STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1923–1924

M. A. DISKIN, Attorney-General

CARSON CITY, NEVADA

STATE PRINTING OFFICE : : : : JOE FARNSWORTH, SUPERINTENDENT

1925

1[23]

TYPOGRAPHICAL
UNION LABEL
WASHOE

LETTER OF TRANSMITTAL

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 31, 1924.

To His Excellency, J. G. SCRUGHAM, *Governor of Nevada.*

SIR: Pursuant to the provisions of section 4132, Revised Laws, I have the honor to herewith submit my report as Attorney-General of the State of Nevada for the years 1923 and 1924.

Very respectfully,

M. A. DISKIN,
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
M. A. Diskin	1923–1924

[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

M. A. Diskin	Attorney-General
Thomas E. Powell	Deputy Attorney-General
Edith J. Holland	Secretary

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

SYLLABUS

1. **Schools—Emergency Loan—Public Service Corporation—Duty to Furnish Water to City.**

(1) Stats. 1919, p. 497, provides that governing board of school district may borrow money in emergency. Before adoption of resolution declaring emergency to exist and authorizing loan, notice of intention to so borrow must be published in a newspaper of general circulation for at least two publications, one week apart. The resolution must then be adopted and submitted to and approved by State Board of Finance.

(2) An emergency tax must be levied immediately to pay loan.

(3) Stats. 1877, p. 52, sec. 14, provides that water company under contract to furnish water to city is bound by its contract therefor, and cannot change it so as to compel the city to pay portion of necessary expense of maintaining works.

(4) Stats. 1913, p. 398, requires supply and means of distribution to be adequate, pressure sufficient, and rate reasonable for fire protection, all to be fixed by Public Service Commission. If water company desires to be relieved of any responsibility the matter must be taken up with the commission.

INQUIRY

Carson City, January 8, 1923.

I have your communication of January 6 asking for an opinion in reference to the following facts, to wit:

You advise me that eighteen months ago the School Trustees borrowed under an emergency loan the sum of $2,000, and that this amount of money has not been repaid. You

> request an opinion as to whether or not the Board of County Commissioners, by resolution adopted, could borrow or transfer $2,000 sufficient to pay this indebtedness to the school fund.

OPINION

You are advised that the governing board of the school district must proceed under the Statutes of 1919, p. 497, by having a meeting of the board, and declare, by resolution, that an emergency exists and authorize a temporary loan for the purpose of meeting such emergency. It will be noted from a reading of this section of the Act that before the adoption of any such emergency resolution, the governing board shall publish notice of their intention to act thereon in a newspaper of general circulation for at least two publications, one week apart. It is necessary, of course, that an emergency tax be levied immediately to take care of this loan.

A certified copy of the resolution shall then be forwarded to the State Board of Finance for its approval.

You will, therefore, borrow a sufficient amount to pay principal and interest. Copies of the resolution, as to form, may be obtained from Hon. Gilbert C. Ross, Carson City, Nevada.

In reference to the second question propounded, to wit:

> You advise me that it has been the custom for the water company of Virginia City to pay $150 a month for a keeper to repair, regulate and watch over the three large fire-tanks which supply water for fire emergency, and you further advise that the water company reports that it will be necessary to discharge the keeper unless the city pays $50 per month towards the salary of the watchman so employed.

Your attention is respectfully called to an Act approved January 22, 1877 (Stats. 1877, p. 48). Section 14 of this Act (p. 52) provides that during the existence of the contract with the city for supplying of water, the water company shall keep all reservoirs, pipes, and hydrants well supplied with water for the purpose for which they were constructed. In addition thereto your attention is respectfully called to an Act approved March 26, 1913, Statutes of Nevada 1913, at page 387. Under the provisions of this Act it is made the duty of every public utility to furnish to their city and town a reasonable and adequate supply of water, at a reasonable pressure for fire protection and at a reasonable rate—all to be fixed and determined by the Public Service Commission of this State. Section 2 of the Act further provides and makes it the duty of public utilities to provide means and all necessary connections for the proper delivery of water for fire protection.

It appears, therefore, and it is my opinion, that inasmuch as the services of a keeper are required to regulate and watch over the tanks provided for the supply of water in cases of fire, the water company is not authorized and cannot make any change under the contract whereby the city would be compelled to pay any charges for this service, and if the water company desires to be relieved of a responsibility the matter must be taken up with the Public Service Commission.

Please keep me advised in reference to this situation so that proper action may be taken to give your city fire protection.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. WM. S. BOYLE, *District Attorney, Virginia City, Nevada.*

SYLLABUS

2. Budget Law—County Commissioners.

(1) Transfer of money from one fund to another by County Commissioners acting in good faith and without loss to the county, not ground for removal.

(2) Sec. 1540, Rev. Laws (Stats. 1881, p. 32), was amended sections 3826 to 3836, Rev. Laws (Stats. 1903, p. 107), and both were repealed by Stats. 1917, p. 249, as amended Stats. 1919, p. 406, as amended Stats. 1921, p. 78.

(3) County Commissioners are not authorized to transfer surplus money from one fund to another, and, if any fund is exhausted, they should proceed under section 5, Stats. 1917, p. 249.

(4) County Commissioners are not subject to removal if, under mistaken theory, and without loss to taxpayers, they improperly transfer money from one fund to another.

INQUIRY

CARSON CITY, January 13, 1923.

I have your telegram, under date of January 10, 1923, requesting my opinion in reference to the following hypothetical case:

The county budget for a certain year sets aside for a road fund the sum of $9,400. During the same year this amount is expended. The Commissioners thereupon, in good faith and acting for what they believe to be the best interests of the county, transfer from the general fund of the county, which contained moneys then not needed, additional money to the road fund and expended these. The road-fund appropriation is thus exceeded by several thousand dollars. There was, however, no excess of the sum total of the budget. The Commissioners were acting without criminal intent. Was the law violated upon such a statement of facts, so that removal proceedings under section 5 might or might not be instituted? Also advise whether budget law has been modified by a former statute which specifically authorizes transfer from certain county funds to other county funds.

OPINION

The statement of facts made by you presents the following questions for determination:

First—Has the Act entitled "An Act to authorize the County Commissioners of the several counties in this State to loan or transfer surplus money from one fund to the other," approved February 9, 1881 (section 1540, Revised Laws of Nevada, 1912), been repealed by an Act entitled "An Act regulating the fiscal management of counties, cities, towns,

> school districts, and other governmental agencies," approved March 22, 1917, Statutes of Nevada, 1917, p. 249, as amended Statutes of Nevada, 1919, p. 406, as amended by Statutes of Nevada, 1921, p. 78?
>
> Second—When the Board of County Commissioners in fixing the budget for the year estimated that a certain amount was required to maintain the road fund of the county and the amount so fixed and collected was thereafter expended, would the action of the board, in transferring in good faith, and prompted by what they deemed to be the best interests of the county, a certain sum from the general fund of the county to the road fund, violate the provisions of section 4 of the Act of 1917, p. 249, as amended 1921, p. 78?

The Act of 1881 (p. 32, sec. 1540, Revised Laws of Nevada, 1912) provides:

> SECTION 1. The County Commissioners in the several counties in this State are hereby authorized and empowered to transfer any surplus money which may be in any of the county funds of the respective counties (except the school fund) from one or more of said funds to another or others, and transfer the same back to the fund or funds from which said surplus money was taken at such times and in such manner as in the judgment of said Commissioners the best interests of the county may require.

When this Act was adopted by the Legislature, the business of the county was not operating under a budget system and the Legislature had made no provision authorizing emergency loans. It is apparent, therefore, that, in order to permit the County Commissioners to function, some system was required to permit the transfer of surplus funds from one fund to another.

Legislative action in 1903 varied the operation of county business by the adoption of an Act entitled "An Act relating to county government and the reduction of the rate of county taxation" (Stats. 1903, p. 107), Revised Laws of Nevada, sections 3826 to 3836, inclusive.

By virtue of the provision therein enumerated, a budget system was adopted (sec. 3829, supra), and by section 3831, supra, the emergency loan was provided.

The Act of March 22, 1917, Statutes of Nevada, 1917, p. 249, inaugurated a new plan for the fiscal management of counties and expressly repealed the Act of March 13, 1903, and provided under section 3 that the County Commissioners should prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business for the then current year. The said Act enacted that the budget should—

> estimate expenditures in detail showing administrative expense, indigent fund, roads and bridges, interest and redemption, county schools and high-school emergency;

and further provided:

> and the several sums in said budget, under estimated expenditures, shall be thereby appropriated for the several purposes therein named for the then current fiscal year.

Section 4 of this Act, as amended by Statutes of Nevada, 1921, p. 78, provides:

> that it shall be unlawful for any Commissioner, or any Board of County Commissioners, to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment;

and further—

> that any County Commissioner violating the provisions of this section shall be removed from office and a suit to be instituted by the District Attorney upon request of the Attorney-General or upon complaint of any interested party.

It is also enacted—

> that the provisions of this section shall not apply to lawful advances for the support of county farm bureaus.

Section 5 of the Act of 1917, supra, was amended by the Statutes of 1921, p. 79, in the respect that before the Board of County Commissioners could act on a resolution providing for an emergency loan, notice of said action must be published in a newspaper for at least two publications.

It will be noted that no express repeal is contained in the Statutes of 1917, p. 249, with the exception that this statute repeals the Act of March 20, 1903, contained in the Revised Laws (sections 3826 to 3836, inclusive, Revised Laws of Nevada, 1912).

It is evident that when the Legislature adopted the statute of 1917, p. 249, the legislative intent was to promulgate a system for the fiscal management of the respective counties, and that, in passing said Act, it was the purpose of the Legislature to divide the respective county funds into the classifications referred to in section 3 and make the appropriations called for under their respective headings to be the appropriation for the several purposes named therein for the fiscal year.

I am of the opinion that the Statutes of 1917, supra, together with the amendments as made by the Legislature in 1919, p. 406, and 1921, p. 78, repealed the Act of 1881 (sec. 1540, Revised Laws of Nevada, 1912) authorizing the County Commissioners to transfer surplus moneys from one fund to another. The Act of 1917 had for its purpose the placing of county business under a budget system, and limited the respective amounts designated therein for the respective funds to be the amount which could be expended for the current fiscal year. To permit the County Commissioners to transfer surplus moneys from one fund to another would be to violate the provisions of the Act of 1917, as amended, supra.

It will be noted that in the Act of March, 1921, under section 4 thereof, which is an amendment to the Act of March 22, 1917, an exception is made in reference to lawful advances that can be made by the County Commissioners.

This office has heretofore held—

> that it was the duty of the County Commissioners to make a budget and that it was unlawful for the Board of County

Commissioners to contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment. (Opinions of Attorney-General, No. 111, 1913-1914.)

Again in the opinions of the Attorney-General, 1917-1918, No. 250, it was decided—

that the County Commissioners were bound by the estimates made in the budget and that the money in the general funds of the county could not be used for road construction and that the deficiency would have to be provided for by an emergency loan.

I am, therefore, of the opinion that the County Commissioners under the present laws are not authorized to make transfers of surplus money from one fund to the other, but if the money in any particular fund becomes exhausted, it is the duty of the County Commissioners to proceed under section 5 of the statute of March 22, 1917, as amended Stats. 1921, p. 79.

In reference to the second query, I feel that the Board of County Commissioners in transferring the funds were acting in good faith, under the mistaken theory that they had the right so to do under the section of the statute indicated.

It is apparent that they were conscientiously endeavoring to further the best interests of the county and that by reason of their action no loss accrued to the taxpayer, the county government was in no way embarrassed, and neither was the county fund in any way jeopardized.

Therefore, in fairness to the members of the board, I do not consider that, under the circumstances, I am warranted in requesting that suit be instituted for their removal.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. L. T. Williamson, *Foreman Grand Jury, Hawthorne, Nevada.*

SYLLABUS

3. Corporation—Not Ipso Facto Dissolved by Failure to Display Name, Etc.

(1) Judicial proceedings are necessary before corporation failing to display name, etc., can be dissolved. The provision is not self-executing. The Governor may issue certificate of revival upon good showing for noncompliance. Secretary of State is not authorized to declare corporation dissolved.

INQUIRY

Carson City, January 16, 1923.

I have your communication of January 6 requesting an opinion in reference to whether a corporation which fails to comply with section 16 of the general corporation laws of Nevada, Revised Laws, 1912, section 1120, is ipso facto dissolved, and to the extent that you would be authorized in permitting the corporate name of such corporation to be used by another.

OPINION

Section 16 provides:

> Every corporation organized under this Act shall have and maintain in a conspicuous place on its principal office required by section 14, in letters sufficiently large to be easily read, painted or printed the corporate name of such corporation. And every such corporation which shall fail or refuse to comply with the requirements of section 14 and of this section, for a period of thirty days, or fail to maintain such office or fail to have a competent agent in charge thereof, on all business days of the year, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered with costs by the State before any court of competent jurisdiction by action at law, to be prosecuted by the Attorney-General, or by the District Attorney of the county in which such action or proceeding to recover such fine is prosecuted. Failure to comply with the requirements of this section for a period of ninety days shall render the certificate issued by the Secretary of State void, and the same can only be revived by a certificate from the Governor issued for good and sufficient reasons for noncompliance.

The Supreme Court of the United States has held, in reference to a similar section—

> that a ground was not self-executing, although providing that on a certain contingency "the corporate powers and privileges should cease and determine." Frost's Lessee v. Frostburg Coal Co., 16 L. Ed. 637.

In another case decided by the Supreme Court of the United States a distinction between conditions subsequent and conditions precedent is dwelt upon and the necessity for recourse to the courts in case of conditions subsequent is emphasized. Bybee v. Oregon & C. R. Co., 35 L. Ed. 305.

While courts are divided on the question as to whether a provision similar to the provision found in our statute is self-executing, the great weight of authority holds that such a provision is not self-executing.

It will be noted further that provision is made, under section 16, that upon good cause shown for noncompliance the Governor is authorized to issue a certificate of revival. If you, as Secretary of State, under section 16, supra, declared a forfeiture for noncompliance and permitted a new corporation to assume the corporate name, this provision of the Act would thereby be ineffectual.

I am, therefore, of the opinion that a judicial proceeding must be instituted before a corporation could be dissolved. For these reasons, it is my opinion that you are not authorized to declare a corporation forfeited or to permit the name of such corporation to be used by another.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

4. **Corporation—Nonprofit Cooperative Association—Fees.**

(1) Stats. 1921, p. 366: Only fee chargeable by Secretary of State against nonprofit cooperative association is $10 for certifying to articles of incorporation.

(2) Articles of incorporation too broad or inconsistent with powers granted by statute should be amended.

INQUIRY

CARSON CITY, January 16, 1923.

You request an opinion in reference to what fees you may collect from a corporation organized under the Act approved March 23, 1921.

OPINION

You are advised that the only fees that are chargeable against such an association is the sum of $10 for certifying to its articles of incorporation.

This statute provides for the organization of a nonprofit cooperative association. Your attention is respectively called to subdivision (f) of section 2, on page 2, and to the first paragraph on page 4 of the proposed articles of incorporation.

I am of the opinion that the provisions in both of these sections are too broad and are inconsistent with the powers sought to be granted to such associations by the Legislature of this State, and, for these reasons, the proposed articles should be amended.

Your attention is further directed to the fact that the articles of incorporation state that the parties seek to form a corporation under the Act approved March 16, 1901, whereas the Act was not adopted until March 23, 1921, Statutes of Nevada, 1921, p. 366.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

5. **Sheep—Law Providing for Grazing License Repealed.**

(1) Stats. 1915, p. 247, repeals section 3769, Rev. Laws, which provided that persons grazing sheep and failing to secure license therefor might be prosecuted.

INQUIRY

CARSON CITY, January 16, 1923.

Receipt is acknowledged of your communication of the 13th instant, requesting an opinion as to whether or not, under section 3769, Revised Laws of Nevada, 1912, persons engaged in the business of grazing sheep in your county, and who have failed to pay a license, may be arrested for violation of this section.

OPINION

Section 3769, Revised Laws of Nevada, 1912, was repealed by

Statutes of Nevada, 1915, p. 236, at p. 247, and, therefore, the provisions of this section are no longer operative.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. JOSEPH T. MURPHY, *District Attorney, Tonopah, Nevada.*

SYLLABUS

6. **Election—Variation in Name on Ballot and in Certificate—Duty of Clerk to Correct.**

(1) Sec. 1795, Rev. Laws (sec. 29, General Election Law): Where person is elected to an office, and, through error, Clerk issues certificate of election containing variations in name, he should issue corrected commission to conform to name on ballot.

INQUIRY

CARSON CITY, January 16, 1923.

You advise me that Hon. J. A. Callahan, recently elected Judge of the Sixth Judicial District Court of the State of Nevada, has informed you that the commission issued recites his name as James A. Callahan, but that his name appeared on the ballot and he was elected under the name of J. A. Callahan. You request advice as to what action you should take in the premises.

OPINION

Section 29, General Election Laws, provides:

> When two or more counties are united in one senatorial, representative, or judicial district for the election of any officers, the Board of County Commissioners of each county shall canvass the votes, according to law, of the voters of their respective counties for said officer or officers; and the Commissioners of the county whose initial is the lowest on the alphabet shall transmit to the Commissioners of the county of the highest initial a copy of the abstract of the votes for such officer or officers, when the said last Commissioners shall make a final abstract and aggregate of said votes, and shall proceed to cause to be issued certificates of election, and otherwise to act as is provided in this and the two preceding sections.

It appears, therefore, that the Clerk of the county of Humboldt has made a mistake in issuing the election certificate under the provisions of this Act, and his attention should be called to the error that the same might be corrected and a commission issued under the name as appearing on the ballot.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

7. **Nepotism—County Officer—Deputy—"Employ."**

(1) Stats. 1915, p. 17, 3 Rev. Laws, p. 2877: County officer cannot lawfully appoint or employ deputy without compensation who comes within third degree of consanguinity or affinity.

(2) The word "employ" does not necessarily imply compensation.

INQUIRY

CARSON CITY, January 23, 1923.

You request an opinion in reference to the following facts:

Can a county official appoint or employ a deputy, without compensation, who comes within the third degree of consanguinity or affinity, and not violate the nepotism law, as provided in Statutes 1915, p. 17; Revised Laws of Nevada, 1919, vol. 3, p. 2877?

OPINION

You are advised that it is my opinion that a county officer cannot appoint or employ a deputy without compensation who comes within the third degree of consanguinity or affinity and not violate the nepotism law. This law makes it unlawful "to employ or keep in his employ on behalf of the State of Nevada."

The word "employ" does not necessarily mean that the party serving in this capacity receives a reward or compensation. Commonwealth v. Griffith, 90 N. E. 394; Mousseau v. City of Sioux City, 84 N. W. 1027.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. GROVER L. KRICK, *District Attorney, Minden, Nevada.*

SYLLABUS

8. **City Official May Hold other City or County Office.**

No provision in State Constitution or laws prohibits city official from holding other city or county office, if positions are not incompatible. The city charter governs in such cases.

INQUIRY

CARSON CITY, January 24, 1923.

Can a city officer hold any other city or county position?

OPINION

You are advised that there is no provision in the Constitution of the State of Nevada, or in the laws of this State, which prohibits a city official from holding a city or a county position, or prohibiting a city official from holding two positions under the city; provided, however, that the respective positions are not incompatible.

I have not before me your city charter, and cannot, therefore, state whether there is any provision therein which might incapacitate a person from holding two positions under the city government.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. W. BURROWS, *City Attorney, Sparks, Nevada.*

SYLLABUS

9. **Crimes and Punishments—Assault with Deadly Weapon—Penalty—Indeterminate Sentence—Duty of Court.**

(1) Stats. 1921, p. 265, repealing Stats. 1919, p. 191, which amends Rev. Laws, 6413, was intended to have court, in all cases where judgment of confinement is rendered on conviction of any felony for which no fixed period of confinement is imposed, to fix imprisonment for indefinite term, within minimum and maximum term prescribed.

(2) Court may impose fine without imprisonment.

(3) In construing the two sections, all doubts have been resolved in favor of defendant, as opinion cannot be reviewed by Supreme Court.

INQUIRY

CARSON CITY, January 24, 1923.

You advise that Judge Hart and yourself request an opinion as to what effect Statutes of 1915, p. 191, has upon that portion of section 6413, Revised Laws 1912, in reference to the punishment the Court may pronounce upon a person convicted of violating that portion of said section which defines assault with a deadly weapon. The particular portion of section 6413, Revised Laws 1912, material for consideration, reads as follows:

> An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the State Prison not less than one year or exceeding two years, or to a fine not less than one thousand, nor exceeding five thousand dollars, or to both such fine and imprisonment.

Statutes of 1915, p. 122, provide:

> Whenever any person shall be convicted of any felony for which no fixed period of confinement is imposed by law, *the Court shall, in addition to any fine or forfeiture which he may impose, direct that such person be confined in the State Prison*, for an indeterminate term limited only by the minimum and maximum term of imprisonment prescribed by law for the offense of which such person shall be convicted; and where no minimum term of imprisonment is prescribed by law, the Court shall fix the minimum term in his discretion at not less than one year nor more than five years, and where no maximum term of imprisonment is prescribed by law, the Court shall fix such maximum term of imprisonment.

Your query is:

> Do the provisions of the Act of 1915, supra, compel the Court in pronouncing sentence for violation of section 6413, supra, to impose confinement in the penitentiary?

OPINION

The question might be somewhat of a serious one if the provisions of the statutes of 1915, supra, were still in force and effect, but the

Legislature of 1921, Stats. 1921, p. 265, amended section 410, and the amendment reads as follows:

> Whenever any person shall be convicted of any felony for which no fixed period of confinement is imposed by law *and where a judgment of confinement is rendered,* the Court shall, in addition to any fine or forfeiture which he may impose, direct that such person be confined in the State Prison for an indeterminate term limited only by the minimum and maximum term of imprisonment prescribed by law for the offense of which such person shall be convicted; and where no minimum term of imprisonment is prescribed by law, the Court shall fix the minimum term in his discretion at not less than one year nor more than five years, and where no maximum term of imprisonment is prescribed by law, the Court shall fix such maximum term of imprisonment.

The provisions of the indefinite-sentence law, sometimes called the indeterminate-sentence law, adopted by the Legislature of 1921, noted an exception in this, to wit: That the provision in said section which reads "for which no fixed period of confinement is imposed by law *and where a judgment of confinement is rendered,*" shows that the Legislature had in mind that under existing laws in felony cases there might arise violations under which a judgment of confinement would not be rendered. The purpose of the Legislature, in adopting the provisions of this section, was to compel the Court in all cases where a judgment of confinement is rendered to fix the imprisonment for an indefinite term, limited only by the minimum and maximum term, as prescribed by law.

It must be remembered that the indeterminate-sentence law was enacted for the purpose of meting out justice on a more equitable basis and not to inflict a greater hardship upon those convicted of crime than already existed. To construe the Act of 1921, supra, upon the theory that the Court, in addition to a fine, must pronounce a confinement sentence, would be to hold that the Legislature had in mind the repealing of all punishment sections of statutes which imposed a lighter sentence than that provided by the indefinite-sentence law.

For these reasons, therefore, it is my opinion that the Court in this case may impose a fine without imprisonment. If the Court desires to impose a prison sentence, he would under the law, enter a judgment that defendant be confined in the State Prison for a period of not less than one year and not to exceed two years, or he could impose the prison sentence, as stated, and, in addition thereto, impose a fine.

In construing these two sections, I have resolved all doubts in favor of the defendant, realizing that the opinion rendered by me cannot be reviewed by the Supreme Court.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. E. E. WINTERS, *District Attorney, Fallon, Nevada.*

SYLLABUS

10. Schools—Trustee May Not Contract.

(1) Rev. Laws, 3309 (Stats. 1911, p. 183, sec. 71), prohibits School Trustee from being pecuniarily interested in any contract made by the board of which he is a member.

INQUIRY

CARSON CITY, January 24, 1923.

May a School Trustee enter into contracts with School Districts?

OPINION

I am of the opinion that a School Trustee, by reason of section 71 of the school laws, is incapacitated to enter into any negotiations or contracts providing for the disposal to the School Districts of any goods, wares, or merchandise, and, therefore, Mr. Treat, a School Trustee, would not be in a position to furnish coal to the school inasmuch as he is a School Trustee.

In connection with section 71, it is apparent in sparsely settled communities it is invoking a harsh rule to prohibit School Trustees from rendering services to the School Board, and the statute might be amended to eliminate this feature in communities of this description.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. CHARLES PRIEST, *Deputy Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

11. Schools—Fund for "Support and Maintenance" of, Not Liable for Expense of Supervision and Administration—Superintendent of Public Instruction Is a State Officer—Constitution—Statute, Construction Of.

(1) Art. 11, sec. 6, of Constitution provides for special tax for "support and maintenance" of schools and University. The salary of the State Superintendent of Public Instruction of Public Instruction, and the salaries and expenses of his deputies, are not included within the term quoted.

(2) Art. 11, sec. 1, makes the Superintendent and his deputies state officers, and intends their salaries, etc., shall be paid as are those of other state officers.

(3) Art. 4, sec. 32, provides for abolition of office of County Superintendent of Schools.

(4) Stats. 1907, p. 181, abolished that office and transferred duties thereof to Deputy Superintendent.

INQUIRY

CARSON CITY, January 31, 1923.

I am in receipt of your communication requesting an opinion concerning the interpretation of article 11, section 6, of the Constitution of the State of Nevada, which reads:

> The Legislature shall provide a special tax, which shall not exceed two mills on the dollar of all taxable property in the

State, in addition to the other means provided for the support and maintenance of said University and common schools.

You make the following inquiry:

> Does the expenditure for state supervision and administration of the public-school system come within the meaning of the terms "support and maintenance"?

You desire to be advised further in reference to the provisions of article 4, section 32, of the Constitution of the State of Nevada, wherein it is provided for the supervision of the schools through county paid officers, and your query is:

> When this function was taken over by the State, could such expenditure be counted as "support and maintenance" of schools?

OPINION

Assuming that expenditures for state supervision and administration is intended to include the salary, office and other administrative expenses of the State Superintendent of Public Instruction, and the salaries, office and other administrative expenses of the Deputy Superintendents of Public Instruction, there can be no question that such expenditures do not come within the meaning of the terms "support and maintenance" as used in section 6, article 11, of the Constitution of Nevada.

Section 1, article 11, of the Constitution provides for a Superintendent of Public Instruction and makes him a state officer the same as other state officers, and, of course, intends, there being no special provision therefor, that he shall be paid the same as other state officers, and also, in addition thereto, the expenses of his office.

The Constitution (section 32, article 4) makes provision for Superintendents of Schools and contemplates, in the absence of a special provision to the contrary, that their salaries and the expenses of their office shall be paid in the same manner as other county offices.

Section 6 of article 11 of the Constitution provides for a special tax of two mills on the dollar for the support and maintenance of said University and county schools. It, therefore, manifestly appears that, provisions having been otherwise made for expenses of state supervision and administration, it was not the intent that they should be included within the meaning of "support and maintenance" as used in section 6 of article 11.

Article 4 of section 32 further provides that the Legislature shall have power to abolish the office of Superintendent of Schools as well as other county offices. This the Legislature did by "An Act to provide for a reorganization of the system of school supervision and maintenance, to repeal all Acts in conflict therewith, and matters properly connected therewith," approved March 29, 1907.

This Act provides for the appointment of Deputy Superintendents of Public Instruction, and assigns to them generally the duties formerly performed by the County Superintendents of Schools — their duties being generally the same—and, it being the intent to replace the County Superintendents of Schools, the expenditures for their salaries, office and other administrative expenses could not be held to be within

the term "support and maintenance" as used in said article 11 of section 6.

The conclusion must follow, therefore, that expenditures for state supervision and administration should not be paid out of the fund provided by the tax mentioned in article 11 of section 6 of the Constitution, but that such fund should be used exclusively for the "support and maintenance" of the University and common schools.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. J. HUNTING, *Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

12. **High Schools—Bond Issue Limited—Statute.**

Stats. 1921, chap. 81, as amended, limits bond issue for high-school purposes, and same Act, par. 5, sec. 7, as amended, limits total bonded indebtedness of county for all purposes.

INQUIRY

CARSON CITY, February 1, 1923.

You advise that School District No. 3 is contemplating the erection of a high-school building and that you are in doubt as to the amount of bonds that can be legally issued by a county for high-school purposes.

You state that Lyon County has an assessed valuation of eleven and one-half million dollars, and you desire to be advised if high-school bonds could be issued to the extent of $172,500.

OPINION

Under chap. 81, Stats. 1921, Lyon County, with an assessed valuation of $11,500,000, may issue bonds for high-school purposes in the sum of $172,500, provided such issue will not increase the total bonded indebtedness of your county to more than $1,150,000.

The statute limits the amount of bonds that may be issued for high-school purposes in any case to 1½ per cent of the assessed valuation of the county, and paragraph 5, section 7 of the Act, as amended, further limits the total amount of bonded indebtedness for all purposes to 10 per cent of the assessed valuation.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. E. KING, *Secretary Wellington Community Center, Wellington, Nevada.*

SYLLABUS

13. **Statutes—Amendment and Repeal—Sufficiency of Title.**

(1) When provisions of related Acts are repugnant and inconsistent, later Act repeals former in so far as they conflict.

(2) Slight error in title of Act amended is immaterial. Reference which identifies is sufficient.

INQUIRY

CARSON CITY, February 1, 1923.

You request an opinion as to whether chap. 229, Stats. 1919, entitled:

> "An Act to amend sections 32, 34, and 39 of an Act entitled 'An Act to provide for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891," approved April 1, 1919,

repealed the provisions of an Act entitled:

> "An Act to amend an Act entitled 'An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891, and of Acts amendatory thereto," approved March 2, 1917.

You further desire an opinion as to the effect the omission of the word "revenue" from the title of the Act of 1919, wherein it appears to amend the provisions of section 39 of the Act approved March 23, 1891.

OPINION

An examination of legislative action in reference to the subject-matter covered by these various Acts discloses that the Legislature heretofore enacted a measure entitled:

> "An Act to amend an Act entitled 'An Act to provide revenue for the support of the government of the State of Nevada and to repeal certain Acts relating thereto,' approved March 23, 1891, and of Acts amendatory thereof," approved March 2, 1917. (Chap. 32, Stats. 1917.)

Section 1 thereof provides for the amendment of section 39, Revenue Act of 1891, and also makes provision for the time and manner of sale of property upon which delinquent taxes are a lien, and states that such property shall be advertised for sale on the second Monday of December, and that such property shall be sold on the third Monday of June next succeeding.

> "An Act to amend sections 32, 34, and 39 of an Act entitled 'An Act to provide for the support of the government of the State of Nevada and to repeal certain Acts relating thereto,' approved March 23, 1891," approved April 1, 1919, being chap. 229, Stats. 1919.

Section 3 of this Act provides for the amendment of section 39 of the Revenue Act of 1891 and makes provision for the time and manner of sales of property upon which delinquent taxes are a lien, and enacts that such property shall be advertised for sale after the second Monday in June, and sold on the third Monday in July.

It is obvious that chapter 32, Stats. 1917, and chapter 229, Stats. 1919, deals with the same subject-matter, and the provisions of these two sections are inconsistent in reference to procedure. The provisions are so repugnant and inconsistent that the conclusion must follow that the statute of 1919 repeals chap. 32 of the statute of 1917, in so far as their provisions are in conflict.

In reference to the variance between the amended and the amendatory Acts, by reason of the omission of the word "revenue" from the amended Act, I am of the opinion that the failure to correctly recite the Act amended would not affect the provisions of the amendatory Act.

> Where the title of the amendatory Act recites the title of the Act amended with that title, an error in referring to the date of the passage or approval of the Act amended will not vitiate the title. Citizens Street Railroad Co. v. Hough, 41 N. E. 533.
>
> All that the law requires is that the reference to the amended Act be sufficient for identification. People v. Beaun, 92 N. E. 917.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

14. District Attorney—Drainage District—Statute.

Stats. 1913, p. 461, creating drainage district, does not require services of District Attorney. He may therefore advise, prosecute, or defend for or against such district.

INQUIRY

CARSON CITY, February 7, 1923.

I have your letter of the 3d instant, requesting an opinion as to whether or not you are disqualified, inasmuch as you are the District Attorney of Pershing County, from bringing an action against the drainage district for damages.

OPINION

An examination of the law creating this drainage district (Act of 1913) makes no provision requiring the District Attorney of the county to give legal advice to the drainage district or to act in any capacity. Therefore there is no provision of law which would in any way confer upon you the duties of advising or counseling this district.

18 Corpus Juris, p. 1309, lays down this doctrine:

> It is not a part of the official duty of a county attorney to prosecute for and defend a drainage district located in his county. Lincoln County v. Roberson, 130 Pac. 947.

I am of the opinion, therefore, that you are not in any way disqualified from accepting employment in connection with or against the drainage district.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

15. Commissioner Districts—Plan of Local Government Not Uniform throughout State, Unconstitutional.

(1) Constitution, art. 25, sec. 4, provides that system of county and township government shall be uniform. An Act providing for commissioner districts in one county not applicable to other counties of the State would be unconstitutional.

INQUIRY

CARSON CITY, February 7, 1923.

You have submitted to me Senate Bill No. 15, which has for its purpose the establishing of commissioner districts in the county of Mineral, and providing for the election therefrom of members of the Board of County Commissioners, and you desire my opinion as to the constitutionality of this Act.

OPINION

Section 25 of article 4 of the Constitution provides: "The Legislature shall establish a system of county and township government which shall be uniform throughout the State." The provisions of Senate Bill No. 15 violate this provision of the Constitution of the State of Nevada, inasmuch as this bill has for its purpose establishing a system of county government in the county of Mineral, and which provisions are not applicable to the other counties of the State.

The Supreme Court of this State, in the case of State v. Boyd, 19 Nev. 43, has interpreted and construed this section of the Constitution and the reasons which prompted its adoption in the following language:

> It is claimed by relator that the provision is a violation of article 4, section 25, of the Constitution, which provides that "the Legislature shall establish a system of county and township government, which shall be uniform throughout the State." If this requirement can be expressed more significantly in its application to this case, it means that the Legislature shall establish a uniform plan or method for the government of all the counties of the State. It is a matter of general knowledge that Legislatures are disposed to adopt, without particular scrutiny, measures proposed by the representatives of a particular locality, affecting it only, and not the State at large. The object of the provision was to prevent this character of legislation in relation to county government. Any change in the general system of county government may affect every county in the State. Among the advantages attained by this requirement is that legislation upon this subject will receive the careful attention of the members of the Legislature in general, all proposed alterations will be scrutinized, and frequent and disturbing changes avoided.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

16. Cigarettes, License for Sale of—Revenue—Statute.

(1) Stats. 1916, p. 236 (sec. 2): Both wholesale and retail dealers in cigarettes must pay license.

INQUIRY

CARSON CITY, February 14, 1923.

You request an opinion as to whether or not under section 2 of an Act entitled "An Act to provide revenue for the support of the government of the State of Nevada, and to repeal all Acts and parts of Acts in conflict therewith" (Stats. 1915, p. 236), the license fee therein provided must be collected from those who conduct a wholesale or retail business in selling cigarettes.

OPINION

This section provides that "any person, firm, association, or corporation engaged in dealing, in selling, giving away, or offering to sell cigarettes * * * shall take out a license and pay therefor the sum of $15 per quarter-year."

It is my opinion that wholesalers, as well as retailers, engaged in dealing, selling, or giving away cigarettes must pay this quarterly license.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. HARLEY HARMON, *District Attorney, Las Vegas, Nevada.*

SYLLABUS

17. United States and Nevada Constitutions — Statute — Prohibition Act Unconstitutional — Subject Must Be Expressed in Title — When Invalid Portion Vitiates Whole Act—Fines—Affirmed by Supreme Court.

(1) Stats. 1923, p. 43, is void under art. 4, sec. 17, Constitution of Nevada, because subject-matter of bill is not expressed in title.

(2) United States Constitution, art. 6, sec. 2, makes national law supreme law of land by which judges of all States are bound.

(3) A legislative Act attempting to extend jurisdiction of national law is an idle thing.

(4) Section 3 of the statute violates art. 4, sec. 1, Nevada Constitution, in that it attempts to delegate legislative power to Congress.

(5) Where the intent of an Act is to accomplish a single purpose and its provisions are so mutually connected as to indicate the intent that they be construed as a whole, if some of such provisions are void, the whole Act is void.

(6) Section 3 violates article 2 of the Constitution, being section 355, Revised Laws, as to disposition of fines.

This opinion was affirmed by Supreme Court in Ex Parte Mantell, 47 Nev. 95, 216 Pac. 509.

CARSON CITY, February 17, 1923.

I have your request for an opinion as to the constitutionality of Assembly Bill No. 64.

The title of this Act provides:

> An Act to make the provisions of the National Prohibition Act of the United States of America the law of the State of Nevada; and to repeal an Act entitled "An Act to prohibit the manufacture, sale, keeping for sale, and gift, of malt, vinous and spirituous liquors, and other intoxicating drinks, mixtures or preparations, making the Superintendent of the Nevada State Police ex officio Commissioner of Prohibition, and defining his duties; and providing for the enforcement of this Act, and prescribing penalties for the violation thereof," enacted pursuant to direct vote of the people, general election, November 5, 1918; and an Act entitled "An Act prohibiting the sale, furnishing, giving away, or having in possession of any intoxicating drinks; defining the same; making the Superintendent of the Nevada State Police ex officio Commissioner of Prohibition, and defining his duties; prescribing penalties for the violation of this Act and providing for the enforcement of the same," approved April 1, 1919; and to repeal all Acts in conflict herewith; and other matters connected therewith.

I

Section 1 "adopts the penal provisions of the Volstead Act" and imposes the duty of enforcing the same on Sheriffs, peace officers, etc.

Section 2 recites that "all acts or omissions declared unlawful by the Eighteenth Amendment to the Constitution of the United States or by the Volstead Act are prohibited and declared to be unlawful"; and further, that violations thereof are subject to the penalties provided in the Volstead Act.

Section 3 provides "whenever Congress shall amend or repeal the Volstead Act, or enact any other law to enforce the Eighteenth Amendment to the Constitution of the United States, then the provisions of sections one and two of this Act shall apply."

Section 4 provides that "all fines and forfeitures collected under any ordinance * * * shall be paid into the treasury of the city whose ordinance is violated."

Only such portions of the provisions of this Act have been quoted as are deemed essential for a determination of the questions involved.

TITLE OF THE ACT

Eliminating that portion of the title of the Act which repeals existing statutes, the title states:

> An Act to make the provisions of the National Prohibition Act of the United States of America the law of the State of Nevada.

The body of the Act reveals an intent to adopt the provisions of the Volstead Act, confer jurisdiction upon the courts of this State in cases of violation thereof; and impose upon District Attorneys and peace officers the duty of enforcing the same. No mention, or even hint, of any such enactment is contained in the title of this bill.

This Act, with the exception of the title, is an exact duplication of what is known in the State of California as the "Wright Act." It will be noted that the title of the Wright Act provides:

> An Act to enforce the provisions of article 18 of the amendments to the Constitution of the United States; prohibiting all acts or omissions prohibited by the Volstead Act; imposing duties on courts, Prosecuting Attorneys, Sheriffs, and other officers and extending their jurisdiction; and providing for the disposition of fines and forfeitures.

The difference in the title of the Nevada and California Acts is very apparent. The title of the latter Act sets forth:

First—That it is to enforce the provisions of article 18 of amendments to the Constitution of the United States.

Second—To prohibit all acts or omissions prohibited by the Volstead Act.

Third—Imposing duties on courts, Sheriffs, District Attorneys, etc., and extending their jurisdiction.

Fourth—Providing for the disposition of fines and forfeitures.

The Nevada Act falls far short in its title of expressing the subject-matter contained in the body of the bill.

Section 17, article 4, of the Constitution of the State of Nevada provides:

> Each law enacted by the Legislature shall embrace but one subject and matters properly connected therewith, which subject shall be briefly embraced in the title. * * *

The title of Assembly Bill No. 64 discloses a purpose to enact a measure which would extend the jurisdiction of the Act of Congress to the State of Nevada. This, of course, is an idle thing and a mere work of supererogation. One, in reading the title, would conclude that its purpose was simply to concede that the State of Nevada is a part of the United States and subject to the law of Congress. It is hardly necessary to state the provisions of the Constitution of the United States, under section 2 of article 6:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

As was said by the Supreme Court of Pennsylvania, in the case of Commonwealth v. Sweeney, 61 Pa. Sup. Ct. 367, 373:

> Now an Act of the Federal Congress is a law. Where its terms are applicable, it is as much the law of Pennsylvania as it is of Maine or California.

Construing the words used in this title in their broadest sense, the conclusion is inevitable that, from the title of the bill, the Legislature was attempting to enact a measure which had for its purpose the

application, in and within the State of Nevada, of the provisions of the National Prohibition Law.

This in itself would be a measure without life or meaning, unless, in addition thereto, further provisions were enacted seeking to enforce the same, imposing duties for enforcement upon peace officers, and extending the jurisdiction of courts in reference to violations thereof.

If the intent of the Legislature was to enact a law similar in all respects to the Act of Congress, but based upon the lawmaking power of this State, fit words might have been chosen in the title to have expressed this purpose.

Again, the title of this bill simply refers to the National Prohibition Law and makes the provisions thereof the law of this State.

Our Constitution declares, in reference to the title of the Act, that "the subject shall be expressed in the title," and it cannot be said that this has been done when the title does no more than furnish a reference to the National Prohibition Law, from which by search the true purpose of the title may be ascertained. As was said by the Supreme Court of Texas, in the case of Gunter v. The Texas Land and Mortgage Co., 17 S. W. 840:

> The body of a bill would furnish more ready means of information to members of the Legislature as to its subject than would a mere reference in a title to some other law which it was the purpose of a bill to adopt or amend. No one would contend that a title as follows: "An Act to amend an Act in reference to the subject contained in the bill to which this is the title," would be a compliance with the Constitution.

It is, therefore, my opinion that the title to Assembly Bill No. 64 is contrary to the provisions of section 17 of article 4 of the Constitution of the State of Nevada, in that the subject-matter embodied in the bill is not expressed in the title.

II

Section 3 of this bill provides:

> Nevada hereby recognizes that its power to enforce the Eighteenth Amendment to the Constitution of the United States should at all times be exercised in full concurrence with the exercise of the like power of Congress; and, to that end, whenever Congress shall amend or repeal the Volstead Act or enact any other law to enforce the Eighteenth Amendment to the Constitution of the United States, then the provisions of sections 1 and 2 of this Act shall apply thereto.

This section vests Congress with the power to write laws upon the statute-books of Nevada and make the same binding and obligatory upon the people of this State, and is a power that cannot be exercised, for the reason that it is a delegation of legislative power by the Legislature of Nevada to Congress.

The provisions of section 3 constitute, and are, in effect, an unconditional surrender of the autonomy of the State to the Federal Government. Section 1 of article 4 of the Constitution provides:

> The legislative power of this State shall be vested in the Senate and Assembly which shall be designated the Legislature of Nevada.

In the case of Merchants v. Knott, 111 S. E. 565, at page 571, the Court said:

> We are of the opinion that the power to bind and loose, to inaugurate and suspend the operation of a law, to say where and when it is a law, is, of necessity, an inherent and integral part of the lawmaking power not to be delegated.

In the case of Davenport v. Elwood, 107 N. W. 833, the Court said:

> One of the settled maxims in constitutional law is that power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority.

Section 3 further provides that any amendments made by Congress to the Volstead Act shall, by virtue thereof, be adopted and applied under sections 1 and 2 of this Act. This violates section 17, article 4, of the Constitution of the State of Nevada, in that it attempts to amend an Act without reenacting and publishing at length its provisions. Further, it is an attempt to adopt prospectively laws which may be enacted by the Congress of the United States, and, as was said by the Court in the case of Moore v. Allen, 30 Ky. 651:

> It is a fundamental rule that we cannot adopt prospectively any law that might be passed by a foreign lawmaking body, because this would enable the foreign lawmaking body to write statutes upon our books.

III

Inasmuch, therefore, as section 3 of the provisions of this Act is, in my opinion, unconstitutional, the question necessarily arises: What effect would this have upon the other provisions of the bill?

It must be remembered that section 6 of the bill provides:

> Should any section or any portion of any section of this Act be found unconstitutional, the remainder shall continue in full force and effect, it being expressly declared that such is the intention.

The Legislature, in enacting this measure, has provided that all amendments made by the Congress of the United States should, by operation of section 3, be applicable in so far as the enforcement of the prohibition law in Nevada is concerned. There is herein expressed an intent by the lawmakers to enable Nevada to operate "in full concurrence" with Congress in the enforcement of the Eighteenth Amendment.

No other construction can be placed upon the Act. This intent is apparent; were this not the intent, it would not be so expressed and furthered by every step in the Act.

Were there a mere desire to employ the machinery of our State to enforce the provisions of the Eighteenth Amendment, this could be done by very different means than those employed in the Act.

A new law could be adopted by our Legislature absolutely independent of the Act of Congress.

In the law the same acts or omissions could be punished by the same penalties as prescribed by the Act of Congress.

But if it were the intention of our lawmaking body to act independently and not in "full concurrence" with Congress, why did our lawmakers provide in the Act for our law paralleling that of Congress, keeping abreast of amendments, dying with a repeal of the congressional Act, and adopting any new laws of Congress?

None of these things was or is necessary if a different intent is to prevail.

Cooley, in his able work on Constitutional Limitations, says:

> But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion, and, if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the Legislature intended them as a whole, and, if all could not be carried into effect, the Legislature could not pass the residue independently, then, if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them.

So it will be seen that the rule we must invoke in placing a construction upon a statute in an effort to determine the effect of an invalid portion of the same Act is that, if the purpose is to accomplish a single object and some of the provisions are void, the whole must fail, if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the Legislature intended them as a whole.

> The rule applicable to this point is forcibly stated by Chief Justice Shaw in Warren v. Mayor of Charlestown, 2 Gray, 98, who, after stating the general proposition that some portions of a statute may be held to be constitutional, while another portion may be pronounced void, and that in certain cases the valid portion may stand and the other be rejected, proceeds to say that "this must be taken with this limitation, that the parts, so held respectively constitutional and unconstitutional, must be wholly independent of each other. But if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the Legislature intended them as a whole, and that, if all could not be carried into effect, the Legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected, must fall with them." This case was quoted with approval in French v. Tescemacher, 24 Cal. 548; and doubtless states the law correctly. Tested by this rule, the whole of section 3696 was void per se. Wills v. Austin, 53 Cal. 152, p. 179.

> The insuperable difficulty with the application of that principal of construction to the present instance is that, by rejecting the exceptions intended by the Legislature of Georgia, the statute is made to enact what confessedly the Legislature never meant. *It forces upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions.*

The conclusion must follow that it was not the purpose of the Legislature to forever bind the people of this State with the provisions of the National Prohibition Law as it now exists, but, on the contrary, to make this enactment in reference to prohibition not positive and rigid, but it was desired to submit to the will of Congress the right to regulate in reference to this measure; to have the advantage of such change as may be adopted in making more liberal provisions. This being true, the removal of section 3, supra, by reason of its unconstitutionality, thereby eliminates what might be termed its elasticity, with the result that what remains of the Act would make the provisions positive and beyond the intent which the Legislature had in mind.

It is true the bill contains a saving clause, but the provisions of the saving clause are repugnant to the intent expressed in the Act, and, by reason of their repugnancy, would be inoperative.

IV

There is serious doubt as to whether or not the provisions of this Act are not violative of the due-process clause of the Constitution.

One of the essential elements in the enactment of legislative Acts which seek to make the performance of certain acts criminal, is that those acts, commissions, or omissions be defined with certainty. The provisions of this bill do not definitely define what acts, commissions, or omissions are criminal, but refers the individual to the statute adopted by Congress wherein he can obtain the information in reference to what acts and omissions are a violation of this law. The citizen shall, at his peril, determine for himself what are the acts and omissions prohibited by the Volstead Act, for this bill makes no attempt to define them. As was said by the Supreme Court of California in the case of In Re Lockett, 179 Cal. 583:

> So important is the liberty of the individual that it may not be taken away even from the most debased wretch in the land except upon conviction of a crime which has been so clearly defined that all might know in what act or omission the violation of the law should consist.

Every citizen realizes the difficulty that is encountered today in enforcing the prohibition law. Is it wise and prudent to enact a measure seeking to define certain acts or omissions as criminal when the measure, as adopted and by the Act of the Legislature is thus raised to the dignity of a law, is uncertain and indefinite in its terms and provisions?

V

The Supreme Court of California, in the matter of the Application of Frank Burke, was called upon to determine the validity of the Wright Act, and it was urged to this body that the fines imposed for a violation of the Wright Act were payable to the United States Government, and not the State of California. The Supreme Court of California, passing upon this question, remarked:

> The question whether the fines which are imposed under the penal provisions of the Act are payable to the United States or to the State, may be a matter of dispute, but it is not the question with which petitioner is concerned.

This question is of serious importance in this State because, if the fines collected, by reason of enforcing this Act, do not inure to the benefit of the State of Nevada, the provisions of the Act violate section 3, article 2, of the Constitution of the State of Nevada, being section 355, Revised Laws of Nevada, vol. 1, p. 107, wherein it is stated that "all fines collected under the penal laws of the State are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses."

I realize that the Supreme Court of California has passed upon the Wright Act and held the same to be constitutional, but it is to be remembered that the question of the invalidity of section 3 was not before the court for decision, and, second, that the matter of the disposition of the fines and forfeitures was held to be of no concern to the petitioner, and the Court stated that this was a matter of disposition between the Federal and State Governments, to be determined later. The title of the Wright Act was not assailed before the Supreme Court. The only serious question urged was that it violated that section of the Constitution of the State of California, which provides:

> No Act can be revised or amended by reference to its title, but such section as is amended or revised must be published at length.

The Legislature of this State is now in session. The defects which I have pointed out herein can be easily remedied. If it is the desire of the legislative body, as expressed in this bill, to exercise its law-making power by enacting a measure similar in import to the provisions of the National Prohibition Law, it is a very simple matter to pass an Act incorporating therein the National Prohibition Law.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

18. Constitution — Amendment — Statute — Void Local Law — Delegation of Legislative Power — Compensation of Township Officers.

(1) Stats. 1919, p. 395, is void under art. 4, sec. 20, of the Constitution, as amended at general election of 1921.

(2) Compensation of township officers cannot be fixed in any other way than by a general law applicable to all townships.

(3) No power exists in Legislature to delegate to County Commissioners authority to fix compensation of township officers.

INQUIRY

CARSON CITY, February 21, 1923.

I have your request for an opinion as to the effect of the amendment to section 20 of article 4 of the Constitution of the State of Nevada, which amendment was adopted and made part of the Constitution by the vote of the people at the last general election.

OPINION

In your communication requesting this opinion you have set forth your views in reference to the effect of this amendment and, after careful examination of your letter and the reasoning therein contained, I have concluded to adopt the contents of your letter as my opinion in reference to this matter. Your letter reads as follows:

> At the last general election, section 20 of article 4 of the Constitution of the State of Nevada was amended. Two changes were made in that section, to wit:
>
> The words "and fixing their compensation" were added to the first subdivision of the section. As it now reads, the Legislature is expressly prohibited from passing any local or special laws fixing the compensation of Justices of the Peace and Constables.
>
> The second change was in the last subdivision, by striking out the words "and township." Whereas there was formerly an express exception permitting special laws to be passed fixing the compensation of township officers, that has been eliminated ex industria, and such laws can be passed now only with respect to county officers.
>
> These two changes very definitely and plainly deprive the Legislature of the power to pass any local or special law fixing the compensation of Justices of the Peace and Constables.
>
> What is the effect of this amendment? During the last election it was generally stated to the public that it would remove from the time and consideration of the Legislature measures dealing with the compensation of Justices of the Peace and Constables, and place the same in the Boards of County Commissioners.
>
> It seems to me that it has had exactly the opposite effect, and that the compensation of Justices of the Peace and Constables throughout the State will remain stationary and not subject to change unless this Legislature passes a general Act fixing such compensation for every Constable and Justice of the Peace in the State. Of course, this could be done by a classification of townships, providing a certain compensation for townships of a certain population.
>
> Such compensation, however, will hold from one session of the Legislature to the next, and will not permit of regulation

by the Boards of County Commissioners, as the law now stands.

This, to my mind, would render the statute of 1919, p. 395, unconstitutional under section 20 of article 4, as amended. That Act authorizes the County Commissioners to fix the compensation of Justices of the Peace and Constables under certain conditions.

The reason for my conclusion is this: It is elemental that a governmental body cannot delegate to an inferior body powers which it does not itself possess in the first instance. So, too, the Legislature cannot delegate a power which it does not possess. 12 C. J. 840.

This principle, of course, applies in any character of cases involving agency.

Neither can a thing be done indirectly which cannot be done directly.

Consequently, if the Legislature cannot fix, for instance, the salary of the Justice of the Peace of Verdi Township, in Washoe County, how can it authorize the Board of County Commissioners of Washoe County to do so?

The only thing it can do, it seems to me, under the Constitution as it now stands, is to classify all of the townships in the State, or else allow compensation to remain as now fixed by law.

The power to pass such special Acts cannot be read into the Constitution by implication as was done in State v. Fogus, 19 Nev. 247, 9 Pac. 123, and Mining Co. v. Allen, 21 Nev. 325, 31 Pac. 434. The express language of the amendment prohibits any such construction by implication.

Apparently, the various salary Acts as already passed would not be affected, because the section goes to the power to pass, and not to the Acts per se. That power existed when they were passed.

After classification it could not be provided that the Commissioners might fix the compensation of those classifications, because they could then be fixed differently in different counties, and the law would not, in its very nature, be general throughout the State.

If it is the desire that this power should rest with the County Commissioners, amendment of this section should again be provided for in this session of the Legislature, so as to go before the people at the earliest possible date.

In the meantime, compensation must remain as it is, unless the Legislature undertakes to classify all of the townships in the State.

It is my opinion, therefore, that under section 20, article 4, the Legislature is prohibited from fixing fees and compensation of township officers in any other way than by a general law applicable to all the townships in this State, and, therefore, no power would exist in the Legislature to delegate to the County Commissioners authority

inconsistent with the power thus vested in the Legislature. If it is desired to have the County Commissioners fix the fees and compensation of township officers in the several counties of this State, a proper amendment will have to be made to this section and article of the Constitution.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

19. Automobile—Negligence—Liability for Personal Injury by Federal or State Official when Driving Official Car—Relief.

United States cannot be sued for negligence of its officers, and State is not liable for torts of its officers in discharge of official duties, unless each has assumed liability. Aggrieved person's only relief is by appeal to Legislature. The only liability is personal liability of driver of car.

INQUIRY

CARSON CITY, February 21, 1923.

I have your communication of the 14th instant wherein you desire an opinion in reference to the following two questions:

> *First*—If a federal veterinarian operating a state-owned car should inflict damage on another party and the Court should decide that the damage arose through the negligence of the driver, who would be held financially responsible—the driver as an individual, the Federal, or the State Government?

Your second query relates to the liability of a state-owned car as to whether or not the State would be liable if an employee caused damage to an individual while he was not engaged along the line of his official business.

OPINION

Replying thereto, you are advised that the courts have held, first, that the United States cannot be sued for damages for the negligence of its officers; and, second, that a State is not liable for the torts of its officers or agents in the discharge of their official duties unless each has voluntarily assumed such liability and consented to be liable. The only relief the aggrieved person has in such case is an appeal to the Legislature.

Melvin v. State, 53 Pac. 416;
Lewis v. State, 48 Am. Rep. 607;
Billings v. State, 67 Pac. 583.

It would follow, therefore, that the only liability to the aggrieved person would be the personal liability of the individual driving the car.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *University of Nevada, Reno, Nevada.*

SYLLABUS

20. Emergency Loan—Legality of Form of Application For.

Papers in application for temporary loan, held to be in proper form.

INQUIRY

CARSON CITY, February 28, 1923.

This will acknowledge the receipt of your letter of the 28th instant, together with the resolution of the Board of County Commissioners of Mineral County in re application for a temporary loan.

OPINION

I have examined the several papers submitted, and I am of the opinion that the same are in due form and according to law. I therefore approve their legality as to form.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

21. National Prohibition Law—State Court Has No Power to Enforce National Law.

(1) The United States and the State of Nevada are two separate and distinct sovereignties, and the courts of this State have no power to enforce the penalties prescribed by criminal laws of the United States.

INQUIRY

CARSON CITY, February 28, 1923.

You advise me that a petition was filed in your District Court for a writ of habeas corpus, wherein the defendant was held in custody for a violation of the state prohibition Act.

The habeas corpus proceedings were sought upon the theory that the law under which the petitioner was arrested had been repealed by the Legislature, and, inasmuch as no saving clause was contained in the repealing Act, upon the hearing of the petition the Court granted the writ and the petitioner was released.

OPINION

There can be no question but what the Court ruled correctly, and it appears from your letter that you are satisfied with the Court's decision in this respect.

You maintain, however, that "there is still sufficient law in this State, even though the Legislature should wipe out all state legislation on the prohibition question, to hold persons charged with the manufacture or sale of intoxicating liquors"; this upon the theory that the National Prohibition Law can be enforced in state courts without any Act upon the part of the State Legislature in reference thereto.

I cannot agree with your contention. The State of Nevada and the United States are two separate and distinct sovereignties.

> The powers of the General Government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. Abelman v. Booth, 21 How. (U. S.) 516.
>
> The several States can have no constitutional power to enforce the penalties prescribed by the criminal laws of the United States. Stearns v. United States, 2 Paine, 300; Commonwealth v. Feely, Va. Cas. 321.

It is likewise held that—

> The courts of the United States have no power to execute the penal laws of the individual States. Huntington v. Attrill, 146 U. S. 671.
>
> No sovereignty can have power to enforce the penal laws of another sovereignty. People v. Kelly, 38 Cal. 145.

It is, therefore, my opinion that an appeal to the Supreme Court, based upon the theory suggested by you as stated above, would be ineffectual.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. T. Mathews, *District Attorney, Elko, Nevada.*

SYLLABUS

22. Easement of Highway on Public Land—Settler.

The Highway Department acquires an easement upon that portion of the public domain which it designates for highway purposes, and a subsequent settler thereon takes subject to such easement.

INQUIRY

Carson City, March 6, 1923.

I have your request for an opinion as to the right of the Department of Highways to claim a right of way for state highway purposes over public lands. Your inquiry states that at the time the survey was made the lands were public lands and had not been settled upon by any person. However, after the state highway had been surveyed and the lines established, an individual filed a homestead entry on a portion of said lands embraced within that section of the same over which the state highway was designated.

OPINION

I am of the opinion that the case of Wallowa County v. Wade, 72 Pac. 793, is decisive of the right of the state highway in connection with this matter. The Court in this case stated:

> The right is necessarily indefinite, and, in a sense, floating and liable to be extinguished by a sale or disposition of the land until the highway is surveyed and marked on the ground, or in some other way identified or designated, but when the public authorities lay out and locate a road over public lands of the United States by surveying and marking

> it on the ground, or by some legislative Act, or when it is shown by user, the right becomes complete, and an intention to accept the dedication is manifested, and subsequent settlers on the land take subject to the easement.

I am, therefore, of the opinion that the person settling on the land after the highway had been designated over and across the public land in question, took the said land so settled upon subject to the easement that accrued to the Highway Department by reason of the facts stated above.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

SYLLABUS

23. **Statute—Budget Law Construed.**

Stats. 1917, p. 250, the Budget Law: A recital of the estimated expenditures, etc., in such detail as shall be prescribed by the Tax Commission would be a compliance with this statute.

INQUIRY

CARSON CITY, March 19, 1923.

You desire an interpretation concerning the following words in Stats. 1917, p. 250:

> And shall show the estimated expenditures in detail, showing administrative expense, etc.

OPINION

It is my opinion that this language should be construed together with the other recitals contained in this Act, which provides:

> Said budget shall be prepared in such detail as to the aggregate sums and the items thereof as shall be prescribed by the Nevada Tax Commission.

Therefore a recital of these items in accordance with the prescribed form of the Nevada Tax Commission would be a compliance with the provisions of this statute.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

24. **Surety Bonds for Public Officers — Payment of Premiums at Public Expense—Constitutionality of Statute.**

(1) The title of Stats. 1917, p. 340, seems to authorize payment of all official bonds at public expense, but the Act contains no authority in the body thereof justifying County Commissioners in paying premium on bonds for township officers.

(2) Failure to recite in the body of an Act a provision indicated in the title does not render the Act unconstitutional.

INQUIRY

CARSON CITY, March 19, 1923.

You address to me the following inquiries:

1. Under the provisions of the Act of the Legislature of March 24, 1917, entitled "An Act to provide surety bonds for state, district, county, city, and township officers at public expense," can the county allow a claim for payment of premium on bonds of Justices of the Peace, when there is no mention in the body of the Act of township officers?

2. Would the omission of such, thereby making a conflict between the title and the body of the Act, render it unlawful to pay premiums on the other classes of officials named therein?

OPINION

Replying to your first inquiry, I am of the opinion that surety bonds executed by Justices of the Peace or Constables cannot be paid by the county, for the reason that, while the title of the Act would seem to authorize such proceeding, the body of the Act contains no authority that would justify County Commissioners in paying the premium on surety bonds for township officers.

Replying to your second inquiry, I am of the opinion that the failure to recite in the body of the Act a provision authorizing the payment of surety bonds for township officers in compliance with the title of this Act would not render the Act unconstitutional.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

25. **Private Employment Agency—Annual License—Bond.**

INQUIRY

CARSON CITY, March 19, 1923.

I have your letter dated March 17, 1923, containing the following inquiry:

> I am submitting herewith copy of the amendments to chap. 167, Stats. 1919, relating to regulation of private employment agencies and the amendment to section 5 of the Act, approved March 5, 1923.
>
> Section 5 of the Act increases license fees to $50 per year and reenacts section in connection with the filing of bonds. Sam Francovich of the Francovich Employment Agency has submitted check for $50 for license fee. He has held license since 1919 under the Act referred to. Are we privileged to continue bond, copy of which I am enclosing herewith, and which is on file with the City Clerk of Reno, or should he be required to obtain new bond, although the sections against which the former bond was a penalty have not been changed?

OPINION

I have examined sections 1 and 5 of said Act, as amended by the Act of March 5, 1923, and am of the opinion that section 5, as amended, places an additional liability upon the bondsmen for the payment of annual fee of $50 by the licensee, and that you should require a new bond from such licensee conditioned that the licensee "comply with the provisions" of the Act as amended by the Act of March 5, 1923.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. FRANK INGRAM, *Labor Commissioner, Carson City, Nevada.*

SYLLABUS

26. Budget Law—Indigent and Other Funds.

(1) Requirement that County Commissioners fix amount of indigent and other funds is for budget-fixing purposes only.

(2) Revenues collected for indigent and other general expenses are apportioned to general fund, while those collected for special purposes are placed in special funds. Notwithstanding fact that money for the several general expenses goes into general fund, County Treasurer must keep account of each county, state, and special fund.

INQUIRY

CARSON CITY, March 19, 1923.

You request an interpretation from this office as to whether Stats. 1919 (chap. 184, p. 331, par. 2, sec. 1) conflict with or supersede the provisions of par. 1, p. 250, Stats. 1917, as to requiring an indigent fund to be kept, or whether all revenues (other than special for special funds) are to be paid into a general fund, and paid out therefrom.

OPINION

For the purpose of arranging the budget under Stats. 1917, p. 250, it is required that the County Commissioners, under the heading "Indigent Fund," should set forth the amount of money that is necessarily required for this fund during the fiscal year, and the several funds therein set forth and enumerated are for budget-fixing purposes only.

Under Stats. 1919, p. 331, it is required that "all revenue collected for general, administrative, current expense, salary, indigent, and contingent purposes shall be apportioned to the general fund." In other words, the taxes collected for these respective purposes are placed in the general fund, and all revenue collected for special purposes is apportioned to the special fund in contradistinction to the general fund. Therefore the moneys collected by taxation for the benefit of the indigent fund are paid into the general fund, and obligations accruing to the indigent fund are paid by the County Treasurer from the general fund.

Notwithstanding the fact that all these moneys go into the general fund, it is necessary that the County Treasurer, in accordance with

the provisions of section 2, Stats. 1919, p. 331, submit to the Board of County Commissioners a statement giving the balance in each county, state, and special fund. For the purpose of deducting the amount, the money from all funds, except the special fund, is paid into the general fund and from this fund distributed, and the County Treasurer is required under the law to keep an account of the moneys expended from the several funds which comprise the general fund.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. J. H. White, *District Attorney, Hawthorne, Nevada.*

SYLLABUS

27. Brands—Livestock Units.

(1) No person who has one or more brands of legal record under previous law can be awarded a new brand under provisions of this Act unless he is owner of separate livestock unit.

(2) No one who has recorded brand for separate units is entitled to new brand unless he is owner of separate unit.

INQUIRY

Carson City, March 20, 1923.

You request an opinion in reference to section 7 of Assembly Bill No. 27, "An Act providing for the adoption, recording, and use of brands," etc.

Section 6 provides:

> Hereafter but one brand shall be awarded for each owner of horses, mules, asses, cattle or hogs.

In connection with the provisions of this section you desire an interpretation, as follows:

> 1. That no one who had one or more brands of legal record under the previously existing system of recording brands in the various counties could be awarded a new brand under the provisions of the law recently enacted and here cited.
>
> 2. That this section would only become applicable after this Act became a law, and that at the present time each and every separate and distinct livestock owner is entitled to record one new brand regardless of how many brands of legal record he owned under the provisions of previously existing statutes.

OPINION

The purpose of the Act in question was to provide "for the adoption of and recording, rerecording, transferring and use of brands and marks, etc.; defining the duties and powers of the State Board of Stock Commissioners in connection therewith," etc.

It will be seen, therefore, that it was the intent of the Legislature to make certain changes in the then existing laws in reference to the record of brands, etc.

Section 7 provides:

> Hereafter but one brand shall be awarded or recorded for each owner of horses, mules, asses, cattle, or hogs; *provided,*

that each owner of a separate and distinct livestock unit may, under the terms of this Act and within the discretion of the board, record one brand for use in connection with and for each such distinct and separate livestock unit; * * * *and provided further,* that nothing in this section shall apply to the rerecording of any brand or brands legally recorded at the time of passage of this Act and remaining of legal record in this State under the provisions of this Act, in so far as the legal owners of such brand or brands at the time of passage of this Act are concerned; or to brands legally transferred as provided for in section 11 of this Act.

Sections 3 and 4 of this Act authorize the several County Recorders of this State to transfer to the board all of the records having to do with the recording of brands and marks, and also provide that all brands and marks now recorded in accordance with law shall be rerecorded in the office of said board.

This is a sufficient statement of the provisions of this Act to answer your questions.

It is my opinion, in answer to your first inquiry, that no one who had one or more brands of legal record under the previously existing law could be awarded a new brand under the provisions of this Act unless he was the owner of a separate and distinct livestock unit, as defined in section 7 of said Act.

Replying to your second inquiry, I am of the opinion that no person, who at the present time has a brand and the same is of record for separate and distinct livestock units, would be entitled to a new brand unless, as defined in subdivision 7, supra, he is the owner of a separate and distinct unit.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *State Board of Stock Commissioners, University of Nevada, Reno, Nevada.*

SYLLABUS

28. **Statute—Attorney-General's Opinion on Constitutionality of Statute—When Same Is an Opinion on a Moot Question.**

(1) Attorney-General should not pass on validity of law unless question arises in regard to act of some official. An inquiry otherwise presented would be a moot question, and an opinion of the Attorney-General thereon that a law is unconstitutional would not relieve the official from compliance with such Act nor from the penalty for his noncompliance.

INQUIRY

CARSON CITY, March 20, 1923.

I have your request for an opinion as to the constitutionality of that certain Act entitled:

"An Act in relation to courts of record, to prevent unnecessary delay in rendering judicial decisions, and repealing a certain Act in conflict therewith," approved March 24, 1913 (Stats. 1913, p. 313);

and, particularly, with reference to sections 2 and 5 thereof.

OPINION

I have read with a great deal of interest the authorities submitted by you to sustain the theory that this Act is unconstitutional.

I am of the opinion that my office should not pass upon the validity of Acts of the Legislature unless the question arises or is submitted where an officer is required to perform or not to perform certain acts in connection with the statute in question.

In this case, if a District Judge should refuse to file an affidavit with the State Controller, under the provisions of this section, and the State Controller should request an opinion from me regarding the constitutionality of this Act, I would, of course, be glad to give him my opinion in reference to the provisions of the Act. I feel, however, that in the way this matter is presented it might be said to be a moot question. If I should render an opinion in this case holding that the Act in question was unconstitutional, my opinion, of course, would not absolve the District Judge from complying with the provisions of this statute and would not relieve him from the penalty of the law in the absence of such compliance.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

29. **Constitutionality of Relief Bill—Statute.**

(1) Stats. 1919, p. 439, prescribed procedure for claims against State. Subsequent Legislatures may enforce or ignore it. Legislature is not bound by Act of previous Legislature.

(2) An Act allowing a claim which has previously been presented and disallowed, is constitutional. Its passage is simply a question of policy.

INQUIRY

CARSON CITY, March 21, 1923.

You hand me Assembly Bill No. 69, which is a relief measure in the sum of $280.23, authorizing the payment to Eugene Schuler of a sum of money. You request an opinion as to whether this Act is constitutional.

OPINION

It appears upon the face of this relief bill that this claim accrued several years ago and the bill was presented to different Legislatures without success. It will be noted that Stats. 1919, p. 439, provides:

> That any person having, or claiming to have, any alleged claim against the State of Nevada shall present such alleged claim for consideration to the next succeeding session of the Legislature following its incurrence. Any such alleged claim not so presented, or which has been so presented, shall be forever barred from presentation to any subsequent Legislature for further consideration.

This Act is nothing more nor less than a rule of procedure in reference to when and how claims against the State of Nevada must be presented. The Legislature of 1923, which allowed the instant

claim, had the right to enforce this provision of the statute or to ignore it. It is doubtful if any legislative enactment could be binding on subsequent Legislatures. In any event, the Legislature that enacted this bill would have the inherent right to repeal the Act of 1919, p. 439, supra, or to refuse to be governed by its provisions.

The Legislature, in enacting laws, is supreme except only as it may be restricted by the provisions of the Constitution of the State of Nevada.

I am, therefore, of the opinion that this Act is constitutional, and it is simply a question of policy on the part of the Legislature in enacting this measure. It is not within my province to criticize the policy which may have prompted them to enact any measure.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

30. Old-Age Pension—Senate and Assembly Bills—Funds Available.

(1) Sum available for old-age pensions would be amount of tax imposed for that purpose.

(2) Expenses of administration should be paid from the old-age pension fund.

(3) No other fund could be used to supplement the tax levy.

INQUIRY

CARSON CITY, March 21, 1923.

You direct my attention to Senate Bill No. 147 and Assembly Bill No. 49 (old-age pension bills), and request information:

> *First*—The amount of money available for the use of this commission under the tax levy;
>
> *Second*—For what purpose this money can be used;
>
> *Third*—Whether or not, if the money is available under the tax levy or insufficient to carry out the provisions of the Act, could any other state or county funds be used to supplement the tax levy; and
>
> *Fourth*—Is the Act unconstitutional?

OPINION

Replying to your first inquiry: Section 19 of Assembly Bill No. 49 provides:

> The Boards of County Commissioners of each and every county of the State of Nevada are directed to collect for the fiscal year 1923, and annually thereafter, a tax of two and a half mills on each one hundred dollars of taxable property within their respective counties for the purpose of creating an "Old-Age Pension Fund."

The amount of money therefore available for the use of the Commission would be the sums of money collected by reason of this tax imposed.

Replying to your second interrogatory: Section 20 of the Act provides:

> All expenses incurred by the Commission in the administration, investigation, and salaries shall be borne by the State of Nevada. The Commission shall audit all bills for said expenses and salaries, and when same shall have been certified to by the chairman and secretary, the secretary shall file the same with the State Board of Examiners for approval, and the same shall be paid *out of the old-age pension fund.*

All expenses, including such salaries as are authorized by this Act, must be paid from the old-age pension fund.

Replying to your third inquiry: It is my opinion that, if the tax levied as provided for in section 19 is not sufficient to pay all demands arising by virtue of the provisions of this Act, no other state or county fund could be used to supplement the tax levy. State v. LaGrave, 23 Nev. 25.

The Act, in my opinion, is constitutional.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

31. Gasoline Tax, by Whom Paid—Coupon Books—Interstate Commerce.

(1) Senate Bill No. 20 is not an excise tax on sale of gasoline, but rather a tax upon the use of public highways.

(2) The tax is to be paid by all users of gasoline for propelling certain motor vehicles.

(3) Purchasers of coupon books, prior to enactment of Act, are not relieved from payment of tax on portion of such books used after enactment of Act.

(4) Shipments of gasoline out of State are not subject to tax.

INQUIRY

Your letter reads: CARSON CITY, March 26, 1923.

> I would like an opinion:
>
> *First*—As to the taxability of coupon gallonage books which have been sold prior to the enactment of Senate Substitute for Senate Bill No. 20, which is an Act authorizing collection of a 2-cent tax on gasoline.
>
> *Second*—Whether or not the 2-cent tax is to be collected on sales made to the government, state, and municipalities;
>
> *Third*—As to whether or not the tax is to be collected on shipment of gasoline made to points outside of the State of Nevada.

OPINION

Senate Substitute for Senate Bill No. 20 is entitled:

> "An Act to provide an excise tax on the sale of gasoline, distillate, and other volatile and inflammable liquids produced or compounded for the purpose of operating or propelling motor vehicles," etc.

The introductory clause contains recitations disclosing that the

operation of motor-driven vehicles over the state highways of the State of Nevada is attended by constant and serious danger to the public and that, by reason thereof, the State expends large sums of money repairing said highways.

Section 2 of the Act imposes an excise tax of 2 cents per gallon on all motor-vehicle fuel sold or used by every dealer as is defined in said Act.

Section 4 exempts all motor-vehicle fuel which is used for operating or propelling such apparatus as are stationary or that are not used on the public roads of this State.

The excise tax is not imposed on account of purchase of gasoline nor on the gasoline itself. On the contrary, the final and essential element in the imposition of the tax is that the gasoline purchased must be used in propelling a certain kind of vehicle over the public highways. That which is really taxed is the use of the vehicle of the character described upon the public highway, and the extent of the tax is measured by the quantity of fuel consumed; the tax is imposed according to the extent of the use as thus measured. It is clear that the tax is not imposed upon the seller nor upon the gasoline while in his hands, but it is rather a tax upon the use of the public highways by the vehicle described in said Act.

With this statement of the purpose of the Act in mind, it must necessarily follow that the sale of coupon books made by dealers in gasoline prior to the enactment of this measure would in no way relieve the buyer of said books from the payment of the tax imposed. It is my opinion, further, regarding sales of gasoline made to the government, state, and municipalities, if the same are to be used for the purposes described in said Act, that a tax must be collected on the sales so made unless they come within the provisions of section 4 of the Act.

In cases where sales of gasoline are made to be shipped to points outside of the State of Nevada, I am of the opinion that no sale tax should be charged; this for the reason that in these cases it cannot be said that the highways of this State will be used by any such vehicle, and for the further reason that it would be placing restrictions on interstate commerce.

In conclusion, I desire to call your attention to the specific provision of this Act which requires that the dealers shall not only pay a charge of 2 cents on all gasoline sold by them, but they must also pay 2 cents per gallon for all gasoline used by them in this State.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. J. G. Scrugham, *Governor, Carson City, Nevada.*

SYLLABUS

32. Corporations—May Purchase their Own Stock for Unpaid Assessments.

(1) Nevada corporations may purchase their own stock when same is on sale for unpaid assessments.

INQUIRY

CARSON CITY, March 28, 1923.

Have Nevada corporations the right to purchase their own stock on sale for unpaid assessments?

You advise me that the charter of the company in question contains an express authorization to the company to purchase its own stock; that the company is solvent and that there are no rights of creditors or nonassenting stockholders affected.

OPINION

This matter is elaborately treated and the rule is laid down as follows:

> In the absence of constitutional, statutory, or charter restriction, by the weight of authority in the United States a corporation may purchase and hold shares of its own stock. 144 C. J. 275, and note 58, citing several hundred cases.

The provisions of our general corporation law were borrowed from New Jersey. I find the following New Jersey decisions to support the rule stated:

Chapman v. Iron Co. (N. J.), 41 Atl. 690;
Knickerbocker Co. v. State Board (N. J.), 65 Atl. 913, 9 L. R. A. (N. S.) 885;
Berger v. U. S. Steel Co. (N. J.), 53 Atl. 68;
Oliver v. Ice Co. (N. J.), 54 Atl. 460;
Hoskins v. Seaside Co. (N. J.), 59 Atl. 645.

In Gilchrist v. Highfield (Wis.), 17 Am. & Eng. Ann. Cas. 1257, and particularly in the extended and elaborate note, is a very complete consideration of the entire question; and it is to the effect that, in the absence of statute, corporations have this power.

So, in an extended note to the case of Hall v. Henderson (Ala.), 61 L. R. A. 621, the same general rule is arrived at, and the cases laying down a contrary rule are explained as being governed by statutes different from anything existing in Nevada or New Jersey.

The United States Supreme Court, in Johnson County v. Thayer, 94 U. S. 631, 24 L. Ed. 133, laid down the rule squarely that, unless prohibited by law, a corporation may become a holder of a portion of its own shares, and this case has been uniformly followed.

It is my opinion, therefore, that the question propounded to me, supra, should be answered in the affirmative—that is to say, that Nevada corporations may purchase their own stock when the same is on sale for unpaid assessments.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

33. **State Engineer—Public Service Commission—Statute—Repeal.**

(1) The general appropriation law of 1923 does not repeal Stats. 1919, chap. 110S, providing for salaries of State Engineer and his office force,

nor chap. 109, sec. 5, Stats. 1919, providing for his salary as ex officio member of Public Service Commission.

INQUIRY

Carson City, April 2, 1923.

Would the paragraph of the general appropriation law of the State of Nevada, enacted at the recent session of the Legislature of the State of Nevada, reading as follows:

> For salary of State Engineer for all services rendered to the State, ex officio or otherwise, $7,200; for salary of Assistant State Engineer, $4,800; for salary of Deputy State Engineer, $4,400; for maintenance and support of State Engineer's office, $20,000; one Chief Clerk, $3,600; for snow surveys, $1,500; one stenographer, $3,000; for cooperative water measurements with U. S. Geological Survey, $5,000—

have the effect of repealing that part of section 5 of chapter 109, Statutes of Nevada, 1919, which provides a salary of $1,000 for the ex officio member of the Public Service Commission of the State of Nevada?

OPINION

The paragraph of the general appropriation law passed at the last session of the Legislature of the State of Nevada, and as above quoted, was never intended for any purpose other than to prescribe a compensation for the State Engineer, his assistant, and office force, as provided by the bill passed by the recent Legislature, and vetoed by the Governor, the paragraph above quoted being insufficient to repeal chapter 108, Statutes of Nevada, 1919, providing for the salaries of the State Engineer and his office force. (See recent opinion upon this subject.)

We are of the opinion that the clause, "for all services rendered the State, ex officio or otherwise," would be also insufficient and without force and effect to repeal chapter 109, Statutes of Nevada, 1919, providing for the salaries of the State Engineer as ex officio member of the Public Service Commission of the State of Nevada.

By order of the Attorney-General:

Respectfully submitted,

Thomas E. Powell, *Deputy Attorney-General.*

Hon. J. G. Scrugham, *Governor, Carson City, Nevada.*

SYLLABUS

34. **Witnesses—Mileage—Per Diem Fees.**

(1) Witnesses subpenaed in criminal cases from out of county are not entitled to mileage, but may be paid actual and necessary expenses in traveling, and per diem, not exceeding $4 per day while away from home; amount to be fixed by District Judge, certified to County Clerk for entry on pay-roll.

(2) Witnesses from within county are paid per diem for "attendance."

INQUIRY

CARSON CITY, April 2, 1923.

Will you please advise me whether or not witnesses in criminal cases, subpenaed to attend in the District Court, wherein the witnesses are subpenaed from without the county, are entitled to mileage at the rate of 30 cents per mile, or just entitled to their actual and necessary traveling expenses incurred by them in going to and returning from the place where the court is held?

Also, if they are entitled to per diem from the day they leave their homes until they return, or just entitled to their per diem for the days they are actually in attendance in court? (See page 3322, vol. 3, Rev. Laws, 1919.)

OPINION

Replying to the above inquiry, we beg to state that it is our opinion that under the provisions of section 3, chapter 96, Statutes of 1919, witnesses who have been subpenaed from out the county are not entitled to mileage, but are entitled to their actual and necessary traveling expenses in going to and returning from the place where the court is held and per diem for the number of days necessarily consumed by them from the time they leave their homes until they return thereto, not exceeding $4 per day, as may be fixed by the District Judge who shall certify the same to the County Clerk for entry upon his pay-roll of witnesses and jurors.

Our reasons for this opinion are as follows: Section 1 of the Act provides that witnesses subpenaed from within the county shall receive mileage, but no per diem, except while actually in "attendance" upon the court, and the time consumed in going to and returning from the county-seat is short, thus placing no unjust burden upon the witnesses, and, the mileage being comparatively small, place no unjust burden upon the county.

But when witnesses attend from another county or State where a number of days may be consumed in going to and returning from the place of trial, if the witness could receive no per diem for that time, it would place an unjust burden upon him, and would make it practically impossible to secure the attendance of witnesses from without the State; while, if mileage were allowed to such witnesses, frequently such mileage would be quite considerable and thus place a heavy burden upon the county and give the witness an unreasonable compensation.

So the Legislature has provided for witnesses within the county per diem "for each day's *attendance*," while for witnesses without the county such sum per diem while going to and returning from the place of trial not exceeding $4 per day, as may be fixed by the District Judge.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General*.

HON. EDGAR EATHER, *District Attorney, Eureka County, Nevada*.

SYLLABUS

35. **Brands—Recording.**

Stats. 1915, sec. 1, chap. 249, was not intended to render illegal a brand recorded after January 1, 1921, provided it had not in meantime and after that date been filed as brand of some other person.

INQUIRY

CARSON CITY, April 2, 1923.

Under the provisions of section 1, chapter 249, Statutes of Nevada, 1915, reading as follows:

> Every person, company, or corporation having horses, cattle, or other live stock and owning a brand or mark, or brands or marks, for the same, shall record such brand or brands, or mark or marks, with the County Recorder on or before the 1st day of January, 1916, and again within sixty days prior to the 1st day of January, 1921, and repeatedly within sixty days prior to the first day of January at the end of each five-year period thereafter, such record to be made in the manner provided by existing laws for the recording of marks and brands—

would a brand recorded after the 1st day of January, 1921, under the provisions of that section be considered a legally recorded brand?

OPINION

We are of the opinion that section 1, chapter 249, Statutes of 1915, wherein appears the clause, "again within sixty days prior to the 1st day of January, 1921," was not intended to invalidate or render illegal, either as a rerecorded brand, or as a new or original brand, a brand recorded after the 1st day of January, 1921, provided it had not in the meantime, and after January 1, 1921, been filed and recorded as a brand by some other person.

The clause above referred to was manifestly intended to name a date after which any person might record and use a brand, irrespective of whether or not it had been previously used by some other person. And, even though it was rerecorded after January 1, 1921, it would still be a legally recorded brand, provided it had not at that time been filed and recorded by some other person.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. EDWARD RECORDS, *State Board of Stock Commissioners, University of Nevada, Reno, Nevada.*

SYLLABUS

36. **Corporation—Preferred and Common Stock—Par and Nonpar Value—Opinion Affirmed by Supreme Court.**

(1) Nevada corporations may have both common and preferred stock without par value.

(2) Dividends upon preferred stock without par value should be computed on value as fixed by directors, in lieu of par value.

(3) Company may not have part of its stock with, and part without, par value.

This opinion was affirmed by Supreme Court in State ex rel. Goodman v. Greathouse, 47 Nev. 198, 217 Pac. 957.

INQUIRY

Carson City, April 12, 1923.

(a) Under subdivision 4 of section 4 of "An Act providing a general corporation law," approved March 16, 1903, as amended by chapter 206, Statutes of 1923, can a company be incorporated with two kinds of stock, viz: (a) Common stock without par value, and (b) preferred stock without par value?

OPINION

Our answer is, Yes. The first proviso under subdivision 4 of section 4, above referred to, as amended, provides for different classes of stock without par value.

INQUIRY

(b) On what shall the dividends provided for in section 10 of the "General Corporation Law," as amended by chapter 249, Statutes of 1921, be estimated where the preferred stock, mentioned in section 10, shall be without par value?

OPINION

At the time section 10 of the "General Corporation Law" was enacted there was provision for "par value" stock only. Subdivision 4 of section 4 of the law as now amended provides for the issuance of stock without par value, and, *in lieu of a par value*, it further provides as follows:

> and upon the organization of any corporation without par value to the shares of its capital stock, the board of directors may, from time to time, fix the consideration for which any and all shares, except shares subscribed as aforesaid. * * * shall be issued and held.

Under the provision just quoted, when construed in connection with section 10 of the Act as amended by chapter 249, Statutes of 1921, we are of the opinion that any dividends declared upon preferred stock without par value should be computed upon the *value* of the stock *as fixed by the board of directors*, in lieu of a par value.

INQUIRY

(c) Does subdivision 4 of section 4 of the general corporation law, as amended by chapter 206, Statutes of 1923, authorize the incorporation of a company with part of its stock at par value and part of it without par value?

OPINION

Our answer is, No. Subdivision 4 of section 4 of the general corporation law, as originally enacted, provided only for the issuance of stock with par value. That part of the section above referred to was reenacted without any change, but a "proviso" was added which authorizes the incorporation of companies whose authorized capital

stock may be *without par value*, but nowhere does it provide for the incorporation of companies whose authorized capital stock may be part with par value and part without par value, and, in the absence of such authorization, it cannot be done.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

37. **Taxes Delinquent—Certifying.**

Rev. Laws, 3646, 3651, as amended Stats. 1919: Tax receiver should certify delinquent taxes after first Monday in June next succeeding such delinquency.

INQUIRY

CARSON CITY, April 13, 1923.

You advise that in 1919 sections 3644, 3646, and 3651, Revised Laws of 1912, were amended; that by reason thereof certain changes were made in reference to the sale of property for delinquent taxes. You desire to be advised at what time the tax receiver is required to certify delinquent taxes where the amount involved exceeds $300.

OPINION

Section 32 of the Act of 1919 provides that, in the event the first installment of taxes were not paid at the time designated therein, the entire tax should become due. Section 34 of this Act provides as follows:

> A penalty of 3 per cent per month shall be added and collected by the tax receiver on all such delinquent property from the date of delinquency until paid, or if still unpaid on the first Monday in June next succeeding, such penalty of 3 per cent per month shall be added to the original tax, together with the penalty of 15 per cent hereinbefore provided, and the same shall become a lien on the property so assessed; and the tax receiver shall immediately prepare a delinquent list which shall include this property, together with any property that may become delinquent on account of the failure to pay the second installment of taxes.

It is my opinion, therefore, that, under the provisions of this section, the tax receiver should certify delinquent taxes after the first Monday in June next succeeding such delinquency.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. E. E. WINTERS, *District Attorney, Fallon, Nevada.*

SYLLABUS

38. **State Engineer—Salary.**

(1) Repealing clause of general appropriation Act does not affect salaries of officers, as fixed by prior statutes.

(2) State Engineer is entitled to $4,000 salary and $1,000 as ex officio member of Public Service Commission.

(3) Failure of Legislature to allow sum sufficient for salaries of officers does not deprive them of right to collect where Legislature has designated the amount thereof.

INQUIRY

CARSON CITY, April 13, 1923.

You desire to be advised as to what compensation you are directed to pay to the State Engineer and to his assistant.

The apparent confusion in reference to the compensation in the State Engineer's office is due to the fact that the general appropriation bill passed by the 1923 Legislature has appropriated a sum of money for the State Engineer's department which would authorize payment to the State Engineer of a salary of $4,000 per annum and the Assistant Engineer $2,400 per annum. The appropriation bill further contains a repealing clause.

I hand you herewith an opinion rendered by this office under date of April 2, 1923, wherein it is held that the repealing clause of the general appropriation bill has no force or effect in so far as it might be considered an attempt to repeal former statutes fixing the salaries of officers.

OPINION

It is therefore my opinion that the State Engineer is entitled to compensation as fixed in the Statutes of 1919, to wit, a salary of $5,000—$4,000 for his services as State Engineer and $1,000 as an ex officio member of the Public Service Commission. The Assistant State Engineer is entitled to compensation in the sum of $3,600 per year.

It has been held by the Supreme Court of this State that, where the Legislature has fixed the salaries of an officer, the failure on the part of the Legislature in the appropriation bill to allow a sum sufficient to pay the salaries so fixed would not thereby prevent the officer from collecting his salary.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

39. **School Building, Repair of—Vote by Heads of Families.**

(1) Stats. 1921, p. 29, sec. 67, subd. 2: Repairs to school building may be made by Trustees where amount does not exceed $500.

(2) Same, sec. 152½: When cost of repairs exceeds $500, heads of families must authorize repairs by vote.

INQUIRY

CARSON CITY, April 14, 1923.

You advise that the Trustees of the Eureka School District desire to repair the district schoolhouse, and in this connection they estimate that the costs thereby will amount to approximately $3,500. An opinion is requested from this office as to the necessity of the School Board requiring a vote of the heads of the families before this amount of money is expended.

OPINION

This office heretofore rendered an opinion, under somewhat similar provisions of law, that where the board, after having been duly authorized in the manner provided for by law, had commenced the construction of a school building, it was not necessary for the School Board, or the Trustees thereof, where the funds for erecting the school building had become exhausted, to submit the matter to the voters of the school district in order to expend an amount in excess of $500 for completing the school building. (Opinions of the Attorney-General, 1909–1910, p. 26.)

The question presented in this inquiry, however, does not involve the same facts as the matter embraced within this opinion. In the School Code, 1921, p. 29, subdivision 2 of section 67, it is provided:

> The Trustees, without such vote, may make necessary repairs on any school building when the expense of such repairs will not exceed $500; *provided*, that in districts of the first class the Trustees may make all necessary repairs without a vote of the electors.

Section 152½, School Code of 1921, provides:

> If the Trustees of any school district shall certify to the Superintendent of Public Instruction that a new building or repairs to an old school building are necessary to the district, and that the Trustees have been authorized by a vote of the district, if a vote is required, to build such new school building or to make such needed repairs, etc.

It is my opinion, therefore, that before any repairs can be made on a school building where the cost of same exceeds $500, the matter must be submitted to a vote of the heads of families of the district.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDGAR EATHER, *District Attorney, Eureka, Nevada.*

SYLLABUS

40. **Chiropractor May Give Certificate of Death — Conflict in Decisions — "Physician."**

Stats. 1923, p. 20, chap. 25, secs. 4, 5; Rev. Laws, 2958:

(1) "Physician" has not been defined by Nevada statute.

(2) Chiropractor may issue certificate of death, if he was the attending physician during lifetime of deceased. Such certificate should be received by the Board of Health.

INQUIRY

CARSON CITY, April 14, 1923.

You request an opinion as to whether or not chiropractors may issue and sign certificates as to the cause of death under the provisions of section 2958.

OPINION

The question presented is one that presents considerable difficulty to correctly answer, in view of the fact that the statutes of the State of

Nevada have in no place defined definitely the meaning of the word "physician."

Chapter 25, Statutes of Nevada, 1923, p. 20, is entitled "An Act to create a Board of Chiropractic Examiners and to regulate the practice of chiropractors, and to provide penalties for a violation of this Act, and to prohibit the practice of any other mode or system under the name of 'Chiropractic.'"

The provisions of this statute authorize and create a Board of Chiropractic Examiners. The duties of this board are definitely set forth in said Act, under the provisions of section 4 of the Act, and a person desiring to be examined touching his qualifications to practice must be a graduate of a chiropractic school. This section provides that a successful applicant can practice nothing but chiropractic.

Section 5 defines "chiropractic" to be—

> The science of palpating and adjusting the articulations of the human spinal column by hand only.

Section 2958, Revised Laws of Nevada, provides:

> The certificate of death that shall be used is of the United States standard form as approved by the Bureau of the Census. * * * The medical certificate shall be signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death so as to show the course of the disease or sequence of courses resulting in the death, giving first the name of the disease causing death (primary cause), the contributaries (secondary cause), if any.

To answer your query it is necessary to determine whether a chiropractor can be denominated a physician, within the meaning of section 2958.

The question here presented has been presented to other courts in the United States in but three instances, and is one of first impression in the State of Nevada.

In the case of Keiningham v. Blake, 109 Atl. 65, the Legislature of the State of Maryland, in creating a board to license the practice of osteopathy, enacted a provision that those practicing osteopathy were not qualified to issue death certificates. The question was presented to the Supreme Court of Maryland, and the Supreme Court of Maryland held that this provision of the statute did not subject those engaged in the practice of osteopathy to an arbitrary and unconstitutional discrimination. The reasoning of this case would seem to answer the present case in the negative.

The Supreme Court of Illinois, in the case of People v. Simon, held that an osteopathic physician was a legally qualified physician and came within the meaning of the word "physician" as used in their public-health law, and as one, therefore, qualified to issue a death certificate. People v. Simon, 150 N. E. 817; Ex Parte Rust, 183 Pac. 548; In Re Opinion of the Justices, 107 Atl. 102.

The matter was squarely presented to the Supreme Court of Minnesota in the case of State ex rel. Wentworth v. Fahey, 188 N. W. 260.

The Supreme Court of Minnesota held, with two Judges dissenting, that a chiropractor could not give the certificate of death required under the provisions of their statutes.

The case of In Re Opinion of the Justices of the Supreme Court of Rhode Island, 107 Atl. 102, is instructive on the definition of the word "physician," and this Court held that an osteopath was authorized to sign certificates as to the cause of death.

Notwithstanding the decision of the Supreme Court of Minnesota, supra, I am of the opinion that a chiropractor is authorized to sign a certificate of death, under the provisions of section 2958, Revised Laws of Nevada, 1912. My reason for this conclusion might be briefly stated as follows: The State, by its examination and certificate, has certified to the ability of a chiropractor to discover the cause of the disease while the patient is alive. The reasoning which prompts the holding that, after the patient is dead, a chiropractor is not authorized to issue a death certificate when he is the only attending physician, seems to be fallacious. The effect of this reasoning would be to impose, in many instances, unnecessary hardship and pain on the relatives of the deceased. It is my opinion, therefore, that a chiropractor may issue certificates of death, and that the same should be received by the Board of Health when the chiropractor was the attending physician or doctor during the lifetime of the deceased.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. L. Samuels, M.D., *City Health Officer, Reno, Nevada.*

SYLLABUS

41. **Gasoline Tax—Dealer—Sale to Government.**

(1) The dealer, not the purchaser, is responsible for the tax on all sales of gasoline, including those to the Government. If the burden falls on the Government, it does so only indirectly.

INQUIRY

Carson City, April 18, 1923.

You advise that the several oil companies engaged in selling gasoline have presented their monthly reports in compliance with the law. These reports show that no tax was paid by the respective dealers on gasoline sold to the Government.

You also hand me certain briefs presented on the question of the State's right to collect excise tax on gasoline sold by dealers, where the sale is made to the Government. A request is submitted for a reexamination of the question, in view of the briefs presented.

OPINION

The apparent confusion existing in construing the provisions of the Nevada Act is due to the false assumption that the collection of this excise tax is an attempt upon the part of the State to tax government property or any agency or instrumentality of the Government.

The excise tax is placed upon, and to be collected from, the dealer in gasoline, as defined in the Act. Failure to pay the tax works no penalty upon the purchaser. The dealer only is the party to be sued under the Act, where the tax is not collected.

SEC. 2. That, in addition to the taxes now provided for by law, each and every dealer, as defined in this Act, who is now engaged or who may hereafter engage in his own name, or in the name of others, or in the name of his representatives or agents in this State, in the sale or distribution, as dealers and distributors, of motor-vehicle fuel as herein defined, shall, not later than the fifteenth day of each calendar month, render a statement to the Nevada Tax Commission of all motor-vehicle fuel sold or used by him or them in the State of Nevada during the preceding calendar month, and shall pay an excise tax of 2 cents per gallon on all motor-vehicle fuel so sold or used, as shown by such statement in the manner and within the time hereinafter provided.

* * * * * * * * *

SEC. 6. Any dealer, association of persons, firm or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $500 or by imprisonment in the county jail for a period not to exceed six months, or both.

* * * * * * * * *

SEC. 9. If any person, association of persons, firm, or corporation shall fail to pay such license tax herein provided for a period of thirty days from and after the date when the same should have been paid as required by this Act, the amount thereof shall be collected of such person, association of persons, firm, or corporation for the use of this State, and the Attorney-General of the State, or the District Attorney of any county within this State, shall forthwith commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

The State of Arizona has a statute somewhat similar to the Nevada Act. The Arizona statute, however, specifically recites that the tax is to be paid by the *purchaser*. Notwithstanding this provision, the Circuit Court of the Eighth Circuit, construing the nature of this tax, stated:

The Supreme Court of Arkansas, in the case heretofore cited, declared that the tax was not imposed upon the gasoline as property, nor upon the sale, nor upon the purchase, but was laid upon the privilege of the use of the vehicles mentioned in the Act upon the public highways. However, it also stated that:

"The purpose of the statute is twofold, namely, to impose a tax upon the purchaser of gasoline for the use of the car and to regulate the business of the dealer by requiring him to collect the tax and pay it over to the County Treasurer. It is certainly within the power of the Legislature, for it does not involve the payment of any fee nor the performance of any unreasonable task."

It becomes necessary to ascertain the actual effect of the statute, whatever name or description has been applied to it by the State Supreme Court (Standard Oil Co. v. Graves,

> 249 U. S. 389, 394, 39 Sup. Ct. 320, 63 L. Ed. 662), in order to determine whether it violates the Constitution of the United States. It is doubtless true that the amount of the tax usually does fall finally upon the purchaser, because the seller will naturally fix a price or an amount to be collected for the commodities sold which will include the amount of tax. Clark v. Titusville, 184 U. S. 329, 333, 22 Sup. Ct. 382, 46 L. Ed. 569. It may also be conceded that what is ultimately gained by the purchaser for the amount of tax so included is the use of the highways for automotive vehicles propelled by gasoline. In addition there are some of the essential elements of a tax upon the sale, or the privilege of the sale, of the gasoline. The seller is required to register and to file a report of his sales, and show therein "the amount of tax due by said seller." The seller must pay the tax, unless he collects the same from the purchaser. While the first section required the seller to collect 1 cent a gallon from the purchaser in addition to the usual charge therefor, no usual charge is fixed by the statute, and the effect of the Act is to allow the seller to fix any price he wishes, and to require him to pay 1 cent a gallon for the gasoline so sold. The penalties provided in the Act are all levied against the seller. The purchaser is not required to do anything by the Act, although the result may incidentally cause an enhanced price for the gasoline.
>
> The conclusion that the tax is not levied against the purchaser disposes of the basis of the only contention made by appellant of a violation of the Fourteenth Amendment; but it may be added that the conclusion that the tax is an excise tax on the privilege of making sales of the named products, although measured by the gallons sold for a designated use, brings the Act within the proper exercise of the State's power of taxation, when the commerce clause is not involved (see Standard Oil Co. v. Graves, 249 U. S. 389, 39 Sup. Ct. 320, 63 L. Ed. 662; Askren v. Continental Oil Co., 252 U. S. 444, 449, 40 Sup. Ct. 355, 64 L. Ed. 654; Bowman v. Continental Oil Co., 256 U. S. 642, 41 Sup. Ct. 606, 65 L. Ed. 1139; Texas Co. v. Brown, 258 U. S. —, 42 Sup. Ct. 375, 66 L. Ed. —, April 17, 1922), and such taxation is not in violation of the Fourteenth Amendment. Woodruff v. Parham, 8 Wall, 123, 140, 19 L. Ed. 382; Wagner v. City of Covington, 251 U. S. 95, 102, 103, 40 Sup. Ct. 93, 64 L. Ed. 157; Bowman v. Continental Oil Co., supra; Altitude Oil Co. v. People, 70 Colo. 452, 202 Pac. 180; Pierce Oil Corp. v. Hopkins, 252 Fed. 253.

As stated above, the Nevada law, in contradistinction to the Arizona law, imposes an excise tax on the *dealer*, not on the purchaser.

The tax, under the Nevada statute, is not laid upon either the property or any instrumentality of the Government. If it reaches the Government, it does so indirectly. The tax is laid as an excise tax upon the dealer for the importation of gasoline, and, while the dealer will probably pass it on to the consumer, the tax is not laid upon the

consumer. The burden, therefore, if it falls upon the Government, does so indirectly.

I am not without precedent in the position taken here in reference to the collection of this tax from the dealer. The Attorney-General of the United States, in an opinion rendered to the Secretary of the Treasury, has adopted the same theory in reference to the payment by the State of an excise tax imposed by the Government on certain manufactured articles. The question propounded to the Attorney-General was whether the excise tax imposed by section 900 of the Revenue Act, February 24, 1919, in 40 Stat. 1122, upon the manufacturer, producer, or importer, upon the price for which articles enumerated within the section are sold, applies upon sales of such taxable articles to a State or a political subdivision thereof.

In answering this question the Attorney-General stated:

> The United States, of course, cannot tax the property or the instrumentalities of a State, but here the tax is not laid upon either the property or the instrumentalities of the State. If it reaches the State at all, it does so only in an indirect manner. The tax is laid upon the manufacturer, and, while it is probable that he will pass it on to the consumer, the tax itself is not laid upon the consumer. The burden, therefore, if it falls upon the State, does so indirectly. Such an incidental and indirect effect results from the payment of all taxes, and while this tax may be traced more directly into the cost of the State, yet the fact remains that it is an incidental and indirect burden upon the State and not the taxation of either its property or its instrumentalities. Snyder v. Bettman, 190 U. S. 249; Baltic Mining Co. v. Massachusetts, 231 U. S. 68; Kansas City, Fort Scott and Memphis R. R. Co. v. Kansas, 240 U. S. 227; The American Manufacturing Co. v. The City of St. Louis, decided by the Supreme Court on June 9. (63 L. Ed. 108.)

The theory advanced by me in the first opinion I rendered in reference to this matter was adopted from the case of Standard Oil Co. v. Brodie, 239 S. W. 753. The Court in that case held that the tax, under the provisions of the Arizona law in reference to gasoline, was a charge for the use of the public highways by those vehicles which are propelled by gasoline. If this theory is adopted, there is some respectable authority, holding that the State has a right to collect a charge for the maintenance of its public highways, and that this charge may be collected from the Government. This theory is well expressed by Mr. Justice McLean in the case of Searight v. Stokes, 11 L. Ed. 547, 551, where the Court stated:

> Now, can the United States claim the right to use such road or bridge free from toll? Can they place locomotives on the railroads of the States or of companies, and use them by virtue of their sovereignty? Such acts would appropriate private property for public purposes without compensation, and this the Constitution of the Union prohibits.

It is my opinion, therefore, inasmuch as this is an excise tax placed upon the dealer, that the dealer is responsible for the tax to the State

of Nevada for all sales of gasoline made by him, including sales made to the Government.

You are therefore requested to mail to the several oil companies a memorandum showing the amount of tax that is due to the State, by reason of the several sales, and request payment. In the event that payment is not made, you will please advise this office, so that proper proceedings may be instituted to collect same.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

42. **Board of Examiners—Employees of Highway Department.**

Stats. 1923, p. 258, sec. 2: State Board of Examiners determines salaries, compensation, and number of employees of Highway Department. (See Opinion No. 43.)

INQUIRY

CARSON CITY, April 17, 1923.

For the guidance of your department you request an opinion in reference to the applicability to your department of those provisions of the Statutes of 1923, chap. 146, p. 258.

OPINION

Statutes of 1923, p. 258, sec. 2, provide as follows:

> It shall be the duty of the State Board of Examiners, and it is hereby empowered, to determine what employees may be necessary, and to establish the salaries or compensation thereof, in all state offices, departments, institutions, commissions, and bureaus of the state government, except positions and salaries specifically authorized by statute or under the control of elective boards.

Section 4 of the state highway law provides as follows:

> The State Highway Engineer may employ such assistant engineers, clerks, and other assistants as may be necessary to the proper conduct of the Department of Highways, and fix their compensation. Such compensation, however, shall first be approved by the Highway Directors.

Inasmuch as the Highway Department is not under the control of an elective board, it is my opinion that the provisions of the Act of 1923 in reference to establishing salaries and compensation and the number of employees of the State Highway Department is under the supervision of the Board of Examiners, and that the provisions of the Act of 1923, supra, applies to the Department of Highways.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

SYLLABUS

43. Highway Department Employees, Number and Salaries Of.

(1) Stats. 1917, p. 310, sec. 4, authorizing State Highway Engineer to employ assistants and fix their compensation, does not bring fixing of compensation within exception stated in Stats. 1923, sec. 2.

(2) Stats. 1923, sec. 4, while authorizing employment of assistants, does not fix compensation, but delegates that duty to State Highway Engineer and Directors of Highway Department.

(3) Stats. 1923, p. 258, makes it mandatory duty of Board of Examiners to fix compensation of Highway Department employees.

(See, also, Opinion No. 42.)

INQUIRY

CARSON CITY, April 20, 1923.

Reference is made to Opinion No. 42.

You state that it is quite evident to you that section 4 of the state highway law provides a special authorization for employing assistant engineers, clerks, and other assistants as may be necessary for the proper conduct of the Department of Highways, and further makes provision for fixing their compensation.

You also state that inasmuch as I did not give an opinion on that portion of section 2, chapter 146, Statutes of 1923, which refers to special authorization, you desire an opinion as to whether or not section 4 or any other provisions of the state highway law (1917) is not a specific authorization for the purpose of employing assistants and fixing their compensation.

OPINION

Section 4, Statutes of 1917, p. 310, authorizes:

> The State Highway Engineer to employ such assistant engineers, clerks, and other assistants as may be necessary to the proper conduct of the Department of Highways, and fix their compensation.

It is my opinion that this provision of law in reference to authorizing the State Highway Engineer to employ assistants and fix their compensation does not bring the fixing of compensation of persons so employed within the exception as stated in the Statutes of 1923, sec. 2. While section 4 authorizes the employment of assistant engineers, etc., by the State Highway Engineer, it nowhere fixes the compensation of those so employed, but delegates to the State Highway Engineer and the Directors of the Highway Department the right to fix the salary.

The "positions and salaries specifically authorized by statute" which do not come within the supervision of the Board of Examiners are those positions and salaries which are created by the Legislature, and the salaries appertaining to such positions are specifically fixed by the Legislature and not delegated to any persons or board.

It is my opinion, therefore, that the provisions of section 4 of the state highway Act not having fixed and designated by virtue of its provisions the salary of those to be employed by the State Highway Engineer, it becomes a mandatory duty, under the Statutes of 1923,

p. 258, for the Board of Examiners to fix the compensation of those so employed.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

SYLLABUS

44. Inspector of Mines—Assistants—Board of Examiners Fixes Compensation.

(1) This law empowers Inspector of Mines to employ assistants, but not to fix compensation.

(2) Stats. 1923, p. 258, authorizes Board of Examiners to fix such compensation.

INQUIRY

CARSON CITY, April 20, 1923.

You call my attention to section 31 of the laws relating to Inspector of Mines. This section provides:

> The Inspector of Mines is hereby empowered to purchase all supplies that may be required to carry out the provisions of this Act, and, if necessary, to employ additional help, the expenses thereof to be paid out of that said hoisting engineer's license fund in the usual course of claims against the State.

You call my attention to section 2, Statutes of Nevada 1923, p. 258, and request an opinion as to whether the Board of Examiners, under the provisions of this Act, has the power to fix the compensation of help employed by you in connection with the duties of your office.

OPINION

The purpose of the Statutes of 1923, supra, was to confer upon the Board of Examiner the duty of determining the help necessary and to establish the salaries or compensation in all state offices except positions and salaries specifically authorized by statute or under the control of elective boards.

Inasmuch as the statutes do not fix the compensation for the help employed by you, it is my opinion that the salaries and compensation of those employed in your office is to be fixed and regulated by the Board of Examiners under the provisions of the Act of 1923, supra. The provisions of section 31, quoted above, simply authorize you to purchase supplies and employ additional help. It is the duty of the Board of Examiners to fix the compensation of the help so employed, and in addition thereto it is the duty of the Board of Examiners to determine what help is necessary and to authorize the same when the facts warrant.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. A. J. STINSON, *Mine Inspector, Carson City, Nevada.*

SYLLABUS

45. Hoisting Engineer's License—Experience Required.

Stats. 1921, p. 316: Applicant for engineer's license must have had actual experience in operating mine hoisting engine.

INQUIRY

Carson City, April 20, 1923.

You call my attention to section 1, Statutes of Nevada, 1921, p. 316. This section provides, in part:

> It shall be unlawful for any person to operate any steam, electric, gas, air, or any other hoisting machinery over six horsepower when either is used in the lowering or hoisting of men——

My attention is also directed to the provisions of section 9 of this Act, which reads, in part, as follows:

> Licenses issued under this Act shall be divided into three classes, namely, first class, second class, and third class. No person shall be granted a first-class license who has not taken and subscribed to an oath that he has had at least two years experience in the operation of at least one of the engines named in section 1 of this Act, and whose knowledge of the construction and operation of the machine he is to be licensed to take charge of is such as to justify the belief of the Board of Examiners that he is competent to take charge of and operate such machinery.

You request an opinion in reference to these two sections and whether a person filing an application for license must have experience in the operation of an engine described in section 1 in and about the operation of a mine.

OPINION

It is my opinion that it was the intention of the Legislature, in adopting sections 1 and 9, of this Act, to require an applicant to have the experience described in the operation of the classes of engine designated and that such experience must include that which would be gained by reason of the operation of one of these engines while used in operating a hoisting machine in or about the mine.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. A. J. Stinson, *Mine Inspector, Carson City, Nevada.*

SYLLABUS

46. **Public Service Commission—Common Carriers—Certificates of Public Convenience—Motor Vehicles and Trucks—County Commissioners.**

(1) Sec. 9, Stats. 1923, p. 320, authorizing an appeal from decision of County Commissioners to Public Service Commission is not unconstitutional, as the party is not deprived of his day in court, neither are judicial powers conferred on an administrative board.

(2) Applications for certificates of public convenience filed with the Commission should be transferred to the various Boards of County Commissioners, and hearings and rehearings now pending before the Public Service Commission should be submitted to the County Commissioners.

(3) The legislative intent was to have the issuance of certificates of public convenience transferred to the County Commissioners.

INQUIRY

CARSON CITY, April 20, 1923.

You call my attention to the Act approved March 21, 1923, which transfers from the Public Service Commission to the various Boards of County Commissioners the authority to issue certificates of public convenience.

You request an opinion:

(a) Whether sections 7, 18, and 36½, Statutes of 1919, p. 198, are in conflict in any respect with the Act of 1923.

(b) Section 9 of the Act of 1923, supra, provides that appeals may be had from the decision of the Board of County Commissioners to the Public Service Commission, and you request an opinion as to whether this provision is constitutional.

(c) You advise that one or two cases are now pending before the Public Service Commission, and in reference to the duties of the Public Service Commission you desire advice:

(1) Should the applications heretofore filed with the Commission be transferred to the various Boards of County Commissioners?

(2) Should matters now pending before the Commission involving hearings and rehearings be submitted to the several County Commissioners for determination?

OPINION

You are advised that there is no serious conflict, in my opinion, between the provisions of sections 7, 18, and 36½, Statutes of 1919, p. 198, and the provisions of the present law.

In reference to this second query, I am of the opinion that those provisions of the law authorizing an appeal to the Public Service Commission from the decision of the Board of County Commissioners is not unconstitutional. This section does not deprive the party aggrieved from his day in court, neither does it confer judicial power on an administrative board.

In respect to the questions set forth under subdivisions 1 and 2, I am of the opinion they should both be answered in the affirmative. Section 9 of the Statutes of 1923 provides:

> Said Public Service Commission is hereby directed, as soon as possible after the approval of this Act, to transmit to the Clerks of each of the counties in the State certified copies of all certificates of public convenience heretofore issued, affecting the respective counties. The right to issue such certificate heretofore granted to the Public Service Commission shall cease upon approval of this Act, but all other laws regulating operation of common carriers using motor vehicles or trucks shall be in full force and effect until July 1, 1923.

It was the intention of the Legislature, as expressed herein, to have all matters in connection with the issuance of certificates of public convenience transferred to the Boards of County Commissioners.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

PUBLIC SERVICE COMMISSION, *Carson City, Nevada.*

SYLLABUS

47. Animals—"Owner" Defined.

(1) Stats. 1923, sec. 1, chap. 26: An owner [of live stock] is one having one or more classes of live stock assessed or which will be assessed at next annual assessment.

INQUIRY

Carson City, April 17, 1923.

You direct my attention to section 1, chapter 26, Statutes of Nevada, 1923, which provides:

> Section 1. Every owner of horses, mules, asses, cattle, or hogs in this State may design and adopt a brand or brands.

You advise that you construe the word "owner" to mean "those having one or more classes of live stock as disclosed by the assessment rolls, or those whose live stock will be placed on the assessment rolls at the next annual assessment."

OPINION

I agree with your interpretation.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Edward Records, *Secretary State Board of Stock Commissioners.*

SYLLABUS

48. Fish and Game—Sale by Indians—Tags.

All resident Indians, not citizens, may sell fish caught in Pyramid, Walker, and Winnemucca Lakes, in season and in limited quantities. All fish so sold must be tagged.

INQUIRY

Carson City, April 17, 1923.

You request an opinion as to the constitutionality of that certain Act entitled:

> An Act relating to the marketing and sale of fish by Indians, under certain restrictions, and providing penalties for the violation thereof (Stats. 1923, p. 357).

OPINION

Under the provisions of section 1 of this Act, Indians residing in this State have the privilege of selling and marketing, according to the seasons and bag-limits prescribed by law, the fish that they may take from Pyramid, Walker, and Winnemucca Lakes.

While the term "Indian" is used in this Act, and it would appear that the Legislature intended to grant the privilege of selling fish to all Indians who are residents of this State, it is my opinion that, if all Indians in this State, irrespective of whether they were citizens or not, were permitted to sell fish, such a construction would make the Act unconstitutional, for the reason that, inasmuch as some Indians are citizens, privileges would be granted to Indians who are citizens that would not be granted to all other citizens.

The granting of such special privilege would be a violation of the provisions of the Constitution.

The term "Indian," as used in this Act, is to include only such as have not assumed the duties and obligations of citizenship. State v. Lewis, 88 Pac. 940.

In reference to those Indians who are not citizens, they may sell fish according to the seasons, and, when such Indians fish, the amount they catch will be controlled by the laws existing in reference to citizens.

It is necessary that your Commission secure the metal tags under the provisions of section 1, and all fish sold must have upon it these tags.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. E. JOHNSON, *Secretary Nevada Fish and Game Commission.*

SYLLABUS

49. Official Bonds—Mineral County—Chief Deputy Sheriff and Superintendent of Power System—Premium on Bonds.

Stats. 1917, p. 340: Bond of Chief Deputy Sheriff is not required by statute. If Sheriff demands bond, premium therefor is not charge against county.

Stats. 1923, p. 366, sec. 17, provides for appointment of superintendent of power system and requires the filing of a bond. Under Stats. 1917, p. 340, premium on such bond is a charge against the county.

INQUIRY

CARSON CITY, April 21, 1923.

You request an opinion as to whether the Board of County Commissioners of Mineral County:

(1) Can pay the premium on the bond of the Chief Deputy Sheriff;

(2) Can pay the premium on the bond of the superintendent of the Mineral County power system.

OPINION

The statutes nowhere provide that the Chief Deputy Sheriff of Mineral County must execute a bond, and I am of the opinion, therefore, that, if the Sheriff of Mineral County desires a bond from his chief deputy, the premium on said bond is not a proper legal charge against the county, for the reason that it does not come within the provisions of the Statutes of 1917, p. 340.

Answering your second query, it appears that the Legislature of the State of Nevada by enactment has authorized the county of Mineral to take over and operate the power system furnishing electric power within Mineral County.

Under the provisions of the Act of 1923, p. 368, sec. 17, the Board of County Commissioners is required to employ a superintendent who shall qualify as required by law and give a bond in the sum of $5,000 for the faithful discharge of his duties. Inasmuch, therefore, as the law fixes the amount of bond such superintendent is required to give, I am of the opinion that this is a bond required by law within the provisions of the Statutes of 1917, p. 340.

I am also of the opinion that such a superintendent would be a county officer and within the definition of section 1, Statutes of 1917,

p. 340. (See Polk v. James, 68 Ga. 128; State v. Jennings, 49 N. E. 404.)

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

50. Mineral County—Rebate to Consumers of Electric Power.

(1) Stats. 1923, p. 366: The provisions are very ambiguous. The intent appears to be to rebate total cost of construction, yet provisions are made to rebate 15 per cent per year for four years, a total of 60 per cent. The 15 per cent is to be computed on "their monthly bills for service," yet such construction would make the provisions without meaning.

(2) The 15 per cent is to be deducted for four years from monthly bills for service.

(3) Contributor who used no electricity would not be entitled to any rebate.

INQUIRY

CARSON CITY, April 23, 1923.

Request submitted for an opinion as to the proper construction of that portion of section 3, p. 368, Statutes of 1923, relative to the percentage required to be rebated to consumers of electric power under the provisions of this section.

You suggest that the total percentage to be rebated is the amount of 60 per cent based on the total cost of such construction.

OPINION

That portion of section 3, Statutes of 1923, p. 368, which is important and material in the construction of this question, reads as follows:

> and that such total cost may be rebated back to such consumer or consumers at not to exceed 15 per cent annually, computed upon their monthly bills for service, incurred within a period of four years immediately following the construction of such high-tension extension of such system.

The provisions of this section are very ambiguous and inconsistent. It would appear that the intent expressed was to rebate the total cost, and yet, when a scheme is devised whereby the cost is to be rebated, it appears that provisions are made for rebating 15 per cent of the cost per year for four years, or the total of 60 per cent of the cost is authorized.

It would further appear that the 15 per cent was to be computed upon "their monthly bills for service." Although the words of the statute would convey this intention, it would be apparent that such construction would practically make the provisions of the Act without meaning.

I am of the opinion that the 15 per cent recited in the statute is to be allowed each year for a period of four years, and the same is to be deducted from the monthly bills for service rendered.

In the event that the party constructing such line or extension did not consume any power, the Board of County Commissioners would not be authorized to make any rebate, for the reason that the rebate provided for is to be made only in the manner described, to wit, to be computed upon the monthly bills for service.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

51. Statutes—Sufficiency of Title—Constitutionality—Hospitals for Disabled Persons.

(1) Section 1, Stats. 1923, p. 304, chap. 172, provides for manner of establishing such hospitals. Money raised is to be credited to proper fund and paid out on order of Trustees.

(2) Section 16 extends control of Trustees to existing county hospitals.

(3) Section 18 is of doubtful constitutionality since the title appears insufficient, no method is adopted for raising funds, and probably established hospitals would not come under its provisions.

INQUIRY

CARSON CITY, April 23, 1923.

You call my attention to the Statutes of Nevada, 1923, p. 340, chap. 172. The title of this Act reads as follows:

> An Act to enable counties to establish and maintain public hospitals, levy a tax and issue bonds therefor, elect hospital trustees, maintain a training-school for nurses, and provide suitable means for the care of such hospitals and of disabled persons.

OPINION

Section 1 of this Act provides that when a petition is filed with the Board of County Commissioners, signed by a certain percentage of the taxpayers of such county, requesting that an annual tax be levied for establishing and maintaining a public hospital, such Board of County Commissioners shall submit the question to the electors of the county.

The money raised by such tax levy, if the same is authorized by vote, is to be credited to the hospital fund and is to be paid out on the order of the hospital trustees. The hospital trustees have exclusive control of the expenditures of all moneys to the credit of the hospital fund. Section 16 of this Act provides that all provisions of the Act with reference to the administration and government of the county or counties hospitals erected under its provisions shall extend to and be applicable for the administration and government of all county hospitals heretofore erected in the several counties of the State, under and by virtue of any Act of the Legislature.

Section 18 provides in part that the Board of County Commissioners is directed to forthwith appoint a board of trustees for such county hospitals and it makes the provisions of the Act applicable in respect to the future control of such hospitals, and also further provides that

no election is necessary under its provisions for the taking over of such county hospitals, but that it will be presumed that an election was had and a majority of all the votes cast had been in favor of establishing such hospital.

It seems to me that these are the sections of this law which are to be considered in attempting to arrive at a conclusion as to the validity of this enactment.

The purpose of the Legislature as expressed in this statute was to place the operation, management, and control of county hospitals under the control of a board of trustees, and to take the same from the Board of County Commissioners. I agree with you in your contention that the title of the Act is not sufficient to give notice that the Legislature intended to adopt the provisions as set forth in section 18 of the Act. State v. Hallock, 19 Nev. 384; State v. Commissioners, 22 Nev. 399; State v. Gibson, 30 Nev. 353.

Again, if the provisions of section 18 are to be construed as making it the mandatory duty of the Board of County Commissioners to appoint a board of trustees for a county hospital, as described in section 18 of the Act, the conclusion adopted by you is not debatable that under the provisions of section 18 the Board of County Commissioners are compelled to appoint a board of trustees to manage such hospital, and no method is provided for the board to secure funds for the operation and maintenance of said hospital.

You will also note that, under the provisions of section 18, the Legislature had in mind the county hospitals that had been erected under or by virtue of any Act of the Legislature. The question presents itself if this designation would include hospitals that had been erected by virtue of the power conferred upon the Board of County Commissioners under the general law.

The provisions of this statute, with the exception of section 18, were adopted from the State of Missouri. A review of legislative enactment in this State discloses that county hospitals were established in this State by direct legislative enactment and not through the Board of County Commissioners. I entertain serious doubts, if a strict construction was placed upon section 18 of this law, if any hospitals now established in the counties of this State would come within the provisions of section 18.

For the reasons stated and for the reasons included in your opinion presented to me, I have serious doubts as to the validity of section 18, and feel that the matter should be presented to the Supreme Court for decision, if some theory can be worked out to present such a case.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

52. **Revenue—Tax for School Purposes—Duty of County Commissioners.**

It is the duty of County Commissioners to levy a tax necessary to meet expenses of county high school as fixed in budget furnished by educational board.

INQUIRY

CARSON CITY, April 26, 1923.

An opinion is requested as to whether or not it is the mandatory duty of the Board of County Commissioners, in fixing the tax rate for the current year, to include therein an amount sufficient to raise money for the purpose of meeting the requirements of the County Board of Education for the support of the county high school, and also whether the Board of County Commissioners have a right to reduce the amount as fixed by the Board of Education.

OPINION

Section 180, School Code of 1921, provides:

> It shall be the duty of the Board of County Commissioners to include in their annual tax levy the amount estimated by the County Board of Education, as needed to pay the expenses of conducting the county school, etc.

I am of the opinion that this provision of the statute is mandatory upon the Board of County Commissioners, and it is the duty of the County Commissioners to levy such tax as will be required to meet the expenses set forth in the budget as furnished by the County Board of Education.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. HOWARD E. BROWNE, *District Attorney, Austin, Nevada.*

SYLLABUS

53. **Corporations—Building-and-Loan Association—Insufficiency of Articles of Incorporation.**

Stats. 1915, p. 341, authorizes formation of building-and-loan associations.

Rev. Laws, 1108, as amended Stats. 1923, p. 370: Articles of incorporation of domestic corporation which omit statement as to whether or not capital stock, after the subscription price or par value has been paid in, shall be subject to assessment to pay debts, are insufficient.

INQUIRY

CARSON CITY, May 8, 1923.

You hand me articles of incorporation, and request an opinion as to whether the articles recite all the necessary stipulations required by law.

OPINION

Building-and-loan associations and the incorporation of the same are authorized by Statutes of Nevada, 1915, p. 341.

Section 1 of this Act authorizes the incorporation of building-and-loan associations and provides that they may be incorporated under the provisions of the general corporation law of this State. Subdivision 8, Rev. Laws, 1912, section 1108, as amended Statutes of 1923, p. 370, provides:

> Whether or not capital stock, after the amount of the subscription price or par value has been paid in, shall be subject to assessment to pay debts of the corporation.

The articles presented for filing contain no statement in reference to this provision of the statute.

It has been heretofore held by this office that this provision of law is essential. (Opinions of Attorney-General, 1917-1918, No. 30.)

It is my opinion, therefore, that the articles presented are insufficient for the reasons stated.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

54. County—County Commissioners—Lease of County Property.

Rev. Laws, 1508, makes no provision for lease of county property to individuals not engaged in county work.

INQUIRY

CARSON CITY, May 8, 1923.

Has the Board of County Commissioners the power to rent trucks and wagons, owned by the county, to private individuals who are not engaged in performing work for the county?

OPINION

Section 1508, Revised Laws of Nevada, 1912, sets forth the powers of the Board of County Commissioners of the several counties of this State.

In the powers enumerated there is no special provision which authorizes the Board of County Commissioners to lease county property.

It is my opinion, therefore, that the Board of County Commissioners has no power or authority to lease county property as stated in your inquiry. (See Specialty Company v. Washoe County, 24 Nev. 359.)

Vol. 15, Corpus Juris, sec. 221, p. 537, contains the following statement:

> Boards [boards of county commissioners] have no power to rent or to lease property or franchises owned by the county, in the absence of statutory authority so to do. (See State v. Hart, 144 Ind. 107.)

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

55. Chattel Mortgage on Movable Personal Property—Recording.

Stats. 1923, p. 153: Chattel mortgage covering movable personal property, irrespective of use made thereof, should be filed with Secretary of State.

INQUIRY

CARSON CITY, May 10, 1923.

Section 6 and section 7, Statutes of 1923, p. 153, require the Recorders of the several counties of this State, when a chattel mortgage is filed, purporting to create a lien upon live stock, vehicles, or

other migratory chattels, to record the same with the Secretary of State.

Where a chattel mortgage is executed, covering a ranch and a few head of live stock, would the live stock come within the provisions of this law, requiring the chattel mortgage to be filed with the Secretary of State?

OPINION

I heretofore gave you an oral opinion construing these two sections to the effect that the same only applied where it appeared that the live stock or other chattels were migratory in their nature; this upon the theory that the words "and other migratory chattels" limited the words "live stock" to the migratory kind. If, therefore, a rancher desired to mortgage his ranch and dairy stock, it could not be said that the dairy stock, although they may come within the classification of live stock, would be within the definition of a migratory chattel.

After a careful review of the Act, and the arguments presented by Hon. Lester D. Summerfield, District Attorney of Washoe County, and Hon. Booth B. Goodman, District Attorney of Pershing County, to the contrary, I am of the opinion that the provisions of the Act apply to all live stock irrespective of the use made of same.

The theory of Mr. Summerfield in construing the provisions of this Act appears to me as being cogent, where he states:

> The plain wording of the Act and its obvious intent lead me to believe that chattel mortgages, on all personal property which shall, if living, move of itself, or, if inanimate, is self-propelled, or adapted to being moved by wheels or other mechanical instrumentalities, should be recorded by the Secretary of State under this Act.

It is my opinion, therefore, where a chattel mortgage is executed purporting to cover live stock or vehicles or other property that can be moved, irrespective of the use made of said live stock or vehicles, that the same should be filed with the Secretary of State.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

56. **Animals—Transfer of Brand—Recording.**

Stats. 1923, p. 25: It is not necessary that brand or mark be recorded with County Recorder on sale of live stock.

INQUIRY

CARSON CITY, May 10, 1923.

You request an opinion as to the mode of procedure in reference to transferring a brand from the seller to the purchaser of live stock.

OPINION

Under the provisions of section 11, Statutes of 1923, p. 25, it is necessary: First, that the instrument evidencing such transfer must be acknowledged as deeds to real estate are required by law to be. Second, said instrument must be recorded in the office of the board

(Board of Stock Commissioners) in a book to be kept by the board for that purpose. The board must, when such an instrument is presented, and before the transferee can act under said brand or mark, be notified that the said transfer has been approved by the board. The brand or mark so transferred must be such a brand or mark that has been rerecorded in compliance with the provisions of section 13 of the Act. It is not necessary that such brand or mark be recorded with the County Recorder.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Edward Records, *Secretary State Board of Stock Commissioners.*

SYLLABUS

57. Revenue—Poll-Tax—"Civilized American Indians" Defined.

(1) Constitution, sec. 256, provides for poll-tax, but exempts uncivilized American Indians.

(2) All Indians, residing in this State, not otherwise exempted, are civilized and subject to payment of poll-tax.

(3) Rev. Laws, 3711, provides for taxing male residents over age of 21 (uncivilized American Indians excepted).

INQUIRY

Carson City, May 10, 1923.

Section 3711 of the Revised Laws of 1912 provides:

> Each male resident of this State over 21 and under 60 years of age (uncivilized American Indians excepted), and not by law exempted, shall pay an annual poll-tax, for the use of the State and county, of $3.

An opinion is requested seeking to define the words "uncivilized American Indians."

OPINION

It will be noted that our Constitution, sec. 256, provides that a poll-tax shall be collected, but exempts uncivilized American Indians from any law seeking to impose this tax. The Constitutional Debates are of interest in attempting to ascertain what the framers of the Constitution had in mind in making this exemption. Mr. Brosnan made the following suggestion when this matter was before the convention:

> I would suggest that in the case of an educated American Indian, if he becomes also a man of property, then, if he is to be taxed, it sems to me he should also have the right of suffrage.

Mr. Collins stated:

> The time may not be very distant when the Indians of this Territory may become a civilized body of men. As soon as that is done, it seems to me that they should become citizens—at least, so far as to share in the support of the government. I think that, by using the words "wild American Indians" or "uncivilized American Indians," we shall make a clear distinction between Kanakas and Mongolians and the Indian tribes whom we do not desire to tax.

It is evident that the framers of the Constitution had in mind that, when they used the words "uncivilized American Indians," they referred to those Indians who had no education and no occupation. I am of the opinion that in this State today we have no Indians who might be classified as "uncivilized American Indians." It is therefore my conclusion that all Indians residing in this State, and who are not otherwise exempted, are civilized, and must therefore pay a poll-tax.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. CHAS. A. CANTWELL, *Assistant U. S. Attorney, Reno, Nevada.*

SYLLABUS

58. **Motor Vehicles—License to Operate.**

Stats. 1923, p. 320, secs. 2 and 4: Only motor vehicles used as common carriers need pay license.

INQUIRY

CARSON CITY, May 11, 1923.

An opinion is requested in reference to the provisions of sec. 4, chap. 181, p. 320, Statutes of Nevada, 1923, and whether or not the same applies to all motor vehicles or only to those defined in the Act as being used as common carriers for hire.

OPINION

Section 2 of this Act defines motor vehicles and motor trucks as those used for the transportation of persons or merchandise for hire, or used in the business of a common carrier of freight, merchandise, or passengers.

It is my opinion, therefore, that the provisions of this section apply only to those motor vehicles as defined in section 2.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

59. **Motor Vehicle—Nonresident Owner—Registration—Penalty for Violation.**

(1) Stats. 1921, p. 375, subd. g, sec. 9, as amended Stats. 1923, p. 387: Only nonresident owners of motor vehicles must register their cars.

(2) Rev. Laws, 6288, making a violation of a statute to which no penalty is attached a misdemeanor, would apply in case a nonresident failed to register his car as required.

INQUIRY

CARSON CITY, May 11, 1923.

An opinion is requested as to whether the penalty provisions of paragraph g of sec. 9, chap. 212, Statutes of Nevada, 1923, p. 387, apply to all motor vehicles or only to those belonging to nonresidents.

You state that the statute of 1921, p. 375, which is an Act regulating automobiles, and requiring a license for the same, contains no penalty provisions for a violation of the Act.

OPINION

In reference to your first inquiry, it is my opinion that subdivision g of sec. 9, Statutes of 1921, p. 375, as amended Statutes of 1923, p. 387, applies only to motor vehicles belonging to nonresidents.

Replying to your second inquiry, the Act of 1921, in reference to motor vehicles, contains no penalty clause. However, your attention is directed to section 6288 of the Revised Laws of Nevada, 1912, which in substance enacts:

> That the performance of any act which is prohibited by statute, and no penalty for the violation of such statute being imposed, the committing of such act will be a misdemeanor.

It is my opinion, therefore, that this provision would cover a violation of the Statutes of 1921, supra.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

60. **Fish and Game Caught by Indians—Sale.**

(1) Resident Indians may sell fish caught by them in Pyramid, Walker, and Winnemucca Lakes to all persons, but no such fish may be resold by any one other than an Indian.

(2) Restaurants may serve fish bought of Indian to patrons, but cannot dispose of them otherwise.

INQUIRY

CARSON CITY, May 17, 1923.

(1) Under chapter 201, Statutes of Nevada, 1923, may fish, caught and sold by an Indian as therein authorized, be resold either by an Indian or by any other person?

(2) May fish be purchased from an Indian and served by restaurants and cafés, conducted by persons other than Indians, to patrons with meals?

OPINION

(1) Under the provisions of the first paragraph of sec. 1, chap. 201, Statutes of 1923, providing that Indian residents of this State shall, under regulations prescribed by the State Fish and Game Commission, have the privilege of *selling and marketing* the fish they may take from Pyramid, Walker, and Winnemucca Lakes, Indians may sell to all persons other than Indians, and may buy and sell among themselves the fish taken by them as above specified, but no such fish is subject to be resold by any person other than an Indian. That is, the Indians who catch the fish may, if they so desire, sell to other Indians, who may take the fish and market them, either by maintaining a fish-market or selling them from house to house (provided always they comply with local regulations). But no person other than an Indian may sell or engage in marketing any such fish.

(2) Under the provisions of paragraph 2 of section 1 of said Act, it is our opinion that all cafés and restaurants may be considered as

"consumers," and may serve fish purchased from Indians to their patrons as food with meals, but may not serve, sell, or dispose of them otherwise.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

NEVADA FISH AND GAME COMMISSION, *Reno, Nevada.*

SYLLABUS

61. County—Liability for Tort.

A county is not liable for a tort. (See, also, Opinions of Attorney-General, 1921-1922, p. 48.)

INQUIRY

CARSON CITY, May 23, 1923.

Is a county liable for a tort?

OPINION

This office heretofore has held that a county is not liable for a tort. (See Opinions of Attorney-General, 1921-1922, p. 48.)

This opinion is affirmed in all respects.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

62. Corporations, Foreign—Assessable and Nonassessable Stock—Secretary of State.

Stats. 1915, p. 34: Articles of incorporation of domestic corporations must declare whether stock is assessable or not. (See Opinion No. 53, supra.) Foreign corporations are not required to make this statement, and, if legal in other respects and approved by the Bank Examiner, Secretary of State must file their articles.

INQUIRY

CARSON CITY, May 25, 1923.

You hand me certified copy of the articles of incorporation of the Fidelity Building and Loan Association, a corporation, organized and existing under and by virtue of the laws of the State of Utah.

You call my attention to the fact that the certified copy of the articles of this association contains nowhere a statement as to whether the capital stock of said company is assessable or nonassessable. You desire an opinion as to whether these articles should be filed by you.

OPINION

This office has heretofore held that a domestic building-and-loan association must set forth in its articles a statement disclosing whether the capital stock of said corporation is assessable or nonassessable. (Opinions of Attorney-General, 1923-1924, No. 54.)

Section 6, Statutes of 1915, p. 34, provides in substance that "it shall be unlawful for any building-and-loan association, not organized

under the laws of this State, to transact business in this State unless such association or company shall have first complied with the statutes of this State relating to foreign corporations, and shall have submitted a statement of its condition and affairs showing: (then follows a command of what matters are essential to be included in said statement).

The Legislature of this State has enacted no provision of law requiring the articles of foreign corporations to contain those provisions of the statutes of this State which are applicable to domestic corporations. The question then presented for determination is whether a foreign building-and-loan association can file its articles with the Secretary of State when those articles do not contain the matters and things required to be set forth by domestic corporations.

From a reading of our statutes, in an effort to be advised of the public policy of this State, it can readily be determined that we have adopted a most liberal comity toward corporations organized under the laws of other States. It would appear, therefore, when such foreign corporations desire to be admitted to this State, and their articles provide powers and a business not opposed to our laws, but such as we grant to our own corporations, it seems to me that there is nothing else to do but to admit such corporations.

The Supreme Court of Missouri determined a question somewhat similar to the one here presented: The State of Missouri had a statute which in effect provided that no corporation would be admitted to do business in the State of Missouri unless such corporation could have been organized under the laws of the State of Missouri. The Standard Tank Car Company, a corporation, was organized under the laws of the State of Delaware, and the articles of incorporation of the company did not provide for a par value of the stock of said company. Under the laws of the State of Missouri corporations were required to have a par value, and a statement of the amount of the par value was required to be set forth. The Supreme Court of Missouri, in issuing an order commanding the Secretary of State to issue a license to said corporation, quoted from the case of Cowell v. Colorado Springs, 100 U. S. 55, where the Supreme Court of the United States stated:

> If the policy of the State or Territory does not permit the business of the foreign corporation in its limits, or allows the corporation to acquire or hold real property, it must be expressed in some affirmative way. It cannot be inferred from the fact that its Legislature has made no provision for the formation of similar corporations, or allows corporations to be formed only by general laws. State ex rel. Standard Tank Car Co. v. Sullivan, 221 S. W. 728. (See, also, North American Petroleum Co. v. Hopkins, 181 Pac. 625.)

Inasmuch as the Legislature of this State has not in terms prohibited foreign corporations from doing business in this State or from filing its articles in this State, when the articles of said corporation are not in accord with those provisions required of domestic corporations, it is my opinion that the articles presented by this building-and-loan association, if in all other respects they comply with the law, and have the

approval of the State Bank Examiner, must be received and filed by you.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

63. Revenue—Corporation License Tax.

Stats. 1923, p. 342, sec. 1: All corporations, domestic and foreign, excepting only those which are required by law to pay annual tax, must pay license tax under provisions of this statute.

INQUIRY

CARSON CITY, May 25, 1923.

Where a foreign corporation has paid an annual license tax in the State of its domicile, must such corporation pay the license tax to the Secretary of State of the State of Nevada under the provisions of the Statutes of 1923, p. 342?

OPINION

Section 1, Statutes of 1923, p. 342, provides:

> SECTION 1. Every corporation organized under the laws of this State and every foreign corporation doing business in this State shall, on or before the first day of July of each year, pay to the Secretary of State a license tax of $10; *provided, however*, that corporations already required by law to pay an annual license shall not come under the provisions of this Act.

I am of the opinion that the provisions contained in said section, exempting corporations already required by law to pay an annual tax, refer to those corporations, such as a building-and-loan association, which are required by the laws of this State to pay an annual license tax of $100.

I am of the further opinion that, where a foreign corporation pays an annual license tax under the provisions of the law of its domicile, it does not come within the exemption or proviso enumerated in said section, and that such corporation must pay the license tax provided for in this statute.

When the Legislature refers to "a law," or uses the expression "required by law," it means the law of this State.

> Expressions in statutes, such as "required by law," "prescribed by law," "regulated by law," refer to statutory provisions only; and so it is held that the expression "liability created by law" in Code Civ. Proc., sec. 394, providing that that chapter shall not affect an action against a director or stockholder of a moneyed corporation, to recover a penalty or a forfeiture or to enforce a liability "created by law," refers to a statute of the State, and not to the general law recognized therein. Brinckerhoff v. Bostwick, 1 N. E. 663.
>
> As used in the collateral inheritance-tax Act, which provides that certain named societies exempt by law from taxation should not be liable to the tax, "law" means the law of

New York; and hence a legacy to an institution falling within those exemptions, but located in and incorporated under the laws of another State, is subject to the tax. In Re McCoskey's Estate, 1 N. Y. Supp. 782.

A law is a rule of conduct prescribed by the lawmaking power of the State. 1 Kent, Comm. 477.

The term "law" is confined to enactments of the Legislature of the State. When the Legislature speaks in general terms of laws, or of things authorized by law, the expression must be understood as having exclusive reference to the laws of this State. People v. Sturdevant, 23 Wend. 418.

It is my opinion, therefore, that all corporations, domestic or foreign, excepting only those which are required by the laws of this State to pay an annual tax, must pay the license tax under the provisions of this statute.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

64. Constitutional Law—Statute—Delegation of Legislative Power—County Ordinance Regulating Motor Vehicles—Public Service Commission.

(1) Stats. 1923, p. 320: The Act is valid excepting section 9 thereof.

(2) Power conferred by Legislature on County Commissioners to fix license charge and regulate motor vehicles by issuing certificates is not delegation of legislative power.

(3) Section 9—Right given to Public Service Commission to annul ordinances adopted by County Commissioners is unauthorized.

This opinion was affirmed by Supreme Court in Ginocchio v. Shaughnessy, 47 Nev. 129, 217 Pac. 581.

INQUIRY

CARSON CITY, May 31, 1923.

An opinion is requested as to the constitutionality of Stats. 1923, p. 320, chap. 181.

It is urged that this statute is unconstitutional for two reasons:

First—The authority granted to counties to enact ordinances regulating motor vehicles, as defined in the statute, is an unauthorized delegation of legislative power.

Second—The authority granted to the Public Service Commission to review, modify, annul, or approve the ordinances enacted by the various counties, is an unauthorized delegation of legislative power.

OPINION

First—Is the Act unconstitutional as a delegation of legislative power to the County Commissioners?

On the general proposition that the Legislature cannot delegate power to make purely substantive law, there can be no question. There can be no difference of opinion as to the soundness of the correlative proposition that the Legislature can delegate the power to determine the facts or state of things upon which the law makes its own operation depend.

The difficulty lies not in determining the governing principle, but in its application to concrete cases.

The title of this Act recites:

> "An Act to regulate the use and operation of motor trucks; to define and classify them; to protect the public roads and highways of Nevada; to secure revenues for their improvement and maintenance; to provide for the issuance of certificates of public convenience, and licenses, by the Boards of County Commissioners, and the enactment of ordinances therefor," etc.

Section 1 of the Act provides that the power conferred upon the County Commissioners is one to be exercised for the purpose of protecting the public roads and highways and to secure revenue for their improvement and maintenance. Section 1 further authorizes the County Commissioners to enact ordinances licensing and regulating the use of motor trucks.

Section 2 defines motor trucks and motor vehicles.

Section 3 attempts to place restrictions and make classifications for the guidance of the County Commissioners in fixing a license fee on the several motor vehicles and the kind and character of business as well as the road over which said vehicle is to travel.

Section 4 makes it unlawful for a motor vehicle to be operated without a license, and provides a penalty for such violation.

The Legislature therefore authorized the Boards of County Commissioners to classify motor trucks and establish a license fee to be paid by those operating motor trucks or vehicles in the business, as defined in section 2 of the Act.

Can it be said that, when the Legislature authorized the Boards of County Commissioners to classify motor trucks and fix a license to be collected for the operation of said trucks on the public highway, they thereby delegated legislative power to the County Commissioners?

The courts, passing upon questions similar to this, have differentiated between those statutes which delegate to boards or officers the right to make rules and regulations and those cases where the Legislature attempted to delegate to boards the right to make a law and prescribe a punishment for a violation.

The Supreme Court of the United States, in the case of United States v. Grimaud, 55 L. Ed. 563, held that the Act of Congress authorizing the Secretary of Agriculture to adopt rules and regulations covering forest reservations was not unconstitutional as a delegation of legislative power. Quoting from the case of Marshall Field & Co. v. Clark, 36 L. Ed. 310, it was stated:

> The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.

In the case of State v. Duval County, 79 South. 693, the Court held that an Act of the Legislature authorizing the County Commissioners to fix toll charges for the use of a bridge was not a delegation

of legislative power, but rather an administrative function that might be delegated by the Legislature.

The Supreme Court of Alabama, in the case of Terry v. State, 92 South. 85, decided that an Act of the Legislature conferring power on the Commissioner's Court to fix license charges for the use of the public highway, was not a delegation of legislative power. The Court stated:

> While the Legislature cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things, upon which wise and useful legislation must depend, which cannot be known by the lawmaking power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation. Ingram v. State, 39 Ala, 247, 34 Am. Rep. 782; Locke's Appeal, 72 Pa. 491, 13 Am. Rep. 716. If the appellant is guilty in this case, and is punished under the affidavit, he will be punished by the will and command of the Legislature of Alabama, and not by the will and command of the Commissioner's Court of Bibb County.

The County Commissioners are not authorized to fix a punishment for a violation of any ordinance enacted under the provisions of this statute. The only punishment for acts of omission is that prescribed by the Legislature in section 4.

In the case of Brobine v. Revere, 66 N. E. 607, the Court called attention to the fact that the punishment was not fixed by the board, saying:

> that the making of the rules was administrative, while the substantive legislation was in the statute which provided that they should be punished as breaches of the peace. Terry v. State, 92 South. 85; McClure v. State, 88 South. 35; Parke v. Bradley, 86 South. 29; Commonwealth v. Slocum, 119 N. E. 687; State v. Duval County, 79 South. 693.

The only power to regulate that is conferred consists in the issuing of certificates of public convenience. This right is restricted by section 9, and the County Commissioners in issuing certificates "are authorized and directed to follow as closely as practicable the rules and regulations under which such certificates are now issued by the Public Service Commission."

Any other attempted regulation, or the issuing of a certificate of public convenience not in conformity to the laws and regulations under which such certificate was issued by the Public Service Commission, would be void as unauthorized.

The Act simply authorizes the Board of County Commissioners to (a) fix a license charge; (b) regulate motor vehicles by issuing certificates.

It is my opinion that the power conferred by the Legislature upon the County Commissioners is not a legislative power, but it simply

authorizes the County Commissioners to make rules and regulations, and thereby function in an administrative capacity.

Second—It is urged that those provisions of section 9, which give the Public Service Commission the right to review, modify, or annul the ordinances enacted by the various counties, are an unauthorized delegation of legislative power.

This attempt upon the part of the Legislature to confer upon the Public Service Commission the right to annul ordinances adopted by the several County Commissioners of the respective counties of this State is clearly unauthorized and contrary to the Constitution.

Section 10 of the Act, however, provides:

> Each section of this Act is hereby declared to be separate and independent, and if one section be declared unconstitutional it shall not invalidate the other sections of this Act.

The Supreme Court of Arkansas in the case of Snetzer v. Gregg, 196 S. W. 925, in construing a section similar to this, declared, quoting from 6 R. C. L. 123:

> Occasionally the Legislature expressly states its will that the valid provision of a statute shall be enforced in spite of any judicial determination that certain sections of the Act are unconstitutional. Such an expression of the will of the Legislature is generally carried out by the courts.

The Supreme Court of Arkansas held that a declaration of this kind constitutes a legislative determination of its full purpose, and that that declaration can and should be carried into effect. State v. Clawson, 117 Pac. 1101.

Indulging in the presumption that every law enacted by the Legislature is constitutional until the same clearly appears to the contrary, beyond a reasonable doubt, I am not prepared to say that the provisions of this Act are unconstitutional. It is my opinion, therefore, that, excepting that portion of section 9 which gives the Public Service Commission the right to annul ordinances, the other provisions of the Act are valid.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. L. D. Summerfield, *District Attorney, Reno, Nevada.*

SYLLABUS

65. **Statute—Title—Humboldt County Highway Bonds—Tax Levy Valid.**

Stats. 1923, p. 235: While title of Act should have authorized tax levy to redeem Humboldt County highway bonds, failure to do so did not invalidate tax levied, since bonds were authorized, and it must be implied that repayment will be made.

INQUIRY

Carson City, June 7, 1923.

You advise that the Nevada Industrial Commission contemplates purchasing certain bonds of Humboldt County, and an opinion is requested as to the legality of the bonds issued under the provisions of Statutes of 1923, p. 235.

OPINION

Statutes of 1923, p. 235, provide:

> An Act to authorize, empower, and direct the Board of County Commissioners of Humboldt County, Nevada, to issue bonds to provide funds for constructing and improving roads and highways, and constructing bridges in Humboldt County, Nevada.

Section 5 of the Act authorizes the creation of a fund for the redemption and payment of said bonds and authorizes the Board of County Commissioners to levy an annual tax for the payment of said bonds.

It will be noted that the title of this Act nowhere discloses the purpose to authorize the Board of County Commissioners to levy a tax or create a fund for the payment of these bonds. The question then presented is whether the title of the Act conflicts with section 17, article 4 of the Constitution of the State of Nevada.

The Supreme Court of Nevada, in the case of Klein v. Kinkead, 16 Nev. 194, has passed upon a similar question, and in this case the Court construed an Act entitled as follows:

> An Act to provide for the taking care of the insane of the State of Nevada.

In the body of this statute provisions were made for a state loan and for the investment of moneys of the state school fund, and, holding this title was sufficient, the Court quoted from a decision of the Supreme Court of Illinois in the case of Ottawa v. People, 48 Ill. 233, where it was stated:

> That an Act entitled "An Act to authorize the town of Ottawa to erect two bridges across the Illinois-Michigan Canal," was sufficient, notwithstanding the fact that no provision for raising money to defray the cost of such bridges was indicated in the title of the Act.

Also, in the case of People v. Rochester, 50 N. Y. 525, it was held that an Act entitled "An Act in relation to the erection of public buildings for the use of the city of Rochester," and provision for the selecting and procuring of a site for the contemplated building, was valid. The Court stated:

> But buildings can no more be erected without sites than without materials or means to defray the expenses. All these are details, and no reference thereto in the title is required.

It is my opinion, therefore, that, while the title of this Act should have authorized the Board of County Commissioners of Humboldt County to levy a tax, the failure so to do under the decision, supra, did not invalidate the tax levied by the County Commissioners, for the reason that where bonds are authorized to be issued it must be implied that repayment will be made.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada.*

6[23]

SYLLABUS

66. **Revenue—Apportionment of High-School Funds a Ministerial Act which May Be Made Nunc Pro Tunc.**

Stats. 1921, p. 52-54, as amended Stats. 1923: Matter of apportioning money collected from taxes for high school is simply ministerial and can be performed nunc pro tunc.

Sec. 4a, Stats. 1921, was repealed by Stats. 1923.

INQUIRY

CARSON CITY, June 8, 1923.

You advise that at the time of making the semiannual apportionments in January, 1923, the relief apportionments called for under section 151, paragraphs 2c, 3a, 3b, 4a, and 4b, could not be made because of the lack of necessary funds. You further advise that by Statutes of 1923, section 4a, providing an apportionment for the relief of high schools, was repealed. You state that there is now money available for this delayed apportionment, and request an opinion if the apportionment should be made for the relief of high schools under section 4a, inasmuch as this section has been repealed.

OPINION

The various sections cited by you are contained in the School Code of 1921, as amended, pp. 52-54.

Section 4a provides:

> In addition to the apportionments already provided for in this Act, the Superintendent of Public Instruction shall apportion from the state school reserve fund to any county which shall have levied a county high-school tax, when this county high-school tax rate taken with the rate required of the county for elementary schools (any relief rate having been deducted) makes a rate in excess of 40 cents on the $100 assessed valuation of such county, a special high-school relief apportionment equal in amount to that raised by the county by such tax in excess of 40 cents on the $100 assessed valuation in the county as specified above, for the county high-school fund. But in no case shall he apportion from the state school reserve fund at any semiannual apportionment an amount in excess of $12.50 per pupil as determined by the average monthly enrollment in such county high school for the preceding school year.

It is my opinion that the apportionment provided for under section 4a of section 151 should be made at this time, notwithstanding the fact that section 4a has been repealed by the Statutes of 1923.

The Legislature, by reason of the provisions of section 4a and the sections in addition thereto, quoted by you, has authorized the apportionment of taxes collected, and the taxes so collected are apportioned in accordance with the provisions of law which authorized their collection. The matter of apportioning the money is simply a ministerial act and can be performed nunc pro tunc.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

SUPERINTENDENT OF PUBLIC INSTRUCTION, *Carson City, Nevada.*

SYLLABUS

67. Revenue—Exemptions—Charitable Organizations—License.

(1) Stats. 1919, p. 125, exempts personal property of charitable organizations from taxation.

(2) Stats. 1923, p. 342, provides that "every" corporation (except those that pay an annual license tax) shall pay Secretary of State $10 as license tax, but history of legislation shows it was never intention to tax charitable organizations.

(3) Masons, Odd Fellows, Elks, and similar organizations need not pay annual license tax.

INQUIRY

CARSON CITY, June 8, 1923.

An opinion is requested as to whether fraternal organizations, such as the Masons, Odd Fellows, Elks and similar associations and other corporations, eleemosynary in character, are required to pay the annual license fee of $10 under the Statutes of 1923, p. 342.

OPINION

Section 1 provides that "every" corporation organized under the laws of this State shall pay to the Secretary of State a license tax of $10.

Section 2 provides that, when the annual license tax has been paid, the Secretary of State shall issue to each corporation a certificate authorizing it to transact and conduct its business within this State for the period of one year.

This Act, by reason of its provisions, exempts no corporation from the payment of this tax, with the exception that corporations required by law to pay an annual license tax shall not come within provisions of this Act.

The Legislature of the State of Nevada has heretofore exempted from taxation the furniture, funds, and other personal property owned by "any lodge, or the Order of Free and Accepted Masons, or of the Independent Order of Odd Fellows, or any similar charitable organization." (Statutes of 1919, p. 125.) These corporations are not compelled to pay a fee when they organize under the laws of this State; neither are they doing business of such character as would authorize the Secretary of State, under section 2, to issue to them or either of them a certificate.

While the Legislature has not exempted corporations of this character from the payment of this annual license tax by direct permission, a history of the legislative action in this State clearly discloses an intent to exempt these organizations, not only from corporation taxes that may be imposed, but also exempt them from paying property tax.

It is my opinion that these organizations and corporations of similar character are not required to pay the annual license tax.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

SYLLABUS

68. Schools—Discharge of Teacher for Cause—Liability of Trustees for Libel or Slander—Recall Election.

School Trustees may discharge teacher for good cause and are not liable for damages, though conclusions reached may cast aspersions on character of teacher. Nothing would prevent such discharged teacher, thinking himself aggrieved, from commencing action for damages, though the result of such suit might or might not be successful.

Recall election may be had for any cause in accordance with law.

INQUIRY

CARSON CITY, June 8, 1923.

You submit the following query and request an opinion:

1. When a Board of School Trustees in the fulfilment of its duties deems it best to discharge a teacher for reasons which may reflect on the professional standing of such teacher, what protection have members of the School Board, and are they liable to the discharged teacher for the recitals contained in the resolution discharging said teacher when the recitals may possibly reflect upon the character or professional standing of the teacher?

2. In a case submitted to the State Board of Education for the suspension or revocation of a teacher's certificate, what protection is there afforded the members of said board in the discharge of their official duties, where they decide that the evidence of unprofessional conduct is sufficient to warrant the conclusion that a teacher's certificate should be suspended or revoked?

3. Is there any protection as against a recall election on the one hand, or suit for damages by the teacher on the other hand, against the members of either board for their action?

OPINION

The case of Branaman v. Kinkle, 37 N. E. 546, decided by the Supreme Court of Indiana, seems to outline a doctrine that answers the first and second questions propounded by you.

In this case an action for libel and slander was instituted by a school-teacher against a township trustee and a County Superintendent for charging him with incompetency, cruelty, and neglect in the exercise of his duties. The Court, in deciding this case, stated:

> In the opinion [referring to a case decided by the Supreme Court of Indiana, 4 N. E. 197] the Court say that the office of County Superintendent belongs to the executive department of the State, and the statute does not confer upon the incumbent either judicial or quasijudicial power in the matter of licensing persons to teach in the common schools; that it confers upon the County Superintendent a discretion on the subject of licensing teachers, which is so far analogous to judicial discretion, or error in judgment, either in granting or withholding a license. It is a wise and salutary rule that there can be no action maintained against this class of officers

where they act without malice. An honest mistake in judgment, either as to their duties under the law, or as to the facts submitted to them, ought not to subject such officers to a suit for damages. They may judge wrongly, and so may a judicial tribunal, but the party injured can have no cause of action when they act in good faith and in the line of what they believe is honestly their duty. Any other rule might result in great hardship to conscientious men who, with the purest of motives, have faithfully endeavored to perform the duties of their trust. Although of great importance to the public, no considerable profits attach to these offices, and the duties are usually performed by persons sincerely desiring to do right by their neighbors, without hope or expectation of personal gain, and it would be a harsh rule that would subject such officers to a suit for damages for every mistake they may make in the good-faith discharge of their official duties. In order to charge a liability, it must be averred and proved that such action was taken either wantonly or maliciously; that is, from wilful and wicked or corrupt motives. Elmore v. Overton, supra, 548.

In the case of Galligan v. Kelly, 31 N. Y. Supp. 561, the Court stated the following doctrine in reference to the action of School Trustees in discharging a teacher and the liability of such officers for damages in connection with their official duties:

In fine, they were privileged to take testimony to ascertain whether there ought to be a trial by the Board of Education, and that board has sustained them by a vote overwhelmingly preponderating against the plaintiff. It would be monstrous to hold that the testimony thus taken, and thus furnished to the Board of Education, was a mere libelous statement made by the defendants maliciously to punish the plaintiff. Such a doctrine would be most disastrous in its effect upon the proper administration of our public-school system. If, under such circumstances, these Trustees could be treated as libelers, and punished in damages for doing what they did, it would simply prevent all such officers from fearlessly guarding the sacred interests intrusted to them by the law. These officers are responsible for the due administration of the school system, and they should be upheld in all proper efforts to maintain discipline, and to compel obedience to the rules and by-laws laid down by the Board of Education. It would be strange indeed if they were to be held to a stricter rule of law than is held against a person who charges another with a crime in the ordinary criminal courts of the country. In that class of cases the person making the charge cannot be held for damages for malicious prosecution, even if the defendant is acquitted, unless the charge was made wantonly, maliciously, and without reasonable or probable cause to believe it to be true. Here the charges were certainly made with probable cause to believe them to be true, because they were made upon formal testimony, and because the plaintiff

was actually removed by the appropriate tribunal. If such an action as this could be maintained upon such facts, it would be impossible to induce any prudent citizen to accept such a position as that of School Trustee. He would either be held responsible by the people for failure to do his plain duty, or he would be held responsible by the courts for doing his plain duty. Fortunately for the good government of the schools, the Trustee is not between these alternatives. In my judgment, this action was ill advised, and should never have been brought. It certainly cannot be sustained upon any principle or precedent appertaining to the law of libel. The complaint must accordingly be dismissed.

It is my opinion, therefore, that, if the findings made by the respective boards are made in good faith and without malice, the officials would not be liable to the teacher so discharged, even though the conclusions reached may cast aspersions on the character of the teacher.

In reference to the third inquiry it may be stated that there is no protection against a recall election. Neither is there protection against a suit for damages in the event a teacher should be discharged. Recall elections may be had for any cause, the only requirement being that the percentage of signers to the recall petition be in accordance with law. It is needless for me to say that it is impossible to protect any one from a suit for damages. Your only interest, however, is in ascertaining whether such a suit could be successfully maintained. This question I have answered in the negative.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. J. Hunting, *Superintendent of Public Instruction.*

SYLLABUS

69. Revenue—City and County Ordinance—Corporation Tax "Required by Law" Defined.

(1) Stats. 1923, p. 342, sec. 1: A corporation paying a city or county license would be compelled to pay the $10 annual license fee required by this section, the exemption in the Act providing that corporations already "required by law" to pay an annual license does not include ordinances of city and county governments.

(2) City and county ordinances are not usually classed as laws within the scope of the phrase "required by law."

INQUIRY

Carson City, June 8, 1923.

Section 1, Statutes of 1923, p. 342, provides:

Every corporation organized under the laws of this State, and every foreign corporation doing business in this State, shall, on or before the 1st day of July of each year, pay to the Secretary of State, a license tax of $10; *provided, however,* that *corporations* already *required by law to pay* an annual license shall not come under the provisions of this Act.

You request an opinion as to whether a corporation that pays an annual license tax under and by virtue of an ordinance enacted by a city or Board of County Commissioners would thereby be under the provision above stated.

OPINION

The question presented is whether the ordinance of a city may be called a "law," and whether, if a city ordinance requires the payment by a corporation of a license tax, that such ordinance would be synonymous with, and within the scope of, the phrase in the statement "required by law."

In the case of Wright v. The City of Macon, 64 S. E. 807, it was held that "ordinances" are mere rules or by-laws of a municipal corporation. The word "law" does not ordinarily include a "municipal ordinance." See, also, Stott v. City of Chicago, 68 N. E. 726; People v. Gardner, 106 N. W. 540; Clinger v. Bickell, 11 Atl. 555.

It is my opinion, therefore, where a corporation pays an annual license tax under or by virtue of any city or county ordinance, that it would be compelled to pay the license tax as provided for in section 1 of this Act, for the reason that the words "required by law" do not include ordinances enacted by a city or a county government.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State.*

SYLLABUS

70. Criminal Law—Slot Machine.

Rev. Laws, 6518: It is illegal to maintain a slot machine played for money, or for checks or tokens redeemable in money.

INQUIRY

CARSON CITY, June 19, 1923.

An opinion has been requested as to whether a public display and use of slot machines which are being played for cash money constitute a violation of the state law.

OPINION

Section 6518, vol. 3, Revised Laws of 1919, provides:

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

It is my opinion, therefore, that operating slot machines, in the manner specified, is a violation of the law.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

71. Animals—Wild Horses—Estrays.

Stats. 1923, p. 31, does not repeal Stats. 1913, chap. 95. Wild horses may be destroyed; estrays that have owners are protected.

INQUIRY

Carson City, June 21, 1923.

You call my attention to the fact that the Commissioners of Humboldt County, acting under the provisions of Statutes of Nevada, 1923, p. 95, issued to an individual a permit to destroy wild horses.

It is suggested by you that chapter 27, Statutes of Nevada, 1923, automatically repeals Statutes of 1913, supra, and you request an opinion.

OPINION

It is my opinion that the statute of 1923, p. 31, does not repeal statute of 1913, chap. 95. The provisions of the 1923 Act, supra, contemplate those animals that may have an owner, while this Act refers to estray animals that may be marked or branded. Wild horses cannot come within this classification.

By the provisions of the statute of 1923 rules were enacted which had for their object the protection to owners of the animals mentioned that might estray.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Edward Records, *Secretary State Board of Stock Commissioners.*

SYLLABUS

72. United States Statute—Sheppard-Towner Act—Maternity and Infancy Cases—Expenditures.

Sheppard-Towner Act: The bureau at Washington in charge of the enforcement of this Act should be consulted as to expenditures of funds by those in charge of this bureau in this State.

INQUIRY

Carson City, June 27, 1923.

An opinion is requested as to whether the Child-Welfare Division of the State Board of Health, acting under the state law and the Sheppard-Towner Act, can give or afford material relief in maternity and infancy cases.

OPINION

In the bulletin issued by the Children's Bureau of the Department of Labor, subd. 3, p. 3, it is stated:

> As originally introduced, the Act provided that the funds were to be expended by the States for provisions of instruction in the hygiene of maternity and infancy, through public health nurses, consultation, and other suitable methods and the perfection of medical and nursing care for mothers and infants at home or at a hospital, when necessary, especially in remote areas.

These specific provisions do not appear in the Act as passed. Section 10 of the Sheppard-Towner Act provides:

> that the Children's Bureau may withhold any further certificate provided for in section 10 hereof, whenever it shall be determined as to any State that the agencies thereof have not

properly expended the money paid to it or the moneys herein requested to be appropriated by such State for this purpose.

It is my opinion, therefore, that it is incumbent upon those in charge of the operation of this bureau in the State of Nevada to submit to the bureau at Washington its plan of operation, and have the expenditures approved by the Department at Washington. It appears to me that the question involved is one entirely of policy, and the Act of Congress gives to the head of the bureau at Washington discretion in exercising the policy to be adopted. It is therefore suggested that, before any moneys be expended along the lines suggested by you, permission be obtained as indicated.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

MRS. MAUD WHEELER, *Secretary Child-Welfare Division.*

SYLLABUS

73. County—Highways—City and County Road Funds.

Rev. Laws, 842 and 3006, as amended Stats. 1921, chap. 236:

(1) A city with population of less than 2,500 is entitled to portion of general road fund of county.

(2) In counties containing cities of more than 2,500 population the amendment fixes maximum and minimum levy and provides different distribution of road funds.

INQUIRY

CARSON CITY, July 6, 1923.

Is the city of Fallon, with a population of less than 2,500 entitled to a portion of the general road fund of Churchill County, under the provisions of section 842, Revised Laws of Nevada?

OPINION

Yes. The city of Fallon is entitled to such proportion of the total road fund of Churchill County as the valuation of the property within the city limits bears to the total valuation of all property within the county, including the city.

Section 3006, Revised Laws of Nevada, as amended by Statutes of 1921, chap. 235, does not affect the rights of cities with a population less than 2,500.

But, for counties containing cities with a population of more than 2,500, this amendment fixes a minimum levy of 1/8% as well as a maximum levy of 1/4% for road purposes, and further provides that one-half of such city's proportion of such road fund shall be placed in the "general fund" of such city, instead of, as required by section 843, expending it all upon the streets, alleys, and public highways.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. E. E. WINTERS, *District Attorney, Fallon, Nevada.*

SYLLABUS

74. Election—Notice—School Bonds, Validity Of.

Notice of election informing voters that interest on proposed school bonds would not exceed a certain per cent per annum is not too indefinite or uncertain under sec. 193 of School Code.

INQUIRY

CARSON CITY, July 12, 1923.

You submit to me certified copy of the several resolutions adopted by your honorable board, in connection with the proposed issue of $30,000 school bonds, School District No. 10, Washoe County, Nevada.

You also submit the notice published calling for an election which would authorize the issuance of these bonds.

You call my attention to that portion of the notice of election wherein is recited "that the amount of said school bonds shall be $30,000, bearing interest at a rate not to exceed 6% per annum."

You request an opinion as to the validity of the proceedings, calling my attention particularly to the stipulation contained in said notice of election, in reference to the amount of interest the bonds shall bear, and request an opinion as to whether the provision in this notice of election complies with section 193, School Code of Nevada, 1921.

OPINION

Your honorable board is to be complimented for the efficient manner in which all of the resolutions, notices, and other documents in connection with this proposed bond issue have been prepared.

The Supreme Court of this State has not passed upon the provisions of section 193, School Code, as to what statement is a sufficient compliance with this section. It must be kept in mind, however, that the purpose of this notice is to provide information to the voters, so that they may intelligently vote on the question as to whether bonds should issue or should not issue. It is my opinion that, inasmuch as the notice of election informed the voters that the rate of interest would not exceed 6%, it would be a sufficient authorization for the collection of a lesser rate of interest, and I am of the opinion that the fixing of a rate not to exceed 6% could not be criticized as being too indefinite, or uncertain, and not a compliance with section 193.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

BOARD OF SCHOOL TRUSTEES, *Reno, Nevada.*

SYLLABUS

75. Corporation—Par and Nonpar Value—Change of Articles.

General corporation law, as amended Stats. 1923, p. 370: A corporation organized prior to March 26, 1923, may amend its articles to provide for nonpar-value stock to same extent as newly formed corporation might so provide, but same corporation may not have both par- and nonpar-value stock.

Affirmed by Supreme Court in State ex rel. Goodman v. Greathouse, 47 Nev. 198, 217 Pac. 957.

(See, also, Opinion No. 36, supra.)

INQUIRY

CARSON CITY, July 25, 1923.

Can a corporation existing prior to March 26, 1923, amend its articles so as to provide for nonpar-value stock, in the same manner that a newly formed corporation can provide under the provisions of the amendment appearing in Statutes of Nevada, 1923, at page 370?

OPINION

Yes. Under the language contained in section 40 of the general corporation law, reading as follows:

> Every corporation organized under this Act may change the nature of its business, and make such other amendments, changes or alterations as may be desired; *provided*, that such certificate of amendments, change or alteration, shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment—

it is our opinion that corporations existing prior to March 26, 1923, may amend their articles of incorporation so as to provide for the issuance of nonpar-value stock, to take the place of its par-value stock.

This office has heretofore rendered its opinion that, under the provisions of paragraph 4 of article 4 of the General Corporation Law, as amended by chapter 206, Statutes of 1923, corporations may be organized having stock either with or without par value, but that the same corporation may not have both. So that, under the views of this office, amended articles of incorporation may provide that all shares of the capital stock of such corporation shall be without par value, but may not provide that part of such shares may, and part may not, have par value.

However, this matter has been submitted to the Supreme Court in a certain mandamus proceeding, and a final decision thereon should be forthcoming in the near future.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. W. G. GREATHOUSE, *Secretary of State.*

SYLLABUS

76. Revenue—Business License in Unincorporated City or Town.

Rev. Laws, 877, as amended Stats. 1923, chap. 50: No other city or town license may be collected from businesses in unincorporated city or town than that imposed by County License Board.

INQUIRY

CARSON CITY, July 25, 1923.

In view of the provisions of chapter 50, Statutes of 1923, may the Board of County Commissioners of any county, under the provisions of paragraph 9 of section 1 of "An Act providing for the government of the towns and cities of this State," being section 877, Revised Laws

of Nevada, fix and impose a license fee for the benefit of any unincorporated town or city for the carrying on in any such unincorporated town or city of the businesses named in chapter 50, Statutes of 1923, in addition to the county license fixed and imposed, or to be fixed and imposed, by the County License Board, as provided for by said chapter 50?

OPINION

It is our opinion that chapter 50, Statutes of 1923, by giving to the *County License Board the exclusive power to license and regulate* certain businesses named therein, in unincorporated cities and towns, and further requiring all applicants who desire to engage in any such business or businesses to make application to the County License Board of the county in which any such business is to be conducted for a county license of the kind desired, and file the same, together with the required license fee, with the county license collector, without making any provision for the fixing and imposing of a *city or town license* by such board, precludes the imposition and collection of any license fee other than that mentioned in said chapter 50, Statutes of 1923.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. W. T. MATHEWS, *District Attorney, Elko County, Nevada.*

SYLLABUS

77. Corporations—Fees—Interstate Commerce Corporation Filing Fee.

Rev. Laws, 1348, 1350, as amended Stats. 1923, pp. 66, 380: Foreign corporation engaged in interstate commerce need not pay filing fee based on amount of capital stock.

INQUIRY

CARSON CITY, August 2, 1923.

You hand me articles of incorporation of Oregon Short Line Railroad Company, and request an opinion as to the amount of fees you are to collect for filing these articles.

OPINION

It appears, from the articles presented, that the Oregon Short Line Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Oregon; that said railroad company is engaged in the railroad business in Oregon, Utah, and Idaho, and contemplates running a railroad into the State of Nevada from Rogerson, Idaho, to Wells, Nevada. It appears, therefore, that this railroad company is engaged in interstate commerce.

The statute which requires the filing of a certified copy of the articles of incorporation of a foreign corporation in the office of the Secretary of State, is section 1348. Section 2 of the Act provides for the payment of the fees for the filing of articles of incorporation, and section 3, being section 1350 of the Revised Laws, provides a penalty for the failure or neglect to file. Statutes of Nevada, 1923, p. 65, fix the amount of fees required to be paid for the filing of certificates or

articles of incorporation. Section 102, General Corporation Act, was amended Statutes of 1923, p. 380. The fees fixed by Statutes of 1923, p. 380, are dissimilar from those fixed by Statutes of 1923, p. 66. Without deciding which fee law should govern, where a railroad company decides to file articles, it is my opinion that the Oregon Short Line Railroad Company is *not* required to pay any fee for the filing of its articles.

In the case of Pullman v. Kansas, 21 U. S. 57, the Supreme Court of the United States held:

> A corporation organized in one State, and doing an interstate business, is not bound to obtain the permission of another State to transact interstate business within its limits.

Again, in the case of Ludwig v. Western Union, 216 U. S. 148, the Court stated:

> A state statute, which requires a foreign corporation, engaged in interstate commerce, to pay, as a license tax or fee, for doing interstate business, a given amount on its entire capital stock, whether employed within the State or elsewhere, directly burdens the interstate business of such corporation and its property outside the jurisdiction of the taxing State, and is unconstitutional and void.

This corporation, therefore, being engaged in interstate commerce, any statute which would seek to require the corporation to pay a charge based upon the amount of its capital stock would be imposing a burden on such corporation as a condition upon the right of said corporation to do business in this State.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. G. Greathouse, *Secretary of State.*

SYLLABUS

78. Health—Burial—Records.

Sections 2960, 2961, and 2962 of the Revised Laws require permit for interment of body to secure data for public records, and must be complied with.

INQUIRY

Carson City, August 1, 1923.

You advise that some trouble is encountered in reference to burial permits, and desire an opinion as to the necessity of obtaining these permits.

OPINION

Sections 2960-2962, Revised Laws of Nevada, 1912, require that burial permits be obtained. It is provided:

> That no sexton, or person in charge of any premises in which interments are made, shall inter, or permit the interment of, any body, unless it is accompanied by a burial, removal, or transit permit.

The purpose of these provisions is to obtain data for public records, and this law must be complied with.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

DR. J. W. GEROW, *Reno, Washoe County, Nevada.*

SYLLABUS

79. **Recording—Notice—Sale and Attachment of Real Property.**

Stats. 1923, p. 198: Certificate of sale and notice of attachment affecting real property must be recorded.

INQUIRY

CARSON CITY, August 2, 1923.

An opinion is requested as to whether, under Statutes of 1923, p. 198, chap. 120, it is necessary to record, in the office of the County Recorder, certificates of sale and notices of attachment.

OPINION

Prior to the adoption of this statute it has always been the practice to simply file certificates of sale and notice of attachment. The Legislature in 1923 enacted a law which adopted general recording provisions, and, among other things, provided:

> Each of the County Recorders of this State must, upon the payment of the statutory fees for same, record separately, in a fair hand, or typewriter, in large well-bound, separate books: * * * (i) Notices of attachment upon real estate. * * * (p) Certificates of sale.

Section 9 of the Act provides:

> Instruments affecting real property must be recorded in the office of the County Recorder of the county in which the real property is situated.

Provision is further made in the Act imposing a penalty for a Recorder who fails to properly record the several documents required.

It is my opinion, therefore, that a certificate of sale affecting real property and notices of attachment affecting real property must be recorded in this office.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. LILLIAN S. BINGHAM, *Recorder and Auditor of Churchill County, Fallon, Nevada.*

SYLLABUS

80. **Nevada Industrial Commission—Workmen's Compensation—Injury Proximate Cause of Death—Time for Filing Claim.**

Where an employee received an accident, while in the employ of a company insured under the Act, from which accident a disease developed which caused his death three years afterwards, and where a request to file a claim for compensation was made two years later, and additional proof was later presented, and received, held:

(1) The Industrial Commission is estopped to allege the claim was not filed in due time.

(2) The facts warrant a settlement of the claim.

INQUIRY

CARSON CITY, August 6, 1923.

You submit to me the records of your office, wherein is set forth the correspondence and other data, including affidavit and medical reports concerning the injury and death of George R. Miller, and the claim of his wife, Ethel May Miller, for compensation.

It appears therefrom that Mr. Miller was injured while in the employ of the Western Ore Purchasing Company, and died in 1919.

You request that I examine the facts, and render an opinion as to the liability of the Commission to pay compensation.

OPINION

It appears without dispute that George R. Miller was on May 7 employed by the Western Ore Purchasing Company; that the Western Ore Purchasing Company, by reason of a full compliance with the law, was under the protection, so far as accidents were concerned, of the Nevada Industrial Commission.

This matter was acted upon by George D. Smith, formerly chairman of the Industrial Commission, and compensation was refused: First, for the reason that the claim was not presented within a statutory period of one year from date of death. Second, that it had not been affirmatively established that the death resulted from personal injury by accident arising out of the course of employment, and that the accident on May 7, 1916, was not the proximate cause of the death.

In connection with the first contention, your attention is respectfully called to a letter dated February 8, 1921, to the attorney for Mrs. Miller, wherein he was requested to file a claim against the Commission and to present such proof as he could to establish his contention. It appears thereafter that additional proof was presented to the Commission, and I am of the opinion, therefore, that the Commission, having reopened this case, is estopped to now allege that the claim was not filed in time, especially in view of the fact that the claimant expended considerable money in presenting further proof.

In reference to the second contention, it appears from the affidavit of Dr. Turner, who at the time of the accident reported to the Nevada Industrial Commission that George R. Miller was injured by the explosion of a giant cap, and that, by reason of the injury, orchitis developed.

Dr. Turner submitted the patient to a Wasserman test as a means to arrive at a diagnosis, and the patient was sent to R. L. Rigdon of San Francisco, who, on January 11, 1917, performed an orchectomy.

It appears, from Dr. Turner's affidavit, that on July 6, 1917, he wrote the Industrial Commission that the injury received by Miller was of such nature that the patient could not recover.

It appears, thereafter, that Mr. Miller contracted the flu, or rather flu pneumonia, and on January 12, 1919, he died. In concluding his report, Dr. Turner states:

> It is my opinion that in a large number of cases pneumonia is a so-called terminal disease, and there is no doubt at all but what the cause of his death (Miller's) primarily was tubercular orchitis, and an extension of the tuberculosis to a general infection, and that the pneumonia was only contributory to his death.

It appears, therefore, that the contention of claimant is sustained by this medical proof submitted. As to the questions of law involved, your attention is called to the following cases:

> Where an employee strained himself by lifting and later died of pneumonia, the board was justified in finding that the subsequent death was due to an accident arising out of, and in the course of, employment. Folts v. Robertson, 188 N. Y. 359.
>
> An employee suffered a frost-bite while performing his duties in the service of the master, and developed erysipelas as a result of the injury, which caused his death. His death was held to be due to an accidental injury arising out of the employment. Larke v. Hancock Mutual Life Insurance Co., 97 Atl. 320. (See, also, Kinjan Co. v. Ossan, 121 N. E. 289.)

It is my opinion, therefore, that the facts and the law warrant a settlement of this case, and I so advise.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

INDUSTRIAL COMMISSION OF THE STATE OF NEVADA, *Carson City.*

SYLLABUS

81. Banks and Banking—Nonjudicial Day.

(1) Rev. Laws, 4870, as amended, automatically makes day declared to be such by Governor's proclamation a nonjudicial day.

(2) State banks should close on that day.

INQUIRY

CARSON CITY, August 8, 1923.

An opinion is requested as to whether August 10 is a nonjudicial day, the Governor having issued a proclamation declaring that said day be observed as a nonjudicial day, out of respect to the memory of the late President Harding.

OPINION

It is my opinion that the Governor's proclamation of August 4 makes Friday, August 10, 1923, a nonjudicial day.

Section 4870 of the Revised Laws, as amended, governs, and automatically makes a nonjudicial day in the case of the proclamation of the President or the Governor, and the origin of the words "fast," "thanksgiving," or "holiday" is immaterial.

All state banks should close on that day.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

82. Highways—"Through" Defined.

"Highway Law." The word "through," used in describing highway routes, means into and out of a town at different points, and not merely to or into.

INQUIRY

CARSON CITY, August 20, 1923.

Could the word "through," as used in describing the various routes of the state highways in section 8 of the highway law as amended, be construed to mean that the routes of the highways described therein might merely run to, or into, the towns therein named, or that the main routes of said highways may not even run to or into such towns, if spurs were constructed to connect the routes of such main highways with the towns named?

OPINION

The word "through" is defined in Cyclopedia of Law and Procedure to mean:

> From end to end, or from side to side of; into or out of at the opposite, or at another, point; between the sides or walls of; within; from one side to the opposite side; from one surface or limit to the other surface or limit.

We have examined all the authorities cited upon the various shades of meaning set forth in the above definitions, and we are firmly of the opinion that the word "through," as used in section 8 of our highway law as amended, means "from end to end; from side to side; or into or out of at the opposite, or at another, point"; and not merely to or into.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. G. W. BORDEN, *State Highway Engineer.*

SYLLABUS

83. Revenue—Lease of Mining Ground as Unit for Bullion-Tax Assessment.

Rev. Laws, 3687, 3690: Original lease and each sublease of mining ground are separate mining units for bullion-tax assessment purposes. Separate statements must be filed and taxes paid.

INQUIRY

CARSON CITY, August 21, 1923.

Where a lessee of mining ground or tailings dump subleases the same or parts thereof to sublessees, should the lease and subleases be treated as one mining unit for the purpose of bullion-tax assessment, and but one statement required from the lessee; or should the lease and each sublease thereunder be treated as a separate mining unit for such purpose, and a statement and payment of bullion tax be required from the lessee and each sublessee, when either the lease or any sublease shows a net profit, as defined by section 3687 of the Revised Laws?

OPINION

It is our opinion that the original lease and each sublease thereunder should be treated as a separate mining unit for the purpose of bullion-tax assessment, and that the lessee and each sublessee under him should be required to file with the Assessor of his county a statement, as required by section 3690 of the Revised Laws, showing the gross and net proceeds of ore produced on his particular mining unit, and to pay the bullion tax upon any net proceeds of ore produced therefrom as shown by any such statement, as provided in section 3687 of the Revised Laws.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

84. Revenue—Widows' and Orphans' Exemption—Statutes in Conflict—Construction.

Stats. 1891, as amended Stats. 1923, chap. 203: These statutes are in irreconcilable conflict, and the latter must prevail. Property of widows and orphan children not to exceed $1,000 to one family should be exempt from taxation, provided the total value of their property does not exceed $6,000.

INQUIRY

CARSON CITY, September 5, 1923.

Under the provisions of the sixth subdivision of section 5 of "An Act to provide revenue for support of the State of Nevada, and to repeal certain Acts relating thereto," approved March 23, 1891, as amended by chapter 203, Statutes of 1923, which provides that "the property of widows and orphan children not to exceed the sum of $1,000 to any one family shall be exempted from taxation; *and provided further,* that no such exemption shall be allowed any one, the total value of whose property within the State exceeds $4,000; *and provided further,* that no such exemption shall be allowed any one, the total value of whose property within the State exceeds $6,000," which of the above-quoted conflicting provisos shall be given effect in the assessment and taxation of the property of widows and orphan children?

OPINION

It will be noted from the above-quoted provisos that they are in irreconcilable conflict, and that one or the other of the two must fall. In such circumstances it is the well-settled rule of statutory construction that where one part of a statute is in conflict with another, and they cannot be brought into harmony by any rule of construction, the one being later in position must be deemed to render the other nugatory or repeal it. Being later in position, the prevailing provision is deemed later expression of the legislative will. In the reading of a bill, the matter near the close may be presumed to receive the last consideration, and, if assented to, is a later conclusion. Sutherland's Statutory Construction, sec. 349.

In harmony with the above well-settled rule of statutory construction, it is our opinion that the property of widows and orphan children not to exceed the amount of $1,000 to any one family should be exempted from assessment and taxation, provided that the total value of the property belonging to any such widow or orphan children shall not exceed the sum of $6,000.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

85. **Health—Physicians—Optometry—Unlicensed Persons.**

Stats. 1913, chap. 106, as amended Stats. 1923, chap. 100: No unlicensed person may perform any branch of optometry for the public.

INQUIRY

CARSON CITY, September 5, 1923.

Under the provisions of chapter 106, Statutes of 1913, commonly known as "the Optometry Law," as amended by chapter 100, Statutes of 1923, may a regularly licensed physician, or a regularly licensed optometrist, employ a person who is not a regularly licensed optometrist, to do refraction work for the public?

OPINION

After a close examination of the provisions of the law above referred to, it is our opinion that neither a regularly licensed physician, nor a regularly licensed optometrist, may lawfully employ an unlicensed person to do for the public any of the things included within the provisions of section 1 of the optometry law, above referred to, whether such unlicensed person works under the supervision of a licensed physician or optometrist, or otherwise.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. CHAS. O. GASHO, *President of Nevada State Board of Examiners in Optometry, Reno, Nevada.*

SYLLABUS

86. **Labor—Banks and Banking—Eight-Hour Law for Women.**

Stats. 1917, sec. 1, chap. 14, does not apply to women working in banks, as they are not "mercantile establishments."

INQUIRY

CARSON CITY, September 6, 1923.

Inquiry is made for construction of section 1 of chapter 14, Statutes of 1917, which limits the hours of labor of women to eight hours in any twenty-four-hour period. An opinion is requested as to whether the banking business is included in the words "mercantile establishment," so as to include women employees of banks.

OPINION

Section 1 of the Act provides:

> No female shall be employed in any manufacturing, mercantile, or mechanical establishment, laundry, hotel, public rooming-house, apartment house, place of amusement, or restaurant * * * more than eight hours during any one day or more than fifty-six hours in one week.

To answer this question it is necessary to determine whether the banking business would come within the provisions of the words "mercantile establishment."

In the case of Zugalla v. International Mercantile Agency, 142 Fed. 927, the Court held:

> The term "mercantile pursuits" in bankruptcy Act, 1898, chapter 41, making corporations principally engaged in such pursuits subject to the Act, is to be given its common and generally understood meaning, and includes only corporations engaged in the buying and selling of commodities.

In the case of New York Building and Loan Banking Co., 127 Fed. 471, it was held that the phrase "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits" did not include a building-and-loan association.

The word "bank," in its most enlarged sense, includes the business of receiving deposits, paying checks, lending money. Weed v. Bergh, 25 L. R. A. 1217.

I am of the opinion, therefore, that the words "mercantile establishment" do not include the business of banking, and the provisions of section 1, supra, do not apply to banks.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Frank Ingram, *Labor Commissioner, Carson City, Nevada.*

SYLLABUS

87. Revenue—License for Automobile Not in Use.

Stats. 1923, p. 54, does not require payment of license by owner of automobile not being used, but he must file statement of ownership as required.

INQUIRY

Carson City, September 18, 1923.

A ruling is requested as to whether or not the owner of an automobile is liable for the payment of a license to the State, where the automobile is not used at any time during the entire year.

OPINION

Statutes of 1923, p. 54, provide:

> "An Act to amend an Act entitled 'An Act regulating automobiles or motor vehicles in public roads,' " etc.

Under subdivision a of section 2 it is provided:

> The owner of every automobile, motorcycle, etc., shall, within ten days after the acquisition of the same, file with

> the Secretary of State, three copies of a statement containing his name and address.
>
> The second paragraph of section 2 provides that immediately upon receipt of the statements the Secretary of State shall forward a copy of the same to the Tax Commission.

It is my opinion that, unless the owner of an automobile uses the same on the public highways of this State, he is not liable for the payment of a license fee. He is required, however, within ten days after the acquisition of an automobile to file a statement with the Secretary of State as provided in section 2, subdivision a.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

88. **Fish and Game—Pheasants and Quail—County Commissioners.**

Stats. 1923, chap. 195, provides that County Commissioners may fix open and closed seasons for pheasant and valley quail.

INQUIRY

CARSON CITY, October 8, 1923.

Our attention is called to the fact that the several County Commissioners of this State, in fixing the open season on pheasants and valley quail, have prescribed different periods of time for hunting the same. An opinion is requested as to the legality of these orders, and whether the same is authorized by law.

OPINION

Your attention is directed to section 3, Statutes of 1923, chapter 195, which provides:

> The Board of County Commissioners of the several counties of this State may declare the open or closed season on pheasants and on valley quail, and, keeping within the limits prescribed in this Act, may regulate the number of same to be killed * * *; and it shall be unlawful for any person to take, or to attempt to take, * * * except between those dates set by the Board of County Commissioners.

It appears, therefore, from the provisions of this section that the Board of County Commissioners may, by ordinance, establish the season for pheasants and valley quail.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

89. **Public Officers—Deputy Recorder's Compensation.**

(1) Rev. Laws, 2848, as amended Stats. 1921, p. 151: Recorder of Humboldt County may appoint deputy, but county would not be liable for his salary.

(2) If deputy made and certified an abstract in official capacity, fee therefor should be paid to county; if he made abstract in individual capacity, not affixing Recorder's seal, he might retain fee.

INQUIRY

CARSON CITY, October 8, 1923.

You request an opinion relative to employing a Deputy Recorder in your county, whether the same is authorized by law, and, further, if such deputy could retain fees for making abstracts.

OPINION

Section 2, Statutes of 1921, p. 151, provides:

> The County Recorder and Auditor shall receive $3,000 per annum, which shall be compensation in full for all services.

There is, of course, no authority for employing a deputy, in this statute.

Section 2848, Revised Laws of 1919, vol. 3, provides:

> All * * * County Recorders are hereby authorized to appoint deputies who shall have power to transact all official business appertaining to said office, to the same extent as their principals.

It appears, therefore, that you, under the law, are authorized to appoint a deputy. Humboldt County, of course, would not be liable for compensation of such deputy. The same must be paid by you. If this deputy should prepare abstracts of title and certify to the same in his official capacity, as Deputy County Recorder, the fees derived therefrom would have to be paid to the county. If such work, however, is performed by him in his individual capacity, the fees might be retained by him, providing, of course, that the seal of the County Recorder is not placed on any of the instruments so prepared.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

90. Mines and Mining—Hoisting Engineer.

Rev. Laws, 4233: Hoisting engineer should not leave post of duty when men are at work in mine.

INQUIRY

CARSON CITY, October 9, 1923.

May a hoisting engineer, while men are at work in a mine, lawfully perform other duties, such as looking after the batteries, generators, etc.?

OPINION

Section 4233, Revised Laws of Nevada, 1912, provides:

> At all times when men are in a mine, worked through a shaft equipped with hoisting machinery, an engineer shall be kept on duty to answer signals.

It is my opinion that the purpose of the above and foregoing provision is to insure the presence of the hoisting engineer at all times when men are in the mine, in close proximity so that he may answer calls given to him from men underground. It would be a violation of the spirit of the law to permit a hoisting engineer to engage in other duties that would take him away from the hoisting machinery, and I conclude, therefore, that the question must be answered in the negative.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. A. J. Stinson, *Inspector of Mines, Carson City, Nevada.*

SYLLABUS

91. Public Officers—Compensation of District Attorney of Elko County.

Rev. Laws, 3677, Stats. 1917, p. 295, as amended Stats. 1919, p. 37: District Attorney is not entitled to fee in delinquent-tax case.

INQUIRY

Carson City, October 29, 1923.

My attention is directed to Statutes of Nevada, 1919, p. 37, wherein provision was made for compensating the District Attorney of Elko County.

In connection with this section reference is made to section 3677 of the Revised Laws of Nevada, which authorizes the collection of attorney fees in cases instituted for the purpose of collecting delinquent taxes.

An opinion is requested as to whether the District Attorney is entitled to retain the compensation that is paid as attorney fees in delinquent-tax proceedings.

OPINION

Section 1, Statutes of 1917, p. 295, provides:

> From and after the passage and approval of this Act the county officers of Elko County, Nevada, named in this Act, shall receive the following salaries in full compensation for all services rendered by them.

Section 2, Statutes of 1917, p. 295, was amended by Statutes of 1919, p. 37, and under the amendment the salary of the District Attorney was fixed in the sum of $3,000 per annum. Further provision was made that the said $3,000 per annum is "for all services as such officer."

In the early history of legislation of this State compensation of the several county officers was placed upon a fee basis. Within the last ten years the Legislature has compensated the several officers upon a salary basis, and the provisions in reference to fees have been entirely eliminated.

It is my opinion that the District Attorney is not entitled to retain attorney fees collected in delinquent-tax cases under section 3677.

The doctrine of law applicable to the facts here presented is stated in 18 C. J. 1328, as follows:

> A constitution or statute fixing a salary in full payment of all services abolishes all fees pertaining to the office. (See, also, Tilden v. Esmeralda County, 32 Nev. 319.)

The Supreme Court of California, in the case of Kern County v. Fay, 56 Pac. 857, supports the text recited, supra.

The case of Nolan v. Ellis County (Kan.), 68 Pac. 1068, appears to hold to the contrary, but an examination of this case discloses that the statute of Kansas provided that, in addition to the compensation as fixed, the officer was entitled to fees.

The question presented, therefore, must be answered in the negative.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. T. MATHEWS, *District Attorney, Elko, Nevada.*

SYLLABUS

92. **Revenue and Taxation—Property in Two Counties.**

Rev. Laws, 3628: Owner of property assessed by two counties may select one to which he pays taxes. Production of tax receipt by one county entitled him to dismissal of action by other county, free of costs.

INQUIRY

CARSON CITY, November 7, 1923.

You advise that the Assessor of Lander County has raised the question of the location of the boundary-line between Lander County and Eureka County. It is said that several assessments in reference to the same property have been levied in both counties, and you request an opinion as to what a taxpayer should do in reference to payment of taxes where his property has been assessed by both counties.

OPINION

Section 3628, Revised Laws of Nevada, 1912, provides:

> When real property is assessed by the County Assessors of two counties on territory claimed by both, the owner of the real estate assessed is hereby authorized to pay said taxes in either county that he may select, and, in case of suit being brought for the nonpayment of said taxes in the county in which said suit may be brought, the production of a tax receipt for the current year on said property, signed by the proper authority, although in an adjoining county claiming jurisdiction, of a date prior to the commencement of said action, shall entitle said taxpayer to a dismissal of said suit free of costs.

This provision of the law clearly outlines a method of procedure in the matter indicated.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

93. **Schools—Athletics—Physical Examinations.**

(1) Rev. Laws, 3311, 3313: School Trustees and County Boards of Education have power to establish rules for the welfare of pupils.

(2) Scholars desiring to engage in athletic contests, where physical examination is desired and permission therefor is refused, should present written permission of parents.

(3) The right of Trustees or boards to make reasonable rules in cases of emergency is not denied.

INQUIRY

CARSON CITY, November 16, 1923.

Your request an answer to the following inquiry:

> Has the County Board of Education the power to compel pupils attending the high school, who desire to participate in scholastic contests, to submit to an examination before they are allowed to play on the school team?

OPINION

Section 3311 of the Revised Laws of 1912 provides that the Board of School Trustees is given such reasonable and necessary powers as may be necessary to attain the ends for which the public schools are established and to promote the welfare of school children.

Section 3313, Revised Laws of 1912, confers the same power on the County Boards of Education.

It must be remembered that the pupils who attend the public schools represent every religious denomination. It must also be borne in mind that certain religious denominations may object to the action contemplated. Without questioning the right of the board to insist on the physical examination, I respectfully suggest that consent of the parents be first obtained in every instance where a physical examination is desired, and, if consent for the physical examination is refused, that, before the child be permitted to engage on a high-school athletic team, written permission from the parents of the child be first obtained.

This opinion is not to be taken or construed as a denial of the right of the board in cases of emergency, or when the welfare of the public might require the exercise of that power conferred under section 3311.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. HOWARD E. BROWNE, *District Attorney, Austin, Nevada.*

SYLLABUS

94. **Public Officers—Residence Qualification.**

Stats. 1866, as amended Stats. 1921, p. 5: Where state boundary-line runs through small town, and School Trustee, formerly residing on Nevada side, removed across line to another part of same town, in view of fact that residence is matter of intention and under all the circumstances of the case, Trustee is not disqualified.

INQUIRY

CARSON CITY, November 19, 1923.

You call my attention to the geographic status of one of the School Districts in the northern part of this State. It appears that the state-

line dividing Oregon and Nevada runs through the center of a small town, with the result that persons living on one side of the street are residents of the State of Oregon, and those on the other are residents of the State of Nevada.

Directing my attention to these facts, you advise that the Clerk of the Board of School Trustees, while formerly residing on the Nevada side, has now moved, and for five or six months has resided on the Oregon side of the street.

You request an opinion as to whether this Trustee, by reason of these facts, has become disqualified to hold the office of School Trustee.

OPINION

In addition to the facts above recited, it appears from your letter that the School Trustee did not remove all the furniture from the house located in the State of Nevada. Subdivision 6, section 35, of an Act entitled "An Act relating to officers, their qualifications, times of election, terms of office, official duties, resignations, removals, vacancies in office, and the mode of supplying same, misconduct in office, and to enforce official duty," approved March 9, 1866, as amended February 10, 1921, p. 5, provides:

> Sec. 35. Every office shall become vacant upon the occurring of either of the following events before the expiration of the term of such office: * * * 6th: The ceasing of the incumbent to be a resident of the State, district, county, city, or precinct in which the duties of his office are to be exercised, or for which he shall have been elected or appointed.

The reasons which prompted the Legislature to adopt this salutary provision of law are very apparent. To perform efficiently the duties of an office requires a sufficient interest in the welfare of a county or State, which can only be appreciated and understood by a resident of the State. The abandonment of such residence discloses a mental state inconsistent with an understanding of the best interests of the State and with desire to serve.

It cannot be said that, with this standard in view, the Trustee in question, by the mere fact of moving fifty or one hundred feet to the State of Oregon from her former residence in Nevada thereby became disqualified to hold the office of School Trustee.

Residence is a matter of intention, and, under the circumstances stated, and in view of the peculiar state of facts existing, it would be a harsh rule that would disqualify under the circumstances. It would be placing a strict and rigid construction upon section 35, supra, to hold that for the reasons indicated the Trustee was disqualified, and I decline to so construe the provisions of this Act. It is my opinion, therefore, that, under the facts stated, the School Trustee is not disqualified.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. J. Hunting, *Superintendent of Public Instruction.*

SYLLABUS

95. Animals—Brands.

Stats. 1923, chap. 26, sec. 2: Application for new brand should contain recital of abandonment of old brand.

Stock Commissioners may make rules not inconsistent with law.

INQUIRY

CARSON CITY, November 19, 1923.

You call my attention to Statutes of 1923, chap. 26, providing for the adoption and recording of brands, etc., and direct an inquiry concerning the right of an individual after obtaining a mark or brand under sections 11 and 13 to abandon the same for legitimate reasons and secure a new mark or brand.

OPINION

Although there is no specific provision authorizing the procedure indicated, I am of the opinion that, under section 2 of this Act, the Board of Stock Commissioners is authorized to make rules and regulations not inconsistent with the Act, and a rule governing the facts in the case stated would be authorized.

Of course, it would be necessary for the person desiring to abandon a mark or brand to execute a certificate of abandonment containing the proper statement of fact, which certificate should be acknowledged as required by section 11. The certificate should then be recorded in your office. When the application for a new brand is filed with the board, notice of the application should contain a recital of the abandonment of the old mark or brand.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *Secretary State Board of Stock Commissioners.*

SYLLABUS

96. Revenue and Taxation—Inheritance-Tax Exemption.

Constitution, sec. 1, art. 10, Stats. 1913, p. 411, subd. 2: $10,000 is all that should be deducted in fixing amount upon which inheritance tax is based in the classification stated.

INQUIRY

CARSON CITY, November 19, 1923.

Section 4, Statutes of 1913, p. 411, known as the "Inheritance-Tax Law," and subdivision 2 thereof, provide as follows:

> The following exemptions from the tax are hereby allowed:
>
> Subdivision 2: Property of the clear value of $10,000 transferred to any or all of the persons described in the second subdivision of section 2 shall be exempted.

Subdivision 2 of section 2 provides:

> Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a

> descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of 2 per centum of the clear value of such interest in such property.

In arriving at the tax to be paid the State in the Dromiack estate we, in an oral opinion, held that an exemption of $10,000 was allowable to all the persons described in subdivision 2 of section 2, as a class or group. It is insisted by attorneys representing the parties that our construction of this section is erroneous, in that all who inherit $10,000 are not treated alike. For example, if there is one person in subdivision 2, such person could claim an exemption of $10,000; but, if there are four persons in subdivision 2, these four persons could claim only $2,500 each as an exemption. It is urged that our interpretation of this section might be contrary to the Federal Constitution, giving to all persons of a class equal protection of the law; that it would violate the provisions of the Nevada Constitution in section 352, vol. 1, Rev. Laws, providing, in part, "that the Legislature shall provide by law for a uniform and equal rate of assessment and taxation."

In order to clear up any misunderstanding in reference to this section, an official opinion is requested as to whether an exemption is allowed of $10,000 to all persons specified in said provision, or if each person is entitled to an exemption of $10,000.

OPINION

The contentions presented are based upon a false premise—to wit, it is assumed that the inheritance-tax provisions come within section 1, article 10 of the Constitution of the State of Nevada. This section provides:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation * * *.

The Supreme Court of this State has held that the tax contemplated within the provisions of the inheritance-tax law

> is not a property tax, but excise tax on privilege of transfer. In Re Williams, 40 Nev. 241; Cole v. Nickel, 43 Nev. 12.

The Supreme Court of the United States, in the case of Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283, stated:

> The constitutionality of inheritance taxes is based upon two principles: (1) An inheritance tax is not one on property but one on succession. (2) The right to take property by devise or descent is a creature of the law and not a natural right, * * * a privilege, and, therefore, the authority which confers it may impose conditions upon it. From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective Constitutions requiring uniformity and equality of taxation.

The Constitutions of most of the States require equality and uniformity in taxation; but these provisions are held to apply only to property taxes and not to inheritance taxation.

Booth v. Comm., 113 S. W. 61.
Tyson v. State, 28 Md. 577.
Beals v. State, 121 N. W. 347.
Dixon v. Ricketts, 72 Pac. 947.

The general rule has been that exemptions shall be strictly construed against the exemption and in favor of the tax.

Re Bull, 96 Pac. 366.
Matter of Francis, 148 N. Y. Supp. 1116.

The Supreme Court of the State of Washington has had occasion to pass upon a statute of that State where the provision of the statute in reference to the exemption, as to a particular class, was ambiguous. The Court stated:

> When we construe this language strictly, notwithstanding the fact that it is a change in language from the original Act granting the exemption of $10,000, we are of the opinion that the statute manifestly meant that only one exemption of $10,000 should be allowed, and not as many exemptions as there were heirs or legatees, if there were more than one. In Re Ferrel's Estate, 192 Pac. 10; In Re Weller's Estate, 194 Pac. 541.

There is no ambiguity in the language used by the Legislature of this State in allowing exemptions. Subdivision 2 of section 4 provides:

> Property of the clear value of $10,000 *transferred to any or all of the persons described in the second subdivision of section 2 shall be exempted.*

It is my opinion, therefore, that an exemption of $10,000 is allowed to any or all of the persons described in the second subdivision of section 2. This is true if there is but one of said persons or if they number more than one. The conclusion is, therefore, that in the given case one exemption of $10,000 is all that should be deducted in fixing the amount upon which the tax is to be based.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Geo. A. Cole, *State Controller, Carson City, Nevada.*

SYLLABUS

97. **Nevada Industrial Commission—Provisions of Act Mandatory on State Agencies.**

Stats. 1913, chap. 111, subd. b: The provisions of the Act are mandatory in all contracts by State or state agencies.

INQUIRY

Carson City, November 20, 1923.

An opinion from your office is requested as to whether or not it is mandatory upon contractors under State, county, municipal corporations, or school districts, to comply with the provisions of the Nevada Industrial Insurance Act.

OPINION

Subdivision b, Statutes 1913, chapter 111, as amended, provides:

(b) Where the State, county, municipal corporations, school districts, cities under special charter, or commission form of government is the employer, the terms, conditions, and provisions of this Act for the payment of compensation and amount thereof, for such injury sustained by an employee of such employer, shall be exclusive, compulsory, and obligatory, upon both employer and employee.

The Supreme Court of this State in the case of Nevada Industrial Commission v. Washoe County, 41 Nev. 450, in upholding the constitutionality of the Industrial Commission Act, as applied to agencies of the State, stated:

Unquestionably the county is an employer of workmen. In my judgment, the spirit as well as the letter of the whole Act manifests an intention to provide for a systematic arrangement for compensation for injured or afflicted workmen in whatever capacity such might be employed, and to provide that where, as in counties and municipalities, the State is sovereign, such arrangement should be compulsory. This is but following out the fundamental ideas basic to all compensation Acts; i. e., that the industry or employment which requires human agency for its operation should look to the care and upkeep of that agency no less than to other elements of efficiency.

It appears, therefore, that the terms and provisions of the Act are conclusive, compulsory, and obligatory in respect to employees of the State and agencies of the State. The compulsory obligation so placed upon such State or state agency to provide for a systematic arrangement for compensation for injured workmen cannot be evaded by letting a contract to any person or corporation who has the right under the Act to reject its provisions.

All contracts, therefore, executed by the State or a state agency must be executed and entered into in view of the State or state agencies' obligation as to the protection of the workmen engaged.

It is my opinion, therefore, that the provisions of this Act are mandatory upon contractors under this State, or state agency, and the same must be complied with.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada.*

SYLLABUS

98. **Animals—Trespass by Live Stock—Fence Law.**

(1) Rev. Laws, 2335-2337: Unauthorized herding and grazing of live stock on another's land is unlawful. Trespasser is liable for damages and costs. Act does not apply to stock running at large.

(2) Stats. 1917, p. 415: Damages are not recoverable for trespass on unfenced land. "Fence" defined.

(3) Stats. 1919, p. 290: County Commissioners may prohibit stock running at large.

(4) Stats. 1915, p. 278: Stock must not contaminate water supply of towns.

(5) Stats. 1917, p. 124: Stock must not be herded on lands, at wells or springs, or within one mile of home or ranchhouse of another.

(6) No comment is necessary on the law.

INQUIRY

CARSON CITY, November 27, 1923.

You submit several complaints from parties residing at Logandale, Nevada, and vicinity. These complaints enumerate charges that the owners of cattle in that vicinity permit their stock to enter in and upon the ranches and cultivated farm lands, with the result that the practice is destroying the crops of almost every farmer.

Information is requested as to the respective rights of the cattleman and the farmer; the legal duty of the cattleman to keep his stock from trespassing upon the lands of another, and what remedy or redress the farmer has where cattle trespass on his land. Information is further requested as to what effective measures now exist on the statutes of this State which might remedy the situation here presented.

OPINION

The conditions enumerated are brought about no doubt by scarcity of range, with the resulting effect that cattle from necessity are required to trespass on any or all lands to secure sustenance.

I have made a careful study of the legislative enactments of this State in an effort to suggest a remedy.

Your attention is directed to the following provisions of law which are applicable as preventive measures.

Sections 2335, 2336, and 2337 of the Revised Laws of Nevada, 1912, provide:

> SECTION 1. It shall be unlawful for any person or persons to herd or graze any live stock upon the lands of another without having first obtained the consent of the owner or owners of the land so to do; *provided*, that the person claiming to be the owner of said lands has the legal title thereto, or an application to purchase the same, with first payment made thereon.
>
> SEC. 2. The live stock which is herded or grazed upon the lands of another, contrary to the provisions of the first section of this Act, shall be liable for all damages done by said live stock while being unlawfully herded or grazed on the lands of another, as aforesaid, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor, and said live stock may be seized and held by writ of attachment issued in the same manner provided by the general laws of the State of Nevada, as security for the payment of any judgment which may be recovered by the owner or owners of said lands for damages incurred by reason of a violation of any of the provisions of this Act, and the claim

and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of said action.

SEC. 3. This Act shall not apply to any live stock running at large on the ranges or commons.

In connection with these provisions of law, Statutes of 1917, p. 415, should be considered. They read as follows:

SECTION 1. No person, firm, or corporation shall be entitled to collect damages, and no court in this State shall award damages, for any trespass of live stock on cultivated land in this State if such land, at the time of such trespass shall not have been enclosed by a legal fence as hereinafter defined.

SEC. 2. A legal fence is hereby defined for the purposes of this Act as a fence with not less than three horizontal barriers, consisting of wires, boards, poles, or other fence material in common use in the neighborhood, with posts set not more than twenty feet apart. The lower barrier shall be not more than sixteen inches from the ground and the space between any two barriers shall be not more than sixteen inches and the height of top barrier must be at least forty-eight inches above the ground. Every post shall be so set as to withstand a horizontal strain of two hundred and fifty pounds at a point four feet from the ground, and each barrier shall be capable of withstanding a horizontal strain of two hundred and fifty pounds at any point midway between the posts.

Statutes of 1919, p. 290, provide:

SECTION 1. The Boards of County Commissioners of the respective counties of the State are hereby authorized, upon petition of twenty per cent of the taxpayers residing in any district therein defined, to pass ordinances prohibiting horses, cattle, swine, goats, or sheep from running at large upon any portion of the roads and highways within said district which are fenced on both sides.

SEC. 2. Such petition may be presented at any regular or special meeting of any Board of County Commissioners of this State, and shall define the boundaries of the district sought to be established, and shall pray that such district may be established, and that an ordinance may be passed by said Board of County Commissioners prohibiting any of the live stock mentioned in section 1 of this Act from running at large therein.

SEC. 3. The said Boards of County Commissioners are hereby authorized and empowered to provide in such ordinances for the impounding and sale of any such live stock running at large within such district, and making a violation of any of the provisions of said ordinance a misdemeanor and punishable as such.

It is also urged that the cattle contaminate the water system of certain towns in Clark County. I direct your attention to Statutes

of 1915, p. 278, which make it a misdemeanor to "herd, graze, or drive live stock on, over, or across certain lands." This Act provides:

SECTION 1. It shall be unlawful for any person, persons, firm, corporation, or association, owning or having charge of any live stock, to herd, graze, pasture, keep, maintain, or drive the same upon, over, or across any lands lying within one mile of any surface intake, intakes, water-boxes, or surface reservoirs, used for gathering, storing, and conducting water, when said lands are situated within the watershed of any stream, streams, springs, ponds, lakes, or reservoirs, waters from which, when so gathered and stored, are used for municipal, drinking, or domestic purposes by the residents and inhabitants of any city or town in the State of Nevada having a population of fifteen hundred or more people.

SEC. 2. Section 1 of this Act shall not be construed to apply to prospectors or other persons passing over or being temporarily upon said lands with not to exceed ten head of live stock. Neither shall said section apply to live stock running at large upon the ranges.

Statutes 1917, p. 124, provide:

SECTION 1. It shall be unlawful for any person owning, or having charge of, any live stock to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within one mile of a bona-fide home or a bona-fide ranchhouse; *provided*, that nothing in this Act shall prevent the owners from herding or grazing their live stock on their own lands; *and further provided*, that nothing in this Act shall be construed as to prevent live stock being driven along any public highway.

SEC. 2. The owner or agent of such owner of live stock violating the provisions of section 1 of this Act, on complaint of the party injured, in any court of competent jurisdiction, shall be liable to the person injured for actual and exemplary damages.

The various sections have been quoted for the reason that, if this opinion is distributed to all the parties interested, the law may be before them for examination.

No necessity appears for comment on the law.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. JAMES G. SCRUGHAM, *Governor of Nevada, Carson City, Nevada.*

SYLLABUS

99. Municipalities—Bonds of Caliente, by Whom Signed.

Stats. 1921, p. 71: City bonds should be signed by person in office at date of their negotiation and delivery.

INQUIRY

CARSON CITY, November 30, 1923.

You call my attention to an Act of the Legislature approved March 4, 1921, Statutes of 1921, p. 71.

This statute authorizes the issuing of bonds in the amount of $30,000 by the Town of Caliente, State of Nevada.

You advise that the town has sold $20,000 worth of these bonds, and it is now deemed advisable to sell the balance of the bonds.

Information is requested as to whether those bonds which have not been executed should be signed by the present Clerk of the Town Board, or whether they should be signed by the former Clerk.

OPINION

The Supreme Court of Washington, in the case of Yesler v. Seattle, 25 Pac. 1014, reviewed the point here presented and held:

> A statute which requires city bonds to be signed by the Mayor of the city is sufficiently complied with by the signing of the bonds by the person occupying the office at the date of their negotiation and delivery, although he was elected after the day of their date.

It is my opinion, therefore, that the bonds should be executed by the present Town Clerk.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. F. E. WADSWORTH, *District Attorney, Panaca, Nevada.*

SYLLABUS

100. Constitutional Law—Animals—Loaning Public Funds—Expenditure of Public Funds by Private Associations Disapproved.

(1) State Board of Stock Commissioners is advised not to pay money to private stock associations to promote industry, though section is not declared unconstitutional.

(2) Officers of such associations are not public officers.

(3) Only public officers may expend public funds.

INQUIRY

CARSON CITY, December 5, 1923.

Attention is directed to Statutes of 1923, chap. 57, p. 68, with request for an official opinion as to the constitutionality of the provisions therein contained. The Act reads:

> SECTION 1. There is hereby added to the above-entitled Act a new section, to be numbered section 6b, and to read as follows:
>
> Section 6b. The board shall have power to do all things it may consider necessary to encourage, promote, advance, and protect the livestock interests of the State, and may directly or indirectly, by expenditure, or by payment or otherwise to any association formed for any such purpose or objects, pay annually out of the stock inspection fund for any of such enumerated purposes not to exceed an amount equivalent to a

levy of one mill on the dollar of total tax valuation for the preceding year on live stock under its jurisdiction. The board shall be the sole and exclusive judges of the expenditures of all sums directly or by the payment to any association, club, or other organization as herein provided.

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

OPINION

The history of legislative activity seeking to aid and promote the livestock industry of this State shows that legislative cognizance was first taken in 1915 (Stats. 1915, p. 396). This Act created the State Board of Stock Commissioners, the members of which were appointed by the Governor, to hold office for a term of four years. Their duties consisted of exercising general control over live stock by inspection and enforcement of quarantine measures, appointing livestock inspectors, and assisting in enforcement of criminal statutes in reference to branding and stealing of live stock.

Section 4 of this Act (Stats. 1915, supra) provides:

> The Board of County Commissioners, at the time of the annual levy of taxes, must, at the request of the board, levy the rate of tax recommended by the board, *not to exceed 6 mills on the dollar, on all cattle, horses, and hogs, assessed in their respective counties, according to the assessed valuation of the same, the said tax to be collected as other taxes and paid to the State Treasurer, who must keep the same in a separate fund to be known as the "Stock Inspection Fund."*

Various sections of this Act were amended by Statutes of 1919, p. 41. The amendments gave to the board additional regulatory powers. The provision of section 4, supra, was amended authorizing tax to be levied annually.

The amendment of 1923 (Stats. 1923, p. 68) empowered the board "directly or indirectly by expenditure or by payment, or otherwise, to any association formed for any such purpose or object (viz: to encourage, promote, advance, and protect the livestock industry of the State) pay annually, out of the stock inspection fund, for any such enumerated purposes, not to exceed an amount equivalent to a levy of one mill on the dollar of the total tax valuation for the preceding year on live stock under its jurisdiction."

It further provides that "the board shall be the sole and exclusive judges of the expenditures of all sums of money directly or by the payment to any association, club, or other organization as herein provided."

Section 4 (Stats. 1915 and 1919, supra) commands the Boards of County Commissioners in their respective counties at the request of the board, to levy a tax not to exceed 6 mills per annum on all cattle, horses, and hogs, the said tax to be collected as other taxes and paid to the State Treasurer, who must keep the same in a separate fund to be known as the stock inspection fund.

The funds to be used by the board in making payments to associations or clubs under section 6b, supra (Stats. 1923), are derived from the tax authorized and collected under section 4 (Stats. 1915 and 1919, supra).

In adding section 6b the Legislature has authorized the Board of Stock Commissioners to donate money, which has been collected by the taxing power of the State, to associations which have for their purpose and object the promotion of the livestock interest.

Section 9 of article 8 of the Constitution of the State of Nevada provides:

> 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 or charitable purposes.

The question to be determined is whether section 6b violates this provision of the Constitution.

In the early history of this State the Supreme Court, in considering the limitations of our Constitution, affirmed the principle that all political power originates with the people, but it cannot be claimed that either the legislative, executive, or judicial powers can be exercised by them. The supreme lawmaking power, the Legislature, may do anything not prohibited in the organic law, by which it is created, and, unless its acts are "clearly, palpably, and plainly in conflict with some provision of the Constitution, they will not be declared unconstitutional."

Ash v. Parkinson, 5 Nev. 15;
Gibson v. Mason, 5 Nev. 283;
State v. Arrington, 18 Nev. 415.

The appropriation of public money for other than strictly governmental purposes and its expenditure through *any other than official channels have been most carefully limited* by section 9 of article 8 of the Constitution of the State of Nevada, supra.

The Board of Stock Commissioners is a state agency, controlled by the officers appointed by the Governor, and its right to expend money for the public purposes enumerated cannot be doubted.

The amendment (sec. 6b, Stats. 1923, supra) authorizes the payment of money derived from taxation "to any association." The only legislative restriction placed upon the board in making the donation is that the association entitled to the funds must be one formed for the purpose of encouraging, promoting, or advancing the livestock interests. No provision is made in the amendment denominating the association to whom the money is donated a part of the Stock Commission, or any agent thereof. No provision is made giving the State any supervision over such association. No officer of the State has any control or authority over the affairs of such association. Those managing the association are not public officers. The associations are separate and distinct, composed of private individuals, managed and controlled by officers and agents of their own, and for the money entrusted to them no account is required to be made or given to any state agency.

The Board of Stock Commissioners in making these appropriations entirely abdicates all discretion over the subject-matter of the application and expenditure thereof. They become, therefore, mere donations. The payments so made to said associations are to be expended by individuals who are not municipal agents, or subject to any control

or accountability as to the use and application of the money. It is plain that the board could have no power to make appropriations or donations to these associations simply as such, nor because merely of the laudable objects and purposes for which they were created by their founders and promoters; it is only because of the actual services and benefits rendered to the live stock of the State that any claim could be urged for their support from the state treasury. And if this be so, what guarantee has the State that service or benefits will accrue commensurate with the donations that are made? The same principle that would sustain these appropriations would equally sustain donations to every corporation or association engaged in what might be termed the "public good" throughout the State. When once we concede the power to make gifts of this kind, it will be in vain to invoke the courts to exercise a discretion as to any limit in the amount or extent of them.

The Legislature, by this amendment, authorizes a donation to private associations. Such associations are private in the sense that they proceed from the voluntary action of the individual citizen alone. The agents or officers of such association are appointed or selected from its membership. All those who are called upon to pay this tax may, or may not, have a voice in directing the affairs of the same. It cannot be said that the agents of such association are invested, by virtue of their agency alone, with the power of public officers. Such a theory in substance devolves the choice of public officers on a few of the citizens, while, under the Constitution, all public officers must be elected or appointed by other public authorities, and thus trace their title to power and authority back to the people.

It is very dangerous legislative precedent which establishes and sanctions the distribution of money, legally collected as taxes, to a private corporation. It may be admitted that the object or purpose of the association thus formed is a public purpose, in the sense that it is being conducted for the public benefit, but it cannot be said to be a public purpose within the meaning of our taxing laws, unless it is managed and controlled by the public.

Under the provisions of section 6b, as we have heretofore stated, the people upon whom is placed the burden of paying the tax may have no voice in the selection of servants of the association, who are permitted under the Act to expend the money. Neither have they any voice in the selection of a manager or a board of directors who might control and manage the affairs of such an association.

In the case of Attorney-General v. Board of Supervisors of Bay County, 34 Mich. 46, the Court stated:

> Taxes and loans, when authorized to be raised for any public body, must be raised under the implied condition that they are to be applied to the public uses *under the control or care of that body.*

Again it is said:

> It has always been the policy of our law, and no instance can be pointed out where one, other than a public official, either by election or appointment, *has had charge of the disbursements of public funds.* State v. St. Louis, 115 S. W. 534.

In the case of University of Maryland v. Williams, 31 Am. Dec. 72, the Court stated:

> While the uses or objects may in a certain sense be called public, yet the corporations, as distinguished from the uses or objects, are private.

Then, again, the Legislature, by enacting the provisions contained in Statutes of 1915 and 1919, supra, has "created a state agency for regulating, assisting, and promoting, as well as protecting, the interests of the livestock industry of this State." A serious objection presented in considering the amendment of 1923 is that, under its provisions, there is a delegation to private associations of the powers heretofore conferred upon the state agency.

It is elementary, of course—

> that political or police power cannot be delegated to private persons or corporations over whom, or which, there is no supervision, and no liability to act; nor can others be appointed to discharge the duties of public officers. State v. Goldthait, 87 N. E. 133.

It is apparent, therefore, that the authority which has been delegated to the board in reference to the livestock industry of this State is to be held and exercised by said board as a trust, as well for those who become the objects of it as those who support it by contributions in the form of taxes levied upon their property; and, being an important public trust, it cannot be delegated beyond the power and discretion of those to whom it is confided.

In the language of Judge Sanders, in the case of State v. Churchill County, 43 Nev. 290, it may well be said in reference to this amendment, by paraphrasing his language, that:

> The general objection is that it is a deviation from the usual and the long course of usage of the taxing power.

Section 21 of article 5 of the Constitution provides in part:

> The Governor, Secretary of State, and Attorney-General shall constitute a Board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners with the power to examine all claims against the State * * *.

Section 6b, among other provisions, states:

> The board shall be the sole and exclusive judges of the expenditures of all sums directly or by the payment to any association, corporation, or other organization as herein provided.

It can hardly be advanced successfully that, by reason of section 6b, the Legislature intended to, and by virtue thereof did, make an appropriation of the respective sums of money to the associations, organizations, or corporations designated in said section. One of the essential elements of an appropriation is certainty as to the amount and subject-matter, and these provisions fail to comply with this standard. If, by

reason of this section, the appropriation is not directly made, the expenditures under the constitutional provision would have to be presented to and acted upon by the Board of Examiners. The Legislature could not violate any constitutional mandates contained in section 21 of article 5, supra, and delegate the power thus designated upon public officers other than those enumerated.

Notwithstanding the objections enumerated above, I hesitate to declare unconstitutional the solemn act of the Legislature. This is a prerogative intrusted to the Judicial Department of the government. For the reasons stated, however, I suggest that the Board of Stock Commissioners refuse to make contributions under section 6b.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *Secretary State Board of Stock Commissioners.*

SYLLABUS

101. Schools—Name of High School—Separate Boards for Separate Districts.

(1) Any high school is entitled to take name of county in which it is located.

(2) Stats. 1919, p. 218, as amended Stats. 1921, p. 160: Separate school districts must have separate boards.

(3) Legislature provides for control and government of schools by Trustees.

INQUIRY

CARSON CITY, December 6, 1923.

You submit the following questions for an official opinion:

1. Is the high school at Las Vegas entitled to the name "Clark County High School"? Mr. Kelly of Overton makes the point that there are three high schools in Clark County, and that we are no more entitled to the name "Clark County High School" than the other two are. If this be true, what is the name of this high school? If it has no name, how shall we go about it to establish a name?

2. How, under existing laws, may School District No. 12, Las Vegas Grammar-School District, and Educational District No. 2 be governed by one school board? Or can we place Educational District No. 2 and Las Vegas Grammar-School District under the jurisdiction of one school board, something similar to the one board existing in Educational District No. 1?

OPINION

Replying to your first interrogatory, you are advised that any high school established under the provisions of chapter 13, sections 173–184, School Code of 1923, would be entitled to take the name of the county in which said school is located.

In answer to your second question, you are advised that, under existing laws, School District No. 12, Las Vegas Grammar School, and Educational District No. 2 cannot be governed by one school board; this for the reason that, under the laws as they exist, provision is

made for two separate and distinct boards to have control of the separate school districts.

It will be noted that the Legislature by Statutes of 1919, p. 218, as amended 1921, p. 160, and under section 2 thereof, has made provision for the control and government of all high and elementary schools in said District No. 1, and the same was vested in a Board of Education composed of five Trustees. It will require the same legislative action to accomplish the result indicated in reference to Educational District No. 2 and School District No. 12.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. H. A. WHITENECK, *Principal Clark County High School, Las Vegas, Nevada.*

SYLLABUS

102. Schools—Increase in Census—Additional Teachers.

(1) Trustees are warranted in taking census if they have reasonable ground to believe an increase of 30 has occurred since last census.

(2) The increase is estimated from the last preceding school census.

(3) Report of Trustees to Superintendent of Public Instruction must show increase and necessity for additional teachers.

(4) Only those children not counted in preceding census need be counted.

INQUIRY

CARSON CITY, December 6, 1923.

You request an opinion in reference to the following interrogatories:

1. What action is contemplated that the School Trustees must have taken in order to "have ascertained that since the last regular school-census report there has been an increase of thirty or more census children in the district under their jurisdiction"? Must this be definite information or a mere estimate that there is such an increase of thirty or more census children?

2. In what manner is the increase of thirty or more to be reckoned? Does it mean a net increase of thirty or more census children above the census as reported for the last preceding school census, or does it mean that since the last preceding school census there are thirty or more additional census children who are now residents of the district?

3. Must the school board show that the employment of additional teachers is because the additional school census has increased the attendance so as to overcrowd the rooms as previously maintained, so that additional schoolrooms have to be maintained to care for the children, or would the addition of new departmental work requiring one or more additional teachers be construed to come within the intent of the law?

4. In counting the census children in such a special census is it contemplated that the census of the entire school district shall be taken, or is it contemplated that only a census of

those not counted in the last preceding school census shall be taken to ascertain such an increase of thirty or more?

OPINION

Interrogatory 1. You are advised that it is only necessary for the School Trustees to have reasonably good grounds for believing that an increase in census children exists to warrant them in taking the census. This may be imparted to them by virtue of their own investigation, or they may act upon information received from residents of the district.

Interrogatory 2. Replying to this interrogatory, reference is made to section 131a, School Code of 1923, which provides:

> If any Board of School Trustees has ascertained that since the last regular school-census report there has been an increase of thirty or more census children. * * *

It is my opinion that the increase of census children is to be determined from the last preceding school census.

Interrogatory 3. Replying to this interrogatory, the statute provides (sec. 131a) that a correct report of such increase shall be presented to the Superintendent of Public Instruction, with a showing that there is a necessity for the employment of one or more additional teachers because of such increased school census. It is necessary, therefore, that, in addition to the report showing an increase of census children, there must be a further showing of necessity for the employment of additional teachers.

Interrogatory 4. In counting the census children it is not contemplated that the census of the entire school district shall be taken, but only a census of those not counted in the last preceding school census.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

103. **Criminal Law—Fictitious Check—Gambling.**

(1) Sec. 407, Crimes and Punishments Act, as amended Stats. 1917, p. 10: One who, having lost at poker, gives worthless check covering amount, is guilty of felony, though not guilty of forgery.

INQUIRY

CARSON CITY, December 6, 1923.

One without money or credit, or with insufficient funds in the bank, makes a check out on the bank, and passes same to pay for chips which he had lost in a poker game. In other words, is one guilty of forgery or of a felony, who loses in a poker game and then gives his own check covering the amount, when he has no account with the bank or has insufficient money to cover the same?

OPINION

We have gone into the law quite fully and are of the opinion that, under the circumstances stated in this question, one would be guilty

of a felony under the provisions of section 407, Crimes and Punishments Act, as amended by chapter 9, Statutes 1917. He would not be guilty of forgery.

We do not find any decisions directly in point, but find a number of analogous cases under the forgery statutes of several States, and we believe the same principles applied in those cases would be applicable to section 407, as amended.

The following cases hold:

> In a prosecution for forgery of a check it is immaterial and not a defense that the accused used the proceeds in an unlawful gambling game conducted by the party who cashed the check. State v. McBride, 72 Wash. 390, 130 Pac. 486.
>
> Though furnishing intoxicating liquors to Indians is prohibited by law, Indians may be convicted of forging an order to furnish liquor to "bearer." People v. James (Cal.), 42 Pac. 497.
>
> It was no defense to an information for forging a clearing-house certificate by raising its amount from $1 to $10 that the issue of said paper was contrary to public policy. People v. Collins (Cal.), 99 Pac. 1109.

See, also, Dunn v. People, 4 Colo. 126; People v. Monroe (Cal.), 35 Pac. 326.

The true test of criminality in cases of this kind seems to be, not whether the instrument or the transaction in which it is uttered, passed, or published is unlawful, void, or against public policy, but whether the instrument is capable of defrauding or is efficacious to defraud, or might, in fact, defraud some innocent third person. It is obvious that, if the payee of the check in the case assumed in the inquiry should pass the check to some innocent third person in due course of business, such innocent third person would, or might be, defrauded.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. F. E. WADSWORTH, *District Attorney, Panaca, Nevada.*

SYLLABUS

104. Mineral County—Jurisdiction of County Commissioners—Operating Power System Outside of State—Status of County Ownership.

(1) Secs. 1501, 1529, Revised Laws; Stats. 1911, p. 10; Stats. 1921, p. 80, as amended Stats. 1923, p. 365: Jurisdiction of County Commissioners over power system is not limited to county boundaries, part of system being located in California.

(2) Stats. 1921, p. 80, as amended Stats. 1923, p. 365, amends Rev. Laws, 1508, in so far as Mineral County is concerned, and they are repugnant.

(3) Such amendment does not violate secs. 20, 21, and 25, art. 4 of Constitution.

(4) The operation of the power system outside the State is not a governmental function, but has character of private proprietor, according to California authorities.

(5) Stats. 1921 and 1923 mentioned authorize operation and maintenance of entire system within and without county, though that portion in California would be subject to its laws.

(6) The Acts authorize system to acquire property and distribute power "along the line" both in Nevada and California. In California, the operation of the line would be subject to its laws.

(7, 8.) (Answered above.)

(9) Mineral County derived its power to acquire extraterritorial property from Acts of 1921 and 1923.

(10) The power system is not distinct from the county. California might decide it has character of private corporation or individual.

(11) As to operation of system within Nevada, Mineral County would have status of private proprietor, either corporation or individual. In California it would be given status of private citizen amenable to its laws.

(12) Expression in Act that purpose is to supply certain towns in Nevada does not prevent extensions of line in Nevada or into California, which latter would be subject to assent and laws of California.

CARSON CITY, December 8, 1923.

1. *Inquiry*—The Act of the Legislature of the State of Nevada (Stats. 1911, chap. 13, p. 10), having in express terms defined the territorial boundaries of and erected Mineral County within the same, is the Board of County Commissioners thereof restricted and limited to exercising the authority conferred by law (Stats. 1865, p. 257, secs. 1501-1529, Rev. Laws, 1912, vol. 1) upon them (and all other) Boards of Commissioners, to the territorial area as defined in section 1 of such Act (Stats. 1911, p. 10)?

Opinion—We are of the opinion that your Board of County Commissioners is not restricted or limited in the exercise of jurisdiction to the limits of Mineral County, in so far as the Mineral County power system is concerned, in view of the Act of 1921, relating thereto, as amended by chap. 205, Stats. 1923, which expressly authorized the purchase, maintenance, and operation of its power line, a part of which is located in the State of California.

2. *Inquiry*—Does the Act of 1921, chap. 45, p. 80, as amended by Stats. 1923, chap. 205, p. 365, amend the Act creating Mineral County and defining its boundaries, so as to authorize and permit such county to acquire extraterritorial realty and other property? (See Buck v. Boerlin, 45 Nev. 131.)

Opinion—In so far as the Mineral County power system is concerned, the statute above referred to, which is a special statute, must be construed to amend sec. 1508, Revised Laws, which is section 8 of the general law relating to the powers and duties of Boards of County Commissioners, as well as the Act creating Mineral County, in so far as they are repugnant to each other.

3. *Inquiry*—If you hold that such Act (Stats. 1911, p. 10) has been amended to that extent, would such amendment in any wise violate the provisions of secs. 20, 21, and 25 of art. 4 of the Constitution of

Nevada, in so far as they relate to counties? (See Buck v. Boerlin, supra.)

Opinion—Your third inquiry would seem to be conclusively answered in the negative by the decision in Buck v. Boerlin, 45 Nev. 131.

4. *Inquiry*—Is the operation of the Mineral County power system as a public utility, by Mineral County, a governmental function, or, when acting a public utility, is Mineral County to be regarded, as to its rights and obligations, as having the same status as other private corporations engaged in a like business? (See Pasadena v. Pasadena, 93 Pac. 490; Sacramento County v. Chambers, 164 Pac. 614.)

Opinion—We are of the opinion that the operation of the Mineral County power system outside of the State of Nevada is not a governmental function, and such ownership and operation is in the character of a private proprietor, either as a private corporation or as an individual. This would have to be decided by the California authorities, though the cases seem to indicate that the status would be that of an individual.

5. *Inquiry*—Does the Act of the Legislature (Stats. 1921, chap. 45, p. 80), as amended by Stats. 1923, chap. 203, p. 366, by implication or in express terms limit the authority of the Board of County Commissioners of Mineral County, acting as a public utility, to "maintain and operate" the Mineral County power system, solely within Mineral County and the State of Nevada?

Opinion—We are of the opinion that the statutes named, particularly secs. 1, 2, and 3 of the Act, authorize the Board of County Commissioners of Mineral County, without limitation, to maintain and operate the Mineral County power system, either within or without the State, though ownership, maintenance, and operation within another State would be subject to consent or assent of California and to the laws and regulations of that State.

6. *Inquiry*—Is there any authority conferred by the terms of such Acts, either expressly or by necessary implication, whereby Mineral County as a public utility can legally acquire property (a) outside of Mineral County (bounds as fixed by Stats. 1911, p. 10); (b) the State of Nevada?

Opinion—Section 1 of the Act of 1921, as amended by the Act of 1923, expressly authorizes the purchase of the power line extending from Lundy in Mono County, Calif., to Hawthorne, Nevada, and section 2 of the Act as amended expressly authorizes the Board of County Commissioners to "enter into contracts with consumers for the sale, distribution, and delivery of electrical energy along the line of said utility." The provision last above quoted is without limitation, and must be construed to mean "along the line" both in Nevada and California. Section 3 of the Act as amended authorizes the extension of the system without limitation as to place or locality, subject to the conditions named therein. At this point the question naturally arises as to the power of the Legislature to authorize the county to acquire title to property in another State.

A county, as distinct from a municipal corporation, is purely an agency of the State, created by the sovereign power

of a State, without the solicitation, consent, or concurrence of the inhabitants of the territory thus set apart. In political and governmental matters counties are the representatives of the sovereignty of the State and auxiliary to it; in other matters relating to property rights and pecuniary obligations they have the attributes and distinctive legal rights of private corporations. 7 R. C. L. 923-924.

Counties, then, being but agencies of the State, they may do and perform, when properly authorized by statute, any act or thing which the State itself might do. This being true, may the State itself acquire property outside of its boundaries and within the boundaries of another sovereign State? This question has been before the courts very rarely, but, in every case, it has been decided that one State may acquire and hold property in another State, subject, however, to the consent or assent of such other State. In such cases it is held that the State owning such property holds it, not as a sovereign, but as an ordinary private proprietor. 36 Cyc. 870; Dodge v. Briggs, 27 Fed. 160; Burbank v. Fay, 65 N. Y. 57.

The authority of one State to own and hold property in another exists primarily by reason of the nonexistence of any constitutional or statutory law prohibiting it, but in the case under consideration the statute expressly authorizes the owning and holding by Mineral County of that portion of the power line located in California. In so far, then, as the law of this State is concerned, Mineral County has the authority to acquire, maintain, and operate its power line in the manner prescribed in the statute, either in the State of Nevada, or California, but its right so to own, maintain, and operate such power line in California is subject to the consent or assent and the laws and regulations of that State.

7, 8. *Inquiry*—If not, will express legislative sanction be necessary before such power can be legally exercised? If no authority has been expressly or by necessary implication conferred upon Mineral County as a public utility to acquire property outside of such county, or outside of the State of Nevada, will the lack of such authorization be construed as inhibiting the exercise of such power?

Opinion—Your questions 7 and 8 are answered above.

9. *Inquiry*—If, under such Acts, such power to acquire extraterritorial properties is exercised by Mineral County as a public utility, (a) would the legal authority therefor be that conferred by such Acts, or (b) would it be under the authority conferred by the terms of pars. 9 and 13, sec. 8 (sec. 1508, Rev. Laws Nev. 1912, vol. 1), or (c) would it be such as any private corporation would be assumed to have if operating under like circumstances?

Opinion—Mineral County derives its express authority to acquire the extraterritorial property named therein from the statute of 1921, as amended in 1923.

10. *Inquiry*—Are such legislative Acts to be construed as being the charter or articles of incorporation of the Mineral County power system, a public utility owned and operated by Mineral County?

Opinion—We do not understand that the Mineral County power system is an entity separate and distinct from Mineral County, any more than the courthouse would be if a part of it were used and operated for hotel purposes, but if Mineral County, as the owner of a power line in California, should be decided to have the status of a private corporation, its charter would, without doubt, consist of those sections of the Constitution of Nevada relating to counties, the statute of 1911 creating Mineral County, and the statute of 1921 as amended in 1923. We do not, however, assert that its status would be that of a private corporation, for it might be held to be that of an individual, and that question would have to be decided by California.

11. *Inquiry*—Is Mineral County, acting as a public utility, under the terms of such Acts, merely a local legal subdivision of the State of Nevada, which has been created for civil and political purposes and exists to administer locally the power and authority of the State of Nevada, or (b) is it a public-service corporation, as that term is ordinarily understood, or (c) is it properly classed as a private corporation, or (d) is it a purely municipal corporation in either a broad or restricted sense?

Opinion—Assuming that question 11 refers to operations without the State of Nevada, the status of Mineral County would be that of a private proprietor—namely, either a private corporation or an individual—for, when one sovereignty seeks to own property within the territory of another sovereignty, the sovereign attributes of the first must be cast aside at the boundary-line, and it must enter the domain of the second merely as a private subject, amenable to all laws and regulations applicable to a private citizen of that sovereignty.

12. *Inquiry*—(a) Would the expression, "This Act contemplates primarily the purchase, distribution, and resale of electrical energy by said county acting as a public utility in the towns of Luckyboy, Hawthorne, Luning, Mina, Simon, and Candelaria, over the lines of the Mineral County power system" (sec. 3, p. 367, Stats. 1923), be construed as words of limitation limiting the power of such public utility to purchase, distribute and sell, to the points named (and within Mineral County); or (b) does the proviso following give Mineral County acting as a public utility the authority to contract for and build extensions of said system anywhere (within the State and without the State) so long as the entire cost of such extension is advanced by the consumer or consumers whom it is proposed to serve?

Opinion—The expression, "This Act contemplates primarily the purchase, distribution, and resale of electrical energy by said county acting as a public utility in the towns of Luckyboy, Hawthorne, Luning, Mina, Simon, and Candelaria, over the lines of the Mineral County power system," is merely a statement of the primary purpose of the Act, and is not a limitation upon the incidental right to purchase, sell, and distribute electrical energy to other points than those named, either in Nevada or California, and the proviso contained in section 3 of the Act of 1921, as amended in 1923, confers the right to contract for and build extensions, in the manner therein provided, without limitation as to place or locality, though it must always be understood that any operations or extensions in the State of California

must be subject to the consent or assent and the laws and regulations of that State.

The State of California has, apparently, tacitly assented to the ownership of that part of the Mineral County power system which is located in that State, and if Mineral County complies with all laws of that State relating to power-transmission lines, it would appear that there would be nothing further for Mineral County to do; but, before attempting to sell and distribute electrical power as a public utility in the State of California, Mineral County should make application to the Public Service Commission (or its equivalent) of that State, have its status determined, and obtain a permit the same as any other corporate or individual operator of a public utility in that State.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

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

SYLLABUS

105. Physicians—Optometry—License Revoked.

(1) Stats. 1913, p. 129: State Optometry Board may revoke or suspend certificate obtained by fraudulent misrepresentation in application.

(2) Person charged is entitled to notice and public hearing.

INQUIRY

CARSON CITY, December 11, 1923.

Where the State Optometry Board has issued a license, and, after the issuance of same, ascertains that the party to whom the license was issued made misrepresentations on his application blank in respect to material matters, what authority has the board in the premises, and may the license of such person be revoked?

OPINION

Your attention is respectfully called to section 13, Stats. 1913, p. 129, which provides:

> Any person registered as provided in this Act may have his or her certificate of registration revoked or suspended by the Nevada State Board of Examiners in Optometry for any of the following reasons:
>
> 1. His or her conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction, or certified copy thereof by the Clerk of the Court, or by the Judge in whose court the conviction is had, shall be conclusive evidence.
>
> 2. When his or her certificate has been secured by fraud practiced upon the board.
>
> 3. For unprofessional conduct, or for gross ignorance or inefficiency in the profession. Unprofessional conduct shall mean employing what is known as "cappers" or "steerers" to obtain business; the obtaining of any fee by fraud or misrepresentation; employing, directly or indirectly, any suspended or unlicensed optician or optometrist to perform any

work covered by this Act; the advertising of optical business or treatment or advice in which untruthful or impossible statements are made; or habitual intemperance or gross immorality.

4. When the holder is suffering from a contagious or infectious disease; *provided, however,* that before any certificate shall be revoked or suspended the holder shall have notice in writing of the charge or charges against him or her, and at a date specified in said notice, at least five days after the service thereof, be given a public hearing, and have an opportunity to produce testimony in his or her favor, and to confront the witnesses against him or her. Any person whose certificate has been suspended may, after the expiration of ninety days, apply to have the same regranted, and the same shall be regranted him or her upon satisfactory showing that the disqualification has ceased.

It will be noted, therefore, that the board is authorized to revoke or suspend the certificate of any individual, theretofore issued by the board. You must be careful in following the provisions of paragraph 4 in giving the proper notice to the party, and also serve upon the person a copy of the charges.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Charles Gasho, *President Nevada State Board of Optometry, Reno, Nevada.*

SYLLABUS

106. Motor Vehicle—Special Trip—Not Common Carrier.

Stats. 1923, p. 320:

(1) Automobile hired for special trip is not common carrier nor public convenience.

(2) County Commissioners may enact ordinances controlling automobile transportation for hire in their counties. Public Service Commission regulations should be followed as closely as practicable.

INQUIRY

Carson City, December 13, 1923.

Where an automobile owner does not solicit business, nor make regular trips, but is hired to make a special trip, does such owner, by making the trip, violate the rights of persons holding certificates of public convenience?

OPINION

By Statutes of 1923, p. 320, the Boards of County Commissioners of the several counties of this State are authorized to enact ordinances classifying the kinds and character of motor vehicles which shall be licensed, fixing the license fee therefor.

By section 9 the Boards of County Commissioners, after July 1, 1923, are authorized to issue certificates of public convenience. In issuing such certificates the Commissioners are directed to follow as

closely as practicable the laws and regulations under which such certificates were issued by the Public Service Commission.

Inasmuch as the Boards of County Commissioners have been authorized to enact ordinances covering these several matters, it will be necessary to examine the ordinances adopted by your County Commissioners, to answer the question presented.

Your attention, however, is directed to that portion of section 9 of the statute, supra, which authorizes the issuance of certificates of public convenience to "common carriers." It could hardly be contended that, under the facts stated in this inquiry, the individual who might make a special trip for hire would be a common carrier.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

107. Corporation—Insurance Company—Resident Directors.

(1) Stats. 1903, p. 121, as amended: Directors of Nevada corporation need not be residents of State.

(2) Secs. 1266, 1284, Revised Laws: Nevada insurance company may not assume risk as insurer unless at least five directors are residents and property owners of this State.

INQUIRY

CARSON CITY, December 19, 1923.

You request an opinion as to whether a corporation may be formed under the laws of this State to engage in the business of a surety-and-casualty company, and have as directors, persons who reside outside of the State of Nevada. It is stated in the inquiry that the proposed corporation desires to operate wholly without this State.

OPINION

Section 2, Statutes of 1903, p. 121, as amended 1923, provides:

> SEC. 2. Notwithstanding the exceptions in the preceding section of this Act, a corporation may be incorporated under this Act to transact the business of an insurance company, life, fire, marine, or accident, or other form of insurance, or of a surety company, or of a railroad company, or for other cognate or other like purposes, to operate wholly without this State, and may unite the powers to conduct such business without this State with any powers which it is authorized to exercise without or within this State; *provided*, such corporation do not infringe the laws of such other State or country as it may intend to transact business in by so incorporating under this Act.

There are no provisions of the general corporation law by which directors of any corporation organized thereunder must be residents of this State.

Section 2 of the general insurance laws (Rev. Laws, 1266-1284) provides:

> Corporations may be formed under the general laws of this State for the transaction of insurance business, but no such corporation shall be permitted to assume any risk as insurer unless the same shall have at least five directors who shall be residents and property owners of this State. * * *

It is my opinion, therefore, that a corporation may be organized under the general incorporation law; and the directors of said corporation may be nonresidents of this State, but that such corporation cannot do business or assume any risk in the State of Nevada.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

108. Schools—Transportation of School Children.

(1) Stats. 1915, p. 27: Transportation of school children must be authorized by electors of district.

INQUIRY

CARSON CITY, December 27, 1923.

An opinion is requested as to whether the Trustees of Sanders School District are authorized to pay transportation for certain children to and from school.

OPINION

Your attention is directed to Stats. 1915, p. 27, and sec. 6 thereof, which provides in part that transportation of school children must first be authorized at a regular or special election held in the district. You will also note that sections 4 and 5 of said Act are made applicable to all school districts.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

EDWARD F. KNEMEYER, *Clerk School Board, Mason, Nevada.*

SYLLABUS

109. Officers—Holding Two Positions—County Commissioner Disqualified to Act as Postmaster, if Compensation Exceeds $500.

(1) Constitution, sec. 9, art. 4: If County Commissioner should accept position of postmaster where salary is over $500 per year, he would ipso facto be disqualified as Commissioner.

INQUIRY

CARSON CITY, December 27, 1923.

You advise that a County Commissioner of one of the counties of this State is about to receive an appointment as postmaster, and that the compensation for service as postmaster will exceed $500 per annum. An opinion is requested as to whether the appointment as postmaster would disqualify the person from holding the office of County Commissioner.

OPINION

Section 9 of article 4 of the Constitution of Nevada provides:

> No person holding any lucrative office under the Government of the United States or any other power shall be eligible to any civil office of profit under this State; *provided*, that postmasters whose compensation does not exceed $500 per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

As stated by you in your letter, this section of the Constitution has been passed upon by the Supreme Court of this State in three cases (3 Nev. 566, 21 Nev. 333, 25 Nev. 322).

The only matter to be decided is whether or not the office of County Commissioner is "a civil office of profit under this State."

The Supreme Court of California in the case of Satterwhite v. Garrison, County Auditor, 168 Pac. 1053, has squarely passed upon the question here presented, and decided it in the following language:

> It is next urged by appellant that the constitutional inhibition does not apply to him, for the further reason that a Deputy District Attorney is not the holder of an "office, trust, or employment under this State."
>
> While it must be conceded that a Deputy District Attorney is not one of the state officers provided for by the Constitution, and is what is generally known as a county officer, we think the terms of the Constitution "office, trust, or employment under this State" have a much broader signification than that contended for by appellant, and that his office must be held to be covered by them. In People v. Leonard, 73 Cal. 230, 14 Pac. 853, it was held that a Supervisor (who also is a county officer) is a holder of a "civil office of profit under this State." So, also, of a County Superintendent of Schools in Crawford v. Dunbar, 52 Cal. 39; and of a Sheriff in Searcy v. Grow, 15 Cal. 117.

It is my opinion, therefore, that the office of County Commissioner is one within the contemplation of sec. 9, art. 4, Constitution of Nevada, and that under the circumstances stated, if the County Commissioner should accept the appointment to the office of postmaster, he would ipso facto be disqualified to hold the position of County Commissioner.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

110. Criminal Procedure—Fixing Penalty for First-Degree Murder—Opinion Affirmed by Supreme Court.

(1) Stats. 1919, p. 468: Where a jury returns a verdict of first-degree murder and does not fix the penalty at life imprisonment the Court must fix the penalty at death.

(2) This opinion affirmed by Supreme Court in In Re Russell, 47 Nev. 263, 222 Pac. 569.

INQUIRY

CARSON CITY, January 21, 1924.

You advise that in the case of State of Nevada v. Thomas Russell a verdict of murder in the first degree was rendered by the jury and, by the judgment of the Court upon this verdict, the penalty of death was inflicted. The judgment was affirmed by the Supreme Court, and the lower court is now called upon to issue a writ of execution and fix the date of same.

An opinion is requested as to whether the Judge should proceed and fix the date for execution, in view of the fact that the jury by its verdict did not fix the punishment.

OPINION

Section 6386, Crimes and Punishments Act, as amended by Statutes of 1919, p. 468, provides:

> Every person convicted of murder in the first degree shall suffer death or confinement in the State Prison for life, at the discretion of the jury trying the same. * * *

Under this provision of the statute the jury must exercise its discretion and fix the penalty of life imprisonment when a verdict of guilty of murder of the first degree is rendered, and, when the jury fails to fix the punishment by its verdict, and finds the defendant guilty of murder in the first degree, the Court has no discretion but to fix the penalty at death.

People v. French, 10 Pac. 378;
People v. Rollins, 179 Pac. 209.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. T. MATHEWS, *District Attorney, Elko, Nevada.*

SYLLABUS

111. Officers—Salary of Lieutenant-Governor—Old-Age Superintendent—Legislature May Change the Law.

(1) Stats. 1921, chap. 117, fixing salary of Lieutenant-Governor at $3,600 per year, is amended by Stats. 1923, chap. 70, making him Old-Age Superintendent at a salary not exceeding $1,200 per year, and he is entitled to both amounts, though the 1921 statute declared $3,600 should be in full payment for ordinary and all other duties required of him.

(2) To hold otherwise would be to declare that the Legislature might bind subsequent Legislatures and prevent them from changing law.

INQUIRY

CARSON CITY, January 21, 1924.

An opinion is requested as to whether chapter 117, Statutes of 1921, which established the salary of the Lieutenant-Governor at $3,600 per annum, and declared the same "shall be in full payment of all duties now or hereafter required of such officer," affects the payment of salary to the said Lieutenant-Governor, as "Old-Age Superintendent"

by the operation of chapter 70, Statutes of 1923, known as the "Old-Age Pension Act."

OPINION

Statutes of 1921, chap. 117, fixed the salary of the Lieutenant-Governor at $3,600 per annum. Section 2 of this statute provides:

> The foregoing salaries shall be in full payment for all duties now or hereafter required of such officers, not only for the ordinary duties of such officers, but for all other duties required of such officers in any manner whatever.

By Statutes of 1923, chap. 70, the Lieutenant-Governor is made "Old-Age Superintendent," and paragraph c of section 1 provides that:

> The Commission shall fix the salary of the Superintendent, which shall not exceed the sum of $1,200 per annum.

It is my opinion that, if the salary of the Lieutenant-Governor as "Old-Age Superintendent" has been established by the Commission, this officer is entitled to the compensation so fixed, in addition to the salary as Lieutenant-Governor. To hold otherwise would be to affirm the doctrine that the Legislature might bind subsequent Legislatures, and prevent them from amending or changing the law.

These two laws must be read together, and section 2, Statutes of 1921, chap. 117, must be considered modified and amended by the provisions of Statutes of 1923, chap. 70.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

112. **University of Nevada — Constitution — Statute — Land-Grant Fund — Regents—State Treasurer—Custodian.**

(1) Constitution, sec. 8, art. 11: The Board of Regents is authorized to invest the proceeds of the public-land grant of 1862.

(2) Constitution, sec. 3, art 11: The proceeds from this grant are part of permanent school fund.

(3) Rev. Laws, 3384: The State Treasurer is the legal custodian of the fund.

(4) The Constitution and statute are not in conflict.

INQUIRY

CARSON CITY, January 21, 1924.

You submit to me a communication from the Secretary of the Board of Regents of the University of Nevada, wherein the request is made that all securities in connection with the 90,000-Acre-Grant Fund be delivered to the Board of Regents. The provision of section 8, article 11, of the Constitution of the State of Nevada is the authority relied upon for such request. An official opinion on this matter is respectfully requested.

OPINION

Section 8, article 11, of the Constitution of the State of Nevada provides in part:

> *provided*, that all the proceeds of the public lands donated by Act of Congress approved July second, A. D. eighteen hundred and sixty-two, for a college for the benefit of agriculture, the mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first-named departments to the University as set forth in section 4 above; * * *

Under this provision of the Constitution there can be no uncertainty as to the power of the Board of Regents to invest the proceeds derived from this grant.

Under the provisions of section 3, article 11, of the Constitution the proceeds from this particular grant are made a part of the permanent school fund.

Section 3384, Revised Laws of 1912, provides:

> The State Treasurer shall be the legal custodian of all state and national securities in which the moneys of the state permanent school fund of the State of Nevada, are, or may hereafter be, invested, and for their safe-keeping he shall be liable on his official bond.

While section 8, article 11, of the Constitution authorizes the Board of Regents to invest the money derived from this grant, there is no provision therein contained which authorizes the Board of Regents to have custody of said securities, and therefore section 3384, supra, cannot be said to conflict with the constitutional provision, and, inasmuch as the Legislature could lawfully enact this statute, the conclusion must follow that these securities must remain in the possession of the State Treasurer.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

113. Highways—Tax Levy—Valid.

(1) Stats. 1923, p. 381: Act directing County Commissioners to levy tax for road purposes at direction of Department of Highways is constitutional, although Commissioners have no voice in expenditure of fund so raised, that power being vested in Department of Highways.

INQUIRY

CARSON CITY, January 29, 1924.

You submit the following inquiry, and request an opinion:

> The Department of Highways has notified the Board of County Commissioners of its desire to have a levy of 10 cents made this year for road purposes in this county. Under the Act it is mandatory that the Commissioners comply with

the direction. The law, however, gives the County Commissioners no say concerning the expenditure of the money which is to be expended upon the roads within the county. The question presented is: Under these facts, is the law constitutional?

OPINION

Confining myself simply to the question stated, it is my opinion that the Act is constitutional. While it is true the County Commissioners may have no power or authority in reference to the expending of the money so collected, this authority is given to a state agency—to wit, the Department of Highways—and I can see no violation of any constitutional right by reason thereof.

In giving this opinion, however, it is not to be understood that I affirm the matters of law stated in the interrogatory.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Booth B. Goodman, *District Attorney, Lovelock, Nevada.*

SYLLABUS

114. Revenue—Soft-Drink License in Unincorporated Town—County Commissioners May Fix.

(1) Rev. Laws, 877, as amended Stats. 1919, p. 408: County Commissioners may fix license of soft-drink establishments.

(2) Stats. 1921, p. 194, are amended by Stats. 1923, p. 62. County Commissioners, acting as Town Board for unincorporated town, may enact ordinance fixing license of soft-drink places.

INQUIRY

Carson City, January 29, 1924.

You call my attention to Stats. 1921, p. 194, which provide:

> An Act creating a County License Board to regulate the issuance and revocation of licenses for billiard-halls, dance-halls, bowling alleys, theaters, or soft-drink establishments, in unincorporated cities and towns of this State.

You advise that no law can be found authorizing the collection of licenses on soft-drink establishments, and you request information as to the powers of the Board of County Commissioners to fix the amount of license fee to be collected on soft-drink establishments.

OPINION

Statutes of 1921, p. 194, have been amended by Statutes of 1923, p. 62.

Your attention is directed to Statutes of 1919, p. 408, chap. 228, wherein the Act approved February 26, 1881, being section 877 of the Revised Laws, has been amended.

Under the ninth subdivision of this amendment the Boards of County Commissioners are authorized to adopt ordinances fixing a license tax on the several businesses mentioned by you in your letter, including soft-drink establishments.

It will be necessary, therefore, for your Board of County Commissioners, acting as a Town Board for the unincorporated cities and towns of your county, to enact an ordinance fixing the license fee to be charged and collected from those engaged in the business of operating soft-drink places.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. F. E. WADSWORTH, *District Attorney, Pioche, Nevada.*

SYLLABUS

115. Constitution, How Amended.

(1) Sec. 3, art. 19, of the Constitution: Before amendment to the Constitution can be made, independent of the Legislature, it is necessary that a method of procedure be adopted, even though provisions of section are declared to be self-executing.

INQUIRY

CARSON CITY, January 30, 1924.

You submit the following interrogatories, and request an official opinion:

> In what manner is the power to propose amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature, to be exercised?
>
> Is it by initiative petition of 10 per cent or more of the qualified electors, as provided in section 3, article 19 of the Nevada Constitution, and is the further action covered by either (1) Enactment by the Legislature, or (2) Upon the rejection by the Legislature, or its failure to act upon said petition, by majority vote of the qualified electors at the next ensuing general election?

OPINION

Section 3 of article 19 of the Constitution of the State of Nevada provides:

> The people reserve to themselves the power to propose laws and the power to propose amendments to the Constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any Act, item, section, or part of any Act or measure passed by the Legislature, and section 1 of article 4 of the Constitution shall hereafter be construed accordingly. The first power reserved by the people is the initiative, and not more than 10 per cent of the qualified electors shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions, for all but municipal legislation, shall be filed with the Secretary of State not less than thirty days before any regular session of the Legislature; the Secretary of State shall transmit the same to the Legis-

> lature as soon as it convenes and organizes. Such initiative measures shall take precedence over all measures of the Legislature, except appropriation bills, and shall be enacted or rejected by the Legislature, without change or amendment, within forty days. If any such initiative measure, so proposed by petition as aforesaid, shall be enacted by the Legislature and approved by the Governor in the same manner as other laws are enacted, the same shall become a law. If said initiative measure be rejected by the said Legislature, or if no action be taken thereon within said forty days, the Secretary of State shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure, it shall become a law and take effect from the date of the official declaration of the vote.

A careful study of the constitutional provisions of the States of Oklahoma and Oregon discloses that similar provisions have been enacted, but a method of procedure has been indicated.

It will be noted that under the provisions of section 3, supra, no procedure is set forth as to the number or percentage of electors whose names must be affixed to the petition requesting an amendment to the Constitution; no time is designated when said petition must be filed; neither is the place for filing said petition set forth.

I am of the opinion that, in order to carry out the intent of the people in adopting section 3 to the Constitution, whereby proposed amendments could be enacted at the polls, independent of the Legislature, some form or method must be adopted by the Legislature. Section 3 of article 19 fails to outline a method.

In arriving at this conclusion I have not overlooked the fact that section 3, supra, provides:

> The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.

The Supreme Court of the State of Nevada, in the case of State v. Brodigan, 37 Nev. 43, quotes from a decision of the Supreme Court of Illinois, in the case of Washingtonian Home v. Chicago, 41 N. E. 896, where the Court states:

> Where the Constitution requires the performance of an act, but provides neither officer, the means, or the method in which the act shall be performed, in such a case there is no other means of carrying such a provision into effect but by appropriate legislation.

Notwithstanding the declaration contained in section 3, in reference to these provisions being self-executing, the Supreme Court in the Brodigan case held that legislative action was necessary.

I have examined, also, Statutes of 1915, p. 157, and Statutes of 1921, p. 108, but conclude that these provisions of the law apply to initiative petition as defined in the Constitution.

It is my opinion, therefore, that before amendments to the Constitution can be made, independent of the Legislature, in conformance to

section 3, article 19, legislative action is necessary and a method of procedure must be adopted.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. J. Hunting, *Superintendent of Public Instruction.*

SYLLABUS

116. Corporations—Delinquent Corporation—Publication of List by Governor—Expense, How Paid.

(1) Stats. 1923, p. 342: List of delinquent corporations and Governor's proclamation of forfeiture should be published in Carson City News and some paper outside Carson City.

(2) The advertising cost should be paid out of appropriation designated in Act.

(3) The Carson City News is not entitled to any additional compensation for this publication.

INQUIRY

Carson City, February 16, 1924.

You request an official opinion concerning the following matters:

Section 4 of chapter 190, Statutes of 1923, p. 342, provides for the publication by the Governor in two daily papers of a list of delinquent corporations and a proclamation of impending forfeiture. The Carson City News, under Stats. 1917, is required to publish all advertisements for the State of Nevada, and is paid a stipulated monthly price.

Will the Statutes of 1923 be served by publishing one of these lists in the Carson City News and another in some other paper? Under these circumstances will the Carson City News be entitled to additional compensation for such publication? From what fund may the cost of these advertisements be paid?

OPINION

The provisions of law will be complied with by publishing one of the lists in the Carson City News and the other list in some paper published outside of Carson City.

The Carson City News will not be entitled to any additional compensation for such publication.

The advertising costs for the publication of this list will be paid from the appropriation designated in said Act.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. J. G. Scrugham, *Governor, Carson City, Nevada.*

SYLLABUS

117. Schools—Term of Trustee Appointed to Fill Vacancy.

(1) Trustee appointed to fill vacancy is appointed for entire unexpired term of predecessor.

INQUIRY

CARSON CITY, February 23, 1924.

Under the provisions of section 64, School Code of Nevada, where a vacancy in office of School Trustee has been filled by appointment, by the Deputy School Superintendent, how long is it contemplated that the appointee shall hold office—till the next election of School Trustees, or for the unexpired term of the former Trustee whose office is being filled by appointment?

OPINION

It is obvious that, under section 64 of the School Code, the Deputy Superintendent filling a vacancy in the office of a short-term Trustee fills it for the unexpired term, for the term expires at the time of the next school election.

The only question, then, is whether the Deputy Superintendent, in filling a vacancy in the office of a long-term Trustee, fills it for the unexpired term or until the next election.

The only provision for filling a vacancy by election is that contained in section 63 of the School Code. There is no provision for filling by election a vacancy which has already been filled by appointment—which would be, in fact, filling a vacancy which has, in fact, no existence.

Section 63 provides for "filling of a vacancy" by election, and section 64 provides for "filling of a vacancy" by appointment. The "filling of the vacancy" by election being for the unexpired term, we are of the opinion that "filling of the vacancy" by appointment must be given the same meaning—that is, for the unexpired term—in the absence of any provision, other than section 63, for filling it by election.

We are, therefore, of the opinion that a vacancy in the office of School Trustee filled by the Deputy Superintendent, under the provisions of section 64 of the School Code, is filled for the "unexpired term" and not merely until the next school election.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

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

SYLLABUS

118. Schools—Budget—High-School Dormitory Maintenance—Deficit.

(1) The budget of Board of Education is mandatory upon County Commissioners. They may not change it.

(2) Board of Education may charge for board and room only reasonable amount.

(3) The dormitory is part of high-school equipment. Any deficit must be paid from county high-school fund.

INQUIRY

CARSON CITY, February 26, 1924.

You request an opinion on the following questions:

1. Is the budget of the County Board of Education as submitted to the County Commissioners mandatory upon the

latter, or have the Commissioners the legal right to use their discretion in accepting or revising said budget?

2. Is it the intent of the Act concerning high-school dormitories that such institutions shall be self-sustaining; that the rates charged for board and room shall be such as to cover cost; or may the County Board of Education pay any deficit from the regular county high-school fund, disregarding capital outlay and interest on bonds?

OPINION

Answering question 1, it is our opinion that the budget of the Board of Education is mandatory upon the Board of County Commissioners, and that the Board of County Commissioners has no discretion to change or revise it, but must accept it as filed with the Auditor and Recorder.

Answering question 2, there is very little in the law with reference to dormitories from which to ascertain the intent of the Legislature, but we think it is without question that the Board of Education may charge for board and room only such sums as are fair and reasonable for such service, as the only possible purpose of providing dormitories is to save the parents and pupils from exorbitant charges for good food and comfortable rooms, and to provide such service at reasonable prices.

Section 184 of the School Code provides that dormitories shall be considered part of the regular high-school equipment and organization, and it is our opinion that any deficit arising from the operation thereof must be paid from the county high-school fund the same as for the maintenance and operation of any other part of the high-school equipment.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction, Ely, Nevada.*

SYLLABUS

119. Employer and Employee—Private Employment—Payment of Wages—Penalty for Delay—Use of Team.

(1) Stats. 1919, p. 121: The use of a team by an employee who is hired and is to be paid by the day does not deprive him of the benefits of the Act. He is entitled to prompt payment for services and use of team upon discharge, and penalty for delay.

(2) This rule does not apply to an independent contractor or one who is to be paid by the job.

INQUIRY

CARSON CITY, March 6, 1924.

You submit the following questions, and request an official opinion in respect thereto:

(1) Is a workman who works with and furnishes his own team and is paid a daily rate for his combined service an employee of an employer, under chapter 71, Statutes of 1919, entitling him to penalty pay under section 2 of the said Act

in the failure of the employer to pay wages or compensation promptly upon discharge?

(2) What part of the combination rate is wage or compensation and what part horse-hire for the purpose of determining the penalty rate?

(3) Or is he entitled to penalty on the combined rate, including that part undoubtedly paid for the use of his horses?

(4) In the event that employee is discharged by one employer and not paid within the thirty days during which penalty runs, but, in the interim, obtains contract or work from another employer, can such second employment wages or compensation earned be set up to reduce the running of the penalty against the first employer by showing lack of actual damages in the amount earned from the second employer within the thirty days from discharge by the first employer?

OPINION

In answer to your first interrogatory, you are advised that if an individual is employed by the day to perform work and labor and is to be paid by the day, the mere fact that in connection with his employment the workman uses his team would in no way exclude him from the benefits accruing by reason of the Statutes of 1919, chapter 71, and under these circumstances the wages or compensation of such employee, including the amount to be collected for the use of his team, would come within the provisions of said Act. It must be remembered, however, that such employee must be paid by the day and not by the job, and the element of an independent contractor must not enter into such employment. The fact that the man so employed used his horses and wagons, in performing services for which he was paid by the day, is immaterial. A carpenter or any other skilled workman employs tools to assist him in earning his wages. (See In Re Yoder, 127 Fed. 894.)

2. Interrogatory No. 2 is answered in the reply to question 3.

3. Answering Interrogatory 3, it is my opinion that, in computing the amount of penalty for failure to pay the wage, there should be considered the agreed wage per day, including the part paid for the use of horses.

4. Replying to Question 4, the mere fact that the individual who was discharged or quit work received employment from some other person would in no way affect or reduce the penalty against the first employer.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Frank Ingram, *Labor Commissioner, Carson City, Nevada.*

SYLLABUS

120. Employer and Employee—Nevada Industrial Commission—Safety Rules—Evidence.

(1) Stats. 1919, p. 403: Sections 2, 3, 4, 5 require employers to make the employment and places of employment safe. Section 9 makes failure to do so a misdemeanor.

(2) Section 6 gives Industrial Commission power to prescribe rules and devices for safety.

(3) While a violation of these rules is not a misdemeanor, a failure to comply with them is prima-facie evidence of their violation. The rules are admissible in evidence.

(4) In the absence of proper proceeding to change a rule deemed unreasonable, the Court will deem it reasonable.

(5) The Commission, after proper proceedings, may make necessary rules and orders relative to unsafe employments or places of employment. If not complied with, the matter is referred to the District Attorney.

INQUIRY

CARSON CITY, March 7, 1924.

An official opinion is requested in reference to the following facts:

> Would you kindly give this Commission your official opinion as to the proper means of effectively enforcing the general safety orders adopted by the Nevada Industrial Commission, by virtue of chapter 225, Statutes of 1919?

It is stated in your letter that a complaint has been filed against the White Star Plaster Company for having failed to comply with certain recommendations in reference to safeguards, in the operation of certain machinery.

OPINION

Statutes of 1919, p. 403, and section 9 thereof, make it a misdemeanor for any person to violate sections 2, 3, 4, or 5 of the Act.

Section 6 of the Act makes it the duty of the Nevada Industrial Commission to declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render employment safe as required by law.

In addition to this power, certain other rights and duties are prescribed to be performed by the Nevada Industrial Commission, in respect to the protection and health of employees.

It will be noted that while the statute does not provide that a violation of the rules adopted by the Nevada Industrial Commission shall be punished as a misdemeanor, it does provide:

> In any prosecution under this section it shall be deemed prima-facie evidence of violation of any such safety provision that the accused has failed or refused to comply with any order, rule, or regulation, or requirement of the Commission relative thereto.

The rules made by the Nevada Industrial Commission under the provisions of this Act are made admissible in evidence in any prosecution under said Act. In the event an individual or corporation feels that the rule adopted is unreasonable, the corporation or individual challenging said rule must, prior to the institution of a prosecution for a violation of such rules, institute "proceedings for a rehearing thereon, or a review thereof." In the absence of such proceeding, the rule or order shall be considered by the Court as fair, just, and reasonable.

Under subdivision 6 of section 6, whenever the Commission shall learn, or have reason to believe, that any employment or place of employment is not safe, it may, of its own motion, or upon such notice as it may prescribe, enter and serve such order as may be necessary relative thereto.

Under this provision of the statute a formal complaint reciting the charges must be made before the Commission. It then becomes the duty of the Commission to investigate the charges, and ascertain whether the same are based upon the facts, and at the conclusion of said hearing the Commission shall enter an order and serve such order upon the party offending.

In reference to making the investigation: This may be done by a member of the Commission, or some person designated as agent for the Commission. It will be necessary, however, to have a complaint filed, or, if no complaint is filed, to have the facts recited on the minutes of the Commission, tending to show that the place of employment is not safe, and then investigation must be made; thereafter the conclusions of the Commission in reference to the facts must be incorporated in the minutes, and an order made by the Commission in respect to the findings, and the order served upon the party to be affected by the order. If the order is not then complied with, the matter should be presented to the District Attorney, with a request that a complaint issue.

In any prosecutions under the provisions of this Act, the failure of the party to comply with any order or requirement of the Commission shall be deemed prima-facie evidence of a violation of any such safety provision.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Frank Ingram, *Labor Commissioner, Carson City, Nevada.*

SYLLABUS

121. School of Mines—Sale of Equipment.

(1) Stats. 1919, p. 160, Rev. Laws, 3053: Equipment of School of Mines, no longer in use, may be sold by County Board of Education or Board of School Trustees.

(2) The money received from the sale shall be placed in district school fund.

INQUIRY

Carson City, March 20, 1924.

We have in storage, at Goldfield and Ely, equipment that was formerly used by the Schools of Mines. The vocational education law of 1917 changed the control of these institutions from the University of Nevada to the State Board for Vocational Education, but the law does not seem to give authority for disposing of any of this equipment. We have an opportunity to sell one or both of these sets, and would appreciate your advice as to whether or not we are privileged to do so. If we can legally dispose of the same, to what fund would the proceeds be credited?

OPINION

We have examined the statutes and find from a perusal of section 6, chapter 91, Statutes of 1919, 3 Rev. Laws, 3053, that all equipment, property, and assets of the various Schools of Mines named in your inquiry were transferred by the State Board for Vocational Education, and by the boards then having direct control of such equipment, property, and assets, to the County Boards of Education, or District Boards of School Trustees of the respective school districts in which said schools were located, for the exclusive use of said mining schools, so long as said schools might be operated. Said section 6 has never been amended or repealed, and, therefore, the equipment in question is still in the possession and under the exclusive control of said county or district boards, and not under the control of the State Board for Vocational Education. If said mining schools are no longer in operation, the question arises: "Can the County Boards of Education, or the district school boards, now dispose of the equipment which is of no further use?"

The statute is silent upon the subject, so far as any specific enactment is concerned. Section 75 of the School Code provides that County Boards of Education shall have the same general powers as School Trustees.

Section 73 of the School Code provides as follows:

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

It certainly is reasonable for the School Trustees to have the power to dispose of such equipment as may no longer be of any use in the schools, so that the money secured from the sale thereof may be used in the support and maintenance of such schools, and not be a total loss. There are no provisions of the Constitution or laws of the State prohibiting such action, and it is, therefore, not in conflict with the laws or Constitution.

We, therefore, conclude that such equipment may be sold by the County Board of Education or Board of School Trustees, as the case may be, and that the money received from such sale must be disposed of in accordance with the provisions of par. 5, sec. 67, of the School Code, which provides as follows:

> To manage and control the school property within their districts, and pay all moneys collected by them, from any source whatever, for school purposes, into the county treasury, to be placed to the credit of the school fund of their district; * * *

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. W. J. HUNTING, *Executive Officer, Nevada State Board for Vocational Education, Carson City, Nevada.*

SYLLABUS

122. Criminal Procedure—Dismissal of Criminal Action.

Filing of statement by District Attorney of his reasons in fact and law why information should not be filed does not operate, of itself, as dismissal of case. The dismissal is made by order of court having jurisdiction.

INQUIRY

CARSON CITY, March 29, 1924.

Does the filing of a statement, under section 8, Revised Laws of Nevada, vol. 3, p. 3401, operate as a dismissal of the case, and of the discharge of defendant in a criminal action?

OPINION

Section 8, supra, makes it the duty of the District Attorney to inquire into all cases of preliminary examination, and, "if the District Attorney shall determine in any such case that an information should not be filed, he shall file with the Clerk of the court having jurisdiction of such supposed offense a written statement containing his reasons, in fact and in law, for not filing any information in such case, and such statement shall be filed within ten days after the holding of such preliminary examination."

Your question assumes that the defendant has had a preliminary examination and has been bound over to the District Court for further action.

Section 11, Statutes of 1913, p. 293, makes it the duty of the magistrate, when a preliminary examination is had, and the defendant ordered held to appear before the court having jurisdiction, to file with the Clerk of said court all papers in the proceeding, together with a copy of the transcript.

The matter then becomes of record in the District Court. Section 545, Criminal Practice Act, as amended 1919, p. 436, provides that where a person has been held to answer, if an indictment be not found, or an information filed against him at the last session of the court at which he is held to answer, the Court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Section 549, Criminal Practice Act, as amended 1919, p. 437, provides that the court may, either of its own motion, or upon application of the District Attorney, order any action, after indictment found or information filed, to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order.

Section 7400, Rev. Laws, 1912 (section 550, Criminal Practice Act) provides:

> Neither the Attorney-General nor the District Attorney shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last preceding section.

From a careful reading of the statutes, it is my opinion that the filing of a statement under sec. 8, Stats. 1913, does not of itself operate as a dismissal of the case and discharge of the defendant, but that to effect such a result an order must be made and entered by the District Court having jurisdiction.

For the foregoing reasons, therefore, your question is answered in the negative.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. W. T. MATHEWS, *District Attorney, Elko, Nevada.*

SYLLABUS

123. Attorney-General—No Opinion Rendered when Subject before Court.

(1) The subject-matter of this inquiry having been submitted to court, no opinion should be rendered in the premises.

INQUIRY

CARSON CITY, March 27, 1924.

You request an opinion as to the legality of the various statutes of the State of Nevada with reference to the licensing of sheep and live stock in this State.

You call my attention to an opinion rendered by this office on April 1, 1920, wherein it was held that none of the Acts relating to licensing of sheep was constitutional since the Act of 1901(Stats. 1901, p. 64). You direct attention to the fact that said statute is an amendment of section 1 of an Act approved March 12, 1885, and that the statute of 1895 was repealed by the Act of March 22, 1915.

OPINION

I have been officially advised that an action is now pending in one of the District Courts of this State, wherein the legality of the several Acts of the Legislature with reference to the licensing of sheep and live stock has been attacked, and the questions propounded by you have been raised in this proceeding. Inasmuch as the courts of this State will have the matter involved presented to them for determination, I am of the opinion that this question should not be determined by this office.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

124. Revenue and Taxation—What Property of Nevada Industrial Commission Is Subject to Taxation.

Section 3621, Rev. Laws: Property owned and used by Commission is not subject to taxation, but portion so owned from which rental is received is taxable.

INQUIRY

CARSON CITY, March 29, 1924.

You call my attention to the fact that the County Commissioners of Ormsby County have assessed real property owned by the Nevada Industrial Commission, and you desire an official opinion as to the validity of such assessment.

OPINION

The property assessed by the Board of County Commissioners of Ormsby County consists of certain real estate which is occupied in

part by the Nevada Industrial Commission, functioning as a state agency, and the other portion of the same is rented by the Commission for certain stipulated rentals.

Under section 3621, Revised Laws of 1912, as amended, it is provided that all lands owned by the State are exempt from taxation, provided "that when any of the property mentioned in this subdivision is used for any other than public purposes, and rent or valuable consideration is received for its use, the same shall be taxed."

It is my opinion that the portion of the property owned by the Nevada Industrial Commission and occupied by it is not taxable, but an assessment may be made and a tax collected on the value of that portion of the property owned by the Commission from which a rental consideration is received.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

125. Statutes—Amendment and Repeal—Livestock License.

(1) Stats. 1895, p. 53, was amended by Stats. 1901, p. 64. The amendment becomes as much a part of an Act as if it had always been included in it.

(2) Stats. 1915, p. 247, repealed Stats. 1895, and thereby repealed its amendment of 1901.

(3) There is now no law authorizing the collection of license tax on sheep.

INQUIRY

CARSON CITY, April 4, 1924.

Under date of March 27, 1924, in answer to a request for an official opinion concerning the legality of the various statutes of the State of Nevada with reference to licensing of sheep and live stock, you are advised that, inasmuch as an action was pending in one of the District Courts of this State wherein the matter submitted for an opinion was to be determined, it was ruled that the question should not be decided by this office.

An investigation discloses that the matter submitted is not a subject for court action, and I feel, therefore, that it is my duty to render an official opinion concerning the same.

Your inquiry may be stated as follows: On April 1, 1920, Attorney-General Fowler, in a written opinion, held that the several legislative actions relating to licensing of sheep were unconstitutional, and that recourse must be had to the Statutes of 1901, p. 64, for authority to impose a license tax upon sheep.

You direct my attention to the fact that the statute of 1901 is an amendment of section 1 of an Act approved March 12, 1895; that the Act of 1895 was expressly repealed by the Act of March 22, 1915. Your query is:

1. Conceding the Act of 1915 to be unconstitutional, as so declared by Attorney-General Fowler—

2. Does the repeal of the Act of 1895 leave the State without a sheep-license Act?

OPINION

Statutes of 1915, p. 247, specifically repealed the Act of 1895, supra. With this premise admitted, the question for determination is the effect of such repeal upon the amendatory Act. It is very apparent, from a review of the Statutes of 1895 and the amendatory Act, that the latter is so dependent upon the former, as to become inoperative upon its repeal.

> Where a section of a statute is amended, the original ceases to exist, and the section as amended supersedes it and becomes a part of the statute for all intents and purposes, as if the amendment had always been there. Walsh v. State, 142 Ind. 357; Blair v. Chicago, 50 L. Ed. 801.

I am of the opinion that the provision contained in the amendment of section 1, Stats. 1895, by Stats. 1901, became engrafted upon Stats. 1895 so as to become part and parcel of it for all purposes.

Therefore the repeal of the Act of 1895 must, of necessity, carry with it the amendment of 1901.

The statute of 1901, amending section 1, would have practically no effect without sections 2, 3, 4, 5, 6, 7, and 8 of the statute of 1895.

The Supreme Court of California, in the case of Ellison v. Jackson Water Co., 12 Cal. 542, was called upon to determine whether or not the repealing of a given law would also repeal amendments made to the law. In this case it appeared that the Legislature in the year 1850 gave the mechanics' lien only upon building and wharves. In the year 1853 the Legislature extended, by amendment, the Act of 1850 to include in its provisions bridges, ditches, etc. Thereafter, in the year 1855, an Act was passed repealing the Act of 1850; and the Court held that the repeal carried with it the supplemental Act of 1853. See, also, Blake v. Brackett, 47 Me. 28; Welstead v. Jennings, 93 N. Y. Supp. 39.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

126. Animals—Railroad's Liability for Killing Live Stock on Crossing.

Stats. 1923, p. 148: Railroad company under circumstances stated is liable for value of live stock killed by its train on public crossing.

INQUIRY

CARSON CITY, April 7, 1924.

You advise that the Southern Pacific Company has reported to you the killing of three animals belonging to Mrs. Margaret Ryan; that a formal claim for compensation was presented to the railroad company, and that you are in receipt, from the railroad company, of a communication wherein they deny liability upon the ground that the animals were killed while running at large on a public road-crossing.

You request an opinion as to whether or not the railroad company is liable for compensation for killing the animals in question, in view of the fact that they were killed on the public road-crossing.

OPINION

Your attention is respectfully directed to section 1, Statutes of 1923, p. 148, wherein it is provided:

> Every railroad company which negligently injures or kills any animals, * * * by running any engine * * * over or against such animals, shall be liable to the owner of such animals for the damages sustained, * * * unless it be shown on the trial of any action * * * that the owner of such animal immediately contributed to such killing * * *; *provided*, that the mere straying of such animals upon or along such railroad track or tracks concerned shall not be held upon such trial to be any evidence of contributory negligence upon the part of the owner; * * * nor shall the grazing of the same unattended by a herder be so considered; *and provided further*, that the killing or injury in such action shall be prima-facie evidence of such negligence upon the part of such railroad corporation or company.

Conceding the above rule of evidence does not offend the Constitution, I am of the opinion that the railroad company is liable and should compensate the owner for the animals in question. Further, that no good or sufficient reason that has support in law or fact is recited in the answer of the railroad company to the demand made.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *University of Nevada, Reno, Nevada.*

SYLLABUS

127. **Officers—Duty of County Auditor and Treasurer—Publication of Reports.**

(1) Section 3746 of the Revised Laws is repealed by Stats. 1915, p. 248. It is no longer duty of Auditor to furnish statement of collections, etc.

(2) Stats. 1919, p. 331, as amended by Stats. 1923, p. 346, provides rule to be followed in reference to reports and records of County Auditor and Treasurer.

INQUIRY

CARSON CITY, April 7, 1924.

You call my attention to section 3746, Revised Laws of Nevada. Under the provisions of this section it is the duty of the County Auditor and Treasurer, at certain periods of the year, to make a joint statement to the Board of County Commissioners, showing the amount of collections from all sources paid into the county treasury, etc.

This section further makes it the duty of said officers to publish such statement in some newspaper published in the county. You direct my attention to Statutes of 1915, chap. 178, and request an opinion as to whether section 3746 has been repealed by the Statutes of 1915.

OPINION

Stats. 1915, chap. 178, p. 248, contain a specific repealing clause, and under the provisions of this repeal section 134, which is section 3746 of an Act entitled "An Act to provide revenue for the support

of the government of the State of Nevada, and to repeal said Acts relating thereto," approved March 23, 1891, is repealed.

It will be noted that in volume 1, Revised Laws of 1912, p. 1042, the title of the Act approved March 23, 1891, is set forth. Some confusion arises by reason of the fact that section 3746 is set forth under the Act approved March 18, 1911 (p. 1044), which provides:

> An Act to fix the state tax levy and to distribute the same in the proper funds.

Statutes of 1891, p. 135, enacted the section now known as section 3746, Rev. Laws, vol. 1, p. 1098.

I am of the opinion that section 3746, Rev. Laws 1912, has been repealed by Stats. 1915, p. 248, and that it is no longer the duty of the County Auditor to publish the statement required under said section. It will be further noted that Stats. 1919, p. 331, as amended Stats. 1923, p. 346, has adopted a rule to be followed in reference to the reports and records to be made by the County Auditor and the County Treasurer.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. BOOTH B. GOODMAN, *District Attorney, Lovelock, Nevada.*

SYLLABUS

128. Health—State Board—Public Funds May Be Expended.

Stats. 1917, p. 187: Whenever they are convinced of existence of any great menace to public health, beyond control of local authorities, State Board of Health, acting with Governor, may expend appropriation to combat disease.

INQUIRY

CARSON CITY, April 15, 1924.

You direct my attention to Statutes of 1917, chap. 100, and request an official opinion concerning the appropriation of $10,000 mentioned therein, and desire to be advised as to whether this money may be used in combating foot-and-mouth disease.

In your communication you state:

> I am advised that the foot-and-mouth disease is remarkably malignant and finds victims among humans as well as the lower animals, causing the characteristic lesions and other symptoms noted in neat and other cattle. I find from the information at hand that "it appears that a great menace to the public health and safety exists which is beyond the control of the county, municipal and other local authorities." I believe the State Board of Health will also make a similar finding. As to the futility of county and local control I draw my conclusion from the ineffective campaign waged by the local and county authorities in California.
>
> I would appreciate your opinion as to whether, in case such a finding shall be announced by the State Board of Health and myself, the statute in question will permit the application of the $10,000 so appropriated to the purpose here indicated, confining the same to the inspection and disinfection of human beings.

OPINION

Section 1, Statutes of 1917, p. 187, provides:

> The sum of ten thousand dollars ($10,000) is hereby appropriated, from the general fund in the treasury of the State of Nevada, not otherwise appropriated, as an emergency fund to be expended by the State Board of Health, subject to the approval of the Governor, when it appears to the State Board of Health and the Governor that a great menace to the public health and safety exists and is beyond control of the county, municipal, or other local authorities.

The Legislature has designated the Governor and the State Board of Health to be the agency in determining the ultimate facts as to whether or not "a great menace to public health and safety exists, and is beyond the control of the county, and municipal or other local authorities."

The appropriation mentioned is dependent upon, and may be expended when this determination is made.

It is my opinion that, when the designated legislative agency finds the facts in accordance with the provisions of this statute, the appropriation may be expended for the purposes designated.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. J. G. Scrugham, *Governor, Carson City, Nevada.*

SYLLABUS

129. Officers—Compensation—Unofficial Services.

Stats. 1919, p. 177: County Clerk and Treasurer who performs road work out of office hours is entitled to compensation therefor.

INQUIRY

Carson City, April 15, 1924.

You advise that the County Clerk and Treasurer of your county has, without pay, supervised all county road work; that recently a petition signed by a majority of the taxpayers of the county has been presented to the Board of County Commissioners recommending that a nominal sum be paid for this service rendered; that the same was rendered outside of office hours, and on Sundays and holidays.

You request an official opinion, in view of the facts stated, as to whether the County Commissioners may compensate the County Clerk and Treasurer for these services, and whether or not Statutes of 1919, p. 177, would constitute a legal bar to such payment.

OPINION

Stats. 1919, p. 177, fixes the compensation of the County Clerk and Treasurer, and provides that the compensation designated shall be in full payment for his services.

The services performed by the County Clerk and Treasurer in your inquiry are not such services for which compensation is fixed by Stats. 1919, p. 177.

It appears, therefore, that the compensation to be paid is for services performed by the County Clerk and Treasurer, which were not incumbent upon him to perform by reason of his position.

I am of the opinion that the Board of County Commissioners may in its discretion, compensate for the extra services rendered.

(See Opinions of Attorney-General, No. 73, 1913–1914.)

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. E. E. WINTERS, *District Attorney, Fallon, Nevada.*

SYLLABUS

130. Mothers' Pension Act—Compensation—Qualifications.

Stats. 1915, p. 151, sec. 3: The fact that mother became widow in another State would not preclude her from receiving benefits of Act if other requirements of statute were complied with.

INQUIRY

CARSON CITY, April 15, 1924.

You submit the following inquiry, and request an official opinion:

> A party becomes a widow in the State of Washington in 1918, moving to Smith Valley, Lyon County, Nevada, June 12, 1922, and has continuously resided therein. She is the mother of an eight-year-old son, and now makes application to the Commissioners of Lyon County for a mother's pension.

You desire to be advised as to whether, under these facts, she is entitled or qualified to receive compensation under this statute.

OPINION

In your letter to me you state: "The writer sees no inhibition in section 3 of the Mothers' Pension Act, or otherwise, that would preclude this party from receiving the benefits of the Mothers' Pension Act."

In this conclusion, I concur. The Legislature has designated, in section 3 of the Act, the qualifications necessary to enable an individual to claim the benefits of this Act. The residence qualification consists of residing in the county for a period of one year. If the person making the application has a residence in the county for one year, and the other necessary facts exist as recited in section 3, I am of the opinion that she is entitled to the benefits of this Act.

The question as to the policy which prompted the Legislature to enact this measure, and whether further restrictions should not be incorporated therein in reference to meeting the objections urged, are clearly matters for legislative consideration.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

131. Statutes—Repeal—Budget Law Repeals Road Fund Apportionment Act.

The "Budget Law" repeals sec. 842, Rev. Laws (Stats. 1907, p. 169, sec. 39, City of Yerington Charter) by implication. Therefore County Commissioners may not now apportion part of road fund to city.

INQUIRY

Carson City, April 28, 1924.

You advise that under the charter of the city of Yerington (Stats. 1907, sec. 39, p. 169), a direct provision and authorization is therein contained to the Board of County Commissioners, directing said board to apportion a portion of the road funds to the city of Yerington. You call my attention to a decision of the Supreme Court of the State of Nevada, in the case of the Trustees of Carson City v. Ormsby County (Case No. 2625), and request an opinion as to whether, under this ruling of the Supreme Court, it is no longer the duty of the Board of County Commissioners to make such apportionment.

OPINION

The Supreme Court of Nevada, in deciding the case of Trustees of Carson City v. Ormsby County, stated:

> If the idea, as above expressed, that the budget system "is a complete financial plan for a definite period," is the correct one, then it must inevitably follow that the adoption of the budget law repeals section 842 of the Revised Laws, *and all other provisions relating to the raising and expenditure of revenue by the towns and cities of this State.* Carson City v. County Commissioners, 47 Nev. 423.

It must necessarily follow that sec. 39, Stats. 1907, containing the provision directing the Board of County Commissioners of Lyon County to apportion road funds to the city of Yerington was, by reason of the budget law, repealed by implication.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Clark J. Guild, *District Attorney, Yerington, Nevada.*

SYLLABUS

132. **Insurance Commissioner—Powers—Changing Term of Contract—Insurance of State Agricultural Society Property.**

State Controller, acting as ex officio Insurance Commissioner, is not authorized to direct any change in insurance policy upon property of State Agricultural Society.

INQUIRY

Carson City, April 28, 1924.

Recently a fire destroyed a number of stalls at the race-track, at Reno, Nevada. This property is owned by the Nevada State Agricultural Society, which was incorporated under an Act entitled "An Act to incorporate a State Agricultural Society, and provide for the management thereof," approved March 7, 1873 (Rev. Laws, 3916). Under the authority of section 5 of the Act to provide for the management and control of the State Agricultural Society (Rev. Laws, 3925, as amended Stats. 1915) all the property of the Agricultural Society was insured with the Nevada State Life Insurance Company, the insurance being placed by the State Board of Agriculture.

After the fire it was discovered that the State Controller, as ex officio State Insurance Commissioner, pursuant to section 5 of an Act approved March 12, 1915, and subsequent to the placing of the policies of the State Board of Agriculture, had changed one of the policies, with the result that it would mean a loss of several thousand dollars to the society in the collection of the fire loss; this for the reason that he had the policy reduced on the very buildings that were destroyed.

The question now arises as to the power of the Insurance Commissioner to place a policy upon property owned by the Nevada State Agricultural Society, or to make changes in the terms, conditions, and amounts of policies placed upon said property by the State Agricultural Society.

An opinion is requested from this office by the Secretary of the Agricultural Society, through you.

In submitting this request, you have outlined your views in respect to the question here presented, and, inasmuch as your views coincide with mine, I have concluded to embody them as my official opinion.

OPINION

It is my opinion that the power reposed in the Insurance Commissioner, under section 5, supra, does not extend to property belonging to the State Agricultural Society. The section in question reads as follows:

> SEC. 5. The State Controller, acting as ex officio Insurance Commissioner, shall place all fire insurance required by the State of Nevada *upon its property*, dealing only with companies authorized to do business in the State; and shall also have the power to inspect all state buildings and order such fire-extinguishing and safety appliances as shall be deemed necessary for the protection of property against fire; and shall have the further power to order the removal of combustibles and rubbish from said property, or order such changes in the entrances or exits of the buildings as shall insure the safety of the inmates, together with such fire escapes as he may deem necessary.

It will be noted under the above section that the State Controller is vested with the power to place "all fire insurance required by the State of Nevada upon its property." While it is true that under the provision of section 3921, Revised Laws of 1912, the State Agricultural Society is declared to be a state institution, nevertheless, under the Act of 1873 incorporating the society, the specific power was granted it to purchase, hold, and lease land. All of the property purchased by the society is taken in its name, and not in the name of the State of Nevada.

It is reasonably clear that under the broad powers conferred upon the State Board of Agriculture under section 3925—where they are, in the language of the statute, "charged with exclusive management and control of the State Agricultural Society, as a state institution; shall have possession and care of its property, and be entrusted with the direction of its entire business and financial affairs"—that this necessarily involves the exclusive right to place insurance upon the buildings which are under their possession and care.

It therefore follows that the State Controller had no power or authority to order or direct any change in the insurance policy upon the property of the State Agricultural Society, and, if any changes were ordered, the same were without authority.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Wm. Woodburn, *Attorney at Law, Reno, Nevada.*

SYLLABUS

133. **Bonds and Undertakings—Highway Department Cannot Release Bonding Company from its Liability to Contractor's Creditors, or Substitute One Surety by Another.**

Any release entered into between the Highway Department and a bonding company could in no way release the bonding company from its liability under the bond to the contractor's creditors. A contractor may not have one surety released and another substituted.

INQUIRY

Carson City, May 16, 1924.

Dodge Brothers & Dudley Contracting Company, a corporation, secured a contract from the State Highway Department of the State of Nevada for the construction of a portion of the state highway described as Federal Aid Project No. 53-A.

Upon the execution of said contract, and on January 16, 1924, a surety bond in the sum of $108,769 was presented and filed, the same being executed by the Fidelity and Deposit Company of Maryland. Work under said contract commenced about March 1, 1924.

Dodge Brothers & Dudley Contracting Company desire now to have canceled the surety bond filed by the Fidelity and Deposit Company of Maryland, and in lieu thereof tender a surety bond executed by another surety company.

You request an official opinion as to the legality of such procedure.

OPINION

Upon casual consideration of the question presented, I have heretofore expressed the view that surety bonds and undertakings were similar to other contracts, and where all parties mutually agreed to a release of the obligation thereunder, from the date of such agreement the liability ceases. This principle is elementary. The Legislature of the State of Nevada has enacted a measure for the release of sureties on official bonds and undertakings. This statute was approved February 13, 1867.

Under the provisions of Stats. 1909, a surety company may be released from its liabilities upon the same terms and conditions as are by law prescribed for the release of individuals.

In answering the question propounded, we do not deem it necessary to consider the extent to which the statutes above quoted may apply in the present situation. The question here presented is more complex, as a reading of the statute and the bond itself discloses.

The bond was executed under and by virtue of the provisions of sec. 17, Stats. 1917, as amended 1919 and 1921. Section 17 provides:

> Every contractor for improvements, construction, or maintenance shall execute a bond and, in addition to the conditions heretofore provided, such bond shall provide and secure payment for all material, provisions and supplies, teams, trucks, and other means of transportation used in or upon or about or for the performance of the work contracted to be done, and for any work or labor done thereon. Any person or corporation furnishing labor or supplies, as heretofore provided herein, desiring to be protected under said bond, shall file his claim within thirty days from the completion of the contract with the Department of Highways; * * * and any such person or corporation so filing a claim may, at any time within six months thereafter, commence an action against the surety or sureties on the bond for the recovery of the amount of the claim.

The bond presented and filed by the Fidelity and Deposit Company of Maryland contains two conditions: First—The faithful performance and execution of the work undertaken by the contractor; and, Second—The prompt payment by the contractor of all debts incurred by him in the prosecution of the work for labor and materials supplied by third parties.

In the case of Dewey v. State, 91 Ind. 173, the Court held, in a bond of similar import, that in—

> any breach of the second condition of the bond, by the contractor, the right of action was in the laborer, and that such right of action could not be defeated or prejudiced, by any act done, by the obligee in the bond after the bond had been taken and approved.

It was ruled that changes made in the contract by the parties thereto—to wit, the contractor and public authorities—after the bonds had been executed and accepted, did not deprive materialmen of their right to recover against the sureties on the bond.

In the case of United States v. National Surety Co., 92 Fed. 552, the Circuit Court of Appeals, in construing a bond similar to the one filed in the instant case, held:

> When the Government has executed the contract and taken and approved the bond, it ceases to be the agent of the third parties whom the contractor employs in the execution of the work, or from whom he obtains materials, and the rights of such persons under the bond are unaffected by subsequent transactions between the Government and the contractor. If such were not the case, it would be impossible for the contractor and some officer of the United States, by making some change in the contract, to deprive laborers of all recourse against the sureties in the bond after they had supplied materials and labor of great value in reliance upon its provisions.

The Supreme Court of the United States, in the case of Equitable Surety Co. v. McMillan, 234 U. S. 458, approved the doctrine announced in United States v. National Surety Co., supra, and held:

> The surety is charged with notice that he is entering into what is in a very proper sense a public obligation, and one that will be relied upon by persons who can in no manner control the conduct of the nominal obligee, and with respect to whom the latter is a mere trustee and therefore incapable, upon general principles of equity, of bartering away for its own benefit or convenience the right of the beneficiaries. In the light of the statute the surety becomes bound for the performance of the work by the principal and for the prompt payment of the sums due to all persons supplying labor and material.

It follows, therefore, that any release entered into between the Highway Department and the bonding company could in no way affect or release the bonding company from its liability under the bond to the parties described in section 17 of the Act.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

SYLLABUS

134. Corporations—Foreign—Property of Foreign Corporation May Not Be Attached for Failure to Pay License Tax.

Stats. 1923, p. 342, sec. 4: While the Act provides for the payment of a license tax by both domestic and foreign corporations, the section makes the property of only foreign corporations subject to attachment and sale for default therein. Such discrimination being prohibited, the section is of doubtful validity.

INQUIRY

CARSON CITY, June 3, 1924.

You submit to this department for an official opinion the following communication:

> This department is desirous of obtaining from you an opinion relative to the duties and procedure of the Secretary of State in issuing his warrant and delivering the same to any Sheriff who may seize any property of a foreign corporation that has failed to pay its license tax, in accordance with the last paragraph of sec. 4, chap. 190, Stats. 1923, and what is known as the "Corporation License-Tax Law."

OPINION

That portion of section 4 which authorizes the procedure outlined by you, reads in part as follows:

> In case a foreign corporation shall make default as herein provided, the Secretary of State shall issue his warrant, stating the amount of the tax, penalty, and costs due to the State, and shall deliver such warrant to any Sheriff of any county in this State, who may seize and sell any property of a foreign corporation, as upon execution, and apply the proceeds to the payment of the tax and penalty and costs.

It will be noted from a reading of the Act that, while the license tax is to be paid by both domestic and foreign corporations, it is only the property of a foreign corporation that may be sold as authorized by section 4, supra.

It will be seen, therefore, that, in dealing with the domestic and foreign corporations, a discrimination is made in respect to the property of a foreign corporation and the same procedure, or procedure of like character, is not inaugurated in respect to the property of a defaulting domestic corporation. For this reason, therefore, I entertain serious doubts as to the validity of this particular section, which authorizes you to sell the property of a foreign corporation.

In enacting laws regulating corporations, no discrimination should be made between a foreign corporation and a domestic corporation. The law is well settled that—

> Once admitted, a foreign corporation is entitled to the equal protection of the laws, and to as favorable treatment as a domestic corporation; and any state statute violative of this provision is unconstitutional and void. Louisville R. R. Co. v. Gaston, 54 L. Ed. 542.
>
> Any attempt to substantially discriminate between domestic and foreign corporations admitted to do business in this State, prejudicial to the latter, is invalid, whether it be by unequal taxation or other substantial inequality. Herndon v. Chicago R. R. Co., 54 L. Ed. 570. (See, also, Hostetler v. Harris, 45 Nev. 43.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. W. G. Greathouse, *Secretary of State, Carson City, Nevada.*

SYLLABUS

137. Officers—Statute Authorizes Payment of Salary—Appropriation, Necessity for—To Pay Traveling Expenses.

Sec. 21, chap. 191, Stats. 1919, authorizes payment of per diem to members of reclamation and settlement board, but expenses of members cannot be paid under Act.

INQUIRY

Carson City, June 13, 1924.

You present the following questions, and request an official opinion:

> Under the provisions of chapter 191, Statutes of Nevada, 1919, authority was given the Governor to appoint a reclamation and settlement board of three, to act in conjunction with the Governor and State Engineer, the appointed members to receive $10 a day while actually engaged on the work of the board.

I desire your written opinion, therefore, whether appointive members of this board may be paid the per diem, excluding all other expenses, provided for in the Act of 1919.

OPINION

You are advised that in the opinion of this office, under the provisions of sec. 21, chap. 191, Stats. 1919, you have the authority to

appoint three members of the reclamation and settlement board, as provided for therein, and that such members may lawfully be paid the sum of $10 per day while "actually engaged in the work of the board," the same as other state officers are paid, but, because of vagueness and uncertainty and the impossibility of ascertaining the amount which might be claimed as "necessary expenses" of the members of the board, that part of section 2 providing for the payment of such "necessary expenses" would not be sufficient to constitute an appropriation, and expenses could not be paid thereunder.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. J. G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

138. **Officers—City Officers Elected Every Two Years.**

The provisions of Statutes of 1921, p. 96, in reference to terms of office apply only to county officers. City officers must be elected every two years.

INQUIRY

CARSON CITY, June 23, 1924.

You advise that the city officers of the city of Lovelock were elected last spring to serve, as they supposed, for a term of two years.

There now seems to be some question in the minds of some of the council, as to whether, under the new law, they were elected to serve four years instead of two.

OPINION

Statutes of 1921, p. 96, provide:

> SEC. 17. County Clerks, Sheriffs, County Assessors, County Treasurers, District Attorneys, County Surveyors, County Recorders, and Public Administrators shall be chosen by the electors of their respective counties at the general election in the year 1922, and at the general election every four years thereafter, and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election.

This provision applies to county officers only, and has no application to city officers.

You are advised, therefore, that city officers do not come within the provisions of said Act.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. C. H. JONES, *City Clerk, Lovelock, Nevada.*

SYLLABUS

139. **Officers — Appointment — Tenure and Term under Appointment — Special and General Election—Next General Election Defined.**

(1) Where a vacancy occurs in a county office the County Commissioners may fill such vacancy until the next general election.

(2) The next general election means the next election at which the particular office is to be filled under the law, and not the next election in point of time.

(Opinion affirmed by Supreme Court in case of State ex rel. Bridges v. Jepson, as County Clerk, 48 Nev. .....)

INQUIRY

CARSON CITY, June 27, 1924.

You advise that heretofore you were appointed Public Administrator of Clark County to fill the vacancy caused by the removal from the State of Mr. I. C. Johnson, who was duly elected for the term of four years at the election held November 7, 1922.

You request an opinion as to whether you can hold office, under said appointment, for the unexpired portion of said term, or until the general election in 1926, or whether your successor should be elected at the next general election in November, 1924.

OPINION

Prior to the amendment of section 2781, Revised Laws of 1912, fixing the term of all county officers for a period of two years, there would be no difficulty in determining the present question. Stats. 1921, p. 96, amends section 2781, and by reason of said amendment the term of all county officers was fixed at four years, beginning with the election of 1922.

Inasmuch as Mr. Johnson was elected at the November election of 1922 for a four-year term, and you having been appointed to fill the vacancy caused by his removal from the State, the question to be decided is whether your successor is to be elected at the next general election in November, 1924, or the next general election for the office in which the vacancy has occurred, or in November, 1926.

Section 2813, Revised Laws of 1912, provides:

> When any vacancy shall exist or occur in the office of County Clerk or any other county or township office, except the office of District Judge, the Board of County Commissioners shall appoint some suitable person to fill such vacancy until the next general election.

The matter herein presented must be determined upon the construction to be given the words "until the next general election" as used in the statute, supra.

Stats. 1917, p. 358, provide:

> A general election shall be held in the several election precincts in this State on the Tuesday next after the first Monday of November, 1918, and every two years thereafter, at which there shall be chosen all of such officers as are by law to be elected in such year, unless otherwise provided for.

It will be noted from a reading of this statute that a "general election" is to be held every two years, and at such general election "there shall be chosen all such officers as are by law to be elected in such year."

Section 2781 of the Revised Laws, as amended Stats. 1921, p. 96, provides that the county officers therein enumerated—

> Shall be chosen by the electors of the respective counties at the general election in the year 1922 and at the general election every four years thereafter.

In reference to the election of county officers, this statute, supra, is the authority in law which designates and fixes the time when the general election for county officers must be held.

If we assume that, by the words "next general election," as used in Rev. Laws 2813, it is meant, in the present instance, the general election in the year 1924, we find that there is no authority in law for holding an election for the purpose of selecting a Public Administrator in the year 1924.

It is imperative that the statute authorize and fix a time and place when public offices shall be filled by an election. Voting for and selecting an individual to fill a public office at any other time than that authorized by law would be invalid, and the people have no inherent right to assemble and elect a public officer unless such election has been authorized by legislative Act. The Supreme Court of Nevada, in the case of Sawyer v. Haydon, 1 Nev. 79, announces the following statement of law in support of this doctrine:

> But when a people live under a government which is regulated by written law, in which the powers, duties, and responsibilities of the different officers of the government and of the body of the people are clearly defined, and in which the law attempts to point out how and when citizens may exercise the election franchise, and for what officers they may vote, we cannot conceive of a case in which the people could be entitled to vote for any officer without some provision of law, either express or clearly implied, authorizing such vote to be cast.

In construing the words "until the next general election," as used in section 2813, I am of the opinion that in enacting said section the Legislature intended the words "until the next general election" to mean the next general election when candidates were selected to fill the office in which the vacancy occurred.

Admitting that a general election is to be held in November, 1924, it is a general election only for electing officers who are by law authorized to be elected at that time, and the same would be a special election, considered from the standpoint of filling vacancies in offices, when the statute does not authorize or fix that particular time as the time when the election or selection of said officers are to be made.

> It is not necessarily the time or manner of holding an election to fill a vacancy that makes it a special election, but the fact that it is held at a time other than the time fixed by law to elect an officer for the regular or defined term. State v. Howell, 110 Pac. 386.

It is my opinion, therefore, that, under your appointment, you will hold office until December 31, 1926. Under section 2813, when the Legislature used the words "next general election," it meant the next general election for the particular office, and it did not mean the next general election in point of time.

Authorities examined:

Daggett v. Collins, 2 Nev. 351.
People v. Call, 132 Cal. 334.
People v. Hardy, 9 Utah, 68.
State v. Howell, 110 Pac. 386.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. C. D. BREEZE, *Public Administrator, Las Vegas, Nevada.*

SYLLABUS

140. Officers—Motgages—Sheriff Not Entitled to Commission on Foreclosure Sale to Mortgagee.

Stats. 1919, p. 170: A sheriff is not entitled to commission on foreclosure sale to mortgagee for amount of judgment, etc., where no money passes.

INQUIRY

CARSON CITY, June 30, 1924.

You request an official opinion in reference to the following facts:

Under a decree of foreclosure and order of sale, the Sheriff is commanded to sell certain mortgaged premises to cover the amount of judgment entered, with interest and costs of suit: upon the sale the property is purchased by the mortgagee, but no money passes through the hands of the Sheriff.

Query: Under the provisions of section 4, page 170, Stats. 1919, is said Sheriff entitled to and compelled to collect commissions upon the amount of said judgment?

OPINION

Under the statement of facts recited you are advised that the Sheriff is not entitled to collect a commission. This point was decided by the Supreme Court of Nevada in the case of Clover Valley Company v. Lamb, 43 Nev. 375.

The question would be answered in the affirmative if the sale, under the fact stated, was made under a judgment and execution. Roberts v. Ingalls, 36 Nev. 325.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

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

SYLLABUS

141. Revenue and Taxation—Delinquency—Amount of Payment Necessary to Redeem Property.

(1) Rev. Laws, 3654: Where the delinquent tax, costs, and penalties are less than $300, taxpayer may redeem property prior to sale by paying entire tax.

Rev. Laws, 3645: Or, taxpayer may pay on least subdivision assessed, without paying on whole.

Rev. Laws, 3651: If property goes to sale, taxpayer loses this right and entire tax must be paid by sale of smallest quantity sufficient to pay amount due.

(2) Where delinquent tax is over $300, Sheriff cannot sell any parcel for less than entire amount due.

(3) Rev. Laws, 3651, 3666: "Smallest quantity" means all interest of taxpayer in smallest designated portion, viz., quarter-section, town lot, or specified article of personal property, that will sell for enough to pay entire amount due.

INQUIRY

Carson City, July 11, 1924.

(1) Where property has been duly and regularly assessed, and has become delinquent, can the Tax Receiver (where the amount due, exclusive of penalties and costs is under $300), at the date of sale, accept taxes upon, or sell, any specific part of such delinquent property, less than the entire amount found to be due as delinquent taxes, penalties and costs? In other words, if any person desires to redeem any part of delinquent property is it not required that the Tax Receiver collect the entire amount of the delinquency, plus the penalties and costs?

OPINION

Where property, on which the tax, exclusive of penalties and costs is less than $300, becomes delinquent, the taxpayer may at any time prior to sale, under the provisions of Sec. 3654, Revised Laws of Nevada, pay the entire tax, penalties, and costs and redeem the property; but, under the provisions of Sec. 3645, Revised Laws of Nevada, he is entitled at any time prior to sale, to pay the taxes, together with the penalties and costs if there be any, upon the least subdivision thereof that is entered upon the assessment roll, without paying the taxes on the whole.

If the property goes to sale the taxpayer loses this right and the Tax Receiver must then collect the entire amount of the taxes, penalties and costs by selling "the smallest quantity of the property that will pay the taxes, penalties and costs." (Sec. 3651, as amended.)

INQUIRY

(2) Where property has been duly and regularly assessed and has become delinquent (where the amount of the tax is over $300), can the Sheriff at the execution sale, sell any specific part or parcel of the property for less than the entire amount of the judgment, which includes penalties and costs?

OPINION

After judgment, upon execution sale, the Sheriff cannot lawfully sell any part or parcel of the property for less than the entire amount of the judgment, which includes penalties and costs.

INQUIRY

(3) In the sale of delinquent property, do you construe the language of Sec. 3666 (Rev. Laws, vol. 3, p. 2989) "provided that the officer in

selling such property shall sell only the smallest quantity that will pay the judgment and all costs" to mean that a *specified quantity* shall be sold, or merely an undivided interest in the whole, viz: one-half, or one-third, or one-tenth, etc.?

By *specified quantity*, I mean a designated part or portion of the property assessed, viz: SE¼ of NE¼ of a certain section and township, or a designated lot of ground, or a designated lot of personal property.

OPINION

The words "smallest quantity" as used in sections 3651 and 3666 Revised Laws of Nevada, contemplate the absolute sale of *all the interest of the taxpayer* in and to the smallest quantity that will sell for enough to pay the taxes, penalties and costs, and not the sale of the smallest undivided interest in and to the whole property. For instance, if a purchaser at the sale for taxes of a quarter-section of land, bids for forty acres of such land for the amount of the taxes, penalties and costs, and there is no bid for a smaller quantity, the purchaser takes absolute title, subject to the redemption of the forty acres bid for, and the taxpayer retains undisturbed his title to the remaining one hundred and twenty acres.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

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

SYLLABUS

142. Nevada Industrial Commission—Leasers of Mining Property are Employees and Entitled to Compensation for Injuries—Burden Not on Commission to Collect Premiums—Act Should Be Liberally Construed.

Nevada Industrial Insurance Act (Stats. 1919, c. 176), Sec. 7½(d); Subd. g, section 1: Member of leasing partnership, injured while working on property of mining company which has accepted benefits of Insurance Act is entitled to benefit, even though, through misconception of the law, leasers were not included in pay-roll list furnished Commission, there being no evidence that injured leaser rejected benefits of Act.

The burden is not on Commission to collect premiums due.

The Act should be liberally construed.

INQUIRY

CARSON CITY, July 11, 1924.

The following statement of facts is submitted:

The Seven Troughs Reorganized Mines Company during the time mentioned herein has substantially complied with the requirements of the Nevada Industrial Insurance Act.

On June 22, 1922, the company leased to W. B. Nixon and G. W. Warmoth a portion of its property and, on August 3, 1922, notified the Commission that the partnership of Warmoth and Nixon desired to insure their employees, and enclosed a check from the partnership as

an advance premium payment. It appears that Earl L. Laughton was a member of this partnership. On April 6, 1922, the Commission, assuming that premiums should be paid by the partnership, directed a letter to the company requesting a pay-roll list of the lessees. In reply to this inquiry, the company stated that they had nothing to do with the matter but would advise the lessees of the Commission's demands.

Thereafter the lessees directed a letter to the Commission stating "that they did not employ any men and it is not our intention to carry insurance on the partners."

On November 15, 1923, the lease was canceled and a new lease executed to Warmoth and Laughton. The Commission had no knowledge of the execution of the new lease until January 23, 1924.

Mr. Earl L. Laughton, one of the partners, while operating under said lease and in the performance of his duties in connection therewith, was injured on or about December 28, 1923.

An opinion is requested as to whether or not the Nevada Industrial Commission, under the facts recited should compensate Mr. Laughton under the provisions of the Act for injuries sustained by reason of an accident occurring while working on the leased premises.

OPINION

A review of the above facts establish and, for the purpose of this opinion, we assume that the lessor, Seven Troughs Reorganized Mines Company, had accepted the benefits of the Nevada Industrial Insurance Act and had paid the premium required under the law, except, that said company, due to a misconception of the law, did not include or pay premiums for the leasers on said property, which would include Earl L. Laughton, the party injured.

It is my opinion that the Nevada Industrial Commission is liable and should compensate Mr. Laughton for the injuries received, providing, of course, that no facts exist other than those stated which might militate against his claim for compensation.

Section 7½(d) of the Nevada Industrial Insurance Act provides:

> Workmen commonly called "leaser," engaged individually or in association with other workmen in performing manual labor upon the mining property of another in the expectation of finding, developing, or extracting ore or mineral of value under an agreement, oral or written, to share in whole or in part the value of the ore or minerals found, developed or extracted with the lessor, shall be deemed employees of such lessor, and for the purposes of this Act shall be deemed to be employed at the average wage paid to regularly employed miners in the locality. (Added, Stats. 1919, c. 176.)

By virtue of this section, workmen who operate by virtue of a lease, and perform manual labor upon the mining property of another, under the circumstances stated in said section, are clearly employees of the lessor.

This section definitely and without ambiguity fixes the status of what are termed "leasers," and, under the facts of this case, Mr. Laughton comes within this definition.

It appears that at the time Mr. Laughton was injured he was performing work upon the mining property of the Seven Troughs Reorganized Mines Company under and by virtue of the lease executed November 15, 1923.

No rejection of the benefits of the Act was made by him. It is true, that one of the partners to the original lease, signified an intention "to not carry insurance on the partners," this expression was made, however, under a mistaken conception of the law. Such declaration made by one of the parties would have no force of effect as to the status of his associates. A rejection of the Act by one employee could not be considered as binding upon a coemployee. In any event, at the time Mr. Laughton received his injuries he was operating under a new lease and there is no evidence of any declaration made by Laughton that would be consistent with the conclusion that he desired to reject the benefits of this law.

That the Commission had no knowledge of the execution of the new lease is immaterial; to hold otherwise would be to sustain the contention, that, before the Commission is liable, where an injury occurs, this liability must be predicated upon actual knowledge of every individual employed by a contributor.

From the facts stated it appears that all parties interested acted upon the theory that the "leasers" were not employees of the lessor, and, that if they desired to come within the provisions of the Act, contributions to the Industrial Commission by the way of premiums should have been made. Due to this misapprehension, the lessor although contributing to the Nevada Industrial Commission based upon what is termed regular pay-roll employees, did not include the leasers therein, and because of this condition, some doubt is expressed concerning the duty of the Commission in compensating Mr. Laughton for the injuries received.

Section 7½(d) determines the status of lessors and establishes the relationship of employer and employee, as existing between the lessor and lessee, and under the circumstances enumerated herein, Mr. Laughton, being a leaser, was an employee of the lessor.

Assuming in the given case that an employer by mistake, and without fraud, does not include in his premium payment, all individuals employed by him, could it be successfully maintained that the man for whom no premium is paid would not be entitled to be compensated in the event an injury was received? Such a construction cannot be indulged in, because, it would violate the spirit and intent of the law and work a hardship and an injustice on the working man.

I am not unmindful, of subdivision (g), sec. 1, which provides that: "failure on the part of any such employer to pay the premiums as by the provisions of this Act required shall operate as a rejection to the terms of the Act."

In the instant case the facts admit that the lessor has paid the premiums and there is no provision in the Nevada Industrial Insurance Act which warrants the conclusion, that an employer has rejected the terms of the Act because he fails to include in the premium payments all of the men upon his pay-roll. On the other hand, however, a reading of the sections quoted above shows that the Legislature realized it might

be impossible to include all the individuals working for the mining company in the report of the pay-roll and the premiums due thereon. This for the reason that it provides for an estimate of the monthly pay-roll.

Nothing stated herein is to be construed as placing the burden upon the Commission to collect the premiums due from those participating in the Act. This onus is clearly upon the party desiring to accept the provisions of this law.

This Act is to receive a fair and liberal construction for the protection of the employees and, under the circumstances recited, it would require a narrow and technical interpretation of the provisions of this law to sustain the theory that Mr. Laughton should not be compensated for the injury received.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Nevada Industrial Commission, *Carson City, Nevada.*

SYLLABUS

143. Officers—Sheriff Has No Authority to Appoint Deputy at Expense of County.

Stats. 1917, p. 298, makes no provisions for compensating Deputy Sheriff at expense of county of Lander, even though County Commissioners consented to appointment made by Sheriff.

INQUIRY

Carson City, July 11, 1924.

An opinion is requested in reference to the following facts: Statutes of Nevada, 1917, page 298, provide for the salaries of the various officers of Lander County. Under the authority of this Act, the Sheriff received a salary of $2,400 per annum. He is authorized to appoint a jailor at a salary of $100 per month. An opinion is requested as to whether the Sheriff, with the consent of the Board of County Commissioners, may appoint a Deputy Sheriff to serve in Austin, at a salary of $150 per month.

OPINION

Statutes of Nevada, 1917, page 298, authorizes the Sheriff to employ a jailor, and the Act fixes the compensation of this office. No provision is contained in this Act authorizing the Sheriff to appoint a deputy.

While under the general law the Sheriff may appoint a deputy, the county would not be obligated to pay such deputy any compensation. The Legislature, by statutes 1917, supra, having made no provision for compensating the Deputy Sheriffs, the Sheriff would have no authority, even with the consent of the Board of County Commissioners, to appoint a Deputy Sheriff at the expense of the county.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Howard E. Browne, *District Attorney, Austin, Nevada.*

SYLLABUS

144. Fish and Game—Sage Chicken—Prairie Chicken—Closed Season—County Commissioners Power to Change.

Stats. 1923, p. 349, sections 5 and 20: Within prescribed limits, County Commissioners may change open or closed seasons for any desired period, upon petition of not less than fifty resident electors.

INQUIRY

CARSON CITY, July 15, 1924.

An opinion is requested concerning the following facts:

Statutes of Nevada, 1923, page 349, provides for the protection and preservation of game. Section 5 of said Act, provides as follows:

> It shall be unlawful for any person to take any sagehen or sagecock, or prairie chicken, except between the 16th of August, and the 31st of August, both dates included, in each and every year.

Section 20 of said Act, delegates to the Board of County Commissioners, the privilege of changing certain seasons within certain limits.

An opinion is requested as to the authority of the Board of County Commissioners under section 20, to change the sagehen season to any period other than between August 16 and August 31.

OPINION

Under section 20, the Board of County Commissioners is authorized "to lengthen the time of the closed season or fix the dates of the open season within the limits hereinbefore prescribed, for any species of game mentioned in this Act."

This authority is given to the Board of County Commissioners upon petition of not less than fifty resident electors of said county. The Act specifically recites that the Board of County Commissioners must adopt an ordinance, and publish the same when it is desired to exercise authority under said section. It will be noted that the power and authority thus given to the Board of County Commissioners is limited in this respect:

> That in no event shall the County Commissioners of any county * * * extend the open season or shorten the closed season for any species of game whatsoever.

It is my opinion that the Board of County Commissioners, under the provisions of section 20, may change the sagehen season to any period which it may desire, upon petition, but in making said change it must comply with that portion of the provision of section 20, which limits the right to extend the open season or shorten the closed season.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. HOWARD E. BROWNE, *District Attorney, Austin, Nevada.*

SYLLABUS

145. Election—Election Precincts Created and Abolished—Mailing Precincts.

Stats. 1923, c. 207: Precincts containing not over twenty electors registered at last preceding election are automatically abolished.

Same, sections 1 and 6: Mailing precincts may be established by County Commissioners where there are not more than twenty votes registered for the last preceding general election, without petition. Where there are not more than twenty qualified electors, the showing is made by petition. The only limitation prescribed is "not more than twenty."

INQUIRY

CARSON CITY, July 16, 1924.

You submit the following questions and request an official opinion:

(1) Is an election precinct where there were not at least ten qualified electors at the preceding election automatically abolished by Statutes 1923, chapter 207?

(2) If so, for the reestablishment of that precinct even for a mailing precinct, would it not be necessary to present another petition signed by ten or more qualified electors, permanently residing in said precinct?

(3) How many qualified electors are necessary for the creation or establishment of a mailing precinct under section 6, chapter 207, Statutes 1923?

An opinion is requested, first, as to whether or not under the above provisions of law, election precincts, where there were not at least ten qualified electors at the preceding election, are automatically abolished. Second, if so, for the establishment of a mailing precinct, will it not be necessary to present another petition signed by ten or more qualified electors permanently residing in said precinct. Third, how many qualified electors are necessary for the creation or establishment of a mailing precinct, under section 6, chapter 207, Statutes 1923?

OPINION

Replying to your first interrogatory you are advised that under Statutes of 1923, supra, election precincts for voting purposes containing not more than twenty qualified electors at the last preceding election, are automatically abolished.

Under section 6, Statutes 1923, p. 373, it is the "duty of the Board of County Commissioners," at their regular meeting in the month preceding any election, to establish mailing precincts in accordance with this Act, and forthwith mail notification to the registration agent in each precinct so designated.

The mailing precincts that may be established by the Board of County Commissioners under the provisions of section 1 of said Act are defined as follows:

> An election precinct where there were not more than twenty votes registered for the last preceding general election.

Under this classification, the Board of County Commissioners may establish a mailing precinct at such point without the presentation of a petition.

Section 1 defines the other mailing precinct to be "where it shall appear to the satisfaction of the Board of County Commissioners that there are not more than twenty qualified electors."

This showing may be made by petition.

Replying to your third interrogatory, you are advised that section 6, chapter 207, Statutes 1923, leaves the matter of establishing mailing precincts to the discretion of the Board of County Commissioners. No statement is contained in the Act as to how many voters must be in the precinct thus established. The only provision is that the precinct shall contain not more than twenty votes.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. HOWARD E. BROWNE, *District Attorney, Austin, Nevada.*

SYLLABUS

146. Nevada Industrial Commission—Lump-Sum Payments, When Allowed.

(1) Industrial Insurance Act, Section 31 (Stats. 1913, p. 137): The Commission may, in its discretion, allow conversion of compensation into lump-sum payment not exceeding $5,000, under such rules as may be devised for obtaining present value of compensation.

If suit is brought, the proceedings are trial de novo. Court hears entire matter. The power of Commission ceases. Court may direct lump-sum payment under proper pleading and proof.

(2) Same Act, section 25, subdivision 10: No lump-sum settlement is allowed in action by beneficiary to recover death benefits.

INQUIRY

CARSON CITY, July 16, 1924.

(1) Where an employee institutes an action in the District Court against the Nevada Industrial Commission, and the plaintiff prevails in such action, may judgment be entered directing the amount thereof be paid in a lump sum, or must judgment so entered be paid in monthly payments in accordance with the disability established?

(2) Where such action is instituted by the beneficiary under said Act to recover death benefits, what is the rule as to the power of the Court to enter a judgment directing the payment of a lump-sum?

An official opinion is requested in reference to these two inquiries.

OPINION

The statute in determining and fixing compensation for injured employees, provides that the same shall be paid upon the percentage of disability suffered, and rated and payable monthly in an amount based upon the disability as provided by law.

The principle involved in the compensation Act is that the benefits received are a substitute for the wages of the injured employee, and with this theory in mind, the Legislature has provided for periodical payments. The purpose of this method of payment is to preclude any possibility of an imprudent employee or dependent wasting the means provided for his support and thereby becoming a burden upon society. The practice of commuting payments to a lump sum, if unrestricted,

would result in great abuse and injustice. The disabled workman, in the hope of obtaining a large amount of money at one time, would be inclined to sacrifice his right to additional benefits to which he might be entitled, in order to obtain a lump-sum settlement.

If the Nevada Industrial Insurance Act contained no provision authorizing lump-sum settlements, clearly the Court would have no authority in entering a judgment in this class of cases, to direct lump-sum payments.

Section 31, of the Nevada Industrial Insurance Act provides:

> The Nevada Industrial Commission may, in its discretion, allow the conversion of the compensation herein provided for, into a lump-sum payment, not to exceed the sum of $5,000, under such rules and regulations, and system of compensation as may be devised for obtaining the present value of such compensation.

The Commission would have no authority, however, in all cases where monthly payments are to be made, to commute these periodical payments into a lump-sum settlement. In each case where commutation is made by the Commission, facts must exist which warrant the Commission in exercising this discretion.

When a case is presented to the Court by an employee against the Commission, under the Nevada Industrial Insurance Act, the proceedings in court are considered a trial de novo, and it becomes the duty of the Court to hear the entire case, and to pass upon all questions involved or presented. The Commission has no further power in the premises. It could perform no function in the matter after the suit is brought and every question involved is subject to examination and disposition of the District Court. The District Court has the same power to award a lump-sum settlement in each case as the Commission. The provisions of section 25, supra, become equally applicable in the proceedings before the District Court.

Where a lump-sum award is made by the Court, facts must appear in the complaint which justify such award and in the absence of such allegations and proof, the award in lump sum cannot be made.

It is my opinion, therefore, in answer to the first question, that the District Court may, when the proper showing is made, in entering judgment, direct that the judgment be paid in a lump sum, conditioned, however, that the complaint recite facts and the proof establish matters which will warrant the Court in exercising its discretion and allowing a lump sum.

(2) In reference to the second question presented, the provisions of subdivision 10, section 25 of the Nevada Industrial Insurance Act, the allowance of a lump-sum settlement in death-benefit cases, is prohibited. Subdivision 10 of section 25 provides:

> In such cases where compensation is awarded to the widow, dependent children or persons wholly dependent, no lump-sum settlement shall be allowed.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Nevada Industrial Commission, *Carson City, Nevada.*

SYLLABUS

147. Elections—Primary Elections—Instructions on Ballot as to Number To Be Voted for Governed by Number To Be Elected.

Primary Election Law, section 12, subdivision (e), as amended Stats. 1921, c. 248: Names of candidates on ballot are grouped according to office sought. Each group is preceded by instruction as to how many to vote for, depending on number to be nominated, as fixed by statute.

Stats. 1923, p. 51: Section 22 amends above provision so that number to be voted for depends, not upon the number to be nominated, but upon number to be elected. Thus, in case of office of Justice of the Peace where only one is to be elected, instruction should be "Vote for one."

INQUIRY

CARSON CITY, July 25, 1924.

In preparing the Official Ballots for Nonpartisan Candidates for Justice of the Peace, are the words "Vote for one" or "Vote for two" to be inserted. After reading section 22, page 51, Stats. 1923, I am somewhat puzzled which would be correct.

OPINION

The above question is answered by subdivision (e) of section 12 of the primary law, as amended by chapter 43, Stats. 1923, and not by section 22 of said law, as amended.

Subdivision (e) of section 12 of the Primary Law of 1917, as amended by chapter 248, Stats. 1921, reads in part, as follows:

> The names of the candidates to be grouped according to the office for which they are candidates and the names in each group shall be placed with the surname first, arranged alphabetically, and each group shall be preceded by the designation of the office for which the candidate seeks nomination, and the words "Vote for one," or "Vote for two," or more, according to the number to be nominated.

The right to "Vote for one" or "Vote for two," as the case may be, is conferred and limited by the statute, and, under the language of the statute above quoted, the Supreme Court, in State v. Jepsen, 46 Nev. 193, at pp. 195–196, uses this language:

> Subdivision (e) of section 12 of the Act as amended, which is substantially the same as it was when the Act was originally adopted, states what instructions shall be placed on the primary ballot whether the candidate be partisan or nonpartisan. So far as it is applicable to the point at issue, it provides that the names of the candidates shall be grouped on the primary ballots according to the office for which they are candidates, and the names in each group shall be preceded by the designation of the office for which the candidate seeks nomination "and the words 'Vote for one' or 'Vote for two,' or more, according to the number to be nominated." The statute provides no different instructions for a nonpartisan office; consequently "the words 'Vote for one' or 'Vote for two,' or

more, according to the number to be nominated," apply alike both to partisan and nonpartisan candidates, and the statute means that each group of names of candidates on the primary ballots shall be preceded by the words "Vote for one," or "Vote for two," or more, according to the number to be nominated by the political party or body nominating candidates for the office or position to be filled. If the candidates are partisan, and but one person can be elected to that office at the general election, then each political party can nominate but one candidate for that office; but if the candidates are nonpartisan—that is if they are seeking the nomination for a nonpartisan office, and but one person can be elected to that office at the general election—the law clearly provides that two persons may be nominated for that office by the electors as a whole, who vote at the primary election. Since there were three candidates for the nomination for each of the nonpartisan offices to be filled, mentioned in the amended petition, and since two candidates were to be nominated for each of those offices, under the expressed language of the Legislature, it follows that the words "Vote for two" should precede the names of each group of candidates mentioned in the amended petition.

But the Legislature of 1923 amended this provision of the law, and made the right to "Vote for one" or "Vote for two" to depend, not upon the number to be nominated for the office, but upon the number to be elected to that office, so that if there are two candidates to be elected to an office, as two members of the Board of Education, or two Regents of the University, or two members of the Assembly, the instructions should be "Vote for two" or more, according to the number to be elected; but, in all cases where there is but one to be elected to an office, the instruction should be "Vote for one."

In the specific instance mentioned, as there is, under the present statute, but one Justice of the Peace to be elected, in each township, the instruction should be "Vote for one."

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. L. E. GLASS, *County Clerk, Tonopah, Nevada.*

SYLLABUS

148. Elections—Primary Election—Independent Candidate Should be Registered as Independent.

The spirit and purpose of primary law is that each political party may have opportunity to nominate its candidate. If a person who runs independently presents himself for registration, he should be registered "Independent" or without party designation, otherwise he might be challenged on ground that "he (the voter) does not belong to the political party designated upon the register."

INQUIRY

CARSON CITY, July 25, 1924.

I find no provision in the statutes as to how a person running independent should be registered. If he is running independent for Constable should he be registered as an independent or can he be registered as a Republican or Democrat and vote at the primary election? Although the names of the independent candidates do not appear on any ballots at the primary election.

OPINION

While there is no specific provision of the statute prohibiting one who files for an independent nomination for an office, from participating in a primary election, it would plainly be a violation of the purpose and spirit of the primary law to permit him to do so. The purpose of the primary law is to permit and confer the right upon all persons who belong to a political party, and presumably who expect and desire to support its candidate after the nomination, to take part in such nominations, and to prevent all other persons from doing so. And to permit one who does not expect to do this, but to oppose and contest with one of such candidates for an office at the general election, would clearly be a violation of that purpose.

Further, it is provided in section 16, of the primary law, that a cause for challenge to vote at a primary election may be made upon the ground that "he (the voter) does not belong to the political party designated upon the register.

We can think of no stronger evidence that one does not belong to a political party than the fact that he is actually running as a candidate against a nominee of such party for an office, at the general election, and we are sure that any Court to which the matter might be presented for determination, would hold such evidence to be conclusive.

In respect to your specific question, if one who is running for an office independently presents himself for registration, he should be registered "Independent," or without party designation. Whereas, if he has already been registered and given a party designation on the register, he may be challenged as above stated, if he attempts to vote a party ticket at a primary election.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. L. E. GLASS, *County Clerk, Tonopah, Nevada.*

SYLLABUS

149. Election—Registration—Absent Voters.

All voters who voted absent-voter ballots at last general election must reregister if they desire to vote at ensuing election.

Under the provisions of sec. 2, Stats. 1917, p. 425, persons engaged or employed in the military, national or civil service of the United States or the State of Nevada do not come within the provision of this statute, neither do persons who are kept at an alms house or asylum. Students at seminary or other institution of learning are also exempted.

INQUIRY

CARSON CITY, July 25, 1924.

You advise that many names are now on the registration list of those who voted absent voter's ballots at the election of 1922. Are such persons entitled, under the law, to apply for absent voter's ballots at the election of 1924 without reregistering?

OPINION

This question is answered by the provisions contained in section 15, Stats. 1921, p. 153, as amended Stats. 1923, p. 197. The latter portion of said section reads as follows:

> The County Clerk is hereby directed to cancel all registration cards of persons who voted by absent voter's ballot in the manner provided by section 16, of said Act, approved March 27, 1917.

The only exception to this statute, are those persons described in section 2, Stats. 1917, p. 425, which reads:

> No person shall be deemed to have gained or lost such residence by reason of his presence or absence employed in the military, national or civil service of the United States, or the State of Nevada; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student at any seminary or other institution of learning, nor while kept at an alms house, or other asylum at public expense.

The conclusion therefore, must necessarily follow, that all persons who voted an absent voter's ballot in the election of 1922, except those enumerated in section 2, Stats. 1917, p. 425, must reregister in order to vote at the election of 1924.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. L. E. GLASS, *District Attorney, Tonopah, Nevada.*

SYLLABUS

150. Election—Primary Election—Nonpartisan Candidates.

(1) Where no contest in nonpartisan office at primary, name of candidate not to be printed on official ballot.

(2) Where there are two candidates for nomination for nonpartisan office both names go upon official primary ballot with instructions to "Vote for one."

(3) Names of nonpartisan candidates appear on Democratic, Republican, and Nonpartisan ballot.

(4) Where one candidate for nonpartisan office receives a majority of all votes cast at a primary election, his name only goes on the ballot at general election.

INQUIRY

CARSON CITY, July 29, 1924.

Will you please advise me concerning the nomination of candidates for a nonpartisan office? In this county we expect

to have two candidates for the office of Justice of the Peace, for Eureka Township. In case the two candidates file, would it not become the duty of the County Clerk to place the two names on the primary election ballot and, in case their names are placed on the ballot at the primary election, will one of the candidates be eliminated, or will both names appear again on the general election ballot?

OPINION

Your first inquiry is answered by the provisions of subdivision "J," section 12, of the primary election law, which provides:

> In addition to the party ballots provided for in this section, the County Clerk shall prepare and have printed a "nonpartisan primary ballot; *provided*, that the names of all party candidates shall be omitted therefrom."

Section 22, of the election law provides:

> The party candidate who receives the highest vote at the primary shall be declared to be the nominee of his party for the November election. In the case of an office to which two or more candidates are to be elected at the November election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the primary shall be declared the nominees of their party.
>
> In the case of a nonpartisan office, the candidates equal in number to twice the number to be elected to such office, or less, if so there be, who receive the highest number of votes shall be the candidates for such office at the ensuing election, and their names as such candidates shall be placed on the official ballot voted at the ensuing election; *provided, however*, that in case there is but one person to be elected at the November election to a nonpartisan office, any candidate who receives at the September primary election a majority of the total number of votes cast for all the candidates for such office, shall be the only candidate for such office at the ensuing election. *As amended Stats. 1923, p. 51.*

Under the law therefore, the names of the candidates for the office of Justice of the Peace must be placed upon the nonpartisan primary ballot.

As to whether the names of both candidates shall, after the primary election, be placed on the ballot for the general election, the provision of the statute is clear and free from ambiguity. There is to be but one person elected to the office of Justice of the Peace. If at the primary election one of the candidates for the office receives the majority of the total number of votes cast at the primary election for all candidates, the one receiving such vote shall be the only candidate at the ensuing election.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. EDGAR EATHER, *District Attorney, Eureka, Nevada.*

SYLLABUS

151. Fish and Game—Recreation Grounds, Game Refuges—Governor May Designate—No Persons Permitted to take Game Therefrom.

(1) Stats. 1923, c. 78, section 1: Governor is authorized by proclamation, to set aside not to exceed twenty-five recreation grounds and game refuges on public domain. Privately owned lands are excluded therefrom. All persons including those whose lands are surrounded by or contiguous to such refuges are prohibited from taking or attempting to take game therefrom.

(2) Stats. 1923, c. 195, prohibits all persons from killing game during closed season, even on their own lands.

(3) Stats. 1917, c. 214, permits person to hunt or fish on his own land during open season, but not during closed season, without license.

INQUIRY

Carson City, July 31, 1924.

On June 30, 1923, the Governor set aside by proclamation eleven State Recreation Grounds and Game Refuges under the provisions of chapter 78, Statutes 1923, and on December 15, 1923, another proclamation was issued further describing and setting aside such refuges and also additional ones.

Under the statute reference has been made to lands within the "public domain."

Inquiry has now been made whether in the case of lands held in private ownership such as homesteads surrounded by the "public domain" or contiguous thereto, owners of such lands have the right to take and kill game and birds otherwise prohibited by such proclamations. The question also involves the right of owners of private lands to hunt and kill game and birds during the open season and during the closed season as fixed by the general game laws of Nevada.

OPINION

Section 1 of chapter 78, Statutes of 1923, authorize and direct the Governor to designate and set aside by proclamation "suitable areas described by metes and bounds of the public domain of Nevada, not exceeding twenty-five in number, such areas to be known as State recreation grounds and game refuges."

The above language limits the power of the Governor, in creating and setting aside game refuges, to such areas of the "public domain" as he shall deem advisable, and excludes from such areas and from the operation of chap. 78, Stats. 1923, all lands which are privately owned or shall have been withdrawn from the "public domain," whether they be surrounded by public lands set aside as a game refuge or otherwise. The terms "public domain" and "public lands" are synonymous, and are used to designate such lands of the United States, or other States, as are subject to sale or disposal under general laws. Barker v. Harvey, 181 U. S. 481.

The statute prohibits all persons, whether or not they reside on privately owned lands contiguous to or surrounded by a game refuge, from taking or attempting to take any game bird or animal from such game refuge.

Chapter 195, Statutes of 1923, prohibits all persons (which includes persons hunting on their own lands) from killing or attempting to kill any game bird or animal, excepting during the open season and in the manner, and subject to the conditions therein provided. The only preference given to a person hunting on his own land is contained in section 68, chap. 214, Stats. 1917, which permits a person to hunt or fish on his own lands during the open, but not the closed season, without a license.

By order of the Attorney-General:

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

HON. JAMES G. SCRUGHAM, *Governor, Carson City, Nevada.*

SYLLABUS

152. **Officers—Pershing County Treasurer—Deposit of County Funds in Local Banks—Liability of Treasurer and Banks—Constitutionality of Act.**

(1) Stats. 1919, c. 62, section 18: County Treasurer and funds in his possession do not come within provisions of Act requiring "officials" of that county to deposit certain funds in local banks, but under

(2) Revised Laws, section 1687, such deposit may be made if Treasurer's bondsmen agree, but Treasurer and bondsmen are not relieved from responsibility by such deposit.

(3) The constitutionality of the Act need not be passed upon in view of the foregoing answers.

INQUIRY

CARSON CITY, August 6, 1924.

You submit the following questions that have heretofore been presented to you by the County Treasurer of Pershing County with the request for an official opinion. The questions so presented read as follows:

(1) Is section 18, chapter 62, Statutes of Nevada, 1919, constitutional?

(2) Assuming this question to be answered in the affirmative, does the law make it mandatory upon the County Treasurer to deposit county funds in local banks without condition?

(3) At just what point does the County Treasurer's responsibility cease and the bank's responsibility begin?

OPINION

Replying to the first interrogatory, I am of the opinion that the several questions here presented may be decided without passing upon the constitutionality of section 18, Stats. 1919, chap. 62.

The section referred to reads as follows:

The officials of Pershing County shall deposit all funds of said county appropriate for bank deposits equally, in the several banks located and transacting business in the city of

> Lovelock, dividing said funds equally, or as near equally as may be practicable, among said banks in the city of Lovelock * * *.

As I view the provisions of this section, the office of County Treasurer is not to be included in the words, "officials of Pershing County," and the money in the hands of the County Treasurer cannot be considered as "funds of said county appropriate for bank deposits."

Section 1687 Revised Laws of Nevada, 1912, provides that:

> The County Treasurers of the several counties of this State may, when a private or incorporated bank is located at the county-seat, deposit, with unanimous consent of their bondsmen, county funds in such bank or banks upon open account * * *.

The funds in the possession of the County Treasurer cannot be said to be "funds of said county appropriate for bank deposit" until the provisions of section 1687 have been complied with, and consent of the bondsmen first had and obtained.

The Supreme Court, in the case of State v. Nevin, 19 Nev. p. 162, clearly defined and sets forth the duty and responsibility of County Treasurers in respect to funds coming into their possession. In this case the Court held that in an action brought against the County Treasurer it was no defense to plead that the shortage was caused by robbery.

I conclude, therefore, that:

(1) The question here presented can be determined without passing upon the constitutionality of the law.

(2) That the County Treasurer of Pershing County and the funds in his possession are not to be considered as coming within the provisions of section 18, Stats. 1919, and therefore it is not the duty of the County Treasurer to deposit such funds in local banks, but such deposit may be made when the provisions of section 1687, supra, are complied with.

(3) The County Treasurer and his bondsmen are always liable for county funds, and the deposit of such funds in banks in no way relieves the liability created under the Nevada statute.

Authorities examined:

State v. Commissioners of Washoe County, 22 Nev. 203.
Yarnell v. City of Los Angeles, 25 Pac. 767.
Rothschild v. Bantel, 91 Pac. 803.
People v. Wilson, 49 Pac. 135.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Booth B. Goodman, *District Attorney, Lovelock, Nevada.*

SYLLABUS

153. Elections—Primary Election—Party and Nonpartisan Ballots—Voter To Be Given Only Such Ballot as His Registration Indicates.

Stats. 1923, p. 50, section 12: Separate ballots shall be printed for each party and for nonpartisan candidates.

Same, subdivision (i) determines size, shape, etc. of ballots.

Same, subdivision (j) provided for nonpartisan ballot which shall omit names of party candidates.

Those who fail to designate party affiliations shall receive and vote nonpartisan ballot only.

INQUIRY

CARSON CITY, August 8, 1924.

Owing to the fact that this office has received many inquiries concerning questions relating to the primary election, printing of ballots, nonpartisan candidates, "Vote for one," "Vote for two," it has been deemed advisable to prepare an opinion and mail the same to all officers upon whom the law places the duty of having prepared for printing the official primary ballots.

OPINION

Printing of Ballots: Section 12, Election Law, as amended 1923, provides in part:

> * * * and separate official ballot for each party and for nonpartisan voters shall be printed and provided for use in each precinct, but such ballots must be alike in the designation of nonpartisan candidates.

Subdivision (i), section 12, provides:

> The County Clerk shall determine the size and shape of the ballot in such a way as to conform to the provisions of this Act * * *. Party ballots shall have an extra heavy black vertical line between the column or columns on the left in which the names of candidates for party offices shall be placed and a column on the right in which the names of candidates for nonpartisan offices shall be printed.

Subdivision (j), section 12, provides:

> In addition to the party ballots provided for in this section the County Clerk shall prepare and have printed a "Nonpartisan Primary Ballot" which shall be the same, except as to size thereof, as the other official primary ballots; *provided*, that the names of all party candidates shall be omitted therefrom.

The County Clerk shall, therefore, have printed, irrespective of the fact as to whether or not a contest exists in the Democratic or Republican party, a ballot for the respective parties for the primary election, containing, first, if there is a contest in the party, the names of the respective candidates for the several positions, together with the names of the nonpartisan candidates. If no contest exists in the Republican or Democratic parties, an official primary ballot shall be printed for the Republican and Democratic parties, and such ballot shall only contain the names of the nonpartisan candidates.

In addition to the Democratic and Republican primary ballot, there shall be printed "a nonpartisan primary ballot, which shall be the same, except as to size thereof, as the other official primary ballots; provided, that the names of all party candidates shall be omitted therefrom."

Under the law, therefore, it is necessary that there be printed an official Democratic primary ballot and an official Republican primary

ballot and a nonpartisan primary ballot. In the event a contest exists in the Democratic party, there shall be printed upon such Democratic ballot the names of the candidates for the respective positions, together with the names of the nonpartisan candidates. In the event no contest exists in the party for the respective positions, then there shall appear on the Democratic ballot the names only of the nonpartisan candidates.

There shall be printed a Republican primary ballot containing the names of the party candidates for the respective positions in the event there is a contest, together with the names of the nonpartisan candidates. If no contest exists in the Republican party, for the respective positions, there shall be printed a ballot containing the names only of the nonpartisan candidates. A nonpartisan ballot shall be printed containing the names of the nonpartisan candidates.

Upon the nonpartisan ballot the words "Vote for one" shall appear thereon, if there is to be but one candidate to be elected to such office at the ensuing general election.

Those who fail to designate their party affiliations when registering are entitled to receive and vote a nonpartisan ballot only.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

To County Clerks and Election Officials.

SYLLABUS

154. Election—Registry Card—Duty of County Clerk to Accept though Irregularly Marked by Applicant Who Cannot Write.

Election Laws 1924, sec. 12; Rev. Laws, 6294(7), 3913: It is the duty of the County Clerk to accept registry card of applicant which bears his name, and, in place of usual cross or (x), his thumb print and words "his mark," and signature of witness is sufficient.

INQUIRY

Carson City, August 15, 1924.

You request an opinion upon the following facts:

"Has the County Clerk the right to decline to place upon the registry list of the county, the name of an applicant for registration whose registry card is not signed but which bears a thumb print or finger print in lieu of the signature required by law?"

OPINION

The card of the individual in question has been submitted with this request and it appears that the name of the individual is signed to the card and to the right of this signature appears a thumb print in ink, and over and below said thumb print, are written the words "his mark," Witness, and the names of the witness is signed to said card. Section 12, Election Laws 1924, as compiled by the Secretary of State, provides:

Any elector residing within the County, may register by appearing before the County Clerk or deputy registrar, and making satisfactory answers to all questions propounded by

the County Clerk touching items of information called for by such registry card and by signing and verifying the affidavit or affidavits on such card."

Section 6294(7) defines the word "signature" as follows:

> The word signature shall include any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.

Section 3913, Rev. Laws, provides:

> The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person makes his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

It appears that the person in this inquiry whose registration card is questioned complied with section 3913. It is true that in making his mark he did not make a cross or "X," but he did make a mark, and by making this mark he did so with intent to authenticate his registration card.

I am of the opinion therefore, that the law has been complied with by the registrant, and that the registry card should be accepted.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon J. H. White, *District Attorney, Hawthorne, Nevada.*

SYLLABUS

155. **Election — Registration — Chinese — Foreign-Born Chinese Whose Father Was American-Born Is Entitled to Registration and Citizenship Without Naturalization—Challenging Vote of Such Person—Statute Liberally Construed.**

(1) A Chinese who was born in China but whose father was American-born is American citizen, and entitled to right of suffrage without naturalization.

(2) General Election Laws, section 23, provides for challenge.

(3) Statutes prescribing duties of registration officers should be liberally construed, so that constitutional right of suffrage be not denied.

INQUIRY

Carson City, August 16, 1924.

The following inquiry has been submitted for an official opinion, to-wit:

> Has the County Clerk the right to reject an application for registration in the event that answers given to questions propounded to the applicant are unsatisfactory, or it appears from the statements made that such applicant is not entitled to register?

With this request for an opinion there is submitted the original registration card containing the signature of the party desiring to be registered, together with the answers to questions set forth on the card.

OPINION

It appears to me that the question involved in this case, and to be decided, will not rest upon the query presented.

The registration card discloses that the party desiring to be registered is a Chinese. It is stated on the card that his father was born in America and that he was born in China. It further recites that he was naturalized in 1913. The question to be decided is whether, under these facts, the registrar should register the individual.

It appears that the father of this man was born in America. This being the case, and this fact admitted, the father was a citizen of the United States.

In the case of In Re Look Tin Sing, 21 Fed. 905, the Court decided that:

> A child born of Chinese parents within the dominion and jurisdiction of the United States is a citizen of the United States.

I am not unmindful of the provisions of the Act of Congress which prohibits the naturalization of Chinese persons. The Supreme Court of the United States, however, in the case of United States v. Wong Kim Ark, 42 L. Ed., p. 890, decided that:

> The refusal of Congress to permit the naturalization of Chinese persons cannot exclude Chinese persons born in this country from the operation of the constitutional declaration that all persons born in the United States subject to the jurisdiction thereof, are citizens of the United States.

It having been stated, and admitted that the father of the appellant was born in America, and therefore is a citizen of the United States, the fact that the appellant was born in China would in no way affect his status as an American citizen.

> The foreign-born children of a citizen are themselves citizens. In the application of this rule it is wholly immaterial whether the parents are citizens by birth or naturalization. Ex Parte Wong Fu, 230 Fed. 534.

While it is true that the appellant states he was naturalized in the year 1913, and no naturalization papers were exhibited, yet, under the facts stated by him, there was no necessity for his being naturalized, and his citizenship rests upon the fact that his father was born in America. I am, therefore, of the opinion, that the registration card should be accepted and if any person desires to challenge his right to vote, section 23, General Election Laws, provides a remedy.

We must remember in this and other cases, dealing with the right of an individual to vote, no technical or strict construction should be placed upon the law, if in doing so, the constitutional right of suffrage is to be defeated.

It is a general rule that statutes prescribing the power and duties of registration officers should not be so construed as to make the right to vote by registered voters, dependent upon a strict observance of such officers, of minute direction of the statute, thereby rendering the constitutional right of suffrage liable to be denied through fraud, caprice, ignorance or negligence of the registrar. 20 C. J. sec. 66.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. J. H. White, *District Attorney, Hawthorne, Nevada.*

SYLLABUS

156. Nevada Industrial Insurance—Men Working on Mining Property for Leaser are Employees of Lessor—Lessor Required to Report and Pay Premium—Statute Liberally Construed.

(1) Nevada Industrial Insurance Act, section 7½(a), (d): Men working for leasers on mining property are in employment of lessor, whose duty it is to report to Commission and pay premiums on men so employed.

(2) The statute is remedial and should be liberally construed.

INQUIRY

Carson City, August 19, 1924.

Reference is made to Opinion No. 142. In this opinion it was held that under Section 7½(d) "leasers" were employees of the lessor.

The present inquiry seeks to have determined the status of those employed at a given or stipulated wage by the "leasers." Are such workmen considered employees of the leasers or lessor, under the provisions of the Nevada Industrial Insurance Act?

OPINION

Section 7½(a) defines the term "employee" to mean "every person, firm, etc., * * * which has any person in service under an appointment or contract for hire * * *." An employee is defined to mean "every person in the employment of an employer as defined in subdivision (a) of this section, under any appointment or contract for hire * * *."

It must be remembered that the Nevada Industrial Insurance Act is a remedial statute, adopted for the purpose of giving protection to men employed in various capacities, and is, therefore, to receive a liberal construction.

The Legislature, by enacting section 7½(d) brings within the purview of the Act, leasers who work on the mining property of the lessor. The same liberal spirit which prompted the Legislature to enact this measure would support the construction that men employed by the leasers were employees of the lessor.

In any event it would be paradoxical to so construe the Act and hold that the leasers were employees of the lessor, and the men working for the leasers were not.

Giving to the provisions of this Act a liberal construction, I am of the opinion that men working for the leasers are to be considered, for all purposes of the Nevada Industrial Commission, in the employment of the lessor, and it is therefore the duty of the lessor to report to the Nevada Industrial Commisson and pay premiums on the men so employed.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Nevada Industrial Commission, *Carson City, Nevada.*

SYLLABUS

157. Taxation — Revenue — When Personal Property without State May Be Assessed.

Stats. 1921, as amended, Stats. 1923, p. 359, provides that between first day of January and second Monday of July of each year the Assessor shall ascertain all property subject to taxation and shall, within time stated, determine value, list, and assess such property. Property coming into State after latter date cannot be assessed for current year.

INQUIRY

Carson City, September 12, 1924.

You direct to me the following inquiry and request an official opinion:

> The State Board of Equalization, in session at the present time, requests the opinion of the Attorney-General as to the right of the various County Assessors to assess and collect taxes on personal property unsecured by real estate, after the second Monday in July of any current year; and whether or not the date limit for the assessment and collection of taxes on said property extends beyond the date mentioned. In discussion before said State Board it was brought out that a great deal of such property comes into the State after the second Monday in July.

OPINION

Statutes of 1923, page 359, amends section 8 of an Act entitled "An Act to amend an Act entitled, 'An Act to provide revenue for the support of the Government of the State of Nevada, and to repeal certain Acts relating thereto,' approved March 23, 1891."

Section 8 of this Act provides:

> Between the first day of January and the second Monday of July in each year, the County Assessors, except when otherwise required by special enactment, shall ascertain by diligent inquiry and examination, all property in his county, real and personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms owning the same; and *he shall then determine* the true cash value of all such property, *and he shall then* list, and assess the same to the person, firm, corporation, association or company owning it.

In 37 Cyc., p. 989, the following doctrine is announced in reference to the time and date of assessment:

> The revenue laws commonly provide that the assessment shall be made or shall be completed on a certain day or within a certain time. * * * But the assessment must always be made as of the statutory date, or with reference to conditions as then existing; and hence a delay beyond that time will not enable the assessor *to include in his list, persons or property not within the state or not in existence or not subject to taxation on that date.*

I am of the opinion, therefore, that personal property not within the State of Nevada on the second Monday in July of any current year cannot thereafter be listed or assessed for the current year. If, however, the property is within the State of Nevada, and through inadvertence is overlooked by the Assessor, the same may be thereafter assessed, even beyond the date stated in the statute. I am of the opinion, however, that property not in existence or within the State on the second Monday in July, of any current year, but which comes into existence or into the State thereafter, cannot be assessed for the current year.

See State of Nevada v. Easterbrook, 3 Nev. 173; State of Nevada v. Earl, 4 Nev. 394; State v. C. & C. Railroad Co., 29 Nev. 487.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. STATE BOARD OF EQUALIZATION, *Carson City, Nevada.*

SYLLABUS

158. **Taxation—Revenue—Real Estate of Bank Outside State is Exempt from Taxation.**

Rev. Laws, 3820, as amended, Stats. 1915, 174: In fixing value of shares of stock of bank, real estate of bank without State is allowed as exemption and deducted from value of such shares.

INQUIRY

CARSON CITY, September 13, 1924.

An opinion is requested calling for a construction of Section 3820, Revised Laws Nevada, as amended Stats. 1915, p. 174.

The question to be decided is whether the value of real property owned by banks and situated without the State of Nevada may be deducted from the cash value of the shares of stock of banks in arriving at the value of same for taxation purposes.

OPINION

Section 3820, Revised Laws, reads in part as follows:

> * * * all such shares shall be assessed at their full cash value on the first day of May, first deducting therefrom the proportionate value of the real estate belonging to the bank. * * * .

The Supreme Court of Connecticut has construed a similar statute, and ruled that to deny to the bank an exemption consisting of the value of property situated without the State, would require the Court to read into the statute after the words "real estate," the words "in this State," which the Court had no power to do.

I am of the opinion that the bank is entitled to the exemption precisely as the Legislature has written it, and that in fixing the value of the shares of stock of banks the value of the real estate belonging to the bank and located outside of the State of Nevada should be allowed as an exemption, and deducted from the value of such shares.

Authorities cited: Batterson v. Town of Hartford, 50 Conn. 558.

Respectfully submitted,

M. A. Diskin, *Attorney-General.*

Hon. Lester D. Summerfield, *District Attorney, Reno, Nevada.*

SYLLABUS

159. Taxation—Revenue—Railroad Property Assessment, When Changed.

Tax Commission Law (Stats. 1923, c. 172), sections 4, 5 and 7: Tax Commission shall meet on second Monday in January of each year at regular session, and establish valuation of all interstate and intercounty railroads. Duration of meeting is not limited except that on or before first Monday in June assessed valuation of such property shall be transmitted to County Assessors. Special sessions are provided for. As Board of Assessors, Commission has no power to change original valuation. When sitting later as Board of Equalization, Board may equalize its original assessment, and include value of betterments between date of original assessment and second Monday in July.

INQUIRY

Carson City, September 22, 1924.

Has the Nevada Tax Commission the power and authority, after having established the valuation for assessment purposes of all interstate and intercounty railroads at its regular January meeting, and turned such valuations over to the County Assessors of the various counties involved, on or before the first Monday in June, to reopen the assessment, set aside the valuations originally fixed, and establish a different valuation for assessment purposes of the property of any such railroad at special meetings of the Commission, held in September or October of the current year?

OPINION

Section 4 of the Tax Commission Law provides for certain meetings of the Tax Commission, regular and special. Section 5 provides that, at the regular session of the Commission held on the second Monday in January of each year, the Commission shall establish the valuation for assessment purposes of all interstate and intercounty railroads. The statute does not directly limit the duration of this regular January meeting, but says it shall continue from day to day until the business of the meeting is completed. The statute does, however, provide in section 5:

On or before the first Monday in June it shall be the duty of the said Commission to transmit to the several Assessors, the assessed valuation found by it on such classes of property as are enumerated in this section, together with the apportionment of each county of such assessment. The several County Assessors shall enter on the roll all such assessments transmitted to them by the Nevada Tax Commission.

In case of the omission by said Commission, to establish a valuation for assessment purposes upon any property mentioned in this section, it shall be the duty of the Assessors of any counties wherein such property is situated to assess the same.

So there appears to be a definite limit as of the first Monday in June, when the regular January session must end, and with it, the jurisdiction of the Tax Commission to make an original assessment of the property named in section 5, including railroad property, for, if it has not then been done, it becomes the duty and is within the jurisdiction of the various County Assessors to make the original assessments of such railroad property. There is no provision for concurrent jurisdiction of the Commission and the County Assessors to make the assessment of railroad property, but the law does provide for the original and exclusive jurisdiction of the one or the other, according to the circumstances.

In the case under consideration, we are bound to assume that the Commission did make the original assessment of all the property named in section 5 of the Tax Commission Act, and transmit the same to the various County Assessors on or before the first Monday in June, and that such Assessors did thereafter, and on or before the second Monday in July, make such assessments and enter the same on the assessment rolls of the various counties involved, and turned the same over to the Clerks of the Boards of County Commissioners, on or before the fourth Monday in July. (See chap. 172, Stats. 1923).

We believe it is well settled that when an original assessment has once been made and entered upon an assessment roll and such assessment roll has passed from the hands of the assessing officers, all powers of original assessment are exhausted, and the only power to change it lies in the various Boards of Equalization, excepting where it is otherwise authorized by law. State v. Manhattan Silver Mining Co., 4 Nev. 318.

For the above reasons we do not believe that the Tax Commission, at this time sitting as a board of original assessment, has any power to change the original assessment valuation of the property of any interstate or intercounty railroad, as the same appears on the various assessment rolls.

We do believe, however, that under the provisions of section 7 of the Tax Commission Law, the Commission may, as an equalizing body, equalize its original assessment of any railroad property, and also place upon the assessment rolls of the various counties the value of such improvements, additions and betterments as were made by any such interstate or intercounty railroad, between the date of the original

assessment of its property and the second Monday in July, 1924. See State v. C. & C. Railway Co., 29 Nev. 487.

Respectfully submitted,

THOMAS E. POWELL, *Deputy Attorney-General.*

TAX COMMISSION OF THE STATE OF NEVADA, *Carson City, Nevada.*

SYLLABUS

160. Statutes—No Authority for Expending Funds of Nevada Historical Society in Purchase Copies Nevada's Golden Star.

INQUIRY

CARSON CITY, December 9, 1924.

You request an official opinion as to whether the Nevada Historical Society can use any of the money appropriated in chapter 136, Statutes 1919, for the purpose of purchasing a number of copies of a book entitled, "Nevada's Golden Stars," at actual cost.

OPINION

You are respectfully referred to section 2, of an Act entitled "An Act providing for the publication of Nevada's Golden Star Book," which reads as follows:

> Copies of the book shall be furnished free of charge to the following: * * * To the Nevada Historical Society, * * *.

Under this section, therefore, the Legislature has provided that the Society shall receive copies of the book free of charge, and it would be contrary to this provision to make any charge for copies furnished to this Society.

Respectfully submitted,

M. A. DISKIN, *Attorney-General.*

HON. MAURICE J. SULLIVAN, *Lieutenant-Governor, Carson City, Nevada.*

CASES PENDING JANUARY 1, 1923

Industrial Commission Cases

In the Second Judicial District Court, Ormsby County—Nevada Industrial Commission v. Cortez Mining and Reduction Co. Complaint filed March 12, 1918. Action brought to recover $435.29 dues for premium.

In the District Court of the United States for Nevada—Nevada Industrial Commission v. Southern Pacific Railroad Co. Complaint filed October 22, 1915. Action brought to recover compensation paid by Commission.

In the Seventh Judicial District Court, Esmeralda County—Ethel May Miller v. Nevada Industrial Commission. Complaint filed April 17, 1922. Action brought to recover compensation for death.

In the Fifth Judicial District Court, Nye County—Wm. Mandich, as Administrator, v. Nevada Industrial Commission. Complaint filed April 19, 1922. Action brought to recover disability compensation.

State Engineer

In the Seventh Judicial District Court, Mineral County—Mary Elizabeth Spencer v. Seymour Case, as State Engineer. Action brought to review decision of State Engineer in Application No. 4645. Complaint filed May 25, 1918.

In the Second Judicial District Court, Washoe County—Bernit Lobiday v. Scrugham, as State Engineer, et al. Complaint filed April 19, 1919. Action against State Engineer in reference to water right No. 14315.

In the District Court of the United States for District of Nevada—Steamboat Canal and Irrigation Co. v. J. G. Scrugham, as State Engineer. Complaint filed April 24, 1919.

In the Eighth Judicial District Court, Lyon County—Geo. Rice, et ux., v. Henry Williams, et al. Complaint filed July 3, 1922. Litigation of water rights.

Public Service Commission

In the District Court of the United States for District of Nevada—Nevada Northern Railroad Co. v. J. F. Shaughnessy, et al. Complaint filed 1919. Injunction proceedings against Public Service Commission.

In the District Court of the United States for District of Nevada—Reno Power, Light and Water Co. v. Public Service Commission. Complaint filed 1921. Injunction to restrain enforcement of rates.

Suits Instituted by and on Behalf of State

In the first Judicial District Court, Ormsby County—State v. State Bank and Trust Co. Receivership matter.

In the Second Judicial District Court, Washoe County—State v. Reno Grocery Co. Complaint filed February 13, 1919. Testing legality of sale of flavoring extracts.

In the First Judicial District Court, Ormsby County—State v. Nye and Ormsby County Bank. Receivership matter.

In the Ninth Judicial District Court, White Pine County—State v. Hugh Wilson, et al. Complaint filed September 22, 1922. Action to abate nuisance.

In the Fifth Judicial District Court, Nye County—State of Nevada v. United States Fidelity and Guaranty Co. Complaint filed February 21, 1912. Action to recover on bond of Sheriff.

Tax Commission

(Including Escheats and Inheritance Tax Matters)

In the Eighth Judicial District Court, Churchill County—Matias Jauregui v. Churchill County. Complaint filed September 25, 1920. Action to recover taxes.

In the Fifth Judicial District Court, Nye County—State v. Tonopah Extension Mining Co. Complaint filed October 1, 1920. Bullion tax matter.

In the Sixth Judicial District Court, Humboldt County—John E. Hearn, et al., v. State of Nevada. Complaint filed April 11, 1922. Inheritance tax matter.

In the Eighth Judicial District Court, Lyon County—Garavanta Land and Livestock Co. v. Lyon County. Complaint filed December 27, 1922. Action to recover taxes where mistake was made in assessment.

In the Second Judicial District Court, Washoe County—In Re Estate of Alex Dromiack. In the matter of recovering inheritance tax.

In the First Judicial District Court, Ormsby County—Pittsburg Silver Peak Gold Mining Co. et al., v. Nevada Tax Commission, et al. Complaint filed March 1, 1915. Action to recover taxes paid under protest.

In the First Judicial District Court, Ormsby County—In Re Estate of Hans Kaas. Matter pending in District Court to recover property escheated to State of Nevada.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer, et al., v. State and Eureka County. Action to recover taxes paid under protest for the year 1920.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer, et al., v. State and Eureka County. Action to recover taxes paid under protest for the year 1921.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer v. State and Eureka County. Action to recover taxes paid under protest for the year 1922.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer et al., v. State and Lander County. Action to recover taxes paid under protest for the year 1920.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer et al., v. State and Lander County. Action to recover taxes paid under protest for the year 1921.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer et al., v. State and Lander County. Action to recover taxes paid under protest for the year 1922.

Criminal Cases

In the Supreme Court of Nevada—State of Nevada v. Gee Jon and Hughie Sing, convicted of murder. Pending on appeal.

In the Supreme Court of Nevada—State of Nevada v. Frank Cudney. Pending on appeal from conviction of grand larceny.

In the Supreme Court of Nevada—State of Nevada v. Thomas Russell. Pending in Supreme Court on judgment of conviction of murder of first degree.

In the Supreme Court of Nevada—State of Nevada v. Chin Gim. Pending in Supreme Court of Nevada, on judgment of conviction of having narcotics in possession.

In the Supreme Court of Nevada—State of Nevada v. E. L. Holt. Appealed to Supreme Court, judgment of conviction of murder of first degree.

Highway Department

In the first Judicial District Court, Ormsby County—J. H. Rooney, et al., v. State of Nevada and Highway Department. Complaint filed October 18, 1921. In the matter of contract between Rooney, et al., and Highway Department. Claim for damages.

In the Second Judicial District Court, Washoe County—Charles J. Kappler v. Department of Highways. Complaint filed December 8, 1922. Action to recover compensation for taking of land.

CASES COMMENCED 1923-1924

Tax Commission

(Including Escheats and Inheritance Tax Matters)

In the Second Judicial District Court, Washoe County—In Re Estate of Peter Murphy, Deceased. Complaint filed January 9, 1923. Inheritance tax matter. Hearing held January 9, 1923.

In the Second Judicial District Court, Washoe County—In Re Estate of Wm. H. Clark, Deceased. Action instituted to escheat estate of deceased to State of Nevada.

In the Second Judicial District Court, Washoe County—In Re Estate of Charles William Lang. Appraisement filed June 4, 1923. Inheritance tax matter.

In the Second Judicial District Court, Washoe County—In Re Estate of Mrs. McCann, Deceased. Appraisement filed June 4, 1923. Inheritance tax matter.

In the Supreme Court of Nevada—Pittsburg Silver Peak Gold Mining Co. v. Nevada Tax Commission. Appealed to Supreme Court from judgment rendered against Tax Commission in lower court. Appeal filed October 14, 1923.

In the First Judicial District Court, Storey County—In Re Estate of Delia Fitzpatrick, Deceased. Petition filed June 16, 1923, to escheat property to State of Nevada.

In the Fourth Judicial District Court, Elko County—In Re Estate of Thomas Costello, Deceased. Petition filed June 22, 1923, to escheat estate to State of Nevada.

In the Seventh Judicial District Court, Mineral County—In Re Estate of Daniel Kuciner, Deceased. Petition filed June 1, 1923, to escheat estate to State of Nevada.

In the First Judicial District Court, Ormsby County—In Re Estate of John Meyers, Deceased. To recover money escheated to the State of Nevada.

In the Third Judicial District Court, Lander County—Golconda Cattle Co. v. Tax Commission. Action brought to recover taxes.

In the Second Judicial District Court, Washoe County—In Re Estate of J. Howard Martin, deceased. Petition filed escheating estate to State of Nevada.

In the Second Judicial District Court, Washoe County—In Re Estate of George W. Mapes, Deceased. Inheritance tax matter.

In the Second Judicial District Court, Washoe County—In Re Estate of George Keller, Deceased. Inheritance tax matter.

In the Fourth Judicial District Court, Elko County—State of Nevada v. Elkora Mines Co. Action to recover bullion tax.

In the Fifth Judicial District Court, Nye County—State of Nevada v. Tonopah Belmont Mining Co. Action brought to recover bullion tax.

In the Sixth Judicial District Court, Pershing County—State v. Rochester Silver Corporation. Action to recover bullion tax.

In the Ninth Judicial District Court, Ely, White Pine County—State of Nevada v. Nevada Consolidated Copper Co. Action to recover bullion tax.

Before Board County Commissioners, Eureka, Nevada—Richmond-Eureka Mining Co. v. State of Nevada. Action brought to recover money paid under protest as taxes equalized by Board of County Commissioners.

In the Supreme Court of Nevada—Pittsburg Silver Peak Mining Co., et al., v. Nevada Tax Commission, et al. Case appealed to Supreme Court from First Judicial District Court decision. Action to recover taxes paid under protest.

In the Fifth Judicial District Court, Nye County—State v. West End Consolidated Mining Co. Action to recover bullion tax. Complaint filed April 22, 1924.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer, et al., v. State and Lander County. Notice of motion to dismiss filed August 30, 1923. Action to recover taxes paid under protest for the year 1921.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer, et al., v. State and Lander County. Action to recover taxes paid under protest for the year 1920.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer, et al., v. State and Eureka County. Action to recover taxes paid under protest for the year 1922.

In the Third Judicial District Court, Lander County—Jennie C. D. Meyer, et al., v. State and Lander County. Action to recover taxes paid under protest for the year 1922.

In the Third Judicial District Court, Eureka County—Richmond-Eureka Mining Co. v. State. Bullion tax case. Complaint filed February 29, 1924.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer, et al., v. State and Eureka County. Action to recover taxes paid under protest for 1920.

In the Third Judicial District Court, Eureka County—Jennie C. D. Meyer, et al., v. State and Eureka County. Action to recover taxes paid under protest for the year 1921.

In the Third Judicial District Court, Eureka County—Estate of Pierre Anxo. Inheritance tax case. Notice of appraisement filed April 24, 1924.

In the Sixth Judicial District Court, Humboldt County—Estate of Geo. Blaine. (Escheat.) Judgment filed August 18, 1924, escheating estate to State of Nevada.

In the First Judicial District Court, Douglas County—A. J. Pedroli v. Douglas County. Complaint served August 20, 1924. Action to recover taxes paid by reason of incorrect valuation.

In the First Judicial District Court, Ormsby County—A. J. Pedroli v. Ormsby County. Complaint served August 20, 1924. Action to recover taxes paid by reason of incorrect valuation.

In the Second Judicial District Court, Washoe County—Re Estate of Henry S. Hansen, Deceased. Inheritance tax case.

In the First Judicial District Court, Ormsby County—Escheat case. William Harris Estate.

Industrial Commission

In the Fifth Judicial District Court, Nye County—Henry R. Brewster v. Industrial Commission. Complaint filed February 13, 1923. Action brought to recover disability compensation.

In the Fifth Judicial District Court, Nye County—Jacinto Martinez v. Nevada Industrial Commission. Complaint filed June 29, 1923. Action to recover disability compensation.

In the Second Judicial District Court, Washoe County—Chris Krueger v. Nevada Industrial Commission. Complaint filed June 29, 1923. Action to recover disability compensation.

In the Fifth Judicial District Court, Nye County—Patrick J. Sullivan v. Nevada Industrial Commission. Complaint filed November 24, 1923. Action to recover disability compensation.

In the Second Judicial District Court, Washoe County—Nick Gardella v. Industrial Commission. Complaint filed April 2, 1924. Action to recover disability compensation.

In the Fifth Judicial District Court, Nye County—Minnie A. Bozarth v. Nevada Industrial Commission. Complaint filed April 10, 1924. Action to recover compensation for death of husband.

In the Seventh Judicial District Court, Esmeralda County—Krueger v. Industrial Commission. Action to vacate judgment.

Criminal Cases

In the Supreme Court of Nevada—State v. Dawn Margaret Williams. On appeal from judgment of conviction of murder.

In the Second Judicial District Court, Washoe County—State v. John Capurro. Appeal to District Court of Washoe County from judgment of the Justice Court holding semimonthly pay-day law unconstitutional.

In the Supreme Court of Nevada—State of Nevada v. Henry C. Sigler. Appealed to Supreme Court from judgment of conviction of assault with intent to kill.

In the Supreme Court of Nevada—In the matter of the Application for Writ of Habeas Corpus of Leon Leotard.

In the Supreme Court of Nevada—State of Nevada, ex rel. Gee Jon, v. Seventh Judicial District Court. Application for writ of prohibition to prohibit Court from pronouncing sentence.

In the Supreme Court of Nevada—In the matter of the application of Thomas Russell for Writ of Prohibition to prohibit Judge of Fourth Judicial District Court from fixing date for carrying execution into effect.

In the Supreme Court of the State of Nevada—State v. Harry Hunter. Murder case. Record on appeal filed June 5, 1924.

In the Supreme Court of Nevada—State v. Robert Clark. On appeal.

In the Justice Court of Reno Township—State v. Dixon. Action brought for employment of unlicensed engineer at Wedekind mine.

In the Justice Court of Reno Township—State v. Dixon. Action brought for allowing miners to ride on rim of bucket.

In the Justice Court of Reno Township—State v. Dixon. Action brought for operating single compartment in perpendicular shaft.

In the Supreme Court of Nevada—State v. Clyde Moore. Appealed from District Court.

In the Supreme Court of Nevada—State v. Oliveria. Appealed from a judgment of conviction.

Highway Department

In the Fourth Judicial District Court, Elko County—Highway Department v. W. T. Smith, as Receiver. Complaint filed June 30, 1923, in condemnation suit.

In the Fourth Judicial District Court, Elko County—Highway Department v. Boyd Bros. Complaint filed and money deposited in court for purpose of settling disputes in reference to fund.

In the Second Judicial District Court, Washoe County—B. Capurro v. C. Miles, et al. Action enjoining defendants from destroying plaintiff's ditch. Summons and complaint filed April 4, 1924.

In the Second Judicial District Court, Washoe County—State v. Hunken Estate. Complaint filed July 23, 1924. Condemnation proceedings.

Public Service Commission

In the Supreme Court of Nevada—State of Nevada, ex rel. Ginocchio Bros., v. Public Service Commission. Petition for writ of mandamus filed June 11, 1923.

In the Fifth Judicial District Court, Nye County—Public Service Commission v. Tonopah Sewer and Drainage Co. Complaint filed June 14, 1923, charging violation of order made by Public Service Commission.

In the Fifth Judicial District Court, Nye County—Tonopah Sewer and Drainage Co. v. George Hickernell, et al.

In the Fifth Judicial District Court, Nye County—County Commissioners of Nye County v. Tonopah Sewer and Drainage Co. and Public Service Commission. Complaint filed April 18, 1924. Action to prevent charges made to county institutions by defendant company.

State Engineer

In the Sixth Judicial District Court, Humboldt County—Order of Determination adjudicating waters of Humboldt River filed in Sixth Judicial District Court, April 2, 1923. The following exceptions and claims were filed by the respective parties:

Humboldt Land and Cattle Co. Motion to dismiss and demurrer filed.

George B. Williams. Motion to dismiss and demurrer filed.

Pacific Livestock Co. Motion to dismiss and demurrer filed.
Union Land and Cattle Co. Motion to dismiss and demurrer filed.
Estate of John J. Hill. Motion to dismiss and demurrer filed.
Dunphy Estate. Motion to dismiss and demurrer filed.
Estate of James Faris. Motion to dismiss and demurrer filed.
Flood Estate. Motion to dismiss and demurrer filed.
Land Development Co. Motion to dismiss and demurrer filed.

Exceptions as to Facts

John G. Taylor and J. Sheehan. Exceptions as to facts filed.
Webster Patterson. Exceptions as to facts filed.
William Pettit and L. Hirzel. Exceptions as to facts filed.
A. E. Kent Co. Exceptions as to facts filed.
W. F. Pearce. Exceptions as to facts filed.
Ada Rennie. Exceptions as to facts filed.
W. S. Yates. Exceptions as to facts filed.
The Old Channel Ditch Co. Exceptions as to facts filed.
A. Filippini. Exceptions as to facts filed.
Estate of Chas. Pedroli. Exceptions as to facts filed.
W. C. and F. H. Bergman. Exceptions as to facts filed.
W. R. Bellinger. Exceptions as to facts filed.
Helena L. Waldron. Exceptions as to facts filed.
W. C. Pitt, et al. Exceptions as to facts filed.
Union Canal Ditch Co. et al. Exceptions as to facts filed.
Young Ditch Co. Exceptions as to facts filed.
John G. Taylor. Exceptions as to facts filed.
Williams Estate Co. Exceptions as to facts filed.
Willow Vista Land and Cattle Co. Exceptions as to facts filed.
Ellison Ranching Co. Exceptions as to facts filed.
Fred and Frank Claverly. Exceptions as to facts filed.
John G. Taylor. Exceptions as to facts filed.
J. A. Callahan. Exceptions as to facts filed.
Reinhart Land and Livestock Co. Exceptions as to facts filed.
Viola P. Burnett. Exceptions as to facts filed.
W. T. Jenkins Co. Exceptions as to facts filed.
George Heard. Exceptions as to facts filed.
Lovelock Water Users Association. Exceptions as to facts filed.

In the Supreme Court of Nevada—Humboldt River Water Users v. District Court Sixth Judicial District. Petition for writ of prohibition filed in Supreme Court.

General

In the matter of the removal of District Judge before State Legislature. Hearing before State Legislature February 5, 1923.

In the Supreme Court of Nevada—State of Nevada v. W. G. Greathouse, as Secretary of State. Mandamus proceeding.

In the Justice Court of Hawthorne Township, Mineral County—J. C. Durham, as County Commissioner, et al., v. L. C. Merz. Action to compel defendant to support minor child.

In the Supreme Court of Nevada—State, ex rel. Bridges, v. Jepsen. Petition for writ of mandamus, filed July 14, 1924, to compel Clerk to include in notice to be published, office of County Clerk.

In the Ninth Judicial District Court—Ozello E. McGill v. F. D. Oldfield, as County Clerk. Mandamus action.

In the Supreme Court of Nevada—State, ex rel. McGill, v. Oldfield, as County Clerk. Mandamus action, appealed from Ninth Judicial District Court.

CASES CLOSED SINCE JANUARY 1, 1923

Judgments in favor of State

In the Fourth Judicial District Court, Elko County—State of Nevada and Highway Department v. Boyd Bros. Complaint filed and money deposited in District Court. Case closed October 3, 1923.

In the Fifth Judicial District Court, Nye County—Henry R. Brewster v. Nevada Industrial Commission. Action to recover disability compensation. Closed August 27, 1923.

In the Second Judicial District Court, Washoe County—State of Nevada v. John Capurro. Action involving semimonthly pay-day law. Law declared unconstitutional. Case closed September 27, 1923.

In the Fourth Judicial District Court, Elko County—In Re Estate of Thomas Costello, Deceased. Escheat matter. Case closed July 20, 1923.

In the Supreme Court of Nevada—State v. Frank Cudney. Appeal from conviction of grand larceny. Judgment affirmed. Order denying rehearing filed October 4, 1923. Case closed.

In the Supreme Court of Nevada—State of Nevada v. Gee Jon and Hughie Sing. Appeal from judgment of conviction of murder. Judgment affirmed. Case closed July 5, 1923.

In the Supreme Court of Nevada—State, ex rel. Ginocchio Bros., v. Public Service Commission. Mandamus proceeding. Petition denied, and case closed October 16, 1923.

In the Supreme Court of Nevada—State, ex rel. Gee Jon and Hughie Sing, v. Seventh Judicial District Court. Application for writ of prohibition. Denied, and case closed January 4, 1924.

In the Supreme Court of Nevada—State of Nevada v. E. L. Holt. On appeal from judgment of conviction of murder. Judgment affirmed November, 1. Case closed.

In the First Judicial District Court, Ormsby County—Lincoln Construction Co. v. Highway Department. Case compromised.

In the Supreme Court of Nevada—In the matter of the Application of Leon Leotard for Writ of Habeas Corpus. Application denied and case closed September 4, 1923.

In the Fifth Judicial District Court, Nye County—Ethel May Miller v. Nevada Industrial Commission. Case compromised. Closed July 25, 1923.

In the Second Judicial District Court, Washoe County—Chas. J. Kappler v. Highway Department. Suit to recover compensation for taking of land for State Highway. Case compromised. Closed February 21, 1923.

In the Second Judicial District Court, Washoe County—In the matter of the Estate of J. Howard Martin, Deceased. Escheat matter; $156.53 escheated to State. Case closed January 1, 1924.

In the Supreme Court of Nevada—State of Nevada v. Thomas Russell. Convicted of murder. Judgment of lower court affirmed. Case closed July 2, 1923.

In the First Judicial District Court, Ormsby County—J. H. Rooney v. State of Nevada and Highway Department. Case settled by compromise. Closed February 29, 1924.

In the Supreme Court of Nevada—In Re Application of Thomas Russell for Writ of Prohibition. Application denied. Case closed January 17, 1924.

In the Supreme Court of Nevada—State of Nevada v. Henry Sigler. Defendant charged with assault with intent to kill. Case dismissed July 23, 1923.

In the Fifth Judicial District Court, Nye County—State of Nevada v. United States Fidelity and Guaranty Co. Action to recover on bond of Sheriff. Settled.

In the Supreme Court of Nevada—State of Nevada v. Dawn Margaret Williams. Appeal from judgment of conviction of murder. Judgment affirmed. Case closed November 1, 1923.

In the Second Judicial District Court, Washoe County—Wm. Mandich, Administrator, v. Nevada Industrial Commission. Case compromised. Action to recover compensation. Closed.

In the Second Judicial District Court, Washoe County—In Re Estate of Daniel Kuciner, Deceased. Escheat matter. Estate escheated June 1, 1923.

In the First Judicial District Court, Ormsby County—In Re Estate of John Meyers, Deceased. Judgment entered by stipulation. Closed.

In the Sixth Judicial District Court, Humboldt County—John E. Hearn, et al., v. State of Nevada. Inheritance tax matter. Judgment rendered in favor of State. Case closed.

In the Third Judicial District Court, Eureka County—Richmond-Eureka Mining Co. v. State and Eureka County. Action to recover amount of taxes equalized by County Commissioners. Judgment by stipulation.

Before the Board of County Commissioners, Eureka County—Richmond-Eureka Mining Co. v. State and Eureka County. Hearing on protest filed by Mining Company against assessment of taxes. Order entered equalizing assessment.

In the Supreme Court of Nevada—State v. Greathouse, as Secretary of State. Mandamus. Writ of mandamus denied.

In the Second Judicial District Court, Washoe County—In Re Estate of Peter Murphy. Inheritance tax case. Tax paid July 11, 1923. Case closed.

In the Second Judicial District Court, Washoe County—In Re Estate of Mrs. McCann. Inheritance tax paid June 8, 1923. Case closed.

In the Second Judicial District Court, Washoe County—In Re Estate of Wm. Lang. Inheritance tax paid June 26, 1923. Case closed.

In the Second Judicial District Court, Washoe County—In Re Estate of George Keller. Inheritance tax paid February 24, 1924. Case closed.

In the Supreme Court of Nevada—Humboldt River Water Users, et al., v. Sixth Judicial District Court, et al. Writ of prohibition. Writ denied March 26, 1924. Closed.

In the Second Judicial District Court, Washoe County—In Re Estate of Wm. H. Clark, Deceased. Order made escheating estate to State of Nevada, November 16, 1923. Closed.

In the Supreme Court of Nevada—State v. Chin Gim. Regarding validity of search warrant. Judgment of lower Court affirmed. April 4, 1924. Closed.

In the Second Judicial District Court, Washoe County—In the matter of the Estate of George W. Mapes, Deceased. Inheritance tax matter. Tax paid. Case closed April, 1924.

In the Seventh Judicial District Court, Esmeralda County—Chris Krueger v. Industrial Commission. Suit for recovery of disability compensation. Case closed May 27, 1924.

In the Second Judicial District Court, Washoe County—Nick Gardella v. Industrial Commission. Complaint filed April 2, 1924. Case compromised October 15, 1924.

In the Second Judicial District Court, Washoe County—In Re Estate of Alex Dromiack, Deceased. Inheritance tax. Case closed October 15, 1924.

In the Fourth Judicial District Court, Elko County—Highway Department v. W. T. Smith, et al. Judgment as prayed for in complaint.

In the Fourth Judicial District Court, Elko County—Highway Department v. Boyd Bros. Case fully adjudicated and money distributed to several claimants.

In the Third Judicial District Court, Eureka County—Re Estate of Pierre Anxo, Deceased. Inheritance tax paid.

In the Sixth Judicial District Court, Humboldt County—Estate of Geo. Blaine, Deceased. Judgment entered escheating property to State of Nevada.

In the Supreme Court of Nevada—State of Nevada v. W. G. Greathouse, Secretary of State. Writ of mandamus denied.

In the Justice Court, Hawthorne Township—J. C. Durham, as County Commissioner, et al., v. Merz. Judgment entered and paid.

In the Supreme Court of Nevada—State, ex rel. Bridges, v. Jepsen. Petition for writ of mandamus denied.

In the Ninth Judicial District Court, White Pine County—McGill v. Oldfield. Writ of mandamus denied.

In the Supreme Court of Nevada—State, ex rel. McGill, v. Oldfield. Writ of mandamus denied.

In the Fifth Judicial District Court, Nye County—Patrick J. Sullivan v. Nevada Industrial Commission. Action dismissed.

In the Ninth Judicial District Court, White Pine County—State v. Hugh Wilson. Action dismissed.

In the Eighth Judicial District Court, Lyon County—Garavanta L. and L. Co. v. Lyon County. Judgment entered.

In the United States District Court for Nevada—Reno Power and Light Co. v. Public Service Commission. Litigation settled.

In the Fifth Judicial District Court, Nye County—H. A. McKim v. Nevada Tax Commission. Action to recover on excessive valuation. Judgment for defendant.

CASES SETTLED WITHOUT COURT ACTION, 1923-1924

State, ex rel. Highway Department, v. E. B. Cornell and R. E. S. Hesse. Case settled by payment of $3,000 for right of way through property for State highway. Closed February 8, 1924.

State Highway Department v. E. K. Mathewson, et al. Action to condemn lands for State highway. Settled out of court November 24, 1923.

State Highway Department v. E. G. Norton, et al. Action to condemn lands for State highway. Settled out of court November 24, 1923.

State, ex rel Highway Department, v. J. W. Puett. Action to condemn lands for State highway. Settled out of court July 21, 1923.

In Re $1,000 reward offered by Governor Boyle for capture of the murderers of A. L. Sinclair. Settled without suit, October, 1924.

INDEX

OPINIONS

Numerals designate opinion numbers.

OPINION

95. Animals—Brands.
47. Animals—"Owner" Defined.
126. Animals—Railroad's Liability for Killing Live Stock on Crossing.
56. Animals—Transfer of Brand—Recording.
98. Animals—Trespass by Live Stock—Fence Law.
71. Animals—Wild Horses—Estrays.
123. Attorney-General—No Opinion Rendered when Subject before Court.
19. Automobile—Negligence—Liability for Personal Injury by Federal or State Official when Driving Official Car—Relief.
81. Banks and Banking—Nonjudicial Day.
42. Board of Examiners—Employees of Highway Department.
133. Bonds and Undertakings—Highway Department Cannot Release Bonding Company from its Liability to Contractor's Creditors, or Substitute One Surety by Another.
27. Brands—Livestock Units.
35. Brands—Recording.
2. Budget Law—County Commissioners.
26. Budget Law—Indigent and Other Funds.
55. Chattel Mortgage on Movable Personal Property—Recording.
40. Chiropractor May Give Certificate of Death — Conflict in Decisions — "Physician."
16. Cigarettes, License for Sale of—Revenue—Statute.
8. City Official May Hold other City or County Office.
15. Commissioner Districts—Plan of Local Government Not Uniform throughout State, Unconstitutional.
29. Constitutionality of Relief Bill—Statute.
100. Constitutional Law—Animals—Loaning Public Funds—Expenditure of Public Funds by Private Associations Disapproved.
64. Constitutional Law—Statute—Delegation of Legislative Power—County Ordinance Regulating Motor Vehicles—Public Service Commission.
18. Constitution — Amendment — Statute —Void Local Law— Delegation of Legislative Power—Compensation of Township Officers.
115. Constitution, How Amended.
107. Corporation—Insurance Company—Resident Directors.
4. Corporation—Nonprofit Cooperative Association—Fees.
3. Corporation—Not Ipso Facto Dissolved by Failure to Display Name, Etc.
75. Corporation—Par and Nonpar Value—Change of Articles.

OPINION

36. **Corporation—Preferred and Common Stock—Par and Nonpar Value—Opinion Affirmed by Supreme Court.**
53. **Corporations—Building-and-Loan Association—Insufficiency of Articles of Incorporation.**
116. **Corporations—Delinquent Corporation—Publication of List by Governor—Expense, How Paid.**
77. **Corporations—Fees—Interstate Commerce Corporation Filing Fee.**
62. **Corporations, Foreign—Assessable and Nonassessable Stock—Secretary of State.**
134. **Corporations—Foreign—Property of Foreign Corporation May Not Be Attached for Failure to Pay License Tax.**
32. **Corporations—May Purchase their Own Stock for Unpaid Assessments.**
9. **Crimes and Punishments—Assault with Deadly Weapon—Penalty—Indeterminate Sentence—Duty of Court.**
103. **Criminal Law—Fictitious Check—Gambling.**
70. **Criminal Law—Slot Machine.**
122. **Criminal Procedure—Dismissal of Criminal Action.**
110. **Criminal Procedure—Fixing Penalty for First-Degree Murder—Opinion Affirmed by Supreme Court.**
54. **County—County Commissioners—Lease of County Property.**
73. **County—Highways—City and County Road Funds.**
61. **County—Liability for Tort.**
14. **District Attorney—Drainage District—Statute.**
22. **Easement of Highway on Public Land—Settler.**
145. **Election—Election Precincts Created and Abolished—Mailing Precincts.**
74. **Election—Notice—School Bonds, Validity Of.**
148. **Elections—Primary Election—Independent Candidate Should be Registered as Independent.**
147. **Elections—Primary Elections—Instructions on Ballot as to Number To Be Voted for Governed by Number To Be Elected.**
150. **Election—Primary Election—Nonpartisan Candidates.**
153. **Elections—Primary Election—Party and Nonpartisan Ballots—Voter To Be Given Only Such Ballot as His Registration Indicates.**
149. **Election—Registration—Absent Voters.**
155. **Election — Registration — Chinese — Foreign-Born Chinese Whose Father Was American-Born Is Entitled to Registration and Citizenship Without Naturalization—Challenging Vote of Such Person—Statute Liberally Construed.**
154. **Election—Registry Card—Duty of County Clerk to Accept though Irregularly Marked by Applicant Who Cannot Write.**
6. **Election—Variation in Name on Ballot and in Certificate—Duty of Clerk to Correct.**
20. **Emergency Loan—Legality of Form of Application For.**
120. **Employer and Employee—Nevada Industrial Commission—Safety Rules—Evidence.**

OPINION

119. **Employer and Employee—Private Employment—Payment of Wages—Penalty for Delay—Use of Team.**

60. **Fish and Game Caught by Indians—Sale.**

88. **Fish and Game—Pheasants and Quail—County Commissioners.**

151. **Fish and Game—Recreation Grounds, Game Refuges—Governor May Designate—No Persons Permitted to take Game Therefrom.**

144. **Fish and Game—Sage Chicken—Prairie Chicken—Closed Season—County Commissioners Power to Change.**

48. **Fish and Game—Sale by Indians—Tags.**

31. **Gasoline Tax, by Whom Paid—Coupon Books—Interstate Commerce.**

41. **Gasoline Tax—Dealer—Sale to Government.**

78. **Health—Burial—Records.**

85. **Health—Physicians—Optometry—Unlicensed Persons.**

128. **Health—State Board—Public Funds May Be Expended.**

12. **High Schools—Bond Issue Limited—Statute.**

43. **Highway Department Employees, Number and Salaries Of.**

113. **Highways—Tax Levy—Valid.**

82. **Highways—"Through" Defined.**

45. **Hoisting Engineer's License—Experience Required.**

44. **Inspector of Mines—Assistants—Board of Examiners Fixes Compensation.**

132. **Insurance Commissioner—Powers—Changing Term of Contract—Insurance of State Agricultural Society Property.**

86. **Labor—Banks and Banking—Eight-Hour Law for Women.**

104. **Mineral County—Jurisdiction of County Commissioners—Operating Power System Outside of State—Status of County Ownership.**

50. **Mineral County—Rebate to Consumers of Electric Power.**

90. **Mines and Mining—Hoisting Engineer.**

130. **Mothers' Pension Act—Compensation—Qualifications.**

58. **Motor Vehicles—License to Operate.**

59. **Motor Vehicle—Nonresident Owner—Registration—Penalty for Violation.**

106. **Motor Vehicle—Special Trip—Not Common Carrier.**

99. **Municipalities—Bonds of Caliente, by Whom Signed.**

21. **National Prohibition Law—State Court Has No Power to Enforce National Law.**

7. **Nepotism—County Officer—Deputy—"Employ."**

142. **Nevada Industrial Commission—Leasers of Mining Property are Employees and Entitled to Compensation for Injuries—Burden Not on Commission to Collect Premiums—Act Should Be Liberally Construed.**

146. **Nevada Industrial Commission—Lump-Sum Payments, When Allowed.**

156. **Nevada Industrial Insurance—Men Working on Mining Property for Leaser are Employees of Lessor—Lessor Required to Report and Pay Premium—Statute Liberally Construed.**

97. **Nevada Industrial Commission—Provisions of Act Mandatory on State Agencies.**

OPINION

80. **Nevada Industrial Commission—Workmen's Compensation—Injury Proximate Cause of Death—Time for Filing Claim.**
139. **Officers — Appointment — Tenure and Term under Appointment — Special and General Election—Next General Election Defined.**
138. **Officers—City Officers Elected Every Two Years.**
129. **Officers—Compensation—Unofficial Services.**
127. **Officers—Duty of County Auditor and Treasurer—Publication of Reports.**
109. **Officers—Holding Two Positions—County Commissioner Disqualified to Act as Postmaster, if Compensation Exceeds $500.**
140. **Officers—Mortgages—Sheriff Not Entitled to Commission on Foreclosure Sale to Mortgagee.**
152. **Officers—Pershing County Treasurer—Deposit of County Funds in Local Banks—Liability of Treasurer and Banks—Constitutionality of Act.**
111. **Officers—Salary of Lieutenant-Governor—Old-Age Superintendent—Legislature May Change the Law.**
143. **Officers—Sheriff Has No Authority to Appoint Deputy at Expense of County.**
137. **Officers—Statute Authorizes Payment of Salary—Appropriation, Necessity for—To Pay Traveling Expenses.**
49. **Official Bonds—Mineral County—Chief Deputy Sheriff and Superintendent of Power System—Premium on Bonds.**
30. **Old-Age Pension—Senate and Assembly Bills—Funds Available.**
105. **Physicians—Optometry—License Revoked.**
25. **Private Employment Agency—Annual License—Bond.**
91. **Public Officers—Compensation of District Attorney of Elko County.**
89. **Public Officers—Deputy Recorder's Compensation.**
94. **Public Officers—Residence Qualification.**
46. **Public Service Commission—Common Carriers—Certificates of Public Convenience—Motor Vehicles and Trucks—County Commissioners.**
79. **Recording—Notice—Sale and Attachment of Real Property.**
141. **Revenue and Taxation—Delinquency—Amount of Payment Necessary to Redeem Property.**
96. **Revenue and Taxation—Inheritance-Tax Exemption.**
92. **Revenue and Taxation—Property in Two Counties.**
124. **Revenue and Taxation—What Property of Nevada Industrial Commission Is Subject to Taxation.**
66. **Revenue—Apportionment of High-School Funds a Ministerial Act which May Be Made Nunc Pro Tunc.**
76. **Revenue—Business License in Unincorporated City or Town.**
69. **Revenue—City and County Ordinance—Corporation Tax "Required by Law" Defined.**
63. **Revenue—Corporation License Tax.**
67. **Revenue—Exemptions—Charitable Organizations—License.**
83. **Revenue—Lease of Mining Ground as Unit for Bullion-Tax Assessment.**
87. **Revenue—License for Automobile Not in Use.**

OPINION
57. **Revenue—Poll-Tax—"Civilized American Indians" Defined.**
114. **Revenue—Soft-Drink License in Unincorporated Town—County Commissioners May Fix.**
52. **Revenue—Tax for School Purposes—Duty of County Commissioners.**
84. **Revenue—Widows' and Orphans' Exemption—Statutes in Conflict—Construction.**
39. **School Building, Repair of—Vote by Heads of Families.**
121. **School of Mines—Sale of Equipment.**
93. **Schools—Athletics—Physical Examinations.**
118. **Schools—Budget—High-School Dormitory Maintenance—Deficit.**
68. **Schools—Discharge of Teacher for Cause—Liability of Trustees for Libel or Slander—Recall Election.**
1. **Schools—Emergency Loan—Public Service Corporation—Duty to Furnish Water to City.**
11. **Schools—Fund for "Support and Maintenance" of, Not Liable for Expense of Supervision and Administration—Superintendent of Public Instruction Is a State Officer—Constitution—Statute, Construction Of.**
102. **Schools—Increase in Census—Additional Teachers.**
101. **Schools—Name of High School—Separate Boards for Separate Districts.**
117. **Schools—Term of Trustee Appointed to Fill Vacancy.**
108. **Schools—Transportation of School Children.**
10. **Schools—Trustee May Not Contract.**
5. **Sheep—Law Providing for Grazing License Repealed.**
33. **State Engineer—Public Service Commission—Statute—Repeal.**
38. **State Engineer—Salary.**
28. **Statute—Attorney-General's Opinion on Constitutionality of Statute—When Same Is an Opinion on a Moot Question.**
23. **Statute—Budget Law Construed.**
65. **Statute—Title—Humboldt County Highway Bonds—Tax Levy Valid.**
125. **Statutes—Amendment and Repeal—Livestock License.**
13. **Statutes—Amendment and Repeal—Sufficiency of Title.**
160. **Statutes—No Authority for Expending Funds of Nevada Historical Society in Purchase Copies Nevada's Golden Star.**
131. **Statutes—Repeal—Budget Law Repeals Road Fund Apportionment Act.**
51. **Statutes—Sufficiency of Title—Constitutionality—Hospitals for Disabled Persons.**
24. **Surety Bonds for Public Officers—Payment of Premiums at Public Expense—Constitutionality of Statute.**
159. **Taxation—Revenue—Railroad Property Assessment, When Changed.**
158. **Taxation—Revenue—Real Estate of Bank Outside State is Exempt from Taxation.**
157. **Taxation—Revenue—When Personal Property without State May Be Assessed.**
37. **Taxes Delinquent—Certifying.**

OPINION

17. United States and Nevada Constitutions — Statute — Prohibition Act Unconstitutional — Subject Must Be Expressed in Title —When Invalid Portion Vitiates Whole Act—Fines—Affirmed by Supreme Court.

72. United States Statute—Sheppard - Towner Act—Maternity and Infancy Cases—Expenditures.

112. University of Nevada — Constitution — Statute — Land-Grant Fund — Regents—State Treasurer—Custodian.

34. Witnesses—Mileage—Per Diem Fees.

MISCELLANEOUS MATTERS

Cases Pending January 1, 1923—

	PAGE
Industrial Commission	190
State Engineer	190
Public Service Commission	190
Suits Instituted on Behalf of State	190
Tax Commission	191
Criminal Cases	191
Highway Department	191

Cases Commenced 1923-1924—

Tax Commission	192
Industrial Commission	193
Criminal Cases	193
Highway Department	194
Public Service Commission	194
State Engineer	194
General	195

Cases Closed Since January 1, 1923—

Judgments in Favor of State	195

Cases Settled Without Court Action, 1923-1924 198