answered "no" to the question because it will not be the disposition

of the authorities of this State to construe our prohibition law so that intoxicating liquors, which are nonbeverage in character and which can hardly be used as a beverage, will be included.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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148. **Corporations, Foreign — Facts Stated Do Not Require Foreign Corporations to Qualify in This State.**

CARSON CITY, June 15, 1920.

MR. WM. J. STEINERT, *Seattle, Wash.*

DEAR SIR: In the case mentioned by you—that is, where a corporation having an established business in a State other than Nevada solicits business in this State and makes deliveries pursuant to said solicitation—I am of the opinion that it will be unnecessary for such corporation to file its articles in this State or to take out any kind of a license.

A foreign corporation doing business in this State is denied the right to sue in this State without first coming into Nevada in the manner provided by our laws for recognition of foreign corporations which do a business in this State. I do not think, however, that the law is applicable to the case presented by you, as the corporation will not be doing business in the State of Nevada within the meaning of our Act relative to foreign corporations.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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149. **Revenue—Payment of Taxes on Subdivisions Assessed — Supplemental Opinion.**

CARSON CITY, June 15, 1920.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: In writing my letter of the 7th instant, I had in view only real property upon which the taxes are delinquent.

Our law places a lien upon all real property for the tax levied upon the personal property of the owner of such real property. As this lien attaches to all the real property of the owner of the personal property, it is the first tax that must be paid. The owner, therefore, cannot in such a case pay upon a subdivision of real property without first paying all the taxes due on his personal property.

The law is not concerned with what has become of the personal property after it is assessed. In the event that the taxes become delinquent, then the owner will be denied the privilege of redeeming a particular lot or parcel of his property without first paying the entire amount due for taxes on personal property.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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150. Revenue — Poll-Tax Provided by Constitution — Legislature May Not Ignore Constitutional Provision.

CARSON CITY, June 15, 1920.

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

SIR: Section 7 of article 2 of the Constitution of Nevada is as follows:

> The legislature shall provide by law for the payment of an annual poll-tax, of not less than two nor exceeding four dollars, from each male person resident in the state between the ages of twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of public roads.

This provision of our Constitution compels the Legislature, in any law enacted by it relative to poll-tax, to make the same applicable to every male person resident of the State between the ages of 21 and 60 years, with the single exception of uncivilized American Indians.

The Legislature has not the power to abrogate, modify, or change this provision of the Constitution through the instrumentality of a statute. There is only one way that men who have served in the Army or Navy of the United States may be exempted from such a tax, and that is by amending the Constitution. The ardent desire of the officials of this State to relieve such men of the obligation to pay poll-taxes cannot help the situation. The constitutional provision is paramount, and until it is changed they cannot be made the subject of an exception.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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151. Elections—Primary Elections—Independent Candidates Not Required to File Statements.

CARSON CITY, June 18, 1920.

MISS ANNE MARTIN, *Reno, Nevada.*

DEAR MISS MARTIN: The law of this State which requires candidates for nominations at a primary election to file statements prior to and subsequent to the primary election has no application to an independent candidate, as an independent candidate has no connection whatever with a primary election.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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152. Employment—Employer and Employee—Contractors on Public Contract Bound by Semimonthly Pay-Day Law.

CARSON CITY, June 21, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner.*

DEAR SIR: Replying to your inquiry of this date, we beg to advise you that chapter 71 of the Statutes of 1919, commonly called the semimonthly pay-day law, is applicable to contractors and their employees operating under a contract from the Department of Highways.

The fact that such contractors are engaged on public work does not exclude them from the operations of the Act, as they are indepen-

dent contractors, and, therefore, the relation between them and their employees constitutes private employments.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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153. **Employment — Employer and Employee — Blacklisting Prohibited — Law Discussed.**

CARSON CITY, June 21, 1920.

DR. CLAUDE H. CHURCH, *Tonopah, Nevada.*

DEAR SIR: In reply to your letter of the 15th instant I wish to quote three sections of the Revised Laws of Nevada relative to blacklisting. They are sections 6780, 6781, and 6782, as follows:

> No corporation, company, organization, or individual shall blacklist or publish, or cause to be blacklisted or published, any employee, mechanic, or laborer discharged by such corporation, company, organization, or individual with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, organization, or individual.
>
> If any officer or agent of any corporation, company, organization, or individual, or other person, shall blacklist or publish or cause to be blacklisted or published any employee, mechanic, or laborer discharged by such corporation, company, organization, or individual, with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, organization, or individual, or shall in any manner conspire or contrive, by correspondence or otherwise, to prevent such discharged employee from procuring employment, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty, nor more than two hundred and fifty dollars, or be imprisoned in the county jail not less than thirty nor more than ninety days, or both.
>
> The two preceding sections shall not be construed as prohibiting any corporation, company, organization, or individual from giving in writing, on application from such discharged employee, or any corporation, company, organization, or individual who may desire to employ such discharged employee, a truthful statement of the reason for such discharge; *provided*, that said written cause of discharge, when so made by such person, agent, company, organization or corporation shall not be used as the cause for an action for libel, either civil or criminal, against the person, agent, company, organization, or corporation so furnishing the same.

The law, as you will observe, prohibits any corporation, company, organization, or individual from blacklisting any discharged employee, with the intent and for the purpose of preventing such employee from engaging in and securing similar or other employment from any other corporation, company, organization, or individual. There is no law

which prevents a censorship of applicants for employment prior to their being employed. The central employment bureau, mentioned in your letter, must operate in a way that will not be in violation of the blacklisting provisions as herein given. If it becomes the agent of various corporations, companies, organizations, or individuals, and, as such agent, blacklists men after they are discharged, then the Act will make the corporation, company, organization, or individual which has discharged such employee criminally liable.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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154. **Employment — United States Railroad Administration — Not Subject to Semimonthly Pay-Day Law.**

CARSON CITY, July 8, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner.*

DEAR SIR: We are returning, after reviewing, the file relative to the claim of James Isola v. Southern Pacific Railroad Company, a unit of the United States Railroad Administration, for failure to pay wages promptly upon cessation of work as provided in chapter 71 of Statutes of 1919.

We agree with the opinion of Mr. Douglas Brookman, to the effect that state statutes for failure promptly to pay wages, do not apply to the Federal Government. The Federal Government in the railroad administration was exercising a portion of the sovereignty of the United States, and any state statutes which might conflict or impair the free exercise of such sovereignty is inoperative. Accordingly, your department should call this incident closed.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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155. **Elections—County Commissioners—Must Act Within Time Before Election Prescribed by Law.**

CARSON CITY, July 15, 1920.

MR. R. T. ROCHFORD, *County Commissioner, Silver Peak, Nevada.*

DEAR SIR: We have your inquiry of July 10 as to whether or not the Board of County Commissioners of Esmeralda County may act at its adjourned meeting on July 26 upon the petition presented and filed pursuant to section 1531 of the Revised Laws of Nevada, 1912.

We are of the opinion that the board cannot do so. The section referred to expressly provides that such action must be taken "on or before the first Monday in July preceding any general election." It may be true that, July 5 being a legal holiday, by operation of law the business of the board was automatically continued until the next day (Tuesday), but, having failed to act in accordance with this section at the meeting of the board on Tuesday, the power of the board to act thereafter has ceased.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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156. Emergency Loan—School Trustees—Unanimous Vote Required—Statute Mandatory.

CARSON CITY, July 16, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance.*

DEAR SIR: We have the correspondence transmitted by you between Oliver Iveson, M. J. Burr, Deputy Superintendent of Schools, and yourself, relating to an emergency loan for a certain consolidated school district operating in Washoe and Pershing Counties.

Upon the record, as submitted, you are respectfully advised that the emergency loan cannot be made, since the minutes of the Board of School Trustees show only two members of the board present and acting thereon, whereas the statutes requires a unanimous vote. Such a provision is not discretionary, but it is mandatory, and should a loan be made without such unanimous vote it would be absoluetly void.

We appreciate the necessity of this loan, but we are not responsible for the policy of the law; the law requiring a unanimous vote should be fulfilled.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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157. Elections—Registration of Voters—Reregistration.

CARSON CITY, July 19, 1920.

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

DEAR SIR: Answering your inquiry of July 6, propounded under section 21 of the registration law of this State (Stats. 1917, p. 432), we are of the opinion that under subdivision 6 thereof, if a person registers and does not state to what party he belongs, or states that he is independent or nonpartisan, he may thereafter, not later than thirty days before the primary election, have his registration card canceled and reregister, giving his party affiliation.

While considering this section literally, a contrary view might be taken. Still, in order that there may be a free expression at the polls, we think the view we take is the proper one.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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158. Elections — Registration and Voting of Women Married to Aliens Prohibited.

CARSON CITY, July 19, 1920.

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

DEAR SIR: We have your inquiry of the 15th instant, relating to the citizenship of American women married to unnaturalized aliens, and the alleged Act of Congress purporting to regulate their status on account thereof.

Upon inquiries made, we have ascertained that such Act of Congress

was introduced, but it has not yet become a law. Consequently, it would appear that such women would not have the right either to register or vote.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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159. Elections — Registration of Voters — Fee of Registry Agents — Ruling of Attorney-General Affirmed.

CARSON CITY, July 23, 1920.

HON. J. H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: We have the inquiry of the County Clerk of Mineral County, calling for a legal opinion of this department, transmitted through you, as follows:

> Inasmuch as section 15 of the Primary Law (Stats. 1917, p. 276) provides that the registry agent shall be paid 10 cents per name for certified copies of the register for use at the primary election, I wish to inquire: Am I, as registry agent, entitled to 10 cents per name for said certified copies of the register, in addition to my salary as County Clerk and Treasurer?

We are of the opinion that the County Clerk is entitled to the fees mentioned in addition to his salary fixed by law. This question was propounded to our predecessor, the Hon. Geo. B. Thatcher, and he decided in accordance with these views. His opinion is sound, and, accordingly, we adhere thereto. (See Opinions of Attorney General, 1917–1918, No. 27, p. 194.)

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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160. Employment—Full Train-Crew Law—Quoted and Applied to Case Stated.

CARSON CITY, July 27, 1920.

MR. E. E. SMITH, *Chairman, Grievance Committee, Brotherhood Railway Trainmen, East Ely, Nevada.*

DEAR SIR: We have your letter of July 21, inquiring whether or not a crew of four men—namely, conductor, engineer, fireman, and one brakeman—can handle in yard limits five freight-cars in picking up one car where the train in operation between stations does not exceed, say, four or five cars.

We think that sections 3588, 3592, and 3593 of the Revised Laws of 1912 answer your inquiry. These sections are as follows:

> It shall be unlawful for any person, firm, company, or corporation, engaged in the business of common carrier, operating freight and passenger trains or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through the state, along or over its roads or tracks other than along or over the roads or tracks within yard limits, any freight or

passenger train of more than fifty freight, passenger or other cars, exclusive of caboose and engine, with less than a full train crew consisting of not less than six persons, to wit: One conductor, one engineer, one fireman, two brakemen, and one flagman.

It shall be unlawful for any railroad company or receiver of any railroad company, doing business in the State of Nevada, to run over the road or part of its road outside the yard limits, any passenger train consisting of two cars or less, exclusive of engine and tenders, with less than a crew consisting of four persons, one engineer, one fireman, one conductor, and one brakeman, who will act in the capacity of flagman.

It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the State of Nevada, to run over its road or part of its road outside of the yard limits, any passenger train consisting of three cars or more, exclusive of engine and tenders, with less than a crew consisting of five persons, one engineer, one fireman, one conductor, one brakeman, and one flagman.

We are, therefore, of the opinion that the Nevada Northern Railway Company switching within yard limits with the crew mentioned by you does not violate the statute.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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161. Prohibition Law—Alcoholic Beverages—Law Applied to Case Stated.

CARSON CITY, July 27, 1920.

MR. S. T. CROUCH, *Newport News, Virginia.*

DEAR SIR: Your letter to the State Prohibition Commissioner has been transmitted to this department for reply. In answer thereto we have to advise you that the opinions of the Attorney-General are reserved by law for the State, its officers and institutions, for which reason we are precluded from answering you officially.

However, you do state that "these compounded flavoring oils which are manufactured * * * do contain alcohol, but the writer considers them unfit for beverage purposes." This statement makes your inquiry a question of fact and could not be answered by this department without a full analysis of the compounds mentioned and testimony relating thereto as to whether or not the same might be used for beverage purposes. On the whole, gleaning from your letter that the flavors are whisky, brandy, rum, port, sherry, and claret wines, etc., it is apparent that a court and prosecuting officer thereof would be required to use the utmost caution before ruling that such flavors do not violate the law.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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162. Elections—Corrupt Practice Act—Law Applied to Case Stated.

CARSON CITY, August 13, 1920.

HON. A. GRANT MILLER, *Attorney at Law, Reno, Nevada.*

DEAR SIR: Section 21 of the Corrupt Practice Act clearly prohibits any person to solicit or ask or invite any candidate to subscribe for or pay for space in any book, program, periodical, or other publication. Any candidate who makes a payment for such purposes, with the hope or intent to influence the result of the election, shall be guilty of a corrupt practice.

Viewing the situation from a technical legal standpoint, I am compelled to say that such payment on the part of a candidate would be indicative of a desire to help his candidacy and to influence the result of the election. The law, as it has come from the Legislature, is very drastic, and, in construing or interpreting it, there is little opening for a liberal view of its provisions. Section 37 may relieve a candidate after he is elected of a multitude of mistakes or misdeeds, but, while he is a candidate, it is of no avail.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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163. Surveyor-General — Duties of, Relating to Irrigation District Including State Lands—Request for Advice—Answer.

CARSON CITY, August 14, 1920.

HON. C. L. DEADY, *Surveyor-General and State Land Register.*

DEAR GENERAL: The papers submitted to me by you, relative to the request that you consent to the placing within the Walker Irrigation District of certain lands, has been considered by me.

The lands in question are now the subject of state contracts issued by your office. If you give your consent that such lands become a part of the district, then, according to section 45 of the Irrigation District Act, enacted in 1919 (Stats. 1919, p. 84), the burden will be placed on the State, if the Act is enforceable, of paying the charges and tolls against the said state lands. The contract-holders, relative to said lands, will become the recipients of special favors from the State and the assumption of such a burden by the State as to lands which are now under contracts of sale seems unreasonable.

A vital point in connection with this subject is the fact that there is not a specific and definite appropriation to pay any charges and tolls for which the State would become liable. It is very likely that the possessory right to state lands of a contract-holder may be brought within the district under the terms of the said Irrigation District Act, and, as long as the contract is in force, the contract-holder may be within the district. If, however, the contract is forfeited, there will then be no binding obligations on the State as to said land, as far as the irrigation district is concerned. The complications are such that I cannot see my way clear to advise you to give the consent requested.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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164. Elections—Signers of Petition for Independent Candidate Do Not Lose Party Standing.

CARSON CITY, August 14, 1920.

MR. BYRON GATES, *Justice of the Peace, Dayton, Nevada.*

DEAR JUDGE: A person who signs a petition for an independent candidate does not lose his party standing and has the absolute right to vote at the primary election.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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165. Prohibition Law—Use of Alcohol by Hospitals Permitted.

CARSON CITY, August 16, 1920.

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

DEAR SIR: The primary purpose of the Nevada prohibition law is to prevent the use of alcohol in any detrimental form as a beverage. Section 4 regulates the method whereby alcohol may be sold for medicinal purposes. Another part of the section regulates its sale for pharmaceutical, scientific, and mechanical purposes.

I am of the opinion that the word "scientific" will cover the use of alcohol in a variety of ways in hospitals that do not come within the meaning of the words "medicinal purposes." The use for the purpose of sterilizing surgical instruments, sponging of patients, and as a general antiseptic, when not prepared and used in a way that is potable, may more intelligently be brought within the meaning of the word "scientific" than the words "medicinal purposes."

In our present state of science, it seems that pure grain alcohol is the only discovered liquid that can be used for sterilization purposes that will neither injure surgical instruments, hospital apparatus, or patients.

A construction of our law that will seriously impair the running of hospitals according to the highest standard should be avoided if possible.

I am, therefore, of the opinion that a position contrary to the one herein taken would be so detrimental to the interests of humanity that it would conflict with, rather than support, the intent and purpose of the law under consideration.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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166. Elections—Signers of Petition for Independent Candidates Do Not Lose Party Standing.

CARSON CITY, August 21, 1920.

HON. L. E. GLASS, *County Clerk, Tonopah, Nevada.*

DEAR SIR: You are hereby advised that any legally registered voter, regardless of whether or not his politics are designated, may sign the petition of an independent candidate for office. By doing so he does not lose his party standing and his right to vote at the primary election. The purpose of the law is not to make it practically impossible for a person to run as an independent candidate for office. It is

an affirmative right given to any citizen, and the law should be construed so that it will support, rather than impair, his right.

The requirement that he must obtain the signatures of a certain percentage of the voters of the State, district, or county where he is a candidate is a test of his good faith, and, to a certain extent, of his general standing. All that he is required to do is to obtain the signatures of eligible voters, and when he does this, and has the number required by law, his petition then passes beyond the pale of successful legal attack.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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167. Judicial Procedure — Criminal Law — Corporations — No Law Defining Criminal Offense for Officers to Draw Corporate Checks in Name of Corporation.

CARSON CITY, August 24, 1920.

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

DEAR SIR: The law of this State is in a strange and anomalous situation relative to an officer or officers of a corporation drawing checks in the name of a corporation on a bank, or some other institution or person, when said corporation is without funds in the possession of the drawee to pay said checks.

The Act, as it originally stood and as it was amended (Stats. 1917, p. 10), absolutely fails to include within its provisions such officer or officers of a corporation. It seems that, as the law exists, a person who desires to draw bills, notes, checks, or other instruments in writing for the payment of money or the delivery of other valuable property, directed to or drawn upon any real or fictitious person, bank, firm, partnership, or corporation when there is not money, property, or credit in the possession of the drawee to pay the amount specified in the paper, may escape criminal responsibility by incorporating and operating in the name of a corporation rather than in his personal name.

I have endeavored to find some law that would cover the situation, but I am satisfied that the Legislature has absolutely failed to enact any measure that makes criminal such acts of an officer or officers of a corporation. It is a serious defect in the law, but we are powerless to supplement legislative Acts.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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168. Elections—Residence—Student at University of Learning Does Not Lose Legal Residence—Has Legal Right to Change Same.

CARSON CITY, August 25, 1920.

MR. GARDNER WOOD, *San Francisco, Calif.*

DEAR SIR: The law of this State provides that no person shall be deemed to have gained or lost a residence while a student at any university of learning.

My construction of the law in this respect is that, while such a student is not deemed to have lost a residence, he still has the right to

assert claim to a different residence. If he, therefore, registers at a place where he is attending school, it will be recognized as valid under the laws of this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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169. State Rabies Commission — Conflicting Appropriating Statutes — Latter Controls.

CARSON CITY, August 27, 1920.

State Rabies Commission, Reno, Nevada.

DEAR SIRS: We have your inquiry, calling for an official opinion, propounded as follows: "The point at issue * * * is whether chapter 29, Statutes of Nevada for 1919, making a definite appropriation of $35,000 a year for the biennium, governs, or whether chapter 244, Statutes of Nevada for 1919, fixing the State tax levy for 1919–1920, as the last legislative expression on this subject should govern.

You are respectfully advised that these statutes, in so far as they relate to the same subject-matter, should be construed together, and that the latter legislative expression should control to the extent that a fund is thereby set aside for your Commission of which you may avail yourself pursuant to the former Act to the extent of $35,000 per year.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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170. Revenue—Sworn Statement of Taxable Property—What Constitutes—Procedure Defined.

CARSON CITY, September 1, 1920.

State Board of Equalization.

DEAR SIRS: We have your letter of August 31, inquiring "as to what constitutes a sworn statement of taxable property under the law and how the Assessor shall obtain the same and how he shall proceed in case the statement is not according to law?"

You are respectfully advised that the Nevada Statutes, as amended for 1913, p. 162, and 1915, p. 178, answers your inquiry substantially as follows:

> First—That the Assessor shall demand from the taxpayer a statement, under oath, of all real estate and personal property owned or claimed by the taxpayer, and, if the taxpayer shall neglect or refuse, on such demand, to give such statement, he shall be guilty of a misdemeanor and shall be prosecuted accordingly.
>
> Second—This statement should be sworn to before the Assessor or his deputy or other officer authorized to administer an oath. If the statement is not in accordance with the law, it should be returned for correction, and, if not corrected, should be treated as a nullity. The Assessor's duty ceases when he has complied with the statute above cited and, particularly, by

reporting to the District Attorney the names of all persons neglecting or refusing to give the statement as required by the Act.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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171. Corporations, Foreign—Amendment of Articles—Case Governing—Fees Chargeable.

CARSON CITY, September 3, 1920.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: With reference to the contention of counsel for the Standard Oil Company of California, as to whether or not it is liable for the license fee prescribed for corporations, to be paid to you upon qualifying, we have examined the authorities submitted to you by such counsel. We think that upon reading the same it is apparent that they do not apply, but the case is covered by the principles laid down in General Railway Signal Company v. Virginia, 246 U. S. 511, and under the authority of that case we respectfully advise you to charge and collect the statutory fee from the Standard Oil Company upon filing its amended articles of incorporation.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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172. Elections—Candidate With No Opposition May Act as Inspector.

CARSON CITY, September 7, 1920.

HON. BART S. FITZPATRICK, *Justice of the Peace, Luning, Nevada.*

DEAR SIR: We have your inquiry of September 1 as to whether or not you may act on the primary election board since you are a candidate for Justice of the Peace, with no opposition either at the primary or general election.

Under these facts submitted by you, we are of the opinion that you may legally act as such inspector and that you are not in any manner invalidating the election thereby.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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173. Revenue—Tax Exemption of Veterans—Statute Applies to Veterans of All Wars.

CARSON CITY, September 8, 1920.

HON. J. F. MILES, *County Assessor, Ely, Nevada.*

DEAR SIR: A construction should be passed upon the Act of the Legislature of the State of Nevada, entitled "An Act exempting property of veterans" (Stats. 1917, p. 65) that will give full force and effect to the intent and purposes of said Act.

It does not seem plausible that the Legislature of this State enacted such an exemption Act for the purpose of discriminating in favor of men who have served in any particular wars and that would therefore fail to give the same exemption to men who would serve their country in the same capacity after the passage of the Act. The sensible construction is that the Legislature of this State desired that an Act, permanent and continuing in its effectiveness, should be placed upon the statute-books so that all men coming within the provisions of the Act should be exempted as provided for in said Act, regardless of the war in which they engaged and whether or not their participation in a war was prior or subsequent to the passage of the Act.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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174. Elections—Candidates for Judicial Office Must File Application as Nonpartisan.

CARSON CITY, September 10, 1920.

HON. W. R. REYNOLDS, *District Attorney, Eureka, Nevada.*

DEAR SIR: A person cannot run for any judicial office as an independent candidate. It is mandatory that a person aspiring for such an office must file his application as a nonpartisan candidate prior to the expiration of the time fixed by law for filing applications of candidacy at the primary election.

A vacancy that is permitted to be filled must be one that occurs after a nomination has been made. The mere facts that no one has filed in the manner provided by law to become a candidate for a given office and that there is, therefore, no candidate for such office do not create a vacancy.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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175. Gambling—Municipal Corporations Have Power to Regulate and License Gambling Permitted by Law Under Police Power.

CARSON CITY, September 10, 1920.

REV. E. F. JONES, *Reno, Nevada.*

DEAR SIR: You have propounded to me two questions as follows:

> May a municipal corporation regulate the hours relative to playing the gambling games made legal by the state law?

My answer is that in the exercise of the police power of a municipal corporation and for the protection of the life, property, and happiness of the people situate therein, it may adopt any reasonable regulations and in this regard may confine all legalized gambling to certain hours.

In answer to your second question, I beg to advise that a municipal corporation has the power to impose a substantial license upon any house that operates gambling games, even though said games are made legal by a state law.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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176. Public Funds—State Highway Law—Application of Funds of Bond Issue.

CARSON CITY, September 11, 1920.

HON. C. C. COTTRELL, *State Highway Engineer.*

DEAR SIR: Section 6 of an Act of the Legislature of the State of Nevada entitled "An Act to provide a general highway law for the State of Nevada" (Stats. 1917, p. 309), relative to the powers and duties of the State Highway Engineer, says:

> The state highway engineer shall have charge of all the records of the department of highways; shall keep a record of all proceedings and orders pertaining to the business of his office and of the department; and shall keep on file copies of all plans, specifications, and estimates prepared by his office. He 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. He shall investigate and determine the methods of road construction best adapted to the various sections of the state, and shall establish standards for the construction and maintenance of highways in the various counties, giving due regard to the topography, natural conditions, character, and availability of road-building material. He may at all reasonable times be consulted by county officers having authority over highways and bridges relative to any question involving such highways and bridges, and he may, in like manner, call on such county officials for any information or assistance they may render in the performance of his duties with reference to the highways and bridges within their county, and it shall be the duty of such county officials to supply such information when called upon for same by the said state highway engineer. He shall determine the character and have the general supervision of the construction and repair of all roads and bridges improved under the provisions of this act. He shall report all the proceedings of his office to the board of highway directors annually, and at such other times as they may designate.

The reading of the provisions contained in said section must necessarily lead to the conclusion that the Legislature intended that the scope of that Act should extend to all highways that the Department of Highways, acting through the State Highway Engineer, would determine to be necessary for state purposes. The mere fact that the Legislature designated four routes as constituting state highways does not limit the jurisdiction of the Highway Department in its operations to the routes described, but the said Department of Highways may expand and include roads outside of the routes described when such are necessary to carry out the real intent and purposes of said Act of the Legislature. The road from Reno to Purdy mentioned in your letter is undoubtedly a road that may be considered of great value if it is included in the general system of highways.

I am, therefore, of the opinion that the State Highway Department may use money raised from the bond issue provided for by the Legislature for the purpose of doing work on said road, the understanding

being that Washoe County will reimburse the State for the money expended.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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177. Public Schools—School Trustee—Must Be Citizen—Qualifications.

CARSON CITY, September 20, 1920.

MR. M. J. BURR, *Deputy Superintendent of Public Instruction, Carson City, Nevada.*

DEAR SIR: You are hereby advised that a person who is not an American citizen is not qualified to be appointed a School Trustee. The fact that such a person may have declared his intention to become an American citizen does not change the situation. Section 3 of article 15 of the Constitution of Nevada recites:

> No person shall be eligible to any office who is not a qualified elector under this constitution.

A School Trustee holds an office under the meaning of this constitutional provision.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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178. Public Schools — School Trustees May Require District Attorneys to Render Opinion—May Employ Special Counsel in Certain Cases.

CARSON CITY, September 20, 1920.

MR. J. F. BARTON, *County Auditor, Yerington, Nevada.*

DEAR SIR: It is affirmatively declared in the School Code of Nevada that the District Attorneys of the several counties must give, when required, and without fee, legal opinions in writing to School Trustees on matters relating to the duties of their offices. The Legislature limited the statutory duties of the District Attorneys in this respect to the giving of legal opinions.

I am, therefore, compelled to come to the conclusion that, if School Trustees desire legal services beyond the mere obtaining of legal opinions in a case where legal services are absolutely required, they may employ special counsel for such purposes. They should not, however, employ special counsel to write legal opinions relative to the duties of School Trustees unless it is a case where the District Attorney is disqualified.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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179. Judicial Procedure—United States Not Excepted in Statutes—Must Give Bonds in Judicial Proceedings.

CARSON CITY, September 23, 1920.

HON. WM. WOODBURN, *United States Attorney, Reno, Nevada.*

DEAR SIR: Section 5487 of the Revised Laws of Nevada relieves the State of Nevada or any county, city, or town of this State, or any

officer thereof in his official capacity, from the necessity of giving a bond, undertaking, or security in any action or proceedings prosecuted or defended for the public benefit.

The framer of this section evidently did not have in contemplation the utilization of the state courts by the United States, and consequently the latter is not included in said section. I do not think that there is any provision of law in this State that exempts the United States from giving a bond or undertaking in any proceeding or action in the state courts where such bond or undertaking is ordinarily required.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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180. Public Schools—Part-Time Schools—Certain Portion of Act Invalid.

CARSON CITY, September 29, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: The attention of this office has been called to the defectiveness of the title of an Act of the Legislature of this State entitled "An Act to provide for the establishment of part-time schools and classes, and to compel attendance of minors upon such schools and classes," approved March 25, 1919, in regard to its application to section 3 of said Act, which is as follows:

> All children of the state shall attend school until the age of eighteen unless they are employed and are excused from attendance in accordance with terms of subdivisions 1, 3, and 5 of section 203, chapter 133, Statutes of 1911.

I am constrained to say that I believe that section 3 of said Act is invalid, because of its being foreign to the title.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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181. Public Schools—Teacher's Contract—Termination Thereof—School Trustee—Vacancy of Office.

CARSON CITY, September 29, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: Replying to your inquiry as to what effect section 97 of the School Code of Nevada has upon the contract entered into between a teacher and the Board of School Trustees in the event that the school is compelled to be closed under and by virtue of the provisions of said section, I beg to advise that all contracts between School Trustees and school teachers are necessarily made in the light of existing laws, and such laws are, by implication of law, a part of the contract itself. Therefore, when a school is closed because of the fact that there are not sufficient children in the district to sustain it, and the closing is therefore made compulsory by law, the contract is at an end, and there are no longer any obligations resting upon either of the parties to the contract. They are restored to the same condition that they would have been in if the contract had never been executed.

In regard to your second inquiry as to whether or not a vacancy occurs in the membership of a Board of School Trustees when a member of such board has moved from the school district to some other school district within the State, or has moved out of the State, I beg to reply that subdivision 6 of section 2799 of the Revised Laws of this State, which relates to this subject, reads as follows relative to a vacancy occurring in a public office:

> The ceasing of the incumbent to be a resident of the state, 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.

If the appointing power is satisfied that the holder of a public office is no longer a resident of the State, district, county, city, or precinct, as the case may be, then such appointing power should declare that a vacancy exists and should appoint some person to fill such vacancy. The appointing power must be certain that the absence is not temporary and one wherein the incumbent intends to return to the place where he is required to perform his official duties, but, on the contrary, has absolutely ceased to be a resident of the State, district, county, city, or precinct, as the case may be, with no immediate intention to return to the place where he is required to perform his official duties.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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182. Revenue—Inheritance Tax—Exemption on Distributive Shares—Deductions.

CARSON CITY, September 30, 1920.

HON. E. T. PATRICK, *Attorney at Law, Carson City, Nevada.*

DEAR SIR: We have your inquiry requesting an official opinion in the estate of R. C. Scheel, deceased, referring to the application of the inheritance-tax law thereto, and beg to reply to you as follows:

First—That where the statute allows certain exemptions upon a distributive share, such exemption is not allowed to the heirs as a group, but to each heir in the same class. Any other construction of the statute would be unreasonable and not according to apparent legislative intent.

Second—The amount of the tax is chargeable against the amount of the estate appraised after the payment of debts—or, in other words, the debts of the estate, expenses of administration, etc., are legal deductions, but, while you have not asked the question, we do not desire to be understood as holding that the increase in value of an estate is not subject to the tax. The increase in value of an estate to the close of administration is subject thereto.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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183. Corporations — Insurance Corporations Failing to Qualify — Proceedings Against Same.

CARSON CITY, October 5, 1920.

HON. GEO. A. COLE, *Insurance Commissioner.*

DEAR SIR: We have your verbal statement of facts to the effect that there is a certain fire insurance company, incorporated under the laws of a sister State, which has neither complied with the corporation or insurance laws of this State where it is placing policies of insurance by mail. The inquiry propounded is as to what means may be employed to prevent such operations by such insurance company.

After considerable research and due consideration, we beg to advise you that no effective legal proceedings may be brought either in the state or federal courts of Nevada, for the reason no jurisdiction over the offending corporation can be obtained therein by constructive service of progress. The process of this State, where the judgment is to operate *in personam*, must be personally served within its confines; or, if federal jurisdiction is sought to be obtained, the proceedings must be brought in that district of which the offending corporation is an inhabitant. Accordingly, under the facts submitted proceedings could only be prosecuted either in the state courts or in the federal courts where the company referred to by you is a resident and inhabitant.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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184. Revenue—Automobile Licenses—No License Fee Therefor May Be Collected from County or Municipality.

CARSON CITY, October 5, 1920.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: We have your letter calling for an official opinion at the request of the District Attorney of Nye County as to whether or not automobile and truck licenses may be collected by the State for automobiles and trucks owned by a county or municipality.

Where such property is devoted to public or governmental purposes and is not used for profit, the same is exempted from state or other tax or license, and, therefore, no license fee should be collected under the state law in the premises. This view is fortified by decision law, which holds that, unless the power to tax or license such property is clearly expressed, the same will not be implied.

See 37 Cyc. 875; section 3621, Revised Laws of 1912; State v. Rhoades, 6 Nev. 352.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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185. Judicial Procedure—Criminal Law—Forfeited Bail Belongs to State.

CARSON CITY, October 6, 1920.

HON. GEORGE A. COLE, *State Controller.*

DEAR SIR: We have your inquiry induced by the County Auditor of Yerington, relating to a claim for forfeited bail money, alleged to have

been transmitted to the State Treasurer by mistake, and asking that the same be credited to the County Treasurer of Lyon County. It is insisted that forfeited bail moneys in criminal cases become the property of the county and not of the State. We take the contrary view. Criminal offenses are against the sovereignty of a State, and when a defendant is released under a bail bond the statute provides that that bond shall run in favor of the State. Where the statute permits a deposit of money in lieu of a bail bond, such deposit necessarily is subject to the same terms and conditions as the bail bond itself.

You are accordingly advised that the $2,000 claimed by Lyon County as forfeited bail should be retained by the State.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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186. Live Stock, Quarantine of, etc.—Expense Therefor Not Chargeable to Counties.

CARSON CITY, October 8, 1920.

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

SIR: The Act of the Legislature of March 31, 1913, entitled "An Act providing for interstate and intrastate quarantine with respect to domestic animals and other live stock, poultry, bees, and agricultural and horticultural crops," etc., has become more complicated owing to its mutilation in the amendment thereto approved March 24, 1915, in respect to the source from which the money is to be derived for the purpose of making effective quarantine regulations.

One thing is certain, and that is that there is no responsibility in a financial way imposed upon the counties of this State. In that the administration of the Act is placed in the President and Board of Regents of the University of Nevada, the money for its administration should be derived from some fund under the control of the University. The Veterinary Control Service is made a part of the Public Service Division of the University of Nevada. Any appropriation made by the Legislature for the Public Service Division of the University of Nevada may be legally used for quarantine purposes.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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187. Public Schools — School Funds for Purchase of Books May Not Be Expended for Talking Machine.

CARSON CITY, October 14, 1920.

MRS. HUGH BROWN, *Nevada Federation of Women's Clubs, Minden, Nevada.*

DEAR MRS. BROWN: Your letter of September 14, 1920, addressed to Miss Maude Gillson, has been referred to this office for a reply.

School laws, as affecting the powers of School Trustees or other officials given control of the school funds, cannot be too liberally construed. Necessarily a construction should not be so contracted that it will defeat the purpose of a particular Act. The intent of the Legisla-

ture must govern. When the Legislature of Nevada passed an Act permitting the use of school money in certain cases for the purchase of books, it can hardly be contended that the Legislature had in contemplation any such thing as Victor talking-machine records. The law fails to provide means for the purchase of anything that may be educational in its character, but the particular law under consideration applies to books. There is, of course, no ambiguity or uncertainty in the meaning of the word "books." I am, therefore, compelled to rule that the law relative to the purchase of books for schools is not sufficiently flexible to apply to phonographic records.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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188. Employment—Labor Commission—Labor Laws—Certain Inquiries Relating to Same Answered.

CARSON CITY, October 23, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner.*

DEAR SIR: Various questions propounded by you are herein given in the order contained in your letter with my answers thereto:

1. Do employees engaged in operating prospect drill in connection with the Ruth mine come under section 1941, Revised Laws of 1912, their work being to prospect in advance of underground operations, but being employed upon the surface?

Answer—Yes.

2. Do the provisions of section 6555, Revised Laws of 1912, apply to employees of the Nevada Consolidated Copper Company engaged in dumping cars into ore-bins, which service is the initial operation of, and in connection with, the milling processes and is not for storage purposes or a part of the transportation of such ores?

Answer—Yes.

3. Is it permissible, under section 6555, Revised Laws of 1912, to work an employee eight hours within a plant used for reduction of ores and then an additional two hours outside of the plant in unloading cars?

Answer—No.

4. Is it permissible to permit an employee, under section 6555, Revised Laws of 1912, to obtain outside work from another employer for an additional two or four hours after having worked eight hours within a mill?

Answer—Yes.

5. Do the provisions of section 1941, Revised Laws of 1912, apply to mill employees in the dining-room or eating departments of the Nevada Consolidated Copper Company at McGill and Ruth, Nevada?

Answer—No.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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189. Employment—Nepotism Law—Not Applicable to Case Stated—Opinion of Former Attorney-General Affirmed.

CARSON CITY, October 23, 1920.

HON. H. U. CASTLE, *District Attorney, Elko, Nevada.*

DEAR SIR: Under date of January 26, 1918, Attorney-General Thatcher, by his deputy, William McKnight, rendered an opinion to Mr. W. W. Booher, Secretary of the Board of Government, Nevada School of Industry, Elko, Nevada, relative to the Nepotism Act, in the following language:

> 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 to all such matter, it is our opinion that the contemplated employment can be legally made.

It is my policy to uphold a legal opinion rendered by my predecessor unless very strong reasons exist that necessitate, from my viewpoint, the overturning of any such opinion. In the matter under consideration I adhere to the opinion mentioned.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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190. Elections—Transfer of Registration Precinct.

CARSON CITY, October 27, 1920.

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

DEAR SIR: An elector who changes his place of residence from one precinct in a county to another precinct in the same county within ten days prior to November 2, 1920, cannot obtain a transfer. An elector, however, who changed his place of residence from one precinct in a county to another precinct in the same county more than ten days prior to November 2, 1920, is entitled to a transfer. There is no limitation placed upon the time when the elector is to apply for any such transfer. As long as the registry cards are in the possession of the County Clerk or registry agent, the transfer may be effected under section 14 of the registration law.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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191. Revenue—Nevada Tax Commission Has Power to Review Action of State Board of Equalization.

CARSON CITY, November 6, 1920.

Nevada Tax Commission.

GENTLEMEN: The subject-matter contained in your letter of October 29 practically resolves itself into the question as to whether or not the

Nevada Tax Commission is possessed of the power, upon proper presentation to it, to review any action of the State Board of Equalization relative to the assessment of property and the equalization thereof.

I am of the opinion that the Commission is possessed of such final power regardless of whether the assessment valuation has been raised or lowered by the State Board of Equalization. Section 6 of the Revenue Act of 1917 (Stats. 1917, p. 328) prescribes the duties imposed upon the State Board of Equalization. After reciting said duties, the following language is used:

> *Provided, however*, that if said state board of equalization shall fail to perform the duties enumerated in this section, the Nevada tax commission may make such equalization as will be necessary.

In a case where property is assessed at a figure that is too low, it is the duty of the State Board of Equalization to raise the assessed valuation. In a case where the assessed valuation is too high, it is the duty of the State Board of Equalization to make a reduction thereof. In any case where the State Board of Equalization fails to do the thing that the facts demand that it should do, then the State Board has failed to perform an important duty placed upon it. Such failure of the Board of Equalization thereupon becomes, by reason of the proviso mentioned, the subject of review by the State Tax Commission. The State Tax Commission is, according to the intent and purpose of said Act of the Legislature, made the paramount and final factor in determining the justice and injustice of all assessment valuations and to fully and completely determine all questions relating thereto in the interest of the revenue system of the State. Subdivision 8 of section 3 of the Act mentioned reads as follows:

> The commission shall have, in addition to the specific powers enumerated, the power to exercise general supervision and control over the entire revenue system of the state.

The latter part of subdivision 10 of said section is in the following language:

> The enumeration of the foregoing powers shall not be considered as excluding the exercise of any needful and proper power and authority of said commission.

These recitals of the powers of the Tax Commission clearly indicate the right of the Commission to investigate and determine the fairness or unfairness of all valuations fixed on property in this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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192. Judicial Procedure—Justice Court—Civil Practice Therein in Case Stated.

CARSON CITY, November 9, 1920.

HON. BART S. FITZPATRICK, *Justice of the Peace, Luning, Nevada.*

DEAR SIR: We have your letter of November 7, calling for our official opinion upon the question whether or not in a contested suit filed in your court, on the plaintiff and defendant being absent on the date set for trial, you may consider in evidence a sworn statement as to the

correctness of the itemized account sued upon under section 5754 of the Revised Laws, 1912.

You are advised that you may not legally do so, since the case referred to does not fall within said section. The defendant having appeared and answered the complaint, the sworn statement mentioned is ex parte—that is, made out of court without an opportunity for the defendant to cross-examine the plaintiff. This situation precludes it from being legal evidence, and, accordingly, you are not permitted either to admit the same in evidence or to decide the case thereon.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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193. Prohibition Law—Request for Official Opinion Denied—Attorney-General Cannot Take Judicial Notice of Certain Preparations.

CARSON CITY, December 3, 1920.

MR. P. B. ELLIS, *Attorney at Law, Carson City, Nevada.*

DEAR SIR: We have the request of the Scranton Distributing and Manufacturing Company, transmitted through you, as to whether or not Cusick's Pela Tonic and Cusick's Horke Vino, each containing alcohol in excess of 18%, contravenes the prohibition law of this State.

The opinions of the Attorney-General are preserved by law for the State and its officers and institutions. Hence, we are precluded from advising you officially in the premises. However, there are no means whereby we are able to state whether these preparations or other preparations are prohibited, since a decision necessarily must depend upon divers elements which are foreign to our consideration, namely, the chemical analysis of the preparations, whether or not the same may be used as a beverage, etc., and, even then, our opinion would be only advisory. We can take no judicial notice of such preparations, and therefore we may not decide the question. We will decide such questions only where the subject-matter is governed by the doctrine of judicial notice.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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194. Gambling—Municipality Has Power to Regulate Gambling Permitted by Law.

CARSON CITY, December 3, 1920.

HON. ANDREW L. HAIGHT, *City Attorney, Fallon, Nevada.*

DEAR SIR: It is my opinion that a city ordinance which will prohibit the operation of gambling games between 10 o'clock at night and 6 o'clock in the morning and from 10 o'clock Saturday night to 6 o'clock Monday morning would be perfectly valid.

Gambling is not looked upon with favor in law, and rigorous regulations may be applied thereto by a municipal corporation in the face of the fact that the state law may legitimize certain gambling games. A license fee may be practically prohibitive, or even prohibited, and yet

not be invalid. The mere fact that certain gambling games are not prohibited by state law does not place municipal corporations in the position whereby it may not enact a rigorous ordinance on the subject.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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195. Prohibition Law—Federal Bulletin Covering Procedure Under State Law Approved—Opinion Under Federal Law Not Given.

CARSON CITY, December 8, 1920.

American Railway Express Company, Reno, Nevada.

DEAR SIRS: We have your letter inclosing Director's Bulletin No. 2 from the Federal Prohibition Director at Reno, Nevada, covering the regulations for the shipments and delivery of sacramental wine. The procedure noted therein required by our state law is correct as far as this department may finally decide it. In the proper case, the Supreme Court of this State may or may not modify these regulations. We decline, however, to pass upon the procedure noted in the bulletin under the National Prohibition Act or to state whether or not any part of it is in conflict with the Nevada state laws, for the reason that the function to do so is not reposed in this department, but reposes in the Federal Government.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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196. Elections—City Water-Works Election—Qualification of Voters.

CARSON CITY, December 16, 1920.

HON. W. L. MERITHEW, *City Clerk, Elko, Nevada.*

DEAR SIR: We have the request, transmitted through you, of the Board of Supervisors of the City of Elko, as to whether or not an elector of your city, whose name does not appear upon the assessment roll for the current or preceding year, has the right to vote on the question of purchasing the Elko water-works. Section 77 of your charter requires the judges or officers of election to ascertain of each person offering to vote if such person possess the qualifications prescribed. The qualifications prescribed "shall be construed to be, and include, all persons whose names appear on the tax-roll for the current or the preceding year in which the elector offers to vote." It is apparent, therefore, that the persons referred to in your inquiry do not possess the qualifications prescribed. However, we think that this inquiry should be made direct to your City Attorney, who should advise you in the first instance.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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197. Public Schools—Consolidated School Districts—Must Furnish Transportation—Procedure to Disconsolidate.

CARSON CITY, December 17, 1920.

HON. E. E. FRANKLIN, *Elko, Nevada.*

DEAR SIR: Referring to your letter of November 22, 1920, in regard to the transportation and other matters relating to the Lamoille, Humboldt, and Rabbit Creek Consolidated School District, we have to advise you that under the law the Board of School Trustees must furnish the means of transportation for pupils, and, though there is no specific provision made concerning the opening or closing of gates, such opening and closing of gates is incidental to the object of transportation, and the board must take the necessary means in this respect, so that the transportation may be duly accomplished.

Relating to your inquiry as to the process which must be followed in case the consolidated districts have to revert to their former condition, you are advised that generally they must follow chapter 7, commencing with section 75a, et seq., of the School Code of 1919, which you have. The details in regard thereto are too cumbersome to include here, but at the appropriate time the details must be worked out so that they may have legal and operative effect. After a conference with Mr. Hunting, Superintendent of Public Instruction, we are anxious that not only the board in question, but those throughout the State, will do everything in their power to arrive at the ultimate object of the school law, namely, that the children of school age shall have every convenience in order that they may attend school.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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198. Public Schools—Office Deputy for State Superintendent Cannot Perform Duties of District Deputies—He May Act in Advisory Capacity.

CARSON CITY, December 17, 1920.

HON. W. J. HUNTING, *Superintendent of Public Instruction.*

DEAR SIR: We have your inquiry of the 15th instant, as to whether or not your duly appointed Office Deputy may perform the duties and exercise the powers of the District Deputies appointed under the Act creating them. The duties and powers of District Deputies are specifically enumerated in section 12 of the act entitled "An Act concerning public schools and repealing certain Acts relating thereto," approved March 20, 1911. It appears that these duties are specifically imposed and these powers are specifically reserved to the respective District Deputies, and, accordingly, we hold that your Office Deputy has not the legal right to perform these duties and exercise these powers. We appreciate, however, that an emergency not covered by the law has arisen, and will arise, in the several districts which would require an added official, either to take over in whole, or in part, the functions of a District Deputy or aid him in the discharge of his duties and powers. We suggest, therefore, that your Office Deputy

should act in such emergency in an advisory capacity with the cooperation of the District Deputy.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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199. **Elections—Initiative and Referendum Petitions—Initiative Petitions Need Not Be Verified.**

CARSON CITY, December 17, 1920.

HON. GEO. B. THATCHER, *Reno, Nevada.*

DEAR SIR: We have your inquiry as to whether or not initiative petitions and referendum petitions, respectively, must be verified where they are submitted to an election throughout the State. The scheme for the initiative and referendum is contained in sections 1, 2, and 3 of article 19 of the Constitution of Nevada. The last section proposes the scheme in detail and provides that the section shall be self-executing, but permits legislation to facilitate its operation. No legislation has been enacted to facilitate the operation of the initiative, but we do find that legislation has been passed covering the referendum, and particularly providing for the verification of referendum petitions, in that under section 94 of the Act relating to elections approved March 24, 1917, we ascertain "but each petition must be verified by at least one of the voters." When the Legislature passed the Act including the referendum and excluding the initiative, we are of the opinion that it had the subject-matter of article 19 and its three sections before it and legislated concerning the referendum without reference to the initiative advisedly, and, accordingly, we hold that an initiative petition is not required to be verified.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

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200. **Prohibition Law—Institutions of Learning Cannot Be Construed Druggists.**

CARSON CITY, December 24, 1920.

HON. WILLIAM A. KELLY, *Collector of Internal Revenue, Reno, Nevada.*

DEAR SIR: We have your inquiry, calling for an official opinion concerning the provisions of the Nevada Prohibition Act relating to the obtaining of pure grain alcohol by universities and other institutions of learning. Your inquiry is succinctly stated as follows:

> Would a scientific or educational institution be permitted to withdraw alcohol "tax free" from a distillery warehouse (there being none in the State of Nevada), and have same shipped to them within the State, said shipment of necessity being interstate, or would they be required to purchase tax-paid alcohol from local druggists under the provisions of section 4 of the state Act?

We regard the question of the shipment being interstate as immaterial, and the term "druggist," used in the Act, is applicable to one who

is engaged as such according to the common acceptance of that term and cannot be extended to include a chemical laboratory in a seat of learning. We are of the opinion, therefore, that the method prescribed by the Act is exclusive, and alcohol for scientific or other permitted purposes may only be obtained from, and delivered by, a druggist under the conditions set forth in the Act. The terms of the Act in this respect are plain and clear, and admit of no doubtful meaning.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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201. Public Schools—Heads of Families—Consolidated School Districts—Posting of Notices.

CARSON CITY, December 24, 1920.

MR. JOHN F. PERKINS, *St. Thomas, Nevada.*

DEAR SIR: The term, "head of a family," implies that more than one person resides in the particular house and that one is possessed of leadership and assumes the responsibilities connected therewith. A man who lives alone is not the head of a family.

Where two or more school districts are consolidated, a consolidated school district is brought into existence. Therefore, the law which requires that notices shall be posted in at least three conspicuous places within the district, for the purpose of convening the heads of families to act upon questions of schoolhouse sites or to erect, purchase, sell, hire, or rent schoolhouses for the use of the district, is fully complied with by the posting of said notices in three conspicuous places, any place within the consolidated district. In other words, the districts, as they existed prior to the consolidation, and regular voting precincts are not entitled to any legal recognition in determining where said notices are to be posted.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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202. Prohibition Law—Druggist Alone May Sell Alcohol Thereunder.

CARSON CITY, December 30, 1920.

HON. JONATHAN PAYNE, *Acting Prohibition Director, Reno, Nevada.*

DEAR SIR: The only persons authorized by the Nevada prohibition law to sell pure grain alcohol or wines for the purpose made legal by the Act are druggists. They cannot be sold or disposed of by any other persons. Your ruling is correct wherein you maintain that alcohol or wine purchased for the legalized purposes named in the prohibition law of this State must be purchased through duly licensed druggists of this State.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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203. Emergency Loan — Elko County High School Proceedings Therefor — Application of Loan.

CARSON CITY, December 31, 1920.

MR. W. R. ENGLERT, *Clerk of Elko County High-School Board, Elko, Nevada.*

DEAR SIR: We have your inquiry calling for an official opinion concerning the legality of the proceedings of your board covering the proposed emergency loan in the sum of $21,000 to meet the general expenses of the county high schools specified in the transcript transmitted to us. We find these proceedings regular and in due form of law.

Relative to your inquiry as to whether or not the Emergency Loan Act applies to a county high school, I beg to advise that it is clearly the intent and purpose of said Act to include every kind of a high school, and said Act must be so construed. In arriving at the intent of the Legislature it would be unreasonable to conclude that the Legislature intended to deprive a county high school of any of the privileges, prerogatives, and advantages given to any other kind of a high school. Section 183 of an Act concerning public schools, etc., approved March 20, 1911, reads 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.

A consideration of this section in conjunction with the Emergency Loan Act makes conclusive the contention herein asserted—that county high schools in regard to emergency loans are in the same category as the ordinary high-school district. Even assuming that it would become necessary for a court to define the meaning of the words "high-school district" any court would undoubtedly rule that the enlargement of a high-school district wherein it takes in all the territory of a given county would not take it from without the terms "high-school district"—in other words, for the purpose of giving the vitality to the Emergency Loan Act to which it is entitled the courts would, if necessity so demands, rule that a county high school is a high-school district within the meaning of the Act. While the courts would not be unduly liberal in construing the provisions of the Emergency Loan Act, still they would not adopt an attitude that would defeat in an important instance the purpose of the existence of the Act itself. The fact that no argument can be used to sustain a theory that the law should apply to one kind of a school law and not to another kind, must of itself lead to the conclusion that the Act applies to high schools of every description.

I beg to remain

Very truly yours, L. B. FOWLER, *Attorney-General.*

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204. Public Service Commission—Public Convenience, Hearing and Evidence on Application for Certificate Of.

CARSON CITY, December 31, 1920.

Public Service Commission, Carson City, Nevada.

DEAR SIRS: Replying to your letter, calling for official opinion on

the construction placed on section 36½ of the Public Service Commission law, we have to advise you as follows:

The section referred to provides:

> Every public utility owning, controlling, operating, or maintaining, or having any contemplation of owning, controlling or operating any public utility shall, before beginning such operation or continuing of operations, or construction of any line, plant, or system, or any extension of a line, plant, or system within this state, obtain from the public service commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction. * * * Upon the granting of any certificate of public convenience, the commission may make such order and prescribe such terms and conditions for the location of lines, plants, or systems to be constructed, extended, or affected as may be just and reasonable.

The cardinal point to which your determination should be directed in the premises is the convenience and necessity of the traveling public to subserve which you may prohibit the establishment of competing lines, where the competition would not ultimately redound to the public good, but you would not have power to prohibit the continued operation of a competing line already established, since an attempt so to do would be a confiscation of property and property rights without just compensation being made. Nevertheless, you may so regulate the continued operation of an established competing line so long as such regulation does not amount to prohibition thereof under the guise of regulation. In doing so, the paramount question is the convenience and necessity of the public, and you, therefore, have the right to cause the competing line to be one—not only in name, but in fact—operating on fixed schedules as to time and fares, and with or without passengers, because, if it may operate only when it is afforded business and for fares that may be offered at the time, it is apparent that ultimately such operations cannot tend to the public good, but to the absolute injury of other bona-fide competitors, heavily financed and taxed, and always operating, with or without business. In arriving at your determination in the premises, there are other elements to which you should give weighty consideration. While respective competitors, in established lines, may have vested property rights therein, it is a principle of law that he who is prior in time, if the public good demand it, should be held to be prior in preferential right.

In conclusion, while you have these broad powers, there should be no arbitrary exercise of your functions, but the same should be so exercised with a discretion which will redound to the public good as based upon the evidence adduced before you.

By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

LITIGATION AFFECTING STATE

In Supreme Court

Berney v. Alexander. Mandamus; writ issued.

In Re Brennan. Habeas corpus; writ denied.

In Re Cecchettini. Prohibition; writ denied.

Cole v. Nickel (two cases involving inheritance taxes). Judgment awarding taxes affirmed; writ of error sued out in the United States Supreme Court; pending.

In Re Donnel. Habeas corpus; writ denied.

Lasher v. Brodigan, Secretary of State. Prohibition; writ issued.

In Re Ida May McGee. Habeas corpus; writ denied.

State v. Moran. Mandamus; writ issued.

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In Re Green. Certificate of probable cause; certificate issued.

State v. Emiliano Mimias. Appeal from conviction; pending.

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State v. Sella. Appeal; judgment affirmed.

State v. Rothrock. Appeal from conviction; pending.

In State District Courts

State v. Winters (Washoe County). Eminent domain; settled.

State v. Sella (Washoe County). Eminent domain; pending.

Estate of Saturno (Washoe County). Inheritance tax; pending.

Estate of Newlands (Washoe County). Inheritance tax; pending.

State v. Prosole (Washoe County). Eminent domain; settled.

State v. Brown (Washoe County). Eminent domain; settled.

State v. Ginnochio (Washoe County). Eminent domain; settled.

Garson v. Shaughnessy, et al. (Washoe County). Water charges affected; pending.

Lohiday v. Scrugham (Washoe County). Affecting water permit; pending.

State v. Reno Grocer Company (Washoe County). Prohibition law; pending.

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By order of the Attorney-General:

Respectfully submitted, ROBERT RICHARDS,
Deputy Attorney-General.

CORRECTION

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

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Estate of Kaas (Washoe County). Escheat; settled.

Estate of Forney (Washoe County). Escheat; pending.

State v. Bright (Ormsby County). Eminent domain; settled.

State v. Shafer (Ormsby County). Eminent domain; pending.

Mahoney v. Nevada Industrial Commission (Nye County). Settled.

Dahlquist v. Nevada Industrial Commission (Nye County). Pending.

State v. Moore, et al. (Douglas County). Validity of divorce decree; pending.

State v. Gormley (Clark County). Perjury; settled.

State v. Elges (Humboldt County). Eminent domain; settled.

State v. Borer (Nye County). Eminent domain; pending.

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Nevada-California Power Company v. Glass (Carson City). Validity of taxes; pending.

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Nevada-California Power Company v. Glass (Carson City). Validity of taxes; pending.

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RECOMMENDATIONS AND STATEMENTS RELATIVE TO LAWS

Board of Parole

The Constitution of Nevada creates a Board of Pardons which consists of the Governor, three Justices of the Supreme Court, and the Attorney-General. By statutory enactment the Board of Paroles was created, which consists of the same officials. I think that the law should be changed so that the personnel of the Board of Paroles will be entirely different from the membership of the Board of Pardons. The members of the Board of Paroles should be persons who are willing and can give the time to the study of criminology and all matters connected with people who are sent to penal institutions. I believe that a part of the members of said board should be women.

Divorce

Our present divorce law should be amended to prevent short-term decrees, which are almost invariably procured as a result of fraudulent and collusive practice. It is to the honor of the legal profession of this State that the overwhelming majority of our lawyers have absolutely declined to participate in such cases. The attorneys who have resorted to, or have taken advantage of, such fraudulent and collusive practices constitute but a small minority of the members of the Nevada bar.

Election Laws

The general election laws are in the main satisfactory. In a few minor details they might be advantageously amended. Too much tampering with election laws has existed at various sessions of the Legislature. It is to be hoped that in the future only such changes are made as may be absolutely necessary. Our present direct primary law is fair and just and gives a member of a political party the opportunity to which he is entitled to present himself to his party for a nomination for public office. The destruction of the direct-primary system will mean the reestablishment of political bossism which has always meant corruption in government. Our election laws should be amended, however, to provide for the election of delegates to the national conventions of various political parties by a popular method. A state central committee should be prohibited by law from exercising any such power. Such a method is ruinous to popular government.

Gambling

The present law relative to gambling is farcical. A sensible argument cannot be made in favor of it by either those persons who favor or oppose gambling. The legalization of six games places peace officers and prosecuting attorneys in a position where it becomes almost impossible to successfully prosecute a person for a violation of the law. There is no merit to the slot-machine provision of the law.

Inheritance Tax

Our inheritance-tax law is defective in that it does not provide a tax for the transfer pursuant to administration proceedings in other jurisdictions of shares of stock in Nevada corporations. Such shares should be taxed, and our inheritance-tax laws should be amended for such purpose and provide the necessary machinery for ascertaining the value of such shares, making illegal the transfer of such shares prior to the payment of the tax.

Japanese Question

A constitutional amendment has been prepared by me to change section 16 of article 1 of the Constitution of Nevada which reads as follows:

> Foreigners who are or may hereafter become bona-fide residents of this state shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native-born citizens.

The change will deny the right to possess, enjoy, and inherit property to such foreigners that are denied the right to become citizens of the United States.

Prohibition

The Nevada prohibition law has demonstrated that in a community where the people are strongly in favor of the enforcement of the Act there are few violations of it. In those communities where an opposite attitude on the part of the people exist, enforcement is difficult. This will always be the case.

The unfortunate fact is that many people support the principle or theory of prohibition, but they absolutely fail to give their support to its enforcement. It is difficult, therefore, to obtain the necessary witnesses in various cases where those guilty could be successfully prosecuted if the witnesses would testify. A large sum of money is required for anything like a satisfactory enforcement of the Act. Appeals have been made to me in my official capacity to give my assistance to enforce this law. The people making such requests have not taken into consideration that the contingent appropriation for the Attorney-General for the years 1919–1920 was the sum of $4,500. In reply to such requests for assistance, this office has asserted that if any District Attorney fails to perform his duties in connection with the enforcement of the law that then this office will directly participate, but that, in the absence of such dereliction of duty by the District Attorney, an occasion does not exist to warrant the invasion by this office of the prerogatives attached to the office of the District Attorney. The Act makes legal the obtaining of wine for sacramental purposes. Owing to the federal revenue laws, this provision of our law has become practically inoperative. The Legislature should, therefore, amend our Act to carry into full effect that which the Act itself makes legal.

Salaries of School Teachers

This State has endeavored to be just and liberal in regard to the salaries of school teachers. The goal should be, however, to place the members of this clean and honorable profession upon a twelve-month salary basis. A method which pays a school teacher for eight, nine, or ten months in the given year, and then leaves the teacher in a position where he or she must engage in some other occupation during the vacation period to prevent financial straits is unsound.

Livestock Licenses

The Act passed at the last session, and various Acts passed prior thereto, providing for the levy and collection of a license in the several counties for the herding and grazing of live stock, are clearly unconstitutional. It has been found that it is impossible for the officials named therein to operate thereunder. It is imperative that a constitutional Act, of uniform application and operation in the premises, be passed at the ensuing session. (See Opinion No. 120, supra.)

Respectfully submitted,

LEONARD B. FOWLER,
Attorney-General.

Dated January 3, 1921.

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